2019 IL App (4th) 190016-U

NO. 4-19-0016

FILED
May 14, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re M.H. and C.F., Minors	)	Appeal from the
	)	Champaign County
	)	Circuit Court
(The People of the State of Illinois,	)	No. 18JA67
Petitioner-Appellee,	)	
v.	)	Honorable
Jarod S.,	)	John R. Kennedy,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The respondent's unsubstantiated statement regarding his Indian ancestry was insufficient to implicate the provisions of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1912(a) (2018)).

¶ 2 In November 2018, the trial court entered an adjudicatory order finding respondent, Jarod S., had neglected his minor child, M.H. (born September 6, 2011). In December 2018, the court entered a dispositional order making M.H. a ward of the court and placing custody and guardianship with the Department of Children and Family Services (DCFS). On appeal, respondent argues the court lacked jurisdiction to enter the adjudicatory and dispositional orders because the court (1) had reason to know M.H. was an Indian child as defined by the Indian Child Welfare Act of 1978 (Act) yet failed to verify that M.H. was an Indian child and (2) failed to comply with the Act's notice requirements. The State contends the

trial court had no reason to believe M.H. was an Indian child. We agree with the State and affirm the court's judgment.

¶ 3 I. BACKGROUND

¶ 4 Respondent and Meghann H. are the parents of M.H. Meghann H. is also the parent of C.F. (born March 7, 2017). The record reflects that Meghann H. and C.F. were involved in the underlying proceedings but they are not parties to this appeal.

¶ 5 In September 2018, the State filed a petition for adjudication of wardship, alleging M.H. was a neglected minor and her environment was injurious to her welfare because (1) Meghann H. exposed M.H. to substance abuse (count I) and (2) Jarod S. exposed M.H. to domestic violence (count II). 705 ILCS 405/2-3(1)(b) (West 2016).

¶ 6 In November 2018, the trial court conducted an adjudicatory hearing. At the hearing, Meghann H. admitted to count I of the State's petition. With respect to respondent, the court took judicial notice of three convictions for unlawful restraint in 2018, a prior domestic battery in the presence of a child in 2013, and domestic battery with a prior conviction for domestic battery in 2008. Respondent testified that he was currently incarcerated for a domestic violence incident that occurred in July 2018 and his projected parole date was January 13, 2020. Respondent's mother and a former paramour both testified that M.H. was not present during the domestic violence incidents. The State presented the testimony of Megan Anderson, a DCFS child protection specialist, who stated that she investigated respondent's history with DCFS and found that he had been indicated for a domestic altercation that occurred in the presence of M.H.

¶ 7 On November 8, 2018, the court entered an adjudicatory order finding M.H. was a neglected minor.

¶ 8 On November 30, 2018, a dispositional report prepared by the Center for Youth and Family Services was filed in the trial court. The report provided, in pertinent part, as follows:

> "[Respondent] reported that his maternal grandfather is a descendent of Chief Black Partridge of the Potawatomi Indians. [Respondent] said that his family does not actively participate in tribal activity."

According to service plans dated October 19, 2018, M.H.'s ethnicity was listed as "White / Not Hispanic" and respondent as "White / Not Reported."

¶ 9 On December 5, 2018, the trial court conducted a dispositional hearing. At the beginning of the hearing, the court noted the dispositional report filed by the Center for Youth and Family Services. The State presented no further evidence and respondent's counsel relied on the recommendations contained in the dispositional report, which included that custody and guardianship should be placed with DCFS.

¶ 10 On December 7, 2018, the court entered a dispositional order finding respondent unfit and unable to care for M.H. The court noted that respondent was incarcerated and suspended his visitation with M.H. The court found M.H. was neglected, made her a ward of the court, and placed custody and guardianship with the DCFS.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, respondent argues the court lacked jurisdiction to enter the adjudicatory and dispositional orders because the court (1) had reason to know M.H. was an Indian child as defined by the Indian Child Welfare Act yet failed to verify that M.H. was an Indian child and (2) failed to comply with the Act's notice requirements. The State contends the

trial court had no reason to believe M.H. was an Indian child.

¶ 14 The Indian Child Welfare Act of 1978 (25 U.S.C. § 1912(a) (2018)) was enacted by Congress to address the "abusive welfare practices which separated large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes." *In re C.N.*, 196 Ill. 2d 181, 203, 752 N.E.2d 1030, 1043 (2001); see also *Adoptive Couple v. Baby Girl*, 570 U.S. 637, 649 (2013). Our supreme court has explained that "the heart of the [Act] are its provisions relating to jurisdiction over Indian child custody proceedings." *C.N.*, 196 Ill. 2d at 203.

¶ 15 Generally, tribal courts have exclusive jurisdiction over child custody proceedings involving an Indian child who resides or is domiciled within the reservation of a tribe or when the child is a ward of a tribal court. 25 U.S.C. § 1911(a) (2018). State courts and tribal courts have concurrent jurisdiction over proceedings involving an Indian child who is not domiciled or residing within the reservation of the child's tribe. 25 U.S.C. § 1911(b) (2018). Absent good cause, the state court must transfer the proceedings to the tribal court upon the petition of the tribe or a parent. 25 U.S.C. § 1911(b) (2018). A violation of sections 1911, 1912, and 1913 of the Act may be cause to invalidate a custody proceeding and the removal of a child from the care of a parent. 25 U.S.C. § 1914 (2018).

¶ 16 The Act and its accompanying regulations further provide various requirements when the court has reason to know that the minor is an Indian child, including verification and notice to the parties regarding the proceedings. 25 U.S.C. § 1912(a) (2018); *In re T.A.*, 378 Ill. App. 3d 1083, 1090, 883 N.E.2d 639, 644-45 (2008) (citing Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed. Reg. 67584 (Nov. 26, 1979)). In

pertinent part, the Act provides as follows:

> "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." 25 U.S.C. § 1912(a) (2018).

¶ 17 The requirements under the Act are triggered when "an Indian child is the subject of a child-custody proceeding[.]" 25 C.F.R. § 23.103(a)(1) (West 2018). The Act defines an "Indian child" 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 U.S.C. § 1903(4) (2018)). Under new federal regulations and non-binding guidelines issued by the Bureau of Indian Affairs, a court has reason to know an Indian child is the subject of the proceedings in the following circumstances:

> "(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;
>
> (2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;
>
> (3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(4) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;

(5) The court is informed that the child is or has been a ward of a Tribal court; or

(6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe." 25 C.F.R. § 23.107(c) (2018); see also Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, 80 Fed. Reg. 10146 (Feb. 25, 2015); Guidelines for Implementing the Indian Child Welfare Act, 81 Fed. Reg. 96476 (Dec. 30, 2016).

¶ 18 Our supreme court has held that "unsubstantiated" and "brief references in the record" regarding "Indian heritage" are insufficient to implicate the Act. *C.N.*, 196 Ill. 2d at 206. Further, the "party asserting the applicability of the Act has the burden of producing sufficient evidence for the court to determine if the child is an Indian child." *T.A.*, 378 Ill. App. 3d at 1090. The applicability of the Act is a legal issue that we review *de novo*. *C.N.*, 196 Ill. 2d at 203.

¶ 19 Here, as stated, respondent contends the trial court lacked jurisdiction to enter the adjudicatory and dispositional orders because the court had reason to know M.H. was an Indian child. The State contends the trial court had no reason to believe M.H. was an Indian child and cites *C.N.*, 196 Ill. 2d at 206, and *T.A.*, 378 Ill. App. 3d at 1094, for the proposition that passing references to alleged Indian ancestry are insufficient to implicate the Act. We agree with the State.

¶ 20 In *C.N.*, 196 Ill. 2d at 205-206, the respondent father claimed that his child was of Indian ancestry based on two references in the record. The first reference concerned the

testimony of a DCFS caseworker who stated during a termination hearing that respondent reported he was part of a Native American tribe. *Id.* The second reference came from a psychological assessment of respondent that was incorporated into the DCFS report filed with the trial court. *Id.* at 205. The report stated respondent had "identified himself as the son of a 'full-blooded Blackfoot Indian.' " *Id.* Our supreme court concluded that "the brief references in the record to [respondent's] unsubstantiated statements concerning his alleged Indian heritage were simply insufficient to implicate the provisions of the [Act]." *Id.* at 206.

¶ 21 In *T.A.*, 378 Ill. App. 3d at 1094, this court found that "unsubstantiated and vague evidence" did not give the trial court reason to know that the minor was an Indian child under the Act. The only evidence presented consisted of statements relayed to a caseworker and made by the child's mother, who was not a party to the appeal, indicating that "she was of Native American descent" and "to her knowledge *** none of her family members were registered with any tribes." *Id.* at 1093. This court determined that "[s]uch statements were insufficient to require the trial court to make a determination on the record whether [the minor] was an Indian child" and the statements were also insufficient to trigger the notice requirements under the Act. *Id.* at 1091, 1094.

¶ 22 Similarly, in the instant case, respondent relies on a single unsubstantiated and vague reference in the record regarding his alleged Indian ancestry. Specifically, according to a dispositional report filed by the Center for Youth and Family Services, respondent relayed to a caseworker that "[respondent's] maternal grandfather is a descendent of Chief Black Partridge of the Potawatomi Indians. [Respondent] said that his family does not actively participate in tribal activity." Apart from this one statement, the record is devoid of any evidence regarding

respondent's alleged Indian ancestry.

¶ 23 We find that one unsubstantiated reference in the record was insufficient to give the trial court reason to know M.H. was an Indian child as defined by the Act. Accordingly, the evidence presented in this case was insufficient to require the trial court to verify whether M.H. was an Indian child or trigger the Act's notice requirements.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the trial court's judgment.

¶ 26 Affirmed.