In re Allison B., 79 Cal. App. 5th 214, 294 Cal. Rptr. 3d 581 (2d Dist. 2022)

- **Holding:** Appeal was dismissed as moot on the basis of information concerning possible Indian ancestry gathered and submitted after the appellant mother's opening brief.
- **Summary:** The parental rights of a mother and father were terminated in September 2021. The mother appealed, arguing "that the Los Angeles County Department of Children and Family Services ... failed to comply with its duty under California law to inquire whether the children are Indian children within the meaning of the Indian Child Welfare Act." The juvenile court record reflected that both parents had indicated at the child custody proceeding's inception in 2018 that the three children at issue had no Indian ancestry and that "[d]eclarations submitted by two DCFS social workers filed in May and June 2018 state that the social workers had made 'Indian child inquir[ies]' regarding the children and concluded that the children have 'no known Indian ancestry.'" The record, however, did not reflect with whom the social workers communicated in reaching this conclusion.

  In her January 21, 2022 opening appellate brief, the mother contended "that DCFS, in conducting its Indian child inquiries, failed to question 'the many extended family members with whom [DCFS] had contact [sic] or could have had contact'" such as "maternal grandparents, paternal grandmother, and unidentified paternal 'cousins[.]'" Prior to submission of its brief, the department "filed a motion to dismiss the appeal on the ground that the appeal is moot. DCFS supported the motion with (1) evidence of a last minute information for the court (LMI), which DCFS filed in the juvenile court on February 14, 2022, and (2) minute orders the court issued on March 1, 2022." As summarized by the court of appeal:

  > The LMI is dated February 14, 2022 and signed by two DCFS social workers. It states the following: On January 26, 2022, a DCFS dependency investigator (DI) spoke with the maternal grandparents about possible Indian ancestry. Each grandparent stated that they had no knowledge that they or Mother have any Indian ancestry or that Mother is a member of an Indian tribe. The maternal grandmother said she had met her grandparents and great-grandparents, and that these relatives "never reported Native American heritage or being registered with a [N]ative American tribe." On the same day, the DI also spoke to the paternal grandmother, who denied having any Indian ancestry and reported that she had no knowledge that Father has Indian ancestry or is a registered member of an Indian tribe. The paternal grandmother told the DI that she does not have a telephone number for Father and no way of locating him. Father does, however, come to visit the paternal grandmother sometimes, and she agreed to call the DI if Father comes to her home. The LMI further states that on January 27, 2022, the DI spoke with the incarcerated father of two of Mother's children, who are not subjects of this appeal.

  The panel granted the department's motion to take judicial notice of the LMI filing in the juvenile court, directed supplemental briefing and, based on the new information and without reference to the latter court's minute entries, dismissed the appeal.

  As a procedural matter, the panel relied on Code of Civil Procedure section 909 that states, in part, a "reviewing court may for the purpose of making the factual determinations or for any other purpose in the interests of justice, take additional evidence of or concerning facts occurring at any time prior to the decision of the appeal,

and may give or direct the entry of any judgment or order and may make any further or other order as the case may require." It explained that when "postjudgment evidence is offered to an appellate court in support of a motion to dismiss a juvenile dependency appeal, it is 'routinely consider[ed]' because, if the motion is granted, it will have 'the beneficial consequence' of 'expedit[ing] the proceedings and promot[ing] the finality of the juvenile court's orders and judgment.'" [Cleaned up.] Turning to the "LMI" itself, the panel reasoned:

> In her appellate brief, Mother points to Father's statements to a social worker in July 2018 that the paternal grandmother and "cousins" could help care for the children. Even if Mother is correct that social workers were required to inquire of the maternal grandparents and paternal grandmother as to whether the children are Indian children, the LMI indicates that DCFS did so, albeit belatedly, rendering any prior failure harmless. A DCFS DI spoke with the maternal grandparents, who reported that they had no knowledge that they or Mother have any Indian ancestry or that Mother is a member of an Indian tribe. The DI also spoke to the paternal grandmother, who denied having any Indian ancestry or knowledge that Father has Indian ancestry or is a registered member of an Indian tribe. Although Father had referred to unidentified "cousins" in 2018, his whereabouts are now apparently unknown and there is no reason to believe that such "cousins" were readily available to DCFS for purposes of conducting the ICWA-related inquiry.

The panel rejected the mother's contention "that we cannot rely on the March 1, 2022 [juvenile court] orders because Mother did not have counsel at the time the court made these findings, and Mother asserts that the court did not have jurisdiction to make such post-termination orders" because it "rel[ied] solely on the record and the LMI" and "addressed any due process concern in this context by considering Mother's opposition to the noticed motion to dismiss and her supplemental brief, and by providing her, through her counsel, the opportunity for oral argument before this court, which she waived."

- **Relevant (2022) Deskbook Section:** 13:18 n.18