STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of KEVEN BENNETT, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TIMOTHY BENNETT,

Respondent-Appellant,

and

CHRISTINE PEKKALA,

Respondent.

UNPUBLISHED
November 6, 2001

No. 233095
Montcalm Circuit Court
Family Division
LC No. 99-010310-NA

In the Matter of JASON BENNETT, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

TIMOTHY BENNETT,

Respondent-Appellant,

and

CHRISTINE PEKKALA,

Respondent.

No. 233096
Montcalm Circuit Court
Family Division
LC No. 99-010311-NA

In the Matter of TIMOTHY BENNETT, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TIMOTHY BENNETT,

Respondent-Appellant,

and

CHRISTINE PEKKALA,

Respondent.

No. 233097
Montcalm Circuit Court
Family Division
LC No. 99-010312-NA

Before: Doctoroff, P.J., and Wilder and C. C. Schmucker*, JJ.

PER CURIAM.

Respondent-appellant Timothy Bennett appeals by delayed leave granted from the trial court's order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent-appellant argues that the trial court applied an improper standard of proof in its decision terminating his parental rights. Respondent-appellant predicates this claim on the assumption that the Indian Child Welfare Act (ICWA) applied to these proceedings. We find no merit to respondent-appellant's claim.

25 USC 1912(a) provides:

> 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 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.

---

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

An "Indian child" is defined 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." 25 USC 1903(4). Once notice is provided to the appropriate tribe, it is for the tribe to decide if the minor child qualifies as an "Indian child." *In re IEM*, 233 Mich App 438, 447-448; 592 NW2d 751 (1999); *In re TM (After Remand)*, 245 Mich App 181, 187; ___ NW2d ___ (2001). If proper notice is provided and a tribe fails to either respond or intervene in the matter, the burden shifts to the parents to show that the ICWA still applies. *In re IEM, supra* at 449; *In re TM (After Remand), supra* at 187.

In this case, respondent-appellant informed the court at the preliminary hearing that he was Cherokee Indian. The record reveals that both the Cherokee Nation and the Eastern Band of Cherokee Indians were notified of the proceedings and responded by indicating that the children were not members of the tribe or eligible for membership. Because the required notice was provided to the Indian tribes who declined to intervene, it was respondent-appellant's burden to show that the ICWA still applies. *In re IEM, supra* at 449; *In re TM (After Remand), supra* at 187. Respondent-appellant never objected to the determinations made by the Indian organizations or take any further action to show that the ICWA applied. Accordingly, the children were not Indian children as defined in the ICWA. Further, once notice was properly provided to the Indian organizations and they declined to intervene, it was not necessary to notify the organizations after the petitions requesting termination of respondent-appellant's parental rights were filed.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder
/s/ Chad C. Schmucker