

CERTIFIED FOR PARTIAL PUBLICATION*
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

In re MELISSA R., a Person Coming
Under the Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

S.V.,

Defendant and Appellant.

A121951

(Alameda County
Super. Ct. No. J147902)

Melissa R. is a 20-year-old woman with severe developmental disabilities. She needs assistance in all of her activities of daily living, and will need it for the rest of her life. This appeal concerns the juvenile court's decision to terminate dependency jurisdiction and leave Melissa's placement in her group home. S.V. (Mother), contends the court erred when it dismissed dependency jurisdiction; that the evidence does not show a risk of detriment to Melissa if she were returned to Mother's care; and that lack of compliance with the Indian Child Welfare Act (ICWA, or the Act) requires reversal. We conclude the court properly dismissed dependency jurisdiction and allowed Melissa to remain in her group home, and that Mother's challenge to the risk of detriment finding is moot. We also conclude that reversal and remand to require the juvenile court to comply with ICWA would be futile because Melissa has reached the age of majority and,

* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of Discussion, parts I., II., and IV.

therefore, is not an “Indian child” within the meaning of the Act. We therefore affirm the juvenile court orders.

BACKGROUND

Prior Dependencies

Melissa was born in June 1989 with a congenital chromosomal anomaly that has severely retarded her development.¹ Her medical problems included cerebral palsy, limited mobility, mental retardation and a cleft palate.

Mother’s inability to care for her daughter first resulted in intervention by the Alameda County Social Services Agency (the Agency) in October 1989. After a period of time in the care of her maternal grandmother, the trial court returned Melissa to Mother’s custody and retained jurisdiction. The dependency case was dismissed in November 1990. Although Melissa was developmentally delayed and had not yet begun to walk, she appeared to be healthy and thriving.

The second dependency case was initiated in January 1995, after police found cocaine and drug paraphernalia in Mother’s home. The home was filthy and her children were undernourished and suffering from neglect. Both children were placed in a regional center of the east bay (Regional Center) community care facility.

Mother suffers from an organic mental disorder and mild mental retardation, and has a lengthy history of substance abuse. Her initial compliance with drug treatment programs and drug testing was sporadic. But by December 1995, her case manager believed Mother was clean and sober.

After the children appeared to deteriorate while in Mother’s care for overnight visits, it was recommended that she needed supervision and assistance in child rearing. In December 1996, the Agency recommended that the children be returned to Mother with extensive family maintenance services. Mother completed her reunification plan “in spirit as well as in form” and attended outpatient drug treatment and therapy even after it

¹ Melissa has an older brother, David, born in May of 1984, who also suffers from chromosomal anomalies and has extensive developmental and medical needs.

was no longer required. The dependency case was dismissed in May 1997, when the Agency reported that Mother's parenting skills were excellent and the risk to the children was substantially reduced.

The April 2006 Detention

The case before this court began when Melissa was 16 years old, and Mother was arrested for driving a stolen car. Police found Melissa and her brother in a trailer towed by the car Mother was driving. Melissa was non-verbal and unable to walk or stand for long periods of time.

The detention report recounted Melissa's long history of abuse and neglect. In November 2005, Melissa's maternal grandmother reported that Mother and the children had moved in with her and that Mother left the children with her for weeks at a time without providing money or food for their care. She said Melissa could neither walk, speak nor use the toilet by herself. Melissa's maternal aunt reported that she kicked Mother out of her home several months earlier because Mother was using drugs and her boyfriend was a drug dealer. The aunt said Mother did not take good care of the children.

Although Melissa's maternal grandmother had cared for Melissa for much of her life, she was too ill to do so when this case began. Melissa was placed in a group home and when she arrived she appeared to have been grossly neglected. Melissa did not communicate at all. She slept during the day and was up all night. She cried for no reason and sat with her hands behind her back all day. The home staff was required to help with her activities of daily living, including bathing, toileting, dressing and eating. Although she was able to walk, she would not get up unless prompted and tired easily. She also would persistently bite her hands and wrists. Melissa seemed to lack stimulation at home. Her school attendance was sporadic, and she had not gone to school for almost a year before this dependency.

Family members reported that Mother had a substance abuse problem, but she denied that she used drugs. She said she was arrested because she bought a stolen car from a friend. She lived in maternal grandmother's trailer, and said she could not enroll Melissa in school because her name was not on grandmother's lease.

The juvenile court sustained jurisdiction under Welfare and Institutions Code² section 300, subdivisions (b) and (g), and ordered the Agency to provide Mother with reunification services.

October 2006—Six-Month Review

The six-month review report recommended that Melissa remain a dependent of the juvenile court. Mother enrolled in a transitional treatment program when she was released from jail in April 2006, but she left the program after several weeks without completing it. She had not cooperated with drug or alcohol testing and was homeless. During this period she falsely reported to Melissa's school, social workers and police that Melissa had been kidnapped. Mother cooperated in setting up regular visitation with Melissa, but her disruptive behavior limited those supervised visits.

Melissa showed significant improvement. She was doing well in her high school transitional program. Her self-mutilating behavior decreased and she was learning how to eat solid foods. The group home operator said there would be a high degree of risk to Melissa if she were to reunify with her mother.

Although Mother was given notice of the six-month review hearing, she did not appear. The court found that Mother had made partial progress toward alleviating the causes for Melissa's placement and ordered continued reunification services.

March/April 2007—12-Month Review

By March 2007, Mother had complied with her case plan to the best of her ability. She was enrolled in an outpatient treatment program, cooperating with drug testing, receiving one-on-one therapy, and attending parenting classes. But several of her drug test results were positive for cocaine and methamphetamine. Mother told her social worker she had located housing, but could not remember the address. She consistently visited with Melissa each month and cooperated with the social worker and group home staff. Visits appeared to be going well. Her supervising case manager said Mother was a

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

“wonderful person,” but that her “somewhat condescending behavior and ongoing unresolved mental health concerns and addiction continue to present concerns regarding [Mother’s] ability to provide appropriate care to a child with special needs.”

Melissa had improved physically and emotionally over the previous months. The Agency still believed that returning Melissa to Mother’s care would place her at risk. The court found that Mother had made no progress, continued Melissa as a dependent child of the court, and extended reunification services for six more months.

September 2007—18-Month Review

Melissa turned 18 in June 2007. In August 2007, the Agency sought a 60-day continuance of the 18-month review in order to arrange an appropriate transition plan for Melissa. Mother wanted Melissa returned to her custody. Mother was still enrolled in her outpatient treatment program and had worked closely with her counselor on the issues leading to Melissa’s removal. She had obtained housing at the Paradise Trailer Court in San Leandro; attended substance abuse sessions, parenting classes and therapy; visited monthly with Melissa; and “made herself available to work with the Regional Center as it relates to services for her daughter.” Mother’s drug tests were negative, but the agency had not yet received test results for June and July 2007.

Melissa still could not care for herself and needed help to eat, dress, bathe, use the toilet and perform other basic activities. She communicated through facial expressions, gestures, posture and behavior, and she was making some progress towards expressing her wishes and feelings, albeit without speaking. She was also making excellent progress toward eating without being prompted to chew or having her food cut up for her. She showed more interest in toys and objects. Her self-injurious behavior had decreased. Melissa was beginning to enjoy walks, visits to parks and restaurants, and other group activities. She usually seemed content in the group home environment and was generally in a pleasant mood. Melissa was showing significant improvement at Liberty High School and adjusting well with her classmates.

The Regional Center and La Familia Counseling Services opposed Melissa’s return to Mother. La Familia was concerned that Mother would have difficulty working

with the supportive system it developed for Melissa. The staff at Melissa's group home felt that out-of-home placement remained the best option for her. The Agency also believed such placement was the best option because of Melissa's level of need, but that placement in Mother's home would be possible if Mother were to consistently use the services offered by the Regional Center. If she did not, however, the Agency was concerned that Mother would be overwhelmed by Melissa's special needs. The Agency recommended dismissal of the dependency because Melissa was 18 years old, with a permanent living arrangement in her group home.

The parties submitted on the Agency's report. The court ordered a permanent plan for Melissa that continued her placement at the Avalon Group Home with the goal of her emancipation and identification of a long-term mentor. A contested hearing was set to address Melissa's placement before the dependency action was to be dismissed.

November 2007 and January 2008 Interim Review Reports

On November 15, 2007, the Agency filed a new report recommending that the court set aside the permanent plan for Melissa's out-of-home placement and instead order placement in Mother's home and dismiss the dependency. The Agency requested that La Familia Counseling Services provide services to Mother so that Melissa could be returned home, but it turned out that Mother was ineligible for such services because Melissa had reached adulthood and was living in a group home. Melissa's Regional Center case manager also felt that Mother was not ready to care for Melissa and that it was best for Melissa to remain where she was.

Since September 2007, Melissa had unsupervised weekend visits in Mother's home. Mother provided for Melissa's basic needs during the visits and they appeared happy together. Mother was in the process of completing a parenting evaluation and was still participating in her outpatient treatment program.

The court referred the parties to mediation. Mother was cooperative and attended. When the Agency filed its next interim report in January 2008, it again recommended that Melissa be returned to Mother. The social worker observed a home visit and reported that Mother's home was organized and small but adequate. Mother and Melissa

appeared to be comfortable and happy with each other. Melissa spent two weeks at Mother's home over her winter school break and there were no reports of problems. However, Mother's drug tests were problematic. In September 2007, Mother tested positive for benzodiazepines and gave a number of diluted tests. Between October 2006 and February 2007, she tested positive once for methamphetamine and several times for cocaine.

Melissa's attorney opposed the Agency's recommendation that she be returned to Mother and asked the court to dismiss the dependency. She argued that Mother had no legal right to custody because Melissa had reached majority, and Melissa's adult placement was determined by the Lanterman Developmental Disabilities Services Act. (§ 4500 et seq. (the Lanterman Act).) Counsel argued it would be detrimental to return Melissa to her mother's custody. Melissa was "thriving in an excellent group home for similarly situated young disabled adults. She is in an excellent school environment at Liberty Transition High School and she participates in many home and community-based leisure and recreational activities with her peers." She had made significant progress towards being social, feeding herself and playing with toys. She appeared to enjoy her visits with Mother, but it was not difficult for Melissa to separate from her mother when she returned to her group home. Melissa was equally comfortable in her group home setting, was more physically active and had substantially more resources for educational, recreational and social stimulation there. She developed significant relationships with other young adults and staff. It was possible Melissa could live her entire adult life at Avalon and still have visits with her family.

The May 8, 2008, Interim Report and the Contested Hearing

The contested hearing took place over nine days between February 28, 2008, and June 4, 2008. On May 8, 2008, the Agency again changed its recommendation to request that (1) Melissa remain at Avalon; (2) the dependency case be dismissed; and (3) services for Mother be terminated. The Agency had received Mother's psychological and caregiver competence evaluations and had numerous discussions with all parties about Melissa's ongoing care. Based on the evaluations, input from group home staff and other

care providers, and her lengthy involvement with the case, Melissa's case worker believed Melissa should remain at Avalon with continued visitation with Mother.

A number of witnesses testified at the contested hearing. Senior case manager Nancy Barreda and supervisor Marcia Campos from La Familia Counseling Services, and care provider Lira Reyes and behavior/program consultant Kokil Stillwater from Avalon testified favorably about Melissa's care, environment and progress at the group home. Campos believed Mother was not capable of providing suitable care for Melissa, but felt her love, visitation, and support could be a positive factor in Melissa's life. She testified, that pursuant to the authority provided by the Lanterman Act, La Familia can provide for Melissa without the need for a conservatorship; that placement at Avalon would allow Melissa to achieve her fullest potential in the least restrictive environment; and that Mother's history of chemical dependency combined with her own special needs made it highly possible that Melissa would be harmed were she returned to her mother. Stillwater concurred in Campos's assessment.

Dr. Deepa Abraham evaluated Mother's competence as a caregiver. Dr. Abraham believed that Mother was unable to sustain the level of care Melissa requires due to her own cognitive limitations and her failure to access social services. She thought Melissa should remain in her group home.

Case worker Marilyn Warrick also recommended that Melissa stay at Avalon. Warrick reported that Melissa progressed in the group home program. She believed that Mother could not provide the high level of care Melissa required and was concerned about Mother's potential for relapse. Like Campos, Stillwater and Abraham, Warrick was concerned there would be a substantial risk of neglect and detriment if Melissa were returned to Mother's care. Warrick explained that she had previously recommended returning Melissa to her mother because Mother was complying with the case plan, but she changed her mind after she reviewed the competency evaluation prepared by Dr. Abraham.

Mother testified about her capabilities and preparation to care for Melissa. Jackie Silva, resident manager of Mother's trailer court, testified that Melissa was "really

excited to see her mom” on a visit the previous summer because she made noises, reached out, and had “little tears in her eyes.” Melissa generally seemed happy in her mother’s presence. Silva was willing to help Mother with Melissa, but she had no children, had never worked professionally with children, and had never taken care of Melissa.

Mother’s sister, R.G., lives near Stockton. She testified that she could help Mother care for Melissa, but she had seen Melissa only twice in the past six months and the many demands on her time prevented her from seeing Mother between April 2006 and December 2007. Her husband was then in remission from stage 4 lymphoma and she had a teenager at home and grandchildren with her every other week. R.G. believes Mother is the “best mom” because she is amazing and dedicated and has cared for her children by herself all of their lives.

June 4, 2008, Order

The court found there was a substantial risk of detriment to Melissa if she were returned to Mother’s care. The court rejected Mother’s request that the dependency case proceed while she continued to work toward reunification, and found it unrealistic to expect that Mother would be able to care for Melissa anytime in the near future. The court explained that “it’s really not a practice of mine to keep dependency cases open where the Agency has developed an adequate transitional plan for emancipation, and here the plan for Melissa is not only adequate but excellent. [¶] We all know that Melissa will never have a chance to truly live independently or go to college or do a lot of the things that other young adults do, but under the Lanterman Act she is entitled to care in the community in the least restrictive setting possible. . . . [¶] The Regional Center has done a wonderful job of finding such a setting for Melissa. She’s in a wonderful home with excellent care, a full staff to meet all her needs around the clock, an excellent school program, friends her own age and many activities and outings. She can live there indefinitely. [¶] She will continue to visit her mother as she does now, as both Avalon and the Regional Center considers family contact to be extremely important. No mother is ever happy to let go of a child she loves, but I have absolutely no hesitation in saying

that I believe dismissal of dependency with Melissa remaining at Avalon is by far the best solution for Melissa.” Accordingly, the court dismissed the dependency case.

Mother filed this timely appeal.

DISCUSSION

I. The Trial Court Properly Exercised its Discretion to Dismiss Dependency Jurisdiction

Mother contends the juvenile court erroneously terminated dependency jurisdiction over Melissa after she reached the age of majority. She argues the court failed to consider whether judicial oversight was necessary to protect Melissa from a foreseeable risk of harm and “to ensure Melissa’s safe return to [Mother] or to ensure [Mother] could serve as Melissa’s legal advocate if she remained in the regional center system.” Mother says the court mistakenly focused on whether there would be a substantial risk of detriment if Melissa were returned to Mother’s care, as it would in an 18-month review hearing. Melissa and the Agency disagree. They contend the court correctly exercised its discretion when it considered whether to retain dependency jurisdiction over Melissa after the age of majority. Based upon our review of the record, we agree that the court was aware of and properly exercised its discretionary authority to dismiss the dependency.

“While the juvenile court may not acquire jurisdiction over a person who is 18 years of age or older, once it has obtained jurisdiction of a minor it may retain jurisdiction until the dependent child turns 21. Under section 303, ‘[t]he court may retain jurisdiction over any person who is found to be a dependent child of the juvenile court until the ward or dependent child attains the age of 21 years.’ Conversely, under section 390, the dependency petition may be dismissed any time before the minor reaches age 21 ‘if the court finds that the interests of justice and the welfare of the minor require the dismissal, and that the parent or guardian of the minor is not in need of treatment or rehabilitation.’ ” (*In re Holly H.* (2002) 104 Cal.App.4th 1324, 1330.)

Section 391 sets forth procedural requirements for hearings to terminate jurisdiction over dependent children who have reached the age of majority. Under

section 391, subdivision (a)(2), the child welfare agency is required to submit a report verifying that the child has been provided with written information about the dependency case, legal documents including a social security card and birth certificate, and assistance obtaining health insurance, housing, employment or other financial support, and higher education. If the court finds the agency has not satisfied these requirements *and* that termination of dependency jurisdiction would be harmful to the child’s best interests, it may continue the dependency jurisdiction only for the period of time necessary for the agency to comply (§ 391, subd. (a)(2), (3).) But, the juvenile court also retains the discretion “to continue jurisdiction *for other reasons.*” (§ 391, subd. (a)(2), (3), italics added.)

The legal standard that governs a decision to continue jurisdiction past the age of majority for such “other reasons” is well settled, and the parties do not appear to disagree on the controlling law. The court “must consider whether termination would give rise to an existing or reasonably foreseeable future harm to the young adult. If not, . . . jurisdiction should be terminated. However, if there is a prospect of such harm, the court must decide whether retaining jurisdiction would ultimately serve the best interests of the child.” (*In re Holly H.*, *supra*, 104 Cal.App.4th at p. 1336; see also *In re D.R.* (2007) 155 Cal.App.4th 480, 487; *In re Robert L.* (1998) 68 Cal.App.4th 789, 794.) The party seeking to terminate jurisdiction bears the burden of persuasion. (*In re Robert L.*, *supra*, at p. 793.)

Mother’s contention that the court confused the standard that applies in an 18-month review hearing with the standard that applies to the termination of dependency jurisdiction is unsupported by the record. The record shows that when the court terminated jurisdiction, it had before it *both* the 18-month review and the question of dismissal. Melissa’s counsel expressly sought dismissal pursuant to sections 390 and 391. Her written opposition to Mother’s request for custody set forth the “existing and reasonably foreseeable future harm” standard for dismissal after a dependent child reaches the age of majority and cited the key cases for the controlling law. (See *In re Tamika C.* (2005) 131 Cal.App.4th 1153; *In re Holly H.*, *supra*, 104 Cal.App.4th 1324; *In*

re Robert L., supra, 68 Cal.App.4th 789.) The Agency’s counsel argued both issues, as did Melissa’s. The court made it clear that the first issue before it was the 18-month review and stated the correct standard, i.e., whether returning Melissa to Mother’s care would create a substantial risk of detriment. The court found there was such a risk, and therefore denied Mother’s request that Melissa be returned to her care. Only then did the court proceed to consider whether to dismiss or continue Melissa’s dependency. There was no confusion.

Mother asserts that Melissa’s counsel erroneously argued the juvenile court was required to dismiss jurisdiction because Melissa was no longer a minor. Not so. To the contrary, it was counsel’s view that the juvenile court “[u]nquestionably” may retain jurisdiction until the dependent reaches the age of 21. But even if counsel was incorrect, there is no indication in the record that *the court* was unaware of its authority to retain jurisdiction until Melissa reached 21 years of age. The trial court is presumed to have been aware of and followed the applicable law unless error is affirmatively shown. (*People v. Martinez* (1998) 65 Cal.App.4th 1511, 1517.) None is shown here, and notwithstanding counsel’s alleged error, Mother acknowledges that the court “articulated it was aware it had the authority to continue jurisdiction.”

Mother also contends in this appeal for the first time that the court “failed to require [the] Agency to submit the requisite written report and documents or the mandatory Judicial Council form JV-365, intended to implement [section 391].”³ We

³ Section 391, subdivision (a)(2) requires the Agency to “Submit a report verifying that the following information, documents and services have been provided to the child: [¶] (A) Written information concerning the child’s dependency case, including any known information regarding the child’s Indian heritage or tribal connections, if applicable, his or her family history and placement history, any photographs of the child or his or her family in the possession of the county welfare department, other than forensic photographs, the whereabouts of any siblings under the jurisdiction of the juvenile court, . . . directions on how to access the documents the child is entitled to inspect under Section 827, and the date on which the jurisdiction of the juvenile court would be terminated. [¶] (B) The following documents: [¶] (i) Social security card. [¶] (ii) Certified birth certificate. [¶] (iii) Health and education summary [¶] (iv) Driver’s license . . . or identification card [¶] . . . [¶] (C) Assistance in completing an

will not address this alleged error because it was waived by Mother’s failure to raise it in the juvenile court, when it could have been easily remedied. “ “ “ “An appellate court will ordinarily not consider procedural defects or erroneous rulings, in connection with relief sought or defenses asserted, where an objection could have been but was not presented to the [trial] court by some appropriate method’ ” [¶] Moreover, it would be inappropriate to allow a party not to object to an error of which the party is or should be aware, “ ‘thereby permitting the proceedings to go to a conclusion which he may acquiesce in, if favorable, and which he may avoid, if not.’ [Citation.]” [Citation.] [¶] Appellate courts have applied the waiver doctrine in dependency proceedings in a wide variety of contexts, including cases involving failures to obtain various reports required by statute.’ ” (*In re Carrie W.* (2003) 110 Cal.App.4th 746, 755.) Here, four months before the case was dismissed Melissa’s counsel told the court that “Melissa also has all the information, documents and services that she is entitled to receive pursuant to W&I section 391. Her providers have her social security information, birth certificate and her health and education records. She has income through SSI and attendant regional center funding and Medi-Cal, as well as an excellent educational program. She has housing. . . . Contact and support with her community and extended and [*sic*] family are encouraged as part of Melissa’s appropriate ‘circle of support.’ ” Mother never contended otherwise, even when Melissa’s counsel asked the juvenile court at the June 2008 hearing to find the Agency had complied with section 391. She is therefore barred from doing so on appeal.

application for Medi-Cal or assistance in obtaining other health insurance; referral to transitional housing, if available, or assistance in securing other housing; and assistance in obtaining employment or other financial support. [¶] (D) Assistance in applying for admission to college . . . or to other educational institution and in obtaining financial aid, where appropriate. [¶] (E) Assistance in maintaining relationships with individuals who are important to a child who has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, based on the child’s best interests.”

Mother's related contention that her attorney was ineffective because she failed to preserve these issues is without merit. A parent who claims ineffective assistance of counsel in a dependency case must show that counsel "failed to act in a manner to be expected of reasonably competent attorneys practicing in the field of juvenile dependency law." (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667-1668.) Put in a slightly different way, the parent must affirmatively show, in addition to prejudice, that the alleged errors by trial counsel involved a crucial issue and cannot be explained on the basis of any knowledgeable choice of tactics. (*In re Dennis H.* (2001) 88 Cal.App.4th 94, 98-99.) Mother makes no such showing. She claims that her attorney failed to clarify the correct legal standard governing the retention or dismissal of jurisdiction after the age of majority. But, as we have explained, the record shows neither any confusion on this point nor a failure by Mother's attorney to argue the applicable law. Moreover, Mother's counsel may have strategically declined to challenge the Agency's compliance with section 391 because she knew Melissa had been provided with the required documents and assistance months before the final hearing. Declining to raise a pointless argument is an entirely reasonable choice of tactics.

II. *Mother's Challenge to the Court's Risk of Detriment Finding is Moot*

Mother challenges the evidence supporting the juvenile court's 18-month review finding that there would be substantial risk of detriment to Melissa if she were returned to Mother's care. The Agency argues, correctly, that this issue is moot because Mother's parental rights over Melissa terminated by operation of law when Melissa turned 18.

Parental authority ceases when a child attains the age of majority. (Fam. Code, § 7505, subd. (c).) Melissa is now 20 years old and, as discussed in part I, *ante*, the court properly dismissed the dependency jurisdiction under sections 390 and 391 based on its independent finding that continuing jurisdiction was not required to prevent an existing or foreseeable risk of harm to Melissa. Neither Mother's parental rights nor the juvenile court's dependency jurisdiction over Melissa could be restored if the 18-month review

finding were now to be reversed.⁴ As reversal would thus have no practical impact and provide Mother with no effectual relief, her challenge to the 18-month review finding is moot. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316 [appeal from denial of section 388 petition rendered moot by final order terminating parental rights]; see generally *Downtown Palo Alto Com. for Fair Assessment v. City Council* (1986) 180 Cal.App.3d 384, 391.)

III. ICWA Defects Are Also Moot

It is apparently undisputed that the Agency failed to comply with the ICWA's notice requirements despite having information that Melissa might be of Indian heritage. This error, however, is also moot.

If there is reason to believe that a child who is the subject of a dependency proceeding is an Indian child, ICWA requires that notice of the proceeding be given to the implicated tribes or the Secretary of the Interior. (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 471; 25 U.S.C. § 1912, subd. (a); Cal. Rules of Court, rule 5.481(a)(4).) "The Indian status of the child need not be certain to invoke the notice requirement." (*Desiree F.*, *supra*, at p. 471.) Although Mother informed the Agency in 2006 that she had Cherokee ancestry in her maternal family, the Agency's status review reports uniformly, and without explanation, reported that ICWA did not apply in this case. Apparently no ICWA notice was given.

Mother contends the omission requires reversal of the juvenile court orders with instructions to the court to retain its jurisdiction over Melissa and order the Agency to comply with ICWA. Because of the unusual posture of this case, we do not agree. ICWA's requirements are stringent, and noncompliance by courts and child welfare agencies lead to frequent reversals that direct compliance with ICWA requirements. (See generally *In re I.G.* (2005) 133 Cal.App.4th 1246, 1254.) But reversal to direct ICWA compliance is not an option in this case. ICWA applies only when an "Indian child" is

⁴ To be clear, we express no opinion on the merits of Mother's challenge to the evidence supporting the court's finding of detriment.

the subject of a “child custody proceeding,” as those terms are defined by the Act. (25 U.S.C. §§ 1903, 1911; see *Matter of Adoption of Baade* (S.D. 1990) 462 N.W.2d 485, 490.) An “Indian child” is “any unmarried person *who is under age eighteen* and is either (a) a member of an Indian tribe . . . and is the biological child of a member of an Indian tribe.” (25 U.S.C. § 1903, subd. (4); § 224.1, subd. (a).) California employs the same definitions—not some “higher protection” that would broaden the scope of these definitions to include individuals beyond the age of majority, as Mother contends. (§§ 224, subd. (b), 224.1, subds. (a), (c).)

As Melissa is now 20 years old, she can no longer be an “Indian child” who could be subject to ICWA proceedings if the orders Mother challenges in this appeal were reversed. Although ICWA gives adopted Indian children over the age of 18 the right to certain information concerning their parentage and tribal affiliation (25 U.S.C. §§ 1917, 1951), those provisions apply only to individuals who, unlike Melissa, were in an adoptive placement.⁵ There is therefore no basis for the institution of ICWA proceedings in this case. Because a reversal to require the Agency to comply with ICWA could not provide Melissa, Mother or any possible Indian tribe with meaningful relief, Mother’s ICWA contentions are moot.

IV. Judicial Notice

The Agency has asked this court to take judicial notice of certain factual matters concerning drug testing, 12-step programs, and cerebral palsy. We deny the request because the matters the Agency asks us to notice are not proper subjects of judicial notice. (See *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063-1065.) Moreover, the information in question was apparently not presented to the juvenile court in this case and is unnecessary to our resolution of the contentions of error asserted in this appeal. (See *Tanja H. v. Regents of University of California* (1991) 228 Cal.App.3d 434, 440, fn. 1.)

⁵ This is also likely why information concerning a child’s possible Indian heritage is required to be included in any report prepared pursuant to section 391.

DISPOSITION

The orders of the juvenile court are affirmed.

Siggins, J.

We concur:

McGuiness, P.J.

Jenkins, J.

Trial Court: Alameda County Superior Court

Trial Judge: Honorable Nancy Lonsdale, Commissioner

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