

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of E. C. S., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KIP CHARLES SCHMIDT,

Respondent-Appellant,

and

AMANDA PHYLLIS REKAR,

Respondent.

UNPUBLISHED

April 20, 2010

No. 294408

Lapeer Circuit Court

Family Division

LC No. 08-010793-NA

Before: M.J. KELLY, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(h). We affirm.

The primary issue in this appeal concerns the applicability of the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.* For a child to be covered under the auspices of the ICWA, he or she must be eligible for enrollment in a federally recognized tribe. 25 USC 1903, 1912(a). This Court reviews de novo the applicability of the ICWA as a question of law. *In re JL*, 483 Mich 300, 318; 770 NW2d 853 (2009).

Throughout the lower court proceedings, respondent provided the names of several tribes in which the child might be eligible for enrollment. Several of the identified tribes were not federally recognized for the purpose of applying the ICWA. On appeal, respondent contends that the termination order is invalid because the trial court had notice of respondent's Tuscarora Cherokee heritage, but petitioner failed to contact the tribe as required by law. However, the record adequately demonstrates that petitioner contacted *all* federally recognized Cherokee

bands, and that each tribe responded, indicating that the child was not eligible for enrollment in those tribes. Therefore, the notice requirements of the ICWA were satisfied, and the trial court did not err in its determination that the ICWA did not apply to the proceedings.¹

Respondent also argues that the trial court erred in considering evidence, which constituted hearsay. Specifically, respondent contends it was error for the trial court to consider his presentence investigation report (PSIR) when determining that grounds existed for terminating respondent's parental rights. Because respondent never entered a plea to the allegations in the original petition, only admissible evidence could be used. *In re Gilliam*, 241 Mich App 133, 136; 613 NW2d 748 (2000). This Court reviews a trial court's findings that grounds for termination have been established under the clearly erroneous standard. MCR 3.977(J); *In re Jenks*, 281 Mich App 514, 516-517; 760 NW2d 297 (2008).

On appeal, respondent does not argue that he would be a fit parent despite his ongoing incarceration. Nor does respondent contend that the information relied on by the trial court regarding his incarceration was inaccurate. Rather, respondent only asserts that the PSIR should not have been admitted into evidence. However, a review of the file indicates that other admissible evidence demonstrated that respondent would be incarcerated for more than a two-year period. Thus, the trial court did not err in terminating respondent's rights in accordance with MCL 712A.19b(3)(h).

Affirmed.

/s/ Michael J. Kelly
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder

¹ Accordingly, respondent's argument that expert witness testimony was required in accordance with 25 USC 1912(f) and MCR 3.980(D) is rendered moot.