

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RANDOLPH/HARTMAN,
Minors.

UNPUBLISHED
January 23, 2014

Nos. 316831 &316836
Oakland Circuit Court
Family Division
LC No. 2011-780748-NA

Before: SERVITTO, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

In this consolidated appeal,¹ respondent-mother, Rishelle Hartman, appeals by right from the orders of the trial court terminating her rights to the minor child TR,² and respondent-mother and respondent-father, Arthur Lee Hartman II, both appeal by right from the order of the trial court terminating their parental rights to the minor children PH, JH, AH, and IH. With respect to respondent-mother, we affirm; with respect to respondent-father, we conditionally reverse the trial court and remand to resolve the issue of compliance with the notice requirements of 25 USC § 1912(a).

I. PERTINENT FACTS AND PROCEDURAL HISTORY

On January 24, 2011, petitioner filed a petition seeking permanent wardship over TR, PH, JH, and AH, based on allegations that respondent-mother sexually exploited TR by encouraging her to solicit money from a known sex offender while wearing revealing clothing, and that respondent-father sexually abused TR. At the preliminary hearing before a referee on January 26, 2011, a child protective services (CPS) worker testified that TR had been forensically interviewed. TR reported that respondent-mother had taken her to the home of Marvin Eugene Walding so that respondent-mother could borrow money from him; prior to arriving at Walding's home, respondent-mother told TR to "turn on your charm." Respondent-mother apparently received money from Walding while TR waited in the car. When respondent-mother returned to the car, she told TR to go to the house and get more money. TR returned with

¹ *In re Randolph/Hartman Minors; In re Hartman Minors*, unpublished order of the Court of Appeals, issued June 25, 2013 (Docket Nos. 316831 & 316836).

² The parental rights of TR's legal father were not terminated. TR resided with her father throughout the proceedings, and had lived with him most of her life.

twenty dollars. TR stated that Walding had commented on her cleavage and low-cut top. Respondent-mother was aware that Walding was a registered sex offender.

TR also reported that respondent-father had made inappropriate comments about her body when she was in seventh and eighth grade, made her watch pornographic videos with him, and asked her sexually explicit questions while watching them. TR recounted an incident where respondent-father pressed his erection against the back of her leg. The CPS worker testified that respondent-mother was aware of respondent-father's advances towards TR and began taking TR with her everywhere she went; although eventually TR was left home alone again with respondent-father.

During the hearing, the referee inquired whether respondents had any Native American heritage. Respondent-father stated that his great-grandmother was a member of the "Blackfoot" Indian tribe, but that he himself was not a tribe member, nor had he attended any tribal events, nor to his knowledge had any other member of his family. The referee authorized the petition.

A bench trial was held on June 14, 2011. Respondent-father entered a no contest plea to the trial court's assertion of jurisdiction and finding of statutory grounds for termination over PH, JH, and AH, and requested a hearing on best interests. Respondent-father's plea only provided the court with jurisdiction over PH, JH, and AH. The trial proceeded to determine whether there was a basis for the court to assert jurisdiction over TR and whether a statutory ground for termination could be proven.

TR testified to the events discussed at the preliminary hearing. TR additionally testified that she told her father's girlfriend, and then told respondent-mother and her "Auntie Nini," about the abuse, in order to protect her younger sister, PH, and her siblings. TR testified that when PH played with her Barbie dolls, she would make them "hump." TR testified that PH had not acted that way before TR was abused by respondent-father.

The CPS worker who authored the petition testified that respondent-mother admitted to taking TR to Walding's home, and that respondent-mother was aware of his status as a registered sex offender who had committed a sex offense against a minor. The CPS worker stated that respondent-mother had denied that any money was exchanged in this encounter and denied that TR exposed her breasts. Both parties denied that respondent-father had shown TR pornographic videos or rubbed his erection on TR's leg. Respondents did not present any witnesses. The trial court determined on the basis of TR's testimony that petitioner had met its burden of proof to establish both the court's jurisdiction over TR and statutory grounds for termination.

A best interests hearing was held on August 2, 2011. Petitioner offered psychological evaluations of respondent-mother and TR into evidence. The foster care worker assigned to the case testified that parenting time was going well for both parents and that the children seemed bonded to the parents. A child and family worker for Orchard Children's Services testified that she had referred both respondents to parenting classes, but they were dropped for nonattendance. She testified that respondents arrived together for supervised parenting time. The trial court, after reviewing the psychological evaluations and testimony, stated that it believed that respondent-father had been "grooming" TR and that respondent-mother was aware of what was going on. Nonetheless, the trial court did not find that it was in the children's best interests to

terminate respondents' parental rights, although it described the situation as a "very close call." The trial court continued the matter as a temporary wardship.

On August 23, 2011, respondent-mother gave birth to IH. Petitioner filed a petition asking the court to assert jurisdiction over IH due to respondents' failure to rectify the conditions that led to the removal of the other children. The petition further alleged that respondent-father was currently serving one year in the Oakland County jail for a misdemeanor substance abuse offense. The trial court authorized the petition following a preliminary hearing on September 12, 2011.

On September 22, 2011, respondents both pleaded no contest to the new petition, and the referee adopted parent-agency agreements for both respondents. Respondent-father was brought from the Oakland County Jail, as he was presently incarcerated. Respondent-father had not completed his parenting time due to being incarcerated, and was scheduled to be released on December 18, 2011. The trial court ordered that respondent-father have no contact with the children until he completed sex offender treatment.

Several permanency planning and review hearings were conducted between December 14, 2011 and January 14, 2013. On December 14, 2011, the court reiterated that respondent-father's parenting time was suspended until he began and benefitted from sex offender treatment, and respondent-mother's parenting time was reduced to supervised day visits because respondent-mother had allowed respondent-father to talk to the children on the phone in violation of the trial court's no-contact order. Following respondent-father's release from jail, he had not obtained suitable housing or employment, begun individual therapy and sex offender treatment, or complied with drug screens by March 8, 2012; however he had completed parenting classes. Respondent-father was provided with the information to make intake appointments for these services. Respondent-father's visitation remained suspended; respondent-mother was granted overnight visits at petitioner's discretion.

On April 3, 2012, respondent-mother's visitation was modified back to supervised day visitations after the trial court was informed that PH had disclosed to another foster child that when she was five years old (two years before), respondent-father had her sit on his lap and he was not wearing pants. The foster care worker testified that respondent-mother seemed "unconcerned" when learning of this statement.

By the hearing on June 7, 2012, respondent-mother had regained weekly overnight visits with her children in her home; respondent-father's visits were still suspended until he complied with his treatment plan and completed sex offender treatment.

At the September 6, 2012 hearing, an employee of Orchard Children's Services testified that the reunification of the children with respondent-mother had occurred and was going well. Respondent-mother had completed individual therapy and had maintained suitable housing; she was collecting unemployment compensation and would be starting a temporary job the following week. Respondent-father was residing in an inpatient substance abuse program in Detroit and was participating in individual therapy, sex offender treatment, and random drug screens. Respondent-mother's counsel indicated that respondent-mother was seeking to divorce

respondent-father. The trial court indicated that it wanted to close the case and instructed respondent-mother to seek to obtain custody of the children.

Unfortunately, respondents' situation began to worsen almost immediately. A review hearing was scheduled for December 6, 2012; however, neither respondent was present. Counsel for respondent-father stated that respondent-father had left her a voicemail message stating that he wanted to cancel visitation with the children and wanted to sign over his parental rights to the children. Counsel for respondent-mother stated that respondent-mother was in the hospital for severe stomach problems, and further that the children could not be located. The children were located at a motel, where they had been staying with respondent-mother; however respondent-mother did not have money to pay for another night's stay. The trial court ordered emergency removal of the children.

At the permanency planning and review hearing on December 14, 2012, both respondents were again absent. The children had been removed and placed in three separate foster homes. There had been no contact with respondent-father since November 14, 2012; his phone number was disconnected and he did not reside at his last known address. The children were doing well at their respective placements. Respondent-mother had lost her unemployment compensation and was being evicted for failure to pay rent. Respondent-mother had missed an appointment for an assessment of a potential home and had failed to provide certain necessary documentation.

On January 14, 2013, a permanency planning hearing was held. Neither respondent was present. The referee received information that respondent-mother was allegedly in the hospital for a rib injury, and was also homeless. Additionally, the Orchard Children's Services worker testified that respondent-mother had missed two family visits due to being in jail for felonious assault, although respondent-mother "self-reports that charges were dropped." Respondent-mother had failed to complete a form for IH to receive needed dental care. The worker also testified that she had received a voicemail from respondent-father stating that he wished to continue to care for his children. The referee ordered petitioner to file a petition seeking the termination of respondents' parental rights to all children.

Petitioner filed such a supplemental petition on January 30, 2013. A pretrial on the supplemental petition was held on February 27, 2013. Respondent-father was not present, respondent-mother was present by telephone. Respondent-father's counsel informed the referee that respondent-father wished to reinstate his visitation. Respondent-mother's counsel stated that, according to respondent-mother, respondent-father was in the Wayne County Jail following his arrest for possession of cocaine. A hearing on the supplemental petition was scheduled for March 26, 2013.

On March 26, 2013, a permanent custody hearing was held. Petitioner presented the testimony of a foster care worker, who testified that respondent-mother had completed individual and family therapy but had only "partially benefitted," as her multiple encounters with law enforcement indicated poor decision making. Respondent-mother also completed a drug treatment program and benefitted from it. Respondent-mother had missed several court hearings and had not maintained consistent parenting time with the children, in part due to her arrest for felonious assault. Respondent-mother was not able to maintain appropriate housing or a legal source of income, had received at least one eviction notice for nonpayment of rent, and had lived

with the children in a motel following an eviction. Respondent-mother misrepresented to the agency that her children were with their grandmother when in fact they were living in the motel. Respondent-mother was not able to maintain a living situation without assistance and had yet to sign a lease at her current apartment.

Respondent-father failed to complete a drug treatment program, was not compliant with drug screening, and tested positive for cocaine in June of 2012. Respondent-father had failed to maintain contact with the agency or complete individual, family, or sex offender therapy. Respondent-father did complete parenting classes, but the worker testified that she was unsure if he benefitted from the classes. Respondent-father was currently incarcerated for possession of a controlled substance, and had never obtained appropriate housing or a legal source of income. He had missed several court hearings and parenting time visits. However, both respondents were appropriate during their parenting time visits.

The trial court found that the statutory bases under MCL 712A.19(b)(3)(c)(i), (g), and (j) had been established by clear and convincing evidence, and scheduled the case for a best interest hearing. At the best interest hearing, the court received testimony from several foster care workers, respondent-mother, and Dr. Douglas Park, an expert witness in psychology who performed respondent-mother's psychological evaluation. Park testified that respondent-father did not appear for his psychological evaluation. With regard to respondent-mother, Park testified that respondent-mother had informed him about two recent contacts with the police, one where she was charged with felonious assault but the charge was later dismissed, and another where she was arrested for providing her maiden name to the police instead of her married name and was sentenced to community service. Respondent-mother admitted to relapsing with alcohol in December of 2012 and February of 2013. She denied having had any contact with respondent-father since he was accused of sexually abusing TR.

Park also testified that respondent-mother displayed a high degree of "defensiveness" and also displayed dependency and fear of abandonment. Park also met with the three older children, and testified that TR told him she did not want to live with her mother. TR also told Park about respondent-father's sexual abuse. Park testified that PH was anxious about the situation and was bonded to her mother; however "the bond was more a matter of the kind of what she wants her mother to be as opposed to who her mother has been." Finally, Park stated that he had evaluated JH and did not feel that JH had a strong bond with respondent-mother.

Park opined that it was in the children's best interest to terminate respondent-mother's parental rights, based on the instability of her housing, her drinking, and the possibility of her continuing a relationship with respondent-father. He also believed that respondent-mother would have difficulty empathizing with the children and would not be able to provide proper care and custody within a reasonable amount of time.

A foster care specialist testified that at the time the supplemental petition was filed, both respondents lacked suitable housing and a legal source of income. Since that time, respondent-mother had obtained housing, but was not current on rent or the security deposit, nor were the utilities in her name. The specialist believed that respondent-mother would be unable to maintain the housing. Respondent-mother had obtained part-time employment, but the specialist did not believe she would be able to support herself and the children on her earnings.

Respondent-mother was currently on probation. Respondent-mother had advised the specialist that she was returning to school and would have additional income from student loans.

With regard to respondent-father, the specialist testified that he did not contact her upon his release from jail, and she had no information concerning his living situation, source of income, or compliance with substance abuse treatment. Respondent-father's parenting time was currently suspended.

The specialist also testified that IH presented with severe tooth decay when he returned to foster care after being in respondent-mother's care. The specialist concluded that it was in the best interest of all the children to terminate respondents' parental rights.

An additional foster care specialist also testified that TR was doing fine residing with her legal father, and opined that it was in TR's best interest to terminate respondent-mother's parental rights because respondent-mother was not likely to provide a stable home for her children in the future.

Respondent-mother was called to testify by the lawyer guardian ad litem (LGAL). She acknowledged that she had relapsed with alcohol in 2013 and had admitted herself to a Sober Living Program. She had not informed the caseworkers of her relapse or entry into the program. She testified that she currently resided in a three-story duplex. She was still legally married to respondent-father but was seeking to divorce him. Respondent-mother stated that when she was arrested in February for felonious assault, respondent-father was present, but that it was just coincidental. Respondent-mother admitted that she lied to petitioner about her eviction and her entry into Sober Living.

With regard to respondent-father, the referee noted that before his incarceration, he had every opportunity to comply with the parent-agency agreement and did not do so. The referee also noted his lack of bonding with any of the children and lack of self-discipline, which could put his children at risk. The referee found that it was in the children's best interests to terminate his parental rights to all of his children.

With regard to respondent-mother, the referee referred to Park's testimony concerning her lack of consistency and failure to follow through, as well as her lack of truthfulness with petitioner and the court. The referee recognized a substantial risk that respondent-mother would be evicted soon and found that, despite respondent-mother's bond with the children, she would not be able to consistently provide a safe, suitable environment for the children. The referee found that it was in children's best interests to terminate her parental rights to all of her children. The trial court issued orders terminating respondents' parental rights. Respondents' appeals followed.

II. RESPONDENT-MOTHER – DOCKET 316831

Respondent-mother argues that the trial court erred in terminating her parental rights to all five children, because it erred in holding that a statutory ground for termination was proven by clear and convincing evidence, and further erred in determining that termination would be in the children's best interest. We disagree.

A. STATUTORY GROUNDS FOR TERMINATION

Respondent-mother first argues that the trial court erred in finding a statutory ground for termination had been proven, because the record shows that respondent-mother completed her parent-agency agreement (PAA) and had benefitted from the services. We review a trial court's decision regarding termination for clear error. MCR 3.977(K); see also *In re Mason*, 468 Mich 142, 152; 782 NW2d 747 (2010). A decision is clearly erroneous if this Court, in reviewing the entire record, is left with the definite and firm conviction that a mistake has been made. See *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003).

In order to terminate a respondent's parental rights, a court must first find that a statutory basis for termination has been proven by clear and convincing evidence. *In re JK*, 468 Mich at 211. Clear and convincing evidence creates in the mind of the fact-finder "a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the fact-finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *Hunter v Hunter*, 484 Mich 247, 265; 771 NW2d 694 (2009).

Here, the trial court found that statutory grounds for termination existed under MCL 712A.19(b)(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (parent without regard to intent fails to provide proper care or custody for the children and there is no reasonable expectation that the parent will be able to provide proper care within a reasonable time), and (j) (reasonable likelihood that child will be harmed if he or she is returned to the home of the parent).

With regard to subsection (c)(i), the initial conditions that led to the adjudication were that respondent-mother's home was an unfit place for minor children to live, principally due to respondent-mother's sexual exploitation of TR, respondent-father's sexual abuse of TR, and respondent-mother's failure to protect TR from such abuse. Considerably more than 182 days elapsed between the issuance of the dispositional order and the trial court's finding that this statutory ground was proven. See MCL 712A.19(b)(3)(c). Thus, the question is whether "The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time." See MCL 712A.19(b)(3)(c)(i).

In order to rectify the conditions that led to adjudication, respondent-mother entered into a PAA that required her to attend parenting classes, individual therapy, family therapy, domestic violence class, sexual abuse education, and substance abuse counseling, as well as maintain suitable housing and a legal source of income. The record reflects that respondent-mother completed individual and family therapy; however her case worker testified that she only "partially benefitted" from these services, due to her continued issues with law enforcement that represented poor decision making. Respondent-mother also completed a drug treatment program and benefitted from it. However, respondent-mother had missed several court hearings, had not maintained consistent parenting time with the children, and had been recently arrested for felonious assault. Respondent-mother had been evicted from at least one residence during the pendency of these proceedings for nonpayment of rent, forcing the emergency removal of the children. The referee found that respondent-mother would not be able to maintain a residence

without assistance or maintain a sufficient legal source of income to care for her children. Respondent-mother had also failed to sever her relationship with respondent-father.

It is not enough for a respondent to merely comply with their PAA; he or she must also benefit from the services offered. *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005), superseded in part on other grounds by statute as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010). Here, although respondent-mother completed several components of her PAA, she only “partially benefitted” from these services. At the time the referee determined that this statutory ground was proven, respondent-mother had recently been evicted from her home and had been untruthful with the agency about her eviction. She had also recently been arrested for felonious assault. Although she had housing, she had not yet signed the lease and had not demonstrated an ability to make rent and utility payments without assistance. Thus, respondent-mother did not fully comply with and benefit from her PAA. Further, because her sexual exploitation of TR was based on obtaining money, the fact that she had an unstable housing situation and insufficient income was relevant to the determination of whether the conditions that led to adjudication continued to exist. We find that the trial court did not clearly err in finding that this statutory ground for termination was proven.

As for subsection (g), the same evidence indicates that without regard to respondent-mother’s intent, she failed to provide proper care or custody for her children, and there was no reasonable expectation that the respondent-mother would be able to provide proper care within a reasonable time. As stated, respondent-mother was recently evicted, necessitating an emergency removal of the children. Respondent-mother was also recently arrested, and despite the fact that she had received services from petitioner for over two years, her housing situation was precarious and her income was insufficient. Finally, her relationship with respondent-father had not been severed. The trial court did not clearly err in finding that this statutory ground for termination was proven.

Finally, with regards to subsection (j), respondent-mother’s conduct presented a reasonable likelihood that the children would be harmed if returned to her home. In fact, the last time the children were in her care, emergency removal was required. Respondent-mother was also untruthful with petitioner about the location of her children and their living situation. At the time of the hearing, if the children had been returned to her home, they would have been returned to a precarious home and may well have required another emergency removal following eviction. The trial court did not clearly err in finding that this statutory ground for termination was proven.

Although the trial court was required to find only one statutory ground for termination was proven by clear and convincing statutory evidence, see MCL 712A.19b(5); MCR 3.977(H)(3)(b); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009), we find that the trial court did not clearly err in finding that petitioner had proven all three of the listed statutory grounds by clear and convincing evidence.

B. BEST INTEREST DETERMINATION

Respondent-mother next argues that the trial court erred in determining that termination of her parental rights was in the children's best interest, because the trial court's finding was based on mere speculation. We disagree.

Once the petitioner establishes a single statutory ground under MCL 712A.19b(3) to terminate a parent's parental rights, the lower court must do so if it finds that termination is in the best interests of the children. MCL 712A.19b(5); MCR 3.977(H)(3)(b); *In re Jones*, 286 Mich App at 129. "[W]hether termination of parental rights is in the best interests of the child[ren] must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 336 NW2d 182 (2013). The court must weigh all evidence in the whole record to determine whether termination of parental rights is in the best interests of the children. *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). The court should consider the parent's capacity to care for children, as well as the children's "need for permanency, stability, and finality." *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012).

Respondent argues that the trial court based its finding that termination would be in the children's best interest on the possibility that respondent-mother would stay in an abusive relationship, begin drinking again, return to respondent-father, and fail to maintain a stable home. We disagree.

The record of the best-interest hearing indicates that respondent-mother had had contact with respondent-father in February, and had not pursued divorce proceedings. Further, the record shows respondent-mother's documented difficulties in maintaining a stable home, as well as testimony that her current living situation was precarious and her plan for the future involved spending student loan money on living expenses. All workers involved in her case testified that they did not believe respondent-mother could support her children and that termination would be in the children's best interest. Respondent-mother had recently relapsed with alcohol on two separate occasions. Finally, the trial court heard testimony that it was in TR's best interest to remain with her father.

In sum, it is clear that respondent-mother continued to make poor choices, struggle with substance abuse, and lacked the ability to adequately care for and protect her children. Evidence of respondent-mother's past conduct, combined with evidence of her current poor choices, sufficed to allow the trial court to conclude that termination was in the children's best interest. See *In re JL*, 483 Mich 300, 331-332; 770 NW2d 853 (2009). Additionally, the children were entitled to stability and permanency in their lives. We conclude that the trial court did not err in terminating respondent-mother's parental rights.

We therefore affirm the trial court's termination of respondent-mother's parental rights to all of her children.

III. RESPONDENT-FATHER – DOCKET 316836

Respondent-father argues that the trial court erred in failing to abide by the notice provision of the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.*, and also erred in holding that statutory grounds for termination had been proven and that it was in the children's

best interest to terminate his parental rights. We disagree regarding statutory grounds and the trial court's best interest determination, but we conditionally reverse and remand for compliance with the ICWA.

A. STATUTORY GROUNDS FOR TERMINATION

As with respondent-mother, the trial court found that statutory grounds for termination existed under MCL 712A.19(b)(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (parent without regard to intent fails to provide proper care or custody for the children and there is no reasonable expectation that the parent will be able to provide proper care within a reasonable time), and (j) (reasonable likelihood that child will be harmed if he or she is returned to the home of the parent).

Regarding subsection (c)(i), respondent-father argues that services were not provided to him while he was in jail, and that his incarceration rendered him unable to comply with his PAA. However, the record indicates that respondent-father was not incarcerated for the majority of the more than two years these proceedings were pending. Further, more than 182 days elapsed between respondent-father's release from incarceration in December 2011 and his subsequent incarceration just weeks before the March 26, 2013 review hearing. The record shows that respondent-father made almost no effort comply with his PAA. He failed to complete a drug treatment program, was not compliant with drug screening, and tested positive for cocaine in June of 2012. He additionally failed to complete individual, family, or sex offender therapy. Although respondent-father did complete parenting classes, his case worker testified that she was unsure if he benefitted from the classes. Respondent-father never obtained appropriate housing or a legal source of income.

As stated, the conditions that led to adjudication include respondent-father's sexual abuse of TR. As respondent-father failed to comply with his PAA and failed to receive sex offender therapy or indeed any form of therapy, the trial court did not clearly err in determining that this condition continued to exist. Respondent-father was given a great many chances to comply with his PAA, and was provided with referrals and assistance in obtaining services, yet almost entirely failed to do so.

Similarly, with regard to the remaining subsections, at no point in the proceedings did respondent-father demonstrate stable housing or a legal source of income. Respondent-father also tested positive for cocaine and was arrested for possession of a controlled substance. Finally, respondent-father did not seek treatment related to his sexual abuse of TR. There was no evidence offered that respondent-father could provide appropriate care or custody for his children, and he presented a substantial risk to the children if they were to be placed in his care. We find that the trial court did not err in determining that subsections (g) and (j) were proven by clear and convincing evidence.

B. BEST INTEREST DETERMINATION

Respondent-father also argues that the trial court erred in determining that termination of his parental rights to his four children was in their best interest. Respondent-father essentially repeats his argument that he was not able to work on his PAA because he was incarcerated, and

states that “[s]ometimes it takes a few tries to get on the right track.” However, the record reveals that respondent-father was given two years, during the majority of which he was *not* incarcerated, in which to “get on the right track,” yet he failed to make any significant progress towards doing so. Respondent-father also argues that his children are bonded with each other and that it would be in their best interest to live together as a family. While his children may share a bond with each other, that bond does not outweigh the substantial risk to their well-being that would come from having respondent-father in their lives. The record of the best interest hearing indicates that respondent-father still had not presented evidence of a stable living situation, legal source of income, or compliance with substance abuse or sex offender treatment. Further, the record indicates that none of his children felt a bond with him. After two years, respondent-father’s children deserved some stability and permanency in their lives. See *In re Frey*, 292 Mich App 242, 248-249; 824 NW2d 569 (2012). The trial court did not clearly err in determining that respondent-father would not be able to provide such stability and permanency and that therefore termination of his parental rights was in the children’s best interest.

C. ICWA

Finally, respondent-father argues that the trial court erred in failing to abide by the notice provision of the ICWA. Title 25 USC § 1912(a) provides in pertinent part:

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary

Our Supreme Court has recently examined the ICWA’s notice provision. *In re Morris*, 491 Mich 81; 815 NW2d 62 (2012). In *Morris*, our Supreme Court noted “the standard for triggering the notice requirement of 25 USC 1912(a) must be a cautionary one” and that “sufficiently reliable information of virtually any criteria on which tribal membership might be based suffices to trigger the notice requirement.” *Id.* at 88-89. Our Supreme Court also noted that the circumstances under which a court may have reason to know that a child involved in a child custody proceeding is an Indian child include situations where a parent of the child informs the trial court of his or her Native American heritage. *Id.* at 109.

Here, respondent-father indicated to the referee that his great-grandmother was a member of the “Blackfoot” tribe. Although petitioner argues that there is no such tribe as “Blackfoot,” the BIA’s list of federally recognized Indian tribes includes “the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.” See <http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx> (last visited December 30, 2013). Respondent-father

points out that the name “Blackfoot” was used by the federal government in the Treaty with the Blackfeet of 1855, which recognized the existence of a Blackfoot Tribe and Blackfoot Nation. See Treaty with the Blackfeet, 11 Stat 657 (October 17, 1855). Thus, mindful of our Supreme Court’s statement that “[i]f there must be error in determining whether tribal notice is required, let it be on the side of caution[,]” *Morris*, 491 Mich at 108, we hold that respondent-father provided sufficient indicia of Indian heritage to the trial court to require tribal notice. If the identity of the tribe is uncertain, 25 USC § 1912(a) allows notice to be given to the Secretary of the Interior. Here, the record does not indicate that any notice was given.

Our Supreme Court in *Morris* also discussed the appropriate remedy for failure to comply with 25 USC § 1912(a). *Morris* held that “the proper remedy for ICWA-notice violations is to conditionally reverse the trial court and remand for resolution of the ICWA-notice issue.” *Id.* at 122.

We therefore conditionally reverse the trial court’s termination of respondent-father’s parental rights, and remand to the trial court for resolution of the notice issue. On remand, the trial court shall ensure that notice is properly made to the appropriate entities. If the children are not Indian children or the properly noticed tribes or government entities do not respond within the allotted time, the trial court’s termination of respondent-father’s parental rights is reinstated. If, however, the trial court concludes that the ICWA does apply to the proceedings, the trial court’s termination of respondent-father’s parental rights to his four children must be vacated and proceedings begun anew in compliance with the procedural and substantive requirements of the ICWA.

Affirmed as to respondent-mother in Docket 316831; conditionally reversed as to respondent-father in Docket 316836, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Christopher M. Murray
/s/ Mark T. Boonstra