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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

In re E.J. et al., Persons Coming Under
the Juvenile Court Law.

C054433

YOLO COUNTY DEPARTMENT OF EMPLOYMENT
AND SOCIAL SERVICES,

(Super. Ct. Nos.
JV04272, JV04273,
JV04359)

Plaintiff and Respondent,

v.

E.J. et al.,

Defendants and Appellants.

E.J. (father) and V.B. (mother), the parents of E.J., J.J., and M.J. (minors), appeal from an order of the juvenile court terminating the parental rights of father and mother. (Welf. & Inst. Code, §§ 366.26, 395.)¹ Father and mother contend that the Yolo County Department of Employment and Social Services (DESS) and the juvenile court violated notice requirements of

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

the Indian Child Welfare Act of 1978 (ICWA). (25 U.S.C. § 1901 et seq.) Agreeing with that claim, we shall reverse and remand for proper notice.

FACTUAL AND PROCEDURAL BACKGROUND

On June 30, 2004, DESS filed original juvenile dependency petitions pursuant to section 300 on behalf of E.J. and J.J. Those petitions alleged the minors were the victims of neglect by father and mother. Each petition also alleged the minor might be a member of an Indian tribe. Thereafter, on August 30, 2004, DESS filed a petition on behalf of M.J. containing similar allegations but omitting the allegation of possible Indian ancestry.

At a hearing on July 1, 2004, mother advised the juvenile court she had Blackfeet Indian heritage. Thereafter, DESS sent notices of the dependency proceedings (by certified mail, return receipt requested) to the Blackfeet Tribe in Browning, Montana. The record does not contain return receipts for those notices. However, social worker's reports noted the ICWA might apply.

At the tribe's request, DESS prepared ancestry charts for the Blackfeet Tribe, listing information available to DESS pertaining to relatives of the minors. Those charts stated that mother's birthplace was Gridley, Oregon, while the maternal grandmother's birthplace was listed as Gridley, Colorado. Subsequent notices of dependency proceedings sent to the Blackfeet Tribe contained similar information. The record does not contain return receipts for those notices either.

In its January 2006 report, DESS stated the ICWA might apply. According to DESS, a social worker sent the ancestry charts to the Blackfeet Tribe. The report also noted the tribe had not responded to "further inquir[ies]."

At the December 14, 2006, section 366.26 hearing, the issue of ICWA applicability was not discussed, and the juvenile court made no findings on the matter.

DISCUSSION

Father and mother contend DESS and the juvenile court failed to comply with the notice provisions of the ICWA. They claim mother's birthplace was stated incorrectly on the notices sent to the Blackfeet Tribe, return receipts were not included in the record, and no finding was made whether the ICWA applied. Accordingly, the court erred prejudicially in terminating their parental rights.

The ICWA protects the interests of Indian children and promotes the stability and security of Indian children and Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. §§ 1901, 1902, 1903(1), 1911(c), 1912.) The juvenile court and DESS have an affirmative duty to inquire at the outset of the proceedings whether a child who is subject to the proceedings is, or may be, an Indian child. (Cal. Rules of Court, rule 5.664(d).) If, after the petition is filed, the court "knows or has reason to know that the child is or may be an Indian child," notice of the pending proceeding and the right to intervene must be sent to the tribe or to the Bureau of

Indian Affairs (BIA) if the tribal affiliation is not known. (Cal. Rules of court, rule 5.664(f); 25 U.S.C. § 1912(a).) Failure to comply with the notice provisions and determine whether the ICWA applies is prejudicial error. (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 472; *In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1424.)

"The burden is on the [department] to obtain all possible information about the minor's potential Indian background and provide that information to the relevant tribe or, if the tribe is unknown, to the BIA." (*In re Louis S.* (2004) 117 Cal.App.4th 622, 630.) Notice is meaningless if it fails to provide the very information that might assist the tribe and the BIA in making a determination as to a minor's Indian status. (*In re D. T.* (2003) 113 Cal.App.4th 1449, 1455.) Here, DESS failed to sustain its burden of providing all available information, in accurate form, that was relevant to this inquiry.

Federal regulations and the federal guidelines on Indian child custody proceedings specify the contents of the notice to be sent to the tribe both to inform the tribe of the proceedings and to assist the tribe in determining if the child is a member or eligible for membership. (25 C.F.R. § 23.11(a), (d), (e); 44 Fed.Reg. 67588 (Nov. 26, 1979).) If known, the agency should provide the name of the child, the date and place of birth of the child, and the tribe in which membership is claimed, as well as the names, birthdates, places of birth and death, current addresses, and tribal enrollment numbers of the parents, grandparents, and great-grandparents. This information will

assist the tribe in making its determination whether the child is eligible for membership and whether to intervene. (25 C.F.R. § 23.11(a), (d), (e); 44 Fed.Reg. 67588; *In re D. T.*, *supra*, 113 Cal.App.4th at pp. 1454-1455.)

On July 27, 2007, this court granted father's request for judicial notice of an Oregon document reflecting that no city or other political entity named "Gridley" exists in Oregon. DESS could have asked mother for her birthplace, or surmised that her birthplace matched that of her mother. Moreover, as the record does not contain any return receipts, it is unknown whether the Blackfeet Tribe received any of the documents that DESS sent.

In *In re D. T.*, *supra*, 113 Cal.App.3d at page 1455, reversal was required because the social worker had certain information that should have been provided to tribes but was not. Similarly, here DESS presumably had or could easily have ascertained the information about the birthplace of the minors' mother but instead provided it incorrectly to the Blackfeet Tribe. Moreover, if the tribe responded to DESS, then DESS should have included copies of return receipts and letters sent to it in the record but failed to do so. This will not do. "Notice is meaningless if [insufficient] information is provided to assist the tribes and the BIA in [determining whether the minor is an Indian child]." (*Ibid.*)

The case must be reversed and remanded for proper inquiry and notice to the Blackfeet Tribe. (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 852, 855.)

DISPOSITION

The order terminating parental rights is reversed and the matter is remanded for the limited purpose of securing compliance with the notice provisions of the ICWA. DESS shall promptly send proper notice to the Blackfeet Tribe, which shall include corrected and any previously omitted genealogical information, if known. If there is no response within 60 days or if the tribe determines the minors are not Indian children, the order terminating parental rights shall be reinstated. However, if the tribe determines the minors are Indian children, or if information is presented to the juvenile court that affirmatively indicates the minors are Indian children and the court determines the ICWA applies to this case, the juvenile court is ordered to conduct a new section 366.26 hearing in conformity with all provisions of the ICWA.

_____ RAYE _____, J.

We concur:

_____ DAVIS _____, Acting P.J.

_____ CANTIL-SAKAUYE _____, J.