

S275578

**IN THE
SUPREME COURT OF CALIFORNIA**

In re DEZI C.,
A Person Coming Under the Juvenile Court Law.

**THE LOS ANGELES COUNTY DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,**
Plaintiff and Respondent,

v.

A.A.,
Defendant and Appellant.

From a Decision by the Court of Appeal
Second Appellate District, Division Two, Case No. B317935
Los Angeles Superior Court Case No. 19CCJP08030A-B
On Appeal from the Superior Court of Los Angeles County,
Honorable Robin R. Kesler, Judge Presiding

**RESPONDENT LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES' MOTION TO
TAKE ADDITIONAL EVIDENCE; DECLARATION OF
STEPHEN WATSON; and (PROPOSED) ORDER**

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Respondent's Motion To Take Additional Evidence

The Los Angeles County Department of Children and Family Services (Department), requests the Supreme Court receive as additional evidence on appeal the Declaration of appellate counsel for the Department, Stephen Watson.

DATED: April 5, 2023

Respectfully submitted,

DAWYN R. HARRISON
County Counsel

By 
STEPHEN WATSON
Senior Deputy County Counsel

Attorneys for Respondent

Memorandum of Points and Authorities

Statement of Relevant Facts

This case presents the following issue: In juvenile dependency matters, where parents deny having any American Indian heritage, what standard of prejudice should apply when the child welfare agency neglects to question extended family members and others who may have an interest in the child whether the child is or may be an Indian child as required by heightened state law requirements of the Indian Child Welfare Act (ICWA)?

Appellant, A.A. (mother), seeks reversal of *In re Dezi C.* (2022) 79 Cal.App.5th 769 (*Dezi C.*). In that case, the parents filed forms denying knowledge of Indian ancestry in 2019, never objected to the juvenile court's finding that the ICWA did not apply, and parental rights were terminated in 2022. (*Id.* at pp. 776-777.) On appeal from the order terminating parental rights, mother alleged the Department did not satisfy its duty of initial ICWA inquiry under state law because it failed to make ICWA inquiries of extended family members. (*Ibid.*) Mother argued the "automatic reversal rule" should apply and that the order

terminating parental rights must be reversed and the matter remanded for ICWA inquiry.¹ (*Ibid.*)

Division Two of the Second District Court of Appeal disagreed and affirmed the order terminating parental rights, finding that although the failure to inquire of extended family members was error, mother had failed to demonstrate prejudice justifying reversal. (*Dezi C., supra*, 79 Cal.App.5th at pp. 778-786.) Rejecting the “automatic reversal rule,” the “presumptive affirmance rule,” and the “readily obtainable information rule,” Division Two applied a fourth approach, the “reason to believe rule,” which holds that defective initial inquiry is harmless “unless the record contains information suggesting a reason to believe the child may be an Indian child within the meaning of ICWA, such that the absence of further inquiry was prejudicial to the ICWA finding.” (*Ibid.*)

Mother petitioned this Court to adopt the “automatic reversal rule” or the “readily obtainable information rule.” (Mother’s Opening Brief on the Merits [OBM] 41-52.) *Amicus Curiae* briefs filed by the California Appellate Defense Counsel (CADC) and the California Indian Legal Services and California Tribal Families Coalition (CILS/CTFC) ask this Court to adopt

¹ The various “rules” referenced herein refer to the differing approaches of appellate courts in this state for assessing harmlessness in regard to ICWA inquiry error.

the “automatic reversal rule” or a variation of it. (CADC 12-41; CILS/CTFC 24-25.) One of the arguments that mother, CADC, and CILS/CTFC all make is that parents are not reliable sources of their own ancestry. (OBM 26-32; CADC 29-32; CILS/CTFC 19-23.)

As several appellate courts have noted, ICWA appeals in this posture have increased dramatically in recent years and have resulted in numerous cases being remanded to juvenile courts for ICWA inquiry. (See *In re Ezequiel G.* (2022) 81 Cal.App.5th 984, 1001 [“In just the last 12 months, this approach to asserted ICWA error has resulted in, by our count, appellate courts returning more than 100 dependency cases to the juvenile courts with directions to conduct further ICWA inquiries *after* parental rights were terminated.”]; *Dezi C., supra*, 79 Cal.App.5th at p. 774 [“This juvenile dependency case presents what is unfortunately becoming a common scenario. . . . Nearly 30 months into the proceedings and on appeal from the termination of her parental rights [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.]’”]; *In re A.C.* (2022) 75 Cal.App.5th 1009, 1018 (dis. opn. of Crandall, J.) [“[T]he appellate dockets seem to be burgeoning with such cases.”].)

While completing the Department's Answer to the amicus briefs filed by CADC and CILS/CTFC, Stephen Watson, appellate counsel for the Department, in coordination with the supervisors from the divisions handling juvenile dependency trial matters and appeals from Los Angeles County, compiled data regarding ICWA appeals from 2021 through 2023 to determine the number of reversals/remands that resulted in a finding that the ICWA applied.² The Department's records revealed that in cases where the parent(s) had denied knowledge of Indian ancestry but extended family members were not inquired of, the number of reversals/remands that actually resulted in a finding that the ICWA applied was zero.

Stephen Watson also contacted California's 57 other counties and asked for the same information. Of the 34 counties that responded, each indicated the answer was zero.

Additional Evidence

The general rule is that the appellate court reviews the correctness of a judgment as of the time of its rendition upon a record of matters that were before the trial court for its consideration. (*In re Randi D.* (1989) 209 Cal.App.3d 624, 627; *In re James V.* (1979) 90 Cal.App.3d 300, 304.) However, a reviewing court may receive additional evidence in an

² See Declaration of Stephen Watson below.

appropriate situation, such as a case involving the best interests of a child and where doing so furthers the interests of justice. (Code of Civ. Proc. § 909; *In re D.P.* (2023) 14 Cal.5th 266, 287; *In re Josiah Z.* (2005) 36 Cal.4th 664; 676.) Also, appellate courts may properly consider postjudgment evidence regarding the ICWA on appeal from orders terminating parental rights because ICWA issues are distinct from the substantive merits of a juvenile court's termination of parental rights and because it promotes the finality of juvenile court orders and prevents further delay. (*Josiah Z.*, *supra*, 36 Cal.4th at p. 676; *In re A.C.* (2021) 65 Cal.App.5th 1060, 1071, 1073; *In re A.B.* (2008) 164 Cal.App.4th 832, 840-841.)

The additional evidence in the form of the Declaration of Stephen Watson is proper for this Court to receive as additional evidence because it is relevant to the issue on review in that it pertains to the ICWA, is distinct from the substantive merits of the juvenile court's order terminating parental rights, and contradicts the contention by mother, CADC, and CILS/CTFC that parents are not reliable sources of their own ancestry. (OBM 26-32; CADC 29-32; CILS/CTFC 19-23; Code of Civ. Proc. § 909; *In re D.P.*, *supra*, 14 Cal.5th at p. 287; *In re Josiah Z.*, *supra*, 36 Cal.4th at p. 676; *In re A.C.*, *supra*, 65 Cal.App.5th at pp. 1071, 1073; *In re A.B.*, *supra*, 164 Cal.App.4th at pp. 840-841.) Also, the Declaration is proper for this Court to receive as additional

evidence because it involves the best interests of a child, furthers the interests of justice, and prevents further delay. (Code of Civ. Proc. § 909; *In re D.P.*, *supra*, 14 Cal.5th at p. 287; *In re Josiah Z.*, *supra*, 36 Cal.4th at p. 676; *In re A.C.*, *supra*, 65 Cal.App.5th at pp. 1071, 1073; *In re A.B.*, *supra*, 164 Cal.App.4th at pp. 840-841.)


Conclusion

For the foregoing reasons, the Department respectfully requests this Court accept as additional evidence the Declaration of Stephen Watson.

DATED: April 5, 2023

Respectfully submitted,

DAWYN R. HARRISON
County Counsel

By 
STEPHEN WATSON
Senior Deputy County Counsel

Attorneys for Respondent

Declaration of Stephen Watson

I, Stephen Watson, hereby declare:

1. I am an attorney at law duly licensed to practice before this Court and an employee of the Office of the County Counsel for the County of Los Angeles. In such capacity, I represent Respondent, the Los Angeles County Department of Children and Family Services (Department), in *In re Dezi C.*, Supreme Court No. S275578, 2d Juvenile No. B317935, and Juvenile Court No. 19CCJP08030A-B.

2. I worked with the supervisors from the divisions handling juvenile dependency trial matters and appeals from Los Angeles County to compile data regarding ICWA appeals from 2021 through 2023 to determine the number of reversals/remands that resulted in a finding that the ICWA applied. The Department's records revealed that in cases where the parent(s) had denied knowledge of Indian ancestry but extended family members were not inquired of, the number of reversals/remands that actually resulted in a finding that the ICWA applied was zero.

3. I contacted California's 57 other counties and asked for their data regarding ICWA appeals from 2021 through 2023 to determine the number of reversals/remands in their counties that resulted in a finding that the ICWA applied. The data of the 34 counties that responded revealed that in cases where the

parent(s) had denied knowledge of Indian ancestry but extended family members were not inquired of, the number of reversals/remands that actually resulted in a finding that the ICWA applied was zero.

4. The counties that responded to my request and the representatives with whom I spoke are as follows:

- Calaveras – Julie Spoljaric (JSpoljaric@co.calaveras.ca.us)
- Colusa – Jennifer Sutton (jsutton@countyofcolusa.com)
- Contra Costa – Steven Rettig (Steven.Rettig@cc.cccounty.us)
- Del Norte – Jacqueline Roberts (jacqueline.roberts@co.del-norte.ca.us)
- El Dorado – Beth McCourt (Beth.McCourt@edcgov.us)
- Fresno – Jennifer Wolfe (jwolfe@fresnocountyca.gov)
- Kern – Elizabeth Giesick (EGiesick@kerncounty.com)
- Kings – Rise Donlon (Rise.Donlon@co.kings.ca.us)
- Lassen – Amanda Uhrhammer (amanda@prenticelongpc.com)
- Mariposa – Kim Flores (Kim.Flores@berliner.com)
- Merced – Melanie Smith (Melanie.Smith@countyofmerced.com)
- Modoc – Kellie Haigh (Kellie@prenticelongpc.com)
- Mono – Stacey Simon (ssimon@mono.ca.gov)
- Monterey – Annette Cutino (cutinoa@co.monterey.ca.us)
- Nevada – Jamie Hogenson (Jamie.Hogenson@nevadacountyca.gov)
- Orange – Karen Christensen (Karen.Christensen@coco.ocgov.com)
- Sacramento – Katherine Covert (covertka@saccounty.gov)
- San Benito – Irma Valencia (IValencia@cosb.us)
- San Bernardino – Jeffrey Moret (JMoret@cc.sbcounty.gov)
- San Joaquin – Kimberly Johnson (kijohnson@sjgov.org)
- San Mateo – Judith Holiber (jholiber@smcgov.org)

- Santa Barbara – Lisa Rothstein (LRothstein@countyofsb.org)
- Santa Clara – Hilary Kerrigan (Hilary.Kerrigan@cco.sccgov.org)
- Shasta – Rubin Cruse (rcruse@co.shasta.ca.us)
- Sierra – Kellie Haigh (Kellie@prenticelongpc.com)
- Sonoma – Robert Pittman (Robert.Pittman@sonoma-county.org)
- Stanislaus – Maria Ratliff (RATLIFFM@stancounty.com)
- Sutter – Fitzgerald Javellana (FJavellana@co.sutter.ca.us)
- Tehama – Kellie Haigh (Kellie@prenticelongpc.com)
- Trinity – Kellie Haigh (Kellie@prenticelongpc.com)
- Tulare – John Rozum (JRozum@tularecounty.ca.gov)
- Tuolumne – Maria Sullivan (msullivan@co.tuolumne.ca.us)
- Ventura – Joseph Randazzo (Joseph.Randazzo@ventura.org)
- Yolo – Philip Pogledich (Philip.Pogledich@yolocounty.org)

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

Executed April 5, 2023, at Los Angeles, California.


STEPHEN WATSON

S275578

IN THE
SUPREME COURT OF CALIFORNIA

In re DEZI C.,
A Person Coming Under the Juvenile Court Law.

THE LOS ANGELES COUNTY DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.A.,

Defendant and Appellant.

(PROPOSED) ORDER

Respondent's Motion To Take Additional Evidence, filed on
April 5, 2023, is hereby granted.

IT IS SO ORDERED.

Dated: _____

Declaration Of Service

STATE OF CALIFORNIA, County of Los Angeles:

GENNY GOMEZ states: I am employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action. My business address is 648 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012.

On April 5, 2023, I served the attached **RESPONDENT'S MOTION TO TAKE ADDITIONAL EVIDENCE; DECLARATION OF STEPHEN WATSON; and (PROPOSED) ORDER IN THE MATTER OF DEZI C., SUPREME COURT NO. S275578, 2d JUVENILE NO. B317935, LASC NO. 19CCJP08030A-B**, to the persons and/or representative of the court as addressed below.

BY ELECTRONIC SERVICE. I served via TrueFiling, and no error was reported, a copy of the document(s) identified above:

Karen J. Dodd, Esq.
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Declaration Of Service (Continued)

Honorable Robin R. Kesler
Honorable Tiana M. Murillo
Dept. 403
c/o Clerk of the Superior Court
Edelman Children's Court
JuvJoAppeals@lacourt.org

Court of Appeal
[Service through TrueFiling]

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 5, 2023, at Los Angeles, California.


GENNY GOMEZ

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: **S275578**

Lower Court Case Number: **B317935**

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: **swatson@counsel.lacounty.gov**
3. I served by email a copy of the following document(s) indicated below:

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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.

4/5/2023

Date

/s/Genny Gomez

Signature

Watson, Stephen (272423)

Last Name, First Name (PNum)

Los Angeles County Counsel Appellate group

Law Firm