Filed 8/14/08

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JUSTIN L. et al., Petitioners, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B206462 (Los Angeles County Super. Ct. No. CK66262)

ORIGINAL PROCEEDINGS in mandate. Stanley Genser, Judge. Petitions granted in part and denied in part.

Los Angeles Dependency Lawyers, Inc., Law Office of Barry Allen Herzog, Ellen L. Bacon and Katherine Baca for Petitioner Justin L.

Law Offices of Katherine Anderson, Victoria Doherty and Amy Einstein for Petitioner Jaron D.

Law Offices of Alex Iglesias, Steven D. Shenfeld and Adam Reed for Petitioner R.L.W.

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* Pursuant to California Rules of Court, rules 8.1100 and 8.1110, this opinion is certified for publication as to parts I, IIc., IIIc., and IV.

No appearance on behalf of Respondent.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Associate County Counsel, for Real Party in Interest.

I
INTRODUCTION

Three parents of two children, mother R.L.W., Justin L., father of I.L., and Jaron D., father of E.D., filed petitions for extraordinary writ review (Cal. Rules of Court, rule 8.452) challenging various orders made by the juvenile court on March 12, 2008. We issue a preemptory writ of mandate for the sole purpose of directing the juvenile court and the Department of Children and Family Services (the Department) to comply with the inquiry and notice requirements of the Indian Child Welfare Act (25 U.S.C. §§ 1901 et seq. & 1912 (ICWA)). In all other respects we affirm the juvenile court's orders. We publish this opinion to call attention, once again, to the persistent failure of the juvenile court and the Department to fulfill their obligations under ICWA.

II
FACTUAL AND PROCEDURAL BACKGROUND

[[Begin nonpublished portion.]]

a. *The family's history*

At the time the children were detained, E. was six months old, and I. was two years old. Mother lived with them and the maternal grandmother V.B. Mother has greatly deteriorated vision. She claims that she went completely blind from "macular degeneration and retinal pigmentosa." She hired a caregiver to

assist her in taking care of the children during the day. E.'s father, Jaron, does not reside with mother, his wife. Justin and Jaron have criminal histories.

b. *The events leading to this dependency.*

In March 2007, E. was admitted to Antelope Valley Hospital in critical condition. The hospital diagnosed E. with multiple brain bleeds of varying ages, two skull fractures, retinal hemorrhaging, scarring of limbs, a bite mark, and possible burns to the skin, that could only have been obtained by physical abuse. She responded to pain but not light stimuli.

The attending physician concluded that E.'s injuries were consistent with Shaken Baby Syndrome. Her injuries were both old and new. The doctor noted old injuries on the baby's thighs, back, left bicep, and right eye, which were indicative of child abuse. She was distrustful of adults and screamed hysterically when her diaper was changed. E. had two skull fractures and multiple areas of bleeding in the brain. E. had "non-specific retinal hemorrhaging," which was sometimes consistent with Shaken Baby Syndrome, but in this case could be consistent with brain swelling. The baby had two skull fractures and multiple areas of bleeding in the brain consistent with multiple injuries occurring at different times. E. had dying brain tissue on the right side of the brain more than on the left, which was consistent with being shaken or thrown. The doctor stated that E.'s injuries were "[h]ighly indicative of child abuse." E. would probably be on medication to control seizures for the rest of her life. The Los Angeles County Sheriff's Department Special Victim's Bureau took E. into protective custody and notified the Department.

The hospital's records showed that E. had been X-rayed in January 2007 because I. allegedly hit the baby in the eye with a toy. Although the child was discharged, it was later brought to the treating physician's attention that the X-ray revealed a "subtle but real frontal bone fracture." The doctor was unable to reach the family through the information provided to the hospital. In the doctor's

opinion, something other than the trauma that brought E. to the hospital needed to be considered and the matter needed to be referred to social services.

In her interview with the investigating deputy sheriff, mother blamed I. for E.'s injuries and denied any recent accidents, or ever having shaken or hurt E. Mother also blamed her caregiver. She also described how V.B. had moved furniture around causing mother to stumble frequently. Mother explained how various of E.'s injuries were accidental. She gave two stories about how E.'s eye was injured, one to the hospital and one to the Department, because she did not want her children taken from her. Often mother would not take E. to the hospital after an accident because she was afraid that her children would be taken away from her.

V.B. reported that she was aware the baby was having seizures, but did not know the cause. She attributed E.'s injuries to accidents involving mother tripping or falling. V.B. stated that the family never left mother alone with the children.

Paternal aunt Z. and I.'s paternal grandmother described to the Department a pattern of abuse. They explained how mother would throw E., spank I., drag I. out of the bathtub by her hair, hit her on the back and forcibly hold I.'s hand over the child's mouth when she cried. Aunt Z. reported that I. threw severe tantrums during which she would hurt herself. The paternal grandmother suspected mother had been hitting I. because the child had bruises.

Jaron did not know of any injury that E. may have sustained and had not observed mother hurting E. He had recently taken the baby to Urgent Care and was told she had a viral infection, but no medication was prescribed. Jaron and mother stated that Justin saw his daughter I. once or twice in her life.

The Department took I. into protective custody.

E. was discharged from the hospital in April 2007. The discharge summary indicates that E.'s diagnosis was seizures and "bilateral subacute subdural hemorrhages, bilateral parietal occipital infarcts, and skull fractures, also with R. intraretinal hemorrhages."

E. was also developmentally delayed. E.'s foster mother reported that E. did not reach out and grab things, she did not sit up, crawl, or extend her legs when she was held upright. E. did not cry when she needed to be changed or fed. At six months of age, she had the neck control of a newborn. She did not react to noises and had limited eye contact. The baby moved her eyes around as if she could not focus on anything. She held her arms as if they were twisted and had numerous wide and large healed wounds that did not look like the kind of scratches that a baby normally gets.

I. and E. were eventually placed together with E.'s paternal grandparents. Once there, I. began speaking, smiling and laughing. E. had no new bruises, marks or scars. E. learned to roll both ways and crawl. She could support and hold a bottle, and could bring objects to her mouth. She could fix and follow with her eyes and was cooing and trying to say "mama."

The Department recommended that the juvenile court order no family reunification services for mother and Jaron, but recommended that Justin receive services.

In advance of the jurisdiction hearing, mother and Jaron completed a parenting class. Although mother indicated she had signed up for counseling, the social worker had no verification. Throughout visits, I. cried and threw temper tantrums. Mother's attempts to comfort and calm I. were ineffective. Justin visited I. a total of three times and did not keep in contact with the social worker.

[[End nonpublished portion.]]

c. *The adjudication and disposition orders*

The juvenile court sustained the following allegations in the petition under Welfare and Institutions Code section 300, subdivisions (a), (b), (e), and (g): In March 2007, baby E. was found to be suffering from a seizure, fever, difficulty breathing, and injuries to her back, thighs, left bicep, and right eye and was hospitalized for multiple fractures to her skull, and acute and old subdural hematomas. Mother's explanations were inconsistent with E.'s injuries. Jaron

provided no explanation for the injuries. E.'s injuries were consistent with child abuse and would not have ordinarily occurred except from the deliberate, unreasonable, and neglectful acts of mother and Jaron, who had care, custody, and control of the child. The petition further alleged that "[t]he child's parents knew, or reasonably should have known, that the child was being physically abused and failed to take action to protect the child." Mother and Jaron failed to obtain timely medical care for E. despite being told by doctors that she sustained a skull fracture. Justin failed to and was currently unable to provide for I.'s basic necessities of life. The parents' conduct placed the children at risk of harm.

As for the disposition, the juvenile court removed the children from their parents' custody. Pursuant to Welfare and Institutions Code section 361.5, subdivision (b)(5) and (6), the court found that it would not be in the children's best interest to provide reunification services to mother and Jaron. The court denied Justin reunification services because he was merely an alleged father and because he had made almost no effort to see his child since her detention. The court set the matter for a section 366.26 hearing. Mother, Jaron, and Justin each filed a notice of intent to file a writ petition. We issued an order staying the proceedings in the juvenile court.

III

DISCUSSION

[[Begin nonpublished portion.]]

a. *The evidence supports the juvenile court's Welfare and Institutions Code section 300, subdivision* (*e*) *finding and the ensuing order denying reunification services under section 361.5, subdivision (b)(5) and (6).*

Mother contends that there was insufficient evidence to sustain the count under Welfare and Institutions Code section 300, subdivision (e), with the result that the court abused its discretion in applying section 361.5, subdivision (b)(5) and (6).

Under the substantial evidence standard of review, "we 'accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]' [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.) "All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact. . . .' [Citations.]" (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) We have no power to pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or determine where the weight of the evidence lies. (*In re Casey D., supra*, at p. 52.) "If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed. [Citations.]" (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

Subdivision (e) of section 300 of Welfare and Institutions Code allows the juvenile court to take jurisdiction over a child who is "under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child."

The statute defines " 'severe physical abuse' " as "any single act of abuse which causes *physical trauma of sufficient severity* that, if left untreated, would cause permanent physical disfigurement, *permanent physical disability*, or death; . . . or *more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external* or internal *swelling*, bone fracture, or unconsciousness . . . ." (Welf. & Inst. Code, § 300, subd. (e), italics added.)

Under subdivision (e) of section 300 of Welfare and Institutions Code, where "an infant suffers severe physical abuse at the hands of someone other than a parent[] . . . [t]he subdivision does not require the parent's actual or constructive knowledge that the minor in fact suffered severe physical abuse within the

statutory definition. Indeed, several of the listed injuries, such as bleeding (internal), internal swelling, and bone fracture, may not be visible; they may be discovered only after medical examination or testing." (*In re Joshua H*. (1993) 13 Cal.App.4th 1718, 1729.)

Mother does not, and indeed, cannot argue that E.'s physical abuse was not "severe" as that term is defined by the statute. Nor does she challenge jurisdiction under Welfare and Institutions Code section 300, subdivisions (a) (serious nonaccidental injury) and (b) (neglect). Rather, mother argues that "none of the injuries *attributed to* [*her*] resulted in the type of permanent disfigurement anticipated for application of section 300, subdivision (e)."

This argument completely overlooks the fact that subdivision (e) of section 300 of Welfare and Institutions Code allows the juvenile court to take jurisdiction over a child when the "parent *knew or reasonably should have known that the person was physically abusing the child*." (Italics added.) The petition alleged, and the record supports the court's conclusion, that mother and Jaron reasonably should have known that E. was being severely physically harmed, rather than being merely physically abused. The treating physicians all stated that *six month old* E. suffered multiple injuries to the thighs, back, left bicep, and right eye, burns, scarring, and a bite mark, in addition to her multiple injuries to the skull and brain of varying ages, all of which were "highly indicative of child abuse."[1]

In *In re E. H*. (2003) 108 Cal.App.4th 659, the juvenile court found that the child was *not* described by Welfare and Institutions Code section 300, subdivision (e) because the identity of the person who caused her numerous

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[1] Mother observes that the doctor's final report refers to a "lack of appropriate supervision and the lack of appropriate safety measures." She argues that she is not the one described as having intended the harm to her child. It is not in the province of the physicians to prove who committed the abuse. They diagnose it.

broken bones could not be established. (*In re E. H., supra,* at p. 661.) In reversing, the *E. H.* court held that the Department may employ a " 'res ipsa loquitur' " analysis under which a rebuttable presumption of negligence arises "where the instrumentality causing the injury was in the defendant's exclusive control, and the accident was of the type that ordinarily does not happen in the absence of negligence." (*Id*. at p. 669, fn. 6.) Under that analysis, the *E. H.* court explained, where "[t]here was severe physical abuse of a child under five ([the child's] broken bones) and the child was never out of her parents' custody and remained with a family member at all times; therefore, [her parents] inflicted the abuse or reasonably should have known someone else was inflicting abuse on their child, bringing [the child] within the language of section 300, subdivision (e)." (*Id*. at pp. 669-670.)

Applying a res ipsa loquitur analysis, *E. H*. explained, "The infant, pursuant to the admissions of everyone who resided in the house, was never alone. . . . The only reasonable conclusion to be drawn from the facts of the instant case was that someone in the home was causing E.'s injuries, and that [the parents] *reasonably* should have known (since they lived there) the identity of the perpetrator." (*In re E. H*., *supra*, 108 Cal.App.4th at p. 670.) "Whether [the parents] actually *knew* E. was being injured by someone else is not required by the language of [Welfare and Institutions Code] section 300, subdivision (e) or *In re Joshua H*. [, *supra*, 13 Cal.App.4th 1718]; the only requirement is that they reasonably should have known. Furthermore, where there is no identifiable perpetrator, only a cast of suspects, jurisdiction under subdivision (e) is not automatically ruled out. A finding may be supported by circumstantial evidence as it is here. Otherwise, a family could stonewall the Department and its social workers concerning the origin of a child's injuries and escape a jurisdictional finding under subdivision (e)." (*In re E. H., supra,* at p. 670.)

Here, the same result obtains justifying the court's ruling sustaining the Welfare and Institutions Code section 300, subdivision (e) allegations. It is

indisputable that severe physical abuse of a child under the age of five: E.'s multiple, serious brain injuries, among other things.[2] The evidence also shows that E. was never out of the custody of her parents or members of the household and remained at all times with a family member and mother's caretaker. Mother even blamed other members of the household, such as I. and her caretaker, for E.'s injuries. The court here described mother and Jaron as having "this very connected relationship" and are "like joined at the hip." The hospital reported that E. was distrustful of adults and screamed hysterically when her diaper was changed. Aunt Z. described I. as listless and dull in mother's custody. In short, the only reasonable conclusion to be drawn from the record here was that "someone in the home was causing E.'s injuries, and that [her parents] *reasonably* should have known (since they lived there) the identity of the perpetrator" bringing them within the language of Welfare and Institutions Code 300, subdivision (e). (*In re E. H.*, *supra*, 108 Cal.App.4th at pp. 669-670.) The evidence supported the juvenile court's jurisdictional finding under section 300, subdivision (e).

Under Welfare and Institutions Code section 361.5, subdivision (b)(5),[3] the court is authorized to deny services to the parents when the court finds by clear

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[2] Mother was clearly aware of some injuries – for example, she saw blood on the baby's burp cloth and did not consult a doctor. She also provided implausible or contradictory explanations for other injuries. On still other occasions, she did not take E. to be treated or did not follow up after taking E. to the hospital, fearing they would be detained from her. This conduct suggests not only that mother was well aware that E. was suffering harm, but also that she harbored a sense of the seriousness of the baby's injuries and her own responsibility. The court also had the Department's reports containing statements from family members who had seen mother throwing the children, spanking I., dragging I. out of the bathtub by her hair, hitting her on the back, and forcibly holding her hand over I.'s mouth when I. cried.

[3] Welfare and Institutions Code section 361.5 reads in relevant part: "(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing

and convincing evidence that the child was brought within the jurisdiction of the court under subdivision (e) of section 300 because of the conduct of that parent or guardian. Here, the evidence supports the court's finding by clear and convincing evidence (cf. *In re Marina S.* (2005) 132 Cal.App.4th 158, 165 [appellate court reviews lower court's clear and convincing finding for substantial evidence]) that E. was described by section 300, subdivision (e) because of the conduct of mother and Jaron.[4] (§ 361.5, subd. (b)(5).)

Mother does not actually develop an argument that Welfare and Institutions Code section 361.5, subdivision (b)(5) does not apply here to justify denial of services. She simply argues that application of subdivision (b)(6) of that section is "too severe." However, because subdivision *(b)(5)* justifies denying reunification services, we cannot conclude that the ruling denying services is "too severe."

Mother next argues that reunification services should have been offered for her and I. because the record does not indicate that I. received the same sort of

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evidence, any of the following: [¶] . . . [¶] (5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian. [¶] (6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian. [¶] . . . [¶] A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body or the body of a sibling or half sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half sibling in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage."

[4] Mother argues that unlike *Pablo S. v. Superior Court* (2002) 98 Cal.App.4th 292, she regularly sought medical treatment for E.'s injuries. Actually, the record shows that she acknowledged occasions where she chose not to take E. for treatment because she was afraid the baby would be taken away from her.

abuse that E. did. The juvenile court may deny reunification services to a parent under subdivision (b)(6) of section 361.5 of Welfare and Institutions Code, if the child has been adjudicated a dependent "as a result of . . . the infliction of severe physical harm *to . . . a sibling* . . . by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian." (Italics added.) Indeed, the court is specifically *precluded* from ordering services to a parent who is described by subdivision (b)(6) "unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child." (§ 361.5, subd. (c).) The statute then lists factors the court is to consider in determining whether reunification services would benefit the child under subdivision (b)(6). (§ 361.5, subd. (h).) Three such factors are: "(1) The specific act or omission comprising . . . the severe physical harm inflicted on the child or the child's sibling or half sibling. [¶] (2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half sibling. [¶] (3) The severity of the emotional trauma suffered by the child or the child's sibling or half sibling. [¶] . . . [¶] (5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision." (§ 361.5, subd. (h).)

The juvenile court here specifically addressed the issue of reunification services with respect to I. The court found evidence that I. was physically abused causing the child serious emotional damage, and it had the evidence of the severity and circumstances of E.'s abuse. It observed that, while mother already had some parenting classes, they had not aided her. The court also found it was unlikely that the children could be returned to mother within the prescribed period. Further, the court made the particular finding that would not be in I. or E.'s best interest to provide reunification services to mother and Jaron. The record supports the court's findings when it denied reunification services for these children.

b. *The juvenile court did not err in declining Justin's request for a continuance of the disposition hearing.*

The juvenile court found that Justin was I.'s alleged father. The Department recommended services for Justin to include parenting classes, random drug tests, and individual counseling. At the disposition hearing, the court indicated its tentative decision to deny services to Justin. The court stated as grounds that Justin (1) had not had meaningful contact with I.; (2) failed to provide housing or support for the child; and (3) was not entitled to services because he was an alleged father. Justin's attorney objected to the ruling on the ground that the recommendation had been to give Justin services. Counsel asked for a continuance because she had not notified her client that the court would deny him services. The court denied the continuance request stating that the case was already well beyond the statutory period.

Justin contends that the juvenile court erred in denying his attorney's request for a continuance after he detrimentally relied on the Department's recommendation that he be given services.

Welfare and Institutions Code section 352 authorizes a juvenile court to "continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. [¶] Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance." (§ 352, subd. (a).)

Here, Justin failed to demonstrate good cause for a continuance. He argues he was not given notice that the juvenile court might deny him services. Although the recommendation in the Department's disposition report was for services for

Justin, the petition itself included, in large font type, the notification to parents that: "**The Department of Children and Family Services may seek an order pursuant to WIC 361.5 that no reunification services shall be provided the family which will result in immediate permanency planning through termination of parental rights and adoption, guardianship or long term foster care.**" (Bold in original.)

Furthermore, the record supports the courts specific finding that a continuance would not be in I.'s interest. (Welf. & Inst. Code, § 352, subd. (a).) This case commenced in March 2007. Because I. and E. were under the age of three when they were removed from their parents' custody, the parents would only have been entitled to six months of services. (§ 361.5, subd. (a)(2).) But the disposition hearing was not held until a year later, on March 12, 2008, well beyond the statutory period. And, Justin visited his daughter only three times in the interim.

Any error here was harmless. Justin was an alleged father and as such he was not entitled to services. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 448-449, fn. 6, 451 [only presumed fathers are entitled to reunification services and custody]; *In re Jerry P*. (2002) 95 Cal.App.4th 793, 801; *In re Julia U.* (1998) 64 Cal.App.4th 532, 540.) Justin can always file a Welfare and Institutions Code section 388 to modify the court's ruling as to his status. Until then, the court's order denying him services was entirely justified for the reasons explained above.

[[End nonpublished portion.]]

c. *Remand is necessary to ensure compliance with ICWA.*

On March 28, 2007, the court ordered the Department to notify the appropriate Indian tribes. The Department concedes it issued no notices according

to the requirements of ICWA (25 U.S.C. § 1912(a))[5] and does not oppose remand for the limited purpose of assuring proper compliance with that Act.

The responsibility for compliance with ICWA falls squarely and affirmatively on the court and the Department. (Welf. & Inst. Code, § 224.3, subd. (a); *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1409.) When notice is required but not properly given, the dependency court's orders are voidable. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 174.) This case must be reversed for the limited purpose to, and remanded with directions to the juvenile court to, assure that the required notices are properly given and, based on the results, determine whether E. and I. are Indian children under ICWA. (*In re Rayna N.* (2008) 163 Cal.App.4th 262, 264.)

We are growing weary of appeals in which the only error is the Department's failure to comply with ICWA. (See *In re I.G.* (2005) 133 Cal.App.4th 1246, 1254-1255 [14 published opinions in 2002 through 2005, and 72 unpublished cases statewide in 2005 alone reversing in whole or in part for noncompliance with ICWA].) Remand for the limited purpose of the ICWA compliance is all too common. (*Ibid.*) ICWA's requirements are not new. Yet the prevalence of inadequate notice remains disturbingly high. This case presents

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[5] Title 25 United States Code section 1912(a) states: "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, [t]hat the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding."

a particularly egregious example of the practice of flouting ICWA. The Department concedes it sent no notices, notwithstanding the juvenile court's specific order that it do so. And, we have been given no indication that the Department has attempted to mitigate the damage it caused in failing to attend to ICWA's dictates by sending notices while this proceeding was pending. (*In re Elizabeth W*. (2004) 120 Cal.App.4th 900, 908.) "Noncompliance with ICWA has been a continuing problem in juvenile dependency proceedings conducted in this state, and, by not adhering to this legal requirement, we do a disservice to those vulnerable minors whose welfare we are statutorily mandated to protect." (*In re I.G.*, *supra*, at pp. 1254-1255.) Delays caused by the Department's failure to assure compliance with the law are contrary to the stated purpose of the dependency laws, to promptly resolve cases (*In re Marilyn H*. (1993) 5 Cal.4th 295, 307, 309) and to provide dependent children with protection, safety and stability. (*Id*. at p. 307; Welf. & Inst. Code, § 202.)

IV

DISPOSITION

The petitions for extraordinary writ review are granted solely for the purpose of ensuring compliance with ICWA; in all other respects, the petitions are denied. Let a peremptory writ of mandate issue directing respondent juvenile court to (1) vacate its order setting the Welfare and Institutions Code section 366.26 hearing; (2) order the Department to provide ICWA notices to the designated agents for the Blackfoot, Chocktaw, and Cherokee tribes at the addresses listed in the most recent federal registry. If, following such notice, any of these tribes determines that a child is an Indian child, the juvenile court shall proceed in conformity with ICWA. If, however, no tribe determines that a minor is an Indian child, or if no response is received within the proscribed time indicating a child is an Indian child, the juvenile court shall reset the hearing under

section 366.26. The stay issued April 15, 2008, is hereby lifted. The matter is immediately final as to this court. (Cal. Rules of Court, rule 8.264(b)(3).)

CERTIFIED FOR PARTIAL PUBLICATION

ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.