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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re E.T., a Person Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.C.,

Defendant and Appellant.

E078640

(Super. Ct. No. RIJ2100055)

OPINION

APPEAL from the Superior Court of Riverside County. Donal B. Donnelly, Judge.

Conditionally reversed and remanded with directions.

Michelle S. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant.

Gregory P. Priamos, County Counsel, and Julie K. Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

## I.

### INTRODUCTION

L.C. (Mother) appeals from the juvenile court's order terminating her parental rights as to her 20-month-old son E.T.<sup>1</sup> Mother's sole contention on appeal is that the order must be reversed because the Riverside County Department Public Social Services (the Department) and the juvenile court failed to comply with the inquiry requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) and with Welfare and Institutions Code<sup>2</sup> section 224 et seq. The Department agrees. For the reasons explained herein, we conditionally reverse the judgment and remand the matter with directions the Department and the juvenile court comply with the inquiry and, if applicable, the notice provisions of the ICWA statutes. If after such compliance the juvenile court finds the child is not an Indian child, the judgment terminating parental rights shall be reinstated.

## II.

### FACTUAL AND PROCEDURAL BACKGROUND

Mother was a 16-year-old dependent minor when she gave birth to her child in October 2020 in Los Angeles County. She had been missing from her group home since February 2020, and there was an active protective custody warrant for her in Riverside County. She was discovered after she gave birth to E.T., who was born positive for

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<sup>1</sup> V.C. (alleged Father) is not a party to this appeal.

<sup>2</sup> All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

marijuana, and child protective services received a referral concerning the child's birth. Initially, she lied about her name, age, and the alleged father. Mother had a history of abusing marijuana and alcohol, as well as a history with mental illness resulting in multiple hospitalizations in different states. During the time Mother was away from her group home, she was homeless, at times living on the streets and other times with strangers. Following an interview, Mother gave the social worker verbal consent to detain the child from her care.

On October 6, 2020, the Los Angeles County Department of Children and Family Services filed a petition on behalf of the child pursuant to section 300, subdivision (b) (failure to protect).

The detention hearing was held on October 9, 2020. Neither parent was present. The juvenile court formally detained the child from parental custody and ordered the department to provide the parents with services pending the jurisdictional/dispositional hearing. Mother was provided with supervised visitation. No initial ICWA inquiry was made at that time.

In a jurisdictional/dispositional report, the department reported that ICWA did not apply. Further, by this date, the department had located alleged Father, V.C., who hoped he was the child's father but did not want to take a paternity test. He was 25 years old when he met Mother, who was then 15 years old. He was not present at the child's birth and had dropped Mother off near the hospital prior to delivery.

On November 18, 2020, the juvenile court found V.C. to be the child's alleged father.

On November 19, 2020, Mother's counsel filed an ICWA-020 form on her behalf denying any Indian ancestry.

On November 20, 2020, the department filed a first amended petition on behalf of the child adding allegations related to alleged Father. The ICWA inquiry attachment indicated that there was no reason to believe the child was an Indian child.

In December 2020, the department reported that Mother did not have a relationship with the maternal grandmother because the maternal grandmother never liked her. The maternal grandfather left the family when Mother was a year old due to drugs, but currently had contact with him. Mother moved from relative-to-relative due to behavioral issues and believed her family gave up on her. She eventually became a dependent of the court. Mother met alleged Father on a dating app known for pedophiles, and when she found out she was pregnant, she moved in with him without his parents' knowledge. While they lived together, Mother reported that alleged Father hit her in the face with his fist, forced her to drink alcohol, and was unable to leave the room so went to the restroom in a bucket.

Mother continued to engage in risky behaviors, such as having a boy inside her group home. On December 10, 2021, Mother left her placement and reportedly went to alleged Father's home.

The juvenile court took jurisdiction on January 29, 2021, finding true the allegations in the amended petition and dismissing the allegations pertaining to Mother's mental health. Mother was not present and her whereabouts were unknown. Mother was provided with reunification services and ordered to participate. No services were provided to alleged Father. The court found that ICWA did not apply. On this same day, the court transferred the case to Riverside County.

At the transfer-in hearing held on February 19, 2021, the parents were not present. The juvenile court found that ICWA did not apply.

Mother's whereabouts continued to be unknown by the July 2021 six-month review hearing. Mother only contacted the Department via email, and repeatedly said she would not be turning herself in, and did not want to go into a group home. Mother stated that she was on the run, was not ready to be a mother, and hoped that one day she could be E.T.'s mother again. Later, she indicated that she wanted her son back, but that she would not turn herself in. She noted that E.T.'s caregivers were amazing people, that they deserved to have him, and that she trusted them to take care of him. Mother had not visited E.T. since November 2020.

The six-month review hearing was held on July 29, 2021. Mother was not present. The juvenile court terminated Mother's services and set a section 366.26 hearing. The court also found that ICWA did not apply.

The section 366.26 hearing was held on March 4, 2022. Mother was not present. Mother's counsel objected to the termination of parental rights, but noted that Mother's whereabouts had been unknown for some time and that efforts to locate her had been unsuccessful. The juvenile court found that E.T. was adoptable and terminated parental rights. Mother timely appealed.

### III.

#### DISCUSSION

Mother contends that the juvenile court and the Department failed to comply with the inquiry requirements of the ICWA. She thus requests the matter be remanded. The Department concedes the matter should be remanded because it "acknowledges that there were inadvertent omissions in conducting the initial inquiry of whether the child was an Indian child. . . ." We agree.

"Congress enacted ICWA in 1978 in response to 'rising concern in the mid-1970's over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes.' [Citation.]" (*In re Isaiah W.* (2016) 1 Cal.5th 1, 7 (*Isaiah W.*)). "In California, . . . persistent noncompliance with ICWA led the Legislature in 2006 to

‘incorporate[] ICWA’s requirements into California statutory law.’ [Citations.]” (*In re Abbigail A.* (2016) 1 Cal.5th 83, 91; see *In re Breanna S.* (2017) 8 Cal.App.5th 636, 650 (*Breanna S.*) [California law “incorporates and enhances ICWA’s requirements”].) Both ICWA and California law define an “Indian child” as any unmarried person who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. (25 U.S.C. § 1903(4); § 224.1, subs. (a), (b); see *In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 783.)

Noncompliance with ICWA inquiry or notice requirements may be raised by either parent on appeal, even if the parent did not appeal an earlier order finding the ICWA inapplicable, and even if the appealed order did not contain an express ICWA finding. (*Isaiah W., supra*, 1 Cal.5th at pp. 9-15 [continuing duty under ICWA]; *In re A.M.* (2020) 47 Cal.App.5th 303, 314, fn. 4 (*A.M.*) [absence of express finding does not diminish requirement of a current ICWA finding]; *In re A.W.* (2019) 38 Cal.App.5th 655, 664-665 [a non-Indian parent has standing to raise an ICWA violation on appeal].)

Because Mother is appealing from the March 2022 order terminating her parental rights, and the juvenile court has a continuing duty to determine whether ICWA applies, we apply the federal and state statutes in effect on the date of the hearing. (§§ 224.2, 224.3 [Stats. 2018, ch. 833, §§ 4-7]; *A.M., supra*, at p. 321.)

We review the juvenile court’s ICWA findings for substantial evidence. (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1467.) We must uphold the court’s orders and findings if any substantial evidence, contradicted or uncontradicted, supports them, and we resolve all conflicts in favor of affirmance. (*In re Alexander C.* (2017) 18 Cal.App.5th 438, 446.)

The court and the Department have an affirmative and continuing duty under the ICWA and related California law to inquire whether a child who is the subject of a dependency proceeding is or may be an Indian child. (*Isaiah W., supra*, 1 Cal.5th at pp. 7-8.) The scope of the duty of inquiry is defined in regulations promulgated under ICWA (see 25 C.F.R. § 23.107 et seq. (2018)) and sections 224.2 and 224.3. As discussed in *In re Austin J.* (2020) 47 Cal.App.5th 870, 883 and *In re D.S.* (2020) 46 Cal.App.5th 1041, 1048-1049 (*D.S.*), California law imposes a duty of initial inquiry in every case, and a duty of further inquiry when there is reason to believe a child may be an Indian child under the ICWA.

The Department’s initial duty of inquiry at the beginning of a child welfare proceeding includes “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.” (§ 224.2, subd. (b).) The court must inquire at each party’s first appearance, whether any participant in the proceeding “knows or has reason to know that the child is an Indian child.” (§ 224.2, subd. (c).) Part of the initial inquiry also includes requiring each party to complete

California Judicial Council form ICWA-020, Parental Notification of Indian Status. (Cal. Rules of Court, rule 5.481(a)(2)(C).)

When there is reason to believe that an Indian child is involved in a proceeding, further inquiry is required. (*In re Austin J.*, *supra*, 47 Cal.App.5th at p. 883; *D.S.*, *supra*, 46 Cal.App.5th at pp. 1048-1049; *A.M.*, *supra*, 47 Cal.App.5th at pp. 321-323.) As relevant here, further inquiry includes interviewing parents, grandparents, aunts, uncles, and extended family members to obtain information such as the names of the child's "biological parents, grandparents, and great-grandparents, . . . as well as their current and former addresses, birth dates, places of birth and death, tribal enrollment information of other direct lineal ancestors of the child, and any other identifying information, if known." (§ 224.3, subd. (a)(5)(C).) The agency engaging in further inquiry is also required to contact the BIA, the State Department of Social Services, and any tribes the child may be affiliated with, and anyone else, that might have information regarding the child's membership or eligibility in a tribe. (§ 224.2, subds. (e)(2), (e)(3).)

Mother contends that there was insufficient evidence to show the Department complied with its duty under the ICWA because the Department, despite knowledge of Mother's relatives, made no effort to locate and contact any of the maternal relatives to inquire about Indian ancestry as required by section 224.2, subdivision (b). We agree. There is no evidence in the record to suggest that the Department inquired of Mother and/or the maternal relatives of their Indian ancestry. Moreover, the record is clear that

the juvenile court did not inquire about Mother's Indian ancestry at the detention hearing or any subsequent hearings.

Mother's parents and siblings are among those "extended family members" whom CFS must interview, if possible, to gather information to determine whether the proceeding involves an Indian child. (See Cal. Rules of Court, rule 5.481(a)(4)(A); 25 U.S.C. § 1903(2) [defining "extended family member" to include "the Indian child's grandparent, aunt or uncle"].) The Department must make a good faith attempt to locate and interview extended family members who can reasonably be expected to have information concerning a child's membership status or eligibility. (*D.S.*, *supra*, 46 Cal.App.5th at pp. 1052-1053; see *Breanna S.*, *supra*, 8 Cal.App.5th at p. 652.) However, the Department "is not required to 'cast about' for information or pursue unproductive investigative leads. (*In re Levi U.* (2000) 78 Cal.App.4th 191, 199.)" (*D.S.*, *supra*, at p. 1053.)

The record here does not document that the Department interviewed Mother or the maternal grandparents about their Indian ancestry. (*In re K.R.* (2018) 20 Cal.App.5th 701, 708-710 [agency cannot rely on absence of documentation to argue that appellant's claim of ICWA error must fail on appeal].) The social services agency is obligated "to make a meaningful effort to locate and interview extended family members to obtain whatever information they may have as to the child's possible Indian status." (*Id.* at p. 709.) The juvenile court "has a responsibility to ascertain that the agency has conducted an adequate investigation and cannot simply sign off on the notices as legally adequate

without doing so.” (*Ibid.*) Because the Department failed to document the inquiry efforts required under section 224.2, there is insufficient evidence to support the court’s determination that ICWA was inapplicable to the case.<sup>3</sup> (See § 224.2, subs. (b), (c) & (e); *In re K.R.*, *supra*, at p. 709 [“[O]nce there is sufficient information to believe that the children might be Indian children within the meaning of ICWA and the California statutes, ‘responsibility for compliance’ with those statutes ‘falls squarely and affirmatively’ on *both* the social services agency and the court.”].)

Based on the foregoing, we conditionally reverse the court’s order terminating Mother’s parental rights and remand the matter for the juvenile court to direct the Department to conduct an initial and further inquiry about the child’s Indian ancestry and document its efforts to identify and contact Mother’s parents, siblings, and extended family, and, if appropriate, to send ICWA notices to the relevant tribes and the BIA, in accordance with the ICWA and California law. (See *Breanna S.*, 8 Cal.App.5th at p.

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<sup>3</sup> We note that ICWA notice is required when there is “reason to know” a child is an Indian child. There is “reason to know” a child is an Indian child if “(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child; [¶] (2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child; [¶] (3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child; [¶] (4) The court is informed that the domicile or residence of the child, the child’s parent, or the child’s Indian custodian is on a reservation or in an Alaska Native village; [¶] (5) The court is informed that the child is or has been a ward of a Tribal court; or [¶] (6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.” (25 C.F.R. § 23.107(c); accord, § 224.2, subd. (d).)

656.)<sup>4</sup> If the juvenile court finds the child is an Indian child, the juvenile court must conduct a new section 366.26 hearing and any necessary further proceedings in compliance with the ICWA and California law. If not, the juvenile court shall reinstate the order terminating Mother’s parental rights.

#### IV.

#### DISPOSITION

The March 4, 2022 order terminating Mother’s parental rights is conditionally reversed. The matter is remanded to the juvenile court with directions that the Department conduct an initial and further ICWA inquiry concerning Mother’s Indian ancestry and to file documentation of its efforts. Based on the information obtained by such further inquiry, the court shall determine whether notice is required. If notice is required, notice must be sent in accordance with the ICWA, and if a tribe responds that the child is an Indian children, then the order terminating parental rights shall be vacated,

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<sup>4</sup> We note that Mother’s appellate counsel filed a supplemental information to this court indicating that the family has Blackfoot, Walla Walla, Sioux, and Apache Indian ancestry. To the extent the Department’s further inquiry reveals the names and other identifying information of Mother’s relatives, the juvenile court can determine whether notice to the BIA and the relevant tribes is required. (§ 224.3, subds. (a)(5)(C); 224.2, subd. (d); *In re Elizabeth M.*, *supra*, 19 Cal.App.5th at p. 784 [Notice to a tribe is required, under federal and state law, when the court knows or has reason to know the child is an Indian child.]; see *In re E.H.* (2018) 26 Cal.App.5th 1058, 1069, 1071 [names and other identifying information of an Indian child’s “direct lineal ancestors” must be provided “if such information may be relevant in establishing the minor’s American Indian heritage”]; see also *In re C.B.* (2010) 190 Cal.App.4th 102, 147 [“ “[T]o establish tribal identity, it is necessary to provide as much information as is known on the Indian child’s direct lineal ancestors.””].)

and further proceedings conducted under the ICWA. In all other respects, the juvenile court's orders are affirmed.

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CODRINGTON  
J.

We concur:

RAMIREZ  
P. J.

MILLER  
J.