In re M.E., ___ Cal. App. 5th ___, ___ Cal. Rptr. 3d ___, 2022 WL 1656875 (3d Dist. May 25, 2022)

- **Holding:** Order terminating parental rights was conditionally affirmed but remanded for compliance with the state statutory requirement for further inquiry into "Indian child" status where "reason to believe" such status existed given the parents' assertions of possible Indian ancestry.
- **Summary:** The parental rights of a mother and father to four children were terminated in 2021. At the time of an early detention hearing,

  > the juvenile court held a detention hearing and asked both parents whether they had Indian ancestry. Although mother did not identify a tribe, she claimed Native American ancestry through her mother and provided the names of three relatives (two aunts and an uncle) who she claimed could likely provide more information. The father ... reported Native American ancestry through his father and stated his great-grandfather was "full-blooded Cherokee." Father did not know his great-grandfather's name and stated he believed all the relatives who had that information were deceased.

  The court found that these statements gave rise to believe under the California complementary statute to the Indian Child Welfare Act that "Indian child" status may exist and directed the county department of health and human services "'to continue to investigate or inquire as to [ICWA].'" In the following six weeks, the department interviewed the parents as directed. As to the mother, it

  > reported that [she] informed them that her Indian ancestry had been researched during a previous case in Yuba County regarding two of the minors ... and "they were unable to determine her Native American ancestry, thus, [the] ICWA was found not to apply." The jurisdiction/disposition report further noted that the investigator had reviewed the prior dependency filings in the Yuba County case and discovered mother had previously identified the Blackfeet, Cherokee, and Choctaw tribes, but denied that she herself, or her parents were enrolled members.

  As to the father, the department report stated that he claimed "some knowledge that his great-grandfather was a 'full blooded Indian,' but he did not know his great-grandfather's name or with which tribe he was affiliated or where he lived" and "included information that the disposition report in the Yuba County case noted that father had told a social worker that he possibly had ancestry with Cherokee and Blackfeet tribes, however he denied being an enrolled member."

  Based on this report, the court found "that '[t]here is no evidence that leads the court or anyone to believe that the Indian Child Welfare Act would apply in this case or that these children have any Native American heritage that would qualify them to be tribal members, and therefore the court finds ICWA does not apply.'" The department filed a subsequent report prior to the court's entry of the termination order containing the same information,

  > as well as information from the Cherokee Nation of Oklahoma, the Blackfeet Tribe, and the Jena Band of Choctaw Indians, all from the Yuba County case in 2017 and 2018, that indicated that neither parent nor the children were enrolled members, nor were they eligible for enrollment in the respective tribes. The report also included the following paragraph: "No further information has been provided

to this worker regarding the mother and father's knowledge of ICWA since the previous order in Yuba County was made."

The Yuba County case records were never submitted to the court. The mother appealed the termination order, challenging only the adequacy of the department's "reason to believe" further inquiry.

The court of appeal, agreeing with the mother, conditionally affirmed the termination order but remanded for an adequate further inquiry. It summarized the inquiry requirements under Cal. Welf. & Inst. Code § 224.2 by quoting from *In re D.S.*, 46 Cal. App. 5th 1041, 259 Cal. Rptr. 3d 903 (4th Dist. 2020), summarized at https://docs.google.com/document/d/137I1id6A2zhFv9Kj2r6eoemhUKJYhvdl/edit:

> "[S]ection 224.2 creates three distinct duties regarding ICWA in dependency proceedings. First, from the Agency's initial contact with a minor and his [or her] family, the statute imposes a duty of inquiry to ask all involved persons whether the child may be an Indian child. (§ 224.2, subds. (a), (b).) Second, if that initial inquiry creates a 'reason to believe' the child is an Indian child, then the Agency 'shall make further inquiry regarding the possible Indian status of the child, and shall make that inquiry as soon as practicable.' (Id., subd. (e), italics added.) Third, if that further inquiry results in a reason to know the child is an Indian child, then the formal notice requirements of section 224.3 apply."

"Notably," here,

> the Department did not represent whether it, or the Yuba County case investigator, interviewed the relatives that mother identified at the detention hearing. It did not represent that, as directed by the juvenile court, it had followed up on whether there were any individuals who might have information about father's Cherokee and Blackfeet heritage, even though it had since learned of two living paternal aunts, one with whom it had been in contact. Nor did the Department provide any information regarding what investigation the Yuba County investigator undertook, what information the investigator sent to the tribes, or when that information was sent. The limited information it did provide to the juvenile court was insufficient for the juvenile court to find the Department had fulfilled its ICWA inquiry obligation.

In response to the department's claim of harmless error based on the Yuba County case investigation, the panel observed that "a closer look at the Yuba County case file reveals the same deficiencies in the record that were before the juvenile court when it determined that the ICWA did not apply." In any event, however, "the juvenile court did not take judicial notice of the Yuba County case records or of the Yuba County Juvenile Court's ICWA finding, or otherwise indicate it was basing its finding on the Yuba County court's previous ICWA finding." Given the incompleteness of the department's further inquiry and report upon which the court's conclusion that ICWA did not apply was predicated, therefore, the panel could not "find the error in failing to conduct a more thorough ICWA inquiry harmless."

- **Relevant (2021) Deskbook Sections:** 13:1 n.12; 13:18 n.8