IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-214

Filed 17 October 2023

Mecklenburg County, Nos. 17JT155, 211

IN THE MATTER OF: V.Z.D.T., Z.S-R.B.

Appeal by respondent-mother from order entered 7 December 2022 by Judge Aretha V. Blake in Mecklenburg County District Court. Heard in the Court of Appeals 5 September 2023.

Richard Croutharmel, for respondent-appellant mother.

Kristina A. Graham, for petitioner-appellee Mecklenburg County Department of Youth and Family Services.

Parker Poe Adams & Bernstein, LLP, by Katherine E. Ross, for appellee-guardian ad litem.

FLOOD, Judge.

The juveniles' mother ("Respondent-Mother") appeals from the trial court's order terminating parental rights in two of her children. Respondent-Mother argues the trial court reversibly erred by failing to fulfill its statutory duties under the Indian Child Welfare Act ("ICWA") because the court received evidence indicating the juveniles might be "Indian Children," and the Record lacks evidence showing the court made the requisite inquiries regarding the juveniles' "Indian child" status,

pursuant to ICWA. After careful review, and as explained in further detail below, we affirm the trial court's order.

I. Factual and Procedural History

The following facts and procedural history are derived in part from this Court's opinion in *In re Z.B., A.B., V.T., I.B.L.*, No. COA18-105, 2018 WL 4997430 (N.C. Ct. App. 12 July 2018), and in *In re V.T., Z.B., A.B., I.B.L.*, No. COA19-297, 2020 WL 292170 (N.C. Ct. App. 19 Dec. 2019).

On 18 April 2017, the Mecklenburg County Department of Youth and Family Services ("YFS") filed juvenile petitions alleging neglect and dependency of Respondent-Mother's children—Z.B. ("Zachary"), V.T. ("Victor"), A.B. ("Amy")[1], (collectively, the "children") and I.L.[2]—and obtained nonsecure custody over them. The petitions alleged Victor had excessive unexcused absences from school; Respondent-Mother made false reports regarding Victor's treatment by classmates; Respondent-Mother failed to meet with school personnel to develop reentry and attendance plans for Victor; Victor was regularly subjected to corporal punishment; and Victor was sexually molesting Amy, a fact of which Respondent-Mother was aware but failed to address. The initial Nonsecure Custody Hearing Order, filed in May 2017, provides "[Victor] is African American and Native American.

[1] Pseudonyms are used to protect the identities of the minor children. *See* N.C.R. App. P. 3.1(b), 42(b).

[2] I.L. is not a party to this appeal, as she reached the age of maturity before YFS initiated the termination of parental rights action.

[Respondent-]Mother does not know the tribe but will speak with her grandmother to get the information." The trial court adjudicated the children to be neglected, but not dependent. In November 2017, the trial court entered an adjudication and a disposition order, maintaining Victor in YFS custody and ordering Respondent-Mother to comply with her Family Services Agreement, submit to a parenting capacity evaluation, and continue mental health treatment.

Respondent-Mother appealed the trial court's order to this Court, and we held the trial court failed to make sufficient findings of fact concerning the children. *In re Z.B.*, 2018 WL 4997430, at *4. We vacated the trial court's adjudicatory order and remanded to the trial court for entry of a new adjudicatory order with appropriate findings of fact and conclusions of law, and a new dispositional order if the court adjudicated the children as neglected. *Id.* at *4–*5. On remand, the trial court entered a combined adjudication and disposition order, adjudicating the children as neglected and dependent.

In December 2018, the trial court entered an order granting guardianship of Victor to his foster father. Respondent-Mother appealed the order to this Court, and we vacated and remanded it for a new permanency planning hearing and order, to include whether guardianship is an appropriate permanent plan. *In re V.T.*, 2020 WL 292170, at *7.

On 26 April 2021, the trial court changed the children's primary permanent plan to adoption and ordered YFS to file a termination of parental rights ("TPR")

action within sixty days. In the trial court's Permanency Planning Review Hearing Order, it found, *inter alia*: Respondent-Mother continued to suffer from mental health issues that she had not properly addressed; continued to be oppositional and defiant; and had inappropriately told the children they would be coming home soon. On the same day as the trial court's order, YFS filed a TPR petition, where it alleged: neglect; willingly leaving the children in out-of-home placement for more than twelve months with insufficient progress to reunify; failure to pay a reasonable amount of the cost of care for the children while in out-of-home placement; and dependency.

The TPR petition came on for hearing in March 2022, and the trial court held a total of eight hearings on this matter between 22 March 2022 and 7 July 2022. Over the course of the TPR proceedings, the trial court heard several testimonies.

At the hearing, Respondent-Mother testified that she has "stated . . . from the beginning of the case" that she has Indian heritage, and that her mother, the children's grandmother, had allegedly registered Respondent-Mother as a member of an Indian tribe. At some point prior to 2020, however, Respondent-Mother disclosed to permanency planning social worker Holloman ("Holloman") that "no one in her family is a member of any Native American heritage/tribe[.]" At the TPR hearing, Respondent-Mother did not disclose with any particularity the tribe of which she is allegedly a registered member, but provided her "father is a Cherokee and . . . [on her] father's side, [her] grandfather is a Cherokee and [her] grandmother is a [B]lackfoot."

YFS, in rebuttal to Respondent-Mother's testimony, called social worker Stewart ("Stewart") as a witness, and the following exchange occurred:

> Q. . . . [I]n your capacity as the supervisor over . . . the workers who have been the front line workers for [the children] for the last three years, do you have general knowledge and familiarity with whether or not any of the[] children . . . are actually registered members with any federally recognized Indian tribe?
>
> A. Neither one of the three are.
>
> Q. Okay. And you're certain of that?
>
> A. I am.

Following this exchange, Respondent-Mother's counsel cross-examined Stewart:

> Q. How are you certain?
>
> A. We contact tribes to—when we get parents who say that they have Indian heritage we send notifications to the tribe to identify the child that we have in custody, and they will notify us whether or not they have been a registered tribe member. And we have not received any notification that either child is a registered tribe member.
>
> Q. Okay. Has [YFS] sent out the information to the tribes?
>
> A. To my understanding, yes.

At the close of dispositional evidence, the trial court orally found: "With respect to [ICWA], . . . neither of the . . . children nor [Respondent-Mother] are registered members of a federally recognized Native American Tribe"; "[t]he [c]ourt does not find [Respondent-Mother] to be credible"; and "the [c]ourt has no reason to know that any of the . . . children are Indian children pursuant to [ICWA]." On 7 December 2022,

the trial court entered an order terminating Respondent-Mother's parental rights in Zachary and Victor, but not in Amy[3]. The court, in its written findings of fact, concluded:

> 10. There is insufficient evidence demonstrating that any of the . . . children are registered members of any federally-recognized Native American tribe. Similarly, there is insufficient evidence demonstrating that [Respondent-Mother] was or is a registered member of any federally-recognized Native American tribe. This [c]ourt weighed the credibility of the admissible evidence at trial including the testimony of YFS SWS Stewart and [Respondent-Mother] and the Orders in the underlying matters.
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> 11. Not until [five] years after the . . . children came into YFS custody and during the TPR proceeding did [Respondent-Mother] suddenly offer the names of specific Native American tribes connected to her family or any potential family members. In addition, it was only during the TPR proceeding that [Respondent-Mother] asserted that she went to an unknown location approximately thirty years ago to fill out paperwork related to her alleged Native American ancestry. The [c]ourt does not find [Respondent-Mother] to be credible. The [c]ourt has no credible evidence or reason to know that any of the . . . children are Indian children pursuant to [ICWA].

Respondent-Mother filed timely notice of appeal and requested counsel be appointed to her on appeal.

II. Jurisdiction

[3] The trial court did not terminate Respondent-Mother's parental rights in Amy—who is not a party to this appeal—because she "does not have an identified placement" and she "has gone out of her way, in contravention of prior court orders, to have contact with" Respondent-Mother.

Respondent-Mother's appeal is properly before this Court pursuant to N.C. Gen. Stat. § 7B-1001(a)(7) (2021).

III. Analysis

Respondent-Mother's sole argument on appeal is that the trial court erred in failing to make requisite inquiries regarding the children's[4] "Indian child" status, after receiving evidence indicating the children might be Indian children. We disagree.

Under ICWA, "[w]hen a court knows or *has reason to know* that the subject of a . . . termination-of-parental-rights proceeding is an Indian child, the court must ensure that . . . [t]he party seeking placement promptly sends notice of each such child-custody proceeding . . . in accordance with this section." 25 C.F.R. § 23.111(a), (b) (2016) (emphasis added) ("Notice must be sent to: (1) [e]ach Tribe where the child may be a member (or eligible for membership if a biological parent is a member)[;] . . . (2) [t]he child's parents; and (3) [i]f applicable, the child's Indian custodian."). "'Indian Child' is defined as '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*.'" *In re C.C.G.*, 380 N.C. 23, 29, 868 S.E.2d 38, 43 (2022) (quoting 25 U.S.C. § 1903(4) (2016) (emphasis in original)). "The inquiry into whether a child is an 'Indian child' under ICWA is

[4] For the purpose of our analysis, "the children" is hereinafter in reference to Zachary and Victor, who are parties to this appeal.

focused on only two circumstances: (1) Whether the child is a citizen of a Tribe; or (2) whether the child's parent is a citizen of the Tribe and the child is also eligible for citizenship." *Id.* at 29, 868 S.E.2d at 43 (citation and internal quotation marks omitted). "A court . . . has reason to know that a child involved in [a] . . . child-custody proceeding is an Indian child if . . . [a]ny participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child." 25 C.F.R. § 23.107(2) (2016).

In *In re C.C.G.*, our Supreme Court heard a respondent-mother's challenge to the trial court's order terminating parental rights in her daughter, where respondent-mother argued, *inter alia*, the trial court failed to comply with its duties under ICWA because the trial court had reason to know her daughter was an Indian child. 380 N.C. at 28, 868 S.E.2d at 43. The respondent-mother relied on three documents to argue the court had "reason to know" the child was an Indian child: (1) a DSS court report that explained the respondent-mother "reported there is a possible distant Cherokee relation on her mother's side of the family"; (2) an in-home family services agreement that provided, the "respondent[-mother] reports Cherokee Indian Heritage"; and (3) another DSS court report that explained the "respondent[-mother] reported there is a possible distant Cherokee relation on her mother's side of the family but *no further specifics are known*." *Id.* at 29, 868 S.E.2d at 43 (cleaned up) (emphasis added). Our Supreme Court held,

> [n]one of these documents state [the juvenile] is an 'Indian

> child' and none contain information indicating that [the juvenile] or her biological parents are members or citizens of an Indian tribe. Indian heritage, which is racial, cultural, or hereditary does not indicate Indian tribe membership, which is political. Thus, these statements do not provide reason to know that [the juvenile] is an Indian child[]."

Id. at 29–30, 868 S.E.2d at 43–44 (citations omitted).

Here, Respondent-Mother claimed at the TPR hearing that she is a member of an Indian tribe, which is the first time she disclosed this since the children came into YFS custody in 2017. In fact, prior to the hearing and per Respondent-Mother's disclosure to Holloman, the trial court had reason to believe neither Respondent-Mother nor anyone in her family were members of an Indian tribe. Additionally, in her testimony, Respondent-Mother did not disclose with any particularity the Indian tribe of which she is allegedly a member. She only disclosed possible tribe membership of her father, grandfather, and grandmother and, per *In re C.C.G.*, reports of possible, familial Indian tribe affiliation do not give the trial court reason to know of Indian child status. *See id.* at 29–30, 868 S.E.2d at 43–44.

Other than Respondent-Mother's testimony, the only evidence concerning Indian identity is the initial Nonsecure Custody Hearing Order, which provides Victor has Indian heritage. Documentation of Indian heritage, however, does not give a court "reason to know" of an "Indian child" status, as "Indian heritage, which is racial, cultural, or hereditary does not indicate Indian tribe membership, which is political." *In re C.C.G.*, 380 N.C. at 29–30, 868 S.E.2d at 43–44. As such, the trial

court did not have reason to know of an "Indian child" status in the children, and was therefore not required to make inquiries pursuant to ICWA. *See id.* at 29–30, 868 S.E.2d at 43–44; *see also* 25 C.F.R. § 23.107(a)(2).

Respondent-Mother also contends findings of fact 10 and 11 of the trial court's written order are inconsistent with Stewart's sworn testimony at the TPR hearing, and that this Court cannot discern from Stewart's testimony whether the trial court followed ICWA requirements by inquiring as to whether YFS sent notice to Indian tribes. As explained above, the trial court did not have reason to know of any Indian child status in the children, and it was not required to make inquiries regarding notice. *See* 25 C.F.R. § 23.111. As to the trial court's findings of fact, the Record demonstrates Respondent-Mother's counsel asked Stewart how she can be certain none of the children are registered with a federally-recognized Indian tribe, and Stewart explained YFS's standard procedure in sending notice to the tribes. When Respondent-Mother's counsel then asked Stewart whether "the department sent out information to the tribes[,]" Stewart replied, "[t]o my understanding, yes," which, again, was merely testimony regarding procedures of the YFS. This testimony, which concerned YFS procedure, is not inconsistent with the trial court's findings that it did not have credible evidence of Respondent-Mother's or the children's membership with an Indian tribe, and that it did not have reason to know of any Indian child status in this case. *See In re C.C.G.*, 380 N.C. at 29–30, 868 S.E.2d at 43–44. The trial court did not err.

IV. Conclusion

The trial court did not know or have reason to know of the children having Indian child status, and the court therefore was not required to make inquiries regarding notice under ICWA. Accordingly, we affirm the trial court's order.

AFFIRMED.

Judges ZACHARY and HAMPSON concur.

Report per Rule 30(e).