In re J.S., 62 Cal. App. 5th 678, 276 Cal. Rptr. 3d 876 (2d Dist. 2021)

- **Holding:** DNA test reflecting substantial "Native American" heritage did not give rise to reason to know "Indian child" status under the Indian Child Welfare Act where the tested relative had no knowledge that such heritage derived from a federally recognized tribe.
- **Summary:** The mother appealed from jurisdictional findings and a dispositional order declaring two children dependents of the court and removing them from her custody. She claimed no Indian ancestry. However,

> Father filed a Parental Notification of Indian Status form (Judicial Council Form ICWA-020) indicating Father "may have Indian ancestry." Father wrote on the form that paternal grandmother Rita G. "has 58 percent Native American." At the jurisdiction/disposition hearing on September 13, the juvenile court asked Rita, who was in the courtroom, for her contact information and ordered the Department "to follow up." ... Rita told the Department that she submitted her DNA to ancestry.com to obtain pertinent information associated with the family's lineage. Rita stated that "to her surprise, the DNA results indicated that she had approximately 54% Native American lineage/heritage" and that the "DNA test[ ] results did not provide an associated tribe of descent." After sharing that she was "shocked" by the results, Rita added that "she is nearly 100% certain that none of her relatives/family members have been eligible and/or enrolled in any tribe(s)." [¶] Rita reported that her family was "of Mexican descent" and that her grandparents moved from Mexico to the United States in 1917.

The county department of children and family services interviewed the grandmother and represented to the juvenile court that "'[s]he has no additional information'" and stated that "'without any tribes to notice, we're asking the court [to] dispense with ICWA.'" Based on these facts, the trial court determined that it had no reason to know that ICWA applied.

The mother argued on appeal that "'[t]he court and the Department failed to make ICWA-compliant inquiry and failed to provide ICWA-compliant notice to the Secretary of the Interior and the Bureau of Indian Affairs ... as required when the identity of the claimed tribe(s) is unknown." The court of appeal disagreed. It reasoned:

> While indigenous people in the United States are often referred to as "Native Americans," the term "Native American" has a different connotation for purposes of ancestry.com. According to its website, the "Native American Ethnicity" group includes "ethnic origins" from North America and South America, "[s]tretching from Alaska to the tip of Argentina." Under these circumstances, because Rita's ancestry.com results did not contain the identity of a possible tribe or any specific geographic region from where her ancestry may have originated, the ancestry.com results, even if a reliable source of possible Indian ancestry, suggested "Native American" ancestry over a vast geographic area. As such, the information had little usefulness in determining whether J.S. and M.S. were Indian children as defined under ICWA.

It further held, in response to the mother's contention that notice to BIA should have been given, that "[w]ithout the identity of a tribe, let alone a federally recognized one, or at least a specific geographic area of possible ancestry origin, the BIA could not have assisted the Department in identifying the tribal agent for any relevant federally recognized tribes." Finally, the panel concluded that the department conducted the

inquiry required under state statutes into the "Indian child" status issue through its interview of the grandmother.

- **Relevant (2020) Deskbook Sections:** 13:7 n.2; 13:18 n.7