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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re L.R., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.R., Defendant and Appellant.	E086558 (Super. Ct. No. J299852) OPINION

APPEAL from the Superior Court of San Bernardino County. Annemarie G. Pace, Judge. Reversed with directions.

Patricia K. Saucier, under appointment by the Court of Appeal, for Defendant and Appellant.

Laura Feingold, County Counsel, and David R. Guardado, Deputy County Counsel, for Plaintiff and Respondent.

I.

INTRODUCTION

Defendant and Appellant, A.R. (Mother) appeals from juvenile court's findings and an order terminating parental rights to her daughter, L.R.P. (born in 2013) under Welfare and Institutions Code section 366.26.[1] Mother's sole contention is that the juvenile court and plaintiff and respondent, San Bernardino County Children and Family Services (CFS) failed to comply with the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq.)[2] and related state law. Mother argues that the juvenile court and CFS failed to comply with their initial duties of inquiry under ICWA as to L.R.P.'s paternal relatives. We agree, as does CFS, and therefore conditionally reverse, with directions CFS and the juvenile court comply with their ICWA duties of inquiry and notice.[3]

II.

FACTS AND PROCEDURAL BACKGROUND

Because the sole issue concerns ICWA compliance, the summary of facts and procedural background is abbreviated, other than as relevant to ICWA compliance.

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

[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.

[3] CFS also does not oppose the issuance of an immediate remittitur to resolve the outstanding issues of inquiry in this matter.

On October 30, 2023, CFS received a referral alleging general neglect and physical abuse of seven of Mother's children by Mother and D.M., the father of L.R.P.'s half-siblings. The children were reportedly unkempt, hungry, and missing school, and L.R.P. was looking after the other children. The social worker observed there was no food in the home and the home was dirty. CFS received additional similar referrals through January 2024.

On January 31, 2024, the children were taken into protective custody pursuant to a detention warrant. On February 2, 2024, CFS filed a juvenile dependency petition on behalf of L.R.P. under section 300, subdivision (b). During the detention hearing, Mother denied Native American ancestry. She also identified D.P. (Father) as the father of L.R.P. and indicated that he was deceased. The juvenile court ordered L.R.P. detained on February 5, 2024.

CFS requested in its jurisdiction/disposition hearing report filed in February 2024, that the hearing be continued to allow for investigation into a physical abuse referral. CFS further reported on its ICWA inquiry efforts, which included asking Mother, D.M., and two maternal aunts if they had any Native American ancestry. They all indicated they did not. CFS reported that Father died in November 2023. CFS attached to its hearing report records from the Clark County, Nevada, Department of Family services (Department). The records showed that Father had been in contact with the Department and had discussed his preference to have his children placed with his brother. Father reportedly provided the Department with his brother's contact information. Father also

told the Department he was living with his brother in San Bernardino County, and provided his address.

In February 2024, the juvenile court continued the jurisdiction/disposition hearing to allow further investigation. Reports obtained from the Department revealed that Father was having telephone contact with L.R.P., which was discontinued when Father's phone was disconnected.

On June 21, 2024, CFS filed an amended petition adding an allegation under section 300, subdivision (a), that Mother inflicted serious physical harm to L.R.P. In July 2024, CFS filed an addendum report recommending the juvenile court find true the physical abuse allegations and remove L.R.P. from Mother's care. At the contested jurisdiction hearing on July 31, 2024, the court found the allegations true, declared L.R.P. a dependent, and removed her from Mother's care.

In CFS's January 2025, six-month status review report, CFS reported that Mother failed to benefit from services and refused to acknowledge culpability for L.R.P.'s removal. She also failed to visit L.R.P. since August 27, 2024. At the six-month review hearing in January 2025, the juvenile court continued Mother's reunification services and set a twelve-month review hearing. CFS reported in March 2025, that Mother still had not completed a parenting education course or domestic violence treatment program. At the twelve-month review hearing in March 2025, the court found that Mother failed to benefit from her services and the children could not be returned safely to her care. The court terminated reunification services and set a section 366.26 hearing.

In April 2025, CFS filed an additional information report stating that the social worker attempted to contact Mother to inquire regarding the children's Native American ancestry. Mother refused to speak with CFS. She reportedly would not disclose contact information for "the paternal aunts and uncle." As to Father, CFS reported that Mother "reported no information as to his family heritage [and] has not provided the Department with any contact information for his relatives."

CFS filed a section 366.26 report, in which CFS reported on its efforts to inquire of relatives regarding L.R.P.'s Native American ancestry. The report indicated that there was no new information on the children's Native American ancestry. There was no information showing that CFS contacted Father before he died or contacted any paternal family members to inquire regarding whether the children had Native American ancestry.

At the contested section 366.26 hearing in April 2025, the juvenile court found that CFS had complied with its inquiry duties, and ICWA did not apply. As recommended by CFS, the court ordered termination of Mother's parental rights and adoption as L.R.P.'s permanent plan.

III.

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 a Native American 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 [Cal. Rules of Court,] 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.)

CFS must also ask the child and the child's family members, including extended family members, upon first contact with those individuals. (§ 224.2, subd. (b)(1).) In addition, if the child is taken into CFS's temporary custody under section 306, "or if they were initially taken into protective custody pursuant to a warrant described in [s]ection 340," CFS must ask "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." (§ 224.2, subd. (b)(2); see also *Dezi C.*, *supra*, 16 Cal.5th 1112; *In re Ja.O.* (2025) 18 Cal.5th 271 (*Ja.O.*) Extended family members include adults who are the child's stepparents, grandparents, siblings, brothers-or sisters-in-law, aunts, uncles, nieces, nephews, and first or second cousins. (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. (*Dezi C.*, *supra*, at pp. 1131-1132; *In re Ricky R.* (2022) 82 Cal.App.5th 671, 678-679, quoting 25 C.F.R. § 23.107(a) (2022); § 224.2, subd. (c).)

The juvenile court may find that ICWA does not apply to the proceedings 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 [of an order terminating parental rights] is required so the agency can cure the error and thereby safeguard the rights of tribes, parents, and the child." (*Ibid*.)

Failure to raise in the juvenile court the challenge to the adequacy of ICWA inquiry does not forfeit the issue. Because ICWA imposes on the court a continuing duty

to inquire whether the child is a Native American 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* . . . ."].)

IV.

DISCUSSION

CFS agrees with Mother, as does this court, that CFS and the juvenile court failed to discharge their ICWA duties of initial inquiry. There is no evidence in the record that CFS attempted to contact Father's relatives to determine whether L.R.P. has any paternal Native American ancestry. The record further shows that CFS may have been able to contact paternal relatives had it tried to do so. CFS had access to documents stating that Father has a brother who CFS may have been able to contact. There was contact information for Father's brother, including his address, but no indication CFS attempted to contact him. There was also no showing that CFS made any effort to inquire as to whether there were other paternal relatives who might have information regarding the children's Native American ancestry. In turn, the juvenile court erred by finding that ICWA did not apply, in the absence of evidence that CFS discharged its duty of initial inquiry in full by attempting to contact paternal relatives. (*In re J.C.* (2022) 77 Cal.App.5th 70, 79-80.)

CFS and Mother further agree that the proper disposition on appeal is to conditionally reverse the order terminating parental rights, with directions to the juvenile court and CFS to comply with their ICWA duties of inquiry. We agree a conditional reversal here is an appropriate disposition under *Dezi C.*, (2024) 16 Cal.5th at page 1152 and *Ja.O.*, *supra*, 18 Cal.5th at page 291.

In *Dezi C.*, *supra*, 16 Cal.5th 1112, 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 held that, "[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.)

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 ordered removal of the children from parental custody. The California Supreme Court in *Ja.O.* reversed the court of appeal affirmance on the grounds that recent legislation amending section 224.2 applied retroactively, because it merely clarified that the ICWA duty of inquiry required ICWA inquiry to extended relatives, regardless of whether removal of a child from a parent was under a custody warrant. (*Ja.O.*, *supra*, at pp. 278, 285, 287, 291.) The *Ja.O.* court therefore conditionally reversed the Court of Appeal and remanded the matter to the juvenile court for compliance with the inquiry requirements of section 224.2. (*Ja.O.*, *supra*, at p. 290; see also *Dezi C.*, *supra*, 16 Cal.5th at p. 1141.)

Based on *Dezi C.* and *Ja.O.*, we conclude the appropriate disposition in the instant case is a conditional reversal, with directions that the juvenile court and CFS fully comply with their ICWA duties of initial inquiry, particularly as to paternal relatives.

V.

DISPOSITION

The order terminating parental rights is conditionally reversed, and the matter is remanded to the juvenile court for compliance with inquiry and notice requirements (specifically, 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)). If the juvenile court thereafter finds a proper and adequate further inquiry and that due diligence has been conducted, and concludes ICWA does not apply (§ 224.2, subd. (i)(2)), the juvenile court shall reinstate the order terminating parental rights. If the juvenile court concludes ICWA applies, it shall proceed in conformity with ICWA and California implementing provisions. (See 25 U.S.C. § 1912(a); §§ 224.2, subd. (i)(1), 224.3, 224.4; *Dezi C.*, *supra*, 16 Cal.5th at p. 1141; *Ja.O.*, *supra*, 18 Cal.5th 271.)

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.