STATE OF MICHIGAN

COURT OF APPEALS

In re STACEY M.S.S. FOX, JOHN MICHAEL SCOTT FOX, DAVID KEYWANA JOSEPH FOX, and SARAH SHAWKNEE FOX, Minors

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DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

NANCY FOX,

Respondent-Appellant,

and

JOHNNY MCFARLAND, AL HUGHES and RONALD HARGE,

Respondents.

UNPUBLISHED
January 24, 1997

No. 187189
Oakland Juvenile Court
LC No. 92-054777-NA

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

JOHNNY MCFARLAND,

Respondent-Appellant,

and

NANCY FOX,

Respondent.

No. 187279
Oakland Juvenile Court
LC No. 92-054777-NA

Before: Doctoroff, P.J., Hood and P. J. Sullivan,* JJ.

MEMORANDUM.

Respondents Fox and McFarland filed separate appeals as of right from the probate court order of May 9, 1995, terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (3)(g); MSA 27.3178(598.19b)(3)(c)(i) and (3)(g). The appeals were consolidated for our review. We affirm.

Notwithstanding evidence of possible Indian heritage, the record is devoid of any evidence that any of the children or respondent Fox or respondent McFarland is a member of an Indian tribe. Absent such evidence, the probate court was not required to apply the Indian Child Welfare Act, 25 USC 1901 *et seq.*, or MCR 5.980. See *In re AG*, 899 P2d 319, 322 (Colo App, 1995); *In re Adoption of Baby Boy W*, 831 P2d 643 (Okla, 1992); see also *In re Shawboose*, 175 Mich App 637, 640; 438 NW2d 272 (1989).

Although the probate court initially referred to the best interests of the children, the probate court's subsequent statements confirm that it found that the statutory grounds for termination had been proven by clear and convincing evidence, thus indicating that the proper legal standard was used. Although the trial court's summary conclusions arguably fall short of the requirements of MCR 5.974(G)(1), the evidence supporting termination was overwhelming. The probate court did not clearly err in finding that the statutory grounds for termination had been established by clear and convincing evidence with respect to both respondents. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Additionally, the probate court did not abuse its discretion in ruling that termination was in the best interests of the children. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

We reject respondent McFarland's claim that he was improperly denied visitation, given that visitation need not be scheduled where it would be harmful to the children, MCL 712A.18f(3)(e); MSA 27.3178(598.18f)(3)(e), that he was incarcerated in prison during the period in question, and that he never sought to compel visitation in an appropriate motion in the probate court. Also, the probate court did not abuse its discretion in ordering respondent McFarland's son to remain in foster care placement prior to the filing of the petition requesting termination. *In re Martin*, 167 Mich App 715, 727; 423 NW2d 327 (1988). Finally, there is no record support for respondent McFarland's claim that he was discriminated against because he was an unwed father, or that the probate court "hurried the termination proceedings" without affording him an adequate opportunity to reestablish himself.

Affirmed.

* Circuit judge, sitting on the Court of Appeals by assignment.

/s/ Martin M. Doctoroff
/s/ Harold Hood
/s/ Paul J. Sullivan