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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re M.B.-C., et al., Persons Coming Under the Juvenile Court Law.	
SOLANO COUNTY DEPARTMENT OF HEALTH AND SOCIAL SERVICES, Plaintiff and Respondent, v. C.C., Defendant and Appellant.	A147812 (Solano County Super. Ct. No. J42534, J42535)

C.C. (Father), father of two-year-old twins M.B.-C. and G.B.-C., appeals from the juvenile court's order terminating his and the twins' mother, N.B.-W.'s (Mother) parental rights to the children. He contends the court erred in not ensuring that the Solano County Department of Health and Social Services (the Department) complied with the notice requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). We conditionally reverse the order and remand for additional notice under ICWA.

FACTUAL AND PROCEDURAL BACKGROUND[1]

On June 2, 2014, a dependency petition was filed on behalf of then-two-month-old M.B.-C. and G.B.-C., alleging Father and Mother had failed to provide a safe home for

[1]Because Father does not challenge the court's substantive findings or orders, this section will focus on the facts and procedures relating to ICWA compliance.

their children. There was trash, piles of clothes, and dishes covering the floors and surfaces of the family home. The infants were unsupervised, covered in blankets, propped on pillows on a lower bunk bed, with bottles in their mouths. Their crib was filled with debris. Mother reported that Father had caused her injuries during domestic violence incidents, which included punching her in the back while she was pregnant, locking her inside his mobile home, restraining her, and grabbing her face. Father had a substance abuse history and had been arrested for possession of methamphetamines. Mother had mental health needs that interfered with her ability to care for the children. She " 'rag[ed]' in the home" and destroyed property, and was confrontational and aggressive towards Father.

An Indian Child inquiry attachment to the petition indicated that Mother was an enrolled member of the Chippewa Turtle Mountain Indian Tribe in North Dakota. She did not have her enrollment number at the time but said she would provide it. Father "thought his mother had Native American Ancestry from 'southern Mexico.' " The paternal grandmother reported that "she believed she had Indian Ancestry but did not know the tribe."

According to a June 3, 2014 detention report, M.B.-C. and G.B.-C. were living with their paternal aunt and uncle. The paternal grandfather had reported he had no Native American ancestry. Mother's parents and all of her grandparents were deceased, and all of Father's grandparents were deceased. The juvenile court ordered the children detained, and scheduled a jurisdictional hearing for June 24, 2014.

The parents submitted ICWA-20, Parental Notification of Indian Status, on June 3, 2014. Mother stated she was a member of the Turtle Mountain Indian Reservation North Dakota Chippewa. Father stated he had no Indian ancestry. On June 13, 2014, the Department filed an Advisement of Placement stating the twins were living in the home of an approved relative. On June 17, 2014, the Department filed ICWA-030, Notice of Child Custody Proceeding for Indian Child, as to both children. The notice was sent to the Bureau of Indian Affairs (BIA), the Turtle Mountain Band of Chippewa in North Dakota, and 23 other federally recognized Chippewa and Ojibwe tribes.

On June 23, 2014, the Department filed a jurisdiction/disposition report, recommending that the juvenile court adjudge the children dependents, find Father to be the presumed Father, and offer family reunification services to the parents. Mother reported no new ICWA information. Mother was receiving mental health services and had supervised visits with the children twice a week. Father had not visited the children and said he would not be able to care for them because he did not have an income or a stable home.

At a July 28, 2014 jurisdictional hearing, the juvenile court sustained the petition, as amended, and took jurisdiction over the children. Disposition was also resolved, with the children remaining outside the parents' home and reunification services being provided to both parents.

On September 2, 2014, the Department filed ICWA compliance documents, including return receipts from the ICWA-030 forms sent and response letters from many of the tribes. Turtle Mountain Band of Chippewa Indians reported that Mother was enrolled in the tribe with a three-eighths blood quantum, but that because the threshold requirement for membership under the Constitution Bylaws of the tribe is one quarter or more Indian blood (and her children would have a three-sixteenths blood quantum), neither M.B.-C. nor G.B.-C. was eligible for enrollment. The other tribes that responded also determined the children were ineligible for enrollment. On September 29, 2014, the Department filed additional letters received from the Hannahville Indian community, which determined the children were not enrolled and not eligible for enrollment. At that point, all tribes had sent return receipts, and all but a few tribes had sent response letters. At an October 28, 2014 hearing, the juvenile court found ICWA did not apply to the children.

On November 14, 2014, the Department filed an Advisement of Case Plan Update, stating the children had been returned to Mother. The Department recommended continuing family maintenance services to Mother and terminating reunification services to Father, whose progress in his case plan was minimal. No new information regarding the children's Indian ancestry was reported. On February 25, 2015, the juvenile court

terminated reunification services to Father and provided him with one supervised visit per week.

On February 25, 2015, the Department filed letters from the Grand Traverse Band of Ottawa and Chippewa Indians stating the children were not members of the tribe and were not eligible for enrollment.

On July 7, 2015, the Department filed a detention report and a supplemental petition under Welfare and Institutions Code, section 387.[2] According to the report, Mother was arrested on multiple counts including child endangerment and abandonment after she left the children unattended and the children were found crying, dirty, and smelling of urine. There were clothes and garbage on the floor, a gallon of milk that had been left out and was curdled from the heat, and feces-filled diapers and animal feces that were attracting flies. Father, who had not visited the children despite efforts to schedule visits, said he did not wish to be considered for custody of the children at this time. There was no new information as to Indian ancestry. The juvenile court detained the children.

The Department submitted a section 387 jurisdiction/disposition report, recommending that the children remain detained, and that no additional reunification services be provided to either parent. No new information was obtained contradicting the juvenile court's prior finding that ICWA did not apply.

The jurisdictional and dispositional hearing was set for contest, and was continued for the filing of a brief regarding the provision of reunification services. On October 19, 2015, the juvenile court sustained two of the allegations in the supplemental petition, ordered that the children remain detained, and denied additional reunification services to both parents.

A permanency hearing under section 366.26 (366.26 hearing) took place on March 14, 2016. The children were doing very well in the care of their maternal uncle

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

and aunt who were willing to adopt them, while continuing contact with Mother, especially during the holidays. Father had not seen the children in 16 months despite continued efforts to arrange visitation. There was no new information to report under ICWA. Following the hearing, the juvenile court terminated Mother's and Father's parental rights to M.B.-C. and G.B.-C. and freed them up for adoption.

DISCUSSION

Father contends the juvenile court erred in failing to ensure the Department complied with the notice provisions of ICWA. Specifically, he argues the notices that were sent to the Bad River Band/Lake Superior and Chippewa Cree tribes were not addressed correctly. We agree that additional notice should be provided to the Chippewa Cree tribe.

Where the juvenile court knows or has reason to know that an Indian child is involved, ICWA requires the Department to notify the tribe of the pending proceedings and its right of intervention. (25 U.S.C. § 1912(a); see Cal. Rules of Court, rule 5.481.) Under California law, the Department must send notice, return receipt requested, to "all tribes of which a child may be a member or eligible for membership." (§ 224.2, subd. (a)(3).) If the identity or location of the tribe cannot be determined, the same procedure should be used with respect to notice to the BIA. (*In re Marinna J.* (2001) 90 Cal.App.4th 731, 739–740, fn. 4.)

Notice to the tribe must be sent to the tribal chairperson, unless the tribe has designated another agent for service. (§ 224.2, subd. (a)(2).) The designated tribal agents for service are published in the Federal Register. (See *In re J.T.* (2007) 154 Cal.App.4th 986, 994; *In re Alice M.* (2008) 161 Cal.App.4th 1189, 1201; 25 C.F.R. § 23.12 (2007) [designated agents and addresses are published in the Federal Register].) "The purpose of the requirement that notice be sent to the designated persons is to ensure that notice is received by someone trained and authorized to make the necessary ICWA determinations, including whether the minors are members or eligible for membership and whether the tribe will elect to participate in the proceedings." (*In re J.T.*, *supra*, 154 Cal.App.4th at p. 994.) The Department must file with the juvenile

court the ICWA notice, return receipts, and any response received from the BIA and tribes. (§ 224.2, subd. (c); Cal. Rules of Court, rule 5.482(a)(1); *In re Marinna J.*, *supra*, 90 Cal.App.4th at pp. 739–740, fn. 4.) We review the court's finding that proper ICWA notice was given for substantial evidence. (*In re J.T.*, *supra*, 154 Cal.App.4th at p. 991.)

Here, as to the Bad River Band tribe, the notice for G.B.-C. was sent to Bad River Band of L. Superior Tribe, Pat Blanchard, ICWA Representative, P.O. Box 55, Odanah, Wisconsin 54861-0055,[3] while the address designated by the Federal Register at that time was Bad River Band of Lake Superior Chippewa, Esie Leoso-Corbine, ICWA Director, P.O. Box 55, Odanah, Wisconsin, 54861. (79 Fed.Reg. 3225 (January 17, 2014).) Return receipts were received for both M.B.-C. and G.B.-C.

Although notice was sent to the "ICWA Representative" instead of to the "ICWA Director," courts have held that "[r]equiring literal compliance solely by reference to the names and addresses listed in the last published Federal Register would exalt form over substance," and that the juvenile court must instead determine "as a matter of fact from all the circumstances whether appropriate notice has been given." (*In re N.M.* (2008) 161 Cal.App.4th 253, 268; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1531, 1532 [ICWA notices do not have to be perfect; de minimus deficiencies and inaccuracies are not cause for reversal].) The fact that notice was sent to the "ICWA Representative" at the address specified by the Federal Register gave rise to an inference that it was received by someone at the tribe who was trained and authorized to make the necessary ICWA determinations for the tribe.

As to the Chippewa Cree tribe, the notice for G.B.-C. was sent to Chippewa Cree Indians, Brenda Gardiner, ICWA Rep, RR1, P.O. Box 544, Box Elder, Montana 59521. According to the Department's proof of service, the notice for M.B.-C. was sent to the same address. The address specified for the tribe in the Federal Register was Chippewa Cree Tribe of the Rocky Boy's Reservation of Montana, Christina Trottier, ICWA

[3]The return receipt for M.B.-C. shows his notice was sent to Bad River Band/Lake Superior, Pat Blanchard, ICWA Representative, P.O. Box 39, Odanah, Wisconsin 54864-0055.

Director, 31 Agency Square, Box Elder, MT 59521. (79 Fed.Reg. 3225 (January 17, 2014).) Although the city, state and zip code were the same, the addresses were completely different.

The Department asserts the notice was nevertheless adequate because the P.O. Box address it used to provide notice to the Chippewa Cree tribe was the one that was listed on the State Department of Social Services's (CDSS) website.[4] The Department relies on *In re N.M.*, *supra*, 161 Cal.App.4th at page 268, in which the court held the child welfare agency did not err in using the names and addresses provided by CDSS in notifying the relevant tribes, stating: "The Department should not be hamstrung by limitation to only the names and addresses provided for the tribes in the Federal Register if a more current or accurate listing is available and is reasonably calculated to provide prompt and actual notice to the tribes."

While requiring the Department to adhere to an address listed in the federal register when other, more accurate information is available elsewhere "would exalt form over substance," (*In re N.M.*, *supra*, 161 Cal.App.4th at p. 268), we must still respect the Department of Interior's primary authority in administering ICWA (*In re S.B.* (2005) 130 Cal.App.4th 1148, 1157 [the federal regulations implementing ICWA "are binding in all federal and state courts by virtue of the supremacy clause"]). ICWA notice may depart from the addresses listed in the federal register, but only when the alternative address is "more current or accurate." (*In re N.M.*, *supra*, 161 Cal.App.4th at p. 268.)

Here, there is nothing in the record indicating the CDSS address the Department used was more current or accurate than the address listed in the Federal Register. Thus,

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[4]We take judicial notice of CDSS's list as requested by the Department, and agree the P.O. Box address the Department used to provide notice to the tribe is listed there. (<http://www.childsworld.ca.gov/Res/pdf/CDSSTribes.pdf> [as of Oct. 1, 2016].) We note that at the top of the list, it states: "*Please be aware that this CDSS Tribal Government Listing is NOT to be used in lieu of the official federal Bureau of Indian Affairs' (BIA) List of Designated Tribal Agents for Service of Notice of court proceedings under the Indian Child Welfare Act (Federal Register/Notices), but rather it should be used in conjunction with the BIA's list in order to comply with federal regulations while seeking to ensure the most current address is used*." (Italics in original.)

while the return receipt received for the notice sent for G.B.-C. shows that someone at the CDSS address received the notice, there is no basis to conclude the notice was received by someone at the Chippewa Cree tribe who was "trained and authorized to make the necessary ICWA determinations, including whether the minors are members or eligible for membership and whether the tribe will elect to participate in the proceedings." (*In re J.T.*, *supra*, 154 Cal.App.4th at p. 994.)

The Department claims the error was harmless because Mother's tribe responded stating the children were not eligible to enroll because they did not meet the blood quantum requirements of that tribe. She cites no authority in support of her implicit contention that the response letter shows the children would not have been eligible for enrollment in any other Chippewa tribe. She has failed to establish the error was harmless.

DISPOSITION

The order terminating N.B.-C. and C.C.'s parental rights to M.B.-C. and G.B.-C. is conditionally reversed, and the matter is remanded to the juvenile court, which is directed to order the Department to send proper ICWA notice to the Chippewa Cree tribe. If, after receiving notice required by ICWA, no response is received from the tribe, or a response is received indicating the children are not Indian children, the order terminating parental rights shall be immediately reinstated and such further proceedings as are appropriate shall be conducted. If the tribe determines the children are Indian children, the order terminating parental rights shall be vacated and a new 366.26 hearing shall be held in compliance with the ICWA procedural and evidentiary requirements. In all other respects, the order is affirmed.

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McGuiness, P.J.

We concur:

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Pollak, J.

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Siggins, J.