Filed 1/14/26 In re E.E. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re E.E., a Person Coming Under the Juvenile Court Law.	
TULARE COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. L.M., Defendant and Appellant.	F090497 (Super. Ct. No. JJV075750A) **OPINION**

THE COURT[*]

APPEAL from an order of the Superior Court of Tulare County. Sylvia J. Hanna, Judge.

Gregory M. Chappel, under appointment by the Court of Appeal, for Defendant and Appellant.

Jennifer M. Flores, County Counsel, and Marit C. Erickson, Deputy County Counsel, for Plaintiff and Respondent.

-ooOoo-

[*] Before Franson, Acting P. J., Snauffer, J. and DeSantos, J.

L.M. (mother) appeals from the juvenile court's order terminating her parental rights as to her minor child E.E. under Welfare and Institutions Code section 366.26.[1] Her sole contention on appeal is that the court erred by finding the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.) (ICWA)[2] inapplicable because the Tulare County Health and Human Services Agency (agency) failed to follow up on a paternal claim of Cherokee ancestry and, as such, fulfill its duty of further inquiry.

The agency concedes error, and the parties have stipulated to an immediate remand for the limited purpose of complying with the inquiry provisions of ICWA and the California Indian Child Welfare Act (§ 224 et seq.) (Cal-ICWA).

We accept the agency's concession of error and the parties' stipulation. We conditionally reverse the court's order terminating parental rights, and remand with directions to ensure ICWA and Cal-ICWA compliance.

FACTUAL AND PROCEDURAL BACKGROUND

Brief Overview of Dependency Proceedings

The juvenile court sustained a juvenile dependency petition filed by the agency on behalf of then 19-month-old E.E., alleging she came within the juvenile court's jurisdiction pursuant to section 300, subdivisions (b)(1) (failure to protect) and (g) (no provision for support). At the time the petition was filed, E.E. was residing with mother, and her presumed father, D.E. (father), was incarcerated. E.E. was declared a dependent of the court, removed from the parents' custody, and both parents were ordered to participate in reunification services. Both parents' reunification services were terminated at the six-month review hearing, and a section 366.26 hearing was set. At the

---

1 All further undesignated statutory references are to the Welfare and Institutions Code.

2 "[B]ecause ICWA uses the term 'Indian,' we do the same for consistency, even though we recognize that other terms, such as 'Native American' or 'indigenous,' are preferred by many." (*In re Benjamin M.* (2021) 70 Cal.App.5th 735, 739, fn. 1.)

section 366.26 hearing, the juvenile court terminated parental rights and ordered adoption as E.E.'s permanent plan.

ICWA

The ICWA facts relevant to the error asserted on appeal are as follows.

At the detention hearing conducted on June 11, 2024, the paternal aunt reported Cherokee ancestry and that the paternal great-grandmother on her maternal side would have more information. The juvenile court ordered the agency to follow up on the claim.

In an addendum report dated September 9, 2024, the agency reported that it contacted the paternal great-grandmother on September 9, 2024. The paternal great-grandmother indicated her grandfather was Cherokee, and she was "only about a quarter Indian." That day, the agency gathered biographical information from relatives and sent "NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD" (Judicial Council Forms, form ICWA-030 (ICWA-030)) forms to Cherokee tribes. The completed ICWA-030 form was attached to the report.

At the six-month review hearing conducted on April 29, 2025, the juvenile court referenced the paternal great-grandmother's claim and noted that there had been no update regarding the ICWA-030 forms that were sent to the tribes despite the agency filing two subsequent reports. The court ordered the agency to follow up on the paternal claim of Cherokee ancestry and ensure the outstanding inquiry was resolved prior to the section 366.26 hearing.

The agency included an ICWA section in its section 366.26 report, dated July 24, 2025, but made no mention of its initial contact with the paternal great-grandmother in September 2024, nor the ICWA-030 forms that had been sent or any other further inquiry with regard to the claim of Cherokee ancestry. Rather, it listed unsuccessful attempts to contact the paternal great-grandmother made in July 2024.

At the section 366.26 hearing conducted on August 12, 2025, the juvenile court did not mention the ICWA-030 forms and stated that the paternal great-grandmother "has

not reasonably availed herself to the Agency to indicate whether or not she has ancestry" despite its previous acknowledgement that the paternal great-grandmother had provided information to the agency, and ICWA-030 forms were reportedly sent to Cherokee tribes. The court nonetheless found "[t]here has been insufficient reason with all family members who have presented themsel[ves] to the Agency to find that child is or may be an Indian child pursuant to [ICWA], hence, the Court finds at this time insufficient reason to either believe or know that the child herself may be an Indian child."

DISCUSSION

Mother contends the juvenile court's finding that the agency had adequately discharged its duty of inquiry under ICWA and Cal-ICWA was error because the agency failed to provide information regarding the results of the further inquiry with the Cherokee tribes.

The agency subsequently filed a "STIPULATION TO IMMEDIATE LIMITED REMAND AND IMMEDIATE REMITTITUR," on November 25, 2025, signed both by county counsel and mother's appellate attorney. Therein, the agency concedes ICWA inquiry error and asserts that the parties:

> "[S]tipulate to a conditional reversal of the August 12, 2025, order terminating parental rights and immediate remand to the juvenile court for compliance with the inquiry and notice requirements of ICWA and corresponding California statutes. If the juvenile court thereafter finds a proper and adequate inquiry and due diligence has been conducted and concludes ICWA does not apply, then the court shall reinstate the order terminating parental rights. If the juvenile court concludes ICWA applies, then it shall proceed in conformity with the ICWA and California implementing provisions."

The parties also stipulate to the immediate issuance of the remittitur to minimize delay to the case.

We accept the agency's concession and the parties' stipulations.

Under Cal-ICWA, the court and county child welfare department "have an affirmative and continuing duty to inquire whether a child," who is the subject of a juvenile dependency petition, "is or may be an Indian child."[3] (§ 224.2, subd. (a); see *In re Isaiah W.* (2016) 1 Cal.5th 1, 9; Cal. Rules of Court,[4] rule 5.481(a).)

The department's initial duty of inquiry includes asking parties, family members, and others involved whether the child is, or may be, and Indian child. (§ 224.2, subd. (b).) When initial inquiry gives rise to a "reason to believe"[5] (but not sufficient evidence to determine there is "reason to know"[6]) that an Indian child is involved in a proceeding, "further inquiry regarding the possible Indian status of the child" is required, which includes gathering additional biographical information from family members and

---

3 An " 'Indian child' " is defined in ICWA as an unmarried individual under 18 years of age who is either (1) a member of a federally recognized Indian tribe, or (2) is eligible for membership in a federally recognized tribe and is the biological child of a member of a federally recognized tribe. (25 U.S.C. § 1903(4) & (8); see § 224.1, subd. (a) [adopting federal definitions].)

4 All further rule references are to the California Rules of Court.

5 "There is reason to believe a child involved in a proceeding is an Indian child whenever the court, social worker, or probation officer has information suggesting that either the parent of the child or the child is a member or citizen, or may be eligible for membership or citizenship, in an Indian tribe. Information suggesting membership or eligibility for membership includes, but is not limited to, information that indicates, but does not establish, the existence of one or more of the grounds for reason to know enumerated" in section 224.2, subdivision (d)(1) through (6). (§ 224.2, subd. (e)(1).)

6 These enumerated grounds for "reason to know" are: "(1) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family informs the court that the child is an Indian child[;] [¶] (2) The residence or domicile of the child, the child's parents, or Indian custodian is on a reservation or in an Alaska Native village …[;] [¶] (3) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child[;] [¶] (4) The child who is the subject of the proceeding gives the court reason to know that the child is an Indian child[;] [¶] (5) The court is informed that the child is or has been a ward of a tribal court[;] [¶] [and/or] (6) The court is informed that either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe." (§ 224.2, subd. (d); see 25 C.F.R. § 23.107(c) (2025).)

contacting relevant tribes. (*Id.*, subd. (e)(2)(A)–(C).) The department "must on an ongoing basis include in its filings a detailed description of all inquiries, and further inquiries it has undertaken, and all information received pertaining to the child's Indian status, as well as evidence of how and when this information was provided to the relevant tribes." (Rule 5.481(a)(5).)

We accept the agency's concession that the court abused its discretion in finding the agency had made an adequate inquiry. (See *In re K.H.* (2022) 84 Cal.App.5th 566, 601–602 [stating the standard of review].) Here, in furtherance of its duty of further inquiry, the agency initiated contact with the Cherokee tribes by mailing the tribes ICWA-030 forms to determine whether E.E. was a member or eligible for membership based on the paternal claim. After doing so, however, the agency failed to report to the court whether any of the Cherokee tribes responded or whether any further investigation was conducted and, instead, provided incomplete information in its section 366.26 report suggesting the paternal great-grandmother was unavailable.

The agency's concession appears to have been proper under the circumstances of this case, as the lack of follow-up appears to be the result of incomplete reporting and seemingly inadvertent omissions that substantially affected the juvenile court's ability to make informed findings according to its own statements.[7] The juvenile court specifically requested further information regarding the ICWA-030 forms in order to make its ICWA findings, but ultimately appeared to rely on inaccurate information included in the

---

[7] We note the social worker signed the certificate of mailing, which attested that each copy of the ICWA-030 form was "enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid," and the "envelopes were addressed to each person, tribe, or agency as indicated below" and "sealed and deposited with the United States Postal Service." In other circumstances, absent other evidence, it might be argued that we should presume the Cherokee tribes received the ICWA-030 forms (see Evid. Code, § 641) and infer that their lack of response indicates E.E. was not a member nor eligible for membership in the tribes.

agency's section 366.26 report—that the paternal great-grandmother was not able to be contacted—to make its findings.

Such an error necessitates conditional reversal and remand to ensure compliance with ICWA and Cal-ICWA inquiry provisions. (*In re Dezi C.* (2024) 16 Cal.5th 1112, 1151–1152.)

Further, we conclude immediate remand and remittitur is appropriate. Before reversing or vacating a judgment based upon a stipulation of the parties, an appellate court must find "both of the following: [¶] (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal [and] [¶] (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement." (Code Civ. Proc., § 128, subd. (a)(8)(A)–(B).)

We find both conditions are present. Here, the parties, and we, agree that Cal-ICWA inquiry error has occurred, and conditional reversal and limited remand are necessary regardless of the existence of the stipulation. Thus, the reason for the stipulation is solely to expedite the appellate process and resolution of the error. Quicker resolution of this error, which affects the stability and permanence of a young child, benefits, rather than adversely affects, the child, the public, and a nonparty such as the prospective adoptive parent. Further, the expedited resolution of the present case serves to advance, rather than erode, public trust and outweighs any negative effect of discouraging prejudgment resolution of ICWA issues.[8] (See *In re Rashad H.* (2000) 78 Cal.App.4th 376, 379–382 [stipulation to reverse order terminating parental rights due to notice error permitted by Code Civ. Proc., § 128, subd. (a)(8)].)

---

8 We rest assured the parties will refrain from using the availability of a stipulated reversal as a reason not to prioritize ensuring compliance with ICWA and Cal-ICWA inquiry provisions in the first instance before parental rights are terminated.

DISPOSITION

The order terminating parental rights is conditionally reversed. The matter is remanded to the juvenile court for compliance with the inquiry and notice requirements of ICWA and corresponding California statutes. If the juvenile court concludes, after finding a proper and adequate inquiry and due diligence has been conducted, that ICWA does not apply, then the court shall reinstate the order terminating parental rights. If the juvenile court concludes ICWA applies, then it shall proceed in conformity with the ICWA and California implementing provisions. By stipulation of the parties, the Clerk/Executive Officer of this court is directed to issue the remittitur immediately. (Rule 8.272(c)(1).)