Filed 3/25/15 In re Robert H. CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re Robert H., a Person Coming Under the Juvenile Court Law.	
DEL NORTE COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. NINA P., Defendant and Appellant.	A142091 (Del Norte County Super. Ct. No. JV-SQ-13-6014)

In this Welfare and Institutions Code section 300[1] dependency proceeding, we previously considered—and denied—a petition for an extraordinary writ filed by appellant Nina P. (Nina), mother of Robert H. (Robert), in which she challenged the trial court's order terminating reunification services at the six-month review and setting a section 366.26 permanency hearing. (*In re Robert H.* (Dec. 30, 2013, A139958) [nonpub. opn.].) Since that time, the court held a permanency hearing, terminating Nina's parental rights and ordering Robert placed for adoption. Nina appeals from that order, asserting only one argument: that respondent Del Norte County Department of

[1] All subsequent statutory references are to the Welfare and Institutions Code except where otherwise noted.

Health and Human Services (the Department) failed to comply with the notice requirements of the Indian Child Welfare Act, 25 United States Code section 1901 et seq. (ICWA). We agree, and we reverse.

BACKGROUND

In our prior opinion, we thoroughly detailed the events leading up to the termination of Nina's reunification services. Because the only issue before us is the adequacy of the Department's ICWA notice, we need not repeat those facts in detail, nor need we belabor what occurred at the section 366.26 hearing. Rather, we briefly summarize the background, providing details where they pertain to the ICWA notice, as follows:

This dependency proceeding commenced in February 2013, when the Department filed a section 300 petition alleging that Nina and Robert's father, James, failed to protect then-one-month-old Robert within the meaning of section 300, subdivision (b), due to their substance abuse issues, the "domestically volatile" nature of their relationship, and their failure to timely seek medical care for Robert.[2]

In a detention report, the Department represented that ICWA "does or may apply," advising the court that Nina had "indicated that there is Comanche 'somewhere' in her family" such that Robert may be an Indian child.

At a February 13 detention hearing, the court inquired of Nina whether she had any Native American ancestry. This colloquy ensued:

"NINA: My grandmother told me one time that there's Comanche in our family line somewhere, but I don't remember exactly where she stated.

"THE COURT: All right. And I'm going to order you to provide all the information you have to the social worker. We have an ICWA 20 form that you need to fill out. [¶] . . . [¶] And is your grandmother still alive?

[2] The petition also alleged that James abused Roman, Robert's half-brother. Neither James nor Roman is involved in this appeal.

"NINA: No. She passed away in 2006.

"THE COURT: Do you have any more information that might help us track down the tribe that your children might be affiliated with?

"NINA: I don't know which of my family members I'd be able to talk to about that because I don't know who has that information.

"THE COURT: Okay. Are you a member of a tribe?

"NINA: No. I can't—I don't currently claim. I don't know if I can.

"THE COURT: All right. And are your mother and father alive?

"NINA: My mother, yes. My biological father I don't know.

"THE COURT: And so this grandmother who gave you this information, that was your maternal grandmother?

"NINA: Yes.

"THE COURT: I'm going to direct you to provide as much information as you can to the department."

The hearing then continued on the issue of detention, concluding with the court ordering Robert detained. That same day, Nina completed a parental notification of Indian status form, representing that she may have Comanche ancestry.

A contested jurisdictional hearing was held on March 15, at the conclusion of which the court sustained the allegations in the petition and continued the matter for disposition.

On March 19, the Department served a notice of child custody proceeding for Indian child (mandatory Judicial Council form ICWA-030) on the Bureau of Indian Affairs, the Department of the Interior, and the Comanche Nation in Oklahoma. The Department identified Nina as Robert's biological mother, listing her "Tribe or band, and location" as "Comanche Nation, Comanche, Continental U.S. Indian Tribes" and her membership or enrollment number as "Comanche Nation."

The Department also provided names for Nina's biological mother and father (Robert's maternal grandmother and grandfather), and listed "Grants Pass, Oregon" as the current address for the grandmother and no address for the grandfather. Other than stating "Bureau of Indian Affairs" for membership or enrollment number, no other information was provided for the maternal grandmother and grandfather.[3]

Lastly, the Department provided names for one maternal great-grandmother and one maternal great-grandfather, identifying the Comanche Nation as the applicable tribe or band. No other information was provided.

In advance of a disposition hearing, the Department submitted a report recommending that Nina be provided reunification services. As pertinent here, it reiterated Nina's representation that she may be of Comanche ancestry and advised that it was in the process of verifying the information. It noted, however, that Nina was a section 300 dependent when she was a minor, and according to the file from that dependency, ICWA did not apply to Nina.

On April 9, the Department submitted to the court copies of two letters. The first was from the Comanche Nation advising that it had determined Robert was "not eligible to be an enrolled member with the Comanche Nation." The second was from the Bureau of Indian Affairs acknowledging receipt of the Department's ICWA notice.

At an April 12 continued dispositional hearing, the court found that proper notice under ICWA had been provided. It then ordered reunification services.

On September 10, the Department submitted a six-month status report in which it recommended that the court terminate Nina's reunification services due to her failure to engage in her case plan, her unstable housing situation, and ongoing positive drug tests. A court appointed special advocate also submitted a report and recommendation, recommending continued services for Nina with both Robert and Roman. As pertinent

[3] No information was provided for paternal relatives, as there was no indication of Indian ancestry on Robert's paternal side.

here, the advocate advised the court that Roman identified the most important people in his life as Nina, Robert, and Nina's sister (Roman's maternal aunt), who lived in Oregon next door to Nina's mother.

Following a contested six-month review hearing on October 2, the court terminated Nina's reunification services and set the matter for a section 366.26 hearing. As noted, Nina petitioned for extraordinary writ relief from that order, which petition we denied.

The matter proceeded to a section 366.26 hearing on June 6, 2014. At the conclusion of the hearing, the court ordered Nina's and James's parental rights terminated and Robert placed for adoption.

This timely appeal followed.

DISCUSSION

ICWA was enacted in 1978 to address the "rising concern . . . 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." (*Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 32; see also 25 U.S.C. § 1902 [ICWA enacted to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families . . . ."].) In recognition of the belief that "it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations, a most important resource" (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469), ICWA thus establishes minimum federal standards, both procedural and substantive, governing the removal of children of Indian ancestry from their families. It creates a preference for giving jurisdiction to the tribe, which has the right to intervene at any point in state court dependency proceedings. (25 U.S.C. § 1911(c); *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 253.)

Strict notice requirements are a fundamental component of ICWA. (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421 ["Notice is a key component of the congressional goal to protect and preserve Indian tribes and Indian families."].) This is so, of course, because " 'the tribe's right to assert jurisdiction over the proceeding or to intervene is meaningless if the tribe has no notice that the action is pending.' [Citation.] 'Notice ensures the tribe will be afforded the opportunity to assert its rights under [ICWA] irrespective of the position of the parents, Indian custodian or state agencies.' [Citation.]" (*Dwayne P. v. Superior Court, supra*, 103 Cal.App.4th at p. 253.) Accordingly, when a social services agency has reason to know that a child involved in a dependency proceeding might be an Indian child, which requires only the suggestion of Indian ancestry, notice of the proceeding must be provided to the child's potential tribe, or to the Bureau of Indian Affairs if the tribal affiliation is unknown. (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 702–703; 25 U.S.C. § 1912(a).)

Fundamental to the notice requirement is the concept that the notice must contain enough information to constitute meaningful notice. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 175.) As such, section 224.2, subdivision (a)(5)(C)[4] specifies that notice to the tribe must include the following: "All names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, place of birth and death, tribal enrollment numbers, and any other identifying information, if known." (Accord, 25 C.F.R. § 23.11(d)(3); see also *In re Francisco W., supra*, 139 Cal.App.4th at p. 703.)

California Rules of Court, rule 5.481 imposes an affirmative duty on a social services agency to interview the extended family to ascertain the required information.

[4] In 2006, the California Legislature incorporated ICWA's requirements into California law, adding, among other provisions, section 224 to the Welfare and Institutions Code. (*In re Autumn K.* (2013) 221 Cal.App.4th 674, 703–704.)

(Cal. Rules of Court., rule 5.481, subd. (a)(4) (Rule 5.481) [social worker must, among other things, interview the parents, Indian custodian, and extended family members to gather information required by the notice]; *In re C.D.* (2003) 110 Cal.App.4th 214, 225 [agency "has a duty to inquire about and obtain, if possible, all of the information about a child's family history" required under regulations promulgated to enforce ICWA].)

Against this statutory framework, we turn to the Department's notice, which Nina contends did not contain enough information to constitute meaningful notice. Specifically, she complains that the notice omitted information about Robert's maternal grandmother, information the Department could readily have obtained had it satisfied its duty of inquiry. We review a challenge to the adequacy of an ICWA notice for substantial evidence (*In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1430), and we agree with Nina that the juvenile court's finding is unsupported by substantial evidence.

As noted, the only information the Department provided for the maternal grandmother—Nina's mother—was her name and an incomplete address ("Grant's Pass, Oregon"). The record contains evidence, however, suggesting that with a minimal amount of inquiry, the Department would have been able to obtain additional information regarding the grandmother. First, the family was involved in a dependency proceeding when Nina was a minor. By its own admission, the Department reviewed that file as part of the instant proceeding and, at a very minimum, would have been able to glean the grandmother's date of birth, which was unquestionably in the file. This directly refutes the Department's claim that "there is no indication that the social worker left out any available information."

Moreover, a court appointed special advocate submitted a report and recommendation in advance of the six-month review hearing. While his recommendation is not relevant here, one particular observation is. He related that Roman (Robert's half-brother) had identified the most important people in his life as Nina, Robert, and his maternal aunt (Nina's sister), who lived next door to the maternal grandmother in

Oregon. As Nina correctly notes, this should have indicated to the Department that Nina was—or had recently been—in contact with her sister, such that her sister—and indeed her mother—were potential sources of information regarding the family's Native American ancestry.

The Department dismisses the significance of the special advocate's observation about the important people in Roman's life, stating, "A child's statements about who is important to him and the child's apparent indication of where those people are located has no bearing on the social worker's ability to obtain Indian ancestry information." This is, simply put, incorrect. Roman's statement indicates that there were maternal relatives accessible to the Department, relatives who might possess information about the family's Native American heritage. This had a *direct* "bearing on the social worker's ability to obtain Indian ancestry information." And we reiterate that the Department had an affirmative duty to interview extended family members to obtain the information (Rule 5.481), not to merely include in the notice "all information known to the social worker," as the Department would have it.

Nina made it clear that what little she knew about her potential Comanche ancestry she had learned from her maternal grandmother, now deceased. It was incumbent upon the Department to interview her extended family members to obtain whatever further details it could about the family's Native American heritage. (Rule 5.481.) The logical place to start was with Nina's sister and mother, and there is nothing in the record suggesting the Department made any effort to obtain information from them. In light of this, we cannot conclude that substantial evidence supports the trial court's finding of proper ICWA notice.

DISPOSITION

The order terminating Nina's parental rights to Robert is conditionally reversed, and the matter is remanded for the limited purpose of providing notice of the proceedings in accordance with the notice provisions of ICWA and related provisions of California

law, and to file all required documentation with the juvenile court. If, after proper notice, a tribe claims that Robert is an Indian child, the juvenile court shall proceed in conformity with all provisions of ICWA. If, on the other hand, no tribe claims him to be an Indian child, the order terminating Nina's parental rights shall be reinstated.

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Richman, J., Acting P.J.

We concur:

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Stewart, J.

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Miller, J.