

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 13 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JUAN RODRIGUEZ,

Plaintiff-Appellant,

v.

STATE OF MONTANA; et al.,

Defendants-Appellees.

No. 19-35000

D.C. No. 6:17-cv-00104-BMM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Brian M. Morris, District Judge, Presiding

Submitted May 6, 2020**

Before: BERZON, N.R. SMITH, and MILLER, Circuit Judges.

Juan Rodriguez appeals pro se from the district court's judgment dismissing his action under the Indian Child Welfare Act ("ICWA"), 25 U.S.C. § 1901 *et seq.* We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a district court's denial of leave to amend. *Curry v. Yelp Inc.*, 875 F.3d

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

1219, 1224 (9th Cir. 2017). We vacate and remand.

The district court determined that Rodriguez had not sufficiently pled a violation of his rights under the ICWA, and dismissed without giving leave to amend. The district court did not determine that amendment would be futile. We vacate and remand for the district court to allow Rodriguez the opportunity to file an amended complaint. *See Rodriguez v. Steck*, 795 F.3d 1187 (9th Cir. 2015) (order) (plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is absolutely clear from the face of the complaint that the deficiencies could not be cured by amendment).

Rodriguez's motion for appointment of counsel (Docket Entry No. 17) is denied as moot.

VACATED and REMANDED.