CALIFORNIA Family Law Monthly

In re J.M.

Our Indian heritage, seemingly remote from many of our practices, commands front page news this election season in Elizabeth Warren's quest for a Senate seat in Massachusetts, the infused campaign with allegations disparaging her claim of 1/32 Cherokee ancestry. Closer to home, the list of California courts and judges includes identification of Indian Tribal Courts. Ancestry, family lineage and ethnic bloodlines are important to many cultures, races and religions. The Indian Child Welfare Act (ICWA) under both California and federal law [Welfare and Institutions Code Section 224.2; 25 U.S.C. §§1907-1963] governs child dependency proceedings where Indian ancestry is suspected or alleged to be present.

In J.M., the juvenile court terminated a mother's parental rights to her two children. The trial court determined that the children were not Indian children and, therefore, the notice requirements of ICWA did not apply. The Court of Appeal affirmed, holding that the notices given in the trial court satisfied the requirements of ICWA because the law did not require inclusion of information about great-great ancestors. The ICWA notices which were given did in fact include the children's immediate lineal ancestors, i.e., mother, grandparents and great-grandparents, and there was no indication that the names of the omitted great-great grandparents would have provided any additional insight into the children's possible Indian heritage, and thus the lower court order terminating the mother's parental rights was affirmed.

It is worth noting that these ICWA cases are not as isolated as one may think, as illustrated by two additional recent cases. In *In re A.G.* (2012) 204 Cal.App.4th 1390, the court determined that both federal and state law require that Indian Tribes receive ICWA notice which contains information regarding maternal and paternal grandparents and great-grandparents, including maiden, married, former names and aliases, birth dates, birthplace, place of death, current and former addresses, tribal enrollment numbers and other identifying data. It was also determined that a social worker told of the child's possible Indian heritage has a duty of inquiry and a requirement to gather necessary information. Failure to give adequate ICWA notice required a conditional reversal. Even more recently, *In re Gabriel G.* (May 22, 2012, publication ordered June 12, 2012), the child's father allegedly told a social worker that he lacked Indian heritage, but on the birth certificate he had voluntarily acknowledged paternity and filed forms stating that his own father is or was a member of an Indian Tribe. The purported conflict between the two statements did not excuse compliance with ICWA notice requirements in the absence of further inquiry by the social worker.

As stated above, it may be the case that dependency proceedings involving suspected Indian ancestry don't impact the majority of our cases, but strict compliance with state and federal statutes is a lesson applicable not only in these cases, but the lesson of adherence to technical notice requirements is applicable in many areas of family law practice.

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