Filed 1/22/26 In re I.B. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re I.B., a Person Coming Under the Juvenile Court Law.	
STANISLAUS COUNTY COMMUNITY SERVICES AGENCY, Plaintiff and Respondent, v. R.B. et al., Defendants and Appellants.	F089868 (Super. Ct. No. JVDP-23-000244) **OPINION**

APPEAL from orders of the Superior Court of Stanislaus County. Annette Rees, Judge.

Carolyn S. Hurley, under appointment by the Court of Appeal, for Defendant and Appellant R.B.

Melissa A. Chaitin, under appointment by the Court of Appeal, for Defendant and Appellant V.V.

Thomas Boze, County Counsel, Mark Gabriel Doronio, Deputy County Counsel; Gordon-Creed, Kelley, Holl & Sugarman, Jeremy Sugarman, and Anne H. Nguyen, for Plaintiff and Respondent.

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R.B. (father) and I.B. (mother), the parents of now two-year-old I.B. (daughter), appeal from the juvenile court's orders terminating parental rights and freeing daughter for adoption. (Welf. & Inst. Code,[1] § 366.26.) Father, joined by mother,[2] argues the Stanislaus County Community Services Agency (agency) and juvenile court failed to comply with the inquiry and notice requirements of the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq.) and related California law.[3] Specifically, they argue the agency prejudicially erred in failing to comply with ICWA's further duty of inquiry and adequately documenting its efforts. Finding no merit to their arguments, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND[4]

The Referral and Initial ICWA Inquiry

Daughter came to the attention of the agency on December 11, 2023, when the agency received a referral that her six-week-old twin sister was brought to the hospital with injuries that were indicative of nonaccidental trauma. Twin sister passed away from her injuries the following day. Daughter was examined and found to have injuries that were indicative of nonaccidental trauma. Daughter was taken into protective custody.

Mother, father, and paternal grandmother denied to a social worker that they had any Indian ancestry. Maternal great aunt, Janet V., told the social worker she was interested in being assessed for placement, but she withdrew her request within a few hours. There is no record of her being asked about Indian ancestry. The social worker spoke with maternal grandfather who reported that he did not have any Indian ancestry.

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1 Undesignated statutory references are to the Welfare and Institutions Code.

2 Mother does not advance any independent argument on the ICWA issue father raises.

3 For the sake of consistency, we use the term "Indian" because ICWA uses that term, even though we recognize many prefer other terms, such as "Native American" or "indigenous." (*In re K.H.* (2022) 84 Cal.App.5th 566, 587, fn. 3 (*K.H.*).)

4 We limit our recitation of the background information to that necessary for disposition of the appellate issue.

The Dependency Petition and Detention

The agency filed a dependency petition alleging daughter came within multiple provisions of section 300. The detention hearing was held on December 19, 2023, with mother and father present. The juvenile court found father was a presumed father, ordered daughter's continued detention, and set the jurisdiction and disposition hearing for January 30, 2024.

The juvenile court made ICWA inquiries of relatives who were present at the hearing, all of whom denied any Indian ancestry. Specifically, the court inquired of the following relatives: (1) maternal grandmother Victoria P.; (2) maternal great-grandmother Mary V.; (3) maternal great-aunt Lorraine S.; (4) paternal grandmother Selina S.; (5) paternal grandfather Francisco B.; and (6) paternal uncle Jose B.[5] Mother and father denied to the social worker they had any Indian ancestry and they each completed Judicial Council Forms, form ICWA-020 "PARENTAL NOTIFICATION OF INDIAN STATUS" denying Indian ancestry, which were submitted to the court. The juvenile court found there was no reason to believe ICWA applied at that time.

Jurisdiction and Disposition

In a January 25, 2024 report prepared for the jurisdiction and disposition hearing, the agency recommended that the allegations of a first amended petition be found true and daughter be adjudged a dependent. The agency requested bypass of reunification services for mother and father and the setting of a section 366.26 hearing. Daughter was in a concurrent home with her maternal great-aunt and maternal great-uncle.

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5 While there is no reporter's transcript of the December 19, 2023 detention hearing, the minute order of the hearing and the agency's logs show which relatives were asked about Indian heritage and that they denied such heritage. The agency argues the absence of a reporter's transcript renders the record inadequate for appellate review, but father does not challenge the inquiry of these relatives. Therefore, we reject the agency's contention that the record is inadequate for appellate review.

The agency filed an ICWA compliance report on January 26, 2024, in anticipation of the hearing. The agency reported at that time there was no reason to know daughter was an Indian child. The report included a detailed account of the agency's efforts to ask daughter's numerous relatives about possible Indian ancestry. On December 22, 2023, the agency sent Youth Connections[6] letters to all identified relatives which asked them to contact the agency and provide tribal or enrollment information if they knew of any family members who have or may have Indian ancestry, and to let the social worker know if they could answer questions about themselves and other relatives who may be enrolled members of American Indian tribes.

Most family members the agency contacted denied any Indian ancestry and denied knowledge of any relative living on a reservation. Five relatives, however, disclosed possible Indian ancestry: (1) maternal cousin, Sandy V., whose mother received a relative placement letter, reported her family completed an ancestry test years ago and found out their maternal great-great-grandfather, Ipolito A., was born on the Navajo reservation in New Mexico but was not registered;[7] (2) maternal great-grandfather, Steve P., reported his great-grandmother, Josefina P., was part of the Kickapoo Tribe of New Mexico but was not a registered member; (3) while maternal great-great-grandmother, Sandy R., reported she had Indian ancestry from her grandfather; he was born in Mexico and was part of the Tarasco Tribe of Mexico; (4) maternal great-great-uncle, Fred R., reported his family may have some Indian ancestry, but he needed to

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6 Stanislaus County reports that it "conducts an extensive genealogical and skip tracing search for relative/family members for each dependent youth who enters foster care." The county states it makes great effort to identify the following maternal and paternal relatives: parents, siblings, aunts/uncles, great-aunts/uncles, grandparents, great-grandparents, adult cousins, and other identified relatives.

7 The entry on the agency's delivered service log states that Sandy V. told the social worker Ipolito A. was their maternal great-great-grandfather, while the ICWA compliance reports state she said that Ipolito was "their grandfather."

review documents to provide further information and asked the social worker to send an e-mail reminder for the requested information;[8] and (5) maternal great-grandmother, Shirley P., reported possible Indian ancestry from Arizona and New Mexico, although she did not know a specific tribe, stating an unidentified family member lived on a reservation, and she would attempt to find an affidavit with more information, but in a follow-up call she reported she had provided all information, and she did not provide any updated information about the affidavit.

Based on this information, the social worker conducted informal inquiries with the following tribes to determine daughter's eligibility for enrollment: (1) Navajo Nation, Arizona, New Mexico & Utah (Navajo Nation); (2) Colorado River Indian Tribes of the Colorado Indian Reservation, Arizona and California (Colorado River Indian Tribes); (3) Kickapoo Traditional Tribe of Texas; (4) Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; and (5) Kickapoo Tribe of Oklahoma.[9] Inquiries also were sent to the Bureau of Indian Affairs and California Department of Social Services.

The social worker contacted the tribes to determine their preferred methods of informal ICWA inquiry. Pursuant to the preferred methods of informal inquiry of the Colorado River Indian Tribes and Navajo Nation, the social worker sent a letter to each tribe by certified mail and e-mailed the Navajo Nation's ICWA intake social worker with the letter attached. The letters, which were attached to the compliance report, advised that they were being sent to informally inquire about ICWA and daughter's eligibility for enrollment, "as maternal relatives reported having Navajo ancestry, but denied anyone in the family being an enrolled member in any of the Navajo tribes." The letters asked the

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8 A social worker originally spoke with maternal great-great-uncle, Fred R., on January 4, 2024. The social worker followed up with maternal great-great-uncle by sending him an e-mail with contact information on January 25, 2024. Apparently, Fred did not respond to this email.

9 The social worker determined, based on resources provided by the California Department of Social Services, that there was no Kickapoo tribe located in New Mexico.

tribes to advise if, based on the family information provided, daughter would be eligible for enrollment. The letters listed the names and dates of birth of daughter, mother, father, and about 60 maternal relatives, including maternal grandparents, great-grandparents, great-great-grandparents, and great-great-great-grandparents.[10] The agency had not received a response from these tribes and was awaiting information from the other tribes on their preferred methods for informal inquiry.

The jurisdiction/disposition hearing was continued multiple times and ultimately commenced on July 17, 2024. On February 5, 2024, mother completed and filed another Judicial Council Forms, form ICWA-020, where she again marked the box "None of the above" to indicated she did not have Indian ancestry.

The agency filed an addendum report on April 4, 2024, to provide, among other things, information about the agency's ongoing ICWA inquiry efforts. The social worker reported that since the ICWA compliance report was filed, the agency received a response from the Navajo Nation, which stated the tribe was unable to verify daughter's eligibility for tribal membership enrollment based on the additional biological parent's ancestry provided. Accordingly, the tribe closed the intake.

The social worker was attempting to obtain a response to the inquiry letter sent to the Colorado River Indian Tribes. The social worker conducted informal inquiries with the Kickapoo tribes. The agency received responses from the Kickapoo Traditional Tribe

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10 The last names and birth dates of the relatives listed in the inquiry letters are redacted. From the readable portions, it does not appear the name of the ancestor identified as possibly having Navajo ancestry, Ipolito A., was listed. However, maternal cousin Sandy V. identified Ipolito A. as a "maternal great-great-grandfather," and the inquiry letters included names for all eight maternal great-great-grandparents. Therefore, it appears that Ipolito A. is a more distant ancestor.

of Texas,[11] the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas,[12] and the Kickapoo Tribe of Oklahoma,[13] all of whom stated daughter was not eligible for enrollment.

The contested jurisdiction and disposition hearing took place over nine more days in September, November and December, and concluded on December 23, 2024. According to the minute order of the December 23, 2024 hearing, the juvenile court conducted another in-court ICWA inquiry of maternal great-grandmother, Mary V., who was present at the hearing, and found ICWA did not apply because there was "no reason to know it applied."[14] The juvenile court sustained the allegations of the second amended petition, which was filed in November 2024, declared daughter a dependent,

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[11] The agency sent the Kickapoo Traditional Tribe of Texas a letter and "Family Tree/Pedigree Chart," which are not in the appellate record. The tribe notified the agency that neither daughter nor her parents nor her grandparents were enrolled members of the tribe nor were they eligible for membership.

[12] The Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas requested the following information: the family's names and dates and places of birth, and as much information the agency could provide about maternal and paternal grandparents. The tribe's enrollment verification request form, which was sent to the tribal enrollment office, included daughter's name, date of birth, and birthplace, and mother's and father's names and dates of birth, and asked if any of them were enrolled or eligible for enrollment. The tribe's enrollment director answered both questions in the negative.

[13] The record contains an enrollment verification request for the Kickapoo Tribe of Oklahoma. The tribe's enrollment specialist found no family lineage with the tribe's blood for daughter, mother, or father, using their names and dates of birth, and maternal great-grandparents' names, which was verified by the tribe's enrollment department director.

[14] The agency contends that because there is no reporter's transcript of the December 23, 2024 hearing, the record is inadequate for appellate review. We reject the contention, as the minute order shows which relative inquiry was made of, and father does not contend this inquiry was inadequate.

bypassed reunification services for mother and father, and set a section 366.26 hearing for April 22, 2025.[15]

The Section 366.26 Hearing

The agency filed a report for the section 366.26 hearing, in which it recommended termination of parental rights to allow then 18-month-old daughter to be adopted by her maternal relative caregivers, with whom she had lived since she was seven weeks old. The caregivers wanted to adopt daughter and to raise her within her biological family.

The agency also filed an ICWA compliance report. The report stated the agency completed further inquiry of maternal and paternal relatives, with no new information received. Responses had been received from all previously mentioned tribes that noted daughter was not enrolled or eligible for enrollment. Therefore, the agency recommended the juvenile court find no reason to know that ICWA applied.

The report included a detailed chart describing the agency's ICWA inquiries of daughter's numerous maternal and paternal relatives from the inception of the case. The chart showed the agency conducted further inquiries of numerous maternal and paternal relatives between April 7 and 9, 2025. Of the relatives who responded the agency received the following relevant information: (1) the social worker spoke with maternal great-grandmother, Shirley P., on April 8, 2025, who stated she unsuccessfully attempted to locate paperwork that might yield information about the family's possible Indian ancestry, and she had no further information to convey; and (2) the social worker spoke with maternal great-great-uncle, Fred R., on April 9, 2025, who reported he found out his family was never enrolled in a tribe and was not eligible for enrollment.

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[15] Mother's counsel filed a notice of intent to file a writ petition on December 27, 2024, but we issued an order dismissing the writ as abandoned when neither counsel nor mother filed a petition for extraordinary writ. (*V.V. v. Superior Court* (Feb. 21, 2025, F089112).)

The chart also included descriptions of the informal inquiries the agency made of the five tribes identified based on the maternal family's alleged Navajo and Kickapoo ancestry, with the tribes' responses attached. The agency received a response letter from the Colorado River Indian Tribes in April 2024, which stated that based on the information provided, daughter was "not eligible for enrollment," but if new information were obtained about the parents, the agency should resubmit the inquiry. The social worker confirmed that as of the writing of the report, "the only mentioned potential tribes have all responded that [daughter] is not enrolled nor eligible for enrollment." On April 28, 2025, the agency filed proof of delivery of the Judicial Council Forms, form ICWA-030 to the Bureau of Indian Affairs by certified mail.

The contested section 366.26 hearing was held on May 14, 2025. After testimony by the mother and social worker, and argument by counsel, the juvenile court found by clear and convincing evidence that daughter was likely to be adopted and the beneficial parent-child relationship exception to adoption did not apply. The juvenile court adopted the findings and recommendations contained in the agency's section 366.26 report, including termination of mother's and father's parental rights.

The juvenile court addressed ICWA compliance. The juvenile court found from its review of the ICWA compliance report that the agency complied with section 224.2 in terms of contact and attempted contact of any known family or extended family members and sent out necessary notifications to the Bureau of Indian Affairs and California Department of Social Services by way of the Youth Connections report and received responses from the tribes that were informally contacted. The social worker confirmed there had not been any new information regarding potential Indian heritage since the April 10, 2025 ICWA compliance report. Father's and mother's counsels also confirmed that they were not aware of any new information about potential Indian heritage, and the foster mother denied any new developments in potential Indian heritage. Accordingly,

the juvenile court found there was no reason to know daughter was and Indian child and ICWA did not apply.

DISCUSSION

I. ICWA Inquiry Duties and Standard of Review

Congress enacted ICWA to address concerns regarding the separation of Indian children from their tribes through adoption of foster care placement with non-Indian families. (*In re Isaiah W.* (2016) 1 Cal.5th 1, 7.) The California Legislature enacted Cal-ICWA to "affirm ICWA's purposes (§ 224, subd. (a)) and mandate compliance with ICWA '[i]n all Indian child custody proceedings' (§ 224, subd. (b))." (*In re Isaiah W.*, at p. 9.)

Under Cal-ICWA, the juvenile court and the agency have an "affirmative and continuing duty to inquire" whether a child "is or may be an Indian child." (§ 224.2, subd. (a).) An " 'Indian child' " is defined in the same manner as under federal law, i.e., as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4); accord, § 224.1, subd. (a) [adopting the federal definition].)

This "duty to inquire begins [with the initial contact], 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 …." (§ 224.2, subd. (b)(1).) When the agency takes a child into its temporary custody, the duty to inquire "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 …." (*Id.*, subd. (b)(2).) ICWA defines " 'extended family member' " by "the law or custom of the Indian child's tribe" or, absent such law or custom, as "a person who has reached the age of eighteen 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." (25 U.S.C. § 1903(2); § 224.1, subd. (c) [extended family member "defined by the law or custom of the Indian child's tribe"].)[16]

The juvenile court, in turn, at a party's first appearance, must ask "each party to the proceeding … whether they know or have reason to know that the child is an Indian child" (§ 224.2, subd. (c)) and require each party to complete the Judicial Council Forms, form ICWA-020 (Cal. Rules of Court,[17] rule 5.481(a)(2)(C)). "The parties are instructed to inform the court 'if they subsequently receive information that provides reason to know the child is an Indian child.' (25 C.F.R. § 23.107(a) (2020); § 224.2, subd. (c).)" (*In re D.F.* (2020) 55 Cal.App.5th 558, 566.)

If the initial inquiry gives the juvenile court or agency a "reason to believe that an Indian child is involved," then their duty to "make further inquiry regarding the possible Indian status of the child" is triggered. (§ 224.2, subd. (e).) If further inquiry results in a reason to know the child is an Indian child, then the formal requirements of section 224.2 apply. (§§ 224.2, subd. (e)(2), 224.3, subd. (a)(5).)

There is "reason to believe" a child is an Indian child when the court or social worker "has information suggesting" the "parent of the child or the child" is a member of a tribe or eligible to be a member, which "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 paragraphs (1) to (6), inclusive, of subdivision (d)." (§ 224.2, subd. (e)(1), italics added.)[18]

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16 "While this duty of inquiry is sometimes referred to as the initial duty of inquiry, this is a bit of a misnomer, as the duty 'continues throughout the dependency proceedings.' " (*In re Dezi C.* (2024) 16 Cal.5th 1112, 1132 (*Dezi C.*).)

17 All further references to rules are to the California Rules of Court.

18 Subdivision (d) of section 224.2 provides: "There is reason to *know* a child involved in a proceeding is an Indian child under any of the following circumstances: [¶] (1) A person having an interest in the child, including the child, an officer of the court, a

When further inquiry is necessary to help determine whether there is a reason to know the child is an Indian, such inquiry is includes, but is not limited to: (1) "[i]nterviewing the parents, Indian custodian, and extended family members[19] to gather the information required in paragraph (5) or subdivision (a) of Section 224.3";[20] (2) "[c]ontacting the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information for 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 (3) contacting the tribes themselves "and any other person that may reasonably be expected to have information" about whether the child is a member or eligible for membership. (§ 224.2,

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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. [¶] (6) The court is informed that either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe." (Italics added.)

19 Extended family members include adults who are the child's grandparents, aunts, uncles, brothers, sisters, brothers-in-law, sisters-in-law, nieces, nephews, first or second cousins, and stepparents. (25 U.S.C. § 1903(2); § 224.1, subd. (c)(1).)

20 The information required in section 224.3, subdivision (a)(5) includes, as applicable here: (A) the Indian child's name, birthdate and birthplace; (B) "[t]he name of the Indian tribe in which the child is a member or citizen, or may be eligible for membership or citizenship, if known"; (C) "[a]ll names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married, and former names or aliases, as well as their current and former addresses, birth dates, places of birth and death, tribal enrollment, membership, or citizenship information of other direct lineal ancestors of the child, and any other identifying information, if known."

subd. (e)(2)(A), (B), (C).) Contact with a tribe must, at a minimum, include telephone, facsimile, or electronic mail contact to each tribe's designated agent for receipt of notices under ICWA, and must "include sharing information identified by the tribe as necessary for the tribe to make a membership or citizenship eligibility determination, as well as information on the current status of the child and the case." (§ 224.2, subd. (e)(2)(C).)

The agency is required by the rules to document its inquiries. Rule 5.481(a)(5) provides: "The petitioner 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. Whenever new information is received, that information must be expeditiously provided to the tribes."

The juvenile court may find ICWA does not apply to a child's proceeding if it finds "an agency's inquiry and due diligence were 'proper and adequate,' and the resulting record provided no reason to know the child is an Indian child." (*Dezi C.*, *supra*, 16 Cal.5th at p. 1134; see § 224.2, subd. (i)(2); rule 5.481(b)(3)(A).)

The juvenile court's finding that ICWA does not apply thus " ' "implies that … social workers and the court did not know or have a reason to know the children were Indian children and that social workers had fulfilled their duty of inquiry." ' " (*In re Josiah T.* (2021) 71 Cal.App.5th 388, 401.) Nevertheless, an agency and the court have a continuing duty under ICWA and if the court subsequently receives information providing a reason to believe the child is an Indian child, it "shall reverse its determination" and order further inquiry be conducted. (§ 224.2, subd. (i)(2).)

"The juvenile court's factual finding that ICWA does not apply is 'subject to reversal based on sufficiency of the evidence.' " (*Dezi C.*, *supra*, 16 Cal.5th at p. 1134, quoting § 224.2, subd. (i)(2).) We review a juvenile court's ICWA findings under a hybrid substantial evidence/abuse of discretion standard, reviewing for substantial evidence whether there is reason to know a child is an Indian child, and for abuse of

discretion a juvenile court's finding that an agency exercised due diligence and conducted a " 'proper and adequate' " ICWA inquiry. (*K.H.*, *supra*, 84 Cal.App.5th at p. 601.)[21] In assessing prejudice stemming from an inquiry error, "the focus is on the missed opportunity to uncover relevant information necessary to make a reliable, informed determination concerning whether the child is or may be an Indian child." (*Id*. at p. 609.)

II. The Agency's Further Inquiry Efforts

Father does not argue the agency or juvenile court failed to properly conduct an initial inquiry regarding the applicability of ICWA. He does not identify any extended family member or other interested person whom he contends the agency should have contacted but failed to do so. Further, he does not dispute that the agency, based on the information it collected from its inquiry efforts, properly identified and contacted the relevant tribes in accordance with section 224.2, subdivision (e)(2)(B) and (C).

Father, however, contends the agency erred by failing to fully inquire about the unknown family member who maternal great-grandmother, Shirley P., reported had lived on a reservation and document her response. He also contends the agency failed in its duty to conduct further inquiry because it did not document that it requested biological information about two of daughter's relatives through whom there was a claim of Indian ancestry, Ipolito A. and Josefina P., and failed to provide their names and biological information to the respective identified tribes in violation of section 224.2, subdivision (e).

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[21] Our Supreme Court recognized in the recent cases of *In re Kenneth D.* (2024) 16 Cal.5th 1087, 1101 (*Kenneth D.*) and *Dezi C.*, *supra*, 16 Cal.5th at page 1134, that there is a split of authority among the Courts of Appeal regarding the standard for reviewing a juvenile court's finding that ICWA does not apply. The Supreme Court, however, did not resolve the issue as in both cases it was undisputed the Cal-ICWA inquiry was inadequate. (*Kenneth D.*, at p. 1101; *Dezi C.*, at p. 1134.) Accordingly, we continue to apply the standard of review we articulated in *K.H.*, *supra*, 84 Cal.App.5th at page 601.

We begin with the inquiry of maternal great-grandmother, Shirley P. The record shows that in January 2024, Shirley reported to the social worker that there was Indian ancestry from Arizona and New Mexico in her family, but she did not know the specific tribe, and while a family member lived on a reservation, she would need to locate an affidavit to provide more information. When another social worker contacted Shirley a few weeks later, Shirley reported she provided all information in the prior contact. The social worker contacted Shirley again in April 2025. Shirley told the social worker she was unable to locate paperwork that might yield more information, and she had no further information to convey.

Father does not dispute that the agency made multiple further inquiry efforts of Shirley. Father, however, complains the inquiries were insufficient because the agency did not document that it asked her for the unknown relative's name and dates of birth or death, or the specific geological location of the tribe. He asserts that had the agency obtained the relative's information, it could have inquired of all federally recognized tribes located in Arizona and New Mexico, and without documentation of a full inquiry, it is not known whether there was a reason to believe daughter is an Indian child.

The social worker's documentation shows that Shirley did not have any information apart from what was documented—there may be ancestry from tribes in Arizona and New Mexico, and an unknown family member lived on a reservation. Shirley attempted to locate further information but was unable to find any. Contrary to father's assertion, the agency documented its inquiries and Shirley's responses. We can infer from the record that Shirley did not know the ancestor's name or other biological information and could not identify a specific tribe or location.

Father does not cite any authority that requires the level of detail he demands. While rule 5.481(a)(5) requires the agency to include in its reports a "detailed description" of its inquiries and further inquiries, and "all information received pertaining to the child's Indian status," the rule does not require documentation of the agency's

questions. This is not a case such as *In re K.R.* (2018) 20 Cal.App.5th 701, 709, where the agency failed to document its efforts to locate and interview family members who might have pertinent information; *K.H.*, *supra*, 84 Cal.App.5th at page 620, where the department located numerous relatives but did not document any inquiries of these relatives or their responses; or *In re E.C.* (2022) 85 Cal.App.5th 123, 147–148, where the parent reported possible Indian ancestry and that two ancestors were enrolled tribal members, but the record did not contain any documentation of who the department directed ICWA inquires to and any responses received.

In contrast to these cases, the agency documented its inquiries of Shirley and her responses. Thus, it provided sufficient information to support a finding that Shirley's responses did not provide a reason to know daughter was an Indian child. (*In re H.M.* (2025) 109 Cal.App.5th 1171, 1184–1185 [substantial evidence supported juvenile court's findings that department's further inquiry into possible Indian heritage was adequate, and there was no reason to know the child was an Indian child, although the department could have documented some of its efforts in more detail].)

Father next contends the information the agency shared with the Navajo and Kickapoo tribes during its further inquiry efforts was deficient in violation of section 224.2, subdivision (e). He asserts the agency failed to provide the Navajo Nation and Colorado River Indian Tribes with the name of the relative through whom ancestry was claimed, great-great-great-grandfather, "Ipolito [A].," who reportedly was born on the Navajo reservation in New Mexico but was not a registered Navajo member.[22] He

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[22] It appears from the record that while maternal cousin identified Ipolito A. as a great-great-grandfather, he must have been at least daughter's great-great-great-grandfather, as the family tree the agency provided to the Navajo tribes, which went back to daughter's great-great-grandparents, did not include him. While the agency asserts it is impossible to tell whether Ipolito's name was included in the family trees, as information on them was redacted, the first names of all the relatives included in the trees are clearly readable. For this reason, the agency's claim that the record is inadequate to

also asserts the agency failed to provide the Kickapoo tribes with the name of the relative through whom ancestry was claimed, great-great-great-great-great-grandmother, "Josefina [P].," who reportedly was part of the Kickapoo tribe of New Mexico but was not a registered member.

When the agency received the information about these relatives, it ascertained which Navajo and Kickapoo tribes it should contact to informally inquire about daughter's eligibility for enrollment in the tribes and reached out to those tribes. The agency provided the Navajo Nation and Colorado River Indian Tribes a list of 60 maternal relatives reaching back to her great-great-great-grandparents and asked the tribes to advise if daughter would be eligible for enrollment based on this information. Both the Navajo Nation and the Colorado River Indian Tribes responded that they were unable to verify daughter's eligibility for tribal membership enrollment based on the information provided.

With respect to the Kickapoo tribes, the agency sent the tribes the following: (1) a "Family Tree/Pedigree Chart" to the Kickapoo Traditional Tribe of Texas; (2) the family's names and dates and places of birth, and information about maternal and paternal grandparents to the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; and (3) the family's names and dates of birth and maternal great-grandparents' names to the Kickapoo Tribe of Oklahoma. The Texas Kickapoo tribe advised the agency that neither daughter, nor her parents or grandparents, were enrolled members of the tribe or eligible for membership, the Kansas Kickapoo tribe advised that neither daughter nor her parents were enrolled or eligible for enrollment, and the Oklahoma Kickapoo tribe advised there was no family lineage with the tribe's blood for daughter or her parents.

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conduct a substantial evidence review because father did not obtain unredacted copies of the letters sent to the Navajo tribes is without merit.

Father contends section 224.2, subdivision (e) requires the agency to include the great-great-great-great-grandfather's and great-great-great-great-great-grandmother's names in its inquiry communications to the Navajo Nation, Colorado River Indian Tribes, and the Kickapoo tribes. As discussed *ante*, when there is reason to believe a child is an Indian child, section 224.2, subdivision (e)(2)(C) requires the agency to engage in further inquiry which includes "[c]ontact with a tribe" whereby it "shar[es] information identified by the tribe as necessary for the tribe to make a membership or citizenship eligibility determination, as well as information on the current status of the child and the case." As explained in *In re J.S.* (2021) 62 Cal.App.5th 678, 687, " '[t]he sharing of information with tribes at this inquiry stage is distinct from formal ICWA notice, which requires a "reason to know"—rather than a "reason to believe"—that the child is an Indian child.' "

If an inquiry conducted under section 224.2 produces a reason to know an Indian child is involved, notice must be provided to the relevant tribes under section 224.3, subdivision (a). (§ 224.2, subd. (f).) Such notice must include, as relevant to this appeal, "[a]ll names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married, and former names or aliases, as well as their current and former addresses, birth dates, places of birth and death, tribal enrollment, membership, or citizenship information of other direct lineal ancestors of the child, and any other identifying information, if known." (§ 224.3, subd. (a)(5)(C).)

Here, the agency's inquiry efforts did not establish a "reason to know" daughter was an Indian child as defined in subdivision (d) of section 224.2; father does not contend otherwise. Thus, the requirement the agency provide formal notice to tribes was never triggered. Instead, it was required to contact relevant tribes and "shar[e] information identified by the tribe as necessary for the tribe to make a membership or citizenship

eligibility determination, as well as information on the current status of the child and the case." (*Id.*, subd. (e)(2)(C).)

The record shows the agency sent the relevant tribes the information they requested, which presumably did not include the names of the two distant relatives at issue here. Nothing in the record suggests any tribe requested or needed additional information to make a membership or eligibility determination. Father does not explain how the names of a great-great-great-grandfather and great-great-great-great-great-grandmother, who relatives stated were not registered members, would be necessary for such a membership or eligibility determination in light of ICWA's definition of an Indian child as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4); accord, § 224.1, subds. (a), (b) [incorporating definition of Indian child as set forth in 25 U.S.C. § 1903].) (See *In re J.M.* (2012) 206 Cal.App.4th 375, 381 (*J.M.*) [no error where parent did not offer any explanation why tribe that disclaimed eligibility for membership of children, and their mother, grandparents, and great-grandparents would have reached a different conclusion if it had known the names of the great-great-grandparents].)[23] Thus, the omission of the

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[23] The appellate court in *J.M.* concluded federal regulations did not require information more remote than great-grandparents be provided based on the 2012 version of 25 Code of Federal Regulations part 23.11. (*J.M.*, *supra*, 206 Cal.App.4th at pp. 380–381.) As quoted in *J.M.*, 25 Code of Federal Regulations part 23.11(d)(3) provided that ICWA notice must include " '[a]ll names known … of the Indian child's biological mother, biological father, maternal and paternal grandparents and great grandparents or Indian custodians, including maiden, married and former names or aliases; birth dates; places of birth and death; tribal enrollment numbers, and/or other identifying information.' " (*J.M.*, at p. 380.) Further, part 23.11(b) of the 2012 version of 25 Code of Federal Regulations stated that " '[i]n order to establish tribal identity, it is necessary to provide as much information as is known on the Indian child's direct lineal ancestors *including, but not limited to*, the information delineated at paragraph (d)(1) through (4) of this section.' " (*J.M.*, at p. 381.)

distant relatives names did not render the agency's further inquiry and due diligence efforts deficient.

Even if the agency were required to provide information concerning daughter's great-great-great-great-grandfather and great-great-great-great-great-grandmother, the omission was necessarily harmless because daughter is disqualified from membership irrespective of these relatives' possible membership in the identified tribes. The agency has asked us to take judicial notice of the tribal membership criteria for the Navajo Nation, Colorado River Indian Tribes, the Kickapoo Traditional Tribe of Texas, and the Kickapoo Tribe of Oklahoma, which shows that these tribes all require a minimum blood quantum of at least one-quarter degree Indian blood.[24] The agency asserts it is proper to

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The agency contends we should follow *J.M.* and hold that the agency was not required to provide the names of the identified ancestors because they are more remote than great-grandparents. But part 23.11 of 25 Code of Federal Regulations was amended in 2016 to remove the foregoing language and part 23.111 was added to 25 Code of Federal Regulations, requiring notices to include, among other things, "[i]f known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents." (25 C.F.R., § 23.111(d)(3); 81 Fed.Reg. 38778, 38871); see *In re E.H.* (2018) 26 Cal.App.5th 1058, 1073 [the agency is "required to provide notice of the personal identify information of all 'direct lineal ancestors,' " including great-great-grandparents]; *In re N.G.* (2018) 27 Cal.App.5th 474, 481 [it is " ' "necessary to provide as much information as is known on the Indian child's *direct lineal ancestors*" [citation]' "].) We need not decide the issue because, as we explain, even if the agency was required to provide information about these remote ancestors any error was necessarily harmless.

[24] The agency asks us to take judicial notice of the following. The "INFO" page of Navajo Nation's official website, which states that a person must be at least one-quarter Navajo to be enrolled as a member (<https://www.navajo-nsn.gov/Info> [as of Jan. 22, 2026], archived at <https://perma.cc/6QEC-C55Q>), and the new enrollment page of the Navajo Office of Vital Records website which states the Navajo Nation's criteria eligibility requires at least one biological parent to be enrolled with the tribe and the applicant meet the minimum one-quarter Navajo Blood requirement (Services>New Enrollment, <https://novri.navajo-nsn.gov/Services/New-Enrollment> [as of Jan. 22, 2026], archived at <https://perma.cc/PK5D-SFTS>).

The Colorado River Indian Tribes' constitution and bylaws, which provides that children born after May 29, 1975, must have at least one-fourth degree Indian blood to be

take judicial notice of tribal membership criteria, tribal constitutions, and tribal ordinances. (*J.M.*, *supra*, 206 Cal.App.4th at p. 382 [taking judicial notice of tribal membership criteria to conclude any error in failing to provide remote ancestors name was harmless]; *Yavapai-Apache Nation v. Iipay Nation of Santa Ysabel* (2011) 201 Cal.App.4th 190, 201, fn. 6 ["tribal constitutions and ordinances can be proper subjects of judicial notice"].) The agency also asserts information and documents that are publicly available on a tribe's official governmental website may be the proper subject of judicial notice as facts and propositions not reasonably subject to dispute and that "are

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an enrolled member (Constitution and Bylaws of the Colorado River Indian Tribes of the Colorado River Indian Reservation, Art. II, § 1(b), p. 2 <https://www.crit-nsn.gov/crit_contents/ordinances/constitution.pdf> [as of Jan. 22, 2026]), and the Colorado River Indian Tribe's enrollment application, which includes a family tree chart requesting information back to great-grandparents (Colorado River Indian Tribes Enrollment Department, Enrollment Instructions and Application for Enrollment, p. 4 <https://www.crit-nsn.gov/critenrollment/APPLICATION%20FOR%20ENROLLMENT%20forms.pdf> [as of Jan. 22, 2026], archived at <https://perma.cc/T9AX-TMEV>).

The Kickapoo Traditional Tribe of Texas's tribal enrollment criteria, which states that membership consists of, as applicable here, "[a]ll children born to a member of the Tribe who are at least one-fourth (1/4) degree Kickapoo Indian blood." (Tribal Administrative>Tribal Operations>Enrollment Services, <https://kickapootexas.org/tribaloperations/enrollment-department/> [as of Jan. 22, 2026], archived at <https://perma.cc/BNW7-Q246>.)

The Kickapoo Tribe of Oklahoma's tribal membership criteria, which states that tribal membership consists of, as applicable here, "[a]ll persons born to a Tribal member after October 6, 1972, who are of at least one-fourth (1/4) degree Kickapoo Tribe of Oklahoma Indian blood as defined by and derived" (Departments>Enrollment, <https://www.kickapootribeofoklahoma.com/enrollment> [as of Jan. 22, 2026], archived at <https://perma.cc/4TRL-JWMW>), and the tribe's enrollment application, which limits ancestry information to a grandparent (Forms>Enrollment Dept>Tribal Enrollment Application, p. 3, <https://static1.squarespace.com/static/60537f312b9e3a557fca2b4f/t/67e57d596a7b67074060e0b8/1743093081805/2024+Enrollment+Application-1.pdf> [as of Jan. 22, 2026], archived at <https://perma.cc/ZC9Q-WKWD>).

capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy," citing Evidence Code section 452, subdivision (h).

Father opposes the request, arguing we should deny it because the trial court did not consider the evidence prior to making its ICWA finding. Father asserts the receipt of new evidence on appeal is prohibited when the issue on appeal involves the failure to comply with ICWA's inquiry provisions, citing *Kenneth D.* There, our Supreme Court issued what it called a narrow holding: "Where the juvenile court finds that ICWA does not apply based on an inadequate inquiry into a child's Native heritage, an appellate court, absent exceptional circumstances, may not consider evidence uncovered during a postjudgment inquiry to conclude the failure to conduct a proper inquiry was harmless." (*Kenneth D.*, *supra*, 16 Cal.5th at p. 1107.) Father asserts the agency's evidence of the tribe's by-laws is more appropriately considered by the juvenile court and routinely accepting such evidence on appeal is not sustainable.

Code of Civil Procedure section 909 permits a reviewing court to make factual determinations contrary to or in addition to those made by the trial court, and to take additional evidence of or concerning facts occurring at any time prior to the decision of the appeal.[25] The authority granted by Code of Civil Procedure section 909 " 'should be exercised sparingly' " and only when " 'exceptional circumstances' " are present. (*In re Zeth S.* (2003) 31 Cal.4th 396, 405, italics omitted.)

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[25] Code of Civil Procedure section 909 provides "[i]n all cases where trial by jury is not a matter of right or where trial by jury has been waived, the reviewing court may make factual determinations contrary to or in addition to those made by the trial court…. The reviewing court may for the purpose of making the factual determinations or for any other purpose in the interests of justice, take additional evidence of or concerning facts occurring at any time prior to the decision of the appeal, and may give or direct the entry of any judgment or order and may make any further or other order as the case may require. This section shall be liberally construed to the end among others that, where feasible, causes may be finally disposed of by a single appeal and without further proceedings in the trial court except where in the interests of justice a new trial is required on some or all of the issues."

The agency asserts the evidence of the tribes' membership criteria are relevant to the question of whether the agency met its obligations under section 224.2, subdivision (e)(2)(C), to share "information identified by the tribe as necessary for the tribe to make a membership or citizenship eligibility determination …." (*Ibid.*) The agency asserts this evidence shows the omission of the names of the remote relatives is inconsequential because daughter would not have met the tribes' criteria for membership therefore, taking judicial notice would expedite resolution of the appeal and prevent further delays to daughter's permanency, especially since the tribes demonstrably have no need for the extraneous ancestral lineage information. Father, analogizing this case to *Kenneth D.*, asserts " 'the nature of this evidence only highlights why it should be presented to the juvenile court rather than for the first time on appeal.' " (*Kenneth D.*, *supra*, 16 Cal.5th at p. 1105.)

In *Kenneth D.*, the juvenile court terminated parental rights even though the biological father and his family were never contacted about possible Indian heritage. (*Kenneth D.*, *supra*, 16 Cal.5th at p. 1096.) The father argued on appeal that the department failed to comply with ICWA's inquiry and notice provisions. (*Kenneth D.*, at p. 1097.) Before the opening brief was filed, the department asked the appellate court to augment the record with the department's postjudgment efforts to comply with ICWA, which included contacts with father, paternal grandmother, and the federal Bureau of Indian Affairs that led the department to assert there was no reason to know the child was an Indian child. (*Kenneth D.*, at p. 1096.) The appellate court granted the department's request to augment the record to include this new information and concluded any error in failing to comply with ICWA was harmless based on the augmented record. (*Kenneth D.*, at pp. 1096–1097.) Our Supreme Court reversed the appellate court's decision, with directions to conditionally reverse the order terminating parental rights and remand for compliance with ICWA and California implementing statutes. (*Kenneth D.*, at p. 1094.) The Supreme Court explained, "[t]he sufficiency of an ICWA inquiry must generally be

determined by the juvenile court in the first instance. Because no exceptional circumstances exist here, the Court of Appeal's consideration of previously unadmitted evidence on appeal was error." (*Ibid*.)

The facts in this case, however, differ from those in *Kenneth D.* Here, the agency satisfied the statutory mandates by making multiple inquiries of the maternal relatives about their Indian heritage and sending informal inquiry notices to the applicable tribes. Thus, there was no " 'abject failure of the [agency] and juvenile court to inquire as to [father's] possible Native American heritage' " before terminating parental rights. (*Kenneth D., supra,* 16 Cal.5th at p. 1100.) Moreover, the agency does not seek to introduce "evidence of postjudgment ICWA inquiry" (*id*. at p. 1106) but rather seeks to introduce undisputed evidence of the tribes' membership criteria to show the juvenile court's ruling that ICWA did not apply would be no different had the tribes been notified of the existence of daughter's remote ancestors. Given these facts and the unique circumstances of this case, we conclude exceptional circumstances have been presented to warrant our consideration of the documents filed with the request for judicial notice. "Code of Civil Procedure section 909 exists for exactly these kinds of exceptional cases and [the] Courts of Appeal are well equipped to distinguish between unexceptional fact patterns like *Kenneth D.* and exceptional cases like the one presented here." (*Dezi C., supra,* 16 Cal.5th at p. 1158 (dis. opn. of Groban, J.).)

Accordingly, we take judicial notice of the tribal membership criteria and conclude that given the stringency of tribal membership requirements, the omission of information about daughter's remote relatives is not prejudicial, particularly where more immediate lineal ancestors were included in the agency's correspondence with the tribes. (See *In re J.M., supra,* 206 Cal.App.4th at p. 382.)

In sum, substantial evidence shows the agency conducted adequate initial and further inquiry. Additional notice to the Navajo Nation, Colorado River Indian Tribes, the Kickapoo Traditional Tribe of Texas, and the Kickapoo Tribe of Oklahoma, was not

required because daughter did not meet the minimum blood quantum for membership. Moreover, additional notice to the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas was not required because the agency provided the information that tribe required, which did not include information on remote ancestors.

DISPOSITION

The juvenile court's May 14, 2025 orders are affirmed.

DE SANTOS, J.

WE CONCUR:

FRANSON, Acting P. J.

SNAUFFER, J.