Filed 8/19/26

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Calaveras)

In re W.A., a Person Coming Under the Juvenile Court Law. CALAVERAS COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. S.A., Defendant and Appellant.	C104510 (Super. Ct. No. 22JD6472)

APPEAL from a judgment of the Superior Court of Calaveras County, David Sanders, Judge. Affirmed in part and reversed in part.

Elizabeth Klippi, under appointment by the Court of Appeal, for Defendant and Appellant.

Julie Spoljaric, Deputy County Counsel, for Plaintiff and Respondent.

Appellant S.A. (mother), adoptive mother of the minor W., appeals from the juvenile court's order summarily denying her Welfare and Institutions Code section 388 petition for modification without a hearing. (Welf. & Inst. Code, §§ 300, 388, 395.)[1]

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* Pursuant to California Rules of Court, rules 8.1105 and 8.1110, this opinion is certified for publication with the exception of part I of the Discussion.

1 Undesignated statutory references are to the Welfare and Institutions Code.

Mother also claims the juvenile court and the Calaveras Health and Human Services Agency (Agency) failed to comply with the inquiry and notice requirements of the Indian Child Welfare Act of 1978 (ICWA). (25 U.S.C. § 1901 et seq.) We will affirm the juvenile court's orders but order further ICWA compliance and that a new ICWA finding be entered.

BACKGROUND

Mother and father J.A. (father) legally adopted the minor W. and her sibling R. In September 2022, W. (then age 13), R. (then age 15), and another sibling D. (then age 14) were removed from the parents' custody following reports of serious physical abuse inflicted by father, who struggled with alcohol abuse, and mother's failure to intervene or protect the minors.[2] The court ordered reunification services for both parents. Mother's services included parenting education and family and individual counseling.

At the combined six-month and 12-month review hearing held January 24, 2024, the juvenile court found mother and father made minimal progress in their respective case plans. The court terminated the parents' reunification services and set the matter for a section 366.26 hearing.

According to the May 2024 section 366.26 report, the minor was having once-monthly visits with mother and objected to termination of parental rights. The Agency recommended the minor remain in foster care with a goal of legal guardianship. A July 2024 addendum to the report stated the minor had been placed with a new caregiver and was doing well. It was also reported that, while mother was supportive of father returning to the home following his criminal trial, the minor was hopeful father would go to prison so she could return home.

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[2] Siblings R. and D. are not parties to this appeal and will be mentioned only when relevant to the issues raised by mother.

At the readiness conference on July 23, 2024, the juvenile court noted that, while a section 366.26 hearing was set, the minor was approaching the age of majority and the Agency was recommending she remain a dependent of the juvenile court in a planned permanent living arrangement with the goal of legal guardianship. The parties agreed to vacate the contested section 366.26 hearing and instead implement the Agency's recommended permanent plans via a section 366.3 postpermanency review hearing. The court vacated the section 366.26 hearing, ordered legal guardianship as the minor's permanent plan, and further ordered that all prior nonconflicting orders remain in full force and effect. On January 14, 2025, the court ordered legal guardianship remain the minor's permanent plan.

By January 2025, the minor was no longer participating in visits with mother. The option of adoption as a permanent plan was discussed at a child and family team meeting in June 2025. As of July 2025, the minor was still not visiting with mother and reportedly wanted to be adopted by her current caregivers, who were having ongoing discussions with her about guardianship and adoption. The minor had regular contact with her sibling R. but had no contact with D. as they were not getting along. She was also having contact with her biological mother and sister.

On July 8, 2025, at a postpermanency status review hearing, the juvenile court noted the minor's current caregivers were interested in adoption. The matter was continued for a section 366.26 hearing.

On August 11, 2025, mother filed a section 388 petition requesting the juvenile court reinstate her reunification services, vacate the section 366.26 hearing, and order a bonding study between the minor and mother and the minor and her siblings. Mother's petition argued the anticipated change in the recommended permanent plan from legal guardianship to adoption resulted in changed circumstances. The petition further argued the request was in the minor's best interest because termination of parental rights would have long-term emotional and psychological impacts on the minor and would destroy the

family unit. Mother's petition included her declaration and other documentation purporting to support her arguments.

On August 12, 2025, the juvenile court summarily denied mother's section 388 petition for failure to state new evidence or changed circumstances. The following week, the Agency filed a notice of hearing on selection of a permanent plan indicating its recommendation of adoption as the minor's permanent plan.

Mother filed a timely notice of appeal of the juvenile court's August 12, 2025, denial of her section 388 petition.

DISCUSSION

I
Section 388 Petition for Modification

Mother contends the juvenile court abused its discretion when it summarily denied her section 388 petition without a hearing. She claims she made a prima facie showing of new evidence and changed circumstances and that the requested modification was in the minor's best interest. Mother's claim lacks merit.

To petition to modify a juvenile court order under section 388, a party must factually allege changed circumstances or new evidence to justify the requested order, and that the requested order would serve the minor's best interests. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.) The petitioner has the burden of proof on both points by a preponderance of the evidence. (Cal. Rules of Court, rule 5.570(h)(1)(D).)

In deciding whether a parent has met his or her burden under section 388, the juvenile court must consider such factors as the seriousness of the problem that led to the dependency and the reasons for the continuation of the problem; the degree to which the problem may be and has been removed or ameliorated; and the strength of the relative bonds between the dependent child and the child's parents or caretakers. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1229.) However, this list is not exhaustive. (*Ibid.*)

The child's best interests "are not to further delay permanency and stability in favor of rewarding" the parent for his or her "hard work and efforts to reunify." (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.) "A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47, disapproved on other grounds in *In re Caden C.* (2021) 11 Cal.5th 614, 636, fn. 5.)

The juvenile court must liberally construe the petition in favor of its sufficiency. (Cal. Rules of Court, rule 5.570(a).) Nonetheless, if the juvenile court finds that even so construed the petition fails to make a prima facie case as to either or both tests under section 388, the court may deny the petition without an evidentiary hearing. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 188-189; *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1413; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 806; see Cal. Rules of Court, rule 5.570(d).) We review the summary denial of a section 388 petition for abuse of discretion. (*In re S.R.* (2009) 173 Cal.App.4th 864, 870; *In re J.T.* (2014) 228 Cal.App.4th 953, 965.) As we explain, the juvenile court properly exercised its discretion.

A. *New Evidence or Changed Circumstances*

Here, regarding the first prong — new evidence or changed circumstances — mother's petition argued the plan for the minor "has changed from legal guardianship to adoption." We are not persuaded that this is the type of "change" contemplated by section 388, nor has mother provided any authority suggesting otherwise. Here, mother's section 388 petition sought reinstatement of reunification services. But the Agency's change in the recommended permanent plan was not evidence that *mother's* circumstances had changed; that is, that she made such significant progress in her case plan that additional services were warranted. However, even assuming a change in the

recommended permanent plan sufficed for purposes of section 388, it did not provide the required prima facie evidence of changed circumstances. The minor was removed due to father's severe physical and emotional abuse and mother's failure to intervene or protect her. Mother's petition argued she actively sought to reunify with the minor and that she strived to address each of the Agency's concerns, as evidenced by her successful reunification with her son D. and her participation in parenting classes, individual and family therapy, support groups, and educational seminars. However, unlike the cases upon which mother relies — *In re Aljamie D.* (2000) 84 Cal.App.4th 424, 428, 431-432 and *In re J.M.* (2020) 50 Cal.App.5th 833, 844-846 (denial of § 388 petition after a contested hearing) wherein proof of the respective parent's significant progress in services was set forth in the section 388 petition — here, mother provided no evidence of services she participated in or completed since termination of her services in January 2024. To the extent mother argues she was not provided with reasonable services, she has forfeited that claim due to her failure to timely challenge the juvenile court's reasonable services findings. (See *In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222 [a party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the juvenile court]; *Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 686.)

Mother's petition also argued, as she does here on appeal, that the minor was texting and posting on social media that she wanted to return home, requesting more visits with mother, and requesting that the court reinstate mother's reunification services, all of which established a prima facie showing of new evidence or changed circumstances. But the supporting documentation mother submitted with her petition was either undated or contained general and unverified information, which does not provide support for mother's assertions. Further, the record demonstrates that throughout the proceedings the minor vacillated between desiring to be with mother and not wanting to see her or participate in visits with her. The court considered the Agency's reports along

with mother's petition and supporting documents. Based on the evidence and information before it, the court found mother failed to make a prima facie case that her circumstances were changed. The court properly exercised its discretion.

B. *Best Interest of the Minor*

Given mother's failure to demonstrate a prima facie case of new evidence or changed circumstances, we need not reach the issue of whether mother made a prima facie showing of how reinstating her reunification services nearly three years after the minor was removed from parental custody would be in the minor's best interest. (*In re Casey D., supra*, 70 Cal.App.4th at p. 48; *In re Justice P., supra*, 123 Cal.App.4th at p. 189.) In any event, mother's unsupported and conclusory allegations that termination of parental rights would have long-term emotional and psychological impacts on the minor simply because she was almost an adult, or that severance of the minor's parental and sibling relationships would destroy the family unit, fail to make the necessary prima facie showing. Not only did mother fail to identify any evidence supporting her conclusions, the evidence before the court contradicted them — the minor was comfortable with her adoptive family and wanted to be with them; she had no trouble articulating how she felt about her parents, siblings, and foster caretakers; she had no desire to visit father or be with him and she hoped he would go to prison; there were no reports she suffered any negative psychological effects from being away from her parents or her siblings; she had a relationship with her sibling R. but there was no evidence she was distressed when not with her; and she had little or no relationship with her sibling D.[3]

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[3] Finally, mother argues she made a prima facie showing of best interest via the minor's desire to reunify with her and the minor's request that the court reinstate her services. But we have already rejected those claims due to the lack of evidence supporting them.

Mother failed to make a prima facie showing of new evidence or changed circumstances, or that her request was in the minor's best interest. Thus, the allegations in her petition did not meet either prong of section 388, and the juvenile court acted well within its discretion in summarily denying mother's section 388 petition.

II
ICWA

Mother contends the juvenile court erred in finding the Agency undertook a proper ICWA inquiry of mother's and father's biological extended family members as well as the minor's adoptive extended family members. The Agency argues the ICWA is not at issue here because mother appealed from the court's denial of her section 388 petition, at which hearing the court made no ICWA findings. Nonetheless, the Agency concedes its failure to inquire of the minor's biological extended relatives but argues it was not required to inquire of the adoptive parents' extended relatives. As we explain, the ICWA is applicable under these circumstances, and the Agency's duty of inquiry applied as to the minor's biological extended relatives and her adoptive extended relatives.

A. *ICWA Background*

At the inception of the dependency proceedings, mother and father signed parental notifications of Indian status forms stating they had no known Indian ancestry. They confirmed as much at the September 2022 detention hearing and further informed the juvenile court that, as the minor's adoptive parents, they had no knowledge regarding the biological parents' Indian ancestry. At that time, the court found there was no reason to believe the minor was an Indian child and the ICWA did not apply. The court adopted those findings at the subsequent jurisdiction hearing later that month.

The parents were asked about, and they repeatedly denied having, any new information regarding possible Indian ancestry. At hearings in February 2023 and thereafter throughout the entirety of the proceedings, the juvenile court confirmed its

previous finding that there was no reason to believe the minor was an Indian child and the ICWA did not apply.

Evidence that the Agency asked any extended relatives, whether biological or adoptive, about possible Indian ancestry is scarce. The social worker reported questioning adoptive paternal grandmother W.P., who indicated all of the adoptive maternal relatives (with whom she no longer had contact) lived in California and all of the adoptive paternal relatives lived in Texas and, according to a DNA ancestry search, none of the adoptive paternal relatives had any Native American ancestry. While the record reveals that the Agency was aware of or had contact with other adoptive relatives including maternal aunts K.K. and K.C., the paternal great-grandmother (the maternal grandparents were already deceased), and father's half-siblings, there is nothing in the record demonstrating the Agency discussed potential Indian ancestry with any of those known individuals.

Similarly, although the Agency was aware that the minor was communicating with her biological mother and her biological sister M., the record is devoid of any evidence the Agency attempted to identify and contact the minor's biological relatives or, at the very least, contact the minor's biological mother and sister to make ICWA inquiry.

B. *Applicable Law*

"The ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for removal of Indian children from their families, and by permitting tribal participation in dependency proceedings. [Citations.] A major purpose of the ICWA is to protect 'Indian children who are members of or are eligible for membership in an Indian tribe.' " (*In re A.W.* (2019) 38 Cal.App.5th 655, 662.) The ICWA defines an " 'Indian child' " as a child who "is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4).)

"Under ICWA's state analogue statutes [the California Indian Child Welfare Act] (Cal-ICWA; [citation]), courts and child welfare agencies are charged with 'an affirmative and continuing duty to inquiry whether a child … is or may be an Indian child' in dependency cases." (*In re Dezi C.* (2024) 16 Cal.5th 1112, 1125; see § 224.2, subd. (a); Cal. Rules of Court, rule 5.481(a).) "Inquiry includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child." (§ 224.2, subd. (b)(2).)

"[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. (See § 224.2, subd. (c) [court is obligated to inquire at the first appearance whether anyone 'knows or has reason to know that the child is an Indian child']; *id.*, subd. (d) [defining circumstances that establish a 'reason to know' a child is an Indian child]; § 224.3 [ICWA notice is required if there is a 'reason to know' a child is an Indian child as defined under § 224.2, subd. (d)].)" (*In re D.S.* (2020) 46 Cal.App.5th 1041, 1052.)

On appeal, we review ICWA findings and orders for substantial evidence. (See *In re D.S., supra*, 46 Cal.App.5th at p. 1051.) A finding that the ICWA does not apply is "subject to reversal based on sufficiency of the evidence." (§ 224.2, subd. (i)(2).) The juvenile court's "fact-specific determination that an inquiry is adequate, proper, and duly

diligent is 'a quintessentially discretionary function' [citation] subject to a deferential standard of review." (*In re Dezi C., supra*, 16 Cal.5th at p. 1141.)

C. *Analysis*

The Agency first argues that, because no ICWA findings were made at the section 388 hearing from which mother appeals, the ICWA is not properly before us. We disagree. In support of its argument, the Agency cites *In re N.F.* (2023) 95 Cal.App.5th 170, 179 (*N.F.*). There, the juvenile court made a finding in 2018 that the ICWA did not apply. At the 2021 section 366.26 hearing, the court selected legal guardianship as the minor's permanent plan and terminated dependency jurisdiction. (*N.F.*, at pp. 174-175.) One year later, the mother filed a postpermanency section 388 petition in part challenging the legal guardianship order. (*N.F.*, at p. 175.) The court denied the section 388 petition. (*N.F.*, at pp. 175-176.)

On appeal from the section 388 order, the mother asked the appellate court to reverse the legal guardianship order on the grounds that the juvenile court and the agency failed to comply with their ICWA duties. (*N.F., supra*, 95 Cal.App.5th at p. 178.) The appellate court agreed with the agency's assertion that the mother forfeited her challenge to the order for legal guardianship by not appealing from it, and that the agency no longer had a duty of inquiry under the ICWA at the postpermanency proceedings. (*N.F.*, at p. 178.) In that regard, the court held that "[b]y failing to file a timely appeal from the court's legal guardianship order — entered at the time the court terminated its dependency jurisdiction — mother has forfeited her right to challenge the court's implied ICWA finding made as part of that order." (*Id*. at p. 179.) The court reasoned that because the juvenile court terminated dependency jurisdiction when it instituted the legal guardianship and did not vacate that order at the hearing on the mother's section 388 petition, the "continuing duty of inquiry under section 224.2 was not implicated." (*N.F.*, at p. 179.)

N.F. is distinguishable from the case before us. Here, the juvenile court found, at the September 2022 detention hearing, that the ICWA did not apply. Thereafter, throughout the entirety of the proceedings, the juvenile court confirmed its previous ICWA findings. On July 23, 2024, pursuant to the parties' agreement, the court vacated the section 366.26 hearing and ordered a permanent plan of legal guardianship for the minor, confirming all prior nonconflicting orders but, unlike *N.F.*, maintaining its dependency jurisdiction over the minor. In January 2025, a permanent plan of adoption was discussed by the parties and brought to the court's attention. At the July 8, 2025, postpermanency review hearing, the court set the matter for a section 366.26 hearing, again confirming all prior nonconflicting orders. Mother filed her section 388 petition on August 11, 2025, and the court summarily denied it the following day.

Here, the juvenile court had dependency jurisdiction over the minor when it heard mother's section 388 petition. Moreover, the court's ICWA inapplicability order was made at the September 2022 detention hearing and thereafter confirmed by the court either expressly or impliedly throughout the proceedings, including at the July 8, 2025, hearing when the court set the new section 366.26 hearing. Therefore, the Agency's and the court's continuing duty of inquiry under the ICWA continued and was indeed implicated. Given the court's "affirmative and continuing duty to inquire whether a child … is or may be an Indian child" (§ 224.2, subd. (a)), mother is not foreclosed from raising the issue in this appeal from the section 388 petition even though she did not appeal from the initial September 2022 order or any order thereafter expressly or implicitly confirming the court's ICWA finding. (See *In re Isaiah W.* (2016) 1 Cal.5th 1, 10 [parent's failure to timely appeal from ICWA finding in dispositional order did not preclude her from raising ICWA claim in appeal from order terminating parental rights].)

Next, the Agency argues it was not required to make ICWA inquiry of the minor's adoptive extended family members. We disagree. "[T]he definition of 'Indian child' under the ICWA does not by its terms automatically exclude" children who are "not the

biological children of a parent with Indian blood" and who are adoptees "of an ancestor with Indian blood." (*In re B.R.* (2009) 176 Cal.App.4th 773, 783.) "Tribal membership is treated under the ICWA as a matter of political affiliation rather than racial origin: 'The ICWA recognizes the political affiliation that follows from tribal membership in a federally recognized tribe, rather than a racial or ancestral Indian origin … .' [Citation.] In incorporating the ICWA requirements into state law, the California Legislature explicitly found and declared that tribal membership is a question of political affiliation and that a tribe's determination of its membership is binding on the state: 'A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act to the proceedings.' (Welf. & Inst. Code, § 224, subd. (c).)" (*Ibid*.) That is to say, while the minor's adoptive parents denied any Indian ancestry, it is nonetheless possible their extended relatives knew otherwise and could provide information to the Agency upon proper and diligent inquiry. Assuming an adoptive extended relative had Indian ancestry, there could then be reason to believe the minor could be eligible for membership in an Indian tribe. It would then be the respective tribe's prerogative whether or not to grant the child membership. (*Ibid*.; *In re Dezi C., supra*, 16 Cal.5th at p. 1129 [the ICWA gives Indian tribes " 'concurrent jurisdiction over state court child custody proceedings' " and, "when ICWA applies, 'the Indian child's tribe shall have a right to intervene at any point' in a proceeding involving the removal of an Indian child from their family"].) In short, the ICWA was "intended to protect Native American heritage, cultural connections between tribes and children of Native American ancestry, the best interests of Indian children, and the stability and security of Indian tribes and families." (*In re Dezi C.*, at pp. 1125; see *id*. at pp. 1128-1129.) Thus, ICWA

inquiry of the adoptive extended relatives here was not only required here but imperative in order to fulfill the ICWA's intent.

Finally, the Agency concedes it failed to fulfill its inquiry obligations regarding the minor's extended biological relatives. We accept the Agency's concession and agree that remand is necessary. The record reveals the minor was communicating with her biological mother and her biological sister M. The Agency made no attempt to contact those individuals or to identify or contact any of the other biological extended relatives. We will direct the juvenile court to conduct further ICWA proceedings consistent with this opinion.

DISPOSITION

The juvenile court's order denying mother's section 388 petition is affirmed. Consistent with this opinion, the juvenile court's finding that the ICWA does not apply is vacated and the matter is remanded for further ICWA compliance proceedings, whereafter the juvenile court shall enter new ICWA findings. If the minor is found to be an Indian child, the juvenile court shall proceed in compliance with the ICWA and California implementing provisions.

/s/
EARL, P. J.

We concur:

/s/
HULL, J.

/s/
KRAUSE, J.