Filed 1/9/26 In re R.G. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

In re R.G. et al., Persons Coming Under the Juvenile Court Law.	C103579
TEHAMA COUNTY DEPARTMENT OF SOCIAL SERVICES, Plaintiff and Respondent, v. B.T., Defendant and Appellant.	(Super. Ct. Nos. 24JU000034 & 24JU000035)

Appellant B.T., who is mother of the minors, appeals from the juvenile court's order terminating parental rights and freeing the minors for adoption. (Welf. & Inst. Code, §§ 366.26, 295.[1]) Mother claims the juvenile court prejudicially erred in finding

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

the minors may be Indian children within the meaning of the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq.) by failing to comply with the inquiry and notice requirements of the ICWA. We will reverse and remand for limited ICWA proceedings.

BACKGROUND

In May 2024, the juvenile court took dependency jurisdiction over the minors, R.N.G. (the older minor) and R.M.G. (the younger minor) (collectively the minors),[2] after sustaining allegations filed by the Tehama County Department of Social Services (Department) pursuant to section 300, subdivisions (b) and (j). At the beginning of the dependency case, the Department learned from maternal grandmother D. that the minors had possible Indian ancestry. The court determined, in prior dependency proceedings, that the ICWA did not apply to the older minor or his half-siblings.

At the detention hearing, mother informed the juvenile court she had Indian ancestry with the "Yaki [sic] Tribe" and father of the older minor was deceased. Mother could not identify the father of the younger minor at the time. The court ordered the minors detained.

The May 2024 disposition report reiterated that the ICWA did not apply to the older minor or his half-siblings based on the juvenile court's findings in prior related dependency cases. The Department reported there was no reason to believe the younger minor was an Indian child based on the findings as to the half-siblings and because the identity of R.M.G.'s father was unknown. The Department also reported it complied with its ongoing duty of inquiry by contacting R.M.G.'s known relatives and that those contacts gave the Department no reason to believe R.M.G. was an Indian child within the meaning of the ICWA.

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[2] The minors have two half-siblings, A.A.M. (A.) and L.D.A. (L.) (the half-siblings), neither of which is a subject of this appeal. The half-siblings will be mentioned only when relevant to the issues on appeal.

On October 10, 2024, mother filed a parental notification of Indian status form (ICWA-020) stating she had no known Indian ancestry. That same month, the Department filed a notice of child custody proceeding for Indian child form (ICWA-030). The ICWA-030 form contained information about mother, maternal grandmother D., maternal grandfather D., maternal great-grandmother D., and maternal great-grandfather R. and was directed to the Fort Sill Apache Tribe of Oklahoma, the Jicarilla Apache Nation, the Apache Tribe of Oklahoma, the Mescalero Apache Tribe/Mescalero Reservation, the San Carlos Apache Tribe/San Carlos Reservation, the White Mountain Apache Tribe/Fort Apache Reservation, the Pascua Yaqui Tribe of Arizona, the Tonto Apache Tribe of Arizona, and the Yavapai-Apache Nation/Camp Verde Indian Tribe.

On October 28, 2024, the Department reported that mother had provided information regarding the younger minor's potential father, S.V. (alleged father S.V.). The Department contacted the following maternal relatives for purposes of ICWA inquiry: maternal grandmother D., maternal grandfather D., and maternal aunt J. Those relatives provided information giving the Department reason to believe the minors might be associated with the Pascua Yaqui Tribe of Arizona or the White Mountain Apache Tribe. The Department also contacted the older minor's paternal aunt L. for purposes of ICWA inquiry. She provided information giving the Department no reason to believe the older minor was associated with an Indian tribe on his paternal side. The Department also contacted the following alleged paternal relatives of the younger minor for purposes of ICWA inquiry: paternal grandfather S., paternal aunt S., and paternal cousin J. once removed. Those relatives provided information giving the Department no reason to believe the younger minor was associated with an Indian tribe on his paternal side. The Department attached a detailed report of its contacts with the maternal and paternal relatives.

In early 2025, the Department filed several supplemental reports regarding responses from various Indian tribes to the ICWA-030 forms. The White Mountain

Apache Tribe stated mother was not an enrolled member and neither were the minors. The Tonto Apache Tribe stated the two minors and half-sibling L. were not eligible for enrollment. The Kiowa Tribe Apache Tribe of Oklahoma stated neither mother, any of the fathers, the minors, nor the half-siblings were eligible for membership nor did they possess enough blood quantum to be eligible for enrollment. The Cherokee Nation stated neither mother nor the half-siblings or their fathers were part of the tribal records nor were the half-siblings Indian children.

The Department's February 2025 section 366.26 report stated that inquiry into the older minor's paternal relatives and the younger minor's alleged paternal relatives gave the Department no reason to believe that the ICWA applied. The Department noted, however, that mother's side of the family provided information giving reason to believe the minors may be associated with the Pascua Yaqui Tribe of Arizona or the White Mountain Apache Tribe and thus concluded the ICWA "does or may apply." The Department reported that, as previously set forth in the ICWA-030 filed with the court in October 2024, letters were sent to 10 tribes regarding the minors' possible Indian ancestry. The Department received letters from the United Keetoowah Band of Cherokee Indians, the Pascua Yaqui Tribe, the San Carlos Apache Tribe, the Fort Sill Apache Tribe, the Yavapai Apache Nation, the White Mountain Apache Tribe, the Kiowa Tribe Apache Tribe of Oklahoma, the Tonto Apache Tribe of Arizona, and the Cherokee Nation confirming the minors were either not eligible for membership or enrollment, were not listed in the respective tribe's membership rolls and records, or were not Indian children.

The Department's section 366.26 report recommended "that the [minors] remain dependents in out-of-home care and that the Court terminate the parental rights of [mother, alleged father S.V.] and any unknown fathers, and order a permanent plan of

[a]doption. The Department also requests the Court adopt the recommended findings and orders on the provided JV-320's."[3]

On April 17, 2025, the juvenile court found the minors adoptable, terminated parental rights, and ordered adoption as the permanent plan. Specifically the court stated, "the Court will adopt the findings and orders that have been recommended, including that the parental rights of the mother for [the minors] are terminated as well as the named fathers, alleged fathers, and all unknown fathers. Adoption is identified as the appropriate permanent plan." ICWA was not mentioned at the hearing. But, as we discuss below, the JV-320 form reflected certain ICWA findings, including that the minors were Indian children.

DISCUSSION

I

Mother asserts there was reason to believe, but insufficient information to determine if there was reason to know, the minors were Indian children within the meaning of the ICWA, thus requiring further inquiry by the Agency and the juvenile court. She contends the court erred when it terminated parental rights after finding the minors were Indian children and that notice had been given to the minors' tribe without the court first identifying the tribe, determining the Agency conducted adequate inquiry or provided adequate notice of the section 366.26 hearing to the tribe, or conducting its own further inquiry as required by the ICWA. She argues the error was prejudicial, thus necessitating reversal of the court's section 366.26 order.

Child welfare agencies and juvenile courts "have 'an affirmative and continuing duty' in every dependency proceeding to determine whether ICWA applies by inquiring whether a child is or may be an Indian child. (§ 224.2, subd. (a).) This 'duty to inquire

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[3] The JV-320 is the Judicial Council form for orders under sections 366.24, 366.26, 727.3, and 727.31. Here, the JV-320 was the form as revised on January 1, 2023.

begins with the initial contact, including, but not limited to, asking the party reporting child abuse or neglect whether the party has any information that the child may be an Indian child.' " (*In re Dezi C.* (2024) 16 Cal.5th 1112, 1131-1132.) The duty of inquiry "includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled." (§ 224.2, subd. (b)(2).) The duty of inquiry " 'continues throughout the dependency proceedings.' " (*In re J.C.* (2022) 77 Cal.App.5th 70, 77.)

A juvenile court must make a finding whether the ICWA applies. (*H.A. v. Superior Court* (2024) 101 Cal.App.5th 956, 965-966; *In re E.W.* (2009) 170 Cal.App.4th 396, 403.) A juvenile court's finding that the ICWA does not apply is "subject to reversal based on sufficiency of the evidence." (§ 224.2, subd. (i)(2).) Its "fact-specific determination that an inquiry is adequate, proper, and duly diligent is 'a quintessentially discretionary function' [citation] subject to a deferential standard of review." (*Dezi C.*, *supra*, 16 Cal.5th at p. 1141.) " 'On a well-developed record, the 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. However, the less developed the record, the more limited that discretion necessarily becomes.' " (*In re Kenneth D*. (2024) 16 Cal.5th 1087, 1101-1102)

Here, the record is fraught with inconsistent ICWA-related findings and orders. At the section 366.26 hearing, neither the juvenile court nor the parties made any mention of the ICWA nor did the court make any express ICWA findings. Instead, the court adopted the Department's recommended findings and orders, which findings and orders were comprised of a JV-320 form referenced in the section 366.26 report but not attached to that report in the appellate record. To the extent the JV-320 form orders signed by the court at the hearing were in fact the JV-320 forms referenced by the Department as its

recommended findings and orders, the ICWA-related findings and orders therein are inconsistent and incomplete. For example, the orders as to both minors find that the "case involves an Indian child, and the court finds that notice has been given to the parents, Indian custodian, Indian child's tribe, and the Bureau of Indian Affairs . . . ." However, with regard to the older minor, page 2 of the order indicates "it is likely the child will be adopted" but does not indicate the older minor "is an Indian child" or make the necessary related findings thereunder. With regard to the younger minor, page 2 of the order indicates "it is likely the child will be adopted" and that "the child is an Indian child" but still omits the related findings thereunder.

The remainder of the flaws in the minors' respective orders are identical. For example, page 2 of the orders indicates the parental rights are terminated and adoption is likely to be finalized by August 26, 2025; however, whereas here, the court finds the minors are Indian children, the court must terminate parental rights pursuant to paragraph 10 of the form. It did not. Further, whereas here, the court finds the minors are Indian children and the permanent plan is adoption, the court must include the information set forth in paragraph 19(b) of the form. It did not.

Given the inconsistent and incomplete findings and orders in the JV-320 forms signed by the juvenile court, and in the absence of any clarification by the court on the record at the hearing, we must reverse and remand for further ICWA proceedings. Therefore, we need not address mother's claims of error on the part of the court in finding the Department complied with the inquiry and notice requirements of the ICWA and that the ICWA applied, and we presume those issues will be brought by mother to the juvenile court's attention at the further ICWA proceedings and fully addressed at that time.

DISPOSITION

The juvenile court's order terminating parental rights is conditionally reversed and the matter is remanded to the juvenile court for further ICWA compliance proceedings, after which the juvenile court shall enter new ICWA findings. If the minors are found to

be Indian children, the juvenile court shall proceed in compliance with the ICWA, including vacating its prior order terminating parental rights and conducting a new section 366.26 hearing. If the juvenile court finds the minors are not Indian children and the ICWA does not apply, the juvenile court must correct its written orders and reinstate its order terminating parental rights as corrected.

/s/
MESIWALA, J.

We concur:

/s/
EARL, P. J.

/s/
ROBIE, J.