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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re AUTUMN W. et al., Persons Coming Under the Juvenile Court Law.	
SAN FRANCISCO HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. HAZELLE H., Defendant and Appellant.	A173973 (City & County of San Francisco Super. Ct. Nos. JD23-3265, JD23-3265A)

MEMORANDUM OPINION[1]

Hazelle H. (mother) appeals from the juvenile court's order denying her Welfare and Institutions Code section 388 petition and terminating her parental rights to Autumn W. and Wynter W. under Welfare and Institutions Code section 366.26.[2] Mother argues the San Francisco Human Services Agency failed to comply with the Indian Child Welfare Act of 1978 (25 U.S.C.

[1] We provide a limited factual summary and resolve this case by memorandum opinion. (Cal. Stds. Jud. Admin., § 8.1.)

[2] Undesignated statutory references are to the Welfare and Institutions Code.

§ 1901 et seq.; ICWA) and implementing California law (Welf. & Inst. Code, § 224 et seq.; Cal-ICWA)[3] when it failed to properly document the inquiry as to mother's ancestry and failed to conduct an adequate inquiry as to father's ancestry. Mother requests a conditional reversal and remand to ensure compliance with ICWA. The agency concedes "the record does not demonstrate that the Agency sufficiently discharged its duty of further inquiry, as it failed to document its contacts with the tribes named by maternal family members." The agency does not oppose a remand to ensure compliance with ICWA's inquiry requirements under *In re Dezi C., supra*, 16 Cal.5th 1112. We accept the agency's concession and will conditionally reverse the order.

Section 224.2 states that courts and county welfare departments "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).) This duty to inquire begins when a county is first contacted regarding a child and extends to when a child is placed in temporary custody of a county welfare department and the first hearing on a petition in a proceeding that could result in a child being placed with someone other than a parent or Indian custodian. (*Id.*, subds. (b)–(c).) Inquiry includes, but is not limited to, asking a child's extended family members whether the child is or may be an Indian child. (*Id.*, subd. (b)(1)–(2).)

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[3] Because ICWA and Cal-ICWA both use the term "Indian," we do the same for consistency. We recognize, however, that other terms, such as "Native American" or "Indigenous," are preferred by many. No disrespect is intended. (See *In re Dezi C.* (2024) 16 Cal.5th 1112, 1125, fn. 1.)

If there is "reason to know" a child involved in a proceeding is an Indian child, "the party seeking foster care placement with someone other than a parent or Indian custodian shall provide notice in accordance with Section 224.3." (§ 224.2, subd. (f).) There is reason to know a child is an Indian child if, among other things, a person having an interest in the child informs the court that the child is an Indian child. (*Id.*, subd. (d)(1).)

When a court or social worker has "reason to believe" a child is an Indian child but cannot determine there is reason to know the child is an Indian child, the court or social worker must make "further inquiry." (§ 224.2, subd. (e).) A court or social worker has reason to believe a child is an Indian child when information suggests the child or his or her parent is a member or citizen of or may be eligible for membership or citizenship in an Indian tribe. (*Id.*, subd. (e)(1).) "Further inquiry" includes, but is not limited to, interviewing extended family members, contacting the Bureau of Indian Affairs (BIA) and the State Department of Social Services for assistance in identifying the names and contact information of relevant tribes, and contacting tribes "that may reasonably be expected to have information regarding the child's membership status or eligibility." (*Id.*, subd. (e)(2)(A)–(C).)

If there is reason to know a child is an Indian child but the evidence is not sufficient to determine conclusively whether the child is or is not an Indian child, the court must document that due diligence was used to identify and work with the relevant tribes to verify the child's status or eligibility. (§ 224.2, subd. (g).) If the inquiry establishes a reason to know an Indian child is involved, notice must be provided to the pertinent tribes. (§ 224.3, subds. (a), (b).) "The notice must include enough information for the tribe to 'conduct a meaningful review of its records to determine the child's eligibility

for membership' [citation], including the identifying information for the child's biological parents, grandparents, and great-grandparents, to the extent known [citations]." (*In re Dezi C., supra*, 16 Cal.5th at p. 1133, citing § 224.3, subd. (a)(5)(C).)

"If the court makes a finding that proper and adequate further inquiry and due diligence as required in this section 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. (§ 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.' " (*In re Dezi C., supra*, 16 Cal.5th at p. 1134.) An inadequate ICWA inquiry "requires conditional reversal of the juvenile court's order terminating parental rights with directions to the agency to conduct an adequate inquiry, supported by record documentation." (*Id.* at p. 1125.)

In this case involving an original dependency petition under section 300, the agency's inquiry as to mother's ancestry was not properly documented as required by ICWA. The agency concedes that it "failed to document its contacts with the tribes named by maternal family members," and our review of the record confirms the agency's concession.

Mother stated she does not have Indian ancestry, but maternal family members disclosed potential Indian ancestry (Blackfeet, Cherokee, and Chickasaw). Based on this disclosure, the agency sent notices to the Blackfeet Nation, the Cherokee Nation, the Eastern Band of Cherokee Indians, the United Keetoowah Band of Cherokee Indians, and the Chickasaw Nation regarding the children's ancestry. The agency received responses from each of the tribes indicating the children were not enrolled or eligible for enrollment with the tribe and filed those responses, except for the

response from the United Keetoowah Band of Cherokee Indians. However, the notices the agency sent are not part of the record. Therefore, the record does not disclose whether the agency shared the information required under ICWA in order for the tribes to make their membership determination.

Mother also argues that the agency failed to conduct an adequate further inquiry with extended paternal family members and the BIA. The agency does not address whether the further inquiry as to father's ancestry was adequate. The agency's "failure to address an issue raised in the opening brief is not a concession." (*Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 557, fn. 48.) Yet, the record supports mother's contention that the agency's further inquiry as to father's ancestry was also inadequate.

Father and a paternal cousin reported that paternal great-grandmother was Indian, and the agency and the juvenile court acknowledged further inquiry was necessary. The record does not reflect that the agency exercised due diligence in conducting their further inquiry with extended family members because there is no indication the agency contacted paternal grandmother, despite being identified by father and paternal cousin as potentially having more information regarding paternal great-grandmother's Indian ancestry. Additionally, the agency acknowledged it needed to conduct a further inquiry with the BIA but later reported there were no records showing it had done so. The agency's report noted that it was in the process of contacting the BIA but had not done so because father had not provided "any information to further the Agency's inquiry into ICWA." (Italics omitted.)

Accordingly, we conditionally reverse the order terminating parental rights and remand for the agency to fulfill its duties under ICWA and for the

court to hold a hearing to determine whether ICWA applies as to both parents. (See *In re Dezi C., supra*, 16 Cal.5th at p. 1137.)

DISPOSITION

The juvenile court's termination of mother's parental rights is conditionally reversed. The case is remanded to the juvenile court with directions to order the agency to comply with ICWA's inquiry, notice, and documentation provisions.

If the juvenile court finds that the minors are Indian children, it must proceed in conformity with all provisions of ICWA. If, on the other hand, the juvenile court finds that the minors are not Indian children, the judgment terminating parental rights shall be reinstated.

Jackson, P. J.

WE CONCUR:

Simons, J.
Burns, J.