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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.H., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

C.H.,

Defendant and Appellant.

E086497

(Super.Ct.No. DPRI2300366)

OPINION

APPEAL from the Superior Court of Riverside County. Malvina K. Ovanezova,
Temporary Judge. Reversed.

Richard L. Knight, under appointment by the Court of Appeal, for Defendant and
Appellant.

Minh C. Tran, County Counsel, Julie Jarvi, Deputy County Counsel, for Plaintiff
and Respondent.

INTRODUCTION

C.H. (mother) appeals from the juvenile court’s order terminating parental rights (Welf. & Inst. Code,¹ § 366.26) as to her child, A.H. (the child). Mother contends the matter must be conditionally reversed and remanded because the court, as well as the Riverside County Department of Public Social Services (DPSS), failed to discharge their duty of inquiry under the Indian Child Welfare Act (25 U.S.C. § 1901 et. seq.) (ICWA) and related California law (§ 224.2). DPSS concedes, and we agree. Accordingly, we conditionally reverse the order terminating parental rights and remand for further proceedings.

PROCEDURAL BACKGROUND

On September 28, 2023, DPSS filed a petition on behalf of the child, who was seven years old at the time. The petition alleged that the child came within the provisions of section 300, subdivision (b) (failure to protect).

The social worker filed a detention report and stated that DPSS received a referral for general neglect of the child by mother and the child’s father, J.H. (father)², on August 29, 2023. The child lived with mother and father (the parents), the paternal grandparents, and “multiple unrelated family members.” It was reported that mother smoked methamphetamines in the same room as the child was in, that she kept methamphetamines and marijuana on top of the bookshelf, and that father smoked

¹ All further statutory references will be to the Welfare and Institutions Code, unless otherwise indicated.

² Father is not a party to this appeal.

fentanyl and overdosed on it a couple months prior. A protective custody warrant was issued on September 26, 2023. The detention report listed the following relatives and their contact information: the paternal grandparents, three maternal aunts (Marina Christina H., Catherine H., and Estella H.)³, one maternal uncle (Daniel H.), and the maternal grandmother (the MGM).⁴

The court held a detention hearing on September 29, 2023. Mother was present, but father was not, although he was represented by counsel. The court noted they were joined by the MGM, and maternal aunt Marina H. Counsel for the child noted that the child had been placed with B.A., the paternal aunt, and was doing well. Father's counsel said he attempted to contact father but was unsuccessful. Father's counsel stated, "We are reserving on any presumed father status, ICWA, and the initial paperwork until father does present himself." Mother submitted an ICWA-020 form stating she did not have Indian ancestry. The court addressed mother directly and asked if she was aware of any Native American ancestry, and she said she had no Indian ancestry. The court also asked the MGM and Marina H. if they were aware of having any Native American ancestry, and they both said no. The court detained the child and noted that she was living with the paternal aunt.

³ We note that the social worker listed the name of maternal aunt Marina H. as "Maria Cristina H." That appears to be a misspelling since the maternal aunt appeared at the detention hearing and identified herself as "Marina H." The record refers to her alternatively as "Marina H." and "Maria Christina H." For simplicity's sake, this opinion will refer to her as "Marina H."

⁴ Most of the contact information was listed as confidential.

Jurisdiction/Disposition

The social worker filed a jurisdiction/disposition report on October 18, 2023, recommending that the court sustain the petition, declare the child a dependent, and provide reunification services to the parents. The social worker reported that, on September 6, 2023, the parents were asked if they had Native American ancestry, and they both denied it. On October 13, 2023, the social worker asked them again, and they denied it. Father confirmed that he was the child's biological father, was present at her birth, and was listed on the birth certificate.

Mother reported that she was raised by her mother and father, and she had three siblings. Father said his mother's name was L.M. (the PGM) and his father's name was H.H. (the PGF). The paternal grandparents never married and were currently still together. Father denied having any siblings.⁵

The court held a jurisdiction/disposition hearing on October 23, 2023. Father was present. His counsel asked for presumed father status for father, which the court granted. The court then asked both father and mother if they were aware if they had any Native American ancestry, and they both said no. The court sustained an amended petition which had just been filed that day, declared the child a dependent, removed her from the parents' custody, and ordered reunification services for the parents.

⁵ Although father denied having any siblings, we note the record reflects the child was placed with the paternal aunt. In any event, the paternal aunt is not at issue in this appeal.

Six-month Status Review

On March 28, 2024, the social worker filed a six-month status review report, recommending that the court continue reunification services. The social worker reported that there was no new evidence to suggest any Indian ancestry in this family, as the parents continued to deny having Indian heritage. Mother reported that she recently moved in with a friend and that her (mother's) support system was her mother (the MGM) and her sister, Marina H.

The social worker reported that the child continued to reside with the paternal aunt. However, the paternal aunt had expressed concerns about whether she could keep the child in her care and said she would prefer other family members to take her. The social worker further reported that she had contact with the paternal aunt numerous times during this reporting period to ensure the placement was appropriate and address her concerns.

On March 11, 2024, the social worker spoke with the MGM, who expressed her desire to be the child's caregiver. The social worker further reported that maternal aunts Marina H., Catherine H.⁶, and Estella H. all expressed their willingness and desire to adopt the child, if reunification was not possible.

⁶ We note that the social worker referred to Catherine H. as "Kathy" in the report. However, the maternal aunt clarified with the court that her name was Catherine H., spelled with a "C."

The court held a six-month status review hearing on April 9, 2024. The paternal aunt was present, and the court asked if she was aware of any Native American ancestry in her background, and she said no. At mother's request, the court set the matter contested.

A contested six-month review hearing was held on April 23, 2024. The court reviewed the social worker's reports and noted that mother had been having challenges getting engaged in her services and in staying sober. The court adopted the social worker's recommendations, including that proper ICWA inquiry had been made, that the child was not an Indian child, and that ICWA did not apply. The court continued services.

Twelve-month Status Review Hearing

The social worker filed a 12-month status review report on September 25, 2024, recommending that the court terminate reunification services and set a section 366.26 hearing, with adoption as the permanent plan. The social worker continued to report that ICWA did not apply, as there was no new evidence to suggest any Indian ancestry in this family. The parents denied having Indian heritage again on August 20, 2024.

The court held a 12-month review hearing on October 9, 2024. Parties present included mother, the child, the paternal aunt, two maternal aunts, and the MGM. The court set the matter contested, at the parents' request. The court addressed maternal aunts Marina H. and Catherine H. directly and asked if they had any Indian ancestry. They both said no. The court also asked mother and the MGM if they were aware of any Indian ancestry in their background, and they both said no.

The court held a contested 12-month review hearing on October 23, 2024. The court adopted the social worker's recommended findings and found that the parents had

failed to make substantive progress in their case plans. The court thus terminated reunification services and set a section 366.26 hearing. The court again found that ICWA did not apply.

Section 366.26

The social worker filed a section 366.26 report on January 31, 2025, and recommended that the court terminate parental rights and set adoption as the permanent plan. The social worker continued to report that ICWA did not apply.

The court held a section 366.26 hearing on May 21, 2025. County counsel argued that the court should terminate parental rights and noted that the court previously found that ICWA did not apply and no new evidence had been submitted to suggest otherwise. After considering the social worker's reports, the court found that it was likely the child would be adopted, reasonable services had been provided, there was no substantial probability of return within six months, and adoption was in the child's best interest. The court terminated parental rights and ordered adoption as the permanent plan.

DISCUSSION

The Matter Should Be Remanded For Compliance With ICWA

Mother argues that the juvenile court's order terminating parental rights must be reversed and remanded to permit additional ICWA compliance. Specifically, she contends the court and DPSS failed to comply with ICWA requirements by not inquiring of four extended relatives –the paternal grandparents, maternal aunt Estella H., and maternal uncle, Daniel H. DPSS concedes there were “inadvertent omissions in conducting the initial inquiry,” and we agree.

A. *Applicable Law*

“Congress enacted ICWA in 1978 to address concerns regarding the separation of Indian children from their tribes through adoption or foster care placement, usually in non-Indian homes. [Citation.] ICWA established minimum standards for state courts to follow before removing Indian children from their families and placing them in foster care or adoptive homes.” (*In re D.S.* (2020) 46 Cal.App.5th 1041, 1048 (*D.S.*)).

Section 224.2 of the Welfare and Institutions Code “creates three distinct duties regarding ICWA in dependency proceedings. First, from [DPSS’s] initial contact with a minor and his family, the statute imposes a duty of inquiry to ask all involved persons whether the child may be an Indian child. [Citation.] Second, if that initial inquiry creates a ‘reason to *believe*’ the child is an Indian child, then [DPSS] ‘shall make *further inquiry* regarding the possible Indian status of the child and shall make that inquiry as soon as practicable.’ [Citation.] Third, if that further inquiry results in a reason to *know* the child is an Indian child, then the formal notice requirements of section 224.3 apply.” (*D.S.*, *supra*, 46 Cal.App.5th at p. 1052; § 224.2)

Following the inquiry stages, the juvenile court may make a finding that ICWA does not apply because DPSS’s inquiry and due diligence was “‘proper and adequate’ but no ‘reason to know’ whether the child is an Indian child was discovered.” (*D.S.*, *supra*, 46 Cal.App.5th at p. 1050.) “The finding implies that notice to a tribe was not required because social workers and the court did not know or have a reason to know the [dependent] children were Indian children and that social workers had fulfilled their duty of inquiry.” (*In re Austin J.* (2020) 47 Cal.App.5th 870, 885 (*Austin J.*)). “““On a well-

developed record, the [juvenile] court has relatively broad discretion to determine whether the agency's inquiry was proper, adequate, and duly diligent on the specific facts of the case.'"" (*In re Dezi C.* (2024) 16 Cal.5th 1112, 1141 (*Dezi C.*))

“[W]e review the juvenile court's ICWA findings under the substantial evidence test, which requires us to determine if reasonable, credible evidence of solid value supports the court's order.” (*In re A.M.* (2020) 47 Cal.App.5th 303, 314, disapproved on other grounds in *Dezi C.*, *supra*, at p. 1152, fn. 18; *Austin J.*, *supra*, 47 Cal.App.5th at p. 885 [implicit finding that social workers fulfilled their duty of inquiry and is reviewed for substantial evidence].) If such sufficient evidence supports the trial court's determination as to whether the ICWA applies, we will find that the juvenile court has not abused its discretion. (*Dezi C.*, *supra*, at p. 1141.)

B. The Court and DPSS Failed to Discharge Their Initial Duties of Inquiry

DPSS concedes that the initial inquiry was inadequate and therefore does not oppose a conditional reversal and remand for the limited purpose of ensuring that a proper inquiry under ICWA and related California statutes is done. Mother specifically asks that DPSS satisfy its duty of inquiry regarding the paternal grandparents, maternal aunt Estella H., and the maternal uncle, Daniel H. We note a point of discrepancy. The detention report lists three maternal aunts (Marina H., Catherine H., and Estella H.) and one maternal uncle (Daniel H.) However, the jurisdiction/disposition report reflects that mother reported she had three siblings, although she did not name them. In the six-month review report, the social worker reported that maternal aunts Marina H., Catherine H., and Estella H. all expressed their willingness and desire to adopt the child. Thus, it is

unclear whether Daniel H. is actually mother's sibling, since he would apparently be the fourth sibling, and he is not mentioned in the record after the detention report.

Therefore, upon remand, DPSS should clarify whether Daniel H. is an extended relative, and if so, inquire about his Native American ancestry, along with inquiring about the Native American ancestry of Estella H. and the paternal grandparents.

DISPOSITION

The order terminating parental rights is conditionally reversed. The matter is remanded to the juvenile court with directions to comply with the inquiry provisions of ICWA and of Welfare and Institutions Code sections 224.2 and 224.3, in accordance with this opinion. If, after completing the initial inquiry, neither DPSS nor the juvenile court has reason to believe or reason to know the child is an Indian child, the order terminating parental rights shall be reinstated. If, however, DPSS or the juvenile court discovers a reason to believe that the child is an Indian child, the juvenile court shall proceed as required under ICWA and related California statutes.

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FIELDS
J.

We concur:

RAMIREZ
P. J.
CODRINGTON
J.