STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of K. S. and K. Q., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DEAN THOMAS QUINN,

Respondent-Appellant.

UNPUBLISHED
April 23, 2002

No. 234282
Oakland Circuit Court
Family Division
LC No. 00-637331-NA

Before: White, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Respondent appeals as of right from the circuit court order terminating his parental rights to the minor child, K.Q., under MCL 712A.19b(3)(h). We affirm.

Respondent first contends that the circuit court failed to inquire whether the child was eligible for membership in an Indian tribe. Under the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.*, an Indian child's tribe is entitled to notice of proceedings requesting termination of parental rights, where the court knows or has reason to know that an Indian child is involved. 25 USC 1912(a). An "Indian child" means "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). Further, MCR 5.965(B)(7) requires that a court directly inquire about the tribal status of the parents and the minor child at the time of the preliminary hearing. *In re TM (After Remand),* 245 Mich App 181, 187; 628 NW2d 570 (2001). If the child meets the criteria for tribal membership, the court must comply with the procedures set forth in MCR 5.980. MCR 5.980 provides, among other things, that the petitioner comply with the notice requirements of the ICWA. MCR 5.980(A)(2).

Here, the lower court record indicates that the circuit court failed to inquire about the minor child's membership or eligibility for membership in an American Indian tribe or band. The record also reflects that respondent never stated, suggested, or argued that the child was a member, or eligible to be a member, of a tribe or band. The record does not contain any evidence suggesting possible tribal membership. On appeal, respondent does not assert that the minor child is a member, or eligible to be a member, of an American Indian tribe or band.

Apparently, respondent's appellate argument simply attacks the technical failure of the circuit court to make the relevant inquiry. Based on the lower court record and respondent's argument on appeal, we can only conclude that any error was harmless. MCR 2.613(A). In *In re Osborne,* 459 Mich 360, 369 n 10; 589 NW2d 763 (1999), our Supreme Court noted that it "will not reverse an otherwise proper termination absent a showing that a party suffered an actual deprivation of an important right." Respondent has failed to assert any factual basis that would give rise to rights under the ICWA.

Respondent also contends that the circuit court committed clear error when it determined the child's best interests in terminating respondent's parental rights. We disagree. Respondent entered a plea of no contest to allegations in the petition that gave rise to grounds for termination under MCL 712A.19b(3)(h); therefore, the only matter at issue was whether the termination was clearly not in the child's best interests. The circuit court's decision regarding the child's best interests is reviewed for clear error. *In re Trejo Minors,* 462 Mich 341, 356-357; 612 NW2d 407 (2000). The evidence did not show that termination of respondent's parental rights was clearly not in the child's best interests. MCL 712A.19b(5). Thus, the circuit court did not commit clear error in terminating respondent's parental rights.

Affirmed.

/s/ Helene N. White
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald