

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of SUAVÉ ALEXANDER  
STEPHENS, ZAVONTE MARTELL STEPHENS,  
and RAYMONI LOVE STURGIS, Minors.

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DEPARTMENT OF HUMAN SERVICES, f/k/a  
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JENNIFER SABRINIA STEPHENS, a/k/a  
JENNIFER SABRINA STEPHENS,

Respondent-Appellant,

and

URIAN RAMON STURGIS,

Respondent.

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In the Matter of RAYMONI LOVE STURGIS,  
Minor.

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DEPARTMENT OF HUMAN SERVICES, f/k/a  
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

URIAN RAMON STURGIS,

Respondent-Appellant,

and

UNPUBLISHED  
March 29, 2007

No. 271015  
Wayne Circuit Court  
Family Division  
LC No. 04-435191-NA

No. 271016  
Wayne Circuit Court  
Family Division  
LC No. 04-435191-NA

JENNIFER SABRINIA STEPHENS, a/k/a  
JENNIFER SABRINA STEPHENS,

Respondent.

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Before: Jansen, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

In Docket No. 271015, respondent Jennifer Stephens appeals as of right the order terminating her parental rights to minor children Zavonte Stephens, Suavé Stephens, and Raymoni Sturgis, pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (c)(i), (g), (j), and (k)(iii). In Docket No. 271016, respondent Urian Sturgis appeals as of right the order terminating his parental rights to minor child Raymoni Sturgis under the same subsections.<sup>1</sup> We affirm.

## I

Respondents first argue that the court erred in failing to delay the trial to make appropriate inquiry regarding the children’s status under the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.* Whether the circuit court satisfied the requirements of the ICWA is a legal question that is reviewed de novo. *In re IEM*, 233 Mich App 438, 443; 592 NW2d 751 (1999).

In cases involving Indian children, both the ICWA standard and the state standard for termination of parental rights must be met. *In re SD*, 236 Mich App 240, 246; 599 NW2d 772 (1999). The ICWA standard requires evidence “beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody . . . is likely to result in serious emotional or physical damage to the child.” 25 USC 1912(f); MCR 3.980(D); see also *In re Elliott*, 218 Mich App 196, 209-210; 554 NW2d 32 (1996). An “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.” 25 USC 1903(4). “The ICWA does not apply to proceedings in which the child is not an ‘Indian child,’” and “it is for the tribe to determine whether a child is an ‘Indian child[.]’” *In re Fried*, 266 Mich App 535, 539-540; 702 NW2d 192 (2005).

Respondents did not raise this issue until the termination hearing had already begun. Both respondents were present at the preliminary hearing for Raymoni. There, the referee asked the caseworker whether she had any information that Raymoni was a tribe member, and the caseworker responded “no.” Neither respondent objected to this answer. Similarly, at the preliminary hearing for Suavé and Zavonte, the caseworker informed the referee that neither the children nor the parents were tribal members.

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<sup>1</sup> James Buckley is the father of Zavonte Stephens and Suavé Stephens. Buckley’s parental rights to these two minor children have not been terminated.

The record in this matter does not indicate that the minor children are Indian children. Although respondents now claim that one or two of the children's great-grandparents may have been listed on tribal rolls, the circuit court was presented with no specific evidence to indicate that any of the children was an "Indian child" for purposes of the ICWA. The tribal notice requirements of the ICWA are invoked only if the court's inquiries disclose that a child is in fact an Indian child. MCR 3.965(B)(9). Here, the referee made the required inquiries, and it was not disclosed that any of the children was an Indian child. Therefore, we find that the court's duty of inquiry was satisfied.

Moreover, mere suggestions that a child may have Indian heritage, if unsupported by further evidence that the child in fact qualifies as a tribal member, are insufficient to invoke the procedural requirements of the ICWA. "The fact that [a child] may have Indian heritage does not qualify him as an Indian child under § 1903(4)." *In re Johanson*, 156 Mich App 608, 613; 402 NW2d 13 (1986). We are convinced that the circuit court would have applied the provisions of the ICWA had it possessed any real evidence that the minor children qualified as Indian children under the ICWA. *Id.* We find no error in the circuit court's decision to forgo further inquiry concerning whether the minor children fell within the provisions of the ICWA.

## II

Respondents also argue that admission of Zavonte's hearsay statements was erroneous because no pretrial hearing was held to determine the trustworthiness of the statements and because petitioner did not give notice of its intent to use the hearsay statements. Respondents contend that because Zavonte's statements revealed "new or different" allegations than those contained in the original petition, MCR 3.977(F), other legally admissible evidence was required. We disagree.

Evidentiary rulings are reviewed in general for an abuse of discretion. *People v Smith*, 456 Mich 543, 550; 581 NW2d 654 (1998). However, issues of law and procedure in termination cases are reviewed de novo. *In re CR*, 250 Mich App 185, 200; 646 NW2d 506 (2002).

Reversal is not required by the trial court's admission of Zavonte's hearsay statements concerning abuse by respondent Urian Sturgis. At the time of the proceedings below, MCR 3.972(C)(2)<sup>2</sup> provided in pertinent part:

Any statement made by a child under 10 years of age . . . regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in MCL 722.622(e), (f), (r), or (s), performed with or on the child by another person may be admitted into evidence through the testimony of the person to whom the statement is made as provided in this subrule.

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<sup>2</sup> The text of MCR 3.972(C)(2) was amended in 2006. However, this 2006 amendment is not relevant for purposes of our review in these consolidated appeals.

(a) A statement describing such conduct may be admitted regardless of whether the child is available to testify or not, and is substantive evidence of the act or omission if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness. This statement may be received by the court in lieu of or in addition to the child's testimony.

As an initial matter, and contrary to respondents' contention that no notice was given, petitioner in fact gave timely notice under MCR 3.972(C) of its intent to present Zavonte's hearsay statements as substantive evidence. We concede that no separate hearing was held as envisioned by the court rule. However, the absence of a hearing to determine trustworthiness under MCR 3.972(C)(2) does not require reversal in this case.

Respondents pleaded no contest to the petition. The Inkster police report, petitioner's investigative summary, and the November 2004 ISP/PAA were used as factual bases for accepting respondents' pleas. These documents contained independent references to respondent Urian Sturgis's abuse of Zavonte, specifically mentioning that respondent Urian Sturgis had caused burns, bruises, and marks, and also mentioning that he had beaten and whipped Zavonte with a belt. While these references were not absolutely identical to the statements Zavonte later made to David Herron and Laura Sheldon regarding abuse by respondent Urian Sturgis, they did show the existence of abuse and were substantially related to the accounts of abuse that Zavonte subsequently revealed. Thus, despite respondents' argument to the contrary, the allegations of abuse contained in Zavonte's own subsequent statements were not "new or different" allegations than those contained in the original petition. MCR 3.977(F). Because Zavonte's hearsay statements did not allege "new or different" circumstances of abuse, other admissible evidence was not required to substantiate the allegations. MCR 3.977(F).

Moreover, even if a "tender years" hearing had been held under MCR 3.972(C), Zavonte's hearsay statements would have been found admissible. The evidence showed that Zavonte's statements were reliable. *In re Brimer*, 191 Mich App 401, 405-406; 478 NW2d 689 (1991). Zavonte's statements to Laura Sheldon and David Herron were quite consistent, and no evidence was elicited to suggest that improper methods were used in speaking with Zavonte, that the child was coerced, or that he was in any way unfairly induced into making his statements. *Id.* There was also no evidence that Zavonte had fabricated his statements in this regard. *Id.* Finally, respondents' own admissions corroborated some of Zavonte's statements. For instance, respondent Urian Sturgis admitted that he had punished Zavonte by forcing him to stand in a closet and to stand with his arms outstretched for long periods of time. Because a "tender years" hearing under MCR 3.972(C) would have established the trustworthiness of Zavonte's hearsay statements, and because the other evidence against respondents was clearly and convincingly sufficient to terminate their parental rights, we conclude that any error in this regard was harmless. We will not reverse on the basis of error that is not decisive to the outcome. *In re Gazella*, 264 Mich App 668, 675; 692 NW2d 708 (2005); see also MCR 2.613(A).

### III

Lastly, respondents argue that there was insufficient evidence to support the trial court's termination of their parental rights to the minor children. We disagree. To terminate a respondent's parental rights, the petitioner must prove by clear and convincing evidence the

existence of at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the court must terminate the respondent's parental rights unless it finds that termination is clearly contrary to the best interests of the children. *Id.* at 364-365. We review the trial court's findings in both regards for clear error. *Id.* at 356-357. A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondents' parental rights were terminated under MCL 712A.19b(3)(b)(i), (b)(ii), (c)(i), (g), (j), and (k)(iii). It appears that there was insufficient evidence to terminate respondent mother's parental rights under subsections (b)(i) and (k)(iii).<sup>3</sup> Petitioner's theory was not that respondent mother independently abused the minor children, but that respondent mother failed to protect Suavé and Zavonte from abuses committed by respondent Urian Sturgis. The only abuse arguably committed by the mother herself came from various offhand references to spanking Zavonte or whipping Zavonte and Suavé with a belt. However, there was no evidence that these punishments, if abusive, caused "physical injury" within the meaning of MCL 712A.19b(3)(b)(i), or that they were in fact "severe" within the meaning of MCL 712A.19b(3)(k)(iii).

Nonetheless, we conclude that there was sufficient evidence presented to support termination of respondent mother's rights under subsections (b)(ii) (failure to protect), (c)(i) (conditions leading to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm if child returns to parent's home). Respondent mother clearly failed to protect both Suavé and Zavonte from respondent Urian Sturgis's abuse or neglect. Respondent Urian Sturgis bathed Suavé in scalding hot water, either negligently or as a punishment for failures in toilet training. The child's injuries caused by this incident were quite severe, as evidenced by the photographs accompanying the Inkster police report. Moreover, this incident did not represent the first time that Suavé was injured by respondent Urian Sturgis. When brought to a pediatric clinic in 2004, Suavé had several bruises, marks, and burns on his body. The police did not proceed with charges against respondent Urian Sturgis because of the mother's refusal to cooperate. However, it was nevertheless clear that Urian Sturgis had caused the injuries.

Zavonte also claimed abuse by respondent Urian Sturgis. However, respondent mother stood by and allowed this abuse to happen repeatedly. Respondent mother was hesitant to speak up when respondent Urian Sturgis was present, and nearly all witnesses believed that she would be unable to protect the children from him in the future. Moreover, while respondent mother did cooperate with services, she did not benefit sufficiently to safely return the children to her care. *In re Gazella, supra* at 676-677.

The evidence against respondent Urian Sturgis was strong. While caseworkers termed him "in compliance" in their reports, their testimony clarified that he was in compliance only

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<sup>3</sup> However, this does not affect our decision because there was sufficient evidence to terminate respondent mother's rights under other subsections. Only one statutory ground need be proved to support termination of a respondent's parental rights. *In re Gazella, supra* at 678.

insofar as physically attending services, and not in terms of benefiting from those services. Respondent Urian Sturgis also continued to worsen in his demonstrations of anger towards petitioner. He was initially appropriate in some of his interactions with Raymoni, but later scared the child with his angry outbursts. Further, instead of showing remorse or regret for abusing Suavé and Zavonte, Urian Sturgis blamed Zavonte. Zavonte was very afraid of Urian Sturgis, and was protective of Suavé, who was terrified of taking baths when he first entered foster care. Respondent Urian Sturgis admitted to some of the abuses, but failed to take any responsibility for others. He also had a criminal history, including two criminal sexual conduct convictions, for which he similarly failed to take responsibility. The evidence showed that Raymoni would continue to be at risk in his father's care. Clear and convincing evidence supported termination of respondent Urian Sturgis's parental rights under subsections (b)(i), (b)(ii), (c)(i), (g), (j), and (k)(iii).<sup>4</sup>

Respondent mother has also argued that termination was clearly contrary to the children's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 354-355. However, we cannot agree. Zavonte and Suavé were in foster or relative care since October 2004, and Raymoni was in foster or relative care since January 2005. There was no strong bond between respondents and the minor children, and Zavonte even stated that he never wanted to go home or see his mother again. Despite many months of services, respondents failed to benefit. The majority of caseworkers and other professionals opined that respondent mother would be unable to protect the children in the future, and that abuse by respondent Urian Sturgis would likely recur. Based on the totality of the evidence, the trial court did not clearly err in determining that termination of respondents' parental rights was not clearly contrary to the minor children's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 354-355.

Affirmed.

/s/ Kathleen Jansen  
/s/ Janet T. Neff  
/s/ Joel P. Hoekstra

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<sup>4</sup> Subsection (k)(iii) applies whenever a parent has “abused the child *or a sibling of the child . . .*” MCL 712A.19b(3)(k)(iii) (emphasis added). Although respondent Urian Sturgis is not Suavé's or Zavonte's father, the word “sibling” includes a half-sibling for purposes of MCL 712A.19b.