

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of T.B., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DANIEL BENTON,

Respondent-Appellant,

and

AMBER PATTERSON,

Respondent.

UNPUBLISHED

November 15, 2002

No. 240310

Oakland Circuit Court

Family Division

LC No. 00-631512-NA

Before: Griffin, P.J., and Gage and Meter, JJ.

MEMORANDUM.

Respondent Benton appeals as of right from a circuit court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(h). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent first contends that the court failed to comply with the requirements of the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.*, and corresponding court rules. “This argument was not raised by [respondent] below and, consequently, was not addressed by the trial court. Therefore, it is not preserved for appellate review.” *Camden v Kaufman*, 240 Mich App 389, 400 n 2; 613 NW2d 335 (2000). In any event, respondent has not shown that the minor child was an “Indian child as defined by the” ICWA, MCR 5.980(A), only that she might have an Indian heritage, which does not qualify her as an Indian child. *In re Johanson*, 156 Mich App 608, 613; 402 NW2d 13 (1986), lv den 428 Mich 870 (1987).

Respondent next contends that the court erred in determining that termination of his parental rights was not contrary to the child’s best interests. Respondent admitted that there was sufficient evidence to support a finding that termination was warranted under § 19b(3)(h) but disputed whether termination was in the child’s best interests. The evidence showed respondent

loved his daughter and the two of them enjoyed one another's company. However, respondent was only a regular part of the child's world during her first six months of life. After that, he was in and out of her life as a visitor and not always on a regular basis. Respondent has been in prison since his daughter was two and would be in prison nearly three more years before he was eligible for parole. The evidence presented below did not show that termination was not clearly in the child's best interests. MCL 712A.19b(5). Therefore, the court did not clearly err in terminating respondent's parental rights. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Affirmed.

/s/ Richard Allen Griffin

/s/ Hilda R. Gage

/s/ Patrick M. Meter