

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 22, 2011

In re KING/LITTLE, Minors.

No. 303587
Monroe Circuit Court
Family Division
LC No. 10-021430-NA

Before: MURPHY, C.J., and BECKERING and RONAYNE KRAUSE, JJ.

MEMORANDUM.

Respondent appeals by right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). Although we conclude that the trial court did not err in ordering termination of respondent's parental rights under state law, we must conditionally affirm and remand this case to ensure proper notice under the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.*

Respondent does not contest the trial court's findings regarding the statutory grounds for termination or the best interests of the children. Rather, she contends that the trial court failed to comply with the ICWA to determine if the children were "Indian children" and properly notify the appropriate tribe. MCR 3.965(B)(2); 25 USC 1903(3), (4), and (5).

Petitioner responds to this issue by stating that, after respondent signed the form indicating that the children were eligible for membership in the Cherokee Tribe, it did comply with the requirements of the ICWA by sending the proper notice to both the Cherokee Boys Club and the Cherokee Nation. Petitioner contends it received responses from both organizations indicating that the children were not considered "Indian" in the Cherokee Nation and were not eligible for membership. Petitioner further contends that all the proper paperwork is on file at the Office of the Prosecuting Attorney and the Department of Human Services and invites this Court to view the failure to place this information on the trial court record as harmless error. However, we may not expand the record on appeal. MCR 7.210(A)(1).

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, reversal is not necessarily required. Rather, the remedy is to conditionally affirm the trial court's termination order and remand the matter to the trial court so that petitioner may provide proper notice to any interested tribe. *In re TM (After Remand)*, 245 Mich App 181, 187; 628 NW2d 570 (2001); *In re IEM*, 233 Mich App 438, 449-450; 592 NW2d 751 (1999). Petitioner concedes that, if this Court does not find sufficient notice on the record, "conditionally affirming the

termination to pursue further inquiry into the question of ‘Indian child’ would be appropriate.”
We agree.

We conditionally affirm the trial court’s order terminating respondent’s parental rights but remand for the purpose of ensuring that proper notice was given under the ICWA, the tribe responded as indicated by petitioner, and the trial court record properly reflects this. *In re IEM*, 233 Mich App at 450. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Jane M. Beckering
/s/ Amy Ronayne Krause