

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of I.D.W.C., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

FELICIA CARD,

Respondent-Appellant,

and

MARCO LOGAN,

Respondent.

UNPUBLISHED

April 10, 2003

No. 244865

Isabella Circuit Court

Family Division

LC No. 01-000106-NA

Before: Jansen, P.J., and Kelly and Fort Hood, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from a circuit court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court did not clearly err in finding that at least one statutory ground for termination had been proved by clear and convincing evidence. *In re IEM*, 233 Mich App 438, 450; 592 NW2d 751 (1999). Respondent had been provided various services while residing with her child in a special facility for young mothers. She used drugs and alcohol while there and then fled, abandoning her child. Although she had since sought out treatment on her own, respondent was no closer to reunification than she had been when the child first came under the court's jurisdiction. Further, the trial court did not clearly err in its determination that the evidence, on the whole record, did not clearly show that termination was clearly not in the child's best interests. *In re Trejo*, 462 Mich 341, 354, 356-357; 612 NW2d 407 (2000); MCL 712A.19b(5). Therefore, the trial court did not clearly err in terminating respondent's parental rights to the child. *Trejo, supra* at 356-357.

We find no merit to respondent's contention that the court failed to comply with the requirements of the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.* Although the court may have failed to inquire into Indian heritage at the preliminary hearing, the matter was addressed and petitioner provided notice of the proceedings to the Tule River tribe, which failed to intervene. Therefore, the burden was on respondent to show that the ICWA still applies. *In re TM (After Remand)*, 245 Mich App 181, 187; 628 NW2d 570 (2001). The ICWA only applies if the child is a tribal member or both eligible for membership in a tribe and the biological child of a tribal member. 25 USC 1903(4). There is nothing in the record to show that the child was the member of any tribe. While his Indian heritage may have made him eligible for membership, it did "not qualify him as an Indian child under § 1903(4)," *In re Johanson*, 156 Mich App 608, 613; 402 NW2d 13 (1986); he still had to be the child of a tribal member to qualify as an Indian child. The evidence showed that respondent was not a member of the Tule River tribe and respondent did not show that she or the child's father was a member of any other tribe. Therefore, respondent did not show that the ICWA still applied.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood