REL: May 3, 2019

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2180005

T.W.

v.

Shelby County Department of Human Resources

Appeal from Shelby Juvenile Court
(JU-16-475.05)

2180006

T.W.

v.

Shelby County Department of Human Resources

Appeal from Shelby Juvenile Court
(JU-15-528.09)

2180030

C.L.B.

v.

Shelby County Department of Human Resources

Appeal from Shelby Juvenile Court
(JU-15-528.09)

MOORE, Judge.

In appeal number 2180005, T.W. ("the mother") appeals from a judgment entered by the Shelby Juvenile Court ("the juvenile court"), in case number JU-16-475.05, terminating her parental rights to L.G.P., whose date of birth is June 8, 2016. In appeal number 2180006, the mother appeals from that same judgment to the extent it was entered in case number JU-15-528.09 and terminated her parental rights to B.E.B., whose date of birth is September 8, 2013; in appeal number 2180030, C.L.B., the father of B.E.B., appeals from that same judgment to the extent it was entered in case number JU-15-28.09 and terminated his parental rights to B.E.B.

Both the mother and C.L.B. argue that, considering their current circumstances, the juvenile court erred in terminating their parental rights; they also argue that the juvenile court

erred in determining that there were no viable alternatives, specifically relative placements, to the termination of their parental rights. C.L.B. also asserts that the juvenile court failed to comply with the Indian Child Welfare Act of 1978 ("the ICWA"), codified at 25 U.S.C. § 1901 et seq. We affirm the juvenile court's judgment.

Procedural History

On March 20, 2018, the Shelby County Department of Human Resources ("DHR") filed a petition to terminate the parental rights of the mother and J.P. to L.G.P.; that petition was assigned case number JU-16-475.05. That same day, DHR filed a separate petition to terminate the parental rights of the mother and C.L.B. to B.E.B.; that petition was assigned case number JU-15-528.09.

After a trial, the juvenile court, on August 30, 2018, rendered and entered a single judgment in case number JU-15-528.09 and case number JU-16-475.05, terminating the parental rights of the mother and C.L.B. to B.E.B. and of the mother and J.P. to L.G.P.[1] On September 12, 2018, the mother filed a single postjudgment motion referencing both case numbers;

[1]J.P. did not participate in the proceedings below and has not appealed the judgment terminating his parental rights.

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that motion was denied the same day. On September 13, 2018, C.L.B. filed a postjudgment motion in case number JU-15-528.09; that motion was denied on September 18, 2018.

On September 25, 2018, the mother filed separate notices of appeal. C.L.B. filed his notice of appeal on October 2, 2018.[2]

Facts

I. Background

The mother testified that DHR had removed B.E.B. from her custody in 2015. According to the mother, she had been using methamphetamine and marijuana daily at that time. The mother testified that she had subsequently received counseling services and in-home parenting services and that she had also attended parenting classes. The mother testified that she had ceased using drugs for a period beginning in February 2016. L.G.P. was born on June 8, 2016. According to the mother, B.E.B. was placed back in her home in October 2016. The mother testified that she had relapsed into drug use in December 2016.

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[2]C.L.B.'s notice of appeal was timely pursuant to Rule 4(a)(2), Ala. R. App. P. See, e.g., C.O. v. Jefferson Cty. Dep't of Human Res., 206 So. 3d 621, 625 (Ala. Civ. App. 2016).

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The mother testified that, in February 2017, DHR removed B.E.B. and L.G.P. from her home after she failed a drug test, which had been administered by her probation officer, testing positive for methamphetamine, "benzos," and marijuana. She testified that she had been arrested for possession of drugs in March 2017. She testified that, after her arrest, she had been admitted to an inpatient drug-rehabilitation program at Olivia's House in April 2017 but that she had been discharged from that program for fighting with other patients. According to the mother, after her discharge from Olivia's House, she had completed an outpatient drug-rehabilitation program at "Bradford" in June or July 2017.

The mother testified, however, that, in March 2018, she had again been arrested for possession of methamphetamine. The mother admitted to having used methamphetamine at that time. Abigail Athey, a DHR caseworker, testified that the mother had admitted herself into Bradford's inpatient drug-rehabilitation program in April 2018. The mother testified that she had stayed in that program for two weeks. According to Athey, the mother had left that program voluntarily to go to the beach with her boyfriend.

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The mother testified that she had last used methamphetamine in March 2018; she admitted, however, that, although she was under an order from the juvenile court to submit to drug testing, she had not submitted to drug testing in the two months leading up to the termination-of-parental-rights trial. At the time of the trial, the mother had two charges pending against her for possession of drugs and was incarcerated for failing to appear for court hearings.

C.L.B. testified that, at the time of the termination-of-parental-rights trial, he was incarcerated, having been convicted of rape in the first degree. He testified that his estimated release date is in 2023.

II. Facts Regarding the Applicability of the ICWA

At the trial, the evidence indicated that DHR had provided forms to the mother and C.L.B. inquiring about the possibility of B.E.B. having Native American heritage. A form signed by C.L.B. in 2015 indicated that he had information or belief that B.E.B. was of Indian ancestry. The 2015 form had requested information regarding in which Indian tribe B.E.B., C.L.B., or B.E.B.'s grandparent might have membership; in response to that request, C.L.B. completed the form stating:

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"Theirs [sic] several different tribes. Contact [the paternal grandmother] for information cause I have no clue, all of them I know Cherokee and Sue [sic]." A second form, dated in 2017 and signed by C.L.B., was also introduced into evidence. C.L.B. testified that his mother had assisted him in completing the 2017 form. On the 2017 form, C.L.B. listed Cherokee and "Ojibwa-(Chippewa)" as the tribes in which he, B.E.B., or one of B.E.B.'s paternal grandparents might have membership.

Star Pope testified that, at the direction of C.L.B., she had inquired of the paternal grandmother of B.E.B. regarding with which tribes C.L.B.'s family might be affiliated. She testified that the paternal grandmother of B.E.B. had informed her that C.L.B. was not affiliated with the Cherokee or Sioux tribes but that she had identified the Chippewa or Ojibwe tribe as a possibility. Pope testified that she had contacted authorities in several different states and that she had eventually been directed to a central location to which, she said, she had mailed a letter requesting information concerning whether B.E.B. would be recognized as an Indian child or have benefits under the ICWA. DHR introduced into

evidence a letter dated May 4, 2016, that had been mailed to the ICWA representative from the Chippewa Indians of Mackinac, Michigan, and stated, in part:

> "The father of [B.E.B.] is [C.L.B.] DOB: ..., who is currently incarcerated in Shelby County Alabama. He informed this Agency that his great-grandmother has Native American Heritage. I have spoken with the Paternal Grandmother ... DOB: ..., who informed me that her father is [D.K.] DOB: Unknown and his mother is [M.C.] DOB: ... (Census Enclosed) also known as [A.M.C.] who was included in the 1927 Ojibwa/Chippewa Census.
>
> "Please review and mail or fax a letter determining if you recognize that [B.E.B.] is part of the Chippewa Tribe and is eligible for benefits. ..."

DHR also introduced a letter from the Bay Mills Indian Community dated May 19, 2016, in response to an inquiry from DHR; that letter indicated that B.E.B. was not eligible for membership in the Bay Mills Indian Community.

Standard of Review

A judgment terminating parental rights must be supported by clear and convincing evidence, which is "'"[e]vidence that, when weighed against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion."'" C.O. v. Jefferson Cty.

Dep't of Human Res., 206 So. 3d 621, 627 (Ala. Civ. App. 2016) (quoting L.M. v. D.D.F., 840 So. 2d 171, 179 (Ala. Civ. App. 2002), quoting in turn Ala. Code 1975, § 6-11-20(b)(4)).

> "'[T]he evidence necessary for appellate affirmance of a judgment based on a factual finding in the context of a case in which the ultimate standard for a factual decision by the trial court is clear and convincing evidence is evidence that a fact-finder reasonably could find to clearly and convincingly ... establish the fact sought to be proved.'
>
> "KGS Steel[, Inc. v. McInish,] 47 So. 3d [749] at 761 [(Ala. Civ. App. 2006)].
>
> "To analogize the test set out ... by Judge Prettyman [in Curley v. United States, 160 F.2d 229, 232-33 (D.C. Cir. 1947),] for trial courts ruling on motions for a summary judgment in civil cases to which a clear-and-convincing-evidence standard of proof applies, 'the judge must view the evidence presented through the prism of the substantive evidentiary burden'; thus, the appellate court must also look through a prism to determine whether there was substantial evidence before the trial court to support a factual finding, based upon the trial court's weighing of the evidence, that would 'produce in the mind [of the trial court] a firm conviction as to each element of the claim and a high probability as to the correctness of the conclusion.'"

Ex parte McInish, 47 So. 3d 767, 778 (Ala. 2008). This court does not reweigh the evidence but, rather, determines whether the findings of fact made by the juvenile court are supported

by evidence that the juvenile court could have found to be clear and convincing. See Ex parte T.V., 971 So. 2d 1, 9 (Ala. 2007). When those findings rest on ore tenus evidence, this court presumes their correctness. Id. We review the legal conclusions to be drawn from the evidence without a presumption of correctness. J.W. v. C.B., 68 So. 3d 878, 879 (Ala. Civ. App. 2011).

Discussion

I.

On appeal, both the mother and C.L.B. argue that, considering their current conditions, the juvenile court erred in terminating their parental rights.

Section 12-15-319, Ala. Code 1979, provides, in pertinent part:

> "(a) If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that the parent[] of a child [is] unable or unwilling to discharge [his or her] responsibilities to and for the child, or that the conduct or condition of the parent[] renders [him or her] unable to properly care for the child and that the conduct or condition is unlikely to change in the foreseeable future, it may terminate the parental rights of the parent[]. In determining whether or not the parent[] [is] unable or unwilling to discharge [his or her] responsibilities to and for the child and to terminate the parental rights, the juvenile court shall consider the following factors including, but not limited to, the following:

> "....
>
> "(2) Emotional illness, mental illness, or mental deficiency of the parent, or excessive use of alcohol or controlled substances, of a duration or nature as to render the parent unable to care for needs of the child.
>
> "....
>
> "(4) Conviction of and imprisonment for a felony."

Both parents rely heavily on A.A. v. Jefferson County Department of Human Resources, [Ms. 2170595, Aug. 24, 2018] ___ So. 3d ___ (Ala. Civ. App. 2018), in support of their arguments. In A.A., this court quoted D.O. v. Calhoun County Department of Human Resources, 859 So. 2d 439, 444 (Ala. Civ. App. 2003), which stated: "[T]he existence of evidence of current conditions or conduct relating to a parent's inability or unwillingness to care for his or her children is implicit in the requirement that termination of parental rights be based on clear and convincing evidence." In A.A., the evidence indicated as follows:

> "[T]he mother completed outpatient drug treatment in March 2016. Because she felt she needed additional help, the mother enrolled in the drug-rehabilitation program at the Lovelady Center in July 2017, the same month the last positive drug-screen result

> appears on the mother's color-code drug-test results. After the mother was dismissed from the Lovelady Center, she shortly thereafter enrolled in the Expect a Miracle program. Although the evidence indicates that the mother had missed drug screens through the color-code program, she testified that she had been tested for drugs at both the Lovelady Center and through the Expect a Miracle program. There was no evidence presented indicating that the mother had tested positive for drugs while enrolled in those programs, and there was no evidence indicating that the mother's discharge from the Lovelady Center was related to drug use. Furthermore, the mother testified that she was required to test for drugs as a condition of her probation and that she had not tested positive."

___ So. 3d at ___.

Unlike the mother in A.A., however, the mother in the present case was not in a drug-rehabilitation program at the time of the trial. Instead, she was in jail for failing to appear for court hearings; she also had two charges pending against her for possession of drugs, one of which had resulted from drug use that had occurred approximately three months before the trial. The mother in this case had attended multiple drug-rehabilitation programs, but had relapsed multiple times. Approximately two months before the trial, the mother had attended a drug-rehabilitation program for only two weeks before voluntarily leaving the program to go to the beach with her boyfriend. Moreover, unlike the mother in

A.A., who had been submitting to drug tests leading up to the trial, the mother in the present case admitted that she had failed to submit to drug tests in the two months immediately preceding the trial.

Considering the mother's past history of having multiple relapses of drug use, as well as her recent and current circumstances -- specifically, that she had used methamphetamine approximately three months before the trial, that she had been arrested at that time and charged with possession of methamphetamine, that she had subsequently voluntarily left a drug-rehabilitation program, that she had failed to submit to drug screens in the two months leading up to the trial, that she was incarcerated at the time of the trial for having failed to appear at court hearings, and that she had two pending criminal charges against her for possession of drugs -- the juvenile court could have been clearly convinced that the factor set out in § 12-15-319(a)(2) applied and that the mother is "unable or unwilling to discharge [her] responsibilities to and for [her children], or that the conduct or condition of the [mother] renders [her] unable to properly care for [her children] and that the

conduct or condition is unlikely to change in the foreseeable future." § 12-15-319(a).

With regard to C.L.B., the evidence indicated that he was incarcerated at the time of the trial, having been convicted of rape in the first degree, which is a felony, see § 13A-6-61(b), Ala. Code 1975, and that he had an expected release date of 2023. Considering C.L.B.'s conviction and imprisonment for a felony, the juvenile court could have been similarly clearly convinced that the factor set out in § 12-15-319(a)(4) applied and that he is "unable or unwilling to discharge [his] responsibilities to and for [B.E.B.], or that the conduct or condition of [C.L.B.] renders [him] unable to properly care for [B.E.B.] and that the conduct or condition is unlikely to change in the foreseeable future." § 12-15-319(a).

II.

Both the mother and C.L.B. also argue that the juvenile court erred in determining that viable alternatives, specifically, placement with a relative resource, had been exhausted. We note, however, that "the existence of ... a potentially viable placement alternative would not, in and of

itself, prevent the juvenile court from terminating [a parent's] parental rights, if reunification of the [parent] and [his or her children are] no longer a foreseeable alternative." A.E.T. v. Limestone Cty. Dep't of Human Res., 49 So. 3d 1212, 1219 (Ala. Civ. App. 2010). In the present cases, as noted previously, considering the mother's and C.L.B.'s current circumstances and past history, the juvenile court could have determined that reuniting L.G.P. and B.E.B. with the mother or that reuniting B.E.B. with C.L.B. were no longer foreseeable alternatives. Therefore, "the existence of ... a potentially viable placement alternative would not, in and of itself, prevent the juvenile court from terminating [the mother's and C.L.B.'s] parental rights." Id.

Moreover, we note that "[t]he determination of whether a viable alternative to termination of parental rights exists is a question of fact to be decided by the juvenile court." J.B. v. Cleburne Cty. Dep't of Human Res., 991 So. 2d 273, 282 (Ala. Civ. App. 2008). "The trial court must consider the best interest of the child[ren] when looking at less drastic alternatives" to termination of parental rights. Haag v. Cherokee Cty. Dep't of Pensions & Sec., 489 So. 2d 586, 588

(Ala. Civ. App. 1986). In the present cases, the evidence indicated that the long-time foster parents of B.E.B. and L.G.P., with whom both children were bonded and whom they called "mom" and "dad," desired to adopt both children. The juvenile court could have determined that adoption by the foster parents, and not placement with a relative, was in the best interests of both B.E.B. and L.G.P. because, it determined, family reunification was no longer a foreseeable alternative.

III.

Finally, C.L.B. argues that the juvenile court failed to comply with the requirements of the ICWA with regard to B.E.B.[3]

Section 1912(a) of the ICWA provides in part:

> "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the

[3]We are aware of the recent decision of the United States District Court for the Northern District of Texas holding parts of the ICWA, including the provisions discussed infra, unconstitutional. Brackeen v. Zinke, 338 F. Supp. 3d 514 (N.D. Tex. 2018). We note, however, that this court is not bound by the decision of the District Court in Texas and must presume that the ICWA is constitutional. U.S. v. v. Nat'l Dairy Prods. Corp., 372 U.S. 29, 32 (1963). See also People of South Dakota in the Interest of M.D., 920 N.W.2d 496, 499 n.4 (S.D. 2018).

> foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary [of the Interior] in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary ...."

(Emphasis added.) An "Indian child" is defined in § 1903(4) of the ICWA as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe."

Additionally, 25 C.F.R. § 23.107 provides:

> "(a) State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.
>
> "(b) If there is reason to know the child is an Indian child, but the court does not have sufficient

> evidence to determine that the child is or is not an 'Indian child,' the court must:
>
> > "(1) Confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and
> >
> > "(2) Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an 'Indian child' in this part."

Based on the clear language of the ICWA and the regulation, for the requirements in § 1912 of the ICWA and 25 CFR § 23.107(b) to be triggered, the juvenile court must "know[] or ha[ve] reason to know that an Indian child is involved." 25 U.S.C. § 1912(a) (emphasis added). Therefore, this court must determine if there was "reason to know" that B.E.B. is an Indian child as defined in the ICWA.

Multiple states have considered the construction of the "reason to know" phrase. We find the thorough reasoning set forth in Geouge v. Traylor, 68 Va. App. 343, 808 S.E.2d 541 (2017), persuasive. In Geouge, the Virginia Court of Appeals reasoned:

> "In general, a party invoking the protections of a statute bears the burden of demonstrating that the statute is applicable. Multiple courts addressing the [ICWA] have concluded that the party invoking it bears the burden to demonstrate that the case implicates the [ICWA]. See, e.g., In re Trever I., 973 A.2d 752, 759 (Me. 2009); People v. Diane N. ([I]n [r]e C.N.), 196 Ill. 2d 181, 256 Ill. Dec. 788, 752 N.E.2d 1030, 1044 (2001); In re A.S., 614 N.W.2d 383, 385-86 (S.D. 2000); In re Interest of J.L.M., 234 Neb. 381, 451 N.W.2d 377, 387 (1990). We agree with appellees that, ultimately, the party invoking the [ICWA] bears the burden of establishing that the [ICWA] applies.
>
> "Despite this agreement, we disagree with their assertion that the invoking party must 'prove' that the child is an 'Indian child' before any provisions of the [ICWA] are implicated. From the [ICWA]'s express terms, it is clear that the [ICWA]'s notice provisions are implicated long before a state court has determined conclusively that a child falls within the [ICWA]'s definition of an 'Indian child.'
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> "The [ICWA]'s notice provisions are triggered when a state court 'knows or has reason to know that an Indian child is involved.' 25 U.S.C. § 1912(a). If, for the notice provisions to become operative a party had to prove that a child was an 'Indian child,' the statutory language would provide only that notice is necessary when the state court 'knows that an Indian child is involved.' The inclusion of the less certain 'reason to know' in addition to the more definitive 'knows' is a clear indication that Congress intended the notice provisions to be effective in situations where there was still question as to whether the child is an Indian child.
>
> "This view finds additional support from 25 U.S.C. § 1912(a)'s provisions regarding providing notice to the Secretary of the Interior. Among other instances, notice must be given to the Secretary of

> the Interior when 'the identity [of the] tribe cannot be determined.' Given that the [ICWA] limits the definition of 'Indian child' to those who are members of or eligible for membership in federally recognized tribes, 25 U.S.C. § 1903(3), (4) & (8), it is impossible to prove that a child meets the statutory definition of 'Indian child' without knowing the identity of the tribe. Accordingly, the notice provisions of the [ICWA] clearly are operative in situations where the party invoking the [ICWA] has not yet proven that the child is an 'Indian child.'
>
> "The recently adopted regulations implementing the [ICWA] also make clear that the 'reason to know' standard requires less than actual proof that the child meets the statutory definition of 'Indian child.' The regulations expressly recognize that state courts will be faced with situations in which 'there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an "Indian child."' 25 C.F.R. § 23.107(b). In such a situation, the state court must, among other things, '[t]reat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an "Indian child" in this part.' 25 C.F.R. § 23.107(b)(2).
>
> "Thus, Geouge was not required to <u>prove</u> that L.T. was an 'Indian child' for the [ICWA]'s notice provisions to become operative. As the Supreme Court of Michigan has observed, 'the "reason to know" standard for purposes of the notice requirement in 25 U.S.C. 1912(a) ... set[s] a rather low bar.' <u>In re Morris</u>, 491 Mich. 81, 815 N.W.2d 62, 73 (2012).
>
> "Of course, our recognition that Geouge was faced with a low bar does not mean that she cleared it. In the proceedings below, Geouge never alleged that L.T. <u>is</u> an 'Indian child'; rather, she only alleged that L.T. <u>might</u> be an Indian child. At oral

> argument in this Court, Geouge was asked if, in the time since she first raised the [ICWA] in the circuit court, she had found anything to support the position that L.T. was, in fact, an 'Indian child.' With credible candor, Geouge conceded that she remained unable to assert in good faith anything more than the [ICWA] 'might apply.'
>
> "Thus, we are faced with the question of whether that mere assertion, that the [ICWA] might apply, coupled with the other facts in the record, was sufficient to give the circuit court 'reason to know' that L.T. is an 'Indian child' subject to the [ICWA]'s protections. Based on the record and the recently enacted regulations, we conclude that it is not.
>
> "Prior to the enactment of the regulations, courts were divided on what is required to satisfy the 'reason to know' standard. While some held that a bald assertion was sufficient, others required something more. Compare In re Antoinette S., 104 Cal. App. 4th 1401, 129 Cal. Rptr. 2d 15, 20-21 (2002); In re Dependency of T.L.G., 126 Wash. App. 181, 108 P.3d 156, 162 (2005); In re J.T., 166 Vt. 173, 693 A.2d 283, 288-89 (1997), with Illinois v. Amos (In re T.A.), 378 Ill. App. 3d 1083, 318 Ill. Dec. 408, 883 N.E.2d 639, 647 (2008); A.J. v. Utah (Utah ex rel. M.J.), 266 P.3d 850, 856-58 (Ut. Ct. App. 2011); In re C.C., 187 Ohio App. 3d 365, 932 N.E.2d 360, 363 (2010).
>
> "The regulations were adopted, in part, to address such 'disparate applications of [the [ICWA]] based on where the Indian child resides' and to make certain that the 'uniform minimum Federal standards intended by Congress' were applied in state courts. 81 Fed. Reg. 38,778. Accordingly, the regulations provide that
>
> "'[a] court ... has reason to know that a child ... is an Indian child if:

> "'(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;
>
> "'(2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;
>
> "'(3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;
>
> "'(4) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;
>
> "'(5) The court is informed that the child is or has been a ward of a Tribal court; or
>
> "'(6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.'

"25 C.F.R. § 23.107(c) (emphasis added). Thus, all that is required for the [ICWA]'s notice provisions to apply is for a party or counsel to assert in good faith a belief that the child 'is an "Indian child."' 25 C.F.R. § 23.107(c)(1) & (2).

"In this case, neither Geouge nor her counsel ever made such an assertion. Geouge's counsel candidly admitted during oral argument in this Court

> that, at the time she filed the motion to stay proceedings, she could not assert in good faith that L.T. is an Indian child. She also confirmed that, after the motion to stay proceedings was denied in the circuit court, no steps were taken by Geouge to develop any information that would allow her to allege that L.T. is an Indian child. Given that the proceedings in the circuit court continued for months after the motion to stay proceedings was denied, the inability or unwillingness of Geouge to develop such a good faith belief is significant.
>
> "Moreover, it stands in stark contrast with the actions taken by the appellees. Faced with Geouge's bald assertion that the [ICWA] 'might apply' because of the possibility that L.T. has Cherokee ancestry, appellees took it upon themselves to investigate the claim. Appellees identified for the circuit court the three federally recognized Cherokee tribes and the factors that each of the tribes considers in determining membership and eligibility for membership. During the proceedings below, appellees contacted the three federally recognized Cherokee tribes, provided information regarding L.T., Geouge, and Geouge's father (the alleged link to Native American ancestry), and inquired if L.T. were eligible for membership in the tribes. Each tribe responded in the negative, indicating that L.T. was not eligible for membership in the respective tribes, and thus, was not an 'Indian child' for the purposes of the [ICWA] as it relates to the three federally recognized Cherokee tribes.
>
> "Given Geouge's inability to allege that L.T. is an Indian child and the information provided by the federally recognized Cherokee tribes, the circuit court did not have 'reason to know that an Indian child is involved' in the proceedings as contemplated by 25 U.S.C. § 1912(a). Accordingly, the circuit court did not err in concluding that the [ICWA], including its notice provisions, did 'not apply to this case.'"

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68 Va. App. at 363-68, 808 S.E.2d at 550-53 (footnotes omitted).

Similarly, in the present case, C.L.B. does not point to any evidence in the record indicating that he, the paternal grandmother, or any attorney actually made an allegation that B.E.B. was an Indian child as defined by the ICWA; instead, C.L.B. and the paternal grandmother alleged only that B.E.B. has Indian ancestry. C.L.B. identified certain tribes and informed DHR to ask the paternal grandmother for more information. Pope testified that, although the paternal grandmother had informed her that C.L.B. was not affiliated with the Cherokee or Sioux tribes, she had identified the Chippewa or Ojibwe tribe as a possibility. Pope testified that she had contacted authorities in several different states and that she had been directed to a central location to which, she said, she had mailed a letter requesting information concerning whether B.E.B. would be recognized as an Indian child or have benefits under the ICWA. DHR introduced into evidence a letter dated May 4, 2016, that had been mailed to the ICWA representative of the Chippewa Indians of Mackinac, Michigan, requesting information regarding whether B.E.B. was

an Indian child; DHR also introduced a letter that had been received in response asserting that B.E.B. was not eligible for membership in the Bay Mills Indian Community.

Because, like in Geouge, in the present case, despite DHR's efforts to determine whether B.E.B. is an Indian child under the ICWA, C.L.B. has pointed to no evidence indicating that he alleged that the child is actually an "Indian child" as defined in the ICWA, we conclude that the "reason to know" standard has not been triggered. Therefore, we conclude that the juvenile court was not required to meet the requirements set forth in the ICWA. Accordingly, we will not reverse the juvenile court's judgment on this point.

Conclusion

Based on the foregoing, we affirm the juvenile court's judgment terminating the mother's parental rights to B.E.B. and L.G.P. and terminating C.L.B.'s parental rights to B.E.B.

2180005 -- AFFIRMED.

2180006 -- AFFIRMED.

2180030 -- AFFIRMED.

Thompson, P.J., and Donaldson, Edwards, and Hanson, JJ., concur.