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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re C.O, a Person Coming Under the Juvenile Court Law.	
ALAMEDA COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. M.O., Defendant and Appellant.	A173905 (Alameda County Super. Ct. No. JD-037888-01)

M.O. (Father) appeals from a juvenile court order terminating his reunification services at the six-month status hearing regarding his son, C.O. Father argues the juvenile court abused its discretion in finding his inaction created a substantial likelihood that reunification would not occur. Father also challenges the court's finding that the Indian Child Welfare Act (ICWA, 25 U.S.C. § 1901 et seq.) does not apply, and the parties agree the record does not show compliance with the duty of inquiry under ICWA.

We will vacate the juvenile court's finding that ICWA does not apply and remand to allow compliance with ICWA and related California law. Because we find no other error, we affirm in all other respects.

FACTS AND PROCEDURAL HISTORY

Father and J.O. (Mother) are the parents of C.O. (Minor), who was born in 2010. Father and Mother are divorced and share custody of Minor.

Minor has complex mental health concerns, a history of homicidal and suicidal ideation, and a diagnosis of adolescent onset conduct disorder. In July 2024, Minor was staying at a residential treatment center. On July 17, 2024, Minor was ready for discharge from the treatment center, but neither parent was willing to pick him up. Father reported to a child welfare worker that he was unable to house Minor and was unwilling to pick him up because Minor might hurt his family. Mother reported that she was unable to care for Minor due to his behaviors and that she did not feel safe to care for him; she signed a voluntary release of child custody.

Because neither parent was willing to take Minor home, the Alameda County Social Services Agency (Agency) filed a dependency petition on his behalf, alleging he came within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300, subdivision (g).[1] The operative petition alleged Father "is unwilling to care for the minor . . . due to the minor's history of violence and mental health concerns."

On July 22, 2024, the juvenile court ordered Minor detained and directed the Agency to provide supervised visitation for both parents and to make a referral for therapeutic visits for Minor and Father. Minor was placed in a short-term residential therapeutic program (STRTP).

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[1] A child who "has been left without any provision for support" may be adjudged a dependent of the juvenile court. (Welf. & Inst. Code, § 300, subd. (g).) Undesignated statutory references are to the Welfare and Institutions Code.

On September 4, 2024, at the hearing on jurisdiction and disposition, the juvenile court found the allegations of the petition true and ordered Father "to cooperate with the Child Welfare Worker, and to participate in all aspects of the case plan." The court ordered the Agency to arrange visitation between Minor and Father "as frequently as possible, consistent with the child's well-being."

Father's case plan identified "service objectives" and "client responsibilities." (Capitalization and bolding omitted.) Father's "service objectives" were to demonstrate "ability to provide adequate care for [his] child's special needs" and "ability and willingness to have custody of" Minor. Minor and Father were to "work toward repairing their relationship." The case plan specified that Father "will learn about [Minor]'s mental and behavioral health conditions to understand the minor's needs," "will show positive visitation with their child," and "will identify 5 ways to redirect [Minor] when he becomes aggressive or triggered and demonstrate using at least one of those methods during each visit." Father was also expected to work with a therapist (1) "to understand the impact [Minor]'s behaviors has had on them," (2) "to identify strategies to better communicate with the other parent to manage [Minor]'s behaviors," and (3) "to develop coping strategies for when they feel overwhelmed or triggered by [Minor]'s behaviors." Father's responsibilities included "participat[ing] in family therapy sessions" and "follow[ing] suggestions of the therapist."

On February 10, 2025, the Agency filed a status review report for the six-month review hearing. The Agency recommended terminating family reunification services for Father. It was reported that Father had not maintained communication with the child welfare worker during the reporting period (August 2024 to February 2025). Father also failed to

maintain communication with Minor's STRTP or participate in therapeutic services. Minor had not heard from Father since November 2024. Minor reported that he felt unsafe with Father.

The Agency documented its efforts to work with Father on his court-ordered case plan. In September 2024, a child welfare worker mailed the case plan to Father and emailed Father requesting a case plan support meeting; in November 2024, the worker called, wrote, and emailed Father; in December 2024, she emailed Father twice; in January 2025, she emailed Father and requested a case plan support meeting; in February 2025, she emailed and called Father, inviting him to a Child Family Team meeting.

During the reporting period, Father had one unsupervised visit with Minor around Thanksgiving. Minor reported that he was not interested in visitation or reunification with Father.[2]

On February 11, 2025, the Agency filed a Judicial Council Form JV-180 "Request to Change Court Order" pursuant to section 388. The Agency asked the court to terminate reunification services for Father because he "has not maintained communication with the Agency, participated in case plan services, or engaged in consistent visitation with [Minor]."

At the six-month review hearing on February 20, 2025, Father appeared by Zoom. The juvenile court found the Agency made a prima facie showing for an evidentiary hearing on its section 388 request to terminate

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[2] The Agency further reported on the "family's perception of their needs." (Capitalization omitted.) Minor believed he needed to continue therapy to work on managing his anger; he wanted to continue visitation with Mother and engage in family therapy to strengthen their relationship. Mother believed Minor should continue his treatment and that she and Minor should have visitation and family therapy. The Agency could not report on the Father's perspective because he "ha[d] not made himself available to discuss his perceptions of his needs."

services and set a contested hearing on the six-month status report and the section 388 request for April 7. The court ordered all parties to appear in person.

At the contested hearing on April 7, 2025, Father did not appear. Arguing for termination of services, Agency counsel stated Father "has had no conversation with the [child welfare] worker in regards to the minor's mental health, his best interest, what is happening with him, his school, placement, nothing whatsoever. [¶] [Father] has not been showing an interest." Minor's counsel joined the Agency's argument.

Father's counsel acknowledged that his "client's participation may have been minimal," but he argued Father "wants to try, and that's why the contest was set[ ]up today. [¶] And, he is hoping that this round, another six months, that he could be more present." Counsel reported Father told him "that he needs to be more transparent with the worker, and he plans to. . . ."

The juvenile court agreed with the Agency's recommendations, finding Father made no "meaningful attempt to engage the plan or to address the conditions that led to the Petition."

The court granted the Agency's section 388 request to terminate services. It found, "The action or inaction of the parent creates a substantial likelihood that the reunification will not occur, including but not limited to . . . a failure to visit regularly and make substantive progress in court ordered treatment programs."

Father timely appealed.

DISCUSSION

A. *Early Termination of Family Reunification Services*

Father contends the juvenile court abused its discretion in granting the Agency's section 388 request to terminate reunification services. He claims

the Agency did not meet its burden of showing that his inaction created a substantial likelihood that reunification would not occur. We disagree.

In reviewing a juvenile court's exercise of discretion in ruling on a section 388 request, we "may disturb the exercise of that discretion only in the rare case when the court has made an arbitrary or irrational determination. [Citations.] We do not inquire whether substantial evidence would have supported a different order, nor do we reweigh the evidence and substitute our judgment for that of the juvenile court. [Citation.] We ask only whether the juvenile court abused its discretion with respect to the order it made." (*In re Matthew M.* (2023) 88 Cal.App.5th 1186, 1194.)

Father argues he was stifled from making progress on his case plan because his attempt to foster a relationship was thwarted by Minor, who was not interested in visitation or reunification with Father. Father describes his case plan as consisting of "a single item: conjoint therapy with" Minor. But the court-ordered case plan required more than joint therapy. Initially, the court ordered Father "to cooperate with the Child Welfare Worker, and to participate in all aspects of the case plan." The case plan required Father to "learn about [Minor]'s mental and behavioral health conditions to understand the minor's needs" and to work with a therapist "to understand the impact [Minor]'s behaviors has had on them," "to identify strategies to better communicate with the other parent to manage [Minor]'s behaviors," and "to develop coping strategies for when they feel overwhelmed or triggered by [Minor]'s behaviors." The child welfare worker tried to meet with Father for case plan support over many months, but Father was unresponsive. Father also failed to communicate with Minor's STRTP and failed to participate in therapeutic services.

Thus, there were steps Father could have taken under the case plan besides visitation and joint therapy, and Father did not attempt to take any of them. Indeed, at the contested hearing, Father's counsel acknowledged that Father's "participation may have been minimal" and suggested Father would try to "be more present" in the future. It is not the case that Minor's uninterest in reunifying was the sole cause of Father's failure to make progress on his case plan. On this record, we cannot say the juvenile court abused its discretion in finding Father's inaction created a substantial likelihood that reunification would not occur.

Father cites *In re Ma.V.* (2021) 64 Cal.App.5th 11, for the proposition that a parent need not get along with the social worker, but that case is easily distinguishable. In *Ma.V.*, there was no court-ordered case plan, the mother's services were voluntary, and the juvenile court faulted the mother for being uncooperative with the social worker. (*Id.* at p. 24.) The Court of Appeal found insufficient evidence to support the jurisdiction and disposition orders, noting the law does not require "a parent who is friendly and gets along with" the social worker and juvenile court. (*Id.* at pp. 23, 25.) Here, in contrast, Father does not challenge either jurisdiction or the disposition requiring him to participate in a court-ordered case plan. The juvenile court in the present case did not terminate Father's services because he did not get along with the child welfare worker; it terminated services because Father did not attempt to participate in services as required by his case plan.

We emphasize, however, that even as it terminated services for Father due to inaction, the juvenile court continued to order "visitation between the child and the mom and dad . . . as frequently as possible consistent with the child's well-being." And, in announcing its ruling, the court left the door open for Father to seek reunification services, stating, "If [Father] still wishes to

engage, there . . . is an alternative avenue that he can demonstrate that." We further note that Minor's qualified individual assessment report (filed September 13, 2024) identified as a long-term goal, "Family therapy to address breaches in his relationship with his parents." Nothing in our decision prevents Father from participating in family therapy or otherwise taking steps to work on his relationship with Minor.

B. *ICWA Compliance*

"ICWA establishes minimum standards for state courts to follow before removing Indian children from their families and placing them in foster care or adoptive homes and does not prohibit states from establishing higher standards." (*In re Dezi C.* (2024) 16 Cal.5th 1112, 1129 (*Dezi C.*); see 25 U.S.C. § 1921.)

"Under ICWA's state analogue . . ., courts and child welfare agencies are charged with 'an *affirmative* and *continuing duty to inquire* whether a child . . . is or may be an Indian child' in dependency cases. [Citation.] Child welfare agencies discharge this state law duty by '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.' " (*Dezi C.*, *supra*, 16 Cal.5th at p. 1125, quoting § 224.2, subds. (a) and (b), italics added.)

In this case, Mother and Father both told the juvenile court at the detention hearing that they might have Native American ancestry in their family. Father stated that he heard his mother in Georgia had Cherokee relatives, and he gave the court his mother's name.

The juvenile court subsequently found ICWA does not apply. Father argues no substantial evidence supports this finding. The Agency concedes

that nothing in the record shows it contacted Father's mother to inquire about Indian ancestry and acknowledges that it failed to make adequate further inquiry under ICWA. The parties agree the appropriate remedy is to remand for compliance with ICWA and related California law.

We agree with the parties that the record does not demonstrate the Agency has met its duty of inquiry under ICWA. Accordingly, we vacate the juvenile court's finding that ICWA does not apply and remand for the Agency "to comply with its inquiry and (if applicable) notice obligations under ICWA and related California law." (*In re Dominick D.* (2022) 82 Cal.App.5th 560, 568.) We otherwise affirm the juvenile court's orders. (Cf. *id.* at p. 567 ["ICWA inquiry and notice errors do not warrant reversal of the juvenile court's jurisdictional or dispositional findings and orders other than the ICWA finding itself").]

DISPOSITION

The finding that ICWA does not apply is vacated. The juvenile court is directed to order the Agency to comply with its duties under ICWA and related California law. In all other respects, the juvenile court's findings and orders are affirmed.

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Miller, J.

WE CONCUR:

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Richman, Acting P. J.

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Desautels, J.

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