Filed 1/22/26 In re J.S. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.S. et al., Persons Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. C.S. et al., Defendants and Appellants.	E084899 (Super. Ct. Nos. J299203, J299204, J299205) OPINION

APPEAL from the Superior Court of San Bernardino County. Cara D. Hutson, Judge. Vacated in part, affirmed in part with directions.

Emily Uhre, under appointment by the Court of Appeal, for Defendant and Appellant, C.S.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant, S.S.

Tom Bunton, County Counsel, and David Guardado, Deputy County Counsel, for Plaintiff and Respondent.

I.

INTRODUCTION

Defendants and Appellants, Cora S. (Mother) and Steven S. (Father) appeal the juvenile court's jurisdiction and disposition findings and orders entered on October 18, 2024, in which the court found jurisdiction over Z.S. (born in 2010), S.S. (born in 2012), and J.S. (born in 2018) under Welfare and Institutions Code section 300, subdivision (b),[1] and also under (j) as to Z.S. and J.S. During the disposition hearing, the juvenile court ordered S.S. to remain removed from Mother and Father's (Parents) custody, and Z.S. and J.S. to continue in the custody of Parents under the supervision of the juvenile court, with family maintenance services provided to Parents, and reunification services and visitation provided as to S.S.

Parents join in each other's arguments, contending that there was insufficient evidence to support jurisdiction over the children and removal of S.S. from Parents' custody. Parents also contend that plaintiff and respondent, San Bernardino County Children and Family Services (CFS), and the juvenile court failed to comply with their duties of initial inquiry as to the children's Native American ancestry, required under the

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

Indian Child Welfare Act of 1978 (ICWA; 25 U.S.C. § 1901 et seq.) and related California law.[2]

We conclude there was sufficient evidence to support the juvenile court's jurisdiction and disposition orders, with the exception of the ICWA findings. We conclude that CFS has not established ICWA compliance with its duty of inquiry. We therefore order vacated the juvenile court's finding ICWA does not apply and direct the juvenile court to order CFS to comply with its inquiry and (if applicable) notice duties under ICWA and related California law. In all other respects, we affirm the jurisdiction and disposition findings and orders.

II.

FACTS AND PROCEDURAL BACKGROUND

A. *Living in Montana*

On November 23, 2018, the children called 911 and reported that Parents were hitting each other. Mother was arrested. While living in Montana, there were eight police calls made due to Parents physically fighting with each other, and Mother was charged three times with physically assaulting Father. The Montana juvenile court found, as to both parents, physical neglect of the children, domestic violence, and physical abuse when disciplining the children.

[2] Because ICWA uses the term "Indian," we do so on occasion as well, not out of disrespect, but because of the need for clarity and consistency, even though we recognize that other terms, such as "Native American" or "indigenous" are preferrable.

In January 2023, S.S. was diagnosed with type 1 diabetes and diabetic ketoacidosis (DKA). He was removed twice from Parents because he needed insulin. He was fitted with an insulin pump but stopped using it when he came to California because the pump broke. Montana hospital staff became upset with Parents because they wanted a second opinion on S.S.'s type 1 diabetes diagnosis. S.S. was first removed from Parents in Montana because of Parents' physical neglect and the hospital staff's concern for S.S.'s safety and health. Father reportedly kept saying that the only reason Parents were allowing S.S. to be on insulin was because of CFS's involvement.

The Montana juvenile court ordered that S.S. be returned to Parents' home, but later he was again removed because Parents were unable to manage his medical needs. In Montana, Parents attended classes for type 1 diabetes and parenting. The Montana social worker said it was "obvious the children ran the household." The Montana case was closed in June 2023 because Parents moved to California. Although S.S. was using an insulin pump when the case was closed, the Montana social services agency (Montana Social Services) did not believe Parents' issues were resolved because they "'were not on board with the medical information.'" They continually asked for a second opinion and said S.S. was allergic to the insulin.

B. *California Juvenile Dependency Petitions and Detention Hearings*

After the family moved to California in June or July 2023, S.S.'s treatment was continued in July 2023, at UCLA medical center, which referred S.S. to Loma Linda University Medical Center (LLUMC). The earliest appointment Mother could get for

S.S. at LLUMC was in October 2023. Meanwhile, S.S. was going into rages and refusing to take his insulin. Mother had to call the police and transport S.S. to the hospital for assistance.

Parents and their children first came to the attention of CFS on August 13, 2023, when Parents reportedly contacted the police because, when S.S. took insulin, he would go into a rage, damage the home, and throw rocks at his family. The children started school in California in August 2023. A school nurse was actively involved in S.S.'s diabetes care.

CFS received a second referral on September 2, 2023, when S.S. refused diabetes treatment because it was too painful. Father took him to the hospital because S.S. broke his glucometer and his glucose was high. Mother initially refused to allow the I.V. for S.S., but later permitted it. However, S.S. pulled it out. Mother then tried to leave the hospital with S.S., against medical advice. Hospital staff noted S.S.'s previous glucose checks showed high glucose levels. The staff believed S.S.'s glucose was not being monitored properly. It is unclear from CFS's report whether Mother and S.S. actually left the hospital at that point.

On November 16, 2023, S.S.'s school nurse told CFS that S.S. showed signs of DKA. The nurse said that, although Parents told her that S.S. refused to take his medication at home, S.S. was compliant at school when getting his insulin. The nurse believed Parents were in denial of S.S.'s medical condition.

CFS received a third referral on November 17, 2023, reporting that S.S. had not been taking insulin regularly, and the school nurse noticed S.S. was shaking and had been losing weight. His blood sugar was so high that the nurse could not read it on the glucometer. The reporting party believed he was in the initial stages of DKA. Parents were reportedly neglecting S.S. by not ensuring that he regularly took insulin for his diabetes. Paramedics arrived at the school and suggested he go to the hospital, but parents did not let him go and signed him out. They said they would take him to the hospital.

That same day, CFS contacted Mother, who stated that during Halloween, S.S. ate a lot of candy, which caused his glucose numbers to be higher than normal. When asked why Mother allowed S.S. to have candy, when she was aware of his medical condition, Mother said that she wanted him to enjoy a few pieces of candy and "feel like a normal kid." Mother said her family did not like the hospital that the paramedics were going to transport S.S. to. The paramedics told her they did not have to take S.S. to the hospital if Parents were able to get his blood sugar "numbers lowered." CFS told her she needed to take S.S. to the hospital right away.

After taking S.S. to the hospital that day, Mother called CFS and confirmed S.S. was checked in at LLUMC and was compliant. The hospital admission notes stated that Mother reported that Parents administered S.S.'s insulin regimen for at least three months until his insulin pump malfunctioned in July 2023. Thereafter, S.S.'s blood glucose levels increased and he lost weight. At the hospital he had moderately elevated ketones

in his urine. Parents said S.S. might be allergic to his diabetes medication, and Father stated that S.S. had snuck food and candy at night, causing his glucose numbers to be high. The hospital concluded that S.S.'s diabetes was not controlled as a result of Parents' and S.S.'s behaviors.

On November 22, 2023, Father told CFS that S.S. was recently discharged from the hospital and his sugar levels were better. Father previously reported that sometimes S.S. refused to take his medication, he went into rages because of the insulin, and Parents called law enforcement because of S.S.'s aggressive behavior.

Mother told CFS that, when Parents took S.S. to the hospital on November 16, 2023, he did not want to go. The hospital guard chased him around the parking lot. After S.S.'s glucose levels went down that night at the hospital, Parents took him home, and the next day he went to school. However, at school, his numbers went up, and he was taken back to the hospital, and his medication was changed. Mother said that, at times, S.S. would not allow Parents to check his sugar levels and would refuse to take his insulin. CFS also spoke with J.S. He reported feeling safe with Parents. Z.S. refused to speak with CFS.

Kids 1st Pediatrics in Apple Valley (clinic) told CFS that S.S. was seen on October 23, 2023, for a physical, and also on November 16, 2023, because his ketones were high. He was diagnosed with uncontrolled diabetes. Mother was told to take S.S. to the hospital. Z.S. was also seen at the clinic. There were no medical concerns noted for him.

On November 29, 2023, CFS filed juvenile dependency petitions[3] under section 300, subdivisions (b) (failure to protect, as to S.S.) and (j) (abuse of a sibling, as to Z.S. and J.S.). The petition filed on behalf of S.S. alleged that Parents failed to meet S.S.'s medical needs, which resulted in S.S. being hospitalized due to his uncontrolled diabetes. The petitions filed on behalf of Z.S. and J.S. allege that Parents failed to meet S.S.'s "medical needs which places [Z.S. and J.S.] at significant risk of similar neglect."

During the detention hearing on November 29, 2023, Parents denied they had any Native American ancestry. The juvenile court continued the hearing to allow inquiry into the Montana Social Services case and jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act. The court made temporary detention orders that the children remain in Parents' custody.

CFS received another referral on December 18, 2023, in which Parents were reportedly screaming at each other. Also, S.S. reportedly would go into fits of rage, break windows, throw rocks at the family, and hit family members. This happened when his glucose levels were high or he was being disciplined. It was further reported that, when Parents left J.S. alone with his brothers, they would beat him up. Father reportedly hit the children with a belt. CFS believed there was limited parental control in the home.

[3] Because the dependency petitions and detention reports are, for the most part, the same unless indicated otherwise, we refer in this opinion to the dependency petitions and detention reports in the singular.

At the continued detention hearing on December 21, 2023, CFS requested detention of the children because of concerns regarding S.S.'s medical needs and new concerns of physical abuse of the children. During the continued contested detention hearing held the following day, CFS submitted an updated report regarding the safety and wellbeing of the children. The report stated that CFS interviewed the children on December 21, 2023. J.S. said that the last time he got spanked or Parents got physical was when they lived in Montana. He was aware of incidents in which S.S. threw rocks at Father and broke windows, but J.S. never witnessed the incidents. S.S. threatened to throw a rock at J.S., but Father intervened.

S.S. denied there were any physical altercations between Parents. He reported that Mother broke his gaming system in retaliation for his breaking his blood glucose monitor in frustration. He acknowledged he threatened to throw a rock at Father but could not recall why. S.S. stated he last got spanked a month ago, but did not remember why. He denied sustaining any marks or bruises. The school nurse reported that S.S. had not exhibited any violent tendencies at school. Z.S. told CFS that he had not been disciplined with a belt "in years."

During the contested detention hearing on December 22, 2023, the court ordered that Parents were not to use corporal punishment against the children and permitted the children to remain with Parents under the supervision of the court.

On December 29, 2023, public nurses reportedly visited Parents' home to follow up on S.S.'s care. They noted that the logs showed that Parents were checking S.S.'s blood sugar two to four times a day, whereas it should have been done four to six times a day. S.S.'s glucose average was 163. Parents were instructed to contact the diabetes clinic if S.S.'s glucose levels were frequently below 70 or above 250.

The court held a further detention hearing on January 25, 2024. CFS provided an additional report update, which stated that, when S.S. was first diagnosed with diabetes in Montana, Parents refused to provide him with insulin. They said they could research the matter and resolve S.S.'s medical issues on their own without medical intervention. Mother told CFS that S.S.'s negative behaviors were caused by insulin use. Mother wanted another opinion regarding S.S.'s diagnosis. During an unannounced home visit, S.S.'s blood glucose levels were high (in the 250s). CFS requested removal of S.S. from parental custody because of Parents' inability or unwillingness to appropriately ensure his health and safety in light of his diabetes diagnosis.

After hearing argument, the court ordered S.S. detained, placed in emergency temporary foster care, and admitted to the hospital for treatment of his diabetes. The court further ordered that Z.S. and J.S. remain in Parents' custody. The court set the matter for a contested jurisdiction and disposition hearing, and pretrial settlement conference (PSC).

C. *Amended Petition Detention Hearing and Jurisdiction/Disposition Hearing*

When CFS interviewed Mother after S.S.'s removal from Parents' custody, Mother noted that S.S.'s blood sugar levels were getting high and he was losing weight, but she denied she had not met S.S.'s medical needs or that her other children were at risk. Z.S. and J.S. told CFS that S.S. would get mad and Parents would call the police. They denied there had been any physical or sexual abuse and said they felt safe in his Parents' home.

On February 8, 2024, Parents reportedly failed to give S.S. insulin before attending the detention hearing. When CFS interviewed Parents on February 13, 2024, they told CFS they never refused to give S.S. insulin. Parents explained that they came to court early for the detention hearing, before S.S. normally ate. Parents tried to give him insulin when he was in the court playroom, before he ate, but they were not permitted to see him unless an attorney was present. Father attempted to find their attorney but by the time he found him Parents were told the hearing was starting, and it would be quick, so they would have to wait to see S.S. When they finally saw S.S., he had been given a "goodie bag," which was a concern because he had not had his insulin yet. Father denied that Parents objected to giving S.S. insulin. When S.S. was first diagnosed with diabetes, Mother just wanted to know if S.S. could be treated "naturally." Parents also wanted additional testing done to determine if S.S. had allergies that affected his diabetes condition, but the doctors refused to allow the tests.

On February 15, 2024, CFS filed a jurisdiction/disposition report recommending S.S. be placed in out-of-home care, and Z.S. and J.S. remain in Parents' custody. CFS expressed concern about Parents' management of S.S.'s diabetes. There had been inconsistent blood glucose checks. CFS reported that on December 12, 2023, S.S. was admitted to the hospital and discharged the next day. He had lost 20 pounds during the past month, his Hemoglobin A1C was abnormally high, at 14,[4] and his blood glucose levels were abnormally low, in the 40s.[5] Mother told CFS that S.S. was demonstrating significant behavior changes and "'rage.'" J.S. reported that S.S. broke windows and put a dent in their car. As of February 15, 2024, S.S. remained hospitalized for his diabetes and was awaiting placement in a medically fragile home.

On April 9, 2024, CFS filed an additional information report, stating that CFS received a new referral reporting that Parents physically abused J.S. Also, Parents refused to allow J.S. and Z.S. to be transported by county employees to their scheduled Children's Assessment Center (CAC) forensic interviews. Mother reportedly was acting aggressively toward staff, and Z.S. said he was "'not f---in getting into the car.'" The CAC interviews were rescheduled and the children attended them. Z.S. denied any abuse toward himself or his siblings. J.S. reported two incidents in which he was spanked resulting in bruising. J.S. denied any family violence other than an out-of-state incident.

CFS expressed concerns as to Parents' parenting, based on incidents in which they used excessive discipline, improperly supervised their children's aggression towards each other, failed to acknowledge the scope of S.S.'s medical diagnosis, and failed to

acknowledge that their negative communication and conduct contributed to the children's aggressive and negative behaviors.

On April 10, 2024, CFS filed a first amended juvenile dependency petition to add allegations under section 300, subdivision (b), that Parents displayed inappropriate and at times unsafe parenting practices in that they used inappropriate discipline and failed to provide appropriate supervision, which placed the children at risk of harm.

CFS also filed a first amended detention report recommending maintaining Z.S. and J.S. in Parents' custody, and detaining S.S. in a foster home. The amended detention report further stated that Mother did not have any criminal history. Father had seven convictions for driving under the influence (DUIs) (Veh. Code, § 23152a) and one count of carrying a concealed/loaded firearm (Pen. Code, § 12031, subd. (a)(1)). CFS also reported that it obtained the family's social services records from Montana, which included substantiated reports dated April 25, 2023, January 22, 2023, and November 23, 2018.

In addition, on April 10, 2024, CFS reported that S.S.'s special needs nurse reported that based on S.S.'s blood sugar logs for the week, he was doing well, but he reportedly was refusing to take his medication at times and go to school. S.S. requested leaving his current caregiver, who appeared to be doing a good job. CFS was concerned

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[4] An A1c test reflects the average blood sugar level for over the past two to three months to indicate how one's diabetes is being controlled over a period of months. The higher one's A1c reading, the greater the risk of suffering diabetes-related complications. Normal values are between 4.8 and 5.9.

[5] Normal blood glucose levels are between 70 and 185.

S.S. had been communicating with Mother via text, which was a problem because they were communicating false information to each other.

During the PSC and hearing on the first amended detention petition, on April 11, 2024, CFS's attorney reported that Parents were uncooperative, thwarting CFS services and having unauthorized contact with S.S. CFS believed Parents were attempting to sabotage S.S.'s placement. The court continued the children's detention and current placements, continued the PSC, and admonished Parents to refrain from any unauthorized contact with the children and to cooperate with CFS.

On April 25, 2024, CFS filed a request to move S.S. to a short-term residential therapeutic program (STRTP) facility, because Parents were not meeting S.S.'s medical needs. On May 7, 2024, CFS filed an additional information report stating that S.S. and Parents continued to communicate by cell phone. S.S. refused to go to school in his last placement and requested changing his placement. While in the placement, Parents requested the police to conduct a wellness check. As a result, the caregivers requested S.S. be removed from their home. S.S. was moved to a temporary group home, where he was residing until another home was found for him. CFS concluded the physical and emotional abuse referral regarding J.S. on December 18, 2023, inconclusive and unfounded. At the June 7, 2024, STRTP hearing, CFS informed the court that S.S. had moved to a foster home.

On July 10, 2024, the children filed a motion to amend the petition to conform to proof by adding allegations under section 300, subdivisions (a) and (j), that they suffered serious intentional physical harm by Father, who hit the children on their "'back side'" with his hand or belt on more than one occasion, causing pain and red marks. Mother allegedly knew or should have known of the abuse and failed to protect the children, leaving them at substantial risk of further abuse or neglect. The children were also at substantial risk of harm because Father had hit their siblings with a hand or belt.

On July 16, 2024, CFS filed a first addendum to the jurisdiction/disposition report, recommending that J.S. and Z.S. be removed from Parents' custody and placed in out-of-home care. CFS reported that on July 10, 2024, Father told CFS that one time he spanked J.S., but denied causing any injuries. J.S. told CFS that he used to get spankings with a hand or belt when he was three or four years old, but only in Montana. Z.S. said that he could only think of one time he was spanked, and that was in Montana. The redness lasted a short time. Z.S. reported that Montana social services told Parents not to spank the children, and Parents did not spank them after that.

CFS reported that it reviewed the transcript of J.S.'s CAC interview on April 1, 2024. He stated that, when disciplined, Mother slapped him including on his legs, which left lasting red marks. Father spanked him with his hand and a belt causing redness or purple marks. J.S. said Z.S. and S.S. also received spankings with lasting marks. J.S. confirmed multiple times during the CAC interview that the discipline resulting in "physical abuse" occurred in Parents' current home in California not in Montana.

In addition, CFS interviewed S.S. on July 11, 2024. He confirmed that he had received a spanking "'about a month ago.'" He also confirmed that he and Z.S. beat up J.S., but denied that JD was left at home alone with S.S. and Z.S. S.S. stated that Father had spanked J.S. with his hand after they moved to California. S.S. said Father hits hard but denied that J.S. or Z.S. had any marks or bruises that lasted more than 30 minutes. S.S. said that if Father hit J.S. with the metal belt buckle it would have been accidental.

CFS further reported in its July 16, 2024, addendum report, that it reviewed the referrals received by the county hotline. On December 18, 2023, CFS received a referral that J.S. was hit with a metal part of a belt, J.S. disclosed that when he was left alone with his brothers they would "'beat him up.'" When J.S. told this to Parents, Father spanked Z.S. with the belt. On January 6, 2024, CFS received a referral that J.S. disclosed being spanked with an open hand leaving red marks.

CFS reported that Mother continued to blame S.S.'s behaviors on his diabetes condition and Parents continued to believe that the insulin was causing S.S. to experience pain, rather than Parents considering that he might be exaggerating in order to resist taking the medication. CFS was concerned S.S. was displaying irrational reasoning and manipulative behaviors that were aided by Mother's similar behavior. After he was removed from Parents, S.S. reportedly was doing better and was not breaking things when angry.

CFS concluded in its July 16, 2024, addendum report that "With the totality of the evidence, including the reported disclosures by [J.S.] to different reporting parties, the transcript of the interview at the [CAC], the disclosures by [S.S.] of spanking with a belt here in California, and the known propensity of violence in the family, there is sufficient evidence to reasonably believe that physical abuse associated with discipline by the parents, has occurred, or the risk of physical abuse exists, to [J.S., S.S., and Z.S.]."

On July 17, 2024, CFS filed a second amended juvenile dependency petition as to J.S., adding allegations under section 300, subdivision (a) (serious physical harm), that Parents used methods of physical discipline resulting in physical injury to J.S., not limited to Mother slapping him on his legs leaving a red mark or bruise, and Father striking him with a belt or belt buckle, resulting in redness or bruising. The second amended petition further alleged that under section 300, subdivision (b), as to J.S., and under section 300, subdivision (j), as to S.S. and Z.S., that Parents used methods of physical discipline, which resulted in physical injury to J.S., and S.S. and Z.S. were at risk of similar abuse.

During the detention hearing on the amended second amended petition on July 18, 2024, the matter was continued to the next day to consider CFS's recommendation to detain Z.S. and J.S. from Parents' care. During the hearing on July 19, 2024, Z.S. testified and the court entered into evidence a CAC DVD and transcript of J.S.'s interview. The court permitted Z.S. to testify outside the presence of Parents. He

testified that he had not been abused or coached by Parents against disclosing adverse information. Nor had he witnessed any abuse or coaching of J.S.

Z.S. further testified that he was spanked four years ago and he witnessed J.S. being spanked over two years ago. Z.S. said he had not been spanked while living in California. Z.S. testified that, when they lived in Montana, Mother was arrested for slapping Father. Also, the police had been dispatched to the family home four or five times because of S.S.'s behavior related to his diabetes. S.S. was out of control. He would go into rages and throw things. Z.S. heard about one occasion, in which S.S. got upset at Mother objecting to him eating something. When Z.S. heard Mother and S.S. yelling, Z.S. left but heard about the incident later. Z.S. heard that S.S. may have thrown something and Mother then broke S.S.'s Oculus to show him what it was like to have his things broken. Z.S. testified that Mother and Father engaged in weekly arguments with each other. Their voices were raised and they said hurtful things to each other.

J.S. testified that Mother and Father did not spank him. Mother testified that when living in Montana, the children were spanked, but she had not used physical discipline since residing in California. Mother said she had seen Father use a belt in the past. Mother testified she called the police seven or eight times because of S.S.'s behavior. The police were also called three times because of Parents fighting with each other.

Father testified that he had not spanked the children since moving to California, but he had physically subdued S.S. on multiple occasions to stop his destructive behavior. Father acknowledged he had also previously spanked the children using his hand or a

belt.

The detention hearing was continued to July 22 and 23, 2024. During the hearing, the court noted that the children seemed to be healthy, happy, and thriving. However, the court found that Z.S. and J.S. appeared to be protecting their Parents when testifying. The court further indicated that it strongly believed Parents physically disciplined their children after moving to California. But the court did not believe it rose to the level of justifying removing the children from Parents. The court believed that removing them would do them more harm than good. The court noted that corporal punishment itself is not prohibited under the Welfare & Institutions Code, unless it is unreasonable. The court therefore did not order Z.S. and J.S. removed from Parents' custody.

The court also continued the contested jurisdiction/disposition hearing on the second amended petition as to S.S. The court authorized Parents to have supervised contact with S.S., but admonished Parents not to discuss the case with the children or use any corporal discipline.

On October 2, 2024, CFS provided the court with an additional information report stating that, during S.S.'s doctor's appointments in June and July 2024, the doctor had to remind Mother to stop talking over the caregiver and allow the caregiver to answer the doctor's questions, because S.S. was not in Mother's care. CFS also reported that during a doctor's appointment for S.S. in September 2024, Mother kept saying that S.S. was allergic to long-acting insulin and that he was not getting enough food. The nurses told

Mother there was no evidence S.S. was allergic to insulin. When the doctor increased S.S.'s dosage, Mother said it was too much for him.

CFS further reported that S.S.'s caregiver emailed CFS, stating that she was concerned that Mother's actions and accusations would undermine the caregiver's ability to provide sufficient care for S.S. The caregiver told the doctor that S.S. was sneaking food at night. Mother also reportedly told S.S. that the caregiver did not know how to calculate carbohydrates, which undermined the caregiver's ability to care for S.S. The caregiver recommended that S.S. be cared for by someone who could deal with Mother's micro-management. CFS stated in its report that it was concerned Parents would neglect S.S.'s medical care needs. It seemed to CFS that either Parents did not trust S.S.'s medical care providers or they declined to acknowledge the need for the level of care required for S.S. In either circumstance, S.S. would be at risk of harm if returned to Parents, as they would continue to interfere with his medical care or attempt to treat his diabetes in their own way.

During the PSC on October 3, 2024, CFS requested the court to order Mother excluded from S.S.'s doctors' appointments because on multiple occasions she had been disrupting the appointments. The court ordered that Mother could participate in the appointments only by phone, and if she interfered in the future, the court would order her precluded from participating by phone.

During the contested jurisdiction/disposition hearing on October 18, 2024, the CFS social worker testified that, during the past week, S.S.'s blood glucose levels and A1C were high. The special healthcare needs worker reported concerns by S.S.'s caregiver that S.S. was sneaking food, pretended to take his insulin, and had been behaviorally challenging. There were also concerns Parents were directing S.S. on how to behave in his placement, such as advising him not to follow his diet and act in ways that would impact his medical care.

After hearing testimony and argument, the juvenile court found that CFS failed to establish, as to J.S., the section 300, subdivision (a) allegations (serious physical harm to J.S. by Parents). The court also found not true the related subdivision (j) allegations as to Z.S. and S.S. As to all of the children, the court found true all of the section 300, subdivision (b) allegations (failure to protect—inappropriate discipline and supervision). The court stated that there was historical evidence of inappropriate physical discipline. The court stated that Parents have "'historically displayed inappropriate and at times unsafe parenting practices.'"

As to S.S., the court found true the section 300, subdivision (b) allegations regarding Parents' mismanagement of his diabetes. The court also found true the related subdivision (j) allegations (abuse of a sibling, S.S.) as to J.S. and Z.S.

The juvenile court found jurisdiction over the children and that S.S. was to remain in his current placement, removed from Parents' physical custody. The court further found that returning S.S. to Parents' care would subject him to substantial risk of harm to

his physical and emotional well-being, mental health, safety, and protection. The court ordered that J.S. and Z.S. remain in parental custody with maintenance services ordered for Parents.. Parents filed notices of appeal of the jurisdiction/disposition orders and findings entered on October 18, 2024.

III.

SUFFICIENCY OF EVIDENCE

Parents challenge the juvenile court's finding true the section 300, subdivision (b) allegations that they used physical abuse and unsafe parenting practices. As to S.S., Father also contends there was insufficient evidence under section 300, subdivision (b), establishing that Parents failed to meet S.S.'s diabetes medical needs. In addition, Parents challenge the sufficiency of evidence supporting the section 300, subdivision (j) allegations that J.S. and Z.S. were at risk because of Parents' failure to meet S.S.'s medical needs. We conclude there was substantial evidence supporting the court's jurisdiction and disposition orders.

A. *Burden of Proof and Standard of Review*

CFS "has the burden of proving by a preponderance of the evidence that the children are dependents of the court under section 300." (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*) This court applies the following standard of review: "'In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. "In making this determination, we draw all reasonable inferences from

the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." [Citation.] "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] '"[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate]."'" (*Ibid*.)

B. *Applicable Law*

Under section 300, the juvenile court may adjudge a child who comes within any of the stated qualifying descriptions within the jurisdiction of the juvenile court.

The relevant subdivisions here, describing children who may be adjudged dependents of the court under section 300, are subdivisions (b) and (j). Subdivision (b) requires substantial evidence that "(1) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of any of the following: [¶] (A) The failure or inability of the child's parent or guardian to adequately supervise or protect the child. [¶] (B) The willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left. [¶] (C) The willful or negligent failure of the parent or guardian to provide the child with adequate food . . . or medical treatment."

Section 300, subdivision (j) provides in relevant part: "The child's sibling has been abused or neglected, as defined in subdivision . . . (b) . . . , and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child." Subdivision (j) further states that "[i]t is the intent of the Legislature that this section not disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting."

"[S]ection 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction. The subdivisions at issue here require only a 'substantial risk' that the child will be abused or neglected. The legislatively declared purpose of these provisions 'is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm.*' (§ 300.2, italics added.) 'The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.' [Citation.]" (*I.J.*, *supra*, 56 Cal.4th at p. 773.)

"When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; *I.J.*, *supra*, 56 Cal.4th at p. 773.) Here, subdivision (b) of section 300 applies to all three children. Accordingly, we will focus primarily on that subdivision.

C. *Parents' Failure to Supervise and Protect the Children*

Parents contend that CFS failed to provide substantial evidence establishing under subdivision (b) of section 300, that Parents were abusing, neglecting, and failing to supervise and protect the children, such that the children were at risk of being physically or emotionally abused or neglected. (§ 300, subd. (b) (A), (B).) The petition further alleges that Mother "displayed inappropriate and at times, unsafe parenting practices in that she has used inappropriate discipline and lacks appropriate supervision, which has placed [the children] at risk of harm." The second amended juvenile dependency petition alleges that Father "displayed inappropriate and at times, unsafe parenting practices in that he has used and/or allowed inappropriate discipline and lacks appropriate supervision, which has placed [the children] at risk of harm."

We concluded there is substantial evidence supporting jurisdiction over the children under subdivision (b) of section 300. Such evidence includes Parents' use of unreasonable corporal discipline of the children while they lived in Montana and, more recently, after they moved to California in 2023. While living in Montana, the family was brought to the attention of the Montana Social Services on numerous occasions from 2018, until they moved to California. CFS told Parents to stop using corporal punishment. The evidence shows Parents nevertheless continued to inappropriately physically discipline the children. The Montana Social Services records state that the Montana juvenile court found, as to both parents, physical neglect and abuse of the children when disciplining them. CFS obtained the family's Montana prior child welfare history records, which included substantiated reports dated April 25, 2023, January 22, 2023, and November 23, 2018. There were also four unsubstantiated reports by the Montana Social Services of Parents committing domestic violence with each other in March 2018, March 2019, September 2022, and April 2023, three instances of physical violence against S.S. by Parents; physical neglect of the three children; and physical violence by Mother, S.S. and Z.S. against Father.

Shortly after arriving in California, the family came to the attention of CFS because of reports of Parents' neglect and failure to provide adequate care for S.S.'s serious diabetes condition. At a contested detention hearing in December 2023, CFS requested detention of all three children because of new concerns of physical abuse of the children. During the continued contested detention hearing, CFS submitted an updated

report of newly discovered information, stating that S.S. reported that Mother broke his gaming system in retaliation for him breaking his blood glucose monitor. S.S. also reported that he last got spanked a month before.

In April 2024, CFS filed an additional information report, stating that CFS received a new referral for physical abuse of J.S. by Parents. Also, during the children's CAC interviews, J.S. reported two incidents in which he was spanked, resulting in bruising. CFS expressed concerns regarding Parents' parenting of the children, based on incidents in which they used excessive discipline, improperly supervised their children's aggression towards each other in the home, failed to acknowledge the scope of S.S.'s medical diagnosis, and failed to acknowledge that their hostility and aggression towards medical and CFS staff had an adverse impact on the children.

CFS reported that in July 2024, Father told CFS that one time he spanked J.S., but denied causing any injuries. J.S. told CFS that he used to get spankings with a hand or belt, but only in Montana. Z.S. said that he could only think of one time when he was spanked in Montana. CFS reported that it reviewed the transcript of J.S.'s CAC interview on April 1, 2024, in which J.S. stated that, when disciplined, Mother had slapped him, including on his legs, which left lasting red marks. Father spanked him with his hand and a belt, causing redness or purple marks. J.S. said Z.S. and S.S. also received spankings with lasting marks. J.S. confirmed multiple times during the interview that the discipline, which resulted in "physical abuse," occurred in Parents' current home in California, not in Montana.

S.S. also confirmed in July 2024 that he had received a spanking about a month before, and acknowledged that he and Z.S. beat up J.S. S.S. added that Father had spanked J.S. with his hand after they moved to California, noting that Father hits hard. CFS further reported in July 2024, that it reviewed the referrals received by the county hotline. On December 18, 2023, CFS received a referral that J.S. was hit with a metal part of a belt, and J.S. disclosed that when he was left alone with his brothers, his brothers "'beat him up.'" When J.S. told this to Parents, Father spanked Z.S. with a belt. CFS received another referral on January 6, 2024, when J.S. disclosed being spanked with an open hand, leaving red marks.

Although the juvenile court did not find true the allegations under section 300, subdivision (a), that Parents used physical discipline injuring J.S., we conclude based on the above summarized evidence that there was substantial evidence supporting the court's true findings under section 300, subdivision (b). Substantial evidence supported findings that Parents were physically abusing the children when disciplining them and failing to protect them by not adequately supervising them and allowing inappropriate and unsafe parenting practices, which not only harmed the children but also placed them at substantial risk of serious harm.

D. *Parents' Inadequate Management of S.S.'s Diabetes*

Although substantial evidence supporting a single ground for finding jurisdiction over the children under section 300, subdivision (b) is sufficient (*In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451; *I.J.*, *supra*, 56 Cal.4th at p. 773), we also conclude there was

substantial evidence supporting jurisdiction over S.S. and removal of him from Parents' custody based on their failure to meet his medical needs. There is ample evidence that ever since S.S. was diagnosed with type 1 diabetes, Parents were resistant and negligent in consistently monitoring his glucose levels, testing his A1C, following medical professionals' advice, and insuring S.S. received necessary insulin. There is also evidence of Mother interfering with S.S.'s treatment after his removal from Parents and attempting to sabotage the success of his medical care and placement in foster care.

In January 2023, Montana social services reported physical neglect by Parents, founded on S.S. becoming severely ill and having DKA. After Mother was advised on treating S.S.'s diabetes by his doctors, Mother refused to give S.S. insulin and refused to consent to S.S. receiving insulin while at the hospital. Instead she wanted to treat his illness through diet. As a result, the hospital staff refused to discharge S.S. to Parents' care because of concerns about his safety and health. In April 2023, Montana social services again reported physical and medical neglect, founded on Parents refusing to follow through with medical advice provided by physicians treating S.S.'s diabetes, thereby risking his health and life. He was temporarily placed in foster care in Montana.

In February 2024, S.S. was hospitalized in February 2024 for his diabetes while special healthcare needs placement was being located for him because of Parents' failure to provide adequate care for his medical needs as a diabetic. During the PSC and hearing on the first amended detention petition in April 2024, CFS's attorney reported that Parents were uncooperative, thwarting CFS's efforts to provide services to the children,

and were having unauthorized contact with S.S. CFS believed Parents were attempting to sabotage S.S.'s placement.

CFS reported in July 2024, that Mother continued to blame S.S.'s behaviors on his diabetes condition, and Parents continued to believe that the insulin was causing S.S. to experience pain, rather than Parents considering that he might be exacerbating their concerns in order to avoid taking the medication. CFS was concerned S.S. was displaying irrational reasoning and manipulative behaviors that were aided by Mother's similar behavior. After he was removed from Parents, S.S. reportedly had been doing better and was not breaking things when angry. Based on the foregoing highlighted evidence, we conclude there was substantial evidence supporting the juvenile court's finding of jurisdiction over S.S. under section 300, subdivision (b).

We also conclude there was sufficient evidence to remove S.S. from Parents' custody. Under section 361, subdivision (c)(1), "[b]efore the court may order a minor physically removed from his or her parent, it must find, by clear and convincing evidence, the minor would be at substantial risk of harm if returned home and there are no reasonable means by which the minor can be protected without removal. (§ 361, subd. (c)(1).) A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. [Citation.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. [Citations.]" (*In re Diamond H.* (2000) 82

Cal.App.4th 1127, 1136.) We apply the substantial evidence test when reviewing the disposition findings and order. (*In re A.S.* (2011) 202 Cal.App.4th 237, 244; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

Here, there was substantial evidence supporting the juvenile court's removal order as to S.S. based on evidence stated above that Parents failed to adequately manage S.S.'s diabetes care, thereby resulting in his hospitalization several times and subjecting him to substantial risk of serious harm.

IV.

ICWA COMPLIANCE

Parents contend CFS and the juvenile court failed to satisfy their duties of inquiry under ICWA. We agree.

A. *Standard of Review*

We apply the substantial evidence standard of review when determining whether there was ICWA compliance, unless the facts are undisputed or ICWA compliance turns on a legal issue, in which case we apply the de novo standard of review. (*In re S.R.* (2021) 64 Cal.App.5th 303, 312.) Here, the facts regarding ICWA compliance are undisputed. We therefore review the issue of ICWA compliance de novo.

B. *Procedural Background*

CFS alleged in the detention report filed on November 29, 2023, that it had inquired as to whether the children were or might be a member of a Native American tribe, or eligible for membership. CFS concluded ICWA did not apply. CFS attached

form ICWA-010(A), Indian Child Inquiry Attachment (Cal. Rules of Court, rule 5.481(a)(1)).

On November 30, 2023, Parents filed a CFS form entitled, "PARENT: Family Find and ICWA Inquiry" (CFS form 030), stating the children neither had nor might have Native American ancestry. Parents also filled out and filed a "Parental Notification of Indian Status" form (ICWA form 020) on November 30, 2023, indicating there was no Native American ancestry. During the detention hearing on November 30, 2023, the juvenile court inquired as to the Native American ancestry of Parents. Parents again indicated they had no Native American heritage.

During the contested detention hearing on December 22, 2023, the juvenile court inquired as to Parents' Native American ancestry. Parents indicated they had none. The court ordered parents to complete and submit a parental notification of Indian status (ICWA form 020).

In January 2024, CFS filed an additional information report, which included a copy of a declaration by a Montana social services social worker, signed in February 2023, stating that she had no reason to believe S.S. was an Native American child pursuant to ICWA. The declaration further stated that the social worker made diligent efforts to determine applicability of ICWA, including asking Parents about S.S.'s Native American ancestry. They told her neither Parents nor S.S. is or might be a member of a tribe. The social worker therefore concluded there was no reason to know ICWA applied.

In February 2024, CFS filed a jurisdiction/disposition report, which included a section on ICWA status as to the three children, and stated ICWA does not apply. The report stated that an ICWA status inquiry of both parents was made on February 2, 2024, and they responded, "No." Similarly, CFS's first amended detention report filed on April 10, 2024, stated that an ICWA status inquiry of both parents was made on September 19, 2023, and they responded, "No."

During the contested jurisdiction/disposition hearing on October 18, 2024, the court found that ICWA did not apply.

C. *Applicable ICWA Law*

After the federal ICWA regulations were adopted in 2016, California amended its statutes to conform with ICWA's inquiry and notice requirements. (*In re Dezi C.* (2024) 16 Cal.5th 1112, 1131 (*Dezi C.*).) This resulted in agencies having a broader duty of inquiry. (*Ibid*.) Section 224.2 codifies and expands on ICWA's duty of inquiry to determine whether a child is an Indian child. "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 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.' (*Ibid*.; see also rule 5.481(a); [*In re*] *Isaiah W.* [2016] 1 Cal.5th [1,] 14 ['juvenile court has an affirmative and continuing duty in all

dependency proceedings to inquire into a child's Indian status']." (*Dezi C.*, *supra*, at pp. 1131-1132.)

"[S]ection 224.2 is broadly construed "to require the county welfare department to conduct an extended-family inquiry in all cases in which a child is placed into its temporary custody, regardless of how the child is removed from the home." (*In re Ja.O.* (2025) 18 Cal.5th 271, 290-291 (*Ja.O.*).) Although this duty of inquiry is sometimes referred to as the initial duty of inquiry, the duty continues throughout the dependency proceedings. (*Dezi C.*, *supra*, 16 Cal.5th at p. 1132.)

Under section 224.2, subdivision (b), "once a child is placed into the temporary custody of a county welfare department, 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.'" (*Dezi C.*, *supra*, 16 Cal.5th at p. 1132; see also rule 5.481(a)(1).) "Extended family member" means "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); *Dezi C.*, *supra*, at p. 1132; see also § 224.1, subd. (c) [adopting ICWA definition of "extended family member"].)

Juvenile courts must conduct their own initial inquiry as well. "Federal regulations require state courts to ask each participant 'at the commencement' of a child custody proceeding 'whether the participant knows or has reason to know that the child is an Indian child.'" (*In re Ricky R.* (2022) 82 Cal.App.5th 671, 678-679, quoting 25 C.F.R. § 23.107(a) (2022).) Similarly, state law requires the court to pursue an ICWA inquiry at the first hearing on a dependency petition (or at the first court appearance of a party or "other interested person[]," if the party or other interested person was not present at the first hearing). (§ 224.2, subd. (c).)

"'[R]eason to believe that an Indian child is involved' triggers the duty of further inquiry. [Citation.] '[R]eason to believe' exists whenever the court or DPSS 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.'" (*In re Ricky R.*, *supra*, 82 Cal.App.5th at p. 679, quoting § 224.2, subd. (e), 1st par. & (e)(1).)

The juvenile court may find that ICWA does not apply if it finds "that 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.) The "court's 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." (*Id.* 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."' [Citations.] [¶] If, upon review, a juvenile court's findings that an inquiry was adequate and proper and ICWA does not apply are found to be supported by sufficient evidence and record documentation as required by California law [citation], there is no error and conditional reversal would not be warranted even if the agency did not inquire of everyone who has an interest in the child. On the other hand, if the inquiry is inadequate, conditional reversal is required so the agency can cure the error and thereby safeguard the rights of tribes, parents, and the child." (*Dezi C.*, *supra*, 16 Cal.5th at 1141.) In an appeal from disposition, however, ICWA inquiry error does not require reversal of the dispositional findings and orders other than the ICWA finding itself. (*In re Dominick D.* (2022) 82 Cal.App.5th 560, 567.)

Failure to raise in the juvenile court the challenge to the adequacy of the sufficiency of ICWA inquiry does not forfeit the issue. Because ICWA imposes on the court a continuing duty to inquire whether the child is an Indian child, a parent may challenge a finding of ICWA's inapplicability in an appeal from a subsequent order, even if the parent did not raise the issue in the juvenile court or in an appeal from the previous order. (*In re Isaiah W.*, *supra*, 1 Cal.5th at pp. 6, 9; *Dezi C.*, *supra*, 16 Cal.5th at pp. 1149-1150 [ICWA findings "'are preserved for review *irrespective of any action or inaction on the part of the parent* . . . ."'].)

D. *Discussion*

It is undisputed that the juvenile court and CFS had a duty of initial inquiry under ICWA. We conclude CFS has not established compliance with this duty. The record shows that CFS and the juvenile court inquired of Parents, but no one else, as to whether the children or Parents have Native American ancestry, and Parents indicated they did not have any such ancestry. CFS concedes in its respondent's brief that "[t]he record reflects that inquiry was solely undertaken of Mother and Father who denied Indian ancestry." Parents also acknowledge in the respondent's brief that "there may be other relatives for whom inquiry is required, and the Department will continue to undertake reasonable efforts to comply with its inquiry requirements." Because there may be others, including extended relatives, who have additional knowledge of the children's Native American ancestry, we conclude CFS and the court have not fully complied with ICWA initial inquiry requirements.

"Recognizing that parents may not be the best source of information about a child's Indian ancestry, the Legislature expressly mandated that, from the outset, child protective agencies expand their investigation of a child's possible Indian status beyond the child's parents. [Citations.] An 'agency's inquiry is often the only opportunity to collect . . . information' that the child is or may be an Indian child, and thus 'is a critical step in safeguarding the rights ICWA was designed to protect and one that cannot be excused by reviewing courts.' [Citation.] . . . As required by statute, an adequate initial inquiry that reaches beyond parents to extended family members and others facilitates the

discovery of Indian identity, and maximizes the chances that potential Indian children are discovered and tribes are notified." (*Dezi C.*, *supra*, 16 Cal.5th at pp. 1112, 1139-1140.) Because there is nothing in the record indicating that CFS or the juvenile court inquired as to anyone other than Parents regarding the children's Native American ancestry, we conclude that CFS has not met its burden of establishing compliance with ICWA's initial inquiry requirements.

CFS, however, argues that reversal of the ICWA findings and orders is premature and inappropriate at this stage of the proceedings because, even if this court agrees with Parents' contentions of ICWA noncompliance, upon remand there will remain a continuing duty of inquiry under ICWA. We agree that the duty of inquiry will continue upon remand, but conclude that vacating the ICWA findings and entering a conditional affirmance, with instructions the juvenile court and CFS comply with their ICWA duties of inquiry, is appropriate in this case. As we noted in *In re Dominick D.*, *supra*, 82 Cal.App.5th at page 567, in an appeal from a disposition order, "ICWA inquiry error does not require reversal of the dispositional findings and orders other than the ICWA finding itself. (*Ibid*.; see also *Dezi C.*, *supra*,16 Cal.5th at p. 1169, fn. 5 (dis. opn. of Groban, J.).)

After *Dominick D.* was decided, our high court decided *Dezi C.*, *supra*, 16 Cal.5th at page 1152, in which the court concluded that there had not been an adequate showing of ICWA inquiry compliance and reversed the court of appeal's judgment, "with directions to conditionally reverse the order terminating parental rights. The matter is

remanded to the juvenile court for compliance with the inquiry and notice requirements of sections 224.2 and 224.3 and the documentation provisions of [California Rules of Court,] rule 5.481(a)(5), consistent with this opinion." (*Dezi C.*, *supra*, at p. 1152.)

In re Dezi C. (2024) 16 Cal.5th 1112, is distinguishable. In *Dezi C.* the mother appealed an order terminating parental rights based on ICWA noncompliance of the initial inquiry requirement. The sole question before the California Supreme Court was "whether a child welfare agency's failure to make a proper inquiry under California's heightened ICWA requirements [(section 224.2)] constitutes reversible error." (*Dezi C.*, *supra*, at p. 1128.) The *Dezi C.* court concluded that there had been noncompliance. (*Id*. at p. 1134.) The court further concluded that a finding of prejudice was not required because "it is impossible to ascertain whether the agency's error is prejudicial." (*Id*. at p. 1136.)

The *Dezi C.* court held that, under such circumstances, "[w]hen there is an inadequate inquiry and the record is underdeveloped, it is impossible for reviewing courts to assess prejudice because we simply do not know what additional information will be revealed from an adequate inquiry. We therefore hold that an inadequate Cal-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. Accordingly, we reverse the judgment of the Court of Appeal with directions to conditionally reverse the order terminating parental rights and remand for further proceedings consistent with our opinion." (*Dezi C.*, *supra*, 16 Cal.5th at p. 1125.)

In *Dezi C.*, the court explained: "Congress and the Legislature have committed to protecting Native American heritage and cultural connections between tribes and children of Native American ancestry. (§ 224; 25 U.S.C. § 1902.) We hold our child welfare agencies and courts to these commitments. We do so by *requiring a judgment to be conditionally reversed when error results in an inadequate Cal-ICWA inquiry*. It is only by conditionally reversing that we can ascertain whether error in the inquiry is prejudicial." (*Dezi C.*, *supra*, 16 Cal.5th at pp. 1151-1152; italics added.)

Dezi C. is distinguishable because the mother in *Dezi C.* appealed an order terminating parental rights, whereas, here, Parents are appealing jurisdiction and disposition orders. Thus, upon remand, CFS and the juvenile court will have the opportunity to fully comply with its continuing duty of inquiry.

About a year after *Dezi C.* was decided, the California Supreme Court decided *Ja.O.*, *supra*, 18 Cal.5th 271, in which the juvenile court found that ICWA did not apply, and found jurisdiction over the mother's five children. The juvenile court further ordered removal of the children from parental custody. The mother appealed the jurisdiction and disposition orders based on ICWA noncompliance with the duty of initial inquiry of extended relatives. The court of appeal affirmed the juvenile court finding that ICWA did not apply, and affirmed the jurisdiction and disposition orders. The court of appeal did so on the grounds the child welfare agency was not required to conduct an ICWA extended-family inquiry because the children were removed from their home pursuant to a

protective custody warrant under section 340, and recent legislation amending section 224.2[6] requiring inquiry of extended relatives, did not apply retroactively.

The California Supreme Court in *Ja.O.* reversed the court of appeal, on the grounds that the recent legislation amending section 224.2 applied retroactively, because it merely clarified that the ICWA duty of inquiry included extended relatives, regardless of whether removal of a child from a parent was under a custody warrant. (*Ja.O.*, *supra*, 18 Cal.5th at pp. 278, 285, 287, 291.) The *Ja.O.* court therefore entered the following disposition: "We reverse the judgment of the Court of Appeal and remand the matter to the juvenile court for compliance with the inquiry requirements of section 224.2, consistent with this opinion. If the juvenile court thereafter finds the inquiry duty has been satisfied and ICWA does not apply, the court shall reinstate the jurisdiction and disposition order. If the juvenile court concludes ICWA applies, it shall proceed in conformity with ICWA and California implementing provisions. (See *Dezi C.*, *supra*, 16 Cal.5th at p. 1141.)" (*Ja.O.*, *supra*, at p. 291.)

Ja.O. is distinguishable with regard to conditionally reversing the jurisdiction and disposition orders. In the instant case, Parents did not appeal solely based on ICWA noncompliance. Parents also challenged the insufficiency of the evidence supporting the jurisdiction and disposition orders. In addition, unlike in *Ja.O.*, CFS does not dispute that it has a duty to inquire as to extended family members and agrees in its respondent's brief

[6] Assembly Bill No. 81 (2023-2024 Reg. Sess.) (Assembly Bill 81), signed by the Governor as an urgency measure on September 27, 2024, effective immediately. (Stats. 2024, ch. 656.)

to do so upon remand of the case back to the juvenile court for further proceedings. Under these circumstances, we conclude the appropriate disposition is a conditional affirmance and order vacating the finding ICWA does not apply, with directions that the juvenile court and CFS fully comply with their ICWA duties of initial inquiry.

V.

DISPOSITION

The juvenile court's finding ICWA does not apply is ordered vacated. The juvenile court is directed to order CFS to comply with its inquiry and (if applicable) notice duties under ICWA and related California law. (See 25 U.S.C. § 1912(a); §§ 224.2 and 224.3; Cal. Rules of Court, rule 5.481(a)(5) (documentation provisions).) In all other respects, the jurisdiction and disposition findings and orders are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

RAMIREZ
P. J.

MILLER
J.