

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 21, 2011

In the Matter of AMYX/AMYX-HOLMES,
Minors.

No. 301648
Macomb Circuit Court
Family Division
LC Nos. 2009-000385-NA
2009-000386-NA

Before: TALBOT, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

J. Amyx-Holmes challenges the termination of her parental rights to her two minor children based on the failure to rectify conditions leading to the adjudication¹, the failure to provide proper care and custody² and the reasonable likelihood of harm if the children were returned to her care.³ We affirm the termination of Amyx-Holmes' parental rights to her older child and remand to the trial court the termination of her parental rights to the younger child for a determination of whether the child is an Indian child under the Indian Child Welfare Act (ICWA).

Amyx-Holmes initially asserts that the trial court failed to adhere to the notice requirements and other mandates of the ICWA.⁴ When a court has information to suspect or knows that an Indian child is involved in protective proceedings, the petitioner must notify the Indian tribe or the Secretary of the Interior.⁵ Circumstances found to give rise to a court having a reason to believe the child is an Indian child include: (1) any party, tribe, or agency "informs the court that the child is an Indian child"; (2) "any public or state-licensed agency involved in child protective services or family support has information which suggests the child is an Indian child"; or (3) "an officer of the court involved in the proceeding has knowledge that the child

¹ MCL 712A.19b(3)(c)(i).

² MCL 712A.19b(3)(g).

³ MCL 712A.19b(3)(j).

⁴ 25 USC 1901 *et seq.*

⁵ 25 USC 1912(a); see also MCR 3.920(C).

may be an Indian child.”⁶ It is deemed best to err on the side of granting notice and defer to the tribes’ greater ability to determine membership eligibility.⁷

At the outset of the proceedings, a protective services worker notified the court that he had been informed that the younger of the two children, K. B. Amyx-Holmes, might have Native American heritage. The court correctly ordered petitioner to investigate the allegation. The Department of Human Services (DHS) acknowledges that the trial court record does not indicate whether an investigation occurred or the outcome of any inquiries regarding a possible tribal affiliation of the child. As a consequence, it is necessary to conditionally affirm and remand the portion of this case pertaining to the youngest of the two children for DHS and the trial court to conduct an investigation to determine whether Native American heritage is involved and to provide proper notice to any interested Indian tribe or to the Secretary of the Interior.⁸ If it is established that the child meets the definition of an Indian child, the trial court must conduct further proceedings complying with the requirements of the ICWA, including the notice, higher burden of proof, and expert witness requirements.⁹ If, following the conclusion of this inquiry, it is determined that the child does not meet the criteria establishing her as an Indian child under the law, the trial court’s ruling terminating the parental of Amyx-Homes to this child will not be disturbed. Because the children have different fathers, and there has been no assertion that the older child is of Native American heritage, the termination of Amyx-Homes’ parental rights to the older child is not subject to this remand.¹⁰

Amyx-Holmes also contends that the trial court erred in finding the statutory grounds to terminate her parental rights. A petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence.¹¹ Contrary to the claims of Amyx-Holmes, her rights were not terminated solely based on her past neglect of the children. The trial court did not err when it found clear and convincing evidence that Amyx-Holmes failed to rectify the issues pertaining to her substance abuse, improper living conditions and neglect that led to adjudication and that after more than a year it was not reasonably likely that these conditions would be resolved within a reasonable time.¹² After failing to provide any negative drug screens, Amyx-Holmes was out of contact with DHS and not participating in services for several months. When a foster care worker finally located her, Amyx-Holmes provided only minimal compliance with her parent-agency agreement and did not request information about the children or visits with them. She still did not demonstrate having procured stable housing. The

⁶ *In re IEM*, 233 Mich App 438, 446-447; 592 NW2d 751 (1999), citing the guidelines set forth in Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed Reg 67586 (1979).

⁷ *In re IEM*, 233 Mich App at 447.

⁸ *Id.* at 449-450.

⁹ 25 USC 1912(f); *In re IEM*, 233 Mich App at 450.

¹⁰ *Id.*

¹¹ *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003).

¹² MCL 712A.19b(3)(c)(i).

same evidence served to establish that Amyx-Holmes was incapable of providing proper care and custody or offer the minor children any type of stability within a reasonable period of time and the existence of a likelihood of harm to the children if returned to her care.¹³

Amyx-Holmes asserts that she should have been granted additional dispositional hearings.¹⁴ There is nothing to suggest that Amyx-Holmes did not receive an adequate number of hearings as at least 11 hearings were conducted in this matter over a period of 15 months. Nor does Amyx-Holmes distinguish between the multitude of hearings conducted in this matter from the summary proceedings in the case she relies on to support her premise. In addition, Amyx-Holmes contends that her partial compliance with the parent-agency agreement required the provision of additional time to receive services.¹⁵ The lower court record adequately demonstrates that DHS provided Amyx-Holmes with a number and variety of services but that she failed to consistently participate in the programs offered. Amyx-Holmes did not complete parenting classes, she routinely missed drug screens, she provided no proof of participation in counseling or of having obtained stable housing and did not remain in contact with DHS for extended time periods. Amyx-Holmes does not suggest DHS should have offered her additional or different services and is unable to demonstrate that she was not afforded an adequate opportunity to receive and engage in appropriate services as provided by DHS. Rather, any deficiencies stemmed from the failure of Amyx-Holmes to consistently participate in the services provided or to demonstrate any benefit from their receipt.¹⁶

Amyx-Holmes also argues that the trial court erred when it found termination was in the children's best interests.¹⁷ While she suggests that there was no direct evidence regarding the younger child's best interests, the decision is based on the entire record.¹⁸ Both children required a safe home and permanency, which Amyx-Holmes was unable or unwilling to provide.¹⁹ Even though Amyx-Holmes had custody of the older child for many years, testimony by the child's therapist indicated the relationship between mother and daughter was severely damaged and that the fault for this disconnect was directly attributable to the behavior and lifestyle of Amyx-Holmes. In addition, her conduct indicated that she was unwilling to make the effort necessary to restore her relationship with the children through participation in services. Based on the record established, the trial court did not err when it held that terminating Amyx-Holmes' parental rights was in the children's best interests.

¹³ MCL 712A.19b(3)(g), (j).

¹⁴ Citing *In re PAP*, 247 Mich App 148, 153; 640 NW2d 880 (2001).

¹⁵ *In re Rood*, 483 Mich 73; 763 NW2d 587 (2009).

¹⁶ *In re JL*, 483 Mich 300, 328, 676; 770 NW2d 853 (2009).

¹⁷ MCL 712A.19b(5).

¹⁸ *In re Trejo*, 462 Mich 341, 364; 612 NW2d 407 (2000).

¹⁹ See *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991).

In summary, we affirm the termination of Amyx-Holmes' parental rights to the older child. With regard to the younger child, we remand for an investigation of whether this child is an Indian child in accordance with the ICWA. If the child is determined to be an Indian child, the proceedings thus far pertaining to termination of parental rights are invalidated. If it is determined that the child is not an Indian child, the termination of Amyx-Holmes' parental rights to the younger child is affirmed. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher