Filed 7/31/23 In re N.L. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re N.L. et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. K.A. et al., Defendants and Appellants.	E080557 (Super.Ct.No. SWJ1900380) OPINION

APPEAL from the Superior Court of Riverside County. Michael J. Rushton, Judge. Affirmed.

Donna B. Kaiser, by appointment of the Court of Appeal, for Defendant and Appellant, K.A.

Robert McLaughlin, by appointment of the Court of Appeal, for Defendant and Appellant, D.L.

Minh C. Tran, County Counsel, Teresa K.B. Beecham and Prabhath Shettigar, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

On December 12, 2022, the juvenile court held a hearing pursuant to Welfare and Institutions Code[1] section 366.26 and terminated the parental rights of K.A. (Mother) and D.L. (Father) with respect to their two children, N.L. and S.L. Mother and Father appeal from the order terminating their parental rights, arguing only that the Riverside County Department of Public Social Services (DPSS) failed to comply with its duty of inquiry under the Indian Child Welfare Act of 1978 (ICWA; 25 U.S.C. § 1901 et seq.) and related California statutes. Specifically, Mother and Father claim that DPSS failed to interview extended family members regarding N.L.'s and S.L.'s potential Indian ancestry as required by section 224.2, subdivision (b).

We conclude that section 224.2, subdivision (b), does not apply in this case because N.L. and S.L. were taken into protective custody pursuant to a warrant. Thus, any claim of error cannot be premised solely upon the alleged failure to comply with the provisions of section 224.2, subdivision (b), and we affirm the judgment.

[1] Undesignated statutory references are to the Welfare and Institutions Code.

II. FACTS AND PROCEDURAL HISTORY

Mother and Father are the parents of S.L. and N.L. On June 26, 2019, DPSS obtained a warrant pursuant to section 340 to take S.L. into protective custody. On June 28, 2019, DPSS filed a petition pursuant to section 300 alleging Mother's and Father's inability to adequately supervise, protect, or provide for S.L. Specifically, DPSS alleged that Mother had unresolved mental health issues, Father had a prior child welfare and criminal history, and that both parents engaged in substance abuse. The juvenile court formally detained S.L., sustained the allegations of the petition, and removed S.L. from parental custody. During this period of removal, Mother gave birth to N.L.

On June 10, 2020, the juvenile court returned S.L. to parental custody pursuant to a family maintenance plan upon the recommendation of DPSS.

On December 16, 2020, Father was detained by law enforcement in response to allegations of domestic violence against Mother and the children. As a result, DPSS filed a supplemental petition pursuant to section 387 on behalf of S.L., alleging that the prior disposition had not been effective. DPSS also filed a petition pursuant to section 300 on behalf of N.L., alleging Father's inability to supervise, protect or provide, and abuse of a sibling. On December 18, 2020, DPSS obtained warrants pursuant to section 340 to take S.L. and N.L. into protective custody. The juvenile court detained the children from Father, sustained the allegations of both petitions, removed the children from Father's custody, and maintained S.L. and N.L. in Mother's custody. The juvenile court denied reunification services to Father and limited his visits with the children to once per month.

In June 2021, DPSS received two separate referrals alleging that Father had physically assaulted Mother in the children's presence, and that Mother had permitted Father unauthorized access to the children. As a result, DPSS again obtained warrants pursuant to section 340 to take S.L. and N.L. into protective custody. DPSS also filed a supplemental petition on behalf of both children pursuant to section 387 on the basis that the previous dispositions had not been effective.

On September 1, 2021, the trial court found the allegations of the section 387 petitions true, removed the children from Mother's custody, and denied further reunification services. On December 12, 2022, the trial court held a section 366.26 hearing and terminated both Mother's and Father's parental rights. Both Mother and Father appeal from the order terminating parental rights.

III. DISCUSSION

On appeal, the only claim of error raised by Mother and Father is that DPSS failed to comply with its initial duty of inquiry under ICWA and related California statutes. Specifically, Mother and Father argue that DPSS failed to comply with a mandatory statutory duty imposed by section 224.2, subdivision (b), requiring DPSS to contact extended family members in order to obtain information regarding the children's potential status as Indian children. For the reasons set forth below, we conclude that section 224.2, subdivision (b), does not apply under the circumstances of this case and, as a result, Mother and Father have failed to show reversible error.

A. *Legal Background and Standard of Review*

"Congress enacted the ICWA in 1978 to address concerns regarding the separation of Indian children from their tribes through adoption or foster care placement, usually in non-Indian homes. [Citation.] ICWA established minimum standards for state courts to follow before removing Indian children from their families and placing them in foster care or adoptive homes." (*In re D.S.* (2020) 46 Cal.App.5th 1041, 1048.) The Welfare and Institutions Code "creates three distinct duties regarding ICWA in dependency proceedings. First, from the [Department's] initial contact with a minor and his family, the statute imposes a duty of inquiry to ask all involved persons whether the child may be an Indian child. [Citation.] Second, if that initial inquiry creates a 'reason to *believe*' the child is an Indian child, then the [Department] 'shall make *further inquiry* regarding the possible Indian status of the child, and shall make that inquiry as soon as practicable.' [Citation.] Third, if that further inquiry results in a reason to *know* the child is an Indian child, then the formal notice requirements of section 224.3 apply." (*In re D.S.*, at p. 1052; § 224.2)

Following the inquiry stages, the juvenile court may make a finding that ICWA does not apply because the Department's inquiry and due diligence was " 'proper and adequate' but no 'reason to know' whether the child is an Indian child was discovered." (*In re D.S.*, *supra*, 46 Cal.App.5th at p. 1049.) A juvenile court's finding that ICWA does not apply includes an implicit finding that social workers fulfilled their duty of inquiry. (*In re Austin J.* (2020) 47 Cal.App.5th 870, 885.) "[W]e review the juvenile court's ICWA findings under the substantial evidence test, which requires us to

determine if reasonable, credible evidence of solid value supports the court's order." (*In re A.M.* (2020) 47 Cal.App.5th 303, 314; *In re Austin J.*, at p. 885 [implicit finding that social workers fulfilled their duty of inquiry and reviewed for substantial evidence].)

B. *Section 224.2*, *Subdivision* (*b*), *Does Not Apply in This Case*

The only claim of error asserted on appeal is that DPSS failed to comply with a mandatory statutory duty imposed by section 224.2, subdivision (b), requiring DPSS to contact extended family members in order to fulfill its initial duty of inquiry. As relevant here, section 224.2, subdivision (b), provides: "If a child is placed into the temporary custody of a county welfare department pursuant to Section 306 . . . , the county welfare department . . . has a duty to inquire whether that child is an Indian child. Inquiry includes, but is not limited to, asking . . . extended family members . . . whether the child is, or may be, an Indian child . . . ." (*Ibid*.) However, it is undisputed that the children in this case were taken into protective custody pursuant to a warrant issued under section 340. As a result, DPSS contends that section 224.2, subdivision (b), does not apply because the plain language of the statute provides that it applies only when children are taken into temporary custody pursuant to section 306. We agree.

This court has repeatedly concluded that section 224.2, subdivision (b), applies only when children are taken into protective custody pursuant to section 306 or section 307. (*In re Robert F.* (2023) 90 Cal.App.5th 492 (*Robert F.*), review granted July 26, 2023, S279743; *In re Ja.O.* (2023) 91 Cal.App.5th 672.) We concluded in *Robert F.* that "[s]udivision (b) of section 224.2 requires a county welfare department to ask extended family members about a child's Indian status only if the department has taken the child

into temporary custody under section 306," and its provisions do not apply when "section 306 played no role in [a dependent child's] removal." (*Robert F.*, at p. 504.) We explained that this interpretation of section 224.2, subdivision (b), is supported by the plain meaning of the statutory text, consideration of the statutory provision in context with the entire statutory scheme, the practical and reasonable application of the statute, and the statute's legislative history. (*Robert F.*, at pp. 500-504.)

Thus, we agree with DPSS that section 224.2, subdivision (b), did not apply in this case, and that error cannot be premised solely on a failure to comply with its provisions. This legislative intent to limit the application of section 224.2, subdivision (b), is further made clear by the Legislature's inclusion of subdivision (e) within section 224.2. Similar to section 224.2, subdivision (b), section 224.2, subdivision (e) requires further inquiry, which includes interviewing extended relatives but only when there is "reason to believe" a child may be an Indian child. (§ 224.2, subd. (e)(2).) If the Legislature intended to simply require an expanded duty of initial inquiry in every case, it would have said so.

Father concedes that the plain meaning of the statutory text in section 224.2, subdivision (b), indicates that the provision does not apply to a child taken into protective custody pursuant to section 340. However, Father argues that we should not follow the plain meaning of the statute because doing so would result in absurd consequences. It is true that the plain meaning of the words of a statute may be disregarded when the application of their literal meaning would produce absurd consequences. (*Faria v. San Jacinto Unified School Dist.* (1996) 50 Cal.App.4th 1939, 1945.) However, this exception to the general rule of statutory interpretation "is reserved for 'extreme cases'

where the absurdity is patent." (*California School Employees Assn. v. Governing Bd. Of South Orange County Community College Dist.* (2004) 124 Cal.App.4th 574, 588; *People v. M.H.* (2022) 81 Cal.App.5th 299, 304 [exception should be applied " 'sparingly and only in extreme cases' "].) Courts do not apply the exception simply because a statute "is claimed to run counter to a generalized legislative intent" (*People v. Goodliffe* (2009) 177 Cal.App.4th 723, 729) or may not be favorable to the intended beneficiaries of a statute in every situation (*Souza v. Lauppe* (1997) 59 Cal.App.4th 865, 873-874 [A statute is not absurd simply because it may be applied to the detriment of a class of persons the statutory scheme was intended to protect.]).

We are unpersuaded that a narrow reading of section 224.2, subdivision (b), produces absurd consequences that would justify departing from the plain meaning of the statutory text. As we explained in *In re Ja.O.*, *supra*, 91 Cal.App.5th at p. 672, a plain reading of section 224.2, subdivision (b), brings California's procedures into conformance with relevant federal guidelines and recommendations on the subject. (*Ibid.*) Further, section 306 itself imposes "various time-sensitive ICWA-related requirements" that are not applicable in other circumstances. (*In re Ja.O.*, at p. 681.) Thus, it is not patently apparent that a literal reading of section 224.2, subdivision (b), produces a result that the Legislature clearly did not intend or that such a reading frustrates the overall purpose of the statutory scheme. Absent such, courts engaged in statutory interpretation should adhere to the plain meaning of the text.

C. *A Literal Interpretation of Section 224.2, Subdivision (b), Does Not Violate Equal Protection*

Father also argues that a literal interpretation of section 224.2, subdivision (b), violates the equal protection clauses of both the United States and California constitutions because limiting the requirements in section 224.2, subdivision (b), only to situations involving warrantless detention creates a disparately protected class of potentially Indian children. According to Father, there is no rational basis for the Legislature to treat a warrantless detention differently from a detention pursuant to a protective custody warrant. We disagree.

1. General Legal Principles and Standard of Review

" 'The Fourteenth Amendment to the United States Constitution and article I, section 7 of the California Constitution guarantee all persons the equal protection of the laws.' " (*In re Williams* (2020) 57 Cal.App.5th 427, 433.) Generally, these provisions " 'compel[] recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.' " (*Darces v. Woods* (1984) 35 Cal.3d 871, 885.) "An equal protection analysis has two steps. ' " 'The first prerequisite . . . is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner.' . . ." ' If the groups are similarly situated, the next question is whether the disparate treatment can be justified by a constitutionally sufficient state interest." (*Conservatorship of Eric B.* (2022) 12 Cal.5th 1085, 1102.)

"Where . . . the legislative classification does not reach a suspect class or fundamental right, the classification does not violate equal protection if it bears a rational relationship to a legitimate public purpose. . . . [¶] 'In other words, the legislation survives constitutional scrutiny as long as there is " 'any reasonably conceivable state of facts that could provide a rational basis for the classification.' " This standard of rationality does not depend upon whether lawmakers ever actually articulated the purpose they sought to achieve. Nor must the underlying rationale be empirically substantiated. . . . It is immaterial for rational basis review "whether or not" any such speculation has "a foundation in the record." ' " (*People v. Gerson* (2022) 80 Cal.App.5th 1067, 1090-1091; *People v. Turnage* (2012) 55 Cal.4th 62, 74-75.) "The rational basis test is extremely deferential and does not allow inquiry into the wisdom of government action." (*Las Lomas Land Co.*, *LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 858-859.)

However, this deference "does not extend to laws that employ suspect classifications, such as race. Because suspect classifications are pernicious and are so rarely relevant to a legitimate governmental purpose . . . , they are subjected to strict judicial scrutiny; i.e., they may be upheld only if they are shown to be necessary for furtherance of a compelling state interest and they address that interest through the least restrictive means available." (*Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 33.)

In this case, Father contends that any reading of section 224.2, subdivision (b), is not entitled to deference because ICWA generally involves a racial classification, rendering any ICWA-related statutes inherently suspect. We disagree.

First, it is now widely recognized that for purposes of ICWA, an " 'Indian child' is . . . not necessarily determined by the child's race, ancestry, or 'blood quantum,' but depends rather 'on the child's political affiliation with a federally recognized Indian tribe.' " (*In re Austin J.*, *supra*, 47 Cal.App.5th at p. 882.) "The ICWA recognizes the political affiliation that follows from tribal membership in a federally recognized tribe, rather than a racial or ancestral Indian origin, and therefore does not discriminate on a racial basis. . . . [I]ts provisions are not subject to strict scrutiny, and they need not be narrowly tailored." (*In re Vincent M.* (2007) 150 Cal.App.4th 1247, 1267.) Thus, Father's characterization of ICWA and related statutes as a statutory scheme addressing racial classifications is incorrect.

Second, Father acknowledges that the two allegedly disparately impacted classes created by a literal interpretation of section 224.2, subdivision (b), are determined by the manner in which a dependent child was taken into protective custody—not the child's race. Thus, regardless of whether other provisions of ICWA or related state statutes can be characterized as creating suspect racial classifications, the specific statute challenged in this case does not. For these reasons, we conclude that any equal protection analysis in this case involves the application of the deferential rational basis test in order to determine whether a constitutionally sufficient state interest exists to justify different treatment of otherwise similarly situated individuals.

2. A Rational Basis Exists for the Legislature to Enact Heightened Statutory Requirements Applicable Only to a Warrantless Detention

In this case, even assuming, without deciding, that dependent children taken into protective custody pursuant to a warrant and dependent children taken into temporary custody pursuant to section 306 are similarly situated, we conclude that a rational basis exists for the Legislature to enact the heightened requirements imposed by section 224.2, subdivision (b). As we explain, three constitutional principles provide the context for understanding the statutory scheme and, once this context is properly understood, it is clear that a rational basis exists for the Legislature to impose additional statutory requirements applicable only to warrantless detentions.

First, both state and federal courts have recognized that " '[p]arents and children have a well-elaborated constitutional right to live together without governmental interference.' " (*Arce v. Children's Hospital Los Angeles* (2012) 211 Cal.App.4th 1455, 1473, quoting *Rogers v. County of San Joaquin* (9th Cir. 2007) 487 F.3d 1288, 1294.) Thus, the constitution requires that government officials obtain prior judicial authorization before intruding on a parent's custody of her child absent imminent danger to the child. (*M.L. v. Superior Court* (2009) 172 Cal.App.4th 520, 527; *Wallis v. Spencer* (9th Cir. 1999) 202 F.3d 1126, 1138.) The danger must be so imminent that there is reasonable cause to believe the child will experience serious harm " 'in the time that would be required to obtain a warrant.' " (*Arce*, at pp. 1473-1474.) We acknowledge that this may not reflect the current prevailing practice in some jurisdictions, but it is clear that the law contemplates judicial authorization prior to interference with parental

custody in all but the most exceptional circumstances. A warrantless detention is intended to be the exception and not the rule.

Second, a governmental agency "only [has] the power conferred upon [it] by statute and an act in excess of these powers is void." (*Rich Vision Ctrs. v. Bd. of Medical Examiners* (1983) 144 Cal.App.3d 110, 114; *American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1042.) Thus, while courts have recognized that the threat of imminent danger may justify interference with parental custody of a child absent judicial authorization, in order for the relevant child welfare agency to act, there must still be statutory authorization permitting such action.[2] Clearly, that is the purpose of section 306—to provide statutory authorization for the relevant child welfare agency to act in exigent circumstances when judicial authorization cannot be obtained. (§ 306; *Robert F.*, *supra*, 90 Cal.App.5th at p. 500; *M.L. v. Superior Court*, *supra*, 172 Cal.App.4th at p. 527.)

Finally, the authority granted in section 306 is discretionary. (§ 306, subd. (a) [providing that any social worker "may" do all of the following]; *Bom v. Superior Court* (2020) 44 Cal.App.5th 1, 16-17 [Section 306 is discretionary and permits a child welfare agency to take a child into temporary custody but does not create a duty to do so.]; see *Jenkins v. County of Orange* (1989) 212 Cal.App.3d 278, 287 [interpreting parallel provisions in § 305 as discretionary], disapproved on other grounds in *Leon v. County of*

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[2] " 'In providing child welfare services, the county's social services agency acts as an administrative agency of the executive branch . . . .' " (In re E.E. (2020) 49Cal.App.5th 195, 209; *In re Ashley M.* (2003) 114 Cal.App.4th 1, 7.)

Riverside (2023) 14 Cal.5th 910, 931.) And it is well established that when the Legislature grants an agency discretionary authority, the Legislature must provide reasonable guidelines for the exercise of that authority. (*Monsanto Co. v. Office of Environmental Health Hazard Assessment* (2018) 22 Cal.App.5th 534, 551 [The Legislature must provide " 'suitable safeguards' " that " 'are established to guide the power's use and to protect against misuse.' "]; *Clean Air Constituency v. State Air Resources Bd.* (1974) 11 Cal.3d 801, 817 ["[T]he Legislature must provide an adequate yardstick for the guidance of the administrative body empowered to execute the law."].)

Thus, when viewed in proper context, section 306 is a statute intended to grant the relevant child welfare agency discretionary authority to act in a manner that potentially intrudes on the constitutional rights of parents and children without judicial authorization. It is reasonable for the Legislature to adopt the view that agency exercise of such discretionary authority is materially different from a detention pursuant to a warrant.

The application for a warrant pursuant to section 340 necessarily invites the intervention of the juvenile court before a child is detained. Once the juvenile court intervenes, section 224.2, subdivision (a), imposes upon the court an affirmative and continuing duty to ensure that reasonable steps are taken to conduct an ICWA inquiry. (§ 224.2, subd. (a); *In re N.G.* (2018) 27 Cal.App.5th 474, 482 [juvenile court has a duty to ensure that social services agency makes reasonable ICWA inquiries].) It is reasonable for the Legislature to conclude that intervention of the juvenile court prior to any detention affords sufficient assurance that whatever initial ICWA inquiries are conducted, such inquiries will be reasonable under the circumstances presented in any given case.

Indeed, in the analogous situation involving issuance of a search warrant, both the United States and California Supreme Court have expressed that the process of obtaining a warrant is normally sufficient to establish that a government actor is acting in good faith. (*United States. v. Leon* (1984) 468 U.S. 897, 922; *People v. Camarella* (1991) 54 Cal.3d 592, 602; *People v. Hobbs* (1994) 7 Cal.4th 948, 960.)

In contrast, section 306 authorizes the relevant child welfare agency to act unilaterally. It is reasonable for the Legislature to adopt the view that when the relevant child welfare agency acts unilaterally, additional statutory requirements are necessary to ensure that a reasonable ICWA inquiry is conducted. Otherwise, the determination of what steps constitute a reasonable ICWA inquiry under the circumstances would be left entirely to the child welfare agency. While the imposition of detailed, statutory requirements may seem rigid when compared to entrusting any ICWA inquiry to the supervision of the juvenile court, the Legislature may very well have concluded that rigid statutory requirements are preferrable to permitting a child welfare agency to exercise unfettered discretion when acting unilaterally.

We recognize that the local court rules or agency practice in various jurisdictions may operate to diminish the theoretical distinction between taking custody of a child without a warrant pursuant to section 306 and taking custody of a child pursuant to a warrant under section 340. Nevertheless, rational basis review does not require that "the underlying rationale be empirically substantiated." (*People v. Miranda* (2021) 62 Cal.App.5th 162, 184, review granted June 16, 2021, S268384; *Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881.) Nor does it " 'entitle the judiciary to

second-guess the wisdom, fairness, or logic of the law.' " (*In re Williams* (2020) 57 Cal.App.5th 427, 436.) So long as a conceivable, legitimate government purpose is furthered by the Legislature's decision to impose heightened requirements on a warrantless detention, a literal interpretation of section 224.2, subdivision (b), does not violate equal protection.

IV. DISPOSITION

The order is affirmed.

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FIELDS
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.