

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of WILLIS CARSON, CASEY  
CARSON, and AUSTIN CARSON, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

WILLIS CARSON, SR.,

Respondent-Appellant,

and

CYNTHIA TALBOT and LARRY CARSON,

Respondents.

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In the Matter of WILLIS CARSON, CASEY  
CARSON, and AUSTIN CARSON, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CYNTHIA TALBOT,

Respondent-Appellant,

and

WILLIS CARSON, SR.,

Respondent.

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UNPUBLISHED  
January 29, 2002

No. 232152  
Oakland Circuit Court  
Family Division  
LC No. 98-612905-NA

UNPUBLISHED

No. 232264  
Oakland Circuit Court  
Family Division  
LC No. 98-612905-NA

Before: Cavanagh, P.J., and Neff and B. B. MacKenzie\*, JJ.

PER CURIAM.

In these consolidated appeals, respondents Cynthia Talbot and Willis Carson, Sr. appeal as of right from the trial court's order terminating their parental rights to the minor children<sup>1</sup> pursuant to MCL 712A.19b(3)(g). We remand for further proceedings.

The trial court did not clearly err in finding that the statutory ground for termination was established by clear and convincing evidence with respect to both respondents. See MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, the evidence did not show that termination of respondents' parental rights was clearly not in the children's best interests. See MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). We find nothing in the record to support respondent mother's suggestion that her constitutional rights were not protected.

However, the record reveals that the trial court failed to ensure compliance with the notice requirements of the Indian Child Welfare Act, 25 USC 1900 *et seq.*, after respondent mother advised the court that her father was a "full blooded Cherokee." Failure to comply with the notice provisions of the ICWA may be grounds for invalidating state proceedings to terminate parental rights to an "Indian child," 25 USC 1914. *In re TM (After Remand)*, 245 Mich App 181, 185; 628 NW2d 570 (2001). An "Indian child" is "any unmarried person who is under the age of 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." *Id.* at 186, quoting 25 USC 1903(4). Respondent mother's apparent lack of formal enrollment in a Native American tribe is not conclusive of the issue whether her children qualify as "Indian children." Rather, the question whether a person is a member of a tribe or eligible for membership is for the tribe itself to determine, *In re NEGP*, 245 Mich App 126, 133; 626 NW2d 921 (2001), and notice to the tribe is mandatory. *In re TM (After Remand)*, *supra*.

Therefore, we remand this matter so that notice can be provided to the Cherokee tribe to allow it to determine whether the children are "Indian children" and, if so, whether the tribe chooses to intervene. *In re NEGP*, *supra* at 133-134. If not, the lack of notice does not invalidate the proceedings and this matter is affirmed. See *Id.* at 133. If the children are determined to be "Indian children" and if the tribe chooses to intervene in this matter, the termination must be reversed and the trial court must conduct new proceedings in compliance with the ICWA. See *Id.* at 134.

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<sup>1</sup> The court terminated respondent Cynthia Talbot's parental rights to all three children, and terminated Willis Carson, Sr.'s parental rights to his two children, Willis and Austin. The court also terminated the parental rights of Larry Carson, father of Casey, but he is not a party to this appeal.

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

Finally, both respondents raise issues concerning their counsel's absence at specific hearings. Neither party preserved these issues with an appropriate objection below and neither party cites authority in support of their claim. Respondents cannot leave it to this Court to search for authority to sustain or reject their positions. *Staff v Johnson*, 242 Mich App 521, 529; 619 NW2d 57 (2000). Further, we are satisfied from the record that the absence of counsel at the proceedings in question did not affect either respondent's substantial rights, especially considering that an adequate evidentiary basis for termination of each respondent's parental rights was presented at the other hearings. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991).

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Janet T. Neff

/s/ Barbara B. MacKenzie