Filed 8/21/26 In re W.J. CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re W.J., a Person Coming Under the Juvenile Court Law.	
S.D. COUNTY HEALTH & HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. A.J., Defendant and Appellant.	D087869 (Super. Ct. No. NJ16054)

APPEAL from a judgment of the Superior Court of San Diego County, Alejandro Morales, Judge. Affirmed in part, conditionally reversed in part, and remanded with directions.

Sarah Vaona, under appointment by the Court of Appeal, for Defendant and Appellant, A.J.

Suzanne M. Davidson, under appointment by the Court of Appeal for Defendant and Appellant, J.S.

Damon M. Brown, County Counsel, Lisa M. Maldonado, Chief Deputy County Counsel, Katie Abajian, Deputy County Counsel, for Plaintiff and Respondent, W.J.

A.J. (Mother) appeals the juvenile court's findings made at the dispositional hearing pursuant to Welfare and Institutions Code,[1] section 361.2, subdivision (a), contending the San Diego County Health & Human Services Agency (Agency) failed to comply with inquiry requirements of the Indian Child Welfare Act of 1978 (ICWA), 25 United States Code section 1901 et seq., and section 224 et seq. Mother maintains the Agency did not fulfill its duty of inquiry as to extended relatives and requests conditional reversal and remand for compliance with ICWA.[2] J.S. (Father) joins Mother's ICWA argument.

Father, the noncustodial parent of W.J. (Child), also appeals the juvenile court's order finding it would be detrimental to place Child with him after removing Child from the custody of Mother. He argues that no substantial evidence supports the court's detriment finding under section 361.2, subdivision (a).

As to placement with Father, we conclude substantial evidence supports the juvenile court's detriment finding. The Agency concedes a limited remand is necessary to ensure ICWA compliance. We accept that

---

1 Further undesignated statutory references are to the Welfare and Institutions Code.

2 Mother does not challenge the juvenile court's jurisdiction and disposition findings on the section 387 petition. We thus limit the facts to issues relevant on appeal.

concession. Accordingly, we conditionally reverse the court's order and remand the matter for compliance with ICWA.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Case Referral and Petition*

Three-year-old Child came to the Agency's attention after he was found walking alone, after midnight, on a busy section of the Pacific Coast Highway across from the hotel where he was staying. He had been in the care of Mother's boyfriend and adult son while Mother was six hours away. The police brought Child to Rady's Children's Hospital where he tested positive for fentanyl. Mother had a prior child welfare history due to Child testing positive for methamphetamines at birth.

In May 2025,[3] the Agency filed a petition under section 300, subdivision (b)(1), alleging Child was at substantial risk of serious harm due to Mother failing to properly supervise him. At the detention hearing, the juvenile court detained Child out of mother's custody. Mother identified Father as Child's father but stated he was not involved in their lives and his whereabouts were unknown.

B. *Jurisdictional Investigation*

In June, the Agency located Father who was living in Merced, California. Father stated that Mother and Child lived with him after Child was born but they moved away one year ago. At a special hearing, Father was elevated to presumed status and requested unsupervised visitation with Child. Mother opposed unsupervised visitation, stating Father had little prior contact with Child. The juvenile court ordered liberal, supervised visits for Father, with Agency discretion to expand.

---

3 All dates herein are for the year 2025, unless otherwise specified.

Father began having virtual contact with Child. In July, the Agency made travel arrangements for Father to visit Child in person in San Diego and to participate in a drug screening and a Live Scan to gather criminal history. Father requested his significant other also be cleared to visit with Child. When Father arrived for a visit with his female companion, the identification Father previously provided for her did not match her appearance. Despite claiming her identification was at the hotel, neither Father nor his companion provided it to the Agency. During the visit, Father declined to attend the drug screening and Live Scan appointments.

The Agency assessed Father for possible placement. An initial records check revealed Father had a criminal history, including drug-related charges in 2020 and 2021, and domestic violence. Father denied substance use or having any drug-related convictions, and he believed that some of the criminal history was attributed to his adult son with the same name. A subsequent Department of Justice criminal check confirmed Father's criminal history. When the Agency reached out to Father's case manager from United Way, she acknowledged Father's history of substance use but she denied having concerns about his ability to care for himself or Child.

In August, Father tested positive for marijuana, amphetamines, and methamphetamines, but contested the accuracy of the test results. Thereafter, he refused to communicate directly with the social worker, instead directing the Agency to communicate with his United Way case worker, yet he declined to sign a release of information.

Despite having a positive in-person visit, Father only attended about half of his scheduled video visits, during which he appeared distracted and frustrated. The Agency was unable to reach Father when scheduling Child and Family Team Meetings to discuss Child's needs and he was

nonresponsive when the Agency reached out to his United Way case manager about participating in Child's developmental screening.

C. *Jurisdiction and Disposition Hearing*

In its Addendum Report, the Agency expressed concerns that Father denied his substance use and criminal history, provided inconsistent information, failed to engage and maintain contact with the Agency, and exhibited behaviors such as paranoia, confusion, and anger outbursts.

At the September 17 contested jurisdictional/disposition hearing, the juvenile court made a true finding on the petition and found it was not detrimental to place Child with Mother while she remained in a drug treatment program. The court ordered the parents back for a special hearing in November.

Father did not attend the special hearing in November. At that time, Mother was doing well in her program and the court set a review hearing for March 2026.

D. *Section 387 Petition and Investigation*

In January 2026, the Agency filed a section 387 petition alleging the previous disposition was not effective and requesting that Child be detained out of Mother's home because she twice tested positive for drugs, was discharged from the treatment program, and left Child in another individual's care for lengthy periods of time. Unable to reach Father because his cell phone was disconnected, the Agency completed a due diligence report on his whereabouts. At the January 2026 detention hearing on the petition, the juvenile court detained Child for placement away from Mother. Father did not attend the hearing and his attorney was unable to reach him.

That same month, the Agency again attempted to contact Father by sending a letter to his last known address. In February, the juvenile court

sent the January petition, minute order, and notice of the next court date to Father's address of record by certified mail. The return receipt was returned signed, but the signature was dated after the February 2026 jurisdiction hearing, which Father did not attend.

In March 2026, Father called the social worker on a new phone number. He reported completing a parenting and behavior class but refused to provide copies of letters from service providers, instead directing the Agency to his attorney. Father stated he was prepared to care for Child if the juvenile court ordered it at the next hearing but, when questioned by the Agency, he could not identify any of Child's needs. The Agency reported Child had global developmental delays, multiple health diagnoses including an upcoming surgery, and an active Individualized Education Plan for speech and language services. It further reported that Child was doing well and that the foster parents were meeting all of his needs.

E. ***Contested Jurisdiction and Disposition Hearing***

At the contested hearing in March 2026, Father testified he was participating in a parenting class and substance abuse treatment program and had been sober "since this process began." The Agency social worker testified she was unable to verify progress in any service programs because Father failed to provide the necessary information for the service provider after agreeing to do so, and he did not respond when she attempted to contact him. The juvenile court made a true finding on the section 387 petition and ordered continued removal from Mother. The court found it would be detrimental to place Child with Father under section 361.2, subdivision (a).

DISCUSSION

A. ***Substantial evidence supports the juvenile court's detriment finding.***

Father challenges the juvenile court's finding under section 361.2, subsection (a), that placing Child in his custody would be detrimental to Child's well-being. He argues the court erred by basing its detriment finding on Father being argumentative and "difficult to work with," rather than weighing all relevant factors. We conclude, to the contrary, that substantial evidence supports the court's determination.

Where a dependent child would be at substantial risk of physical or emotional harm if left in parental custody and there is a noncustodial and nonoffending parent who is willing to assume custody, the juvenile court must place the child with the noncustodial parent unless it finds that doing so would be "detrimental to the safety, protection, or physical or emotional well-being of the child." (§ 361.2, subds. (a) & (b)(1); accord, *In re Maya L.* (2014) 232 Cal.App.4th 81, 97–99.) "In making a finding of detriment, the juvenile court 'weighs all relevant factors to determine if the child will suffer net harm.' [Citation.] In making this assessment, the court ' " 'may consider a parent's past conduct as well as present circumstances.' " ' "(*In re A.T.* (2025) 110 Cal.App.5th 722, 736 (*A.T.*).) The Agency, as the party opposing placement with the noncustodial parent, bears the burden of proof to show detriment under section 361.2, subdivision (a). (*Id.*)

On appeal, we review the juvenile court's decision for substantial evidence, keeping in mind that the court is required to make a dispositional finding by clear and convincing evidence. (*In re Noe F.* (2013) 213 Cal.App.4th 358, 367.) The question before us is " 'whether the record as a whole contains substantial evidence from which a reasonable fact finder could have found it highly probable that the fact was true.' [Citation.] We view the record in the light most favorable to the prevailing party and give due deference to how the trier of fact may have evaluated the credibility of

witnesses, resolved conflicts in the evidence, and drawn reasonable inferences from the evidence." (*In re M.V.* (2022) 78 Cal.App.5th 944, 960 (*M.V.*).)

Here, the juvenile court considered relevant factors to conclude that Child would suffer net harm if placed with Father. (See *In re A.C.* (2020) 54 Cal.App.5th 38, 43.) First, the court considered Father's inconsistent involvement with Child, noting his initial video visits were productive but he eventually missed half of his scheduled meetings. When he did attend, he appeared distracted and frustrated. Father also failed to attend three court hearings and could not be located for several months, despite the repeated efforts of the Agency and his United Way case manager. The court also noted Father's limited parental history with Child, who neither knew Father well nor had been in Father's care for an extended period. The absence of a meaningful relationship between Father and Child was a permissible factor to consider. (*Id.*) While not an independent basis for a detriment finding, the lack of prior contact underscored the significance of Father's inconsistent visitation and failure to engage with the Agency.

Second, when Father was in contact with the Agency, he was untruthful and did not comply with the Agency's reasonable requests that were necessary to evaluate whether placement with him would pose a risk of harm to Child. For example, he presented false identification for his companion and never provided her true identification, which prevented the Agency from assessing whether she presented safety concerns. He also denied his criminal and substance use history and initially refused to sign a release of information to allow the Agency to obtain drug testing results from his case worker. As the dependency progressed, he failed to provide documentation to show his progress in services and refused to speak with the

social worker directly, instead directing the Agency to talk to his attorney. This evidence supports the court's findings that Father did not "work with" the Agency, thus, it would be detrimental to Child if placed with Father "given the juvenile court's continuing supervision of the child and the Agency's role in addressing the protective issues and facilitating the reunification process." (*A.T., supra*, 110 Cal.App.5th at p.738.)

Compounding these concerns is evidence that Father did not appear to support or meaningfully participate in services for Child, despite his developmental delays and specialized educational and medical needs. (See *A.T., supra*, 110 Cal.App.5th. at pp. 737–738.) Significantly, Father was unable to identify Child's needs or describe how he would attempt to meet those needs. Father also did not attend special meetings to address Child's educational progress and medical condition, and he was nonresponsive when the Agency reached out to his United Way case manager to encourage him to participate in Child's developmental screening. Conversely, the court found Child was doing well in his current placement with his caregiver and was receiving necessary educational, developmental, and medical services. Father's lack of knowledge regarding Child's issues, coupled with his apparent lack of interest in learning about Child's special needs supports the juvenile court's detriment finding. (See *M.V., supra*, 78 Cal.App.5th at p. 960.)

The evidence also shows Father failed to address unresolved substance use issues. He was reluctant to take a drug test, repeatedly denied substance use and his history of drug-related arrests, and exhibited concerning behaviors. He then continued to deny substance use in the face of positive tests for methamphetamine, amphetamines, and marijuana. While he later testified he had been sober "since this process began," Father provided no

evidence of sobriety or his progress in any substance use program or services. The effect of substance use on Father's ability to care for Child, coupled with Child's potential exposure to dangerous substances, was highly relevant in assessing detriment to Child.

Under these circumstances, we conclude clear and convincing evidence supported the juvenile court's finding that it would be "detrimental to the safety, protection, or physical or emotional well-being" of Child if placed with Father at the time of disposition. (§ 361.2(a).)

B. *Conditional reversal is appropriate to permit an adequate ICWA inquiry.*

Both parents alleged possible Native American heritage. Mother reported she may have either Mashika or Wichita ancestry. One maternal adult sibling claimed Native American ancestry through an unknown tribe. Another maternal half sibling reported possible Cherokee ancestry.

The Agency was unable to locate any tribe with the name Mashika or similar spelling. It sent an informal inquiry to the Wichita and affiliated tribes, listing Child, Mother, Father, and maternal grandmother as relatives, but it later received a response that Child was not eligible for enrollment.

Father reported possible Cherokee ancestry, but he had no further information. The Agency made two unsuccessful attempts to contact two paternal relatives. It sent an inquiry to three Cherokee tribes, listing parents, Child, and a paternal great grandmother, and received responses from all three tribes stating that Child was not eligible for membership.

With respect to extended family, Mother identified several maternal aunts and uncles, including a sister, three brothers, and two half-siblings, and informed the Agency she had a close relationship with them. Father

similarly listed two brothers and two sisters with whom he regularly communicated. He also mentioned two paternal great uncles.

On January 20, 2026, the juvenile court found the ICWA did not apply. It renewed this finding on March 20, 2026.

Mother (joined by Father) contends substantial evidence does not support the juvenile court's finding that the ICWA does not apply because the Agency did not comply with its initial duty of inquiry regarding the parents' possible Native American ancestry. In particular, the parents argue the Agency should have inquired of certain extended family members who were reasonably available.

In California dependency proceedings, the juvenile court and Agency have an "affirmative and continuing duty to inquire" whether a child "is or may be an Indian child." (§ 224.2, subd. (a).) The Agency's initial duty of inquiry includes "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).) ICWA defines " 'extended family member' " by "the law or custom of the Indian child's tribe" or, absent such law or custom, as "a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent." (25 U.S.C. § 1903(2); § 224.1, subd. (c).)

Here, the parents contend the Agency failed to satisfy its duty of initial inquiry under section 224.2, subdivision (b), because the ICWA inquiry was inadequate as to maternal uncles and also a paternal great uncle with whom the Agency was in contact. The Agency concedes it failed to comply with its initial duty of inquiry because the record does not reflect any questioning of

these relatives about Indian ancestry. We agree with the parties that a conditional reversal is appropriate.

DISPOSITION

The orders issued at the March 20, 2026, contested jurisdiction and disposition hearing are conditionally reversed. The matter is remanded to the juvenile court with directions to vacate its ICWA finding and to order the Agency to complete the ICWA inquiry. If, after further inquiry, neither the Agency nor the juvenile court has reason to believe or to know that Child is an Indian child, the juvenile court's jurisdiction and disposition orders shall be reinstated. Alternatively, if after completing the initial inquiry the Agency or the juvenile court has reason to know Child is an Indian child, the court shall proceed in conformity with the ICWA and related California law.

DATO, Acting P. J.

WE CONCUR:

KELETY, J.

BERMÚDEZ, J.