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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Levi L., a Person Coming Under the Juvenile Court Law.	B340326
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Appellant, v. JONATHAN L., Defendant and Respondent.	(Los Angeles County Super. Ct. No. 18LJJP00558B)

APPEAL from an order of the Superior Court of Los Angeles County. Donald A. Buddle, Judge. Dismissed.

Emily Uhre, under appointment by the Court of Appeal, for Defendant and Respondent.

Dawyn R. Harrison, County Counsel, Kim Nemoy, Assistant County Counsel, and Melania Vartanian, Deputy County Counsel, for Plaintiff and Appellant.

INTRODUCTION

Jonathan L. (Father) appeals from the order terminating dependency jurisdiction over his son, Levi L., and placing the minor in a legal guardianship at a hearing held under Welfare and Institutions Code[1] section 366.26. Father's sole claim on appeal is that the juvenile court and the Los Angeles County Department of Children and Family Services (DCFS) failed to comply with the requirements of the Indian Child Welfare Act of 1978 (ICWA; 25 U.S.C. § 1901 et seq.) and related California law. However, since the filing of Father's appeal, the juvenile court has reinstated dependency jurisdiction over Levi, terminated the legal guardianship, and ordered further compliance with ICWA. Under these circumstances, we conclude that Father's ICWA claim is not justiciable, and accordingly, dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

1. Dependency proceedings

Father and Michelle L. (Mother) are the parents of Levi, a boy born in June 2008. Shortly after Levi's birth, the child was removed from the parents, declared a dependent of the juvenile court, and ultimately placed in a legal guardianship with his maternal grandfather and maternal step-grandmother. In August 2018, after learning that Levi's legal guardians were both deceased, DCFS filed a section 387 petition on his behalf, alleging that Levi no longer had a guardian able to provide him with care and supervision. In October 2018, the juvenile court sustained the petition, declared Levi a dependent of the court under

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[1] Unless otherwise stated, all further undesignated statutory references are to the Welfare and Institutions Code.

section 300, subdivision (b), and ordered that he be suitably placed by DCFS.

Over the next several years, Levi resided in the foster home of Mr. and Mrs. S. Because Levi wished to reunify with Father rather than be adopted or placed in a legal guardianship, the juvenile court ordered a planned permanent living arrangement as the minor's permanent plan. Levi later was placed in the foster home of Ms. N., and after Father's efforts to reunify with him failed, Levi agreed to a legal guardianship with Ms. N. At a section 366.26 hearing held on June 25, 2024, the court appointed Ms. N. as Levi's legal guardian and terminated dependency jurisdiction over Levi. During the course of the dependency proceedings, DCFS learned that Mother passed away in February 2024.

On August 26, 2024, Father filed an appeal from the order made at the June 25, 2024 section 366.26 hearing.

2. Facts pertaining to ICWA

At a detention hearing held on August 27, 2018, Father and Mother each submitted a Parental Notification of Indian Status (ICWA-020) form. Father denied having any Indian ancestry. Mother, however, indicated she may have Indian ancestry and identified the maternal grandmother as a person who might have more information. The juvenile court ordered DCFS to investigate Mother's claim, and deferred making an ICWA finding.

In a last minute information report filed in April 2019, DCFS noted that the social worker had contacted the maternal grandmother and inquired if she had Indian ancestry. In response, the maternal grandmother stated, " 'I've been told all of my life that we're Cherokee but we don't know them and we don't

have anything to do with them.' " The maternal grandmother denied that anyone in the family was registered with a tribe, received services or money from a tribe, attended a tribal school, or lived on a reservation. She declined to assist DCFS in completing an ICWA-030 form because she did not believe the family had " 'enough Indian in us to make a difference.' " When asked if there were any other relatives that could be contacted, she indicated the maternal great-grandmother was 96 years old and not doing well, so she did not want to involve her.

At a permanency plan review hearing held on October 28, 2019, counsel for DCFS noted that an ICWA finding had not been made, and that DCFS needed to complete an ICWA-030 form and "notice the Cherokee tribes and necessary agencies." In response, the juvenile court ordered DCFS "to complete its investigation of potential ICWA issues with respect to the Cherokee tribe or nation," and to provide the results of the investigation before the next hearing.

In subsequent reports filed with the juvenile court in 2020 and 2021, DCFS stated that ICWA did not apply. But there is no indication in the record that DCFS conducted any further investigation into Levi's possible Cherokee ancestry during this time. In reports filed between December 2022 and June 2024, DCFS stated that, on October 19, 2018, the court determined that ICWA did not apply. However, the record does not show the court made any finding related to ICWA on that date.

In a section 366.26 report filed in June 2024, DCFS provided an update on its ICWA investigation. According to that report, in or about May 2024, DCFS attempted to contact Father, Levi, Levi's adult sibling, the maternal grandmother, and two other possible relatives to inquire about any Indian ancestry in

the family. Both Levi and his sibling denied having any Indian ancestry. DCFS was not able to reach any other family members, including the maternal grandmother because her voicemail box was full. In its report, DCFS stated there were no other known maternal or paternal relatives to contact regarding ICWA, and recommended the court find that ICWA did not apply. However, there is no indication that the court had made any finding related to ICWA when it terminated jurisdiction at the June 25, 2024 section 366.26 hearing.

3. Postappeal orders

DCFS requests that this court take judicial notice of two minute orders issued by the juvenile court during the pendency of this appeal. We grant DCFS's unopposed request. (Evid. Code, §§ 452, subd. (d)(1), 459, subd. (a).) On this court's own motion, we also take judicial notice of an additional minute order issued by the juvenile court on November 19, 2024, while this appeal was pending. As reflected in these orders, on November 19, 2024, the juvenile court reinstated dependency jurisdiction over Levi. Two days later, on November 21, 2024, the court terminated Levi's legal guardianship with Ms. N., and ordered that Levi be suitably placed by DCFS. Then, at a section 366.26 hearing held on March 21, 2025, the court ordered DCFS to "notice the Cherokee tribe regarding ICWA" and to "include an update regarding ICWA" in its next report. At that time, the court also continued the matter for further permanency planning.

DISCUSSION

On appeal, Father argues the case must be conditionally reversed and remanded for compliance with ICWA and related California law. Father contends DCFS failed to comply with its duty of further inquiry because it did not contact the Cherokee

tribes or the Bureau of Indian Affairs in response to the maternal grandmother's report of Cherokee heritage. Father also claims the juvenile court failed to comply with its inquiry obligations because it never made a finding as to whether ICWA applied.

DCFS argues Father's appeal is moot because the juvenile court has since reinstated its dependency jurisdiction over Levi and ordered DCFS to contact the Cherokee tribe. In support of this argument, DCFS filed a motion to dismiss the appeal concurrently with its respondent's brief. Alternatively, DCFS asserts that it satisfied its duty of inquiry based on the ICWA investigation it conducted prior to this appeal, and that even if there was error, reversal is not required because both DCFS and the juvenile court have an ongoing duty of inquiry under ICWA.

Given the procedural posture of this case, we conclude Father's ICWA claim is not justiciable, and therefore, grant DCFS's motion to dismiss the appeal.

1. Overview of ICWA

ICWA mandates that "[i]n any involuntary proceeding in a [s]tate court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe" of the pending proceedings and the right to intervene. (25 U.S.C. § 1912(a).) Similarly, California law requires notice to the child's parent, Indian custodian, if any, and the child's tribe if there is "reason to know . . . that an Indian child is involved" in the proceeding. (§ 224.3, subd. (a).) Both juvenile courts and child welfare agencies "have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300 . . . has been filed, is or may be an Indian child." (§ 224.2,

subd. (a); see *In re Isaiah W.* (2016) 1 Cal.5th 1, 14.) " 'This continuing duty can be divided into three phases: the initial duty to inquire, the duty of further inquiry, and the duty to provide formal ICWA notice.' " (*In re Josiah T.* (2021) 71 Cal.App.5th 388, 402.)

At the first appearance of each party, the juvenile court must inquire whether that party "know[s] or ha[s] reason to know that the child is an Indian child." (§ 224.2, subd. (c).) In addition, whenever a child welfare agency takes a child into temporary custody, it must inquire of a nonexclusive group that includes the child, the parents, and extended family members "whether the child is, or may be, an Indian child." (*Id.*, subd. (b)). Extended family members include adults who are the 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).)

If the juvenile court or the child welfare agency "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 or social worker "shall make further inquiry regarding the possible Indian status of the child . . . as soon as practicable." (§ 224.2, subd. (e).) "[R]eason to believe" means the court or social worker 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." (*Id.*, subd. (e)(1).) Further inquiry includes, but is not limited to, "[i]nterviewing the parents, Indian custodian, and extended family members," "contacting the Bureau of Indian Affairs," 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." (*Id.*, subd. (e)(2)(A), (C).)

"If the court makes a finding that proper and adequate further inquiry and due diligence . . . have been conducted and there is no reason to know whether the child is an Indian child, the court may make a finding that [ICWA] does not apply to the proceedings, subject to reversal based on sufficiency of the evidence." (§ 224.2, subd. (i)(2).)

2. Father's ICWA claim is not justiciable

A court is tasked with the duty to decide actual justiciable controversies by a judgment which can be carried into effect. (*In re D.P.* (2023) 14 Cal.5th 266, 276.) "A case becomes moot when events ' "render[] it impossible for [a] court, if it should decide the case in favor of plaintiff, to grant him any effect[ive] relief." ' [Citation.] For relief to be 'effective,' two requirements must be met. First, the plaintiff must complain of an ongoing harm. Second, the harm must be redressable or capable of being rectified by the outcome the plaintiff seeks." (*Ibid.*)

Here, Father's sole contention on appeal is that there was ICWA inquiry error because DCFS did not conduct a further inquiry into Levi's possible Cherokee ancestry and the court did not make a finding as to whether ICWA applied. Father's appeal satisfies the first requirement for the granting of effective relief because he complains of a failure on the part of both DCFS and the court to fulfill their duty of inquiry under ICWA. (*In re T.R.* (2024) 107 Cal.App.5th 206, 214.) Ordinarily, we would conclude an appeal based on ICWA inquiry error also satisfies the second requirement because the remedy for the failure to conduct an adequate ICWA inquiry is the conditional reversal of the order being appealed and remand with directions to comply with

ICWA. (See *In re Dezi C.* (2024) 16 Cal.5th 1112, 1136–1137.) In this case, however, the appealed order is the juvenile court's June 25, 2024 order placing Levi in a legal guardianship with Ms. N. and terminating dependency jurisdiction. Since the filing of the appeal, the juvenile court has reinstated jurisdiction over Levi, terminated the guardianship with Ms. N., and issued a suitable placement order for the now 17-year-old minor. Given that no portion of the June 25, 2024 order remains in effect, a conditional reversal of that order is no longer an available remedy for the alleged ICWA inquiry error.

Moreover, in its March 21, 2025 order issued during the pendency of this appeal, the juvenile court ordered DCFS to "notice the Cherokee tribe regarding ICWA" and to "include an update regarding ICWA" in its next report. The juvenile court thus granted the same relief that Father seeks in this appeal by ordering DCFS to conduct a further inquiry into Levi's possible Cherokee ancestry and to document its findings for the court's review. Whether these efforts by DCFS constitute a proper and adequate further inquiry under ICWA is a matter for the juvenile court to determine in the first instance. (See *In re Kenneth D.* (2024) 16 Cal.5th 1087, 1105–1106.) Because Father's claim of ICWA inquiry error is not justiciable under the circumstances of this case, we dismiss the appeal.

DISPOSITION

The motion to dismiss is granted and the appeal is dismissed.

VIRAMONTES, J.

WE CONCUR:

STRATTON, P. J.

WILEY, J.