In re M.R., ___ Cal. App. 5th ___, ___ Cal. Rptr. 3d ___, 2022 WL 14749098 (3d Dist. Oct. 26, 2026)

- **Holding:** Order declaring a child free from parental custody and control and authorizing adoption by the child's grandmother was conditionally reversed, and the matter was remanded for compliance with the California Probate and Family Codes' requirement that an inquiry into possible Indian ancestry be made.
- **Summary:** After a child's mother died, a grandmother filed a petition to declare the child free from the father's custody and control on abandonment grounds. Both the grandmother and the father subsequently submitted forms stating no known Indian status. A court-appointed investigator filed a report also so stating. The juvenile court issued a tentative ruling and then a judgment in early 2022 granting the petition but not addressing Indian Child Welfare Act applicability. The county department submitted a report after the judgment "stating that it had made an inquiry and determined that the minor had no known Indian ancestry." The father appealed, raising only the contentions that "the trial court and its appointed investigator failed to make an adequate inquiry of extended family members to determine if the minor had Indian ancestry" and "that the court failed to make findings on the application of the ICWA in this case."

  The court of appeal panel conditionally reversed. It observed that the grandmother did "not separately address the trial court's failure to make findings" and "argue[d] only that any error was harmless when addressing the challenge to the adequacy of the inquiry." The panel "agree[d] with grandmother that nothing within the record of this case, or even offered for us to consider on appeal, indicates any reason to believe the ICWA may apply to the minor. Indeed, all available evidence is to the contrary." It nonetheless pointed out that "[t]he instant case is not a dependency case, and the Probate Code section relied on in large part by the trial court *explicitly did not apply* if the ICWA was at play. Yet, no ICWA finding was made prior to the trial court's reliance on that statute in its ruling." Moreover, "although here the maternal great-grandmother declared no heritage as to herself, she was the closest maternal relative to do so, and there is no evidence that any further inquiry was attempted from living relatives." The panel deemed "[t]hese factors [to] distinguish this case from other situations where the lack of inquiry was ultimately deemed harmless." It

  > therefore conclude[d] that we must conditionally reverse and remand this case for compliance with the ICWA, where father may proffer to the juvenile court any information he contends would provide insight as to the minor's possible Indian heritage, and where those tasked with ensuring their ensuing investigation of the minor's Indian heritage--including inquiring of mother's paternal relatives and the missing branches of her maternal family tree, if available--is thorough and well documented may do so. After such proffer and further inquiry, the trial court shall enter findings on the ICWA and, if it finds the child is not an Indian child, it shall reinstate the judgment. If it finds the child an Indian child, it shall conduct a new trial and proceed in accordance with the ICWA.

- **Relevant (2022) Deskbook Sections:** 13:1 n.12; 13:18 n.8
- **Comment:** The panel's distinguishing of the dependency decisions is thin at best. But its apparent disinclination to engage in a careful analysis of the conflicting welter of decisional authority addressing the harmless-error doctrine in this context is understandable—particularly where the result was highly unlikely to change on remand.