STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of PAIGE ELISE MAULE, Minor.

LYNNE ANNE GIBBENS and
ROBERT JAMES GIBBENS,

Petitioners-Appellees,

v

MATTHEW DEWAIN MAULE,

Respondent-Appellant.

UNPUBLISHED
October 5, 2004

No. 250237
Oakland Circuit Court
Family Division
LC No. 03-677035-AY

Before: Schuette, P.J., and Bandstra and Meter, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 710.51(6). We conditionally affirm the trial court's order and remand this matter for the purpose of complying with the notice provisions of the Indian Child Welfare Act (ICWA).

I. FACTS

Respondent does not challenge issues involving his lack of support or parenting time with Paige under the statute. Instead, the only issue involves whether the trial court properly determined the applicability of the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.*

The trial court and the parties have improperly framed the issue as one involving respondent's status as a member of the Seldovia Village Tribe.[1] A parent's lack of enrollment in an Indian tribe is not dispositive of whether the child qualifies as an "Indian child" under the ICWA. *In re NEGP*, 245 Mich App 126, 134, n 4; 626 NW2d 921 (2001); *In re TM,* 245 Mich App 181, 188; 628 NW2d 570 (2001); *In re IEM*, 233 Mich App 438, 445; 592 NW2d 751 (1999). The proper inquiry is whether Paige is an "Indian child" not whether respondent is an "Indian child."

[1] The parties have not disputed whether the Seldovia Village Tribe is an "Indian tribe" as defined under 25 USC § 1903(8).

II. ANALYSIS

In this case, respondent included his belief that he was an Alaskan Native in his first responsive pleading, and also testified at the June hearing that he was attempting to become a member of the Seldovia Village Tribe. This information was sufficient to trigger the special notice provisions of the ICWA set forth in 25 USC 1912(a). *NEGP, supra* at 131; *IEM, supra* at 446.

Petitioners apparently contacted the Bureau of Indian Affairs in Alaska inquiring about respondent's Alaskan Native lineage, but did not inquire about Paige. When the tribe was unknown, the petitioners should have provided notice by registered mail, return receipt requested, to the Secretary of the Interior, and should have included notice of the right of intervention. Specifically, the notice should have been provided to the Minneapolis Area Director, Bureau of Indian Affairs (BIA). *TM, supra* at 188. Once it was disclosed that respondent was perhaps a descendant of the Seldovia Village Tribe, petitioners should have provided notice by registered mail, return receipt requested, to the tribe of the proceedings involving Paige, including the tribe's right of intervention. 25 USC 1912(a). The question of whether Paige is an "Indian child" is for the tribe itself to answer after it receives proper notice under the ICWA. *NEGP, supra* at 133; *TM, supra* at 187.

This Court has held that where a respondent's parental rights have otherwise been properly terminated under Michigan law, but the petitioner and the trial court failed to comply with the ICWA's notice provisions, reversal is not necessarily required. *IEM, supra* at 450. Instead, the remedy imposed in *IEM, supra*, was to "conditionally affirm the [trial] court's termination order" but remand the matter "so that the court and the FIA may provide proper notice to any interested tribe." *Id.* Here, like in *IEM, supra*, "the sole deficiency at this time is in notice and there has been no determination that the ICWA otherwise applies to this proceeding." *Id.* Therefore, we follow *IEM, supra*, in this case and conditionally affirm the trial court's order terminating respondent's parental rights.

If, after proper notice pursuant to 25 USC 1912(a) and MCR 3.980, the tribe does not seek to intervene, or after intervention the trial court still concludes that the ICWA does not apply, the original orders will stand. If the trial court does conclude that the ICWA applies, further proceedings consistent with the ICWA will be necessary.

Because the ICWA must be complied with, "regardless of how late in the proceedings a child's possible Indian heritage is uncovered," *TM, supra* at 187, it is not necessary for us to separately address the issue whether the trial court properly denied respondent's motion for adjournment.

We conditionally affirm the order terminating respondent's parental rights, but remand for the purpose of providing proper notice to any interested Indian tribe pursuant to the ICWA. We do not retain jurisdiction.

/s/ Bill Schuette
/s/ Richard A. Bandstra
/s/ Patrick M. Meter