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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re R.M., a Person Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

B.P. et al.,

Defendants and Appellants.

E082393

(Super.Ct.Nos. SWJ2200022  
/18CCJP00169B)

OPINION

APPEAL from the Superior Court of Riverside County. Sean P. Crandell, Judge.

Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and  
Appellant, B.P.

Marrisa Coffey, under appointment by the Court of Appeal, for Defendant and  
Appellant, W.M.

Minh C. Tran, County Counsel, Teresa K.B. Beecham and Catherine E. Rupp,  
Deputy County Counsel, for Plaintiff and Respondent.

## I. INTRODUCTION

Defendants and appellants B.P. (Mother) and W.B. (Father) appeal from the August 31, 2023 juvenile court orders terminating parental rights to their child, R.M. (Welf. & Inst. Code, § 366.26.<sup>1</sup>) The parents claim plaintiff and respondent, Riverside County Department of Public Social Services (DPSS), failed to discharge its duty of inquiry under section 224.2, subdivision (b) (section 224.2(b)), by failing to ask all of R.M.'s available extended family members and R.M.'s godparents whether R.M. is or may be an Indian child for purposes of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.; ICWA). The parents claim the error is prejudicial and remand is necessary to ensure that DPSS discharges its duty of inquiry under section 224.2(b). We find no error and affirm the section 366.26 orders.

## II. FACTS AND PROCEDURE

R.M. was born in 2016. On January 4, 2018, when R.M. was living with Mother, and Father was incarcerated, the Los Angeles County Department of Child and Family Services (DCFS) obtained a warrant and took R.M. into custody pursuant to the warrant. (§ 340.) On January 9, a section 300 petition was filed for R.M., Los Angeles County Superior Court Case No. 18CCJP00169B. An attachment to the petition shows Mother

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

was questioned on December 28, 2017, and indicated R.M. had “no known Indian ancestry.”

On January 10, 2018, Mother signed a Parental Notification of Indian Status form (Jud. Council of Cal. ICWA-020), confirming Mother had no known Indian ancestry. At the January 10 detention hearing, Father was not present, but Mother told the court R.M. had no known Indian ancestry through Father. The court ordered the parents to apprise DCFS, their attorneys, and the court of any “new information” concerning R.M.’s “possible ICWA status.”

On May 2, 2018, R.M. was declared a dependent based on Mother’s substance abuse and was ordered removed from parental custody. (§§ 300, subd. (b)(1), 361, subd. (c).) Father was denied services because he was not expected to be released from prison until 2022. (§ 361.5, subd. (e).) In December 2018, R.M. was placed with his maternal grandmother (the MGM). In November 2019, the MGM was appointed R.M.’s legal guardian but, in November 2021, the court granted Mother’s section 388 petition, terminated the guardianship, returned R.M. to Mother, and ordered Mother to live with the MGM and participate in services. On January 20, 2022, the Los Angeles County case was transferred to Riverside County and assigned Case No. SWJ2200022. At the “transfer-in” hearing on January 20, the court continued the prior orders in effect and found ICWA did not apply.

In May 2022, DPSS reported Mother and the MGM denied any Native American ancestry when they were interviewed in February and March 2022. DPSS had been unable to interview Father because his whereabouts were unknown. On June 2, Mother

entered an inpatient program with R.M. On June 8, DPSS obtained a warrant and took R.M. into custody pursuant to the warrant. (§ 340.) On June 9, the paternal grandmother (the PGM) denied any Native American Ancestry. On June 10, DPSS filed a section 387 petition based on Mother's continuing substance abuse. The petition showed Mother again denied any Native American ancestry when interviewed on June 9.

At the detention hearing on June 13, 2022, the court recalled the June 8 warrant, ordered R.M. detained, and again found ICWA did not apply. On June 20, R.M. was placed with his godparents. Also on June 20, DPSS interviewed the maternal grandfather about R.M.'s possible placement with the maternal grandfather. The maternal grandfather said R.M. should live with the MGM. The record does not indicate that DPSS ever asked the godparents or the maternal grandfather about R.M.'s possible status as an Indian child. On July 14, DPSS spoke with a paternal uncle, S.M., who said he was unsure whether he had any Native American ancestry.

In August 2022, R.M. was returned to Mother for visits while Mother was living in a sober living facility, but Mother continued to abuse substances. In August and September 2022, without DPSS approval, Mother allowed her sister, the maternal aunt Danielle P., to care for R.M. while Mother was at work. On September 26, 2022, Mother left the sober living facility with R.M. and returned R.M. to his godparents. The record does not show that DPSS ever asked Danielle P. whether R.M. was or could be an Indian child.

On August 3, 2022, Father signed a Parental Notification of Indian Status form, indicating R.M. was not an Indian child. On October 18, 2022, the juvenile court found that ICWA did not apply and that R.M. was not an Indian child.

On April 17, 2023, Mother and the MGM again denied any Native American ancestry. On August 31, the court terminated parental rights to R.M. and selected adoption as R.M.'s permanent plan. (§ 366.26.) The court again found that ICWA did not apply. The parents filed timely notices of appeal.

### III. DISCUSSION

Mother claims DPSS failed to discharge its duty of inquiry under section 224.2(b) by failing to ask the maternal grandfather, the maternal aunt, and R.M.'s godparents, whether R.M. is or could be an Indian child. Father joins Mother's claim without further argument. The parents also suggest DPSS should have further investigated R.M.'s possible status as an Indian child through Father, given that the paternal uncle S.M. said he was unsure whether he had any Native American ancestry.

DPSS counters, and we agree, that DPSS's duty to make ICWA-related inquiries of R.M.'s extended family members and others having an interest in R.M. under section 224.2(b) never arose because R.M. was never taken into custody without a warrant. Rather, R.M. was twice taken into custody pursuant to warrants: in the Los Angeles County case on January 4, 2018, and in this case on June 8, 2023.

Section 224.2(b) provides: "If a child is placed into the temporary custody of a county welfare department pursuant to section 306 . . . , the county welfare department . . . has a duty to inquire whether that child is an Indian child. Inquiry includes, but is not

limited to, 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 . . . .”

In this court, there is split of authority on the question of when the duty to make ICWA-related inquiries under section 224.2(b) arises. In three published decisions, this court has concluded the duty to inquire of extended family members and others under section 224.2(b) arises only when the child is placed into the temporary custody of a child welfare agency *without a warrant*. (*In re Robert F.* (2023) 90 Cal.App.5th 492, 499-503, review granted July 26, 2023, S279743 (*Robert F.*); *In re Ja. O.* (2023) 91 Cal.App.5th 672, 677-679, review granted July 26, 2023, S280572 (*Ja. O.*); *In re Andres R.* (2023) 94 Cal.App.5th 828, 846-848, review granted Nov. 15, 2023, S282054 (*Andres R.*).

In two other published decisions, this court has concluded that the duty to inquire under section 224.2(b) applies *in every case* when a child is taken or placed into the temporarily custody of the child welfare agency, regardless of how the child was taken into custody—with or without a warrant. (*In re Delila D.* (2023) 93 Cal.App.5th 953, 962 [“[T]here is only one duty of initial inquiry, and that duty encompasses available extended family members no matter how the child is initially removed from home.”], review granted Sept., 27, 2023, S281447 (*Delila D.*); *In re Samantha F.* (Feb. 22, 2024, E080888)\_\_\_Cal.App.5th\_\_\_[2024 Cal.App.Lexis 107 at p. \*42] [accord] (*Samantha F.*)). To date, four other courts, in published decisions, have agreed with *Delila D.* (*In re C.L.* (2023) 96 Cal.App.5th 377 [Third Dist.]; *In re Jerry R.* (2023) 95 Cal.App.5th 388

[Fifth Dist.]; *In re V.C.* (2023) 95 Cal.App.5th 251 [First Dist., Div. Two]; *In re L.B.* (2023) 98 Cal.App.5th 512 [First Dist., Div. Four].)

The question is under review in our Supreme Court, and *Ja.O.* is the lead case. (*Samantha F.*, *supra*, \_\_\_ Cal.App.5th \_\_\_ [2024 Cal.App.Lexis 107 at pp. \*7-\*8].) This panel continues to agree with the reasoning of *Robert F.*, *Ja. O.*, *Andres R.*, the dissenting opinion in *Delila D.* (*Delila D.*, *supra*, 93 Cal.App.5th at pp. 977-981 (dis. opn. of Miller, J.)), and the concurring and dissenting opinion in *Samantha F.* (*Samantha F.*, at pp. \*44-\*53 (conc. & dis. opn. of Fields, J.)).

Thus, DPSS did not err in failing to ask the maternal grandfather, maternal aunt, or R.M.'s godparents whether R.M. is or could be an Indian child. (§ 224(b).) The duty never arose because R.M. was never taken into custody without a warrant. (*Robert F.*, *supra*, 95 Cal.App.5th at pp. 499-503.) Further, the record does not indicate DPSS had a duty to interview the godparents or any extended family members under subdivisions (a) or (c) of section 224.2. (*Robert F.*, at p. 503.)

IV. DISPOSITION

The August 31, 2023 orders terminating parental rights to R.M. are affirmed.

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FIELDS  
J.

We concur:

MILLER  
Acting P. J.

MENETREZ  
J.