

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of FALON MARIE JACKSON, a/k/a
FALON MARIE SAFFOLD, MAURICE
JACKSON, II, a/k/a MAURICE SAFFOLD, II,
EFFREM JACKSON, a/k/a EFFREM SAFFOLD,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MAURICE EDWARD JACKSON,

Respondent-Appellant.

UNPUBLISHED
September 25, 2001

No. 226886
Wayne Circuit Court
Family Division
LC No. 89-274755

Before: Collins, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Respondent appeals as of right from a family court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(ii), (g), and (j). We conditionally affirm and remand for further proceedings.

I

Respondent first argues that the family court erred in rejecting any possible claim of Native American ancestry under the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.* Petitioner concedes that the family court did not comply with the notice requirements under the ICWA. We agree that the family court failed to follow the notice requirements under the ICWA, and we remand so that the family court can provide notice of these proceedings to any interested Indian tribe, as required by the ICWA. See *In re IEM*, 233 Mich App 438, 440; 592 NW2d 751 (1999).

At the dispositional hearing held on December 16, 1999, respondent's counsel informed the family court that there was the possibility of Native American status with regard to

respondent.¹ Respondent informed the court that he does not hold membership in an American Indian tribe. Under the ICWA, an Indian child's tribe is entitled to notice of termination of parental rights hearings "where the court knows or has reason to know that an Indian child is involved." 25 USC 1912(a); see also MCR 5.980(A)(2). As this Court noted in *In re IEM*, *supra*, p 445, tribal membership is not defined by enrollment in the tribe. Consequently, respondent's lack of membership in an Indian tribe is not dispositive of the question whether the children qualify as Indian children. Moreover, it is for the tribe, and not the court, to determine whether the child is an Indian child. *In re TM (After Remand)*, 245 Mich App 181, 187-188; 628 NW2d 570 (2001).

Here, because respondent's counsel informed the family court of respondent's Native American ancestry, the FIA was obligated to provide notice of the proceeding to any interested Indian tribe or the Secretary of the Interior if the tribe is unknown. *Id.*, pp 187-188; *In re IEM*, *supra*, pp 446-448; 25 USC 1912(a). As set forth in *In re IEM*, *supra*, pp 449-450, the proper remedy in this situation where the family court and petitioner failed to comply with the notice requirements of the ICWA is to conditionally affirm the family court's order terminating parental rights because it is supported by clear and convincing evidence (see issue II, *infra*). We remand so that the family court and petitioner may provide proper notice to any interested tribe or the Secretary of the Interior. See *id.*, p 450.

II

We do find, however, that the family court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). There was evidence that respondent's wife (the children's stepmother) suffered from Munchausen's by proxy and continually had the children treated for cystic fibrosis even though they did not have the disease. Additionally, there was evidence that respondent and the stepmother physically and emotionally abused the children. There was ample evidence that respondent failed to protect the children and was an inattentive parent. Furthermore, respondent's total failure to participate in a parent-agency agreement justified termination based on the likelihood of continuing neglect. Therefore, the evidence did not show that termination of respondent's parental rights was not clearly in the children's best interests. MCL 712A.19b(5); *Trejo*, *supra*, p 354. Thus, the family court did not clearly err in terminating respondent's parental rights to the children.

The order terminating parental rights is conditionally affirmed; however, we remand for the purpose of providing proper notice to any interested Indian tribe pursuant to the ICWA. Jurisdiction is not retained.

/s/ Jeffrey G. Collins
/s/ William B. Murphy
/s/ Kathleen Jansen

¹ We note that MCR 5.965(B)(7) requires that the court directly inquire about the tribal status of the parents or the minor children at the time of the preliminary hearing.