

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MERCEDES LASHELLE
WESTMORELAND, a minor.

UNPUBLISHED
May 10, 1996

KENT COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Petitioner-Appellee,

v

No. 170852
LC No. 921468-00-NA

SANDRA SCHOTTEY,

Respondent-Appellant,

and

MELVIN WESTMORELAND,

Respondent.

Before: Doctoroff, C.J., and Hood and Gribbs, JJ.

PER CURIAM.

Respondent appeals from an order of the probate court terminating her parental rights to the minor child pursuant to MCL 712A.19b(3); MSA 27.3178(598.19b)(3). We affirm.

Respondent argues on appeal that the trial court erred in terminating her parental rights without first complying with the Indian Welfare Act, 25 USC § 1901 et seq. There is no merit to this issue. The act does not apply unless the minor is an Indian child as defined by the provisions of the act. MCR5.974(A)(1). The minor child in this case, while of Indian heritage, is not eligible for membership in a United State tribe recognized by the Secretary of the Interior. 25 USC §1903(8). The Little Saskatchewan Band is not included in the list of tribes eligible for service under the act.. Accordingly, the provisions of the act did not apply in this case. Further, there is nothing in the record to suggest that the minor was eligible for membership in any other tribe. We find no error.

Nor did the probate court clearly err in terminating respondent's parental rights. The rules related to review of termination decisions were summarized in *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). In order to terminate parental rights,, the trial court must find that at least one of the statutory grounds of MCL 712A. 19b; MSA 27.3178(598.19b), has been met by clear and convincing evidence. MCR 5.974(A). *In re Vernia*, 178 Mich App 280, 282; 443 NW2d 404 (1989); *In re Springer*, 172 Mich App 466, 473; 432 NW2d 342 (1988). This Court reviews the probate court's findings of fact under the clearly erroneous standard. *In re Miller*, 182 Mich App 70; 451 NW2d 576 (1990). Once the probate court finds statutory grounds for termination by clear and convincing evidence, the decision whether to terminate is within the court's discretion, and the best interests of the children are to be considered. MCL 712A19b(3); MSA 27.3178(198.19b)(3); formerly MCL 712A.19a; MSA 27.3178(598.19a); *In re Miller*, supra at 84; *In re Schejbal*, 131 Mich App 833, 836; 346 NW2d 597 (1984). Therefore, because the ultimate decision whether to terminate parental rights is discretionary, it is reviewed for an abuse of discretion. *In re Miller*, supra at 84.

In the case at bar, this Court has carefully reviewed the record on appeal, the opinion of the probate court, and the briefs of the parties. We are not persuaded that the trial court erred in finding that the statutory grounds for termination were met and that it was in the best interests of the child to terminate parental rights. Accordingly, we find no abuse of discretion by the trial court in terminating respondent's parental rights.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Roman S. Gibbs