Filed 6/29/23 In re M.R. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re M.R. et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. C.P., Defendant and Appellant.	E080328 (Super.Ct.No. RIJ2100164) OPINION

APPEAL from the Superior Court of Riverside County. Mona M. Nemat, Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and Appellant.

Minh C. Tran, County Counsel, Teresa K.B. Beecham and Catherine E. Rupp, Deputy County Counsel, for Plaintiff and Respondent.

C.P. (Mother) appeals from the juvenile court's orders terminating her parental rights to her son, M.R. (born 2019), and daughter, S.R. (born 2017; collectively, the Children). Mother challenges the juvenile court's finding that the Indian Child Welfare Act[1] (ICWA) is inapplicable, arguing that Riverside County Department of Public Social Services (the Department) failed to discharge its duty of initial inquiry into the Children's possible Indian status. Because several extended family members were readily available but were never asked about the Children's Indian ancestry, Mother contends the Department failed to fulfill its statutory obligation set forth in Welfare and Institutions Code[2] section 224.2, subdivision (b). The Department argues that the expanded duty of initial inquiry in section 224.2, subdivision (b)—including the obligation to ask extended family members about a child's Indian status—only applies to children who are placed in the Department's temporary custody without a warrant pursuant to section 306. In this case, the Children were taken into protective custody pursuant to warrants issued under section 340, subdivision (b), and no child was placed in the Department's temporary custody pursuant to section 306. Therefore, the statutory obligation to ask extended family members whether the Children are, or may be, Indian children as part of the initial

[1] "[B]ecause ICWA uses the term 'Indian,' we do the same for consistency, even though we recognize that other terms, such as 'Native American' or 'indigenous,' are preferred by many." (*In re Benjamin M.* (2021) 70 Cal.App.5th 735, 739, fn. 1 (*Benjamin M.*).)

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

ICWA inquiry was never triggered. We agree with the Department, and therefore affirm the juvenile court's orders.

FACTUAL AND PROCEDURAL HISTORY[3]

On March 18, 2021, the Department received an immediate response referral that the Children were exposed to domestic violence when Michael R. (Father) pushed Mother to the ground and started punching her in the head and arms. The Children were present in the motel room where the incident took place. Father fled before law enforcement arrived. Mother had visible marks and bruising on her arm and face, but declined prosecution, declined an emergency protective order, and declined medical treatment.

That same day, a Department social worker went to the motel where the family was residing and met Mother, the Children, paternal grandmother, and paternal aunt Brittany. Mother confirmed the details reported in the referral but minimized the domestic violence incident. Mother acknowledged that a previous domestic violence incident with Father had led to an investigation by child protective services in San Bernardino County and that both parents had been referred for anger management and counseling. Mother insisted that these were the only two times that her disputes with Father had escalated to physical violence. Mother initially stated that she used marijuana occasionally but denied use of any other drug. When the social worker told her this was

[3] Because the only issue on appeal is whether the Department and the juvenile court complied with ICWA and related state law, the factual and procedural history focuses on the history relevant to ICWA.

inconsistent with the child welfare records from San Bernardino County, Mother admitted that she and Father both had a history of using methamphetamine.

Paternal grandmother told the social worker that Mother and Father " 'both beat the crap out of each other.' " She reported that previous domestic violence incidents led to both parents' arrests and Mother having black eyes, and she provided the social worker with photographs of Father with bruises, scratches, lacerations, and bite marks on his body after previous incidents of domestic violence with Mother. Paternal grandmother stated that the Children were being "psychologically abused" by the violence between their parents.

Mother signed a safety plan agreeing not to meet with Father alone, to notify the front desk so they could call the police if Father returned to the motel, and to call the social worker to confirm that she had enrolled in a domestic violence program by noon the following day. The next day, however, the social worker learned that Mother had asked paternal grandmother to pick up M.R. from the motel so Mother could spend time alone with Father before he turned himself in to law enforcement. The social worker also spoke with paternal aunt Summer, who requested consideration as a relative caregiver for the Children.

On March 19, 2021, the Department obtained protective custody warrants for the Children.[4] The Children were taken into protective custody the following day from the

[4] On our own motion, we augmented the record to include the protective custody warrants for the Children issued to the Department on March 19, 2021. (Cal. Rules of Court, rules 8.155(a)(1)(A), 8.340(c), 8.410(b).)

paternal grandparents' home. On March 23, 2021, a petition was filed alleging the Children came under section 300, subdivision (b) (failure to protect), based on the parents' domestic violence and history of substance abuse. Attached to the petition were Judicial Council form ICWA-010(A) stating that Mother was asked about the Children's Indian status on March 18, 2021, Father was asked on March 22, 2021, and neither provided reason to believe the Children were Indian children.

At the detention hearing held March 24, 2021, each parent filed a Judicial Council form ICWA-020 denying Indian ancestry. The juvenile court recalled and quashed the protective custody warrants, found Father to be the presumed father of the Children, found that ICWA did not apply to the proceedings, detained the children, and ordered supervised visitation for both parents.

On April 7, 2021, both parents again denied having any known Indian ancestry. On April 18, 2021, the parents had another domestic violence altercation, during which Mother called maternal grandfather, who arrived and hit Father with a bat. An amended petition with one of the allegations stricken was filed on May 21, 2021. At the combined jurisdiction and disposition hearing held that same day, the juvenile court sustained the first amended petition, found the Children were not Indian children, ordered them removed from the parents' custody, and ordered reunification services for both parents.

On July 29, 2021, the Children were placed with paternal aunt Summer. On October 26, 2021, Mother obtained a no-negative-contact protective order against Father.

At the six-month review hearing on December 29, 2021, the court again found that ICWA did not apply and continued both parents' reunification services.

The parents began unsupervised visitation in December 2021, but they were returned to supervised visitation the following month after S.R. reported that during a visit, " 'Mommy hit Daddy and used bad words.' " In January 2022, Mother tested positive for cocaine. In February 2022, Mother was arrested for assault with a deadly weapon after stabbing Father. Father reportedly refused to press charges and picked up Mother when she was released from jail. The parents' visitation became sporadic, and both parents failed to show up for all but one of their random drug tests during this reporting period. Both parents had completed a 16-week anger management program but failed to submit proof of completion of other services.

Reunification services were terminated at the 12-month review hearing on June 23, 2022. According to the Department's report for the section 366.26 hearing dated November 30, 2022, Mother had not visited the Children in more than a month, Father was in custody, and the social worker had no contact from either parent. The Children were thriving in the home of maternal aunt Summer and her fiancé, who were being assessed for adoption. On November 30, 2022, the juvenile court found the Children were likely to be adopted and terminated the parental rights of both parents. Although the court made no express finding regarding ICWA at the hearing, the order terminating parental rights is premised on an implicit current finding that ICWA does not apply. (*Benjamin M.*, *supra*, 70 Cal.App.5th at p. 740.)

DISCUSSION

ICWA was enacted to curtail "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.) "ICWA reflects a congressional determination to protect Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards a state court must follow before removing an Indian child from his or her family." (*In re T.G.* (2020) 58 Cal.App.5th 275, 287.) In a juvenile dependency proceeding, an Indian child is any unmarried person who is under age 18 and is either (a) a member of a federally recognized Indian tribe or (b) is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe. (25 U.S.C. § 1903(4) & (8); see § 224.1, subd. (a).)

"In 2006, California adopted various procedural and substantive provisions of ICWA. [Citation.] In 2016, new federal regulations were adopted concerning ICWA compliance. [Citation.] Following the enactment of the federal regulations, California made conforming amendments to its statutes, including portions of the Welfare and Institutions Code related to ICWA notice and inquiry requirements. [Citations.] Those changes became effective January 1, 2019 [citation] . . . , and govern here." (*In re D.S.* (2020) 46 Cal.App.5th 1041, 1048, fn. omitted (*D.S.*).)

"To determine whether ICWA applies to a dependency proceeding, 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).) This duty to inquire consists of two phases—the duty of initial inquiry and the duty of further inquiry. [Citation.] The duty of initial inquiry begins at the referral stage when [the Department] must ask 'the party reporting child abuse or neglect whether the party has any information that the child may be an Indian child.' (§ 224.2, subd. (a).)" (*In re Dominick D.* (2022) 82 Cal.App.5th 560, 566.) "The juvenile court must ask each participant at the first appearance 'whether the participant knows or has reason to know that the child is an Indian child,' and the court must 'instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.' (§ 224.2, subd. (c); see 25 C.F.R. § 23.107(a) (2022).)" (*Ibid*.)

If the initial inquiry provides "reason to *believe* that an Indian child is involved in a proceeding," then "further inquiry regarding the possible Indian status of the child" must be made. (§ 224.2, subd. (e), italics added.) If further inquiry provides "reason to *know*, as set forth in subdivision (d) [of section 224.2], that the child is an Indian child," formal notice must be given to the tribe pursuant to section 224.3. (§ 224.2, subd. (f), italics added.) If the court finds that proper and adequate inquiry has been conducted and there is no reason to know the child is an Indian child, it may make a finding that ICWA does not apply to the proceedings. (§ 224.2, subd. (i)(2).)

"On appeal, we review the juvenile court's ICWA findings for substantial evidence. [Citations.] But where the facts are undisputed, we independently determine whether ICWA's requirements have been satisfied." (*D.S.*, *supra*, 46 Cal.App.5th at p. 1051.) Where the parties' contentions concern issues of statutory interpretation, our review is de novo. (*In re A.F.* (2017) 18 Cal.App.5th 833, 842.)

At issue in this appeal is subdivision (b) of section 224.2, which expands the duty of initial inquiry to require a county welfare department to ask, among others, "extended family members" about the child's Indian status. (§ 224.2, subd. (b).) Extended family member is "defined by the law or custom of the Indian child's tribe," or otherwise includes 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); see § 224.1, subd. (c).)

Mother contends the Department was required by subdivision (b) of section 224.2 to ask the Children's paternal aunts, paternal uncle, paternal grandparents, and maternal grandfather about the Children's Indian status. The Department contends that its duty to ask extended family members about a child's Indian status is not part of the "affirmative and continuing duty to inquire" applicable to all dependency proceedings set forth in subdivision (a) of section 224.2. (§ 224.2, subd. (a).) Rather, subdivision (b) requires the Department to ask extended family members about the Indian status of any child "placed

into the temporary custody of a county welfare department pursuant to Section 306."[5] (§ 224.2, subd. (b).) The Department, citing the concurring opinion in *In re Adrian L.* (2022) 86 Cal.App.5th 342 (*Adrian L.*), argues that "section 224.2, subdivision (b), was never triggered[,] and interview of extended relatives was never mandated, because the children were never taken into 'temporary custody' under section 306." We agree with the Department.

This court recently followed the reasoning of the *Adrian L.* concurrence, relied upon by the Department here, in *In re Robert F.* (2023) 90 Cal.App.5th 492 (*Robert F.*). Because the child in *Robert F.* was removed pursuant to a protective custody warrant rather than under section 306, we held that subdivision (b) of section 224.2 does not apply, and the obligation to ask extended family members about the child's Indian status was not triggered. (*Robert F.*, at p. 504.) We reached this conclusion based on the plain language of the prefatory clause of section 224.2, subdivision (b), limiting the duty to ask extended family at the initial inquiry stage to cases where a child " 'is placed into the temporary custody of a county welfare department pursuant to [s]ection 306.' " (*Robert F.*, at p. 500.) This language in subdivision (b) of section 224.2, restricting its duty of inquiry to only a narrow subset of dependency cases contrasts sharply with the broad

---

[5] The provision states in full: "If a child is placed into the temporary custody of a county welfare department pursuant to Section 306 or county probation department pursuant to Section 307, the county welfare department or county probation department has a duty to inquire whether that child is an Indian child. 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 and where the child, the parents, or Indian custodian is domiciled." (§ 224.2, subd. (b).)

language used by the Legislature in subdivisions (a) and (c) to "address[] the duty of inquiry [that] appl[ies] in all dependency cases without limitation." (*Robert F.*, at p. 501.)

As we explained in *Robert F.*, the legislative history provides "strong evidence" that the Legislature intended to conform California statutes to updated federal guidelines for implementing ICWA issued by the Bureau of Indian Affairs (BIA) in December 2016 "which recommend initial inquiry of extended family members in emergency situations but not in all cases." (*Robert F.*, *supra*, 90 Cal.App.5th at pp. 502-503.) The guidelines recommend that state child welfare agencies ask extended family about a child's tribal affiliation "as part of the emergency removal and placement process," whereby a child is "taken into custody by a State official without court authorization" and removal is "necessary to prevent imminent physical damage or harm to the child." (U.S. Dept. of the Interior, Guidelines for Implementing the Indian Child Welfare Act (Dec. 2016) (BIA Guidelines) at pp. 28, 23 <https://www.bia.gov/sites/default/files/dup/assets/bia/ois/pdf/idc2-056831.pdf> [as of June 27, 2023]; see 25 U.S.C. § 1922.) In enacting section 224.2, subdivision (b), the Legislature recognized that the emergency circumstances under which a child may be placed into temporary custody without a warrant under section 306 are the same emergency circumstances under which the BIA urges state agencies to ask extended family about the child's Tribal affiliation. (*Robert F.*, at p. 503, citing § 306, subd. (c).) "By contrast, section 340 requires neither imminent danger nor the threat of physical

harm for the court to issue a warrant." (*Id*. at p. 501.) Removal pursuant to this lower standard " 'would not be an "emergency removal" under federal law.' " (*Id*. at p. 503.)

The Children here were detained pursuant to protective custody warrants issued pursuant to section 340, subdivision (b), on March 19, 2021, prior to the filing of the dependency petition on March 23, 2021. No child was placed into the temporary custody of the Department without a warrant pursuant to section 306, so the Department was not required by subdivision (b) of section 224.2 to make an initial inquiry of extended family members.[6] "Mother therefore has not shown that [the Department] failed to discharge its duty of initial inquiry." (*Robert F., supra*, 90 Cal.App.5th at p. 504.)

Mother cites several cases in which courts, including this one, have held that a county welfare agency is required to ask extended family members about a child's Indian status as part of the initial inquiry duty under section 224.2, subdivision (b). As the Department points out, however, none of those cases address the subdivision's introductory clause limiting its application to children placed into the temporary custody of a county welfare department pursuant to section 306. "Obviously, cases are not

---

[6] Aside from section 224.2, subdivision (b), Mother does not suggest there are any unique circumstances particular to this family that might indicate a need to conduct an inquiry of extended family members. (Cf. *In re Y.W.* (2021) 70 Cal.App.5th 542, 548 [mother "was adopted when she was two years old, did not have any information about her biological relatives, and was 'estranged' from her adoptive parents"]; BIA Guidelines at p. 18, [where the child or parent indicates affiliation with a tribe or group of tribes but is uncertain of their citizenship status, state agencies "should ask the parent and, potentially, extended family what Tribe or Tribal ancestral group the parent may be affiliated with]). Nor does she claim there is any "reason to believe" the children are Indian children which would trigger the "further inquiry" requirement that extended family members be interviewed in order to gather information on the children's direct lineal ancestors. (§ 224.2, subd. (e)(2)(A).)

authority for propositions not considered therein." (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 372.)

In her reply brief, Mother acknowledges that "the plain language of section 224.2, subdivision (b), states it applies when a child [is] taken into temporary custody of a county welfare department pursuant to section 306." She argues, however, that a child removed by a peace officer pursuant to a protective custody warrant must "immediately be delivered to the social worker" (§ 340, subd. (c)) and that a child "delivered by a peace officer" must be "[r]eceive[d] and maintain[ed]" in "temporary custody" under subdivision (a)(2) of section 306. Mother contends that since "that child ends up in the Department's custody by authority of section 306," the Department's obligation to inquire of extended family members applies equally to children removed pursuant to warrant as those removed due to exigency. We are not persuaded.

As an initial matter, Mother points to nothing in the warrants or elsewhere in the record that indicates the children here were detained by a peace officer who subsequently delivered them to the social worker. Even if they were, a "child taken into *protective* custody" (§ 340, subd. (c), italics added) under section 340 is not maintained in "*temporary* custody" (§ 306, subd. (a)(1), italics added) under section 306. Mother's argument conflating the two was recently rejected by this court in *In re Ja.O.* (2023) 91 Cal.App.5th 672, 680 (*Ja.O.*).

Finally, Mother argues that limiting the Department's obligation to inquire of extended family members to only those children taken into its temporary custody without

a warrant draws a distinction "between children removed pursuant to court order, and those removed under emergency circumstances, which is irrelevant to the legitimate governmental objective of properly determining a child's Indian status and protecting the integrity and stability of Indian tribes." She contends this is an arbitrary distinction that violates equal protection and leads to "absurd consequences the Legislature did not intend."

This argument is also foreclosed by *Ja.O.*: "By imposing an expanded duty of initial inquiry for children taken into custody without a warrant, the Legislature was following the recommendation in the federal guidelines. [Citation.] The Legislature's decision to follow the federal guidelines' recommendation is not absurd. Rather, because warrantless detentions trigger various time-sensitive ICWA-related requirements that are otherwise inapplicable (§ 306, subd. (d)), it makes sense in such cases to expand the duty of initial inquiry—confirming whether the child in such a case is an Indian child is particularly urgent." (*Ja.O.*, *supra*, 91 Cal.App.5th at pp. 680-681; see *Robert F.*, *supra*, 90 Cal.App.5th at p. 502 ["[I]dentifying an Indian child subject to the exclusive jurisdiction of the tribe is particularly urgent in warrantless removal cases, when the social worker is acting without court authorization"]; *Adrian L.*, *supra*, 86 Cal.App.5th at p. 369 [including "specific mandated inquiries to be made in the special case of emergency removals" does not "conflict with the 'spirit [and] purpose' of ICWA"].)

Because the Children here were not placed into the Department's temporary custody without a warrant under section 306, the Department was not obligated to

conduct an initial inquiry of their extended family members under section 224.2, subdivision (b). We accordingly affirm the juvenile court's orders terminating parental rights.

DISPOSITION

The juvenile court's findings and orders are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

McKINSTER
Acting P. J.

MENETREZ
J.