

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

In re AALIYAH G., a Person Coming Under
the Juvenile Court Law.

B161963

(Los Angeles County
Super. Ct. No. CK25571)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ROBERT G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court for Los Angeles County, Thomas Grodin, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Mark A. Massey, under appointment by the Court of Appeal, for Defendant and Appellant.

Lloyd W. Pellman, County Counsel, Frank DaVanzo, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Robert G. (father) appeals from an order terminating his parental rights to Aaliyah. He contends that his parental rights should not have been terminated because there was insufficient evidence to establish that the adoptive parents are capable of meeting

Aaliyah's needs and that they have no prior referrals for child abuse or neglect. He also contends that there was insufficient evidence to support the juvenile court's finding that the Welfare and Institutions Code section 366.26, subdivision (c)(1)(A) exception did not apply.¹ In addition, father argues that the termination order must be reversed because no affirmative inquiry was made as to whether Aaliyah has Indian heritage. We affirm the order terminating father's parental rights.

FACTUAL AND PROCEDURAL BACKGROUND

Aaliyah's detention

In January 1998 the Department of Children and Family Services (DCFS) detained Aaliyah, who was four months old, because her mother abused drugs. Aaliyah was placed with her maternal great-grandparents.²

History of visitation

Father, who had moved to and resided in Florida, first appeared in the proceedings in February 1999, at which time the court ordered monitored visits. In September 1999, a social worker reported that father visited Aaliyah "infrequently" and that his last visit was three weeks prior to the date of the report.

The matter proceeded to a contested section 366.22 permanent plan hearing in December 1999. At that time, father's counsel said father visited Aaliyah every month to six weeks and telephoned every day when he was in Florida, but the juvenile court said that the social worker had reported that father visited every two months.³ Even though

¹ All further undesignated statutory references are to the Welfare and Institutions Code.

² Aaliyah's half-sister, mother's daughter by another father, was already living with great-grandparents.

³ The juvenile court referred to a social worker's August 1999 report which is not a part of the record on appeal.

the court found that father had complied with his case plan, it held that Aaliyah should not be returned to him and that family reunification services should be terminated as to him because he was living with mother, who had not complied with her case plan.

In April 2000 DCFS reported that father had not visited Aaliyah since February 2000, although he did visit her in April 2000. Father maintained phone contact with Aaliyah, but he did not visit her again in 2000. In June 2001 DCFS reported that father visited Aaliyah, and father's counsel said father spent three months with Aaliyah from November 2000 to January 2001.

Adoption assessment

The juvenile court initially placed Aaliyah in a legal guardianship with her great-grandparents, but DCFS ultimately recommended that the permanent plan be changed to adoption. An adoption assessment, prepared in March 2002, reported that father had not visited Aaliyah in six months, although great-grandfather later testified that father visited Aaliyah in December 2001. Aaliyah appeared to be in good general health, happy, stable, and secure. Great-grandparents had a strong bond and loving relationship with Aaliyah, and, in response to capability to meet child's needs, the assessment said they "have been legal guardians to both children for over 1 yr."

At an initial section 366.26 hearing in April 2002 (which was continued), Aaliyah's counsel said she might contest adoption because she received reports of physical discipline, but she needed to investigate further. Aaliyah's counsel, however, did not raise the issue at a subsequent review hearing in July 2002. The July 2002 status review report and August 2002 interim review reports also did not refer to any physical discipline. Aaliyah's counsel had previously asked the court to remind great-grandparents not to use corporal punishment, and the court did so. When interviewed by a social worker on June 30, 2001, Aaliyah's half-sister said great-grandparents disciplined half-sister by sitting her down, talking to her, and trying to correct her behavior.

The contested section 366.26 hearing

At a contested section 366.26 hearing in September 2002 to terminate parental rights to free Aaliyah for adoption by great-grandparents, great-grandfather testified that father visited in December 2001, that he called four to five times in 2001, and that he brought clothes for Aaliyah when he visited. Father testified that he came to California three times in 2001, that each time he visited he stayed for a month, and that he was in California from December 14, 2001 to around January 6, 2002.

Father said that in June 2002 he came to California at the beginning of the month and left on June 27 and that he had all day visits with Aaliyah about three times per week, but great-grandfather said that father visited once or twice in June 2002 and 10-to-12 times in August 2002, including on Aaliyah's birthday. Father said he returned to California on August 28 and stayed for the contested section 366.26 hearing on September 26 and 27 during which time he saw Aaliyah about four times a week. Father said that when he is in Florida he calls Aaliyah two times a day. Great-grandfather said father called Aaliyah 25-to-30 times in 2002, but he also testified father called her two times per day. Father said that when he visits, he plays with Aaliyah, watches movies with her, and tries to teach her things like the alphabet.

Great-grandfather also testified that father had not attended any of Aaliyah's school functions or medical appointments and that he has never asked great-grandfather about Aaliyah's health and well-being. Father conceded he does not know the name of Aaliyah's teachers or doctors, what she does after school when he is not there, whether she has trouble sleeping at night, and whether she is healthy. If Aaliyah has a problem at school, she turns to her great-grandparents.

Aaliyah is happy and excited to see her father, whom she calls "dad," and is affectionate with him. Aaliyah calls her great-grandfather "papy." Father treats Aaliyah well, but she does not ask about father when he is not around. Great-grandparents said that Aaliyah has never told them she wants to live with her father, and father said that although she has asked to go home with him and she used to cry when he left, she does not cry anymore.

Although the juvenile court found that father loved Aaliyah and visited her, it also found that the “nature and quality” of his visits were basically that of a friend. The juvenile court found that Aaliyah was adoptable and that it would be detrimental to Aaliyah to return her to her parents. The court terminated father’s, as well as mother’s, parental rights and declared Aaliyah free from her parents’ control and custody.

DISCUSSION

Standard of review

As to the issues father raises that are discussed below, the sufficiency of the evidence is the standard of review. We are required to give deference to the juvenile court’s decision and do not review such decisions as if we were the juvenile court, i.e., de novo. That is why the substantial evidence standard is called “deferential.” (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, superseded by statute on other grounds.) Our Supreme Court has described the standard as follows: “ ‘Where findings of fact are challenged on a civil appeal, we are bound by the “elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,” to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court.’ [Citation.]” (*Ibid.*)

Sufficiency of the evidence to support the adoptability finding

Father argues there was insufficient evidence to support the juvenile court’s adoptability finding because the adoption assessment failed to establish that great-grandparents are capable of meeting Aaliyah’s needs and that they have no prior referrals for child abuse or neglect. We hold that there was substantial evidence to support the court’s findings.

We review the court's order regarding adoptability to determine whether the record contains substantial evidence from which a reasonable trier of fact could conclude, by clear and convincing evidence, that Aaliyah was likely to be adopted. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.) "The issue of adoptability posed in a section 366.26 hearing focuses on the *minor*, e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor. [Citations.] Hence, it is not necessary that the minor already be in a potential adoptive home or that there be a proposed adoptive parent 'waiting in the wings.' [Citations.] [¶] Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*" (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650; accord, *In re Lukas B.*, at p. 1154.)

Here, father does not contend that it was unlikely Aaliyah would be adopted. Indeed, such a contention would have no merit as Aaliyah, at the time of the section 366.26 hearing, was just four years' old, healthy, and reported to be a happy and well-adjusted child. Also, her great-grandparents were willing to adopt her, which willingness also indicates that Aaliyah was likely to be adopted. (*In re Sarah M.*, *supra*, 22 Cal.App.4th at pp. 1649-1650.)

Although the record contains sufficient evidence to show that it was likely that Aaliyah would be adopted, father nonetheless argues that the adoption assessment failed to establish that great-grandparents were capable to meet Aaliyah's needs and that they had no prior reports for child abuse or neglect. An adoption assessment is prepared whenever a court orders a section 366.26 hearing to be held, and it must include information about, among other things, the prospective adoptive parents' capability to

meet the child’s needs and screening for criminal records and prior referrals for child abuse or neglect. (§ 366.21, subd. (i)(4).)⁴ A court’s determination that a child is likely to be adopted is based on the adoption assessment prepared under section 366.21, subdivision (i), and on “any other relevant evidence.” (§ 366.26, subd. (c)(1).) But evidence other than that in the adoption assessment may supply evidence to support an adoptability finding. (*In re Dakota S.* (2000) 85 Cal.App.4th 494, 504-505 [evidence other than assessment report supported finding that prospective guardians could meet child’s needs]; *In re Crystal J.* (1993) 12 Cal.App.4th 407, 413 [review of “totality of the evidence” showed there was “ample” evidence to support court’s findings and judgment, even though assessment reports were deficient].)

⁴ Section 366.21, subdivision (i)(4), provides: “Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment that shall include: [¶] (1) Current search efforts for an absent parent or parents or legal guardians. [¶] (2) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, “extended family” for the purpose of this paragraph shall include, but not be limited to, the child’s siblings, grandparents, aunts, and uncles. [¶] (3) An evaluation of the child’s medical, developmental, scholastic, mental, and emotional status. [¶] (4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child’s needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. [¶] (5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child’s age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition. [¶] (6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.”

With respect to the great-grandparents' capability to meet Aaliyah's needs, the adoption assessment merely reported that they "have been legal guardians for the child and her sister for over one year." Although this statement was insufficient to establish the great-grandparents' capability to meet Aaliyah's needs, other evidence in the record established that they are capable of meeting Aaliyah's needs. In its report prepared for the section 366.26 hearing, DCFS said that Aaliyah and her great-grandparents "love and share a strong bond," and that great-grandparents provided Aaliyah with "stability in [her] education, emotional needs and [her] medical and dental needs." They live in a three bedroom, two bath home. Great-grandfather works part-time, and he receives a monthly pension, social security benefits, and income from rental property. They hired a domestic helper so great-grandmother can spend more time caring for the children. And, although objections were sustained at the contested section 366.26 hearing to questions about great-grandparents' health, the record does contain information that great-grandparents are physically capable of caring for Aaliyah. Great-grandfather was born in 1936, and he does not have mental, physical, alcohol or drug problems. Great-grandmother was born in 1940, and she has no psychiatric, alcohol or drug problems, but she is diabetic and has high blood pressure, for which she takes medication.

With respect to prior referrals for child abuse or neglect, the adoption assessment states that there was no criminal activity found for great-grandparents and that no results were found after a CWS History Clearance. The record also contains reports showing that no criminal records regarding great-grandparents were found as a result of a Department of Justice search. Although Aaliyah's counsel said in April 2002 that she wanted to investigate reports of physical discipline, there is no subsequent mention of this issue in either the social worker's reports or at hearings. In short, nothing in the record suggests that any physical discipline amounted to "child abuse or neglect" that would overcome the adoptability finding.

We therefore conclude that the evidence before the juvenile court, even though it was not all restated in the adoption assessment, supported its finding that Aaliyah was likely to be adopted.

Sufficiency of the evidence to support the section 366.26, subdivision (c)(1)(A) finding

If a court finds it is likely a child will be adopted, then it shall terminate parental rights unless the parents “have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(A).) This visitation exception applies only if “the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated. [¶] . . . The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*))

The exception does not apply if the relationship between parent and child is more akin to a friendship than to that of parent and child. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576; accord *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419 [section 366.26, subdivision (c)(1)(A) exception did not apply when parents had not occupied a parental role in childrens’ lives, notwithstanding frequent and loving relationship between parents and children].) Parents bear the burden of establishing the exception. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) The juvenile court’s finding that the exception does not apply is reviewed under the substantial evidence standard. (*Autumn H.*, at p. 576.; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)

Substantial evidence supports the juvenile court’s finding that father did not establish the visitation exception applied. Although father visited Aaliyah, his decision to live in Florida constrained his ability to visit. Father visited Aaliyah, according to social worker’s reports, only in February and April 2000. He visited again in June and

December 2001. He visited in June and August through September 2002, and he maintained telephone contact with Aaliyah when he was in Florida. Notwithstanding father's visits, Aaliyah does not turn to him when she needs help, she no longer cries when he leaves, and she has never told great-grandparents she wants to live with her father. Father also conceded he does not know Aaliyah's teachers or doctors, has never attended her school or other functions, and does not know whether she is healthy. Instead, it is Aaliyah's great-grandparents, with whom she has lived almost since birth, who attend to Aaliyah's day to day needs.

Notwithstanding the undisputed love and affection between father and Aaliyah, we hold that substantial evidence supports the juvenile court's conclusion that the relationship between father and Aaliyah does not promote Aaliyah's well-being to such a degree as to outweigh the well-being Aaliyah would gain in a permanent home with her great-grandparents.

Indian Child Welfare Act

DCFS stated in its petition application that Aaliyah did not have Indian heritage, and it continued to state in its reports throughout the proceedings that the Indian Child Welfare Act (ICWA) did not apply. Father, however, contends that the juvenile court and DCFS failed to satisfy their affirmative duty to inquire as to ICWA's applicability. We do not agree.

ICWA requires a court, if it "knows or has reason to know that an Indian child is involved" in any involuntary proceeding, to give notice to the Indian child's tribe of the pending proceedings and their right to intervene. (25 U.S.C. § 1912(a).) California Rules of Court, rule 1439 implements ICWA's notice provisions in California courts. It provides that the court and DCFS have an "affirmative duty to inquire whether a child for whom a petition under section 300 is to be, or has been, filed is or may be an Indian child." (Cal. Rules Ct., rule 1439(d) (rule 1439(d).) Thus, the juvenile dependency petition form must be checked "if there is reason to know" the child is a member of or may be eligible for membership in an Indian tribe or "if there is reason to believe the

child may be of Indian ancestry.” (*Id.* at rule 1439(d)(1).) Circumstances that may give rise to probable cause to believe a child is an Indian child include a party or welfare agency so informing the court or providing information suggesting the child is an Indian child, and if the child or its parents reside in a predominately Indian community. (*Id.* at rule 1439(d)(2)(A), (B).) If proper notice under ICWA is not given, the Indian child, the child’s parent or Indian custodian, or the child’s tribe may petition the court to invalidate the proceeding. (25 U.S.C. § 1914.)

Father argues that rule 1439 requires juvenile courts and DCFS to inquire sua sponte whether children have Indian heritage. Even assuming that is a correct interpretation of rule 1439, the record here shows that any affirmative duty was discharged. The petition application was marked “No” to show that Aaliyah did not have Indian heritage. DCFS thereafter consistently reported that ICWA did not apply, and neither father nor any of Aaliyah’s relatives ever suggested to the contrary. There is no indication in the record that Aaliyah has Indian heritage.

Nonetheless, father contends that the mere marking of a box and DCFS’s subsequent statements in its reports of ICWA’s inapplicability were insufficient to show that any affirmative duty that rule 1439(d) imposes was discharged. Checking the “No” box suggests that an inquiry as to Aaliyah’s heritage was made. There is no indication that in checking the box “No” no inquiry was made.

Even if no inquiry were made, the failure to do so when there is no indication of such heritage does not constitute reversible error. (We note, however, that it is desirable for juvenile courts to make an inquiry regarding Indian heritage). Nothing in rule 1439(d) or authority discussing it suggests that additional inquiry must be made in the absence of information that the child might have Indian heritage. Instead, termination orders have been reversed only when there is information the child has Indian heritage and notice was not given to the Indian tribe. (See, e.g., *In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1266 [court failed to make an inquiry even though there was information in the record to support probable cause to believe the children were affiliated with Chumash Tribe]; *In re Jonathan* (2001) 92 Cal.App.4th 105 [termination order

reversed when court failed to give timely notice to Indian tribes]; *In re Marinna J.* (2001) 90 Cal.App.4th 731 [termination order reversed because notice was not sent to Indian tribe despite family report that child had Indian heritage].) We have not found a case and father has not cited one in which a termination order has been reversed when there was *no* information in the record suggesting the child is an Indian child.

Based on the record, there is an inference here that an inquiry was made as to whether Aaliyah is an Indian child. The record also contains no indication that Aaliyah has such heritage. We therefore conclude that there was no violation of ICWA.

DISPOSITION

The order terminating Robert G.'s parental rights is affirmed.

MOSK, J.

We concur:

TURNER, P.J.

GRIGNON, J.

CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re AALIYAH G., a Person Coming Under
the Juvenile Court Law.

B161963

(Juvenile Ct. No. CK25571)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

(Thomas Grodin, Commissioner)

Plaintiff and Respondent,

ORDER CERTIFYING OPINION
FOR PARTIAL PUBLICATION

v.

ROBERT G.,

Defendant and Appellant.

THE COURT:

Good cause appearing, it is ordered that the opinion in the above-entitled matter, filed May 13, 2003, be certified for partial publication. The only parts of the opinion to be published are the following: the Introduction, the Indian Child Welfare Act section of the Discussion and the Disposition.

MOSK, J.

TURNER, P.J.

GRIGNON, J.

CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re AALIYAH G., a Person Coming Under
the Juvenile Court Law.

B161963

(Juvenile Ct. No. CK25571)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

(Thomas Grodin, Commissioner)

Plaintiff and Respondent,

ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

v.

ROBERT G.,

Defendant and Appellant.

THE COURT:

It is ordered that the opinion filed herein on May 13, 2003, be modified as follows:

1. The entire INTRODUCTION paragraph is modified to read as follows:

“INTRODUCTION

Robert G. (father) appeals from an order terminating his parental rights to Aaliyah. He contends that his parental rights should not have been terminated because there was insufficient evidence to establish that the adoptive parents are capable of meeting Aaliyah’s needs and that they have no prior referrals for child abuse or neglect. He also contends that there was insufficient evidence to support the juvenile court’s finding that

the Welfare and Institutions Code section 366.26, subdivision (c)(1)(A) exception did not apply.¹ In addition, father argues that the termination order must be reversed because the legally required affirmative inquiry was not made as to whether Aaliyah has Indian heritage. We affirm the order terminating father’s parental rights. In the published portion of this opinion we discuss whether a sufficient inquiry was made as to whether or not the child has Indian heritage.”

2. The entire *Indian Child Welfare Act* section of the Discussion is modified to read as follows:

“DCFS stated in its petition application that Aaliyah did not have Indian heritage, and it continued to state in its reports throughout the proceedings that the Indian Child Welfare Act (25 U.S.C. § 1901 et seq. (ICWA)) did not apply. Father, however, contends that the juvenile court and DCFS failed to satisfy their affirmative duty to inquire as to ICWA’s applicability. We do not agree.

ICWA requires a court, if it “knows or has reason to know that an Indian child is involved” in any involuntary proceeding, to give notice to the Indian child’s tribe of the pending proceedings and its right to intervene. (25 U.S.C. § 1912(a).) California Rules of Court, rule 1439 implements ICWA’s notice provisions in California courts. It provides that the court and DCFS have an “affirmative duty to inquire whether a child for whom a petition under section 300 is to be, or has been, filed is or may be an Indian child.” (Cal. Rules Ct., rule 1439(d) (rule 1439(d).) Thus, the juvenile dependency petition form must be checked “if there is reason to know” the child is a member of or may be eligible for membership in an Indian tribe or “if there is reason to believe the child may be of Indian ancestry.” (*Id.* at rule 1439(d)(1).) Circumstances that may give rise to probable cause to believe a child is an Indian child include a party or welfare

¹ All further undesignated statutory references are to the Welfare and Institutions Code.

agency so informing the court or providing information suggesting the child is an Indian child, and if the child or its parents reside in a predominately Indian community. (*Id.* at rule 1439(d)(2)(A), (B).) If proper notice under ICWA is not given, the Indian child, the child's parent or Indian custodian, or the child's tribe may petition the court to invalidate the proceeding. (25 U.S.C. § 1914.)

Father argues that the juvenile court and DCFS did not comply with their duty under rule 1439 to inquire whether the child has Indian heritage. The record here shows that any affirmative duty by DCFS and the court was discharged. The petition application was marked "No" to show that Aaliyah did not have Indian heritage. DCFS thereafter consistently reported that ICWA did not apply, and neither father nor any of Aaliyah's relatives ever suggested to the contrary. There is no indication in the record that Aaliyah has Indian heritage.

Nonetheless, father contends that the mere marking of a box and DCFS's subsequent statements in its reports of ICWA's inapplicability were insufficient to show that any affirmative duty that rule 1439(d) imposes was discharged. Checking the "No" box suggests that an inquiry as to Aaliyah's heritage was made. There is no indication to the contrary. The court had no obligation to make a further or additional inquiry absent any information or suggestion that the child might have Indian heritage. In the cases in which termination orders have been reversed for the failure to comply with ICWA notice requirements, there was information indicating that the child had Indian heritage. (See, e.g., *In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1266 [court failed to make an inquiry even though there was information in the record to support probable cause to believe the children were affiliated with Chumash Tribe]; *In re Jonathan* (2001) 92 Cal.App.4th 105 [termination order reversed when court failed to give timely notice to Indian tribes]; *In re Marinna J.* (2001) 90 Cal.App.4th 731 [termination order reversed because notice was not sent to Indian tribe despite family report that child had Indian heritage].)

Based on the record, there is sufficient evidence that an inquiry was made as to whether Aaliyah is an Indian child. The record also contains no indication that Aaliyah has such heritage. We therefore conclude that there was no violation of ICWA."

This modification does not change the judgment.

MOSK, J.

TURNER, P.J.

GRIGNON, J.