Filed 12/11/25 In re E.D.J. CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re E.D.J., Jr., et al., Persons Coming Under the Juvenile Court Law.	
FRESNO COUNTY DEPARTMENT OF SOCIAL SERVICES, Plaintiff and Respondent, v. J.S., Defendant and Appellant.	F090125 (Super. Ct. Nos. 24CEJ300010-2, 24CEJ300010-3, 24CEJ300010-4, 24CEJ300010-5, 24CEJ300010-6, 24CEJ300010-7) **OPINION**

THE COURT[*]

APPEAL from orders of the Superior Court of Fresno County. Kimberly J. Nystrom-Geist, Judge.

Laura D. Pedicini, under appointment by the Court of Appeal, for Defendant and Appellant.

Douglas T. Sloan, County Counsel, and Ashley N. McGuire, Deputy County Counsel, for Plaintiff and Respondent.

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[*] Before Detjen, Acting P. J., Peña, J. and Meehan, J.

INTRODUCTION

Appellant J.S. is the mother of seven children, E.C.J.,[1] E.D.J., Jr. (now 16 years old), I.J. (now 14 years old), R.S., Jr. (now 12 years old), I.S. (now 9 years old), J.D.S. (now 4 years old) and J.E.S. (now 1 year old) (collectively, the children). Mother appeals from orders entered on May 12, 2025, following a Welfare and Institutions Code section 366.26[2] hearing. Mother argues the Fresno County Department of Social Services (the department) did not fulfill its duty of inquiry as required by the Indian Child Welfare Act (ICWA). Respondent concedes error as to E.D.J., Jr., and I.J. Pursuant to *In re Dezi C.* (2024) 16 Cal.5th 1112 (*Dezi C.*), we find the department's inquiry into E.D.J., Jr., and I.J.'s potential Indian ancestry was incomplete, conditionally reverse the court's section 366.26 order as to E.D.J., Jr., and I.J., and remand the matter for further proceedings consistent with this opinion.[3]

FACTUAL AND PROCEDURAL HISTORY[4]

On January 16, 2024, the department filed a section 300 petition for the children. In the petition, E.J., Sr., was identified as the presumed father of E.C.J., E.D.J., Jr., and I.J. R.S., Sr., was identified as the presumed father of R.S., Jr., I.S., J.D.S. and J.E.S. The ICWA-010 forms attached to the petition indicated that following an ICWA inquiry, there was no reason to believe any of the children are or may be an Indian child.

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1 E.C.J. turned 18 and is not a party to this appeal.

2 Further undesignated references to code are to the Welfare and Institutions Code.

3 "[B]ecause ICWA uses the term 'Indian,' we [may at times] 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, disapproved in part on another ground in *Dezi C.*, *supra*, 16 Cal.5th at p. 1152, fn. 18.)

4 We limit the factual summary to those facts relevant to the issues presented in the instant appeal.

As to the children, the petition alleged that mother had a substance abuse problem which negatively affected her ability to provide regular care, supervision, and protection for them. On December 15, 2023, J.E.S. tested positive for amphetamine, and mother had tested positive for methamphetamine on August 25, 2023, and December 12, 2023. Mother continued to test positive for amphetamine on January 10, 2024. As to R.S., Jr., I.S., J.D.S. and J.E.S., the petition additionally alleged father R.S., Sr., had a substance abuse problem which negatively affected his ability to provide regular care, supervision, and protection for the children. As of December 28, 2023, R.S., Sr., disclosed ongoing methamphetamine and alcohol use, was not in compliance with recommended voluntary family maintenance services, and failed to drug test as recommended.

ICWA History

On December 27, 2023, social worker Lisa Reyna spoke with father E.J., Sr., about his ethnicity. Father E.J., Sr., stated he was Black and was not certain, but he thought that his family may be part of the Blackfoot tribe. He had no other information at that time.

On December 27, 2023, Reyna also spoke with E.D.J., Jr., and I.J.'s paternal grandmother, S.A. When asked if her family had any Indian ancestry, S.A. stated that she had heard that her grandfather is possibly Cherokee, but stated that she did not believe they were registered or had any tribal representative.

A summary report of a team decision making meeting (TDM), which took place on December 28, 2023, indicated that mother, father R.S., Sr., paternal grandmother S.A., paternal grandmother L.R., and maternal grandmother A.S. were present. Next to each family member's name, the box indicating Native American ancestry was marked "No."

A summary report of a TDM, which took place on January 12, 2024, indicated that mother, father R.S., Sr., father E.J., Sr., maternal grandmother A.S., paternal grandmother L.B., and maternal uncle A.G. were present. Next to each family member's name, the box indicating Native American ancestry was marked "No."

On January 19, 2024, the juvenile court held an initial detention hearing and conducted an ICWA inquiry. Maternal grandmother A.S. indicated no Native American ancestry and agreed to provide contact information of a maternal great-aunt for further inquiry. Mother indicated no Native American ancestry and agreed to provide information for the maternal grandfather's family for further inquiry. Father R.S., Sr., indicated no Native American ancestry and agreed to provide information for the paternal grandmother L.B. and paternal great-grandmother S.M. for further inquiry. The detention hearing was continued until January 22, 2024.

In the detention report filed on January 22, 2024, the department stated, "[ICWA] does not apply. Mother, [E.J., Sr.], and [R.S., Sr.,] reported they do not have any Native American ancestry. In addition, maternal grandmother [A.S.] and paternal grandmother [S.A.] reported they did not have any Native American ancestry. On January 12, 2024, maternal uncle [A.G.] denied having Native American ancestry."

A combined jurisdiction/disposition hearing was scheduled for February 26, 2024. The juvenile court held the jurisdiction hearing and found the allegations of the first amended petition true. The department requested a continuance to further assess ICWA information. The department stated that it recently received the family finding back from paternal relatives and needed to follow up, because there was no inquiry of the paternal relatives. The disposition hearing was continued to March 25, 2024.

In the addendum report filed on March 25, 2024, the department described efforts to reach maternal and paternal extended family members. The department spoke with paternal aunt E.J. who stated that paternal grandmother L.B. had Native American ancestry. The department was able to speak with paternal grandmother L.B. on August 29, 2024, and she stated that she did not have Native American ancestry and no one in her family has ever been associated, affiliated or enrolled with any Native American tribe.

At the March 25, 2024, disposition hearing, the juvenile court stated, "[a]t this time the [c]ourt is satisfied that the [d]epartment has documented its efforts to make inquiry of extended family members and has completed family finding. There is no reason to believe that the children may be Indian children as described by [ICWA]. The Court would ask the [d]epartment to please incorporate the [ICWA] status section of the 3/13 report into subsequent reports, and would ask the [d]epartment to continue its efforts to make inquiry with any other relatives who may be discovered."

The department documented its continued ICWA inquiry into maternal and paternal family members on father R.S., Sr.'s, side of the family in subsequent reports. The department's section 366.26 report filed on May 12, 2025, stated, "[Mother], [father E.J., Sr.], and [father R.S., Sr.,] reported they do not have any Native American Indian ancestry. In addition, maternal grandmother, [A.S.], and the paternal grandmother, [S.A], reported they do not have any Native American Ancestry. On January 12, 2024, the maternal uncle, [A.G], denied having any Native American ancestry." Regarding father E.J., Sr., the report stated that on January 27, 2025, the department attempted to call him but was unsuccessful. As of the preparation of the report, the father E.J., Sr., had not contacted the department to provide information that would lead the department to believe ICWA was applicable. The report stated the paternal great-grandmothers D.A. and B.M. were deceased, and the department was not able to reach paternal grandmother S.A or paternal aunt J.A. Finally, the department was able to contact paternal aunt M.A., who stated she was not aware of any Native American ancestry in her family. The report concluded that father E.J., Sr., does not come within the provisions of ICWA.

At the May 12, 2025 section 366.26 hearing, the juvenile court found there was no reason to know or believe the children were Indian children, and ICWA did not apply.

DISCUSSION

"ICWA was enacted in 1978 by Congress 'out of concern that "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their

children from them by nontribal public and private agencies." 92 Stat. 3069, 25 U.S.C. § 1901(4). Congress found that many of these children were being "placed in non-Indian foster and adoptive homes and institutions," and that the States had contributed to the problem by "fail[ing] to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families." §§ 1901(4), (5). This harmed not only Indian parents and children, but also Indian tribes. As Congress put it, "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children." § 1901(3).' (*Haaland v. Brackeen* (2023) 599 U.S. 255, 265 (*Haaland*); accord, *Mississippi Choctaw Indian Band v. Holyfield* (1989) 490 U.S. 30, 32–36 (*Holyfield*); *In re Isaiah W.* (2016) 1 Cal.5th 1, 7–8 (*Isaiah W.*).)" (*In re Jerry R.* (2023) 95 Cal.App.5th 388, 407–408 (*Jerry R.*).)

" '[ICWA] thus aims to keep Indian children connected to Indian families. "Indian child" is defined broadly to include not only a child who is "a member of an Indian tribe," but also one who is "eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (§ 1903(4).) If the Indian child lives on a reservation, ICWA grants the tribal court exclusive jurisdiction over all child custody proceedings, including adoptions and foster care proceedings. (§ 1911(a).) For other Indian children, state and tribal courts exercise concurrent jurisdiction, although the state court is sometimes required to transfer the case to tribal court. (§ 1911(b).) When a state court adjudicates the proceeding, ICWA governs from start to finish. That is true regardless of whether the proceeding is "involuntary" (one to which the parents do not consent) or "voluntary" (one to which they do).' (*Haaland*, *supra*, 599 U.S. at pp. 265–266; accord, *Holyfield*, *supra*, 490 U.S. at p. 36.)" (*Jerry R.*, *supra*, 95 Cal.App.5th at p. 408.)

"In 2006, 'persistent noncompliance with ICWA led [our state] Legislature … to "incorporate[] ICWA's requirements into California statutory law." ' " (*Jerry R.*, *supra*, 95 Cal.App.5th at p. 409, quoting *In re Abbigail A.* (2016) 1 Cal.5th 83, 91.)

"Subsequently, the California Legislature enacted Assembly Bill No. 3176 [(2017−2018 Reg. Sess.) (Assembly Bill 3176)], effective January 1, 2019, which ' "made conforming amendments to its statutes, including portions of the Welfare and Institutions Code related to ICWA notice and inquiry requirements." ' " (*Jerry R.*, *supra*, 95 Cal.App.5th at p. 410, fn. omitted, quoting *In re K.H.* (2022) 84 Cal.App.5th 566, 595.) The legislation "revised and recast the duties of inquiry and notice, in accordance with federal law, and, relevant to inquiry, 'revise[d] the specific steps a social worker, probation officer, or court is required to take in making an inquiry of a child's possible status as an Indian child.' " (*Jerry R.*, at p. 411, quoting Legis. Counsel's Dig., Assem. Bill 3176, Stats. 2018, ch. 833, p. 1.)

Very recently, faced with continuing difficulties and inconsistencies in this area of the law, the Legislature enacted Assembly Bill No. 81 (2023−2024 Reg. Sess.) effective September 27, 2024. Assembly Bill No. 81 "create[d] a comprehensive act to protect and preserve Indian families in California and to aid in improving implementation of applicable state and federal laws." (§ 224, subd. (c).) The legislation expressly recognized, "Despite the passage of the federal [ICWA] of 1978, Senate Bill [No.] 678 [(2005−2006 Reg. Sess.)] (Stats. 2006, [c]h. 838), and Assembly Bill [No.] 3176 [(2017−2018 Reg. Sess.)] (Stats. 2018, [c]h. 833), California continues to experience inconsistent implementation of [ICWA] and its related state law protections, thus continuing the harm and breakup of Indian families. Variation in practice undermines tribal sovereignty, furthers destructive impacts on tribes and tribal communities, puts the lives of Indian children and families at disproportionate risk for multiple adverse outcomes, and fails to address systemic racism." (§ 224, subd. (b).)

As amended, section 224.2 provides, in relevant part, "The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 may be or has been filed, is or may be an Indian child." (§ 224.2, subd. (a).) "The duty to inquire

begins for a county when first contacted regarding a child, including, but not limited to, asking a party reporting child abuse or neglect whether the party has any information that the child may be an Indian child, and upon a county department's first contact with the child or the child's family, including extended family members as defined in paragraph (1) of subdivision (c) of Section 224.1.[5] At the first contact with the child and each family member, including extended family members, the county welfare department or county probation department has a duty to inquire whether that child is or may be an Indian child." (§ 224.2, subd. (b)(1).)

"Inquiry includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled." (§ 224.2, subd. (b)(2).)

"For a court presiding over any juvenile proceeding that could result in placement of an Indian child with someone other than a parent or Indian custodian, including proceedings where the parents or Indian custodian have voluntarily consented to placement of the child, the duty to inquire begins at the first hearing on a petition. At the commencement of the hearing, the court shall ask each party to the proceeding and all other interested persons present whether the child is, or may be, an Indian child, whether they know or have reason to know that the child is an Indian child, and where the child, the parents, or Indian custodian are domiciled, as defined in Section 224.1. Inquiry shall also be made at the first appearance in court of each party or interested person who was

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5 Section 224.1, subdivision (c)(1) states, " '[e]xtended family member' has the same meaning as defined by the law or custom of the Indian child's tribe" and as "a person who has reached 18 years of age and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent."

not present at the first hearing on the petition. The inquiry and responses shall occur on the record. The court shall instruct the parties and persons present to inform the court if they subsequently receive information that provides reason to know the child is, or may be, an Indian child." (§ 224.2, subd. (c).)

"If the court, social worker, or probation officer has reason to believe that an Indian child is involved in a proceeding, but does not have sufficient information to determine that there is reason to know that the child is an Indian child, the court, social worker, or probation officer shall make further inquiry regarding the possible Indian status of the child, and shall make that inquiry as soon as practicable." (§ 224.2, subd. (e).) Such inquiry includes, "[c]ontacting the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or citizen, or eligible for membership or citizenship in, and contacting the tribes and any other person that may reasonably be expected to have information regarding the child's membership status or eligibility" and "[c]ontacting the tribe or tribes and any other person that may reasonably be expected to have information regarding the child's membership, citizenship status, or eligibility." (§ 224.2, subd. (e)(2)(B), (C).)

"The juvenile court's finding that ICWA does not apply to the proceeding rests on two elemental determinations, 'subject to reversal based on sufficiency of the evidence.' " (*In re K.H.*, *supra*, 84 Cal.App.5th at p. 601, quoting § 224.2, subd. (i)(2); accord, *In re E.C.* (2022) 85 Cal.App.5th 123, 142–143; *Adoption of M.R.* (2022) 84 Cal.App.5th 537, 542; Cal. Rules of Court, rule 5.482(c)(1),[6] (2).) First, "[t]he court must find there is 'no reason to know whether the child is an Indian child,' which is dependent upon whether any of the six circumstances set forth in subdivision (d) of section 224.2 apply." (*K.H.*, at p. 601, quoting § 224.2, subd. (i)(2); accord, *E.C.*, at p. 143; rule 5.482(c)(1).) Second,

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6 Undesignated references to rules are to the California Rules of Court.

"[t]he juvenile court must … find a 'proper and adequate further inquiry and due diligence ….' " (*K.H.*, at p. 601, quoting § 224.2, subd. (i)(2); accord, *E.C.*, at p. 143; rule 5.482(c)(1).)

The juvenile court's finding on the second element "requires the … court to 'engage in a delicate balancing of' various factors in assessing whether the … inquiry was proper and adequate within the context of ICWA and California law, and whether [there was] due diligence.' " (*In re K.H.*, *supra*, 84 Cal.App.5th at p. 601, quoting *In re Caden C.* (2021) 11 Cal.5th 614, 640; accord, *In re E.C.*, *supra*, 85 Cal.App.5th at p. 143; *In re Ezequiel G.* (2022) 81 Cal.App.5th 984, 1004–1005.)

However, in *Dezi C.* the Supreme Court made clear that a deficiency in an initial inquiry is not simply reviewable for prejudice. "We hold that error resulting in an inadequate initial Cal-ICWA inquiry requires conditional reversal with directions for the child welfare [department] to comply with the inquiry requirement of section 224.2, document its inquiry in compliance with rule 5.481(a)(5), and when necessary, comply with the notice provision of section 224.3. When a Cal-ICWA inquiry is inadequate, it is impossible to ascertain whether the [department]'s error is prejudicial. [Citations.] '[U]ntil [the department] conducts a proper initial inquiry and makes that information known, it is impossible to know what the inquiry might reveal.' " (*Dezi C.*, *supra*, 16 Cal.5th at p.1136.)

Mother argues the department failed to conduct an adequate ICWA inquiry into father E.J., Sr., and paternal aunt S.A.'s statements regarding potential Native American ancestry. Mother further argues that the department failed to adequately document its inquiry into father E.J., Sr.'s, family ancestry. Respondent agrees.

As noted in *Dezi C.*, we cannot ascertain whether an inquiry was prejudicial when it was initially inadequate. (*Dezi C.*, *supra*, 16 Cal.5th at p. 1136.) The record reflects father E.J., Sr., and paternal aunt S.A. initially believed their family may contain Native American ancestry with the Blackfoot or Cherokee tribes. Although subsequent inquiry

into father E.J., Sr.'s, statements did not reveal additional information, and ultimately the department was unable to contact father E.J., Sr., and paternal aunt S.A., pursuant to section 224.2, subdivision (e)(2)(B) and (C), the department had a duty to contact the Bureau of Indian Affairs, the State Department of Social Services, and the Blackfoot and Cherokee tribes regarding children E.D.J., Jr., and I.J.'s potential Indian ancestry.

For this reason, we conditionally reverse the juvenile court's May 12, 2025, section 366.26 order terminating mother's parental rights as to children E.D.J., Jr., and I.J., and remand the matter to the court for compliance with the inquiry and notice requirements of sections 224.2 and 224.3 and the documentation provisions of rule 5.481(a)(5), consistent with this opinion. "If the juvenile court thereafter finds a proper and adequate further inquiry and due diligence has been conducted and concludes ICWA does not apply (§ 224.2, subd. (i)(2)), then the court shall reinstate the order terminating parental rights. If the juvenile court concludes ICWA applies, then it shall proceed in conformity with ICWA and California implementing provisions. (See 25 U.S.C. § 1912(a); §§ 224.2, subd. (i)(1), 224.3, 224.4.)" (*Dezi C.*, *supra*, 16 Cal.5th at p. 1152.)

DISPOSITION

We conditionally reverse the juvenile court's May 12, 2025, section 366.26 order terminating mother's parental rights as to children E.D.J., Jr., and I.J., and remand the matter to the juvenile court for compliance with the inquiry and notice requirements of sections 224.2 and 224.3 and the documentation provisions of rule 5.481(a)(5), consistent with this opinion. "If the juvenile court thereafter finds a proper and adequate further inquiry and due diligence has been conducted and concludes ICWA does not apply (§ 224.2, subd. (i)(2)), then the court shall reinstate the order terminating parental rights. If the juvenile court concludes ICWA applies, then it shall proceed in conformity with ICWA and California implementing provisions. (See 25 U.S.C. § 1912(a); §§ 224.2, subd. (i)(1), 224.3, 224.4.)" (*Dezi C.*, *supra*, 16 Cal.5th at p. 1152.)