Filed 6/17/15 In re Y.R. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Y.R. et al., Persons Coming Under the Juvenile Court Law.	B258958 (Los Angeles County Super. Ct. No. DK03980)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ALANA Z., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, D. Zeke Zeidler, Judge. Conditionally affirmed and remanded with directions.

William Hook, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

Alana Z. (Mother) appeals from an order declaring her children, Y.R. and R.R., to be persons described by subdivisions (a) and (b) of section 300 of the Welfare and Institutions Code,[1] removing them from her custody and placing them with their maternal grandmother, Sandy A. Mother does not contest the juvenile court's jurisdiction findings of risk of harm to the children arising from Mother's substance abuse (counts b-1 and b-2), Mother's failure to plan for the children's care and supervision (count b-3), or Father's substance abuse (count b-4). However Mother contends there is no substantial evidence to support the juvenile court's jurisdiction findings based on domestic violence (counts a-1 and b-5). She also claims the court failed to comply with the notice requirements of the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.). We conditionally affirm the order; we remand the case for compliance with the ICWA notice requirements.

FACTUAL AND PROCEDURAL BACKGROUND

The Department of Children and Family Services (DCFS) received a referral regarding the family on February 10, 2014. Sandy A., maternal grandmother, called the Child Abuse Hotline to report that Mother had suffered a drug relapse about six months earlier and was using methamphetamine, heroin and alcohol. Mother, who lived with Sandy A., would leave six-year-old Y.R. and four-year-old R.R. home alone without notifying Sandy A. Mother would forget to feed R.R. while Y.R. was at school. Mother took the children with her when she went out with friends to use drugs. Mother had threatened to take the children away from Sandy A.'s home, and Sandy A. was concerned for their safety. On the date of the report, the children were staying with their father, David R. (Father),[2] and their paternal grandmother, S.V.

---

1 Unless otherwise specified, all statutory references are to the Welfare and Institutions Code.

2 Father is not a party to this appeal.

A Children's Social Worker (CSW) interviewed Mother and Father, who both admitted past drug use but denied they were currently using drugs. The CSW referred both parents for drug testing. Mother failed to report to the DCFS-approved drug testing site. Father tested positive for methamphetamine, amphetamine and marijuana. Both parents had extensive criminal histories, including drug-related offenses and domestic violence.

DCFS filed a section 300 petition on March 6, 2014, alleging under subdivision (b) that the children were at risk due to the parents' substance abuse and due to Mother's leaving the children with Sandy A. without making any plan for their care and supervision.

Both parents filled out notification of Indian Status forms. Mother stated that she had no Indian ancestry as far as she knew. Father stated that he may have Indian ancestry through the paternal grandmother in the Apache tribe of New Mexico.

At the detention hearing, the court asked Father who knew more about his Indian ancestry, him or his mother. When he said his mother, the court asked her whether she knew which Apache tribe she was from. S.V. said, "No. But, actually, we're all from another tribe here." The court asked if she knew which one, and she said she did not know. Father volunteered that it was Cherokee. The court asked S.V. about being Cherokee, and she said she did not remember, "[b]ut they're from Colorado." She added, "We always knew we had some Apache, but we didn't know we had other Indian in us."

The following conversation then took place:

"THE COURT: Okay. Of the eight Apache, the only ones that are New Mexico —

"[S.V.]: Or Colorado.

"THE COURT: —or Colorado are the Jicarilla, the Mescalero. Considering that's Mescalero, New Mexico. And that is it. And are you registered with any tribe?

"[S.V.]: No. But now I do kind of remember a little bit about the other Indian, because we always used to go. My dad was born in New Mexico; mom in Colorado. So

my mother's family is from Colorado, is that we would go up to Mesa Verde, and we're related to those Indians. That's the Anasazi Navajo.

"THE COURT: Anasazi Navajo, which I don't think is federally recognized.

"[S.V.]: We're not registered with them.

"THE COURT: . . . And as far as you know, were either of your parents registered with any tribe?

"[S.V.]: No.

"THE COURT: So who told you about — well, you used to go up and visit.

"[S.V.]: Yeah. But we recently did some 'ancestrial' blood lines through my uncle. So we found out more about our blood line. So we also found out about some other interesting stuff.

"THE COURT: Have any of you applied for membership?

"[S.V.]: No, but I've thought about it.

"THE COURT: At this point, none of the four generations are registered. The court is finding that the court does not have reason to know or believe the children are Indian children as defined by the Indian Child Welfare Act. The Indian Child Welfare Act does not apply. But the [DCFS] is ordered to investigate Indian ancestry, starting with an interview of the paternal grandmother. . . ."

The court found a prima facie case for detention and ordered the children detained with Sandy A. and her husband, M.A. It ordered DCFS to provide Mother and Father with referrals for drug and alcohol programs and testing.

On May 20, 2014 DCFS filed a supplemental report indicating that a dependency investigator spoke to the paternal grandmother. S.V. again stated that her family had Indian ancestry in the Mesa Verde tribe. She stated her uncle had taken a DNA test and confirmed Indian heritage from the Mesa Verde tribe and three other tribes, but did not know the other tribes.

At the May 20 hearing, the juvenile court reviewed the supplemental report and found, "I have the ICWA interview of the paternal grandmother. She indicates that the family knows one of the tribes and that that tribe is not federally recognized. The uncle

did a DNA test that identified both that tribe and three others, but she couldn't remember what tribes they were. At this point, any American Indian ancestry in those three tribes is too vague, attenuated, and remote." The court asked if anyone wanted to be heard on the ICWA issue. When no one responded, the court stated the "[t]he March 6th findings remain, and the Court is finding that the ICWA investigation is complete."

DCFS filed a first amended petition on July 9. It added allegations under subdivisions (a) and (b) of section 300 that Mother and Father "have a history of domestic violence and engaging in violent altercations," which put the children at risk of physical and emotional harm. The petition alleged acts of domestic violence occurring in 2007 and 2010. The court dismissed the original petition.

On July 11, Mother filed notification of Indian status, stating that she may have Oglala Sioux ancestry through Sandy A. The court ordered DCFS to investigate the matter and provide notice to the Oglala Sioux tribe if appropriate.

In a supplemental report filed on July 17, DCFS reported that Mother had been arrested on May 12 for possession of a controlled substance and controlled substance paraphernalia. She was in a car with hypodermic needles, a rock cocaine pipe, a methamphetamine pipe, and methamphetamine. In addition, Mother had failed to drug test or complete drug treatment.

DCFS also reported that Father and Mother maintained a relationship with one another and were attending a relationship workshop. Father was currently in a program for batterers and acknowledged that domestic violence between him and Mother was due to their drug use. Per DCFS, Sandy A. reported problems with Mother's visitations including no-shows and late arrivals. Sandy A. reported that Mother and Father made joint phone calls to the children, during which they made inappropriate comments. Father had told Sandy A. that Mother had threatened to "take her children," and threatened to shoot Father in the head. Mother harassed Sandy A. by repeated telephone calls and hang-ups. S.V. reported she had heard that Mother went to Father's house in late May 2014. Mother was honking and screaming about her keys. Father was trying to

calm her down but had to call the police. Mother threatened S.V. on the phone that she was going to come over to S.V.'s home and take the kids.

Additionally, a dependency investigator spoke to Sandy A. regarding her Indian ancestry. She stated, "We don't have enough to be considered eligible in any tribe." She stated she had heard about Oglala Sioux ancestry from her grandparents, who were "all dead now, but they didn't know anything either. I've been doing genealogy for 20 years now, and I haven't been able to trace any connection. The only thing I come up with is Cherokee through a 5th or 6th cousin, and there's no information there about any enrol[l]ment. There's nothing there."

At the jurisdiction/disposition hearing on July 18, the juvenile court amended the domestic violence allegations to delete reference to the previous incidents of domestic violence, explaining, "Regarding the violent altercations, I think that sustaining the count with all of the details in it can be misleading since most of the details about the father really ignore the dynamic between the parents."

The section 300, subdivision (a), allegation at issue here states, as amended: "The children [Y.R. and R.R.]'s mother Alana [Z.] and father David [R.] have a history of domestic violence and engaging in violent altercations. On numerous prior occasions, the children . . . were exposed to violent confrontations between their mother . . . and father . . . . Such violent altercations on the part of the . . . mother . . . and father . . . endangers the children's physical and emotional health and safety and places the children at risk of physical and emotional harm, damage and danger." The section 300, subdivision (b), allegation, as amended, reads identically.

The court sustained the petition as amended finding the children to be persons described under section 300, subdivisions (a) and (b). The court found by clear and convincing evidence that removal of the children from the parents was necessary to protect the children's physical and emotional health. It removed the children from the parents' custody and ordered them to remain placed with Sandy A.

The court ordered the parents to participate in individual counseling, parenting and domestic abuse programs, drug and alcohol counseling, and random drug and alcohol testing.

DISCUSSION

A. *Whether Substantial Evidence Supports the Jurisdiction Finding that the Children Were at Risk of Harm Due to Mother's Domestic Violence*

"We review the juvenile court's jurisdictional findings and orders for substantial evidence. [Citations.] Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value. [Citations.] We draw all reasonable inferences from the evidence to support the findings and orders of the juvenile court. We adhere to the principle that issues of fact, weight and credibility are the provinces of the juvenile court. [Citations.]" (*In re R.C.* (2012) 210 Cal.App.4th 930, 940-941; accord, *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.)

Jurisdiction may be asserted under subdivision (a) of section 300 if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. . . ." Under subdivision (b) of section 300, jurisdiction may be asserted if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . ."

"Exposure to domestic violence may serve as the basis of a jurisdictional finding under section 300, subdivision (b). . . . '"[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it." [Citation.] Children can be "put in a position of physical danger from [spousal] violence" because, "for example, they could wander into the room where it was occurring and be

accidentally hit by a thrown object, by a fist, arm, foot or leg . . . ." [Citation.]' [Citation.] Further, . . . '"[b]oth common sense and expert opinion indicate spousal abuse is detrimental to children." [Citations.]' [Citation.]" (*In re R.C.*, *supra*, 210 Cal.App.4th at pp. 941-942).

"Although many cases based on exposure to domestic violence are filed under section 300, subdivision (b) [citations], section 300, subdivision (a) may also apply." (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.) "Domestic violence is nonaccidental," and even when directed at a spouse or cohabitant, it can place the children "at substantial risk of suffering serious physical harm." (*Id*. at p. 600.) Under such circumstances, it can serve as the basis for jurisdiction under subdivision (a) of section 300. (*Id*. at p. 601.)[3]

Jurisdiction findings under section 300 require evidence that the child is subject to a defined risk of harm at the time of the hearing. (*In re T.V.* (2013) 217 Cal.App.4th 126, 133; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) Mother contends that there is no substantial evidence to support the jurisdiction findings under subdivisions (a) and (b) of section 300 that the children were at risk of harm due to domestic violence. She argues that "[w]hile it is true the parents had a history of domestic violence, it was not relevant to jurisdiction as the most recent incident was over four years ago. . . . A four-year-old incident of domestic violence is not substantial evidence that a child is at risk of harm under section 300."[4]

---

[3] At least one prior incident of domestic violence occurred in the presence of the children and exposed them to risk of physical harm. In 2010, Father kicked out the window of Mother's car and glass was knocked into the vehicle in which the children were seated.

[4] DCFS claims that we need not decide this issue in light of the unchallenged jurisdiction findings based on the parents' drug abuse. However, we are persuaded by Mother's argument that we should decide the issue because the "jurisdictional findings as to [Mother based on domestic violence], if erroneous, could have severe and unfair consequences to [Mother] in future family law or dependency proceedings" (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716).

It is true that past incidents of domestic violence alone, while a predictor of future violence (*In re R.C., supra*, 210 Cal.App.4th at p. 942; *In re E.B.* (2010) 184 Cal.App.4th 568, 576), are insufficient to support a jurisdiction finding based on domestic violence. In *In re Daisy H., supra*, 192 Cal.App.4th 713, the court noted that "[p]hysical violence between a child's parents may support the exercise of jurisdiction under section 300, subdivision (b) but only if there is evidence that the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm. [Citations.]" (*Id*. at p. 717.)

In *In re Daisy H.*, the prior acts of domestic violence occurred two or seven years before the petition was filed; there was no evidence that the children were exposed to the past violence, and there was no evidence of any ongoing violence between the parents who were separated. (*In re Daisy H., supra*, 192 Cal.App.4th at p. 717.) The court concluded this "evidence was insufficient to support a finding that past or present domestic violence between the parents placed the children at a current substantial risk of physical harm." (*Ibid*.; see also *In re Jesus M.* (2015) 235 Cal.App.4th 104, 113 [no substantial evidence to support domestic violence jurisdiction finding where "the parents had long been separated, the two incidents [the m]other could recall had occurred more than three years earlier, and there was no evidence of current violent behavior"].)

In re Daisy H. is distinguishable. Here, although Mother and Father separated after the prior incidents of domestic violence, the evidence shows the parents reconciled to some extent after the children were removed from their custody. They maintained a relationship with one another and were attending a relationship workshop. Father acknowledged that domestic violence between him and Mother was due to their drug use.

The evidence showed Father and Mother were currently using drugs, the trigger for their domestic violence, and the potential for violence was returning. In one recent incident recounted by Sandy A. and S.V., Father called the police because Mother drove up to his house, honking her horn and yelling that he had her keys. When he went out to try to calm her down, she threatened to shoot him in the head, or to have him shot in the

head. It was after this incident that DCFS filed the amended petition alleging jurisdiction based on domestic violence.

Despite the fact that the previous domestic violence incidents happened four years earlier, the evidence showed there was a current risk of domestic violence that placed the children at risk of harm. The jurisdiction findings based on domestic violence are therefore supported by substantial evidence. (*In re Daisy H.*, *supra*, 192 Cal.App.4th at p. 717.)

In light of this conclusion, we also reject Mother's contention that the juvenile court abused its discretion in requiring her to participate in therapy for domestic violence. The requirement was "designed to eliminate those conditions that led to the court's finding that the [children were persons] described by Section 300." (§ 362, subd. (d); see *In re Nolan W.* (2009) 45 Cal.4th 1217, 1229; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 172.)

B. ***Whether the Juvenile Court Failed To Ensure Compliance with the Notice Requirements of ICWA***

"In the context of juvenile dependency proceedings, notice to Indian tribes is governed by both federal and state law. ICWA provides that if 'the court knows or has reason to know that an Indian child is involved' in an involuntary state court proceeding, 'the party seeking foster care placement of, or termination of parental rights to, an Indian child shall notify . . . the Indian child's tribe . . . .' (25 U.S.C. § 1912(a).) Section 224.2, subdivision (b) reiterates that '[n]otice shall be sent whenever it is known or there is reason to know that an Indian child is involved, and for every hearing thereafter . . . unless it is determined that [ICWA] does not apply to the case [in accordance with Section 224.3].'" (*In re Alice M.* (2008) 161 Cal.App.4th 1189, 1197.)

Under section 224.3, subdivision (a), DCFS has a "continuing duty to inquire whether a child for whom a petition under Section 300 . . . has been[] filed is or may be an Indian child . . . ." The notice requirements are triggered when the court has reason to know that an Indian child is involved in the proceedings. (*Id.*, subd. (c).) Under

subdivision (b) of section 224.3, "[t]he circumstances that may provide reason to know the child is an Indian child include, but are not limited to, the following: [¶] (1) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family provides information suggesting the child is a member of a tribe or eligible for membership in a tribe or one or more of the child's biological parents, grandparents, or great-grandparents are or were a member of a tribe."

In Mother's view, once Father and then she submitted notification of Indian Status forms stating that the children may have Indian ancestry, the juvenile court was required to order DCFS to provide notice to the various tribes. In support of her position, she relies on *In re Alice M.*, *supra*, 161 Cal.App.4th 1189.

In *In re Alice M.*, the mother filled out a form stating that Alice "'is or may be a member of, or eligible for membership in, a federally recognized Indian tribe,'" namely "'American Indian, Navajo-Apache.'" (*In re Alice M.*, *supra*, 161 Cal.App.4th at p. 1194.) The social services agency sent notice "to all federally recognized Navajo and Apache tribes" and "to the Bureau of Indian Affairs." (*Ibid*.) "Eight tribes responded to the notice by indicating that Alice was not eligible for tribal membership. Three tribes did not respond[.]" (*Ibid*.) The mother claimed on appeal that the agency failed to provide adequate notice to the three tribes that did not respond. (*Id*. at p. 1195.)

The court concluded that the information the mother provided "gave the court reason to know that Alice *may be* an Indian child. In completing the JV-130 form, [the mother] stated that Alice is or may be a member of, or eligible for membership in, an Apache and/or Navajo tribe. The ambiguity in the form and the omission of more detailed information, such as specific tribal affiliation or tribal roll number, do not negate [the mother's] stated belief that Alice may be a member of a tribe or eligible for membership." (*In re Alice M.*, *supra*, 161 Cal.App.4th at p. 1198.) The court rejected the agency's claim "that the information provided in this case triggered only a duty of further inquiry, and not the specific notice requirements of section 224.2." (*Ibid*.) Under section 224.3, subdivision (b), so long as the mother provided information *suggesting* Alice was

a member of or eligible for membership in an Indian tribe, notice was required. (*Id*. at pp. 1199-1201.)

Here, Father stated that he may have Indian ancestry through the paternal grandmother in the Apache tribe of New Mexico. S.V. confirmed that "[w]e always knew we had some Apache" in addition to other Indian ancestry. Father identified the other Indian ancestry as Cherokee. S.V. added that they were related to the Anasazi Navajo or Mesa Verde Indians. Under *In re Alice M.*, this information was sufficient to require notification of the federally recognized tribes. (*In re Alice M.*, *supra*, 161 Cal.App.4th at p. 1198.)

That "none of the four generations [were] registered" with a tribe does not eliminate the notice requirement. DCFS argues that "[t]he statutory language of ICWA expressly limits the number of generations the court must consider in determining whether there is reason to know a child is an Indian child, i.e., the court need only go back as far as the great-grandparents." This characterization of the statutory language is not accurate. Nothing in section 224.2 or 224.3 limits the notice requirement to cases in which a child's parent, grandparent, great-grandparent, or great-great-grandparent was registered with a tribe.

Section 224.2, subdivision (a)(5)(C), provides that the notice to the tribe shall include: "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, places of birth and death, tribal enrollment numbers, and any other identifying information, if known." In *In re J.M.* (2012) 206 Cal.App.4th 375, on which DCFS relies, the mother challenged the sufficiency of the ICWA notices because they did not include the names of the child's great-great-grandparents. (*Id*. at p. 378.) The court addressed the question whether this information was required to be included in the notices despite the language of section 224.2, subdivision (a)(5)(C), and its federal counterpart.

In re J. M. provides no support for the position taken by DCFS in this case. That court analyzed only whether the information included on the notifications to the Indian

tribes was sufficient. Its holding that notice is not required to include information about ancestors more remote than the dependent child's great-grandparents (*In re J.M.*, *supra*, 206 Cal.App.4th at p. 380) does not stand for the proposition that *no* notice was required when Mother and Father here provided information suggesting the children were members of a tribe or eligible for membership in a tribe. *In re J.M.* does not hold that, as a matter of law, a child is not an Indian child if a specified number of previous generations were not members of the tribe. (See *id*. at p. 381 [a decision is authority "only for the points actually considered and decided"].) The tribe itself is the final arbiter of its membership. (*Id*. at p. 382.)

Subdivision (b)(1) of section 224.3 is written in the disjunctive, requiring notice if "a member of the child's extended family provides information suggesting the child is a member of a tribe or eligible for membership in a tribe *or* one or more of the child's biological parents, grandparents, or great-grandparents are or were a member of a tribe." (Italics added.) The "use of the word 'or' in a statute indicates an intention to use it disjunctively so as to designate alternative or separate categories." (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 680; accord, *Boy Scouts of America National Foundation v. Superior Court* (2012) 206 Cal.App.4th 428, 444). Thus, subdivision (b)(1) of section 224.3 provides two separate bases on which notice may be required: information suggesting the child may be eligible for membership *or* membership of the child's parents, grandparents, or great-grandparents.

As previously stated, Father provided information suggesting Y.R. and R.R. may be eligible for membership in a federally recognized tribe, mentioning both Apache and Cherokee. S.V. also mentioned the children may have Indian ancestry in the Mesa Verde tribe, and three other tribes which she could not name. The court found that the Mesa Verde tribe was not a federally recognized tribe, and that the information about the three unnamed tribes was "too vague, attenuated, and remote." However the additional information provided by S.V. did not negate the suggestion regarding Apache or Cherokee ancestry so as to alleviate the requirement for any notice to be given.

Mother claimed to have Oglala Sioux ancestry through Sandy A. This was also information suggesting the children were members of a tribe or eligible for membership in a tribe. DCFS spoke to Sandy A., who stated that she had heard about Oglala Sioux ancestry from her grandparents, but had no additional information. Sandy A. stated: "We don't have enough to be considered eligible in any tribe." She stated she had been looking into her genealogy and had not "been able to trace any connection. The only thing I come up with is Cherokee through a 5th or 6th cousin, and there's no information there about any enrol[l]ment. There's nothing there."

These facts are not dissimilar to those presented in *In re Damian C.* (2009) 178 Cal.App.4th 192. In that case, the mother stated she may have Indian ancestry as follows: "'Pasqua Yaqui—enrollment is currently closed' and 'M[aternal] G[rand] F[ather] Felipe Manuel C[.] is descended from tribe.'" (*Id*. at p. 195.) Manuel C. was later interviewed. He stated he had heard his father was either Yaqui or Navajo, but was later informed the family did not have Indian heritage. Manuel C. could not identify which Yaqui or Navajo tribe or band the family might be related to or where the tribe or band was located. He also stated the family had been trying to research its possible Indian heritage, but kept "hitting dead ends" due to lack of sufficient information. (*Id.* at p. 196.) The court found that ICWA notice was nonetheless required. The lack of sufficient information to determine whether the family in fact had Indian ancestry "did not release the Agency from the obligation to provide notice." (*Id.* at p. 199.) Here, despite Sandy A.'s comments, the juvenile court had been provided sufficient information to trigger the notice requirements. As previously stated, the question of membership in the tribe rests with the tribe itself.

We have concluded that the juvenile court erred in not directing DCFS to provide notice under ICWA. However, we have also concluded that absent ICWA error, the juvenile court's jurisdiction and disposition orders were supported by substantial evidence. Here, reversing the jurisdiction and disposition orders would not be in the best interests of Y.R. and R.R. if they are not in fact Indian children. (See *In re Brooke C.* (2005) 127 Cal.App.4th 377, 385.) Notably, Mother does not ask that the jurisdiction or

disposition orders be reversed, but only that the juvenile court's findings and order based on domestic violence be stricken. Neither does Mother request reversal of the jurisdiction or disposition order based on ICWA noncompliance, but only requests that the matter be remanded to juvenile court with directions that the juvenile court order DCFS to comply with ICWA notice provisions.

Under these circumstances, we find it appropriate to conditionally affirm the jurisdiction and disposition orders, and also order a limited remand to the juvenile court for it to order DCFS to comply with the notice requirements of ICWA. If, after proper notice is given under ICWA, Y.R. and R.R. are determined not to be Indian children, our affirmance stands. If after proper notice, Y.R. and R.R. are determined to be Indian children, the juvenile court must vacate its jurisdiction and disposition orders and proceed in conformity with all provisions of ICWA.

DISPOSITION

The order is conditionally affirmed. The case is remanded with directions that the juvenile court order DCFS to comply with the notice provisions of ICWA. If no response to the ICWA notices is received, or if the response is negative, no further action need be taken. If after proper notice, Y.R. and R.R. are determined to be Indian children, the juvenile court is ordered to vacate its jurisdiction and disposition orders, and to proceed in conformity with all provisions of ICWA.

STROBEL, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.