Children's Law Center of California

"DEPENDENCY LEGAL NEWS"

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NEW DEPENDENCY CASELAW

ICWA; WIC 224.2

In re S.H.—published 8/12/22; First Dist., Div. One
Docket No. A163623
Link to case: https://www.courts.ca.gov/opinions/documents/A163623.PDF

BECAUSE THE DUTY TO FURTHER INQUIRE IS ONGOING, THERE IS NO NEED TO DISTURB AN EARLY ORDER WHERE PROCEEDINGS ARE ONGOING, THERE IS ADEQUATE OPPORTUNITY TO FULFILL THOSE STATUTORY DUTIES, AND ALL PARTIES RECOGNIZE THE DEFICIENT ICWA INQUIRY.

S.H. was filed on for general neglect. Mother's counsel told the court that mother had no known Indian ancestry, and then discussed mother's support network which included her mother, grandmother, and aunt. Later, a social worker received a voicemail from alleged father Anthony H. who had accidentally left his phone on after completing his message. In the apparent unintended portion of his voicemail, Anthony H. was heard discussing with mother a plan to claim the minor had Indian ancestry to delay the agency's removal of her from the home. Mother was heard saying the child did not

have Indian ancestry and that she was Japanese. The record otherwise did not support any Indian ancestry on mother's side. Subsequently, mother told the social worker she was unsure about ancestry and would have to call her grandmother about it. The agency later interviewed maternal great-grandmother who reported that her great-grandparents said she was Blackfoot Cherokee, but she did not know if her great-grandmother had lived on a reservation or received Native American services. The agency recommended a finding that there was no reason to believe or know that S.H. was an Indian child and that ICWA did not apply. S.H. was eventually placed with a relative described as a maternal cousin or great aunt but there was nothing in the record to indicate the caretaker had been asked about ancestry. At the disposition hearing, the agency's attorney argued that further inquiry had not resulted in any specific information and that claims of heritage appeared to have been made up by mother and Anthony H. The court found that ICWA did not apply but without prejudice and subject to further inquiry. Mother appealed, arguing the agency conducted an inadequate investigation as to the child's possible Native American ancestry.

Affirmed. Where the agency concedes its failure to fulfill its inquiry obligations under ICWA, a reversal of an early disposition order is not warranted simply because the parent shows ICWA obligations have not yet been satisfied as of the time of their appeal. Here, the agency conceded on appeal its error in failing to interview the maternal grandmother and maternal relative with whom the child was placed. However, there is no need to disturb a finding through a reversal (or "conditional reversal" or "conditional affirmance") and remand as mother requests based solely on a duty of inquiry that the agency agrees has yet to be satisfied. The agency's duty to further inquire and report to the court is a continuing one. And, even after the juvenile court concludes ICWA does not apply, it must reverse that finding if it receives information giving a "reason to believe." Similarly, the juvenile court here clearly knew of its continuing duty as it had made its ICWA finding without prejudice and subject to further information. It makes little sense to reverse a jurisdiction/disposition order to direct the agency and juvenile court to do something that they recognize must be done anyway. This same principle does not apply to an ICWA appeal from the termination of parental rights (TPR). Unlike an order made at the early stage of the case, such as at the jurisdiction/disposition hearing, the hearing to decide TPR is the last opportunity for a tribe to intervene and leaves no further opportunity for inquiry after the child is freed for adoption. (ML)

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Special Immigrant Juvenile Status (SIJ)

Guardianship of Saul H.—published 8/15/22; Cal. Supreme Court Docket No. S271265
Link to Case: https://www.courts.ca.gov/opinions/documents/S271265.PDF

[1] A CHILD'S DECLARATION, WITHOUT FURTHER EVIDENCE, MAY BE SUFFICIENT TO SUPPORT PREDICATE SIJ FINDINGS. [2] WHEN CONSIDERING WHETHER REUNIFICATION WITH A PARENT IS VIABLE, THE COURT MUST CONSIDER THE PAST RELATIONS BETWEEN THE CHILD AND PARENT, HOW FORCED REUNIFICATION WOULD AFFECT THE CHILD'S WELFARE, THE PARENT'S ABILITY AND WILLINGNESS TO PROTECT AND CARE FOR THE CHILD, AND THE PARENT'S LIVING CONDITIONS. [3] THE HEALTH, SAFETY AND WELFARE OF THE CHILD IS THE PRIMARY CONCERN OF THE COURT WHEN DETERMINING THE BEST INTEREST OF THE CHILD.

Saul left El Salvador at the age of 16, fleeing gang violence. Saul's parents started sending him to work in the fields in the summers when he was 10 years old. At 15, his parents made him stop going to school after gang members attempted to recruit him outside of class. Saul later got a job to provide for his family, but a gang member approached him there too and threatened to hurt him unless he paid the gang. He later left El Salvador against the wishes of his parents. In the United States, a distant relative agreed to serve as his guardian and Saul sought predicate SIJ findings through the probate court. Saul was eighteen when he sought relief. In support of his petition, Saul submitted a declaration detailing the dangers he faced in El Salvador, his parents' inability to provide for and protect him, and the safety and happiness he has found in his guardian's care. The probate court denied the petition. The probate court determined that because Saul's parents' inability to provide for the child was due to poverty, the child could not establish that reunification with his parents was not viable. The court also held it was not in Saul's best interest to stay in the United States; since he was now an adult, the threats he faced when he was younger may no longer be present if returned to El Salvador. The court acknowledged the gang violence prevalent in El Salvador, but opined that El Salvador also produces doctors, lawyers, and other professionals, regardless of gang violence.

Reversed. [1] Petitioners must prove the facts supporting SIJ predicate findings by preponderance of the evidence. Evidence supporting SIJ predicate findings may consist solely of, but is not limited to, a declaration by the child who is the subject of the petition. When a child's declaration alone does not establish the factual basis for SIJ predicate findings, a superior court may

consider, or request, other evidence to ascertain the child's eligibility. [2] Viability means workability or practicability. The fact that harm to the child is attributable to a parent's poverty does not preclude a court from determining that reunification with a parent is not viable; the relevant inquiry is not whether a child's parents are blameworthy. The focus is on whether it is workable or practical to force the child to return to live with the parent, not on whether harm the child experienced in the past was excusable or the parent's reasons for inflicting it reasonable. Returning Saul to live with his parents would not be workable or practical because he would face a substantial risk that he would suffer serious harm as a result of his parents' inability to protect him from gang violence while providing for his basic needs and education. [3] The best interest determination is distinct from the nonviability of reunification determination in that the court's focus is not on the relationship between the child and the child's parent. Instead, the best interest determination focuses on the effects of sending children back to live in their home country. The health, safety and welfare of the child is the primary concern of the court when determining the best interest of the child. In making such determinations, California courts give special weight to a child's wishes. In comparing the uncontroverted evidence of Saul's circumstances, it was not in his best interest to return to El Salvador—in California, Saul had a guardian who provides for him, and he can focus on his education without fear of gang violence. If repatriated, it is likely Saul would be unable to pursue his education and be unable to avoid gang contact that may threaten his life. (MO)

REUNIFICATION BYPASS; WIC 361.5(b)(5), (c)(3)

In re Raul V.—published 8/17/22; Fourth Dist., Div. Two
Docket No. E077964
Link to case: https://www.courts.ca.gov/opinions/documents/E077964.PDF

WHERE A PARENT IS DENIED REUNIFICATION SERVICES PURSUANT TO SECTION 361.5(b)(5) AND (c)(3), ON APPEAL THE PARENT MUST SHOW THAT THE EVIDENCE COMPELLED A CONTRARY FINDING IN FAVOR OF THE PARENT AS A MATTER OF LAW.

Three-month-old Raul V. was found to have an acute fracture of his left arm, an older fracture of the left femur that had started to heal, marks on his upper left thigh that appeared to have been caused by adult fingernails, and he was missing the frenulum under his tongue. The agency filed a petition alleging serious physical harm under subdivision (a), failure to protect under subdivision (b)(1), and severe physical abuse under subdivision (e). Mother admitted to causing the fingernail injuries when Raul would not stop crying

as she was changing his diaper but denied causing the other injuries. The court sustained the petition as pled. The disposition report stated that mother acknowledged having pinched the child's leg but continued to deny any knowledge of how the other injuries occurred. A forensic psychologist reported and testified that mother was suffering from some form of mental illness which contributed to her inability to properly care for the child and to recall the details surrounding the pinching. The psychologist opined that the agency should remain involved with the family for at least eighteen months to ensure mother's compliance with treatment. She testified that mother's inability to recall the details surrounding the child's injury did not indicate a failure to take responsibility. The court determined that mother failed to carry her burden of proving by preponderance of the evidence that services are likely to prevent reabuse. The court removed Raul from parents and ordered reunification services for father but denied services for mother. Mother filed a timely appeal.

Affirmed. Mother failed to make a showing that the evidence compelled a finding in her favor as a matter of law, that is, whether the evidence supporting mother's position was (1) uncontradicted and unimpeached and (2) of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding. The court had good reasons for rejecting parts of the psychologist's testimony. Attributing mother's purported inability to recall the details of how the injuries occurred to memory impairment resulting from mother's mental illness was inconsistent with mother's denials and varying explanations over time. Further, evidence that mother participated in predisposition services did not require the juvenile court to find in mother's favor. The court reasonably did not believe mother's claim that she could not remember anything else about how the injuries were caused. Thus, the evidence supported a reasonable inference that by the time of the disposition hearing mother still had not admitted and hence had not begun to address what she had done to Raul. This is not a case where undisputed facts lead to only one conclusion in mother's favor. (NS).

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Beneficial Parental Relationship Exception – WIC 366.26

In re J.R.—Cert. for Part. Publ. 8/22/22; First Dist., Div. Two
Docket No. A164334
Link to case: https://www.courts.ca.gov/opinions/documents/A164334.PDF

THE JUVENILE COURT'S RULING REGARDING THE BENEFICIAL RELATIONSHIP EXCEPTION TO TERMINATION OF PARENTAL RIGHTS IS EVALUATED UNDER A HARMLESS ERROR STANDARD AND REVERSAL IS ONLY WARRANTED IF A PARENT PROVIDES EVIDENCE IN THEIR FAVOR SUPPORTING AN APPLICATION OF THE EXCEPTION.

The agency filed a petition in 2020 regarding then one-and-a-half-year-old J.R. and six-month-old B.R. due to extensive domestic violence and substance abuse issues by the parents and mother's mental health issues. The juvenile court sustained the petition and ordered family reunification services for both mother and father, which were later terminated after the parents received twelve months of services. Subsequently, mother entered a drug treatment program and filed a section 388 motion requesting reinstatement of her family reunification services. The juvenile court held a combined section 366.26/388 hearing in December 2021, denying mother's 388 motion and terminating mother and father's parental rights. In its ruling, the juvenile court considered whether a "parental bond" existed between mother and her children. Mother appealed.

Affirmed. Six months before the .26 hearing in this case, the California Supreme Court issued *In re Caden C.* (2021) 11 Cal.5th 614, which detailed the purpose and scope of the beneficial relationship exception to termination of parental rights, as well as affirming that it is the parent's burden to prove the applicability of this exception by a preponderance of the evidence. Mother's sole issue on appeal alleges error by the juvenile court in considering whether a "parental bond" existed between herself and her children for purposes of evaluating the second part of the exception, whether "the child has a substantial, positive, emotional attachment to the parent—the kind of attachment implying that the child would benefit from continuing the relationship." However, because mother did not provide evidence supporting the exception, she is not prejudiced by any possible error, and it is unnecessary to decide if the juvenile court erred. Dependency cases are not reversed when the error is harmless, because the delay in addressing a reversal is contrary to the child's interest in permanency. A remand for further review is necessary if the trial court applies the wrong legal standard and the underlying record is unclear regarding what decision the trial court would have arrived at if it had applied the correct legal standard. However,

in this case, the proper legal standard from *In re Caden C.* was available to all parties at the time of the .26 hearing and mother had full and fair opportunity to present evidence regarding the exception but did not do so. Thus, no factual errors require resolution and remand is not necessary because any error by the juvenile court is harmless. (SW)

ICWA; WIC 224.2

In re Dominick D.—published 08/23/2022; Fourth Dist., Div. Two
Docket No. E078370
Link to Case: https://www.courts.ca.gov/opinions/documents/E078370.PDF

THE DUTY TO INQUIRE UNDER ICWA REQUIRES INTERVIEWS OF THE REPORTING PARTY, EXTENDED FAMILY MEMBERS, AND OTHERS WHO HAVE AN INTEREST IN THE CHILD.

Five-month-old Dominick came to the attention of the agency after mother left him with an unwilling caretaker, who subsequently contacted law enforcement. The agency filed a petition, alleging counts under section 300(b)(1) and (g). Prior to and after the detention hearing, a social worker spoke with maternal great-grandfather, but there is no indication that he was asked whether Dominick is or may be an Indian child. On numerous occasions, mother denied Indian ancestry as reflected in the ICWA-010(A), mother's ICWA-020, mother's statements to the juvenile court at the detention hearing, and mother's statements to the agency. When the social worker met with mother and took a family history, mother identified her father, mother, and three sisters, two of whom were adults. Maternal aunt T.D. denied Indian ancestry. There is no indication that the agency attempted to locate or contact maternal grandparents or the other adult maternal aunt to ask about Dominick's possible Indian ancestry. At the adjudication and disposition hearings, the court sustained multiple allegations, found that Dominick's father was unknown, and concluded that ICWA did not apply. The court removed Dominick from mother's custody and ordered reunification services for her. Mother appealed.

Affirmed in part, vacated in part, and remanded with directions. On this record, the agency failed to discharge its first-step inquiry duty under section 224.2, which requires the agency to ask all involved persons whether the child may be an Indian child. This duty of initial inquiry includes asking the reporting party, child, parents, legal guardian, extended family members, and others who have an interest in the child whether the child is or may be

an Indian child. When the agency became involved in this matter, it did not ask the reporting party, maternal great grandfather, or three of the extended family members identified by mother – maternal grandmother, maternal grandfather, and maternal aunt S. – about Dominick's potential Indian status. The agency concedes these failures. The Court declines to address harmlessness because the Court is not reversing the jurisdictional or dispositional findings but only vacating the finding that ICWA does not apply. On remand, the agency must comply with its inquiry and, if applicable, notice obligations under ICWA and related California law. (AMC)

Due Process; Notice; Standing

In re J.R.—published 8/23/2022; Second Dist., Div. One
Docket No. B314532
Link to case: https://www.courts.ca.gov/opinions/documents/B314532.PDF

[1] MOTHER'S DUE PROCESS RIGHTS WERE VIOLATED WHEN DEPENDENCY PROCEEDINGS WERE INITIATED WITHOUT ATTEMPTING TO LOCATE HER IN THE COUNTRY SHE RESIDED IN, AND WHEN THE AGENCY FAILED TO PROVIDE NOTICE OF THE PROCEEDINGS AFTER MOTHER PROVIDED HER PHONE NUMBER, HOME ADDRESS, AND THE CHILD'S BIRTH CERTIFICATE. [2] FATHER HAD STANDING TO MAINTAIN THE APPEAL OF THE VIOLATION OF MOTHER'S DUE PROCESS RIGHTS SINCE HIS RIGHTS WERE INTERTWINED WITH MOTHER'S, AND AS A RESULT OF THE COURT EXERCISING ITS BROAD REMEDIAL DISCRETION.

A petition was filed for 8-year-old J.R. due to physical abuse by the father. Father reported that he and J.R. immigrated from El Salvador the year prior, that he raised J.R. alone since age one and a half, and that mother still resided somewhere in El Salvador, but he did not have her contact information. The agency conducted a due diligence search for mother but did not locate her. The search was limited to federal government records and California databases. The juvenile court sustained the petition, removed J.R. from the parents, and ordered reunification services for father only. At the 12-month review hearing, J.R.'s counsel reported that the foster parents had located mother in Honduras and spoken to her. The agency was ordered to contact mother. The agency reported in October 2020 that the mother called the social worker in September 2020, and reported she was stuck in Guatemala, where she was searching for J.R., due to the covid-19 pandemic.

She reported that she raised her son until three years ago when the father forced her to sign his passport application and indicated he was taking J.R. to Guatemala. Mother had been searching for her son ever since. Mother provided her cell phone number and her family's home address in El Salvador. The agency received a copy of J.R.'s birth certificate from the foster parent, whose sister obtained it by reaching out to mother on social media. Father's reunification services were terminated at the 18-month hearing date, and a section 366.26 hearing was set. The agency provided notice of the hearing by publishing a notice in a Los Angeles newspaper and conducting a new due diligence search of the same databases previously searched. Parental rights were terminated. Father appealed.

Conditionally reversed and remanded with instructions. Father's appeal was timely, and since the father's parental rights depend upon whether there is merit to the claim that mother's due process rights were violated, their interests are intertwined such that father has standing to raise mother's due process challenge. Given the Court's broad remedial discretion, father's parental rights are reinstated along with mother's, given the violation of mother's fundamental due process rights. The agency violated mother's due process rights when it failed to exercise reasonable diligence in attempting to locate her. Both the father and child reported that mother resided in El Salvador, yet the agency failed to contact the El Salvadoran government and instead searched federal records and California databases. The agency failed to provide notice of the proceedings to mother even after she had provided her cell phone and home address in El Salvador. Further, they failed to locate her on social media, which was how the foster parent's sister located mother. The Agency's violation of mother's due process rights was not harmless, because she likely would have been involved in the case and could have filed a section 388 petition alleging due process violations stemming from the denial of her reunification services. Upon remand, if mother does not appear after receiving proper notice and a reasonable opportunity to be heard, the order of parental rights is reinstated for both parents. (KH)

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ICWA; WIC 224.2(b)

In re Ricky R.—published 8/25/22; Fourth Dist., Div. Two
Docket No. E078646
Link to case: https://www.courts.ca.gov/opinions/documents/E078646.PDF

THE FAILURE TO CONDUCT AN INITIAL INQUIRY OF READILY AVAILABLE EXTENDED FAMILY MEMBERS IS PREJUDICIAL ERROR.

Ricky and his brother Jayden were detained from mother due to mother's substance abuse and neglect. Father was whereabouts unknown. Prior to the initial hearing, mother denied any Native American ancestry. Mother said the same to the court at the combined jurisdiction and disposition hearing and submitted an ICWA-020 form indicating no Native American ancestry. The court found that the Indian Child Welfare Act ("ICWA") did not apply. Mother named her father as a potential placement, and an assessment of maternal grandfather was ordered. Father was located in April 2020 and the agency asked him about Native American heritage; father denied any ancestry. The parents and maternal grandfather disclosed additional relatives to be assessed, including a maternal great-aunt, paternal grandmother, and a maternal cousin. The children were eventually placed with maternal cousin for adoption purposes, and she denied any Native American ancestry. The section 366.26 report named numerous other relatives and their contact information, but the agency had not asked relatives about Native American ancestry. The juvenile court did not address the ICWA at the section 366.26 hearing and terminated mother's parental rights. Mother timely appealed.

Conditionally reversed and remanded. The agency failed in its duty to conduct an initial inquiry and the juvenile court erred by implicitly finding that ICWA did not apply despite the agency's failure to adequately inquire of extended family members. This error was prejudicial under *In re Benjamin M.* (2021) 70 Cal.App.5th 735, 744 because there was "readily obtainable information that was likely to bear meaningfully upon whether the child is an Indian child." The extended family members were known to the agency, had been contacted regarding placement, and were thus readily available. Their responses were likely to help ascertain whether there was reason to believe the children were Indian children. The agency's request that post-judgment evidence be considered to render the case moot is denied. The evidence offered, two social worker declarations, was never before the juvenile court and cannot be considered. The juvenile court needs to first

evaluate the evidence to determine whether the agency has fulfilled its duty to inquire, and mother has a right to challenge the offered evidence. (SH)

ICWA; WIC 224.2

In re Y.M.—published 9/2/22; Fourth Dist., Div. One
Docket No. D080349
Link to case: https://www.courts.ca.gov/opinions/documents/D080349.PDF

THE *BENJAMIN M.* TEST TO ASSESS THE PREJUDICIAL EFFECT OF THE AGENCY'S FAILURE TO COMPLY WITH ITS DUTY OF INITIAL INQUIRY IS THE MOST APPROPRIATE AND IN KEEPING WITH THE STATUTORY SCHEME AND STATE CONSTITUTION.

Y.M. was filed on for her mother's drug abuse and her parents' domestic violence. Both mother and father denied any Indian ancestry in interviews with the agency and mother further denied ancestry through her counsel in court. At the jurisdiction/disposition hearing, father and paternal grandmother (PGM) appeared by phone but no one inquired with them about ancestry. Subsequently at the status review hearings, the agency reported contacts with father, paternal uncle, and paternal grandfather (PGF) who was going through the RFA process, and PGM even testified in support of her placement request. At the 366.26 hearing, the agency's report noted the court previously found at the detention hearing that ICWA did not apply and recommended the juvenile court again make that finding. The juvenile court found that ICWA did not apply and terminated parental rights. Father appealed.

Affirmed. Father argued, and the agency agreed, that the agency's initial ICWA inquiry was deficient because it failed to ask extended family members about possible Indian ancestry even though the agency had spoken to them multiple times. There is currently a wide and varied split of authority regarding the proper standard to apply to determine the prejudicial effect of the agency's failure to comply with its duty of initial inquiry: (1) Reversible Per Se Standard (*In re Y.W.*): Father argued for this standard which requires automatic remand for ICWA noncompliance. However, this standard conflicts with the state constitutional requirement for a showing that the error caused a "miscarriage of justice" for the judgment to be reversed. It also encourages gamesmanship by incentivizing parents to not object to ICWA findings but wait to appeal and could result in an ongoing loop of appeals and remands.

(2) Presumptive Affirmance Standard (*In re Rebecca R.*): Also known as the harmless error standard, this view requires reversal only if the parent shows that a result more favorable would have likely occurred absent the error and allows for proffers on appeal to be considered. However, this test ignores the rule that appellate courts generally do not consider matters beyond the trial court record and unreasonably requires the parent to make affirmative representations about ancestry when it was the agency's failure to conduct an adequate investigation in the first place that deprived them of the very knowledge they would need for reversal. (3) *Dezi C.*'s Modified Presumptive Affirmance (or "Reason to Believe") Standard: The agency asserts the most appropriate standard is that adopted in *Dezi C.*, which states, "An agency's failure to discharge its statutory duty of inquiry is harmless unless the record contains information suggesting a reason to believe that the children at issue may be 'Indian child[ren],' in which case further inquiry may lead to a different ICWA finding by the juvenile court." This test fails for the same reasons given for the Presumptive Affirmance Standard. (4) *Benjamin M.*'s Standard of Prejudice: Under this standard, reversal is required only "where the record shows that the agency has not only failed its duty of initial inquiry, but where the record indicates that there was readily obtainable information that was likely to bear meaningfully upon whether the child is an Indian child." Both the agency and father advocated for this as their second choice. This view most closely achieves the balance of the state constitutional requirement of a miscarriage of justice for reversal and appropriate consequences in favor of parents and tribal rights where an agency fails its duty of initial inquiry. Here, while the information regarding ancestry was "readily obtainable" through multiple contacts between the agency and extended family members, it was not "likely to bear meaningfully upon whether [Y.M.] is an Indian child." Father had motive to obtain ancestry information from the PGM with whom he lived and had a good relationship, but no information was offered. Likewise, the PGF, who was seeking placement of Y.M., had a strong incentive to raise any Indian ancestry in support of that goal but never did. In sum, and given that both parents had denied Indian ancestry, father failed to show prejudicial error requiring reversal under the *Benjamin M.* test. (ML)

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ICWA – Harmless Error; Post-Judgment Evidence

In re Kenneth D.—published 9/7/22; Third Dist.
Docket No.: C096051
Link to Case: https://www.courts.ca.gov/opinions/documents/C096051.PDF

POST-TERMINATION REMEDIAL EFFORTS MAY BE CONSIDERED ON APPEAL REGARDING ISSUES INVOLVING ALLEGED ICWA VIOLATIONS.

Mother initially reported having possible Native American heritage on her father's side, but none of her family were enrolled members. At the detention hearing, she denied any Native American heritage and the juvenile court determined ICWA did not apply. Prior to the termination of his parental rights, the juvenile court and agency did not ask father or inquire whether he had Native American ancestry. The juvenile court did not make express ICWA findings at the section 366.26 hearing where mother and father's parental rights were terminated. Following the termination of father's parental rights, the agency contacted father regarding possible Native American heritage; he reported having possible Cherokee ancestry. Father believed the paternal grandmother may have more information regarding possible Native American heritage. Paternal grandmother denied any Native American ancestry. Father timely appealed. The agency requested consideration of their post-termination remedial efforts for purposes of the pending appeal.

Affirmed. Although mother initially reported having possible Indian American heritage, she later unequivocally stated she, and her family, were not eligible for tribal enrollment. Thereafter, mother consistently maintained she did not have Native American heritage. In regard to father, the agency and juvenile court initially failed to comply with ICWA. However, shortly after the termination of parental rights, the agency interview father and paternal grandmother regarding possible Native American heritage. Such an inquiry was found sufficient to satisfy ICWA requirements. The consideration of post-judgment evidence on appeal was also found to be appropriate; the Court declined to follow *In re M.B.*, (2022) 80 Cal.App.5th 617, which found consideration of post-judgement evidence was inappropriate. As a result, father was found unable to establish prejudicial error due to ICWA errors. (MO)