*In re Adrian L.*, ___ Cal. App. 5th ___, ___ Cal. Rptr. ___, 2022 WL 17661267 (Div. 1 Dec. 14, 2022)

- **Holding:** County department's failure to inquire into Indian child status with extended family members as required by California statute was harmless where the inquiry would not have yielded information likely to bear meaningfully on such status.
- **Summary:** The involved child was the subject of protective proceedings beginning in 2019. The mother's parental rights were eventually terminated in 2022. During the course of the proceedings, the mother was arrested after stabbing the father to death. Both he (prior to demise) and she denied Indian ancestry. Two paternal aunts had sought, or expressed interest in, the child's placement in their care. The county department of children and family services also considered, but rejected, placement in the maternal grandmother's home. It conducted no inquiry into these family members' Indian ancestry. The mother appealed the termination order, arguing that the department violated Cal. Welf. & Inst. Code § 224.2, subdivision (b) by failing "to inquire of extended family members, including maternal grandmother, paternal grandmother, and paternal aunt, regarding Adrian's potential status as an Indian child as defined in the Indian Child Welfare Act." The court of appeal affirmed on harmless error grounds.

  Although recognizing that the department failed to ask extended family members about their possible Indian ancestry, the panel stated that "DCFS's failure to inquire of extended family members does not result in automatic reversal. ... Instead, we must examine the record and reverse or remand only if that review shows prejudice because there was 'information that was likely to bear meaningfully upon whether the child is an Indian child.'" Here, "[t]he appellate record does not demonstrate that inquiring of maternal grandmother, paternal grandmother, or paternal aunt would have yielded information likely to bear meaningfully on the court's ICWA determination." The panel explained in this regard that

  > Mother and Father were close to their respective families. Mother and (to a lesser extent) Father resided with maternal grandmother and maternal uncles at various times throughout the proceedings. Father maintained a relationship with his sister, Veronica, who also lived with paternal grandparents as well as Father's two other children. Thus, it is unlikely maternal grandmother, paternal grandmother, or paternal aunt had knowledge of Adrian's possible tribal affiliation superior to Mother's and Father's disclaimer of any such ancestry.

  It added that "because preference is given to placing an Indian child with extended family ..., there is a strong incentive to bring to the juvenile court's attention facts suggesting that a child is an Indian child" but that "neither Mother, her attorney, maternal grandmother, a [paternal aunt]. or minor's counsel indicated that Adrian may be an Indian child." The panel further noted that the heightened evidentiary requirements for foster care and parental rights termination imposed under 25 U.S.C. § 1912(e) and (f) created an incentive to seek a determination of ICWA applicability where a basis for such a determination exists.

  The author of the panel opinion appended a lengthy concurrence. In his view, the Indian-child inquiry duty imposed under § 224.2, subdivision (b) is limited to instances where a county department assumes temporary custody of a child under Cal. Welf. & Inst. § 306. In this matter, the proceeding was initiated under Cal. Welf. & Inst. § 300(b).

The concurrence accordingly reasoned that "the preferred approach here should be to declare 'no error' rather than 'harmless error.'"

- **Relevant (2022) Deskbook Section:** 13:18 n.1
- **Comment:** This opinion presumably was designated for publication to present to the California Supreme Court the limiting interpretation of § 224.2, subdivision (b) proposed in the concurrence.