Filed 4/26/24 In re M.R. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re M.R., a Person Coming Under the Juvenile Court Law. LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. F.R., Defendant and Appellant.	B331295 (Los Angeles County Super. Ct. No. 22CCJP00891A)

APPEAL from an order of the Superior Court of Los Angeles County, Stephen C. Marpet, Judge Pro Tempore. Affirmed.

Benjamin Ekenes, under appointment by the Court of Appeal, for Defendant and Appellant.

Dawyn R. Harrison, County Counsel, Kim Nemoy, Assistant County Counsel, and Navid Nakhjavani, Principal Deputy County Counsel, for Plaintiff and Respondent.

Mother, F.R., appeals from an order terminating her parental rights to her daughter, M.R., under Welfare and Institutions Code section 366.26.[1] Mother asserts she previously appealed from the jurisdictional and dispositional orders and reversal of those orders requires reversal of the order terminating parental rights. However, we affirmed the court's jurisdictional and dispositional orders.[2] Mother's sole remaining contention is that the Los Angeles County Department of Children and Family Services (Department) failed to comply with the initial inquiry requirements of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA) and related California law. Finding any ICWA error harmless, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND[3]

In March 2022, the Department filed a section 300 petition on M.R.'s behalf. The petition alleged M.R. was at risk of serious physical harm due to mother's and nonparty father's substance

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1 All undesignated statutory references are to the Welfare and Institutions Code.

2 We take judicial notice of our opinion from mother's appeal of the jurisdictional and dispositional orders, *In re M.R.* (Jan. 19, 2024, B320974 [nonpub. opn.]). (Evid. Code, § 452, subd. (d).)

3 Our summary of the facts is limited to those relevant to the ICWA issue raised on appeal and necessary for context.

abuse and mother's failure to protect M.R. from father. Attached to the petition was form ICWA-010(A), stating that a social worker interviewed mother and father in February 2022 and neither provided any reason to believe M.R. was an Indian child. Mother and M.R. were living in the same home as maternal grandmother, maternal great-aunt Rose E., maternal aunt R.R., and maternal great-grandfather Raul R. At the detention hearing, the juvenile court found a prima facie case for detaining M.R.

A few days after the detention hearing, father reiterated he did not have Native American ancestry. On the same day, the social worker spoke with M.R.'s maternal grandmother and paternal grandmother. They denied having Native American ancestry. Approximately one week later, mother and father filed Parental Notification of Indian Status (ICWA-020) forms indicating they did not have any Indian ancestry. At the parents' arraignment, the juvenile court acknowledged receipt of mother's and father's ICWA-020 forms and asked if it was correct that neither parent had Native American ancestry. Mother's and father's counsel each confirmed that was correct. The court ordered the parents to keep the Department, their attorneys, and the court aware of any new information relating to possible ICWA status.

The jurisdiction and disposition report noted that paternal grandmother reported, and father admitted, the parents were abusing Percocet daily. During an interview with the social worker, father further admitted to consuming methamphetamine while he was staying with M.R.'s paternal grandfather in "the [riverbed]." Paternal grandmother told the social worker she

kicked paternal grandfather out of the home due to paternal grandfather's drug use and he was homeless.

At the adjudication and disposition hearing, the juvenile court sustained the petition as pled. The court removed M.R. from the parents' custody and ordered they be provided with family reunification services. Mother appealed, and we affirmed the orders. (*In re M.R.* (Jan. 19, 2024, B320974 [nonpub. opn.].)

In June 2022, M.R. was placed with maternal great-aunt Debra G. and maternal great-uncle David G. Debra G.'s and David G.'s three adult children—P.G., A.T., and Z.G.—lived in the same home with them.

In its report for the six-month review hearing, the Department indicated that between May and November 2022, mother had one negative drug test but failed to appear for 23 tests. Mother enrolled in inpatient substance abuse programs in May and September 2022, but left the programs within one or two days each time. Mother did not otherwise enroll in substance abuse programs, parenting classes, or individual counseling. Father did not submit to any drug testing or provide proof of enrollment in any court-ordered programs. Mother's only visit with M.R. was a video call for less than five minutes in October 2022. Father did not visit. At the six-month review hearing in November 2022, for which the parents were not present, the juvenile court found the parents' progress in their case plans was unsubstantial and terminated family reunification services.

In January 2023, a dependency investigator attempted to contact mother and father to conduct additional ICWA inquiry, but their phone numbers were not in service. The investigator, however, spoke with maternal grandmother, who again stated there was no Native American ancestry on the maternal side of

the family. The investigator also spoke with paternal grandmother in early March 2023, and paternal grandmother repeated there was no Native American ancestry on the paternal side of the family. A few days later, the social worker spoke with Debra G., who said that to her knowledge there was no Native American ancestry on the maternal side of the family. M.R. remained placed with Debra G. In June 2023, the Department reported Debra G. and her daughter P.G. expressed their commitment and desire to adopt M.R. It was further reported M.R. was adjusting well to their home, and mother had no visits or calls with M.R. for several months.

At the section 366.26 hearing in June 2023, the juvenile court found M.R. was adoptable and no exception to adoption applied. Mother was not present, and mother's counsel informed the court, "I have no direction from my client at this time." The court terminated parental rights. Concerning ICWA, the Department stated both sides of the family indicated they did not have Native American heritage. The juvenile court found ICWA did not apply to M.R.'s case.

Mother timely appealed the order.

DISCUSSION

A. Legal Principles

"ICWA was enacted to curtail 'the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement' [citation], and 'to promote the stability and security of Indian tribes and families by establishing . . . standards that a state court . . . must follow before removing an Indian child from his or her family' [citations]." (*In re Dezi C.* (2022) 79 Cal.App.5th 769, 780, review

granted Sept. 21, 2022, S275578 (*Dezi C.*).) Whether ICWA applies depends on whether the child who is the subject of the custody proceeding is an Indian child. (*In re Abbigail A.* (2016) 1 Cal.5th 83, 90.) Both ICWA and state statutory law[4] define an "Indian child" as a child who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. (25 U.S.C. § 1903(4); accord, § 224.1, subds. (a), (b).)

Under state law, the juvenile court and the Department have "an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300 . . . may be or has been filed, is or may be an Indian child." (§ 224.2, subd. (a); see *In re Isaiah W.* (2016) 1 Cal.5th 1, 9, 11–12.) "The continuing duty to inquire whether a child is or may be an Indian child 'can be divided into three phases: the initial duty to inquire, the duty of further inquiry, and the duty to provide formal ICWA notice.'" (*In re Y.W.* (2021) 70 Cal.App.5th 542, 552.) The duty of initial inquiry includes, but is not limited to, "asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child." (§ 224.2, subds. (a), (b).) "Extended family members" include adults who are the child's "grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent." (25 U.S.C. § 1903(2); § 224.1, subd. (c) [adopting federal definition].)

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[4] Our state Legislature incorporated ICWA's requirements into California statutory law in 2006. (*In re Abbigail A.*, *supra*, 1 Cal.5th at p. 91.)

"We review claims of inadequate inquiry into a child's Indian ancestry for substantial evidence." (*In re H.V.* (2022) 75 Cal.App.5th 433, 438.) Where the Department's inquiry was erroneous, "we must assess whether it is reasonably probable that the juvenile court would have made the same ICWA finding had the inquiry been done properly." (*Dezi C.*, *supra*, 79 Cal.App.5th at p. 777.) "If so, the error is harmless and we should affirm; otherwise, we must send it back for the Department to conduct a more comprehensive inquiry." (*Ibid.*)

California appellate courts have formulated several different tests for deciding whether a defective initial inquiry is harmless. (See *Dezi C.*, *supra*, 79 Cal.App.5th at pp. 777–779.) For the reasons stated in *Dezi C.*, we apply the "reason to believe" rule articulated therein. (*Id.* at pp. 779–785.) Under this rule, "an agency's failure to conduct a proper initial inquiry into a dependent child's American Indian heritage is harmless unless the record contains information suggesting a reason to believe that the child may be an 'Indian child' within the meaning of ICWA, such that the absence of further inquiry was prejudicial to the juvenile court's ICWA finding." (*Id.* at p. 779.)

B. Any ICWA Inquiry Error was Harmless

Mother argues the Department failed to fulfill its duty of initial inquiry by not interviewing all of M.R.'s known extended family members and others who have an interest in her. Specifically, mother asserts the Department failed to make any inquiry of maternal aunt, R.R., maternal great-aunt, Rose E., maternal great-grandfather, Raul R., paternal grandfather, and Debra G.'s adult children. There is no indication in the record the Department attempted to contact any of these relatives about

M.R.'s Indian ancestry. Not all these individuals meet ICWA's definition of "extended family members," and mother does not establish that each has an interest in M.R. However, assuming this was error, we find any error in failing to interview these family members was harmless.

At the outset, we address mother's argument that a showing of prejudice is not required for the order terminating parental rights to be conditionally reversed. In support of this contention, mother primarily relies on *In re Y.W.*, *supra*, 70 Cal.App.5th 542. *In re Y.W.* adopted the "'automatic reversal rule,'" under which reversal is automatic and required if the Department's initial inquiry was deficient. (*Dezi C.*, *supra*, 79 Cal.App.5th at p. 777.) As noted above, however, we have adopted the approach outlined in *Dezi C.* Thus, we do not remand without considering whether the Department's failure to ask the family members about Native American ancestry was prejudicial under the reason to believe rule.

Nothing in the record or appellate briefing provides any reason to believe M.R. is an Indian child. Mother and maternal grandmother lived in the same home as R.R., Rose E., and Raul R., and father was in contact with paternal grandfather. Further, Debra G.'s adult children resided with her. Consequently, the possibility these other family members might have differing information about Native American ancestry is minimal. (See *In re Ezequiel G.* (2022) 81 Cal.App.5th 984, 1015 [observing that where parents were "in contact" with their extended families, "the possibility that they might unknowingly be members of a tribe appears trivially small"].) There is nothing to suggest that contacting the relatives mother identifies would contradict the repeated and consistent statements by mother,

father, maternal grandmother, paternal grandmother, and Debra G. that M.R. does not have Native American ancestry.

Moreover, there is no indication mother's and father's denials of Native American ancestry—or maternal grandmother's, paternal grandmother's, or Debra G.'s denials—were not fully informed. There is no evidence mother or father were adopted or unfamiliar with their biological family history. (Cf. *Dezi C.*, *supra*, 79 Cal.App.5th at p. 779 [failure to inquire of extended family members may not be harmless if the record indicates that one or both of the parents were adopted and hence their self-reporting of no ancestry may not be fully informed].) In her appellate filings, mother has not proffered additional evidence or asserted M.R. has Native American ancestry. (See *Id.* at p. 779, fn. omitted [for purposes of evaluating whether defective initial inquiry is harmless, "the 'record' includes both the record of proceedings in the juvenile court and any proffer the appealing parent makes on appeal"].)

Therefore, we conclude "it is reasonably probable that the juvenile court would have made the same ICWA finding" even if the Department had conducted initial inquiries with the relatives mother identifies. (*Dezi C.*, *supra*, 79 Cal.App.5th at p. 777.)

DISPOSITION

The order terminating parental rights is affirmed.

MORI, J.

We concur:

COLLINS, Acting P. J.

ZUKIN, J.