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See dissenting opinion

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re L.C., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.C., Defendant and Appellant.	E081670 (Super.Ct.No. J292768) OPINION

APPEAL from the Superior Court of San Bernardino County. Steven A. Mapes, Judge. Affirmed.

Jason Szydlik, under appointment by the Court of Appeal, for Defendant and Appellant.

Tom Bunton, County Counsel, Joseph R. Barrell, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant and appellant A.C. (Mother) appeals from the June 21, 2023 orders terminating parental rights to Mother's child, L.C. (Welf. & Inst. Code, §§ 366.26, 395.)[1] Mother claims that plaintiff and respondent, San Bernardino County Children and Family Services (CFS), failed to discharge its initial duty of inquiry, under section 224.2, subdivision (b) (§ 224.2(b)), by asking several of L.C.'s maternal extended family members (five of Mother's six siblings) whether L.C. is or may be an "Indian child" for purposes of the Indian Child Welfare Act. (25 U.S.C. § 1901 et. seq.; ICWA). Mother asks that we conditionally reverse the section 366.26 orders and remand the matter with directions to the juvenile court to ensure that CFS discharges its initial duty of inquiry (§ 224.2(b)), regarding L.C.'s material extended family members. We affirm the orders.

II. FACTS AND PROCEDURE

L.C. was born in December 2021. On March 22, 2022, Mother went to a sheriff's substation in Hesperia with L.C. and reported there were suspicious vehicles parked in front of her home, she was being "scammed out of $5,000," and a person she met through social media was sending fraudulent checks to her bank account. Mother became "distraught to the point . . . she was shaking uncontrollably" and was told to "put the baby down." Mother reported receiving psychiatric services and suffering panic attacks.

[1] Undesignated statutory references are to the Welfare and Institutions Code.

Following her assessment by "TEST social workers," Mother was released to go home with L.C.

On April 6, 2022, a social worker went to Mother's home to see whether Mother had family members who could help Mother with a safety plan. At the "front house" on the property, the worker spoke with the property owner who reported: Mother had lived in the "back house" for several years but was not home; L.C.'s father did not "come around," but Mother's ex-husband and the father of Mother's older daughter, A., helped Mother with L.C.; and Mother had recently been in car accident with L.C. in the car. The owner also said that L.C.'s maternal grandmother had died several years earlier, and that Mother had "an aunt from Oregon who sent her cards in the mail." The owner denied other knowledge of Mother's friends or family.

Later on April 6, 2022, the worker spoke with Mother's ex-husband, J.C., who reported Mother cared for L.C.'s basic needs but agreed Mother's paranoia had "been increasing" since L.C. was born. J.C. and Mother divorced in 2016; their daughter, A. (age 15), lived with J.C. J.C. said there was a history of mental health issues in Mother's family; Mother suffered sexual abuse, physical abuse, and domestic violence as a child; and Mother had been diagnosed with bipolar disorder, depression, panic attacks, and PTSD (post-traumatic stress disorder).

Also on April 6, the worker spoke with Mother at a hospital where Mother had taken L.C. When asked why she had taken L.C. to the hospital, Mother told "a very lengthy story regarding people scamming her and taking pictures of [L.C.] for money." Mother also claimed that L.C.'s biological father, C.B., was hurting L.C. The hospital

would not discharge L.C. to Mother. CFS obtained a detention warrant and served the warrant on Mother at the hospital on April 6. L.C. was initially placed with J.C.

On April 8, 2022, a dependency petition for L.C. was filed, alleging Mother suffered from mental health problems that limited her ability to care for L.C. and the whereabouts of L.C.'s alleged father, C.B., were unknown. (§ 300, subds (b)(1), (g).) The petition stated CFS had been unable to complete an ICWA inquiry because Mother was "unable to answer" and C.B.'s whereabouts were unknown.

At the detention hearing on April 11, 2022, Mother was present with her father and one of her three sisters. In response to the court's questions, Mother, her father, and her sister each told the court that they did not have any Native American ancestry. Mother also completed a "Parent: Family Find and ICWA Inquiry" form and a "Parental Notice of Indian Status" form (ICWA-020), indicating on both forms that neither Mother nor L.C. had Native American ancestry. On the family find form, Mother provided phone numbers for her father, her sister, and for Mother's two other sisters. The court appointed a guardian ad litem for Mother and ordered L.C. detained outside of parental custody.

On April 14, 2022, L.C. was placed with a nonrelative extended family member (NREFM). On April 28, CFS filed a jurisdiction and disposition report stating that Mother and "all available relatives denied any Native American ancestry." The report also stated that Mother was born and raised in Utah; Mother's mother was deceased; Mother's father still lived in Utah; and Mother had six siblings. Mother identified her sisters as her support network. C.B. denied he was L.C.'s biological father and did not

wish to participate in the proceedings. The April 28 report did not indicate whether CFS had asked Mother's five other siblings about L.C.'s possible Native American ancestry and status as an Indian child. On May 2, the court found that ICWA did not apply, declared L.C. a dependent, and ordered L.C. removed from parental custody.

On January 18, 2023, the court terminated Mother's reunification services. On June 21, the court terminated parental rights to L.C. and selected adoption as L.C.'s permanent plan. (§ 366.26.) At the time of the section 366.26 hearing, the NREFM was willing to adopt L.C. Mother timely appealed from the section 366.26 orders.

III. DISCUSSION

Section 224.2(b) provides: "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 . . . 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." (Italics added.) " 'Extended family member(s)' " 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); see § 224.1, subd. (c), [adopting federal definition]; *In re N.F.* (2023) 95 Cal.App.5th 170, 177, fn. 9.)

Mother claims insufficient evidence supports the juvenile court's implied finding, at the May 2, 2022 jurisdiction and disposition hearing, that CFS satisfied its initial duty

of inquiry under section 224.2(b). Mother argues CFS was required to make a meaningful effort to locate all of Mother's extended family members, including the five of Mother's six siblings who were not present at the April 11 detention hearing, and to ask these extended family members whether L.C. is or may be an Indian Child. Mother claims the record shows CFS did not discharge its duty of initial inquiry (§ 224.2(b)) because it made no effort to contact Mother's five other siblings after Mother, her father, and her sister each denied having any Native American ancestry at the April 11, 2022 detention hearing. Mother claims the error was prejudicial under *In re Benjamin M.* (2021) 70 Cal.App.5th 735, 744 [Reversal of section 366.26 orders is required "where the record demonstrates that the agency has not only failed in its duty of initial inquiry, but where the record indicates that there was readily obtainable information that was likely to bear meaningfully upon whether the child is an Indian child."].)

CFS counters that the duty to make ICWA-related inquiries of a child's extended family members, under section 224.2(b), did not apply because L.C. was taken into protective custody pursuant to a warrant. (§ 340.) We agree with CFS.

As noted, L.C. was taken into custody pursuant to a detention warrant (§ 340) on April 6, 2022, before the section 300 petition for L.C. was filed on April 8. Based largely on Justice Kelly's concurring opinion in *In re Adrian* L. (2022) 86 Cal.App.5th 342 at pages 353-373, several panels of this court have concluded that a county welfare agency's duty to make ICWA-related inquiries of a child's extended family members, under section 224.2 (b), does not apply when the child is taken into temporary custody pursuant to a warrant (§ 340); rather, the duty to inquire of extended family members (§

224(b)) applies only if the child is taken into temporary custody, on an emergency basis, without a warrant (§§ 306, 307). (*In re Robert F.* (2023) 90 Cal.App.5th 492, 500-504 (*Robert F.*), review granted July 26, 2023, S279743; *In re Ja.O.* (2023) 91 Cal.App.5th 672, 677-681 (*Ja.O.*), review granted July 26, 2023, S280572; *In re Andres R.* (2023) 94 Cal.App.5th 828, 836, 840-860 (*Andres R.*), review granted Nov. 15, 2023, S282054.) Another panel of this court reached the opposite conclusion in *In re Delila D.* (2023) 93 Cal.App.5th 953 (*Delila D.*), review granted September 27, 2023, S281447. In *Delila D.*, the majority disagreed with *Robert F.* and held that the agency's duty to inquire of extended family members applies in every dependency case, regardless of how the child is taken into custody—with or without a warrant. (*Id*. at pp. 956-957; § 224.2(b); Cal. Rules of Court. rule 5.481(a)(1).)

Thus far, three other Courts of Appeal have issued published decisions agreeing with and following *Delila D.*: *In re C.L.*(2023) 96 Cal.App.5th 377, 386; *In re Jerry R.* (2023) 95 Cal.App.5th 388; and *In re V.C.* (2023) 95 Cal.App.5th 251. Our Supreme Court will resolve this split of authority when it issues its decision in *Ja.O.*, the lead case under review. (See *In re Ja.O.* (2023) 91 Cal.App.5th 672, 677-681 (*Ja.O.*), review granted July 26, 2023, S280572.)

In this case, we agree with the interpretation of section 224.2(b) adopted and explained in *Robert F.*, *Ja.O.*, and *Andres R.* (*Robert F.*, *supra*, 90 Cal.App.5th at pp. 500-504; *Ja.O.*, *supra*, 91 Cal.App.5th at pp. 677-681; *Andres R.*, *supra*, 94 Cal.App.5th at pp. 836, 840-860.) In sum, section 224(b) "requires a county welfare department to ask extended family members about a child's Indian status only if the

department has taken the child into temporary custody under section 306" (without a warrant). (*Robert F.*, at p. 504.) Because L.C. was taken in to temporary pursuant to a warrant (§ 340), CFS's duty to make ICWA-related inquiries of L.C.'s extended family members (§ 224.2(b)) never arose. There was no inquiry error under section 224.2(b).)

IV. DISPOSITION

The section 366.26 orders for L.C. are affirmed.

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FIELDS
J.

I concur:

CODRINGTON
Acting P. J.

[[*In re L.C.*, E081670]

RAPHAEL, J., Dissenting.

The majority opinion applies the peculiar distinction that has appeared in some recent dependency-case opinions from this division: that a county's initial duty to inquire into whether a child has Indian heritage is lesser when the child is removed by warrant, rather than without a warrant. I respectfully dissent. The duty to inquire into Indian heritage is the same for all children removed from their home, no matter whether they were removed by a warrant. (See *In re Delila D.* (2023) 93 Cal.App.5th 953, review granted Sept. 27, 2023, S281447; see also Cal. Rules of Court, rule 5.481(a)(1).)

In summing up its holding, the majority states that a county welfare department must inquire of a child's extended family under Welfare and Institution Code section 224.2, subdivision (b) only if the child is taken into "'temporary custody under section 306' (without a warrant)." (Maj. opn, *ante*, at p. 7.)[1] The majority is correct that section 224.2 states that the duty begins when a child is placed into the temporary custody of a department under section 306. But the words "without a warrant" are not in either section 224.2 or 306. They are the majority opinion's addition.

In fact, section 306, subdivision (a)(1), grants departments authority to receive and maintain in "temporary custody" children "delivered by a peace officer." A child removed from a home by a warrant under section 340 "shall immediately be delivered to the social worker." (§ 340, subd. (c).) These interlocking provisions show that the

[1] The statutory sections cited all are to the Welfare and Institutions Code.

statutes provide the opposite of the words that the majority has added. A child removed by warrant is delivered to a social worker, and the department receives and maintains the child in temporary custody per section 306, subdivision (a)(1). The department then has the same duty to inquire into the child's Indian heritage as it would if it took the child into temporary custody without a warrant. Of course, the same interest exists, whether a warrant is used or not, in determining whether a child is Indian such that the courts must apply federal and state standards for "the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture. . . ." (25 U.S.C. § 1902.)

Here, with the Department's failure to inquire of five identified relatives about the child's Indian heritage, there was "readily obtainable information that was likely to bear meaningfully upon whether the child is an Indian child." (*In re Benjamin M.* (2021) 70 Cal.App.5th 735, 744.)

RAPHAEL

J.