Children's Law Center of California

"DEPENDENCY LEGAL NEWS"

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NEW DEPENDENCY CASELAW

ICWA; Post-judgment evidence on appeal

In re A.C.—published 6/25/2021; Fourth Dist.
Docket No.: E075333
Link to Case: https://www.courts.ca.gov/opinions/documents/E075333.PDF

APPELLANT MUST SHOW PREJUDICIAL ERROR WHEN RAISING ICWA VIOLATIONS ON APPEAL. THE APPELLANT MAY SUBMIT POST-JUDGMENT EVIDENCE TO ESTABLISH THE POSSIBILITY OF INDIAN ANCESTRY AND PROVE PREJUDICIAL ERROR.

At the time of the detention hearing, father was in custody and not brought to court. The agency did not conduct an ICWA inquiry. father made his first appearance at the jurisdiction/dispositional hearing. The juvenile court did not order him to file an ICWA-020 form, nor did the agency inquire of any possible Indian ancestry. At the 12-month review hearing, the juvenile court found the ICWA did not apply.

Affirmed. Under federal law, the juvenile court "must ask each participant" in dependency "at the commencement of the proceeding […] whether the participant knows or has reason to know that the child is an Indian child." Although the juvenile court erred by failing to ask the father, at his first appearance (or any other

time), whether he had any Indian ancestry and the agency failed to ask the father and his extended family members whether he had Indian ancestry, the error was not prejudicial. Any failure to comply with a higher state standard, above and beyond what ICWA itself requires, must be held harmless unless the appellant can show a reasonable probability that he or she would have enjoyed a more favorable result in the absence of the error. When a parent cannot make a good faith claim that the child has Indian ancestry, the possibility that an inquire would nevertheless show that the child is an Indian child is meritless. Father's failure to raise the possibility of Indian ancestry at the trial level, or on appeal, precluded him from establishing prejudicial error. If he, at any point, claimed Indian ancestry, the Court of Appeal conceded it would have reversed. In a dissenting opinion, Justice Menetrez contested whether father established prejudice. According to the majority opinion, in order to obtain a reversal, father must assert on appeal that he has Native American ancestry, even though the record contains no support for that assertion because the agency and the trial court never investigated. The dissent inquired the extent appellate attorneys must conduct their own investigations now outside the scope of the record and concluded, "[j]ust how much of the trial court's and [the agency's] jobs does the majority opinion reassign to appellate counsel?" (MO).