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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re L.O., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.O.,

Defendant and Appellant.

E079511

(Super.Ct.No. RIJ2000607)

OPINION

APPEAL from the Superior Court of Riverside County. Cheryl C. Murphy, Judge.

Conditionally reversed and remanded with directions.

Paul A. Swiller, under appointment by the Court of Appeal, for Defendant and Appellant.

Minh C. Tran, County Counsel, and Julie K. Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant (father) is the father of L.O., who is the subject of a dependency case. Father appeals from the juvenile court’s July 19, 2022 order terminating his parental rights at a Welfare and Institutions Code section 366.26 hearing. On appeal, he contends the court and the Riverside County Department of Public Social Services (the department) failed in their duties of initial and further inquiry under the Indian Child Welfare Act of 1978 (ICWA; 25 U.S.C. § 1901 et seq.)¹ and Welfare and Institutions Code² section 224.2 as to L.O.’s possible Indian heritage. No interested party filed a respondent’s brief; instead, the department acknowledges omissions in its initial inquiry and expresses no opposition to a conditional reversal and remand. We agree with the parties and conditionally reverse and remand for proceedings to ensure ICWA compliance; otherwise, we affirm the juvenile court’s orders.

I. PROCEDURAL BACKGROUND AND FACTS

In July 2020, shortly after L.O.’s birth, the Orange County Social Services Agency initiated dependency proceedings pursuant to section 300, subdivisions (b)(1) and (j), based on both parents’ unresolved substance abuse problems, criminal histories, and the maternal half sibling’s removal from mother’s care.³ The child was detained and placed in the home of a paternal great-aunt. In October 2020, the juvenile court sustained the

¹ Because ICWA uses the term “Indian,” we will do the same for consistency, even though we recognize that “other terms, such as ‘Native American’ or ‘indigenous,’ are preferred by many.” (*In re Benjamin M.* (2021) 70 Cal.App.5th 735, 739, fn. 1.)

² All further statutory references are to the Welfare and Institutions Code.

³ Mother died on April 28, 2022, and is not a party to this appeal.

allegations in the amended petition, declared L.O. to be a dependent, removed him from parental custody, and ordered family reunification services.⁴ On October 1, 2020, mother denied any “American Indian Heritage” and stated that “father does not have any American Indian Heritage.” Father’s counsel also stated that “father does not have any American Indian Heritage.” No counsel objected to a “no ICWA finding at this time.”

The matter was transferred to Riverside County. Pursuant to the transfer documents, the juvenile court “found that ICWA does not apply on 7-20-2020 and 10/1/2020.” According to the detention report filed July 15, 2020, mother denied Native American heritage to the emergency response social worker, but father was not questioned. On February 22, 2021, a department social worker asked the parents about having “any Native American Ancestry, which they denied.”

In the section 366.26 report filed March 2, 2022, the department reported that on November 17, 2021, at the contested jurisdiction hearing, the juvenile court “found that the Department made a sufficient inquiry regarding whether the [child] may have Indian Ancestry ICWA may apply. Therefore, the Court found that ICWA did not apply.” Father had not visited the child since January because of his incarceration; L.O. was doing well and bonding with his relative caregivers who wanted to adopt him. The caregivers were not interested in any postadoption agreement with father because of his aggressive behaviors. Father appeared telephonically (from Orange County jail) at the July 19, 2022 section 366.26 hearing. He had no affirmative evidence, requested a

⁴ Father’s services consisted of a substance abuse program, drug testing, parenting classes, and individual counseling.

continuance to provide certificates from services completed, and objected to the termination of his parental rights. He informed the juvenile court about the positive steps he had taken while in custody. The court denied the request for a continuance, terminated parental rights, and selected adoption as the permanent plan. Father appeals.

II. DISCUSSION

This case involves reversible error because the parties agree, and we concur, there was noncompliance with the inquiry requirements of ICWA and related California provisions. (*In re H.V.* (2022) 75 Cal.App.5th 433, 438; *In re Benjamin M.*, *supra*, 70 Cal.App.5th at p. 744.) Here, the Orange County Social Services Agency and the department only inquired of the parents regarding Native American ancestry. Neither asked the paternal great-aunt (L.O.’s caregiver and prospective adoptive parent) or any extended known maternal and paternal family members about Indian heritage. Pursuant to section 224.2, subdivision (b), both social services agencies had a duty to ask L.O.’s “extended family members” and “others who have an interest in the child” whether the child is an Indian child.

III. DISPOSITION

The juvenile court’s July 19, 2022 order terminating parental rights to L.O. is conditionally reversed, and the matter is remanded for proceedings consistent with this opinion. The juvenile court shall order the department to make reasonable efforts to interview the paternal great-aunt and available maternal and paternal family members about L.O.’s Indian ancestry and to report to the court the results of the investigation. Based on the information reported, if the court determines that no additional inquiry or

notice to tribes is necessary, the order terminating parental rights is to be reinstated.

However, if additional inquiry or notice is warranted, the court shall make all necessary orders to ensure compliance with ICWA and related California law.

The remittitur shall issue forthwith.

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McKINSTER
Acting P. J.

We concur:

CODRINGTON
J.

SLOUGH
J.