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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re LARRY M. H., a Person Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. LARRY H., Defendant and Appellant.	D045221 (Super. Ct. No. J506485H)

APPEAL from a judgment of the Superior Court of San Diego County, Julia Kelety, Judge. Affirmed in part; reversed in part and remanded with directions.

Larry H. (Larry H.), the father of Larry M. H. (Larry), appeals the termination of his parental rights pursuant to Welfare and Institutions Code section 366.26.[1] Larry H. contends the juvenile court erred by: (1) denying his section 388 motion; (2) failing to apply the beneficial relationship exception to adoption (§ 366.26, subd. (c)(1)(A)); (3) failing to order a permanent plan of long-term foster care or legal guardianship; and (4) finding the Indian Child Welfare Act (ICWA) did not apply.

We agree that there was noncompliance with ICWA, but otherwise find no error. Accordingly, we reverse with directions.

FACTUAL AND PROCEDURAL BACKGROUND

On October 7, 2002, the San Diego County Health and Human Services Agency (Agency) filed a dependency petition on behalf of Larry, alleging the 20-month-old child had suffered or there was a substantial risk he would suffer serious physical harm because the substance abuse of his mother, Deborah B., rendered her unable to provide regular care for him. (§ 300, subd. (b).)[2] The petition alleged Deborah had a long history of substance abuse, parental neglect and domestic violence, and had lost custody of and was unable to reunify with at least 10 other children.

Deborah identified Larry H. as Larry's father; she indicated that he had taken care of the child and supplied diapers, food and clothing for him. Larry had lived with Larry H. for about three months. Although he no longer had a relationship with Deborah,

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

2 Deborah is not a party to this appeal.

Larry H. continued to provide financial and emotional support for the child. Larry H. had signed a voluntary declaration of paternity at the hospital when Larry was born.

Deborah said she possibly had Cherokee Indian heritage, and Larry H. said he possibly had Sioux Indian heritage. The social worker reported she sent out forms SOC 318 and SOC 319[3] via certified mail to the Bureau of Indian Affairs (BIA), the United Band of Keetoowah Indians and the Eastern Band of Cherokee Indians. The social worker received a letter from the Cherokee Center for Family Services stating Larry was neither registered nor eligible to register as a member of the Eastern Band of Cherokee Indians. Similar letters were later received from the Cherokee Nation and the Keetoowah Band of Cherokee Indians in Oklahoma. The BIA returned the notices, explaining there was insufficient information identifying a federally recognized tribe for Deborah and Larry H. The BIA also informed Agency that there were no Sioux tribes in Kentucky and Louisiana, where Larry H.'s family originated. The court subsequently found ICWA did not apply.

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[3] The SOC 318 form and the SOC 319 form are pre-printed forms promulgated by the State of California Health and Welfare Agency, intended to assist county agencies in conforming with The Guidelines for State Courts; Indian Child Custody Proceedings (44 Fed.Reg. 67584 (Nov. 26, 1979)). (*In re Karla C.* (2003) 113 Cal.App.4th 166, 176.) Notwithstanding the social worker's representation that she sent both forms to the tribes and the BIA, the record does not include copies of the SOC 318 forms. The SOC 318 form (Request for Confirmation of Child's Status as Indian) has spaces for the name, birth date and place of birth of the child's grandparents and great-grandparents and all names by which those persons may have been known. (*In re C.D.* (2003) 110 Cal.App.4th 214, 223, 225.)

Larry H. was retired after working 19 years for the federal government. He was married twice and had two grown children. Larry H. had undergone open-heart surgery in August and was living with a friend. Larry H. had a criminal history that included a conviction for possession of narcotics and a needle/syringe, and carrying a loaded firearm. Larry H. also had an outstanding misdemeanor bench warrant. Larry H. denied any current use of alcohol or illicit drugs, but Deborah told the social worker that Larry H. was "too hooked on drugs" to take care of Larry.

At the contested jurisdictional hearing on December 10, the juvenile court amended the petition to name Larry H. as the presumed father of Larry. The court sustained the petition, declared Larry a dependent and ordered him placed in foster care. The court also ordered no reunification services be provided to Deborah under section 361.5, subdivisions (b)(10), (b)(11) and (b)(13). The court found Larry H. was a noncustodial father available and willing to care for Larry; however, the court also found it would be detrimental to place Larry with Larry H. because of his criminal history and his lack of suitable housing. The court ordered Larry H. to enroll in the Substance Abuse Recovery Management System (SARMS) and submit to random drug testing.

Larry H. enrolled in SARMS and the CRASH drug treatment program. By March 2003, Larry H. was not compliant with SARMS and although he was attending CRASH he did not provide urine samples for drug screening. Larry H.'s weekly visits with Larry went well, according to the social worker. Larry appeared happy and bonded to Larry H.

In April, Larry H. was hospitalized for heart failure and received a pacemaker. One of his doctors recommended hip replacement surgery.

At the six-month review hearing, the court found Larry H. had made some progress and continued services to the 12-month date. The court terminated Larry H. from SARMS because he was medically unable to participate and ordered random drug testing.

In October, Larry's foster family moved to Perris in Riverside County. Because Larry had developed a close and loving relationship with his foster family, the social worker recommended that he remain in their care. Larry H. agreed that it would be better for Larry to remain with this foster family than be placed with another in San Diego. Agency offered Greyhound Bus tickets to Larry H. to facilitate visits with his son in Riverside County.

Meanwhile, Larry H.'s health problems continued. Larry H.'s mobility was restricted and his hip replacement surgery was delayed because he had not sufficiently recovered from his heart condition. Agency offered in-home parenting education, but Larry H. declined because he had roommates.

At the 12-month review hearing on February 4, 2004, the juvenile court found Agency had provided or offered reasonable services, Larry H. had failed to make substantive progress in his case plan, returning Larry to parental custody would be detrimental and there was no substantial probability of return by the 18-month date,

which was only two months away. The court terminated services and set a section 366.26 hearing.[4]

The adoption assessment report found Larry was adoptable because of his "young age, good health . . . and . . . near normal development."[5] The foster parents with whom Larry had been living since October 2002 wanted to adopt him. Larry had formed a strong attachment to his foster parents, and referred to them as "momma" and "dad." Also, Agency had identified 13 other approved adoptive families who wanted to adopt a child with Larry's characteristics.

From December 2003 until mid-August 2004, Larry H. visited his son three times. The social worker reported the Larry H. was appropriate during the visits. On August 13 Deborah visited Larry, showed him a picture of Larry H. and asked who was in the picture. Larry responded: "daddy." When Deborah went through the same routine with a picture of herself, Larry replied: "you."

At the beginning of the contested section 366.26 hearing on August 14, Larry H. made an oral motion for modification (§ 388), seeking to have services reinstated or alternatively to have Larry placed in his custody. As changed circumstances, Larry H. alleged that since services were terminated he had participated in six parenting classes and had three visits with Larry. Larry H. alleged it was in Larry's best interests to

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4 We denied Larry H.'s writ petition challenging this ruling. (*Larry H. v. Superior Court* (May 20, 2004, D043726) [nonpub. opn.].)

5 Larry appeared to have a mild speech delay.

continue their relationship. According to Larry H.'s stipulated testimony, he did not complete the parenting program because he missed three classes after he was re-admitted to the hospital. Larry H. loves Larry very much and believed he had a close relationship with Larry. Further, Larry H. believed he had been "denied the opportunity to properly bond by the fact that [Larry] was moved so far away and [he was] not able to visit regularly."

The court denied Larry H.'s section 388 motion, finding Larry H. had not shown a change of circumstances or that it would be in Larry's best interests to grant the motion.

Turning to the section 366.26 hearing, the court found it was likely that Larry would be adopted within a reasonable time if parental rights were terminated. The court also found that none of the statutory exceptions to adoption applied, and adoption was in Larry's best interests. The court terminated Larry H.'s and Deborah's parental rights.

DISCUSSION

I. *Court Did Not Abuse its Discretion by Denying Section 388 Motion*

Larry H. contends the court erred by denying his section 388 modification petition. The contention is without merit.

Under section 388, a parent may petition the court to change, modify, or set aside a previous court order on the grounds of changed circumstances or new evidence. (§ 388, subd. (a).) The petition shall set forth why the requested modification is in the best interests of the dependent child. (§ 388, subd. (b).)

The parent bears the burden of showing *both* a change of circumstances exists and that the proposed change is in the child's best interests. (*In re Casey D.* (1999) 70

Cal.App.4th 38, 47.) The juvenile court may consider the entire factual and procedural history of the case in considering a section 388 petition. (*In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1450-1451.)

Rulings on section 388 motions are reviewed for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) The court's order on a section 388 motion will not be disturbed on appeal unless the court has exceeded the limits of legal discretion by making an arbitrary, capricious, or absurd determination. (*Ibid.*)

As changed circumstances, Larry H. alleged that he had attended six parenting classes and seen Larry three times since the court terminated services six months earlier. Although Larry H.'s participation in parenting classes and his visits with his son are commendable, they did not constitute changed circumstances within the meaning of section 388. At most, these activities showed "changing circumstances" regarding his ability to parent. (See *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 47.)

Further, to prevail, Larry H. had to show that granting his petition would be in Larry's best interests. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 48.) When a parent's circumstances are "changing, rather than changed," it is not an abuse of discretion to deny a section 388 petition if the court concludes that granting the petition would not be in the child's best interests. (*In re Casey D., supra,* at p. 49.)

Larry H. did not show that it would be in Larry's best interests to reinstate services. At that point, Larry had lived with his foster parents for almost two years and had thrived in their care. As the juvenile court observed, the foster parents were the only family Larry had ever known. Larry H., meanwhile, continued to have serious,

debilitating health problems, which cast substantial doubt on his physical ability to take care of a toddler in the short run and to provide a stable, permanent home for Larry in the long run.

Once reunification services have been terminated, the focus of the dependency proceeding becomes the child's best interests and bringing permanency and stability to his or her life. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310.) It does not promote stability for the child to delay the selection of a permanent home on the chance that a parent, who had failed at reunification in the past, "might be able to reunify [with this child] at some future point." (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 47.) "'Childhood does not wait for the parent to become adequate.'" (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.)

Larry H. relies on *In re Kimberly F.* (1997) 56 Cal.App.4th 519 and its three-part test for analyzing the "best interests" requirement of a section 388 petition:

> "(1) the seriousness of the problem which led to the dependency and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretaker; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been." (*In re Kimberly F., supra,* 56 Cal.App.4th at p. 532.)

The reliance is misplaced because Larry H. cannot prevail on any of the three *In re Kimberly F.* considerations.

First, Larry was brought into the system because his mother's substance abuse rendered her unable to care for him and left him at substantial risk of physical harm. The seriousness of the problem is obvious. Although Larry H. was a nonoffending,

noncustodial parent, Larry was not placed with Larry H. because of his drug history and lack of housing. Even if we were to put aside Larry H.'s refusal to undergo drug testing and thus satisfy Agency and the court that he was drug free, Larry H. had not completed other requirements of his case plan. Also, Larry H.'s health problems prevented him from assuming a parental role for his toddler son. Consequently, Larry H. continued to be unable to take care of his son 22 months after the child was taken into protective custody.

Second, although Larry H. and Larry had a relationship and Larry identified Larry H. as his "daddy," the foster parents had become Larry's de facto parents. The evidence is overwhelming that the bond between Larry and the foster parents was considerably stronger than the bond between Larry and his biological father. We realize Larry H.'s visits with Larry dropped significantly after the foster family moved to Riverside County. However, Larry H. agreed with Agency that it would be in Larry's best interests to stay with this particular foster family. Moreover, Larry H. did not take advantage of the transportation offered by Agency to enable visits to Larry.

Third, Larry H. had not shown he could remove or ameliorate the problems that led to the dependency and the denial of placement with him. Larry H. could have shown he was drug free but did not undergo drug tests. Larry H. did not complete the other requirements of his case plan.[6]

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6 Larry H. argues that as a nonoffending, noncustodial parent, he should not have been required to comply with a reunification plan or participate in a drug treatment or parenting classes. The time has long since passed to complain about the reunification plan; we deem Larry H. has waived or forfeited any complaint in this regard. (See *Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 803-804, 811.)

We realize that Larry H.'s actions did not lead to the dependency and that throughout these proceedings he has had serious health problems that compromised his ability to participate in services. In that sense, this is an unfortunate case. However, the bottom line is that Larry H. was not ready or able to resume responsibility for his child. The focus of the proceedings had shifted from reunification efforts to providing Larry with stability and permanence.

The juvenile court did not abuse its discretion in denying Larry H.'s section 388 motion.

II. *Existence of Beneficial Relationship Exception to Adoption Not Demonstrated*

Larry H. contends the juvenile court erred by choosing adoption as Larry's permanent plan because adoption would interfere with the beneficial parent-child relationship between them. The contention is without merit.

Our standard of review is the substantial evidence test. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) We determine if there is substantial evidence, contradicted or uncontradicted, to support the conclusions of the juvenile court, resolving all conflicts in favor of the prevailing party, and drawing all legitimate inferences to uphold the lower court's ruling. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.)

Adoption is the permanent plan preferred by the Legislature. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) At the selection and implementation hearing, the court must terminate parental rights if the child is likely to be adopted within a reasonable time unless a statutory exception applies. (§ 366.26, subd. (c)(1).) There are five statutorily recognized exceptions to adoption. (§ 366.26, subd. (c)(1)(A)-(E).) These include the

beneficial parent-child relationship exception. (§ 366.26, subd. (c)(1)(A).) The parent bears the burden to establish by a preponderance of the evidence that an exception to the statutory preference for adoption applies. (§ 366.26, subd. (c)(1); *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345.)

The beneficial parent-child relationship exception provides that after the court finds a child is likely to be adopted the court shall not terminate parental rights if it finds termination would be detrimental to the child because "[t]he parents . . . have maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(A), italics added.) The exception applies only if both prongs are met.

The record contains substantial evidence that neither prong of section 366.26, subdivision (c)(1)(A) was met.

Although Larry H. consistently visited Larry on a weekly basis before the foster family moved to Riverside County, he did not do so afterward. After the move, Larry H. visited his son two times a month for two months. In the ensuing nine months, Larry H. visited Larry three times; on each of these occasions, the foster family brought the child to San Diego. Undoubtedly, Larry H.'s health problems and the distance between the residences contributed to the decline in visits. However, Agency made Greyhound Bus passes available, but Larry H. did not take advantage of them. We agree with Agency that three visits in nine months does not constitute "regular visitation" within the meaning of section 366.26, subdivision (c)(1)(A).

As to the second prong of the statute, in *In re Autumn H.*, *supra*, 27 Cal.App.4th at page 575, this court explained that to come within the beneficial relationship exception to adoption, a parent must show the "relationship promotes 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." (Italics added.) The court must balance "the strength and quality of the . . . parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer." (*Ibid*.) In balancing these interests, relevant factors include "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs." (*Id*. at p. 576.) Further, the parent must show the benefit arises from a parental rather than a caretaker or friendly visitor relationship. (See *In re Beatrice M*. (1994) 29 Cal.App.4th 1411, 1420; *In re Elizabeth M*. (1997) 52 Cal.App.4th 318, 324 [frequently visiting mother occupied pleasant place in minor's life, but did not have parental role].) We affirmed this balancing test, explaining the standard "reflects the legislative intent that adoption should be ordered unless *exceptional circumstances* exist." (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51, italics added.)

Larry was taken into protective custody when he was 20 months old and detained in a foster home. Larry has been living with the same foster family throughout these proceedings, and the foster family wants to adopt him. The foster family has provided Larry with the basic necessities of life as well as giving him the love and support any young child needs. The foster family has bought stability to his life. It is undisputed that

Larry has looked to the foster family to meet his daily needs. Even when Larry H. was regularly visiting him, Larry did not rely on Larry H. to provide him with the basic necessities. Although Larry H. continued to have a relationship with Larry, it was not a parent-child relationship within the meaning of section 366.26, subdivision (c)(1)(A).

Despite Larry H.'s obvious love of Larry, the juvenile court could reasonably infer from the evidence that Larry H. did not "occup[y] a parental role in [Larry's] life, resulting in a significant, positive, emotional attachment from child to parent." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 953-954.) Moreover, the record showed Larry H. failed to show substantial progress with his case plan and did not have the ability to provide ongoing care for Larry. In balancing "the strength and quality of the natural parent[-]child relationship in a tenuous placement [with Larry H.] against the security and sense of belonging a new [adoptive] family would confer," the court could reasonably conclude termination of Larry's relationship with Larry H. would not be detrimental to him. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575-576.)

In sum, substantial evidence supported the court's finding that the section 366.26, subdivision (c)(1)(A) exception did not apply.

Larry H.'s reliance on *In re Jerome D.* (2000) 84 Cal.App.4th 1200, *In re Amber M.* (2002) 103 Cal.App.4th 681, and *In re Brandon C.* (1999) 71 Cal.App.4th 1530 is unavailing.

In *In re Jerome D.*, *supra*, 84 Cal.App.4th at page 1209, we reversed the judgment terminating parental rights because insufficient evidence supported the finding of adoptability and we concluded the minor would benefit from continuing a relationship

with his mother. This case is distinguishable from *In re Jerome D.*, *supra*, in which the eight-year-old child was unadoptable, the mother had maintained regular visitation with the boy and was having unsupervised overnight visits with him in her home, there was expert evidence that the two shared a strong and well-developed parent-child relationship, and the boy, who had lived with the mother for the first six years of his life, wanted to live with her again. (*Id*. at pp. 1205-1207.) In contrast, there is no dispute three-year-old Larry was adoptable, Larry H. had not maintained regular visitation and his visits remained supervised, there was no expert evidence that there was a parent-child relationship, and although Larry was too young to understand the proceedings and voice a preference, he saw his prospective adoptive parents as his primary caretakers.

Similarly, *In re Amber M.*, *supra*, 103 Cal.App.4th at page 691, in which we held insufficient evidence supported the court's finding that the section 366.26, subdivision (c)(1)(A) exception did not apply, is distinguishable. The mother in *In re Amber M.* maintained regular contact and visitation with her children. Multiple experts believed the children had a beneficial relationship with their mother that clearly outweighed the benefit of adoption. (*Id*. at pp. 689-690.) Additionally, the section 366.26 hearing occurred in 10 different sessions over a period of several months, and we noted the fragmented hearing process may have led the court to incorrectly perceive the beneficial nature of the relationship between the mother and her children. (*In re Amber M., supra,* at pp. 690-691.) In this case, there was no expert evidence that a beneficial parent-child relationship existed, and Larry H. did not maintain regular visitation. Moreover, there was no fragmented hearing process; the section 366.26 hearing occurred on one day.

Larry H.'s reliance on *In re Brandon C.*, *supra*, 71 Cal.App.4th at page 1532, which affirmed an order of guardianship as the permanent plan for four-year-old twins, is misplaced. In that case, the Court of Appeal upheld the application of section 366.26, subdivision (c)(1)(A) notwithstanding the social services agency's argument that the mother had not regularly provided her "'children with comfort, nourishment, or physical care'" during their weekly visits. (*In re Brandon C., supra,* 71 Cal.App.4th at pp. 1537-1538.) The Court of Appeal noted: "The benefit of continued contact between mother and children must be considered in the context of the very limited visitation mother was permitted to have." (*Ibid*.) In so doing, the appellate court was characterizing the mother's visitation as limited in the sense that her weekly one- or two-hour visits did not offer the opportunity for her to provide her children with the basic necessities of life; the characterization goes directly toward the second prong of section 366.26, subdivision (c)(1)(A) — namely, whether the parent-child relationship was a beneficial one. Here, however, Larry H.'s visitation was limited in the sense that he visited Larry three times in nine months, which involves the first prong of section 366.26, subdivision (c)(1)(A) — namely, whether there was regular and consistent visitation and contact. Moreover, to the extent that Larry H.'s visitation was limited by Agency, the limitation was a result of the foster family's move to Riverside County. As noted above, Larry H. agreed with Agency that keeping Larry with this particular foster family was in the boy's best interests, and he did not take advantage of the Greyhound Bus passes provided by Agency.

There are other differences between *In re Brandon C.*, *supra*, 71 Cal.App.4th 1530 and this case as well. Because *In re Brandon C.* was an appeal by the social services agency from the juvenile court's refusal to terminate parental rights, the Court of Appeal was required to view the evidence in the light most favorable to the mother. Here, the situation is reversed, and we must view the evidence most favorably to the juvenile court's finding that section 366.26, subdivision (c)(1)(A) did not apply. In *In re Brandon C.*, *supra*, 71 Cal.App.4th at page 1533, the paternal grandmother, who was the caretaker, "testified that mother had visited the boys regularly throughout the years, that the children look forward to mother's visits, have a good relationship with mother, refer to her as 'Mommy,' and seem to love her." Further, "[t]he grandmother did not think it would be in the boys' best interest to terminate their relationship with mother and father." (*Ibid*.) The Court of Appeal found the social services agency had not refuted the mother's evidence that she did, in fact, have a close relationship with her children. (*Id*. p. 1538.) Here, there was no evidence that a close parent-child relationship had developed between Larry H. and Larry.

III. *Circumstances of Case Did Not Call for Plan Other Than Adoption*

Larry H. contends that given the circumstances of the case — his being a nonoffending, noncustodial parent who could not comply with his case plan because of serious health problems — the juvenile court should have ordered a permanent plan of long-term foster care or legal guardianship rather than adoption. The contention is without merit.

The statutory mandate is that once the court finds by clear and convincing evidence that it is likely the minor will be adopted, the court must terminate parental rights unless the beneficial relationship exception or four other specified exceptions, which are not relevant here, apply. (§ 366.26, subd. (c)(1)(A)-(E).) In *In re Zeth S.* (2003) 31 Cal.4th 396, 410, our Supreme Court observed: "The Legislature . . . has determined that what is in the child's best interests is best realized through implementation of the procedures, presumptions, and timelines written into the dependency statutes."

To the extent Larry H. urges a "best interests" exception to adoption, he cannot prevail. There is no generalized "best interests" exception under section 366.26, subdivision (c)(1). (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164-1165.) As one court has stated, a parent may not prevent termination by showing "'. . . that in some general way the "interests" of the child will be fostered by an order based on some consideration not set forth in section 366.26.'" (*In re Jasmine J.* (1996) 46 Cal.App.4th 1802, 1808.)

IV. *ICWA Compliance*

Larry H. contends the juvenile court erred in finding ICWA did not apply because Agency did not comply with the notice requirements of the federal act. As Agency concedes, Larry H. is correct.

In 1978, Congress enacted ICWA to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families." (25 U.S.C. § 1902.) ICWA allows a tribe to intervene in dependency proceedings because the law

presumes it is in the child's best interests to retain tribal ties and heritage and that it is the tribe's interest to preserve future generations. (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.)

ICWA sets forth specific notice requirements:

> "[W]here the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention." (25 U.S.C. § 1912(a).)

If the identity of the tribe cannot be determined, notice must be given to the BIA. (25 U.S.C. § 1912(a); *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 253.)

The Indian tribe determines whether the child is an Indian child. (*In re Desiree F.*, *supra*, 83 Cal.App.4th at p. 470.) "'A tribe's determination that the child is or is not a member of or eligible for membership in the tribe is conclusive.'" (*Dwayne P. v. Superior Court*, *supra*, 103 Cal.App.4th at p. 255.)

Notice must be sent whenever there is reason to believe the child may be an Indian child. (Cal. Rules of Court, rule 1439(f)(5).) "[T]he juvenile court needs only a suggestion of Indian ancestry to trigger the notice requirement." (*In re Nikki B.* (2003) 106 Cal.App.4th 844, 848.)

ICWA notice requirements are strictly construed. (*In re Karla C., supra,* 113 Cal.App.4th at p. 174.) The notice sent to the BIA and/or Indian tribes must contain enough information to be meaningful. (*Id*. at p. 175.) To enable the juvenile court to review whether sufficient information was supplied, Agency must file with the court the

ICWA notice, return receipts and responses received from the BIA and tribes. (*Id*. at pp. 175, 178-179.)

Because Agency did not submit to the juvenile court copies of the SOC 318 forms that it sent to the tribes and the BIA, the court had no way to assess whether Agency supplied enough information to the tribes and the BIA to enable them to knowingly determine Larry's Indian heritage. Accordingly, we conclude the court erred when it found that ICWA did not apply, and we reverse and remand with directions that the court order Agency to comply with the notice requirements of ICWA and case law interpreting the federal statute. (See, e.g., *In re Karla C., supra,* 113 Cal.App.4th 166.) Agency is to provide the court with complete copies of the required ICWA notices that it either previously sent or those that Agency sends hereafter, along with return receipts for these notices and all responses received from the tribes and the BIA.

DISPOSITION

The judgment terminating parental rights is reversed, and the matter is remanded to the juvenile court with directions to order Agency to make proper inquiry and to comply with the notice provisions of ICWA, the relevant case law interpreting ICWA, and the views expressed in this opinion. If, after proper inquiry and notice, a tribe claims

Larry is an Indian child, the juvenile court shall proceed in conformity with all provisions of ICWA. If, on the other hand, no response is received or no tribe claims that Larry is an Indian child, the judgment terminating parental rights shall be reinstated.

HALLER, J.

WE CONCUR:

HUFFMAN, Acting P. J.

IRION, J.