Filed 1/15/09 In re A. S. CA3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

In re A. S., a Person Coming Under the Juvenile Court Law.	
BUTTE COUNTY DEPARTMENT OF EMPLOYMENT AND SOCIAL SERVICES, Plaintiff and Respondent, v. A. E., Defendant and Appellant.	C059261 (Super. Ct. No. J32083)

A. E., the mother of 10-year-old A. S., appeals from a juvenile court's order terminating her parental rights. (Welf. Inst. Code,[1] §§ 366.26, 395.) She contends: (1) she was wrongly denied visitation before the termination of her parental rights; (2) the denial of visitation prevented her from asserting the beneficial relationship exception to termination of rights; and

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

(3) the juvenile court failed to ensure compliance with the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq.), in that the notices sent to the Cherokee tribes were insufficient. We shall remand for further ICWA proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

A

Originating Circumstances

In August 2005, the Children's Services Division of the Butte County Department of Employment and Social Services (the department) received reports that then-six-year-old A. S. had tested positive for opiates, that her urine sample evidently had been diluted, that mother had nodded off in the doctor's office, and that another female resident of the same household had been seen driving wildly around Paradise.

Law enforcement officers and a department social worker went to the residence. Mother informed them that A. S. was away from the house with mother's roommate.

During a consent search of the residence, officers found prescription pill bottles bearing different patients' names in the kitchen, living room, and master bedroom. Prescription pills were lying on the counters in the master bedroom. A plastic pill container held numerous green pills. A prescription pill bottle labeled for temazepam and bearing a scratched-out patient's name was found on the living room floor. The bottle held two different kinds of pills and a small baggie containing .2 grams of methamphetamine. In mother's purse were two prescription bottles containing two types of pills and

bearing A. S.’s name. Several empty prescription pill bottles were found in the kitchen and living room. The bottles bore the names of various doctors and patients. Most had fill dates of July 20 or 28, 2005.

The residence was cluttered with belongings and clothes strewn about. The only food in the cupboards was a bag of cereal and two bags of potato chips. The refrigerator held lunch meat and cheese, and the freezer held hot dog buns, frozen French fries, and meat in plastic baggies. On the kitchen table was a folded piece of foil that appeared to have residue on the top and a burn mark on the bottom. Law enforcement officers explained that this was a common way to use methamphetamine if no glass pipe was available.

Mother admitted that she had given A. S. medications that were not intended for her, that she knew A. S. would test positive for opiates at the doctor’s office, and that she had added water to A. S.’s urine sample.

A. S. arrived home while the officers and social worker were present. She told them that she had not eaten breakfast and had eaten a chocolate-covered doughnut for lunch. A. S. stated that usually they did not eat dinner.

A. S. was dirty and could not remember the last time she had bathed or showered. She reported that she takes two white pills at night and two blue pills during the day. She was taken into protective custody and placed in a foster home where she disclosed that mother would give her wine and soda to help her

sleep. At the foster home, A. S. had no difficulty sleeping without medication.

In August 2005, the department filed a petition alleging that A. S. was within the provisions of section 300, subdivisions (a) and (b). At the detention hearing, both parents appeared and counsel were appointed.[2] Both counsel submitted on the issue of detention and a jurisdiction hearing was set. The court noted that ICWA may apply.

B

Jurisdiction Hearing

At the jurisdiction hearing in August 2005, the parents were present along with two grandmothers and one grandfather. Both parents submitted on the issue of jurisdiction. Because ICWA notice had not been completed, the matter was continued to a combined jurisdiction and disposition hearing.

Mother believed that her father may have Cherokee ancestry. ICWA notices were sent to three Cherokee tribes and the Bureau of Indian Affairs (BIA). The notices contained mother's address, date of birth, and place of birth; father's address and date of birth; the maternal grandmother's name and date of birth; the maternal grandfather's name; and the names of one maternal great-grandmother and one maternal great-grandfather.

The September 2005 disposition report recommended that both parents receive reunification services.

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[2] The father participated in the dependency case in juvenile court. He is not a party to this appeal.

A. S. had a prescription for a sleeping aid while she was in mother's care. She had no difficulty sleeping at her foster placement and the prescription has been discontinued. A. S. appeared to be developmentally on track and was attending first grade. Eventually she was placed with maternal relatives who agreed to provide permanent care should reunification be unsuccessful.

Mother received some supervised visits with A. S., although she missed some scheduled visits. Mother's interactions with A. S. were troublesome, as mother was observed to have slurred and slow speech, non sequitur thoughts, lethargic movements and gait, and an inability to engage fully with her daughter.

Six drug tests were scheduled within a 17-day period. Mother failed to appear twice, tested positive for opiates twice, tested positive for marijuana once, and tested positive for methamphetamine once.

The department referred mother for parenting classes, individual counseling, family counseling, and substance abuse education. In addition, she was directed to initiate drug treatment and medication management services. She had not obtained those services at the time the report was written.

Mother did not attend the September 2005 jurisdiction and disposition hearing, but her counsel was prepared to submit on the issues of jurisdiction and disposition. Father's counsel submitted on the former but not the latter. The court found that A. S. was within section 300, subdivisions (a) and (b), and continued the matter for disposition.

In September 2005, return receipts from the tribes were filed.

At the continued hearing, the parents submitted on the issue of disposition and a six-month review was scheduled.

In December 2005, a response letter from the Cherokee Nation was filed. The letter indicated that A. S. was not considered to be an Indian child.

C

Six-Month Review

Notice of the six-month review hearing was sent to the United Keetoowah Band of Cherokee Indians and the Eastern Band of Cherokee Indians in January 2006. Return receipts from both tribes were filed in February 2006.

In February 2006, the department filed a six-month status review report recommending that A. S. remain a dependent and that the parents be ordered to comply with an updated case plan. The report asserted that ICWA did not apply.[3]

A. S. was still living with her maternal aunt and was doing well in school. She was adjusting to out-of-home care and to visitation with her parents. She was referred for counseling but an assessment concluded that it was not necessary.

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[3] The status review report asserted that "there has been an excess of sixty days since Notice was sent," and "[t]o date, there have been no responses from the tribes." The report, signed on February 15, 2006, did not mention the response from the Cherokee Nation, filed the previous December, indicating that A. S. was not an Indian child.

A. S. was visiting mother three times a week. Mother was making an effort to remain awake and alert during the visits, which occurred during the late afternoon and evening hours. Mother's visits were going well and each family member reported enjoying them.

Mother resided with the maternal grandparents in their home. Initially she was taking morphine, Vicodin, and other prescriptions to control her pain. She switched to methadone to address her pain medication addiction, then resumed using the pain medications, and then resumed the methadone. The maternal grandmother typically administered mother's medications. Mother's service providers reported that she often appeared to be under the influence of too much medication, rendering her lethargic and sometimes asleep during sessions.

Mother was unable to participate in a program called Touchstone because she was using prescription narcotic medication. She had not provided verification of attendance at 12-step meetings. She continued to test positive for morphine although it was no longer prescribed. She also failed to appear for one test.

Mother attended individual counseling sessions, but her participation was limited. She fell asleep during one session, causing it to end early. The counselor questioned whether sessions were appropriate for mother at that time.

Mother attended parenting classes but she was nearly asleep the entire time. She arrived late for one class and fell asleep

for an hour or more. The class facilitator contacted the social worker and questioned whether mother was a drug user.

Mother began seeing her current physician in November 2005. The physician prescribed several different medications to manage her pain, caused by Fibromyalgia. The doctor believed her then-current regimen was the lowest dose of narcotics that mother had taken in a long time. The physician said that with continued progress and resolution of matters that caused her stress and anxiety, mother may no longer need medication in the future.

The social worker recommended that A. S. not be returned to the parents, in part because mother had not yet participated in substance abuse services and had slept through parenting classes and individual counseling.

The six-month review hearing was held in February 2006. The parents submitted on the recommendation. The juvenile court followed the recommendation and scheduled a 12-month review hearing.

In April and May 2006, the department filed response letters from the United Keetoowah Band and the Eastern Band of Cherokee Indians indicating that A. S. was not eligible for enrollment or membership.

D

Twelve-Month Review

In August 2006, the department filed a 12-month status review report recommending that reunification services be terminated and a permanency planning hearing be held.

A. S. was doing well and appeared to be comfortable in her home. There were no reports of problems with her adjustment or behaviors. She wished to remain with her aunt if she could not return to her mother's care.

In March 2006, mother had informed the department that she had obtained employment at a large retailer. She later told the department that she had missed a Saturday visit with A. S. because she was at the employer's orientation and had missed a Sunday visit because her car had broken down. The department received information that, in fact, mother had spent Friday through Sunday with a friend with whom she had used drugs in the past. On Monday, mother refused the department's request to drug test, claiming she was too sick. On Tuesday morning she failed to appear for an ordered drug test and again claimed that she was too sick to test. On Wednesday afternoon she appeared for a drug test after 4:00 p.m., which was too late in the day. On Thursday, she tested positive for morphine, which no longer was prescribed for her.

The maternal grandmother told the department that she wanted mother to move out of her home because mother was not doing what she was supposed to be doing. Mother's friend informed the department that she and mother had spent the weekend in Sacramento drinking and smoking methamphetamine.

In April 2006, mother appeared at a hospital emergency department complaining of problems eating and sleeping due to severe stress. She claimed she had no physician and was not taking any medications. She received a prescription for Xanax.

Four days later, mother went to a different hospital's emergency department complaining of a low back injury she had sustained when her boyfriend pushed her down some stairs. Again claiming that she had no physician and was not taking any medications, mother requested a "pain shot." When it became apparent that the physician would not prescribe one, she stormed out.

Later that day, mother returned to the first emergency department and reported that she was in significant pain from recent molar extractions. She requested something for the pain and claimed that she was not taking any medications. The physician reviewed mother's "old chart" and learned that she had come to the emergency department the previous year stating "she had run out of Norco" even though she "actually appeared to be quite intoxicated." The physician was "very concerned that she was involved with some pain medication seeking behavior."

The next month, mother appeared at the first emergency department complaining of "'a sharp pain'" that resulted from her "'lifting furniture.'" She was given a morphine injection and was sent home with Vicodin and Baclofen.

Eight drug tests were scheduled since the last review. Mother failed to appear three times, tested negative three times, tested positive for morphine once, and tested "dilute" for creatinine 7.0 once.

Mother completed a series of outpatient classes through the Butte County Behavioral Health, Alcohol and Drug Services. She did not provide proof of attendance at 12-step meetings.

Mother had attended counseling but she had received minimal benefit. She stopped attending for about a month and made no effort to resume the sessions. Her counselor concluded that counseling should be terminated.

Mother completed parenting classes. However, the instructor was concerned about mother's overuse of, and dependence upon, prescription medications.

Mother visited A. S. consistently but there continued to be concern about the quality of the visits. A. S. was disappointed when mother fell asleep during a movie they attended. Otherwise, A. S. enjoyed her visits with mother.

The department did not recommend continued reunification services because mother had not made significant progress in resolving her substance abuse issues.

At a contested 12-month review hearing, the social worker testified that mother was having visitation once a week for three hours monitored by the maternal grandparents.

It was the social worker's opinion that it would not be safe to return A. S. to mother's care because the social worker had not seen any consistent behavior or progress in mother's services. Because of the inconsistent participation and cooperation, mother's parenting and lifestyle would be possibly dangerous.

Following testimony from mother and arguments of counsel, the juvenile court terminated reunification services.

E

Permanency Planning Hearing

In January 2007, the department filed a permanency planning report that recommended terminating parental rights and selecting a plan of adoption.

A. S. was eight years old and was doing well in her placement with the maternal aunt. She was “very clear” that she wanted to remain with that family and was “pleased to be staying with them permanently.” She was doing well in school, was getting along well with others, and no longer was behind her peers academically.

A. S.’s contact with mother was ongoing but it was strained by mother’s need for time to adjust emotionally to the fact that someone other than herself would permanently parent her child. Visits were limited to a maximum of twice a month, “based upon the degree of benefit or detriment to [A. S.], and the actions or behaviors of [mother].”

An adoption assessment by the state Department of Social Services (social services) found that A. S. was adoptable and recommended that parental rights be terminated.

In February 2007, mother decided to pursue a designated relinquishment. In March 2007, a contested permanency planning hearing was continued for receipt of a doctor’s report and determination of the status of the relinquishment. At the continued hearing in April 2007, mother’s counsel said that she had signed a relinquishment that morning. The matter was

submitted and the court adopted the proposed findings and orders.

F

Post-Permanency Reviews

In September 2007, the department filed a status review report that recommended that A. S. remain in a permanent plan of adoption. A. S. still desired to be adopted by her caretakers. Since the reduction in contact with mother, A. S. has "become even more reassured" that she would remain with the caretakers and she "has had less anxiety about the future."

The last visit between A. S. and mother had occurred at a family gathering in August 2007. Mother had been overheard assuring A. S., "'you don't need permission to call me mommy'" and then instructing her to "'call me mommy. I want to hear you say it right now.'" Mother moved out of state shortly after the visit. A letter from social services said that the adoption process would take several months.

In March 2008, the department filed a status review report showing that a new permanency planning hearing had to be scheduled because the relinquishment document mother had executed contained some errors and she did not wish to execute a new relinquishment. No further visitation had been allowed since the August 2007 family gathering because there was "concern as to what contact is appropriate and emotionally healthy for" A. S., given mother's "inability to support a Permanent Plan" or to allow A. S. to "move forward with her new family."

At a hearing in March 2008, the juvenile court scheduled a permanency planning hearing. The court then stated, “I will grant visitation within the discretion of [the department] and to determine whether visits will be detrimental to the interest of the child.” The clerk’s minutes simply state, “Visitation for Mom is authorized.”

G

Second Permanency Planning Hearing

In May 2008, the department filed a second permanency planning report that continued to recommend terminating parental rights and allowing A. S.’s caretakers to adopt her.

The department reported that A. S. was “doing very well and has blossomed in the care of her relatives.” The department’s “only concern for her emotional stability” would arise from “any push for contact or visits with her mother.” In the department’s view, mother “is not a mentally stable person, and has not been able to look beyond her own needs to allow [A. S.] to move on in an emotionally healthy way.”

The department noted that neither it nor social services supports any contact between mother and A. S. The department explained that A. S. “gets very nervous when approached about visitation with her mother, and she is not a subject that [A. S.] brings up or discusses voluntarily except occasionally when [she] will remember some negative thing she recalls about her early childhood.”

At the May 8, 2008, permanency planning hearing, the parties stipulated that mother could have a “goodbye visit” with

A. S., contingent upon her first meeting with the social worker and others to discuss appropriate conduct. Mother submitted to termination of parental rights contingent upon the visit taking place.

At the continued hearing on May 22, 2008, the maternal aunt testified that visitation with mother would not be in A. S.'s best interest at that time. The aunt claimed she would not oppose future visits if she thought A. S. would benefit.

A social worker said that a visit would not benefit A. S. and would upset her.

Counsel for the department represented that social services attempted to schedule a "goodbye visit" but mother refused to participate in the planning process for the visit because certain unidentified aspects of the arrangement did not "meet [mother]'s expectations."

Based on the testimony it had heard, the juvenile court found that a "goodbye visit" would be detrimental to A. S. and thus would not be ordered.

Following a brief argument, the juvenile court adopted the proposed findings and terminated mother's parental rights.

DISCUSSION

I

Visitation

Mother contends she was wrongly denied visitation prior to the termination of her parental rights because there was insufficient evidence that visitation would be detrimental to A. S. We are not persuaded.

The juvenile court is "*required* to permit continued visitation pending the section 366.26 hearing absent a finding visitation would be detrimental" to the minor. (*In re David D.* (1994) 28 Cal.App.4th 941, 954; see *In re Mark L*. (2001) 94 Cal.App.4th 573, 580.)

Mother concedes that the juvenile court "authorized visits for [her] following the hearing held" on March 18, 2008.[4] Mother contends, and we assume, that "[t]he evidence fully supported" this order.

Mother next contends the juvenile court's subsequent finding on May 22, 2008, that "a goodbye" visit would "be detrimental to [the child]," is not supported by sufficient evidence. We disagree.

When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence -- that is, evidence that is reasonable, credible and of solid value -- to support the conclusion of the trier of fact. (*In re Angelia P*. (1981) 28 Cal.3d 908, 924; *In re Jason L*. (1990) 222 Cal.App.3d 1206, 1214.) In making this determination, we recognize that all conflicts are to be resolved in favor of the judgment and that issues of fact and credibility are questions for the trier of fact. (*In re Jason L.*, at p. 1214.) The reviewing court may

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[4] In her opening brief, mother refers to the date of this hearing as "March 17, 2008" and "May 8, 2008."

not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

The maternal aunt testified that following the last visit in August 2007, A. S. "was pretty distraught afterwards. And we came home and we talked about it and she made it clear to me that she did not want to see her biological mother if she was unable to keep her eyes open and talk in a normal way. And the reason why she was distraught was because she was . . . told, 'I need to hear you call me mommy right now, I'm your mommy, I'll always be your mommy.'" On cross-examination, the aunt clarified that A. S. "was crying when she left" the visit and "was crying when we came home." The aunt added that A. S. has "realized in the last three years being with us what so-called normal is, you know. She's -- [mother] has always been where she can't hold her eyes open and she can't present herself in a -- and so [A. S.] has a hard time seeing [mother] that way. She has a very hard time seeing her that way."

Social worker Tina Smith testified that she was familiar with A. S. and also knew mother. It was Smith's opinion that a visit, following nine months without visits, would be detrimental to A. S. The detriment was that "[i]t just would upset her as [did] the visit before. I have not seen a great deal of change in the mother's condition now as in the past. She, her attitude as she presented here in court last time was not any different than it has been in the past."

The department's permanency planning report, co-authored by Smith, noted that A. S. "gets very nervous when approached about

visitation with her mother, and she is not a subject that [A. S.] brings up or discusses voluntarily except occasionally when [A. S.] will remember some negative thing she recalls about her early childhood." The report noted that social services did not support any contact between mother and A. S.

Mother claims ending all contact is not in the minor's best interest because various psychological studies have shown that "adoption carries with it lifelong scars, and feelings of abandonment." However, none of the cited studies was before the juvenile court. Mother has not shown that the evidence before the court was insufficient. (See *In re Angelia P.*, *supra*, 28 Cal.3d at p. 924.)

In re Hunter S. (2006) 142 Cal.App.4th 1497, on which mother relies, is readily distinguishable because the juvenile court in that case "made no finding of detriment," and the appellate court did not conclude that its failure to do so was error. (*Id.* at p. 1505.) Here, in contrast, the juvenile court *found* that a "goodbye visit" *would be* detrimental. *Hunter S.* does not suggest that this *finding* of detriment was improper. (E.g., *People v. Knoller* (2007) 41 Cal.4th 139, 154-155 [an opinion is not authority for propositions not considered].) Even if the evidence could be reconciled with a contrary finding, comparable to the one made in *Hunter S.*, reversal of the judgment would not be warranted. (E.g., *People v. Ceja* (1993) 4 Cal.4th 1134, 1139; *People v. Bunyard* (1988) 45 Cal.3d 1189, 1213.)

Mother argues that because she had stabilized on her pain medication and had obtained full-time employment, she thus had progressed to the point where visitation no longer would be detrimental to A. S. However, there was conflicting evidence, i.e., testimony from social worker Smith, that mother's condition had not changed "a great deal," and that her "attitude as she presented here in court last time was not any different than it has been in the past." The finding of detriment is supported by substantial evidence. (See *In re Angelia P.*, *supra*, 28 Cal.3d at p. 924.)

II

The Benefit Exception

Mother contends the denial of visitation following the August 2007 family visit deprived her of due process because it prevented her from asserting the "benefit exception" to termination of parental rights. We disagree.

Parental rights shall not be terminated if the juvenile court finds "a compelling reason for determining that termination would be detrimental to the child" because "the parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).)

The benefit to the child must promote "the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement

against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Even frequent and loving contact is not sufficient to establish this benefit absent a significant positive emotional attachment between parent and child. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Teneka W.* (1995) 37 Cal.App.4th 721, 728-729.)

In this case, the juvenile court had no occasion to consider the "benefit exception" because mother did not object to the termination of her parental rights until the conclusion of the last hearing, following the denial of her request for a "goodbye visit." Even at that late date, mother did not ask the court to apply the exception.

III

ICWA Notices

Mother contends the ICWA notices sent to the tribes were insufficient in that they did not contain basic information that was easily accessible to the department.

Since the principal purpose of ICWA is to protect and preserve Indian tribes, a parent's failure to raise an ICWA notice issue in the juvenile court does not bar consideration of the issue on appeal. (*In re Marinna J.* (2001) 90 Cal.App.4th 731, 739.)

The petition alleged that A. S. may be of Indian ancestry. Mother told the department that she has Native American ancestry and that she believed her father may have Cherokee ancestry.

Under ICWA, notice of the pending proceeding and the right to intervene must be sent to applicable tribes or to the BIA if the tribal affiliation is not known. (25 U.S.C. § 1912; § 224.2, subd. (a).) Once notice is provided, it must be sent for each subsequent hearing until it is determined that the ICWA "does not apply to the case in *accordance with Section 224.3*." (§ 224.2, subd. (b), italics added.)

In August 2005, ICWA notices were sent to the three Cherokee tribes and the BIA. The notices contained mother's address, date of birth, and place of birth ("California"); father's address and date of birth; the maternal grandmother's name and date of birth; the maternal grandfather's name; and the names of one maternal great-grandmother and one maternal great-grandfather. All other relevant information was listed as "unknown."

The record shows that the maternal grandmother participated throughout these proceedings; for example, she was present at the hearings on March 18, 2008 and May 8, 2008.

In this case, all three Cherokee tribes determined that A. S. was not an Indian child. The ICWA notices were sent in August 2005, the Legislature enacted sections 224.2 and 224.3, effective January 1, 2007. (Stats. 2006, ch. 838, §§ 31, 32.)

Section 224.3, subdivision (a), provides in relevant part: "The court [and] county welfare department . . . have an

affirmative and continuing duty to inquire whether a child for whom a petition under Section 300 . . . is to be, or has been, filed is or may be an Indian child in all dependency proceedings . . . if the child is . . . in foster care." (Italics added.) Because this duty of inquiry was "continuing," it was operative during the pendency of this case and we consider whether the department's 2005 efforts were sufficient to satisfy the duty. We conclude they were not.

Section 224.3, subdivision (c), provides in relevant part: "If the . . . social worker . . . knows or has reason to know that an Indian child is involved, the social worker . . . is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, *by interviewing the parents*, Indian custodian, *and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.2* . . . ." (Italics added.)

Section 224.2, subdivision (a)(5), provides in relevant part: "In addition to the information specified in other sections of this article, notice shall include all of the following information: [¶] (A) The name, birthdate, and birthplace of the Indian child, if known. [¶] (B) The name of the Indian tribe in which the child is a member or may be eligible for membership, if known. [¶] (C) *All names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal*

enrollment numbers, and any other identifying information, if known. . . ." (Italics added.)

As noted, the ICWA notices were sent in August 2005. The section 366.26 hearings were conducted in March 2007 and May 2008. These hearings were conducted after the enactment of section 224.2 the 2005 notices did not contain all the information required by sections 224.2 and 224.3.

At the time of the hearings in 2007 and 2008 the department had an "affirmative and continuing duty" to "interview" "extended family members," including but not limited to the maternal grandmother, in order to "gather the information required." (§ 224.3, subds. (a), (c).) Because the maternal grandmother participated in these proceedings, the record supports an inference that the department had access to her and could have interviewed her to obtain basic information such as her own address.[5] The failure to interview the grandmother was prejudicial because the ICWA notice states that her address, along with much other information, is "unknown." The department's failure to interview the relatives after the statutes' effective date and prior to the last section 366.26 hearing renders the ICWA notice inadequate.

On remand, the juvenile court shall direct the department to conduct the inquiry and provide the notice required by

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[5] We reject the department's argument that "[t]here is no evidence that additional information could have been ascertained."

sections 224.2 and 224.3. Thereafter, the court shall proceed consistent with the responses to the notice.

DISPOSITION

The order terminating parental rights is vacated and the matter is remanded for the purpose of providing adequate ICWA notice to three Cherokee tribes. If any tribe responds that the child is an Indian child or eligible for enrollment, the court shall proceed as required by ICWA. If all tribes respond that the child is not an Indian child or eligible for enrollment, the court shall reinstate the order terminating parental rights.

ROBIE, J.

We concur:

BLEASE, Acting P. J.

HULL, J.