

Court of Appeals, State of Michigan

ORDER

In re T S T Withers Minor

Docket No. 307972

LC No. 96-349450-NA

Christopher M. Murray
Presiding Judge

Michael J. Talbot

Cynthia Diane Stephens
Judges

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the September 21, 2011, order of the Wayne Circuit Court terminating respondent's parental rights hereby is **CONDITIONALLY AFFIRMED**. In the circuit court, respondent invoked his rights under the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.*, yet the record before this Court does not reflect that petitioner notified the child's Indian tribe of the proceedings by registered mail, return receipt requested, of the right to intervene, if the child is eligible for membership in a tribe that has been federally recognized as eligible for services. Where a respondent's parental rights have otherwise been properly terminated under Michigan law, but the petitioner and the trial court failed to properly comply with the ICWA, the remedy is to conditionally affirm the termination order and remand the matter so that petitioner may provide proper notice to any interested tribe. *In re TM*, 245 Mich App 181, 187; 628 NW2d 570 (2001); *In re IEM*, 233 Mich App 438, 449-450; 592 NW2d 751 (1999). However, the trial court on remand must first decide whether the tribe claimed by respondent is an Indian tribe within the ICWA. *In re Fried*, 266 Mich App 535, 540; 702 NW2d 192 (2005); *In re NEGP*, 245 Mich App 126, 133-134; 626 NW2d 921 (2001). The case is **REMANDED** to the circuit court for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

FEB 23 2012

Date


Chief Clerk