S275578

Supreme Court No. _____

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

In re DEZI C., et al., Persons Coming Under the Juvenile Court Law. _____	)	2nd Civ. No. B317935
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Petitioner and Respondent, v. ANGELICA A., Defendant and Appellant. _____	)	Los Angeles County Superior Court Case No. 19CCJP08030A-B

_____

APPELLANT'S PETITION FOR REVIEW

_____

On Appeal from an Order of the Juvenile Court
State of California, County of Los Angeles

Hon. Robin R. Kesler, Judge Pro Tempore

Karen J. Dodd, Esq. #146661
17621 Irvine Blvd., Ste 200, Tustin, CA 92780
tel (714) 731-5572 fax (714) 242-9065
kdodd@appellate-law.com

Attorney for Appellant mother, Angelica A.
Appointed by the Court of Appeal

Table of Contents

//

Table of Authorities

United States Supreme Court Cases

Federal Statutes

California Supreme Court Cases

California Appellate Cases

California Statutes

Rules of Court

//

Secondary Authority

ISSUE PRESENTED FOR REVIEW

1. This Court Should Grant Review to Settle the Conflict Between the Various Districts of the Court of Appeal Concerning the Standard of Prejudice in Reviewing Indian Child Welfare Act Error in Dependency Cases.

Introduction

Petitioner seeks review so that this Court can settle an important question of law concerning the standard of prejudice for initial inquiry errors concerning the Indian Child and Welfare Act ("ICWA"), 25 U.S.C., section 1901, et seq. The various Districts of the Court of Appeal employ five different standards of prejudice in reviewing ICWA error in dependency cases, requiring review by this Court to settle this important issue of law. (Cal. Rules of Court, rule 8.500(b)(1).)

When the agency and the juvenile court fail to comply with the initial inquiry duties concerning whether the child may be an Indian child as set forth in Welfare and Institutions Code section 224.2, subdivisions (b) and (c)[1], the published cases from various Districts of the Court of Appeal are divided into five distinct groups in determining whether the error was harmless. Several Districts expressly disagree. Many opinions include dissents, disagreeing with the majority view. This is an archetypal issue meriting review.

Moreover, the new standard set forth in *In re Dezi C.* (2022) 79 Cal.App.5th 769, conflicts with this Court's opinion in *In re Zeth S.* (2003) 31 Cal.4th 396 because *Dezi C.* approves the use of a "proffer" under Code of Civil Procedure section 909 for appellate counsel to introduce additional ICWA evidence on appeal. (Typed Opinion, p. 3.) This not only violates the Legislature's mandate,

---

[1] Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

which placed the burden on the agency and juvenile court, but it also requires appellate counsel to violate the rule set forth in *Zeth S.* that post-judgment evidence is only proper if it supports the underlying judgment. (*Id.* at p. 413.)

This Court should grant review to resolve these conflicts and settle these recurring issues of law.

Statement of the Case

A. The Juvenile Court Granted DCFS' Application Authorizing Removal; DCFS Filed Petitions, and the Children Were Detained.

On December 12, 2019, DCFS filed an application, number RO 33067 A-B, authorizing removal and order authorizing entry into the home for removal purposes. (1CT 50.) The court granted the application the same day. (1CT 55.) DCFS took the children into protective custody on December 13, 2019. (1CT 10, 19.)

On December 17, 2019, DCFS filed a section 300 petition concerning Dezi C., age three, and her brother, Joshua C., age 20 months. (1CT 10-18, 19-26.) The petition alleged the children came within section 300, subdivisions (a) and (b)(1). (1CT 10, 19.) It alleged the children's parents, Angelica A. and Luis C., had a history of domestic violence in the presence of the children. (1CT 13, 22.) It alleged father failed to protect the children by allowing the mother to continue to reside in the home. (1CT 14, 23.) Lastly, it alleged both mother and father had a history of substance abuse and currently were users of methamphetamine. (1CT 15, 24.)

On December 18, 2019, the court held a detention hearing.

(1CT 119, 124; 1RT 1-2.[2]) Mother and father attended the hearing; counsel was appointed to represent each of them. (*Ibid*.) Also present in the courtroom were a paternal aunt and paternal cousin. (1RT 6.) After an inquiry, the court found father to be a presumed father. (1CT 120, 125; 1RT 2-3.)

The court ordered the parents provide DCFS with the name, address, and any other identifying information for maternal and paternal relatives. (1RT 4.) Mother's counsel requested mother' father, Pablo A., be assessed as mother's visitation monitor. (*Ibid*.) Father's counsel requested father's sister, Susie C., and his cousin, Berenize, be assessed as his visitation monitor. (*Ibid*.) Mother's counsel requested the court authorize visits for the maternal grandparents. (1RT 5.) The court ordered DCFS to assess the maternal and paternal relatives as soon as possible. (*Ibid*.)

The court found a prima facie case for the detaining the children existed. (1RT 5; 1CT 121, 126.) It formally detained the children, removing them from their parents' care. (1RT 6; 1CT 121, 126.) It ordered DCFS to provide reunification services and monitored visits. (*Ibid*.) The court ordered three visits per week

---

[2] "1RT" refers to the reporter's transcript of the December 18, 2019, hearing. "2RT" refers to the reporter's transcript of the February 19, 2020, hearing. "3RT" refers to the reporter's transcripts for the hearings on August 26, 2020, December 15, 2020, July 13, 2021, April 13, 2021, and August 25, 2021. "4RT" refers to the reporter's transcript for the hearing of October 18, 2021. "5RT" refers to the reporter's transcript for the hearing of January 18, 2022.

for a minimum of one hour at each visit. (1RT 6, 1CT 123, 128.) The parents were to visit separately, not at the caretakers' home. (*Ibid*.) It set a jurisdiction and disposition hearing for February 19, 2020. (1RT 8; 1CT 123, 128.)

B. At the Jurisdiction/ Disposition Hearing Held on February 19, 2020, the Court Found the Allegations True, Adjudged the Children Dependents, and Ordered Family Reunification Services.

On February 19, 2020, the court held a jurisdiction and disposition hearing. (1CT 191-198.) The parents were not present, but were represented by counsel. (2RT 1.) The maternal grandparents were present. (*Ibid*.) The court denied mother's counsel's request for a continuance. (2RT 2.)

At the request of the parents' counsels, the court struck the subdivision (a) allegation. (2RT 4; 1CT 192, 196.) It found the subdivision (b)(1) allegations true and adjudged the children dependents. (2RT 5, 7; 1CT 191-192, 195-196.) It ordered the children removed from their parents' custody. (2RT 5, 1CT 192, 196.) It ordered DCFS assess the maternal grandparents for visits and/or overnight visits. (2RT 6, 9.) It ordered mother's case plan to include drug and alcohol services with an aftercare program; random or on-demand testing every other week, a 12-step program with a sponsor; and conjoint counseling with father if they intend to remain as a couple. (2RT 7; 1CT 131-132.) It ordered the same case plan for father, but allowed him to visit the children at his parents' home. (2RT 8; 1CT 131-132.)

The court set a six-month review hearing for August 26, 2021. (2RT 9; 1CT 193, 197.)

C. At the Six-Month Review Hearing, the Court Terminated the Parents' Reunification Services.

On August 26, 2020, the court held a six-month review hearing. (2CT 403-408.) The proceedings were held via webex because of the pandemic. (3RT 1.) Neither mother or father were present, but mother's counsel stated mother was attempting to "call in." (*Ibid.*) The court denied mother's counsel and father's counsel request to continue reunification services for the family. (3RT 3.) The court terminated reunification services. (3RT 5.) It found the parents were not in compliance with their case plan and had made minimal or no progress towards alleviating and mitigating causes necessitating placement. (3RT 6.) It set a section 366.26 hearing for December 15, 2020. (*Ibid.*) It set a permanency review hearing for February 24, 2021. (2CT 404, 407.)

D. On January 18, 2022, the Court Terminated the Parents' Parental Rights.

After several continuances (2CT 573, 3CT 788, 4CT 914, 1010) on January 18, 2022, the court held a selection and implementation hearing pursuant to section 366.26. (5RT 1.) Mother was present via webex at the hearing. (5RT 2.) The court denied mother's counsel request for a continuance. (5RT 3-5.) Mother's counsel objected to the termination of parental rights, and argued the parent-child benefit exception applied. (5RT 7.)

The court found, by clear and convincing evidence, the children were adoptable. (5RT 5.) It terminated the parents' parental rights. (5RT 5-6.) It found that "while mother is visiting

once a week, she is not occupying a parental role. Her visits remain monitored." (5RT 7.) It found the "(C)(1)(b)(1)" exception did not apply. (*Ibid*.)

E. Mother Timely Filed a Notice of Appeal.

On January 18, 2022, mother's counsel timely filed a notice of appeal. (4CT 1096-1097.)

F. Opinion and Petition For Rehearing.

On June 14, 2022, the Court of Appeal filed its published opinion. (App. A.) Appellant timely filed a petition for rehearing on June 27, 2022 , which was modified and denied on June 28, 2022. (App. B.

Statement of Facts[3]

A. Circumstances Surrounding DCFS' Decision This Family Needed Court Intervention.

1. The Family.

Mother, Angelica A., then age 26, and father, Luis C., then age 33, were the parents of two young children, Dezi C. (born 2016) and Joshua C. (born 2018). (1CT 10, 12.) The parents and the children resided together in Los Angeles, in the same apartment with the paternal grandparents, Teresa and Luis, Sr. (1CT 28, 36.) Mother and father began a relationship in 2012; mother moved into the paternal grandparents home in approximately 2014 or 2015. (1CT 31, 144.) The maternal grandparents, Yara A. and Pablo A., did not reside together, but

---

[3] Petitioner presents an abbreviated factual statement because the only issues presented concern the Indian Child Welfare Act.

lived locally. (1CT 32, 147; 1RT 4.). Also, mother has two brothers. (1CT 34.) Luis has one sister, Susie C., and a cousin, Berenize C. (1RT 4.)

. 2. The November 6, 2019, Referral.

On November 6, 2019, DCFS received a referral alleging mother and father were involved in a physical altercation outside the apartment building at approximately 10:30 a.m. (1CT 30.)

DCFS interviewed the paternal grandmother, Teresa, who stated the parents argued on a daily basis. (1CT 31.) Mother was violent and aggressive, and behaved erratically by talking to herself. (1CT 32.) Mother drank alcohol daily. (*Ibid*.) The paternal grandparents provided primary care for the children because the parents would "come and go." (*Ibid*.) Continuing, Teresa reported the mother had been arrested recently for physically attacking the maternal grandmother. (*Ibid*.) Luis, Sr. reported the parents would fight in front of the children. (*Ibid*.) DCFS interviewed mother on the same day, who reported father was gone all day, and she was tired of staying home and caring for the children. (1CT 33.) She denied drug use or having an alcohol problem. (*Ibid*.) Mother denied hitting her mother, but did admit she spent two days in jail. (1CT 34.) Father told DCFS mother is always mad at him. (*Ibid*.) He reported mother followed him everywhere. (*Ibid*.)

The parents agreed to drug test; mother's results were positive for amphetamine/methamphetamine. (1CT 37.) Father had been unable to test due to lack of identification. (*Ibid*.) During DCFS' investigation, the paternal grandmother contacted

DCFS on December 11, 2019, reporting mother took the children and did not return to the home the previous night. (1CT 40.) DCFS spoke to father, who admitted to recently using methamphetamine. (*Ibid*.) DCFS explained to father a court case would be filed. (*Ibid*.) Father agreed to move from the home so that his parents could care for the children. (*Ibid*.)

B. Additional Facts Concerning Adjudging the Children Dependents. (December 18, 2019-February 18, 2020.)

The children continued to reside with the paternal grandparents. (1CT 137.) The parents were homeless, residing in their car. (1CT 138.)

There had been one prior referral in April 2019, concerning the parents' arguing and fighting. (1CT 140.) Both parents had a criminal history. (1CT 141, 2CT 382-385.) Mother admitted the parents had a history of domestic violence. (1CT 143.) Mother reported she began using methamphetamine when she 19 years old. (*Ibid*.) She used "off and on," but not while pregnant. (1CT 143-144.) She began using daily after Joshua was born. (1CT 144.) Mother denied a problem with alcohol because she drinks just beer. (*Ibid*.) Mother reported she and father never used methamphetamine together. (*Ibid*.) The parents only drug tested one time each; the positive tests indicated high levels of methamphetamine. (1CT 151.) DCFS recommended a full drug and alcohol program with testing and after care. (*Ibid*.)

The parents failed to visit the children after the detention hearing; their first visits were scheduled for February 1, and 2, 2020. (1CT 150.)

C. Facts Concerning Parents' Participation in Case. Plan. (February 19, 2020-August 26, 2020.)

The children remained placed with the paternal grandparents. (1CT 199; 2CT 378.) Mother and father remained homeless, living in their car. (1CT 199; 2CT 386.)

The parents failed to participate in their case plan components. (1CT 199; 2CT 391.) Mother's drug tests were positive for methamphetamine the five times she tested during her brief enrollment at Clinica Romero. (1CT 203-207; 2CT 391.) Father had been arrested for domestic violence in early August 2020. (1CT 200-201.) He was not compliant with his case plan either. (2CT 396-397.)

Mother remained in contact with her children, mostly by virtual visits due to the pandemic. (1CT 386.) Her mother, Yara A., supervised the visits. (2CT 397.)

DCFS recommended the court terminate reunification services. (2CT 399-400.) DCFS opined the parents were not committed to sobriety and had not addressed the issues which brought them to the attention of DCFS. (2CT 399.)

D. Facts Supporting Termination of Parental Rights. (August 27, 2020-January 18, 2022).

Dezi appeared to be on track developmentally. (2CT 531.) Joshua showed signs of fine motor delays and speech delays. (2CT 532.) By July 13, 2021, he was doing very well in therapy and would soon be done with services. (4CT 903.) Neither child required mental health services. (2CT 531-532, 3CT 674-675.) The paternal grandparents were willing to adopt the children.

(2CT 533, 534, 3CT 675, 778, 782, 4CT 904, 975, 1006.)

Mother visited her children on Saturdays. (2CT 533; 3CT 676, 4CT 976.) The maternal grandmother supervised the visits. (*Ibid*.) The visits were held in a public setting or at the maternal great aunt's home. (*Ibid*.) Due to the spike in COVID cases, the visits alternated between in-person visits and virtual visits. (*Ibid*.) In March 2021, mother became violent with the maternal grandmother, causing the grandmother to call the police. (4CT 976.)

Indian Child Welfare Act

A. Detention Report.

The detention report filed on December 17, 2019, stated: "The Indian Child Welfare Act does not apply. Mother and father denied Indian ancestry." (1CT 29.)

B. ICWA-010(a) Forms Attached to Petitions.

Attached to the petitions filed December 17, 2019, were the ICWA-010(a) forms indicating an inquiry had been made (1CT 16, 25) and the "1. f." box was checked, "[t]he child has no known Indian ancestry." (*Ibid*.)

C. Detention Hearing.

At the detention hearing held on December 18, 2019, the parents filed ICWA 020 forms. (1CT 114-116, 120, 125.) The minute order for the December 18, 2019, hearing noted the following:

> The Court does not have a reason to know that this is an Indian Child, as defined under the ICWA, and does not order notice to any tribe or BIA. Parents are to keep the Department, their Attorney and the Court aware of any

> new information relating to possible ICWA status. ICWA-020, the Parental Notification of Indian Status is signed and filed.

(1CT 120, 125.)

According to the reporter's transcript for the December 18, 2019, hearing, the court stated "And I have your ICWA-020 forms indicating no American Indian heritage. (1RT 3.) [¶] Is that accurate? You have no American Indian heritage?" (*Ibid.*) Mother responded, "Yes, I don't. (*Ibid.*) The court asked father, and he responded, "No." (*Ibid.*) The court stated: "This court finds this is not an I.C.W.A. case." (*Ibid.*)

D. Jurisdiction/Disposition Report.

The jurisdiction/disposition report filed on February 4, 2020, indicated

> 0n 1/18/19, "the Court ordered it does not have a reason to know that this in an Indian Child, as defined under ICWA, and does not order notice to any tribe or the BIA. ¶ On 1/29/20, mother reported that she does not have any Native American heritage.

(1CT 139.)

E. Status Reports, Section 366 Report, and Interim Reports.

The status review report filed on August 7, 2020, the section 366.26 report filed on December 2, 2020, the Status Review Report filed on February 10, 2021, and the Interim Review Report filed on June 28, 2012, reported "On 12/18/2019, the Court found that the Indian Child Welfare Act does not apply regarding children Dezi [.] and Joshua [.]" (2CT 380, 529, 3CT 670, 4CT 900.)

F. The Section 366.26 Hearing.

At the January 18, 2022, selection and implementation hearing pursuant to section 366.26, the ICWA was not mentioned. (5RT 1-7.)

\ \

\ \

\ \

Discussion

I. This Court Should Grant Review to Settle the Conflict Between the Various Districts of the Court of Appeal Concerning the Standard of Prejudice in Reviewing Indian Child Welfare Act Error in Dependency Cases.

The various Districts of the Court of Appeal disagree as to the correct standard for evaluating prejudice resulting from ICWA error. The Districts employ five distinct standards for determining prejudice as a result of the agency's and the juvenile court's broad duties of inquiry set forth in section 224.2, subdivision (a)-(c), in determining whether the child at issue is an Indian child. This Court should grant review to resolve this reoccurring conflict.

A. The Five Standards.

1. The Error Warrants Reversal in Every Case Because the Duties Were Mandatory and Unconditional. Therefore, the Failure to Satisfy the Duties of Inquiry is Presumed Prejudicial.

One line of cases holds failure to satisfy the duty of inquiry is presumed prejudicial, requiring reversal. This line of cases includes *In re K.R.* (2018) 20 Cal.App.5th 701, 709 [4th Dist, Div.2] and *In re N.G.* (2018) 27 Cal.App.5th 474, 484 [4th Dist, Div. 2]. Both of those case were published prior to the Legislature's revision of section 224.2, in enacting Assembly Bill 3176.

The next tranche of cases, enunciating the current majority view that prejudice is presumed, and were decided based on Legislature's expansion of the duties of ICWA inquiry enacted of

Assembly Bill 3176, revising section 224.2, subdivisions (a)-(c): *In re T.G.* (2020) 58 Cal.App.5th 275, 288-289 [2nd Dist, Div. 7; review denied March 24, 2021]; *In re Y.W.* (2021) 70 Cal.App.5th 542, 556 [2nd Dist., Div. 7]; *In re H.V.* (2022) 75 Cal.App.5th 433, 438, fn. 4 [2nd Dist., Div. 5]; *In re Antonio R.* (2022) 76 Cal.App.5th 421, 435 [2nd Dist., Div. 7]; *In re J.C.* (2022) 77 Cal.App.5th 70, 80 [2nd Dist., Div. 7]; and *In re A.R.* (2022) 77 Cal.App.5th 197, 207 [4th Dist., Div. 3]; and *In re E.V.* (June 30, 2022, G061025) __ Cal.App.5th__ (2022 Cal.App.LEXIS 581, [4th Dist., Div. 3].)

In *In re T.G.*, *supra*, 58 Cal.App.5th 275, mother claimed she "may" have Indian ancestry, requiring further inquiry. (*Id.* at p. 292.) The agency failed to further inquire. (*Ibid.*) The *T.G.* Court held that the agency failed to adequately investigate that claim, rejecting the narrow holding in *In re Austin J.* (2020) 47 Cal.App.5th 870, 888-889, that a statement that suggests a mere possibility of Indian ancestry does not require further inquiry. (*Id.* at pp. 280, 294.) Continuing, the Court held that the juvenile court fulfilled its initial duty asking about Indian ancestry at the detention hearing, but it failed to ensure an appropriate further inquiry had been conducted, before concluding ICWA did not apply. (*Id.* at p. 281, 293.) The court explained

> the imposition of a duty to inquire that is significantly ore expansive than the duty to provide ICWA notice is premised on the commonsense understanding that, over time, Indian families, particularly those living in major urban centers like Los Angeles, may well have lost the ability to convey accurate information regarding their tribal status. As a result, the information available at the outset

> of dependency proceedings will often be inadeuate to ensure th necessary protection of the rights and cultural heriage of Indian children, Indian families, and Indian tribes. (Citation.) General information from the family about its ancestry frequently provides the only available basis to believe an Indian child is involved.

(*Id.* at p. 296.)

In *T.G.*, the Court conditionally reversed the guardianship orders and "remanded the matter to allow the agency to juvenile court to rectify their errors and take all other necessary corrective actions." (*In re T.G., supra,* 58 Cal.App.5th at p. 281.)

In *In re Y.W., supra,* 70 Cal.App.5th 542, the Court conditionally affirmed the orders terminating parental rights, and directed the juvenile court to ensure DCFS complies fully with the inquiry and notice provisions of the ICWA and related California law. (*In re Y.W., supra*, 70 Cal.App.5th at p. 559.) *Y.W.* held DCFS failed to comply with inquiry provisions of the ICWA, and the juvenile court failed to ensure the DCFS adequately investigated the children's possible Indian ancestry through mother's side of the family. (*Id.* at p. 555.)

Y.W. rejected DCFS' claim any error was harmless because mother made no representations her biological relative would provide any information indicating the children were Indian children. (*In re Y.W., supra*, 70 Cal.App.5th at p. 556.) The *Y.W.* Court held a parent does not need to assert he or she has Indian ancestry to show DCFS's failure to make an appropriate inquiry under ICWA and relative law is prejudicial. (*In re Y.W., supra*, 70 Cal.App.5th at p. 556.) DCFS was required to obtain information the parent may not have, and it was unreasonable to

require a parent to make an affirmative representation of Indian ancestry where DCFS failed to conduct an adequate inquiry depriving the parent of the very knowledge need to make such a claim. (*In re Y.W., supra*, 70 Cal.App.5th at p. 556.)

Similarly, *Antonio R.,* also decided by Division Seven of the Second District, explained:

> In most circumstances, the information in the possession of extended relatives is likely to be meaningful in determining whether the child is an Indian child, regardless of whether the information ultimately shows the child is or is not an Indian child. We conclude the error was prejudicial because we do not know what the information the maternal relatives would have provided had the Department or the court inquired.

(*In re Antonio R., supra*, 76 Cal.App.5th at p. 426.)

In *In re H.V., supra*, 75 Cal.App.5th 433 [2nd Dist., Div. 5], the agency conceded error in failing to interview extended family members about potential Indian ancestry, but contended mother failed to make an affirmative representation on appeal of Indian ancestry. (*Id*. at p. 438.) *H.V.* held mother did not have an affirmative duty to make a factual assertion of appeal that she cannot support with citations to the record. (*Ibid*.) *H.V.* noted the agency's failure to discharge its inquiry duty under ICWA and state law was responsible for the absence of information in the record about the child's possible Indian ancestry. (*Ibid*.) The Court conditionally affirmed the jurisdiction and disposition orders and remanded with directions to the juvenile court to order the agency to comply with ICWA. (*Ibid*.)

In *In re A.R., supra*, 77 Cal.App.5th 197, the agency

conceded it failed to conduct an inquiry into the children Indian ancestry, but contended the judgment should be affirmed because appellant failed to make a showing on appeal that the children may have Indian ancestry, and therefore, failed to demonstrate error. (*Id*. at p. 201.) The Fourth District, Division Three, held

> The interests protected by ICWA include the broad interests of Native America tribes in maintaining cultural connections with children of Native American ancestry. Those tribe have no standing to intervene in dependency cases unless Native American ancestry is first uncovered and established, and thus no way of protecting their tribal interests unless the child welfare agencies comply with ICWA and then notify the appropriate tribe when the inquiry reveals Native American ancestry. [¶] That is why the law requires that an ICWA inquiry be conducted in *every* case. The tribes have a compelling, legally protected interest in the inquiry itself. It is only by ensuring that the issue of Native American ancestry is addressed in every case that we can ensure the collective interests of the Native American Tribes will be protected. [¶] What troubles us about county counsel's positive, and by extension, SSA's, is that it seems to relect a belief that inquiry into Native American ancestry is not important. That cannot be the case. Until the inquiry is conducted, and the issue is put to rest, the interests of the Native American tribes have not be adequately protected, and the judgment in this case would remain vulnerable to potential collateral attack.

(*Id*. at pp. 201-202.)

Continuing, *A.R*. held:

> Adopting "a rule requiring reversal in all cases where ICWA requirements have been ignored is consistent with the recognition that parents are effectively acting as 'surrogate[s]' for the interests of Native American tribes when raising this issue on appeal. . . . '[A]ppellate review of procedures and ruling that are preserved for review

> irrespective of any action or inaction on the part of the parent should not be derailed simply because the parent is unable to produce an adequate record.' [Citation.] [¶] Any other rule would potentially make enforcement of the tribes' rights independent on the quality of the parents' efforts on appeal. That would be inconsistent with the statutory schemes which place the responsibility squarely on the courts and child welfare agencies. Stated plainly, it is the obligation of government, not the parents in individual cases, to ensure the rtibes interest are considered and protected.

(*Id.* at p. 207.)

A.R. held conceded error "warrants reversal in every case because the duty to inquire was mandatory and unconditional." (*In re A.R., supra,* 77 Cal.App.5th at p. 205.)

Therefore, there are four published cases from Second District, Division Two; two cases from Fourth District, Division Three, and one published case from the Second District, Division Five requiring reversal per se.

2. Another Line of Cases Holds the Error Does Not Warrant Reversal Unless a Miscarriage of Justice Is Demonstrated in the Appellate Record to Have Occurred As a Consequence of the Failure to Inquire and the Appellant Must Affirmatively Demonstrate Prejudice.

Another line of cases requires a parent to demonstrate prejudice, i.e., requiring the parent show on appeal that he or she would, in good faith, have claimed some kind of Indian ancestry. In *In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1439 [4th Dist., Div. 2], a case published before the Legislature revised section 224.2, subdivision (a)-(c), the Court required the affirmative

showing of prejudice.

In *In re A.C.* (2021) 65 Cal.App.5th 1060, 1069, another panel of the Fourth District, Division Two, also held an affirmative showing was required, which was after the Legislature revised section 224.2, subdivisions (a)-(c). More recently, the Second District, Division Five, in *In re H.V., supra,* 75 Cal.App.5th at p. 440, the dissent suggested that, under the deferential standard of review, the juvenile court's ICWA finding should not be disturbed because there was substantial evidence supporting the determination based on mother's denial of Indian heritage. (*Id.* at p. 441, (dis. opn. of Baker, J.).)

Similarly, in *In re A.C.* (2022) 75 Cal.App.5th 1009 [Second District, Division One], the dissent advocated for a harmless error standard, requiring the appealing party to affirmatively show prejudice, and expecting more of a parent's trial counsel in raising ICWA issues in the juvenile court. (*Id.* at p. 1021-1022, (dis. opn. of Crandall, J.).)

These cases conflict with the majority view discussed in the preceding section requiring reversal per se.

3. Another Line of Cases Hold the Error Is Determined on a Case-By-Case Basis, Looking to Whether the Record Reflects There Are Known Relatives Identified By the Agency, Who Appear to Have Been Able to Shed Light on the Issue of Native American Heritage.

Yet another line of cases articulates a different approach. In *In re Benjamin M.* (2021) 70 Cal.App.5th 735, a panel of the Fourth District, Division Two, held the reviewing court "must

reverse where the record demonstrates that the agency has not only failed in its duty of inquiry, but where the record indicates that there was readily obtainable information that was likely to bear meaningfully upon whether the child was an Indian child." (*Id.* at p. 744.)

In that case, mother denied Indian ancestry. (*In re Benjamin M., supra,* 70 Cal.App.5th at p. 740.) Father's whereabouts were unknown throughout the entire case. (*Ibid.*) However, mother told the agency about father's brother, but the agency never contacted him about father's or Benjamin's possible Indian ancestry. (*Ibid.*) On appeal, mother contended the agency failed to comply with its initial inquiry by failing to inquire father's brother. (*Ibid.*) The agency conceded error, but contended the error was harmless. (*Ibid.*) The court explained that, since this was a violation of state law, the error must be prejudicial, i.e., the sole issue was whether prejudice resulted from the failure to ask father's known relatives about possible Indian ancestry. (*In re Benjamin M., supra,* 70 Cal.App.5th at p. 743.)

Benjamin M. explained this issue was analogous to the state having a duty to disclose certain evidence but failing to check if it has such material, citing *Brady v. Maryland* (1963) 373 U.S. 83, 87 [10 L.Ed. 2nd 215, 83 S.Ct. 1194].) Continuing, *Benjamin M.* explained:

> Here, instead of mere duty to disclose, the agency has a duty to gather information by conducting an initial inquiry, where the other party–here the parent "acting as a surrogate for the tribe" (Citation)–has no similar obligation.

> At any point, the agency could still gather the required information and make it known. Until the agency does so, however, we cannot know what information an initial inquiry, properly conducted, might reveal.

(Pp. 742-743.)

In order to determine if the violation was prejudicial, the court explained, there were three options. The first option was the court could always conclude it was reasonably probable that a result more favorable to the appellant might be revealed by additional evidence, requiring reversal whenever the agency erred. (*In re Benjamin M., supra,* 70 Cal.App.5th at p. 743.) However, the court rejected this option because it was not consistent with a harmless error rule. (*Ibid.*) It explained, in some cases, where the agency erred, but after considering the entire record, that additional information would not have been meaningful to the inquiry. (*Ibid.*) The court cited *In re J.M.* (2012) 206 Cal.App.4th 375 as a situation in which the additional information would not be meaningful to the inquiry. (*In re Benjamin M., supra,* 70 Cal.App.5th at p. 743..) The *J.M.* Court held the failure to include the great-great-grandparents in the ICWA notice was harmless because the tribe's membership criteria showed that the "children are disqualified from membership irrespective of their great-great-grandparents possible membership in the tribe." (*In re J.M., supra,* 206 Cal.App.4th at p.382.)

Next, *Benjamin M.* discussed the second option, which would be to require the parent to prove the missing information would have demonstrated a "reason to believe." (*In re Benjamin*

M., *supra,* 70 Cal.App.5th at p. 743.) However, it also rejected the second option because imposing such a requirement would conflict with the Legislature's imposition of that duty on the Agency. (*Ibid.*) *Benjamin M.* explained that a parent cannot always easily obtain the missing information. (*Ibid.*) Additionally, the ICWA determination is also the Indian tribe's right. (*Ibid.*) Lastly, the court held placing the burden on the parent "would frustrate the statutory scheme if the harmlessness inquiry required proof of an actual outcome (that the parent may actually have Indian heritage) rather than meaningful proof relevant to the determination, whatever the outcome will be." (*Id.* at pp. 743-744.)

Benjamin M. rejected the rule set forth by another panel of Fourth District, Division Two, in *In re A.C.*, *supra,* 65 Cal.App.5th 1060, 1069, which required "a parent asserting failure to inquire must show–at a minimum–that, if asked, he or she would, in good faith, have claimed some kind of Indian ancestry." (*In re Benjamin M.*, *supra,* 70 Cal.App.5th at pp. 745-746.) The court explained it was "keeping in mind that a collateral attack on a juvenile court judgment based on later discover information can wreak havoc on a child's stability if the child turns out to have been an Indian child all along, citing 25 U.S.C., section 1914, which allows the tribe to petition to invalidate actions conducted in violation of certain ICWA provision. (*Id.* at p. 745.) *Benjamin M.* found the risk of a collateral attack "would be greater, and even more unacceptable, if the agency foregoes basic inquiry into meaningful, easily

acquirable information." (*Ibid.*) The court conditionally reversed the order terminating parental rights and remanded the case with directions to comply with inquiry requirement of ICWA. (*Id.* at p. 746.)

Benjamin M. held the court must reverse where the record demonstrates that the agency (1) has failed in its duty of initial inquiry, and (2) where the record indicates there was readily obtainable information that was likely to bear meaningfully upon whether the child is an Indian child. (*In re Benjamin M., supra,* 70 Cal.App.5th at p. 744.)

The court explained the agency failed to obtain information that appears to have been both readily available and potentially meaningful. (*In re Benjamin M., supra,* 70 Cal.App.5th at p. 744.) Continuing, the court held the agency failed its duty of inquiry by not asking "extended family members," i.e., the father's brother and sister-in-law about Indian ancestry on the paternal side of the family. (*Ibid.*) The court explained the missing information was readily obtainable because the agency had spoken to the sister-in-law, and it had been provided father's brother's address. (*Ibid.*) The court explained the information those relatives could have given would likely have shed meaningful light on whether there was a reason to believe Benjamin was an Indian child. (*Ibid.*) Lastly, the court stated that, the brother's knowledge of his own Indian status would be suggestive of father's status. (*Id.* at p. 745.) Even though the brother's answer to the inquiry was unknown, his answer was likely to bear meaningfully on the determination whether father had any Indian ancestry. (*Id.*)

Division One of the Second District, in both *In re S.S.* (2022) 75 Cal.App.5th 575, 582, and *In re Darian R.* (2022) 75 Cal.App.5th 502, 509-510, applied the *Benjamin M.* test but affirmed the juvenile court's decision ICWA did not apply. (*Ibid.*)

Therefore, the holdings in *Benjamin M.*, *Darian R.* and *S.S.* conflict with the majority view requiring reversal per se.

4. Still Another Line of Cases Looks to Whether The Substantial Evidence Supports the ICWA Findings and Orders.

There is a fourth line of case that applies the "substantial evidence" test in determining ICWA initial inquiry error.

In *In re Josiah T.*, the Second District, Division Eight, reviewed DCFS' failure to complete its initial and further duties to investigate ICWA by contacting extended family members. (*In re Josiah T.* (2021) 71 Cal.App.5th 388, 401.) The Court explained DCFS has a duty to "document it[s inquiry] and to provide clear information to the court" so that the court may rule on the question of whether the ICWA applies, citing *In re L.S.* (2014) 230 Cal.App.4th 1183, 1198. (*In re Josiah T., supra*, 71 Cal.App.5th at p. 406.)

Continuing, the Court explained the juvenile court may *not* find that ICWA does not apply when the absence of evidence that the child is an Indian child results from a DCFS inquiry that is not proper, adequate or demonstrative of due diligence. (*In re Josiah T., supra,* 71 Cal.App.5th at p. 408.)

> In order for the court to make a determination whether the notice requirements of the ICWA have been satisfied, it must have sufficient facts, as established by the Agency,

> about the claims of the parents, the extent of the inquiry, the result of the inquiry, the notice provided any tribes and the responses of the tribes to the notices give. Without these fact, the juvenile court is unable to find, explicitly or implicitly, whether the ICWA applies. (Citation.) Because DCFS's inquiry and reporting deficiencies, the juvenile court's lack of information it needed to make those determinations, and even worse, it would have to engage in detective worker to uncover the fact that it did not have the information necessary to make an informed ruling.

(*Id.* at p. 408.)

In *Josiah T.,* the Court did not require a parent show prejudice by making an affirmative showing of Indian ancestry. Instead, it conditionally reversed the orders terminating parental rights and remanded with directions to the juvenile court to permit DCFS to demonstrate it did in fact satisfy its affirmative duty to investigate. The court ordered that, if DCFS shows its investigation fulfilled its duty to investigate, the juvenile court should reinstate the section 366.26 orders. (*In re Josiah T., supra,* 71 Cal.App.5th at p. 408.)

In *In re K.T.* (2022) 76 Cal.App.5th 732 [Fourth Dist., Div. Two], the agency failed to follow-up on information received by the parents of possible Indian ancestry. (*Id.* at p. 737.) The Court held the record contained no indication the agency made any effort to investigate the parents' claim of Indian ancestry. (*Ibid.*) Therefore, substantial evidence did not support the finding ICWA did not apply. (*Ibid.*) This was a different pan than that which decided *In re A.C., supra,* 65 Cal.App.5th 1060.

The dissent in *In re H.V., supra,* 75 Cal.App.5th at p. 440 [Second District, Division Five], also suggested that, under the

deferential standard of review, the juvenile court's ICWA finding should not be disturbed because there was substantial evidence supporting the determination based on mother's denial of Indian heritage. (*Id.* at p. 441, (dis. opn. of Baker, J.).)

These three cases conflict with the majority view these errors require reversal per se.

B. Dezi C. Created a New Test, Holding the Error Does Not Warrant Reversal Unless a Miscarriage of Justice Is Demonstrated in the Appellate Record And Any Further Proffer the Appealing Parent Makes on Appeal.

Lastly, in this case, Division Two of the Second District Court of Appeal in *In re Dezi C.*, *supra*, adopted still another test. The Court held an agency's failure to discharge its statutory duty of initial inquiry is harmless unless the record contains information suggesting a reason to believe that the children at issue may be Indian children, in which case further inquiry may lead to a different ICWA finding by the juvenile court. Continuing, it held for these purposes, the record means not only the record of proceedings before the juvenile court but also any further proffer the appealing parent makes on appeal." (Typed Opinion, p.3.)

1. Dezi C. Conflicts With the Majority View Requiring Per Se Reversal.

Dezi C. expressly rejected the first three standards and failed to analyze the substantial evidence test, creating a clear conflict in the law requiring resolution by this Supreme Court. (Typed Opinon, p. 15-21.) This fifth standard looked to the"reason

to believe" before the initial inquiry has been completed. (Typed Opinion, 3, 9-11, 3-15.) Section 224.2, subdivision (b), comes into play *after* the initial broad inquiry has been completed, and there is not sufficient evidence to determine there is a "reason to know" the child is and Indian child. (Welf. & Inst. Code, § 224.2, subd. (e).) This issue on appeal is the agency's failure to complete its broad initial inquiry by not inquiring of the extended family members. *Desi C.* conflicts with not only the majority view, but the other three standards as well.

2. Requiring Appellate Counsel to Make a Proffer on Appeal Conflicts With the Holding in This Court's Opinion in *In Re Zeth S.*

Dezi C. approves the use of a "proffer" under Code of Civil Procedure section 909 for appellate counsel to introduce ICWA evidence on appeal. (Typed Opinion, p. 3.) It reassigns the agency's duty of inquiry to appellate counsel. This not only violates the Legislature's mandate, but it also conflicts with this Supreme Court's opinion in *In re Zeth S.*, *supra*, 31 Cal.4th 396 mandating that post-judgment evidene is only proper if it supports the underlying judgment. (*Id.* at p. 413.) *Dezi C.* requires appellate counsel interview appellant and his/her extended family member and then, contrary to *Zeth S.*, provide the information to the Court of Appeal as a basis for reversal. Previously, Justice Menetrez explains this conflict. (See *In re A.C.*, supra, 65 Cal.App.5th at p. 1078, (dis. opn. of Menetrez, J.)

Additionally, appellate counsel generally is under time constraints in dependency appeals. (Cal. Rules of Court, rule

8.412(b); rule 8.412(c); rule 8.416 (e); and rule 8.416(f).) There are "no-extension/short time frame" requirements in which to file a brief. Appointed appellate counsel has neither the time nor the resources to complete an investigation and file a brief presenting new ICWA evidence or file a timely no-issue brief after a review by the appellate project.

Moreover, appointed appellate counsel "ordinarily do not, need not, and are not paid to conduct an investigation of facts outside the record." (See *In re A.C.*, *supra,* 65 Cal.App. at p. 1078, (dis. opn. of Menetrez, J.) The appointed appellate counsel programs in dependency appeal are limited by "guidelines" and are highly systemized. (See 2022 Continuing Education of the Bar, California Juvenile Dependency Practice (2022), §§ 10.15 et seq., the Appellate Projects, pp. 975-978.)

Requiring appellate counsel to proffer new evidence in the Court of Appeal will cause appointed appellate counsel just to decline appointments because counsel will be unable to comply with the new investigative requirement. This will create significant delays throughout the dependency appeals process.

Dezi C. conflicts with prior law in, admittedly, disagreeing with prior precedent and creating yet another additional test. Moreover, it conflicts with *Zeth S.* by requiring appellate counsel to ferret out the additional facts to present to the court of appeal.

Conclusion

Prior to Dezi C., the various Districts of the Court of Appeal disagreed, sometimes sharply, concerning the proper standard under which to evaluate prejudice. This issue merited review

even before this instant case. Then *Dezi C.* created an even sharper disagreement, creating a new standard imposing duties which conflict with *Zeth S*. This Court should grant review in this case to resolve these reoccurring question and settle this important issue of law.

Dated: July 19, 2022 Respectfully submitted

/s/ Karen J. Dodd

Karen J. Dodd, Esq., counsel for appellant

Certificate of Word Count

I, Karen J. Dodd, counsel for appellant, certify that the foregoing brief complies with California Rules of Court and contains 4,714 words, including footnotes, but excluding table and signature lines, according the word count of the computer program used to prepare this brief. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: July 19, 2022 /s/ Karen J. Dodd

Karen J. Dodd, Attorney for Appellant

Filed: 6/14/2022

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re DEZI C. et al., Persons Coming Under the Juvenile Court Law.	B317935 (Los Angeles County Super. Ct. No. 19CCJP08030A-B)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ANGELICA A., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Robin R. Kesler, Judge Pro Tempore. Affirmed.

Karen J. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Dawyn R. Harrison, Acting County Counsel, Kim Nemoy, Assistant County Counsel, and Stephen Watson, Deputy County Counsel, for Plaintiff and Respondent.

* * * * * *

This juvenile dependency case presents what is unfortunately becoming a common scenario. Both parents of the two children at issue in this case repeatedly denied having any American Indian heritage. While the case was ongoing, the social services agency spoke with several of the parents' relatives (including the parents' parents, their siblings and the father's cousin), but never asked those relatives whether the children had any American Indian heritage. Nearly 30 months into the proceedings and on appeal from the termination of her parental rights, Angelica A. (mother) is for the first time objecting that the agency did not discharge its statutory duty to "inquire" of "extended family members" whether her children might be "Indian child[ren]" within the meaning of our state's broader version of the federal Indian Child Welfare Act (ICWA) (25 U.S.C. § 1900 et seq.) (Welf. & Inst. Code, § 224.2, subd. (b)), and is seeking a remand for the agency to conduct a more fulsome inquiry on this topic.[1] There is no dispute that the agency did not properly discharge its statutory duty, and that there is therefore "ICWA error."

---

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

The question before us now is whether this error was harmless and, more to the point, *how* harmlessness is to be assessed where an agency has failed to conduct the statutorily required initial inquiry into a dependent child's American Indian heritage. So far, the courts have developed three different rules—at various points along a continuum—for assessing harmlessness. In our view, the proper rule lies at a different point on that continuum. We accordingly offer up a fourth rule: An agency's failure to discharge its statutory duty of initial inquiry is harmless unless the record contains information suggesting a reason to believe that the children at issue may be "Indian child[ren]," in which case further inquiry may lead to a different ICWA finding by the juvenile court. For these purposes, the "record" means not only the record of proceedings before the juvenile court but also any further proffer the appealing parent makes on appeal.

Because the record in this case contains the parents' repeated denials of American Indian heritage, because the parents were raised by their biological relatives, and because there is nothing else in the record to suggest any reason to believe that the parents' knowledge of their heritage is incorrect or that the children at issue might have American Indian heritage, we conclude that the agency's error in this case was harmless and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Mother and Luis C. (father) have two children—Dezi C. (born May 2016) and Joshua C. (born April 2018).

On November 6, 2019, mother and father got into a verbal fight. After father threatened to kill mother, mother struck

father with a broomstick while father was holding then-toddler Joshua in his arms. This was not the first such incident between the parents.

Both mother and father also have longstanding issues with substance abuse. Mother has been using methamphetamine for more than seven years; father also uses.

II. Procedural Background

A. *Petition, adjudication and termination of parental rights*

On December 17, 2019, the Los Angeles Department of Children and Family Services (the Department) filed a petition asking the juvenile court to exert dependency jurisdiction over Dezi and Joshua on the basis of (1) mother's and father's history of domestic violence (rendering jurisdiction appropriate under subdivisions (a) and (b)(1) of section 300), and (2) mother's and father's drug abuse (rendering jurisdiction appropriate under subdivision (b)(1) of section 300).[2]

On February 19, 2020, the juvenile court held a combined jurisdictional and dispositional hearing. The court sustained the domestic violence and substance abuse allegations under subdivision (b)(1), struck the domestic violence allegation under subdivision (a), removed the children from the parents' custody, and ordered the Department to provide both parents with family reunification services in accordance with a "case plan" developed for each parent.

At a six-month review hearing on August 26, 2020, the juvenile court concluded that mother and father were not in

---

2 The petition also alleged that father had failed to protect the children by allowing mother to remain in the family home, but that allegation was dismissed.

compliance with their case plans, terminated reunification services, and set the matter for a permanency planning hearing under section 366.26.

On January 18, 2022, the juvenile court held the permanency planning hearing. After concluding that the children were adoptable and likely to be adopted by their paternal grandparents, the court terminated mother's and father's parental rights.

B. *ICWA-related facts*

In December 2019, mother and father told a Department social worker that they had no American Indian heritage. The next day, mother and father filled out ICWA-020 forms, and checked the box indicating that they had no American Indian heritage "as far as [they knew]." At the hearing on whether to initially detain the children, mother and father told the juvenile court that they had no American Indian heritage.

While investigating the allegations in this case, the Department's social workers spoke to father's parents (the paternal grandparents), mother's parents (the maternal grandparents), father's siblings, mother's siblings, and one of father's cousins. The social workers did not ask any of these individuals whether mother, father, or the children had any American Indian heritage.

The juvenile court found "[no] reason to know that this is an Indian child, as defined under ICWA."

C. *Appeal*

Mother filed this timely appeal from the termination of her parental rights.

DISCUSSION

Mother argues that the order terminating her parental rights must be reversed because the Department failed to comply with its duty under ICWA and related California provisions to initially inquire of "extended family members" regarding Dezi's and Joshua's possible American Indian heritage.[3] It is undisputed that the Department's initial inquiry was deficient: As discussed more fully below, the initial duty of inquiry mandated by California's version of ICWA obligates the Department to question "extended family members" about a child's possible American Indian heritage (§ 224.2, subd. (b)); here, the Department spoke with several members of mother's and father's extended families, but did *not* question them about the children's possible heritage. The question thus becomes: Did the Department's defective initial inquiry in this case render invalid the juvenile court's subsequent finding that ICWA does not apply (and thus render invalid the court's concomitant order terminating mother's parental rights)?

"[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 ICWA finding. (*In re A.M.* (2020) 47 Cal.App.5th 303, 314

---

3 We reject the Department's argument that we lack appellate jurisdiction to entertain mother's challenge to the juvenile court's ICWA finding. Appeals are taken from orders (or judgments), not from factual findings relating to issues necessarily bound up in those orders (or judgments). Thus, mother's appeal from the order terminating her parental rights necessarily encompasses the ICWA findings bound up in that order. Mother's failure to mention ICWA in her notice of appeal is accordingly irrelevant.

(*A.M.*).) Where, as here, there is no doubt that the Department's inquiry was erroneous, our examination as to whether substantial evidence supports the juvenile court's ICWA finding ends up turning on whether that error by the Department was harmless—in other words, we must assess whether it is reasonably probable that the juvenile court would have made the same ICWA finding had the inquiry been done properly. (*People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*).) If so, the error is harmless and we should affirm; otherwise, we must send it back for the Department to conduct a more fulsome inquiry.

I. The Three Current Rules

At this point in time, the California courts have staked out three different rules for assessing whether a defective initial inquiry is harmless. These rules exist along a "continuum." (*In re A.C.* (2022) 75 Cal.App.5th 1009, 1011 (*A.C. 2022*).) The rule at one end of this continuum is one that mandates reversal: If the Department's initial inquiry is deficient, that defect necessarily infects the juvenile court's ICWA finding and reversal is automatic and required (the "automatic reversal rule"). (*In re J.C.* (2022) 77 Cal.App.5th 70, 80-82 (*J.C.*); *In re Antonio R.* (2022) 76 Cal.App.5th 421, 432-437 (*Antonio R.*); *In re A.R.* (2022) 77 Cal.App.5th 197, 205 (*A.R.*); *In re H.V.* (2022) 75 Cal.App.5th 433, 438; *In re Y.W.* (2021) 70 Cal.App.5th 542, 556; accord, *In re N.G.* (2018) 27 Cal.App.5th 474, 484-485 (*N.G.*); *In re K.R.* (2018) 20 Cal.App.5th 701, 708-709.) Under this test, reversal is required no matter how "slim" the odds are that further inquiry on remand might lead to a different ICWA finding by the juvenile court. (*Antonio R.*, at p. 435.) The rule at the other end of the continuum is one that presumptively favors affirmance: If the Department's initial inquiry is deficient, that defect will be

treated as harmless unless the parent comes forward with a proffer on appeal as to why further inquiry would lead to a different ICWA finding (the "presumptive affirmance rule"). (*In re A.C.* (2021) 65 Cal.App.5th 1060, 1065, 1071 (*A.C. 2021*); accord, *In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1430-1431 (*Rebecca R.*).) The third rule lies in between: If the Department's initial inquiry is deficient, that defect is harmless unless "the record indicates that there was readily obtainable information that was likely to bear meaningfully upon whether the child is an Indian child" and that "the probability of obtaining meaningful information is reasonable" ("the readily obtainable information rule"). (*In re Benjamin M.* (2021) 70 Cal.App.5th 735, 744 (*Benjamin M.*); *In re Darian R.* (2022) 75 Cal.App.5th 502, 509-510 (*Darian R.*); *In re S.S.* (2022) 75 Cal.App.5th 575, 581-583 (*S.S.*); *A.C. 2022*, at p. 1015.)

This diversity of rules is understandable. That is because courts are grappling with how to assess how the *absence* of information (that is, answers to the questions about American Indian heritage that the agency never asked) might affect the juvenile court's ICWA finding. (E.g., *Benjamin M.*, *supra*, 70 Cal.App.5th at pp. 742-743 ["we cannot know what information an initial inquiry, properly conducted, might reveal"]; *N.G.*, *supra*, 27 Cal.App.5th at p. 485 ["we simply cannot know whether [the agency] would have discovered information" bearing on American Indian heritage].) Where there is an absence of information or proof, courts typically look to burdens of proof as the "tie-breaker": When the party assigned the burden of proof does not produce sufficient information, that party loses. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 821; *Sargent Fletcher, Inc. v. Able Corp.* (2003) 110 Cal.App.4th 1658, 1666-

1667; Evid. Code, § 115.) Not surprisingly, the current disagreement over which rule to apply largely reduces down to a disagreement over where to assign the burden of proof. Courts adhering to the automatic reversal rule put the burden of proof on the agency to show that its failure to ask questions would be harmless, a burden the agency will never be able to carry because, by definition, it is impossible to know the answers to unasked questions. (*N.G.*, at pp. 484-485.) Courts adhering to the presumptive affirmance rule put the burden of proof on the objecting parent to show—through a proffer—that there is some information out there that, if obtained through inquiry, might alter the juvenile court's ICWA finding. (*A.C. 2021*, *supra*, 65 Cal.App.5th at p. 1070.) The third rule largely avoids the issue by focusing mostly on what is already in the record, thereby reducing the importance of who bears the burden of proof.

Despite this diversity of rules—and, indeed, perhaps because we have had the benefit of considering these rules—we propose a fourth rule for assessing harmlessness, explain why we believe this fourth rule is preferable, and explain why we respectfully decline to adopt any of the three previously formulated rules.

II. A Fourth Rule: The "Reason To Believe" Rule and Its Rationale

In our view, an agency's failure to conduct a proper initial inquiry into a dependent child's American Indian heritage is harmless unless the record contains information suggesting a reason to believe that the child may be an "Indian child" within the meaning of ICWA, such that the absence of further inquiry was prejudicial to the juvenile court's ICWA finding. For this purpose, the "record" includes both the record of proceedings in

the juvenile court and any proffer the appealing parent makes on appeal.[4] To illustrate, a reviewing court would have "reason to believe" further inquiry might lead to a different result if the record indicates that someone reported possible American Indian heritage and the agency never followed up on that information; if the record indicates that the agency never inquired into one of the two parents' heritage *at all* (e.g., *Benjamin M.*, *supra*, 70 Cal.App.5th at p. 740); or if the record indicates that one or both of the parents is adopted and hence their self-reporting of "no heritage" may not be fully informed (e.g., *A.C. 2022*, *supra*, 75 Cal.App.5th at pp. 1015-1016).

We adopt this "reason to believe" rule for three reasons.

First, the "reason to believe" rule weaves together the test for harmless error compelled by our State's Constitution[5] with the cascading duties of inquiry imposed upon agencies by our State's ICWA statutes.

Our Constitution specifies that a judgment may not be "set aside" unless it "has resulted in a miscarriage of justice" (Cal. Const., art. VI, § 13), and our Supreme Court has defined a

---

4 Considering such proffers in this context is appropriate under Code of Civil Procedure section 909. (*In re Allison B.* (May 27, 2022, B315698) [2022 Cal.App.Lexis 465, *6-9] [so holding].)

5 We look to the California standard for harmlessness because the initial duty of inquiry at issue in this case—that is, the Department's obligation to ask the child's "extended family" under section 224.2, subdivision (b)—is purely a creature of California law, as it goes beyond the federal duty to inquire of "participants" in the juvenile court proceeding (25 C.F.R., § 23.107(a) (2022)). (Accord, *A.C. 2021*, *supra*, 65 Cal.App.5th at pp. 1069-1070; *Benjamin M.*, *supra*, 70 Cal.App.5th at pp. 741-742.)

"miscarriage of justice" as existing only when "it is reasonably probable that *a result* more favorable to the appealing party would have been reached in the absence of error" (*Watson*, *supra*, 46 Cal.2d at p. 836, italics added). Thus, our State's test for harmlessness is an *outcome*-focused test.

ICWA was enacted to curtail "the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement" (*Miss. Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 32), and "to promote the stability and security of Indian tribes and families by establishing . . . standards that a state court . . . must follow before removing an Indian child from his or her family" (*In re Austin J.* (2020) 47 Cal.App.5th 870, 881 (*Austin J.*); *In re Isaiah W.* (2016) 1 Cal.5th 1, 7-8 (*Isaiah W.*)). Under the ICWA and California statutes our Legislature enacted to implement it (§§ 224-224.6), as recently amended, a juvenile court—and, as its delegate, the Department—have duties all aimed at assessing whether a child in a pending dependency case is an "Indian child" entitled to the special protections of ICWA. (§§ 224.2, 224.3, added by Stats. 2018, ch. 833, §§ 5, 6; *A.M.*, *supra*, 47 Cal.App.5th at pp. 320-321 [applying ICWA law in effect at time of order appealed from].)[6] Under ICWA as amended, the Department and

---

6 For these purposes, an "'Indian child'" is a child who (1) is "a member of an Indian tribe," or (2) "is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4); § 224.1, subd. (a) [adopting federal law definition].) By its terms, this definition turns "'on the child's political affiliation with a federally recognized Indian Tribe,'" not "necessarily" "the child's race, ancestry, or 'blood

juvenile court have "three distinct duties." (*In re D.S.* (2020) 46 Cal.App.5th 1041, 1052 (*D.S.*) [noting amendment's creation of three duties]; *Austin J.*, *supra*, 47 Cal.App.5th at pp. 883-884 [same].) The first duty is the initial "duty" of the Department and the juvenile court "to inquire whether [a] child is an Indian child." (§ 224.2, subds. (a) & (b).) The Department discharges this duty chiefly by "asking" family members "whether the child is, or may be, an Indian child." (*Id.*, subd. (b).) This includes inquiring of not only the child's parents, but also others, including but not limited to, "extended family members." (*Ibid.*) For its part, the juvenile court is required, "[a]t the first appearance" in a dependency case, to "ask each participant" "present" "whether the participant knows or has reason to know that the child is an Indian child." (*Id.*, subd. (c).) The second duty is the duty of the Department or the juvenile court to "make further inquiry regarding the possible Indian status of the child." (*Id.*, subd. (e).) This duty of further inquiry is triggered if the Department or court "has reason to believe that an Indian child is involved" because the record contains "information . . . suggesting the child is Indian" (*ibid.*; *D.S.*, at p. 1049; *In re Levi U.* (2000) 78 Cal.App.4th 191, 198, superseded by statute on another ground as stated in *In re B.E.* (2020) 46 Cal.App.5th 932, 940), and, once triggered, obligates the Department to conduct further interviews to gather information, to contact the Bureau of Indian Affairs and state department of social services for assistance, and/or to contact the relevant Indian tribe(s). (§ 224.2, subd. (e)(2).) The third duty is the duty to notify the relevant Indian tribe(s). (§

---

quantum.'" (*Austin J.*, *supra*, 47 Cal.App.5th at p. 882, quoting 81 Fed.Reg. 38801-38802 (June 14, 2016).)

224.3, subd. (a); 25 U.S.C. § 1912(a).) This duty is triggered if the Department or the court "knows or has reason to know . . . that an Indian child is involved." (§ 224.3, subd. (a).)

Because the governing test for harmlessness is outcome focused, adapting that test to the situation in this case means courts should focus on whether it is reasonably probable that an agency's error in not conducting a proper initial inquiry affected the correctness (that is, the outcome) of the juvenile court's ICWA finding. As noted above, ICWA already provides a standard for assessing whether further inquiry is necessary after an initial inquiry—namely, if the initial inquiry provides a reason to believe that the child is an Indian child because the record contains "information . . . suggesting the child is Indian." This standard reserves further inquiry for those cases in which such inquiry may affect the juvenile court's ultimate ICWA determination. Because the question before us in assessing harmlessness is *also* whether further inquiry would affect the juvenile court's ICWA finding, the "reason to believe" standard is the logical standard to apply.

Second, the "reason to believe" rule also best reconciles the competing policies at issue when an ICWA objection is asserted in later at the final phases of the dependency proceedings. As noted above, ICWA's inquiry and notice requirements "are, at their heart, . . . about effectuating the rights of Indian tribes" by ensuring that the juvenile court determines whether a child may be an actual or potential member of an Indian tribe and by thereafter giving the pertinent tribe(s) the opportunity to make the final determination of tribal status. (*Benjamin M.*, *supra*, 70 Cal.App.5th at pp. 740-742; *Isaiah W.*, *supra*, 1 Cal.5th at p. 12; *In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1468.) Competing

against that policy is the dependent child's interest in avoiding delay and the instability that comes from having the final determination of his or her permanent placement remain "up in the air." (*A.R.*, *supra*, 77 Cal.App.5th at p. 207 ["prompt resolution of [dependency] cases based on the children's need for permanency remains a significant consideration in . . . juvenile dependency cases"].) Also in the mix is the judicial branch's interest in ensuring that the agency "gets the message" that it is critical to conduct a proper initial inquiry (*ibid.*), as well as the branch's interest in discouraging game playing by parents who hold back any objection to the adequacy of the agency's inquiry until an appeal of the termination of their parental rights in the hopes of delaying the finality of that termination (*ibid.*; *Rebecca R.*, *supra*, 143 Cal.App.4th at p. 1431). In our view, none of these policies trumps all the others; instead, they must *all* be honored. By limiting a remand for further inquiry to those cases in which the record gives the reviewing court a reason to believe that the remand may undermine the juvenile court's ICWA finding, the "reason to believe" rule effectuates the rights of the tribes in those instances in which those rights are most likely at risk, which are precisely the cases in which the tribe's potential rights do justify placing the children in a further period of limbo. The "reason to believe" rule also removes the incentive to use ICWA as a thirteenth-hour delay tactic and, by allowing parents to cite their proffers on appeal as well as the juvenile court record, still sends a "message" to agencies that ICWA's mandates are not to be ignored because remand will be ordered in any case where there is reason to believe the failure to inquire mattered.

Third and lastly, the "reason to believe" rule, by focusing on what is in the record rather than what is not in the record,

largely sidesteps the "how can we know what we don't know" and burden of proof conundrums that animate the automatic reversal and presumptive affirmance rules.

III. Rejecting the Other Rules

We decline to adopt the other three rules currently in use by the appellate courts for the reasons set forth below.

A. *The automatic reversal rule*

We decline to adopt the automatic reversal rule because we disagree with its rationale and because it inevitably leads to what we believe are undesirable consequences.

The cases adopting the automatic reversal rule appear to rest on two alternative rationales—namely, that (1) it is critical that the juvenile court be *certain* whether a dependent child may be an Indian child, and this need for certainty requires that an agency never be excused from conducting the full inquiry mandated by our State's ICWA statutes, and (2) even if something less than certainty is required, remand for a full inquiry mandated by the ICWA statutes is required because whatever the child's parents say about their American Indian heritage is inherently suspect (*J.C.*, *supra*, 77 Cal.App.5th at p. 81 ["it is not uncommon for parents to mistakenly disclaim (or claim) Indian ancestry"]; *Antonio R.*, *supra*, 76 Cal.App.5th at p. 432 [parents may lie because they are "'fearful to self-identify'"]), and because it is impossible to know what information the extended family might have unless those family members are asked.

The rationale that ICWA demands certainty appears to rest on three interlocking premises: (1) our Supreme Court held in *Isaiah W.* that the interest of the tribes in the proper determination of a dependent child's status as an Indian child is

paramount and trumps all other competing policy considerations (see *Isaiah W.*, *supra*, 1 Cal.5th at p. 12 ["the federal and state [ICWA] statutes were clearly written to protect the integrity and stability of Indian tribes *despite the potential for delay in placing the child*," italics added]; see *A.C. 2022*, *supra*, 75 Cal.App.5th at pp. 1016, 1019); (2) a tribe always has the right to collaterally attack a final judgment terminating parental rights, and the only way to stave off such collateral attacks is to remand to conduct a proper inquiry prior to the entry of judgment (*Antonio R.*, *supra*, 76 Cal.App.5th at pp. 436-437; *A.R.*, *supra*, 77 Cal.App.5th at pp. 202, 207-208); and (3) the only way to get agencies to take seriously their statutory ICWA duties is to reverse in every case when they shirk them because, otherwise, their inaction is rewarded given that the less information an agency learns, the more likely its defective analysis will be found to be harmless (*J.C.*, *supra*, 77 Cal.App.5th at p. 80).

We reject each of these premises. Although *Isaiah W.* states that ICWA values the "integrity and stability of Indian tribes" despite possible delay in permanency, the question presented in that case was whether a parent's failure to appeal a juvenile court's ICWA finding in a prior appeal precluded the parent from appealing that finding after the final judgment terminating parental rights. (*Isaiah W.*, *supra*, 1 Cal.5th at pp. 7-10.) Thus, the issue in *Isaiah W.* was whether an appellate court could examine the ICWA issue *at all*; *Isaiah W.* had no occasion to hold—and did not purport to hold—that ICWA errors, once examined, could never be harmless. To be sure, a tribe maintains a right to collaterally attack a final judgment. But that right is akin to a criminal defendant's right to collaterally attack his final judgment of conviction, and courts have never

viewed the possibility of such collateral attacks as warranting a rule of automatic reversal for all errors raised during the direct appeal of a criminal conviction. There is similarly no justification for one here. And our Supreme Court has rejected the notion that reversal is necessary to incentivize agencies to do a better job: "[T]he price that would be paid for" the "added incentive" of "treating [an] error as . . . structural" (and hence automatically reversible), "in the form of needless reversals of dependency judgments, is unacceptably high in light of the strong public interest in prompt resolution of these cases so that the children may receive loving and secure home environments as soon as reasonably possible." (*In re James F.* (2008) 42 Cal.4th 901, 918.) Further, the notion that inaction will be rewarded ignores that inaction affecting the soundness of the juvenile court's ICWA finding *will* be prejudicial: If an agency fails entirely to ask the parents about their possible American Indian heritage, as noted above, there is "reason to believe" the parents may have such heritage and the agency's inaction will demand remand.

We are also unpersuaded by the alternate rationale that failing to remand for further inquiry yields too great a probability that a dependent child may be an Indian child because parents' reports of their American Indian heritage cannot be trusted and because it is not known what information other relatives might have provided. We decline to adopt a rule that obligates us to view with a jaundiced eye whatever parents report about their heritage, at least in the usual case where the parents were not adopted and thus can be presumed to be knowledgeable. (Accord, *Rebecca R.*, *supra*, 143 Cal.App.4th at p. 1431 ["The knowledge of any Indian connection is a matter wholly within the appealing parent's knowledge . . . ."].) Further, and as noted above, we

prefer the traditional approach to evaluating harmlessness, which looks to what is in the record (or proffered by the parent on appeal) rather than speculating about what might have been placed in the record.

In addition, the automatic reversal rule leads to what we view as three undesirable consequences.

First, it encourages parents to "game the system." The usual rule of procedure is that an error is forfeited if it is not raised, which creates an incentive to object as early as possible and thus helps ensure that errors can be fixed before the litigation is completed in the trial court. (E.g., *People v. Nieves* (2021) 11 Cal.5th 404, 451.) The automatic reversal rule perverts that incentive: If parents know that they are guaranteed an automatic remand based on an agency's failure to engage in a full inquiry as required by ICWA, they have every incentive *not* to object when they observe deficiencies in the agency's inquiry. By remaining silent, they "keep[] an extra ace up their sleeves" that will, at a minimum, guarantee a remand that forestalls the finality of the final judgment in the dependency case and, indeed, may even derail arranged adoption of the dependent children if the prospective adoptive parents cannot abide that additional delay. (*In re H.B.* (2008) 161 Cal.App.4th 115, 122; *Rebecca R.*, *supra*, 143 Cal.App.4th at p. 1431.) In this respect, the automatic reversal rule gives rise to the "very evil the Legislature intended to correct"—namely, "lengthy and unnecessary delay in providing permanency for children." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310.)

Second, the rule—in conjunction with the breadth of the duty of initial inquiry under section 224.2—may yield a seemingly endless feedback loop of remand, appeal, and remand.

Section 224.2 does not limit the duty of initial inquiry to "extended family members." Instead, an agency's duty "includes, *but is not limited to*, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect." (§ 224.2, subd. (b), italics added.) Because the automatic reversal rule mandates remand if any stone is left unturned, and because section 224.2 creates an open-ended universe of stones, the rule ostensibly empowers the party to obtain a remand to question extended family members, then a second remand to question the family babysitter, and then a third remand to question long-time neighbors, and so on and so on.

Lastly, the automatic reversal rule seemingly elevates ICWA above the *constitutional* mandate that reversal is only required when there would be a miscarriage of justice. But it is well settled that constitutional provisions trump statutory law, not the other way around. (E.g., *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 904.)

B. *The presumptive affirmance rule*

We decline to adopt the presumptive affirmance rule because, by focusing on what a parent proffers on appeal, it ignores that the juvenile court record may provide a reason to believe that the juvenile court's ICWA finding is incorrect and that further inquiry is warranted. Where, for instance, a parent is never asked about his or her American Indian heritage or the parent's answer is of less value because the parent is adopted, the presumptive affirmance rule would mandate affirmance in the absence of proffer, even though, in our view, there is on those facts reason to believe the child may be an Indian child. By placing the onus solely on the parent to come forward with a

proffer of information likely to be obtained on remand, the presumptive affirmance rule not only embraces finality at the expense of the tribe's interest in ascertaining accurate determinations of the Indian status of dependent children, but does too little to incentivize agencies to conduct proper inquiries because prejudicially deficient inquires will go uncorrected if the parent is unwilling or unable to make a meaningful proffer on appeal.

C. *The readily obtainable information rule*

Although this third rule is the closest in approach to the reason to believe rule we adopt, we nevertheless reject it for two reasons.

First, this rule focuses on whether "there was readily obtainable information . . . likely to bear meaningfully upon whether the child is an Indian child" and the "probability of obtaining meaningful information." (*Benjamin M.*, *supra*, 70 Cal.App.5th at p. 744.) Because this rule focuses on the ease of obtaining information that bears on the question of a child's Indian status rather than whether that information is likely to affect the juvenile court's ICWA finding, this rule lacks the *outcome*-focus that is the hallmark of usual harmlessness review.

Second, this rule appears to be so flexible and malleable that some courts—and, indeed, mother in this case—have argued that it functions as a type of automatic reversal rule. Specifically, mother argues here that the Department had "readily obtainable information . . . likely to bear meaningfully upon whether [Dezi and Joshua]" were Indian children because the Department could have easily interviewed mother's and father's relatives about the children's Indian heritage when they questioned them on other topics. The Department's failure to do

so, mother concludes, is grounds for automatic reversal. The same analysis has been hinted at in *J.C.*, *supra*, 77 Cal.App.5th at page 82, and *Antonio R.*, *supra*, 76 Cal.App.5th at pages 426, 436-437. The uncertainty of the meaning and breadth of this rule has led at least one judge to comment that the rule "merely shifts" "the battleground" to the appellate courts, where there will be skirmishes over whether information was readily obtainable. (*A.C. 2022*, *supra*, 75 Cal.App.5th, at p. 1020, fn. 4 (dis. opn. of Crandall, J.).)

IV. Application

The record in this case does not provide a "reason to believe" that Dezi and Joshua are Indian children. Both mother and father attested—to the Department, on an official form, and to the juvenile court during their initial appearances—that they had no Indian heritage. Mother and father grew up with their biological family members. Mother points to nothing else in the juvenile court's record indicating that she or father has any American Indian heritage. And mother makes no proffer on appeal that either parent has any such heritage. In these regards, the facts of this case are nearly identical to those of *Darian R.*, *supra*, 75 Cal.App.5th 502, and *S.S.*, *supra*, 75 Cal.App.5th 575. Although these other cases applied the readily obtainable information test, they came to the same conclusion as we do under the reason to believe test we adopt today: No remand is warranted.

DISPOSITION

The order is affirmed.

CERTIFIED FOR PUBLICATION.

_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ

Filed: 6/28/2022

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re DEZI C. et al., Persons Coming Under the Juvenile Court Law.	B317935 (Los Angeles County Super. Ct. No. 19CCJP08030A-B)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ANGELICA A., Defendant and Appellant.	ORDER MODIFYING OPINION AND DENYING REHEARING NO CHANGE IN THE JUDGMENT

THE COURT:

It is ordered that the opinion filed herein on June 14, 2022, be modified as follows:

1. On page 2, in the penultimate sentence of the first paragraph, replace the word "fulsome" with "comprehensive."

2. On page 7, in the last sentence before heading I., replace "fulsome" with "comprehensive."

3. On page 10, delete the text in footnote 4, and replace it with the following text, so that footnote 4 now reads:

Considering such proffers in this context is appropriate under Code of Civil Procedure section 909 because they bear on the collateral issue of prejudice rather than the substantive merits and because they expedite the proceedings and promote finality of the juvenile court's orders. (*A.C.*, *supra*, 65 Cal.App.5th at pp. 1071-1073 [so holding, as to parental proffers regarding prejudice]; see *In re Allison B.* (2022) 79 Cal.App.5th 214, 218-220 [considering extra-record evidence in evaluating whether deficiency in ICWA inquiry had been subsequently cured]; see generally, *In re Josiah Z.* (2005) 36 Cal.4th 664, 676 [noting that extra-record evidence may be considered under circumstances delineated above]; *In re A.B.* (2008) 164 Cal.App.4th 832, 841-844 [same].)

* * *

There is no change in the judgment.

Appellant's petition for rehearing is denied.

ASHMANN-GERST, Acting P. J. CHAVEZ, J. HOFFSTADT, J.

PROOF OF SERVICE

I am, and was at the time of the service of this declaration, over the age of 18 years and am not a party to this cause. My electronic service address is kdodd@appellate-law.com and my business address is 17621 Irvine Blvd., Ste. 200, Tustin, CA 92780. On July 19, 2022, I served the persons and/or entities listed below by the method checked. For those marked "Served Electronically," I transmitted a PDF version of the Appellant's Petition for Review by TrueFiling Electronic service or by e-mail to the e-mail service address(es) provided below. For those marked "Served by Mail," I enclosed a copy of the document identified above in an envelope or envelopes, addressed as provided below, and placed the envelope(s) for collection and mailing on the date and at the place show below, following the my office's ordinary business practices. I am readily familiar with this business practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in sealed envelope(s) with postage fully prepaid.

Served Electronically:
1. Office of the County Counsel (appellate@counsel.lacounty.gov)
2. Stephen Watson, Esq. (swatson@counsel.lacounty.gov)
3. CAPLA (capdocs@lacap.com)
4. Marjan Daftary (minors)(daftarym@clccal.org)
5. Layla Toma, Esq (mother) (tomal@ladlinc.org)
6. Jessie Bridgeman (bridgemanj@ladlinc.org)
7. Hon. Robin Kelser (JuvJoAppeals@lacourt.org)
8. Second District Court of Appeal, Division Two (Via Truefiling)

By Mail:
9. A.A. (address omitted)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 19th day of July, 2022, at Tustin, California.

/s/ Karen J. Dodd
Karen J. Dodd

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **In re Dezi C**
Case Number: **TEMP-4W6WMXV7**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **kdodd@appellate-law.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR WRIT OF MANDATE	B317935_PR_AA

Service Recipients:

Person Served	Email Address	Type	Date / Time
Karen Dodd John L. Dodd & Associates 146661	kdodd@appellate-law.com	e-Serve	7/19/2022 9:18:49 AM
County Counsel	appellate@counsel.lacounty.gov	e-Serve	7/19/2022 9:18:49 AM
Stephen Watson 272423	swatson@counsel.lacounty.gov	e-Serve	7/19/2022 9:18:49 AM
CAPLA	capdocs@lacap.com	e-Serve	7/19/2022 9:18:49 AM
Marjan Daftary	daftarym@clccal.org	e-Serve	7/19/2022 9:18:49 AM
Layla Toma	tomal@ladlinc.org	e-Serve	7/19/2022 9:18:49 AM
Jessie Bridgeman	bridgemanj@ladlinc.org	e-Serve	7/19/2022 9:18:49 AM
Hon. Robin Kesler	juvjoappeals@lacourt.org	e-Serve	7/19/2022 9:18:49 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7/19/2022
Date

/s/John Dodd

Signature

Dodd, Karen (146661)

Last Name, First Name (PNum)

John L. Dodd & Associates

Law Firm