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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re V.R. et al., Persons Coming Under the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

Y.L.,

Defendant and Appellant.

E080680

(Super.Ct.No. SWJ1900234)

OPINION

APPEAL from the Superior Court of Riverside County. Kelly L. Hansen, Judge. Conditionally affirmed and remanded with directions.

Lelah S. Fisher, under appointment by the Court of Appeal, for Defendant and Appellant.

Minh C. Tran, County Counsel, and Catherine E. Rupp, Deputy County Counsel, for Plaintiff and Respondent.

Y.L. (mother) appeals from orders terminating parental rights over her minor children. She argues the Riverside County Department of Public Social Services (department) did not conduct a sufficient inquiry into her children's possible Indian ancestry under the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.; ICWA). The department concedes the error, and we agree that the concession was proper. Accordingly, we conditionally affirm the order terminating parental rights and remand with directions.[1]

BACKGROUND

This dependency concerns mother's children Va.R. (born 2014), J.R. (born 2015), and Vi.R. (born 2019). In addition, mother has three older children who are not the subject of this dependency.

In April 2019 the department filed a dependency petition under Welfare and Institutions Code[2] section 300, subdivisions (b) and (g), as to all of mother's children. The department attached forms to the petition attesting it asked mother about the children's potential Indian heritage, and that she did not give the department any reason to believe they had Indian heritage. The department was not able to contact father because he was incarcerated. Later that month at the detention hearing, mother filed an additional form stating she had no Indian ancestry as far as she knew. Mother

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[1] "In addition, because ICWA uses the term 'Indian,' we 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 (*Benjamin M.*).)

[2] Undesignated statutory references are to the Welfare and Institutions Code.

consistently maintained that she had no Indian ancestry throughout the course of the dependency.

At various times during the dependency, the department had contact with maternal grandmother, maternal aunt D.L., and maternal uncle R.L. There is no evidence in the record that the department spoke to any of these maternal relatives regarding the children's potential Indian heritage.

In June 2019 father filed a form indicating he had Indian heritage through a paternal great-grandmother tracing to "a tribe in Arizona." However, he told the court this ancestry was through a paternal great-grandfather, who is deceased. He said his parents were alive and provided the department with paternal grandmother's phone number. Throughout the dependency the department was able to contact paternal grandmother, paternal uncle E.R., paternal uncle M.R., and paternal aunt S.R. Paternal uncle E.R. claimed Indian heritage through the Yaqui tribe, and paternal grandmother claimed heritage through the Yaqui and Apache tribes. Paternal uncle M.R. initially claimed some Indian heritage through the Apache or Yaqui tribes, but eventually denied any such ancestry. However, the department later learned M.R. was only father's half brother.

In July 2019, the department sent form notices (using Judicial Council form ICWA-030 (ICWA-030)) to one Yaqui and eight Apache tribes. These notices contained information regarding both grandmothers, both grandfathers (though noting maternal grandfather is deceased), a paternal great-grandmother, and a paternal great-grandfather.

All the contacted tribes, save the Yavapai-Apache Nation, indicated the children were not members of their tribes. The Yavapai-Apache Nation responded that based on the information received, the children were not eligible for membership but that "Additional Family Information is required to determine eligibility." The department never provided this additional information.

The court held a section 366.26 hearing in January 2023. The court terminated both parents' parental rights, and mother appealed.

ANALYSIS

Mother contends, and the department correctly concedes, that the department prejudicially failed to comply with its duty of inquiry regarding mother and her relatives.

Under California law, the juvenile court and county child welfare department have "an affirmative and continuing duty to inquire" whether a child subject to a section 300 petition may be an Indian child. (§ 224.2, subd. (a); see *In re D.F.* (2020) 55 Cal.App.5th 558, 566.) "This continuing duty can be divided into three phases: the initial duty to inquire, the duty of further inquiry, and the duty to provide formal ICWA notice." (*In re D.F.*, p. 566.)

The department always has an initial duty to inquire into whether a child is an Indian child. (*In re J.S.* (2021) 62 Cal.App.5th 678, 686 (*J.S.*); see § 224.2, subd. (b).) " 'The child welfare department's initial duty of inquiry 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 and where the child, the parents, or Indian custodian is domiciled." ' " (*J.S.*, at p. 686; see § 224.2, subd. (b).) Extended family members include adults who are the child's stepparents, grandparents, aunts, uncles, brothers, sisters, nieces, nephews, and first or second cousins. (25 U.S.C. § 1903(2); § 224.1, subd. (c).)

The law requires further inquiry only " 'when "the court, social worker, or probation officer has reason to believe that an Indian child is involved [or, under Cal. Rules of Court, rule 5.481(a)(4), 'may be involved'] in a proceeding. . . ." ' " (*J.S.*, *supra*, 62 Cal.App.5th at p. 686.) " 'When that ["reason to believe"] threshold is reached, the requisite "further inquiry" "includes: (1) interviewing the parents and extended family members; (2) contacting the Bureau of Indian Affairs and State Department of Social Services; and (3) contacting tribes the child may be affiliated with, and anyone else, that might have information regarding the child's membership or eligibility in a tribe." ' " (*Ibid.*) "At this stage, contact with a tribe 'shall, at a minimum,' include telephone, facsimile, or electronic mail contact to each tribe's designated agent for receipt of ICWA notice, and 'sharing information identified by the tribe as necessary for the tribe to make a membership or eligibility determination, as well as information on the current status of the child and the case.' " (*In re D.S.* (2020) 46 Cal.App.5th 1041, 1049.)

In short, "[i]f the initial inquiry gives the juvenile court or the agency 'reason to believe' that an Indian child is involved, then the juvenile court and the agency have a duty to conduct 'further inquiry' [citation], and if the court or the agency has 'reason to

know' an Indian child is involved, ICWA notices must be sent to the relevant tribes." (*Benjamin M.*, *supra*, 70 Cal.App.5th at p. 742.)

Here, both the department as well as the juvenile court failed to conduct a sufficient initial inquiry. There is no record the department spoke to any extended maternal relatives despite being in contact with maternal grandmother, maternal aunt, and a maternal uncle. All of these family members are extended family members under ICWA, and the department was obligated to inquire with them.

However, even if the initial inquiry was sufficient, the department concedes that its further inquiry was not. Because father's family identified possible Indian heritage through specific tribes, the department correctly provided notice to those tribes as part of its further inquiry. Most responded that the children were not eligible for membership. Nevertheless, one tribe responded requesting additional information. The department concedes it was obligated to provide that information, that it did not provide that information, and that this was prejudicial error justifying conditional affirmance to allow it to correct its error.

We agree. As discussed above, further inquiry requires the department to contact tribes it has reason to believe are affiliated with the children, and to "shar[e] information identified by the tribe as necessary for the tribe to make a membership or eligibility determination." (§ 224.2, subd. (e)(2)(C).) Here, the tribe identified that it required further information to make a membership or eligibility determination, and the

department did not provide that information. Accordingly, we conditionally affirm and remand to allow the department to correct this and all other inquiry errors.

DISPOSITION

We conditionally affirm the order terminating mother's and father's parental rights to the subject children. We remand the matter to the juvenile court with directions to comply with the inquiry provisions of ICWA and of sections 224.2 and 224.3, consistent with this opinion. If, after completing the initial and further inquiry neither the department nor the court has reason to believe or to know the children are Indian children, the order terminating parental rights will remain in effect. If the department or the court has reason to believe or to know the children are Indian children, the court and the department shall proceed accordingly.

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RAPHAEL
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.