Filed 2/3/15 In re J.G. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.G., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.G., Defendant and Appellant.	E062125 (Super.Ct.No. J250160) OPINION

APPEAL from the Superior Court of San Bernardino County. Lily L. Sinfield, Judge. Reversed with directions.

Toni Taylor Buck, under appointment by the Court of Appeal, for Defendant and Appellant.

Jean-Rene Basle, County Counsel, and Jamila Bayati, Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court terminated defendant and appellant J.G.'s (father) parental rights as to J.G. (child). On appeal, father contends insufficient evidence supports the juvenile court's determination the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq.) did not apply to child. Plaintiff and respondent San Bernardino County Children and Family Services (CFS) agrees the matter must be remanded to the juvenile court so that CFS may make further inquiry regarding child's Indian heritage. We reverse and remand with directions.

FACTS AND PROCEDURAL HISTORY

On June 21, 2013, CFS received a referral regarding child, born October 2010, involving general neglect. The reporting party related father had been walking down the street with a sawed-off shotgun. An officer responded to father's residence at 1:00 a.m. where he saw child playing alone in the front yard. The officer could hear people partying inside the home. Father saw the officer and attempted to flee. The officer found a loaded shotgun in plain view on the floor of child's bedroom. Father was arrested for being a felon in possession of a firearm and for being under the influence of heroin. Minor was taken into protective custody on June 28, 2013.

CFS filed a juvenile dependency petition alleging father had longstanding substance abuse problems, left child outside unattended at night, had a loaded, sawed-off shotgun within reach of child, and that father was incarcerated.[1] At the detention

[1] CFS made additional allegations against child's mother; however, she is not a party to this appeal.

hearing, the court asked father if he had any American Indian ancestry. Father responded that he did, but was not sure from what tribe. The paternal grandmother indicated that she had American Indian ancestry from the Cahuilla tribe derived from her mother, A.M.A. The juvenile court asked both father and paternal grandmother to complete ICWA notification forms. The court detained minor. Father completed an ICWA form indicating he may have Indian ancestry from an unknown tribe.[2]

The jurisdiction and disposition report filed July 19, 2013, reflected father had been sentenced on July 3, 2013, to 16 months in jail. On July 23, 2013, CFS noted "there is some ICWA noticing that needs to occur." The court noted "we are continuing the matter . . . on ICWA."

On August 13, 2013, CFS filed notification that they had provided the ICWA notice regarding child to the Bureau of Indian Affairs, the Secretary of the Interior, and the Pala Band of Mission Indians. Attached to the notification was a driver's license and certificate from the Pala Band of Mission Indians for one L.A., the latter of which indicated she was an enrolled member of the tribe with 1/16 blood degree Pala and 5/32 blood degree total.[3]

On August 15, 2013, CFS filed an ICWA declaration of due diligence reflecting, "Efforts to notice all involved Indian Tribes completed. No conformation[*sic*] of

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[2] No ICWA form for paternal grandmother appears in the record.

[3] In the notification, L.A. was listed as the paternal grandmother's mother or child's paternal great-grandmother. No explanation is given in the record regarding the discrepancy between the name given by paternal grandmother for her mother and that reflected in the ICWA notification.

membership received to date." On September 10, 2013, CFS filed another ICWA declaration of due diligence which indicated a letter dated August 20, 2013, had been received from the Pala Band of Mission Indians indicating child was not an enrolled member in the tribe and that the tribe would not intervene in the matter. CFS noted, "Efforts to notice all involved Indian Tribes completed. No conformation[*sic*] of membership received to date."

On September 12, 2013, the court found the allegations in the petition true and removed child from father's custody. On October 16, 2013, the court found that ICWA did not apply and that no further notice was required.

In a March 10, 2014, status review report, the social worker noted father had not enrolled in any services due to his incarceration. Father had been released from jail on February 6, 2014. Father had three subsequent visits with minor which did not last long because child did not recognize father, father was late for one of the visits, and child expressed a desire not to visit with father.

On March 14, 2014, the juvenile court terminated father's reunification services, suspended visitation, and set the Welfare and Institutions Code section 366.26 hearing.[4] At the section 366.26 hearing, the court found child adoptable and terminated father's parental rights.

DISCUSSION

Defendant contends that insufficient evidence supports the juvenile court's

[4] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

determination that ICWA did not apply because child's paternal grandmother indicated Indian ancestry with the Cahuilla tribe, but CFS failed to notify that tribe of the proceedings. CFS agrees the matter should be reversed and remanded for limited proceedings regarding notification of Cahuilla tribe heritage. We agree.

We apply the substantial evidence standard of review to the juvenile court's ICWA findings. (*Fresno County Dept. of Children & Family Services v. Superior Court* (2004) 122 Cal.App.4th 626, 643-646.) Notice of the proceedings is required to be sent whenever it is known or there is reason to know that an Indian child is involved. (25 U.S.C.A. § 1912(a); § 224.2, subd. (a); see *In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) Notice serves a twofold purpose: "(1) it enables the tribe to investigate and determine whether the minor is an Indian child; and (2) it advises the tribe of the pending proceedings and its right to intervene or assume tribal jurisdiction." (*Desiree F.*, at p. 470.) No foster care placement or termination of parental rights proceeding may be held until at least 10 days after the tribe (or the Bureau of Indian Affairs where the tribe is unknown) receives notice. (25 U.S.C.A. § 1912(a); *In re A.B.* (2008) 164 Cal.App.4th 832, 838.) In addition to the child's name, and date and place of birth, if known, the notice is required to include the "name of the Indian tribe in which the child is a member or may be eligible for membership, if known." (§ 224.2, subd. (a)(5)(B).)

Here, paternal grandmother indicated in open court that she had Cahuilla Indian ancestry through her mother, A.M.A. Although paternal grandmother apparently did not complete the court-requested ICWA notification form, her statement was sufficient to put the court and CFS on notice that child might be an Indian child such that CFS was

required to notify Cahuilla tribal authorities of the juvenile proceedings. Thus, we will remand the matter for such notification.

Father contends a broader remand is required because paternal great-grandmother's Pala certification indicated she was 5/32 total blood degree. We disagree. First, the Pala certificate does not indicate that paternal great-grandmother was of 5/32 Indian ancestry; rather, it simply indicated 5/32 "blood degree." Second, even crediting father's interpretation of the certificate, the remaining 3/32 Indian ancestry could be explained by paternal grandmother's indication that her mother was of Cahuilla tribal ancestry. Thus, remand for notification to Cahuilla tribal authorities would satisfy ICWA requirements.

Third, any revelation by paternal grandmother of any further Indian tribal ancestry via paternal great-grandmother's Pala certificate was too vague with respect to specific tribal ancestry to require further notification. "[E]ven if the paternal grandmother was a party, she did not 'inform[ ] the court' [citation] that the minors were Indian children, i.e., that they were either members of a tribe or the biological children of tribal members and eligible for membership." (*In re O.K.* (2003) 106 Cal.App.4th 152, 154, **157** [Grandmother's indication that "the mother 'may have Indian ancestry'" insufficient to trigger duty of further inquiry.]; *In re Aaron R.* (2005) 130 Cal.App.4th 697, 707 [Grandmother's reference to her membership in specific Native American historical association insufficient to trigger court's duty of further inquiry.].)

After all, paternal grandmother apparently failed to complete the ICWA notification form as requested by the juvenile court and apparently provided two different

names for paternal great-grandmother. Nevertheless, if any further information comes to light on remand regarding specific tribal ancestry, CFS should notify those tribal officials as well. Fourth and finally, CFS already notified the Bureau of Indian Affairs, the required entity to notify when the child's tribal affiliation is unknown.

DISPOSITION

The order terminating parental rights is reversed. The juvenile court is directed to order CFS to make a reasonable inquiry regarding the child's ancestry based upon the information available to it in order to give notice in compliance with ICWA and related federal and state law, and to file the required evidence of compliance. The juvenile court shall then determine whether notice has been properly given. If, after proper inquiry and notice, a tribe claims that the child is an Indian child or is eligible for tribal membership, the juvenile court shall set a new section 366.26 hearing and it shall conduct all further proceedings in compliance with the ICWA and all related federal and state law. If, on the other hand, the juvenile court determines that ICWA does not apply to the proceedings (Cal. Rules of Court, rule 5.482(d)(1)), the original order terminating parental rights, which in all other respects is affirmed, shall be reinstated. (*In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1168; *In re A.G.* (2012) 204 Cal.App.4th 1390, 1393-1394.)

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CODRINGTON
J.

We concur:

HOLLENHORST
Acting P. J.

KING
J.