STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
March 13, 2012

In the Matter of YOST/FRISBIE, Minors.

No. 306027
Montcalm Circuit Court
Family Division
LC No. 10-044101-NA

Before: METER, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her minor children under MCL712A.19b(3)(c)(*i*). We affirm.

Respondent argues for the first time on appeal that petitioner and the circuit court did not comply with the notice provisions of the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.* This unpreserved issue is reviewed for plain error affecting respondent's substantial rights. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

MCR 5.965(B)(7) requires that a court directly inquire about the tribal status of the parents or the minor child at the time of the preliminary hearing. In this case, respondent failed to appear for the preliminary hearing. However, at the preliminary hearing the biological fathers of both children denied that the children were members of an American Indian Tribe or were eligible for membership in an American Indian Tribe or Band.

The only information in the lower court record suggesting that respondent raised the possibility that the children were Indian children is in the updated service plans. Respondent relies on these updated case service plans in support of her argument that petitioner was required to provide notice of the proceedings to any tribes in which the children might be eligible for membership. Respondent fails, however, to address additional information in the same paragraph of the updated service plans indicating as follows:

> The DHS 120 has been submitted to the Midwest Bureau of Indian Affairs to determine if the children have any tribal affiliation. On 07/27/10, a letter was received from the Midwest Bureau of Indian Affairs listing possible tribes which the children may be affiliated with. The DHS 120 and a letter detailing possibly ancestry has been mailed to the tribes through certified mail. There has not been any tribes that have verified Native American Heritage at this time.

Given this evidence regarding the efforts made to notify possible tribes which the children might have been affiliated with, as well as the lack of any mention by respondent throughout the proceedings regarding the application of the ICWA, we cannot conclude that petitioner and the circuit court violated the notice requirements of 25 USC 1912(a).[1]

Respondent also argues that there was insufficient evidence supporting the decision to terminate her rights. Specifically, she asserts that she was not granted sufficient time to comply with the case service plan. However, respondent was granted more time than she claims on appeal. Respondent began receiving services a full year before the termination petition was filed. She would begin receiving services, but would then stop when she resumed the use of illegal substances. Respondent admitted she was still using substances a week before the petition was filed. At the time of the termination hearing, she had again drifted away from treatment and was not making herself available to the foster care worker or drug-screening agency. Respondent contends that she was denied parenting time, but does not acknowledge that this was because she continued to test positive for illegal substances.

The circuit court did not err when it found sufficient evidence of a statutory ground under MCL712A.19b(3)(c)(*i*). Petitioner presented clear and convincing evidence that more than 182 days elapsed since the initial disposition, that respondent had not rectified the conditions leading to adjudication, and that she was not reasonably likely to within a reasonable time. MCL 712A.19b(3)(c)(*i*).[2]

Respondent also argues that placement of the children with relatives was not considered. Although placement with relatives can be relevant, see *In re Mason*, 486 Mich 142, 162 n 11; 782 Mich 747 (2010), courts are not required to keep children with temporary relative guardians if it is in the children's best interests to instead terminate the parents' rights and provide the children with permanency. *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999); *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991).

Affirmed.

/s/ Patrick M. Meter
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

---

[1] It is left to the tribe to decide whether the child qualifies as an "Indian child." *In re TM*, 245 Mich App 181, 187; 628 NW2d 570 (2001). If the tribe does not respond to notice, the parents have the burden of establishing that the child is an Indian child. *Id.*

[2] Respondent does not argue on appeal that the trial court erred in finding that termination was in the best interests of the children.