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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1018

Filed 21 May 2024

Mecklenburg County, No. 22 JT 210

IN THE MATTER OF: A.S.C.

Appeal by Respondent-Mother from an order entered 26 July 2023 by Judge J. Rex Marvel in Mecklenburg County District Court. Heard in the Court of Appeals 30 April 2023.

*Mecklenburg County Senior Associate Attorney Kristina A. Graham, for Mecklenburg County Department of Social Services, Youth & Family Services, Petitioner-appellee.*

*Kevin Y. Zhao, for Guardian ad Litem.*

*Kimberly Connor Benton, for Respondent-Appellant Mother.*

WOOD, Judge.

Respondent-Mother (“Mother”) appeals from an order terminating her parental rights of her daughter, Amani.<sup>1</sup> She argues the Indian Child Welfare Act

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<sup>1</sup> A pseudonym is used to protect the identity of the juvenile pursuant to N.C. R. App. P. 42(b).

(“ICWA”) was triggered when she told the trial court during the initial nonsecure custody hearing “that her father is of Cherokee descent.” Specifically, she argues the trial court did not comply with ICWA after she gave it reason to know Amani may be an Indian child pursuant to ICWA. For the reasons stated herein, we agree. We vacate the order terminating Mother’s parental rights and remand for further proceedings as explained below.

### **I. Factual and Procedural History**

Amani was born on 25 November 2018. At the time, Mother was seventeen years old and in DSS custody, causing her to relinquish Amani to Mother’s grandmother (“Grandmother”), upon Amani’s birth. On 11 February 2019, in a separate proceeding, a Mecklenburg County District Court granted Grandmother permanent custody of Amani, finding that Amani had resided with Grandmother for all of her life, Mother was “unable to provide a home for [the] child,” and “Father<sup>2</sup> has had no contact with [the] child.”

Although it is unclear how Mother regained physical custody of Amani, on 29 March 2022, DSS received a report that Amani and her younger brother<sup>3</sup> were in Mother’s care at a hotel. The report alleged that on 27 or 28 March 2022, Mother “trashed” the hotel room because she was upset that a man did not give her money. During the altercation, Amani incurred bruising and scratches on her face. “Officers

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<sup>2</sup> Father is not a party to this appeal.

<sup>3</sup> This case does not involve Amani’s younger brother.

observed a broken mirror, broken fire extinguisher, and broken phone in the room.” Glass was scattered on the floor. Mother was charged with two counts of misdemeanor child abuse and one count of injury to personal property. Amani was placed in the care of her maternal grandmother, Mother’s mother.

On 17 May 2022, DSS received another report alleging that Amani was in the care of her fourteen-year-old cousin, who was also in the custody of Grandmother. The cousin was “beaten up by some girls in the neighborhood,” and afterwards called 911. The cousin explained that Grandmother had left her and Amani alone overnight. DSS took Amani into emergency custody. DSS contacted Grandmother who stated that she did not want custody of Amani any longer. DSS then contacted Mother, who explained that she was “in Alabama with family to get herself together.” Mother was not able to provide other placement options for Amani.

On 19 May 2022, DSS filed a juvenile petition alleging Amani was neglected and dependent within the meaning of N.C. Gen. Stat. § 7B-101(9) and (15) due to the two reports. The same day, DSS obtained nonsecure custody of Amani. The initial nonsecure custody hearing was held on 25 May 2022. In its written order on the hearing, the trial court found, “Mother stated during the hearing that her father is of Cherokee descent. An ICWA finding is held in abeyance.”

The trial court held the adjudication and disposition hearings on 6 July 2022. On 10 August 2022, the trial court entered its written adjudicatory and disposition orders adjudicating Amani neglected and dependent. The trial court identified the

“problems which led to the adjudication” as “exposure to domestic violence, inappropriate supervision and care, lack of caretaker, unknown father, and unavailability of [M]other.”

The trial court incorporated the verified petition and DSS’s Court Summary and the proposed family services agreement contained within it, ordering that Mother “shall obtain stable housing, seek employment and provide [DSS] with evidence of both, as requested by [DSS]. [Mother] is not required to attend all medical appointments for the juvenile but may participate virtually if it is allowed.” The trial court noted Mother resided in Atlanta, Georgia and “plans to remain there.” As contained in the proposed family services agreement, the trial court also required Mother to: “make herself available to provide support for all medical appointments and follow recommendations made”; “access and utilize resources available to maintain a safe environment for her children”; “ensure that she can provide adequate food, shelter, educational and medical needs for her daughter”; and enroll in and complete parenting classes.

The trial court ordered Mother to submit to a mental health assessment in Georgia “and comply with all recommendations if she cannot provide proof of current treatment with a medical professional. [M]other shall meet with the [social worker] as soon as possible to review and further develop the [Family Services Agreement].” The trial court further ordered that Amani shall remain in DSS’s legal custody with appropriate placement. The primary plan of care was for reunification with Mother

with a secondary plan of adoption. Finally, the trial court ordered Mother to have supervised visits with Amani every other week for two hours as well as telephone contact three days per week.

The trial court found that Mother “states she may be of Native American descent but cannot provide specifics as to what tribe. The issue of whether ICWA applies remains open.” The trial court ordered, “If and when [M]other does determine that she is of Native American descent and what tribe, that information shall be provided to [DSS] immediately.”

On 27 September 2022, the trial court held the initial permanency planning hearing, and it entered its initial permanency hearing planning order on 1 November 2022. The trial court made the following findings:

[M]other is not making adequate progress within a reasonable period of time under the plan. She has not engaged in any services and [the social worker] has had difficulty assisting [M]other due to [M]other’s instability and moving to different states.

...

[M]other is not actively participating in or cooperating with the plan, [DSS,] or the GAL due to her instability.

...

[M]other has not remained available to the Court, [DSS,] or the GAL. [M]other moved from Georgia to Alabama and has not provided her new address. Contact with [DSS] is sporadic.

...

[M]other is acting in a manner inconsistent with the health and safety of the juvenile.

. . .

[M]other moved from Georgia to Alabama during this review period and without prior notice to [DSS]. She has not provided a current or stable address. The juvenile is 3 years old and should not remain in foster care. The Court is prepared to proceed to termination of parental rights if there is no progress by [M]other at the next hearing.

The trial court found that it would not be possible for Amani to be returned home within six months nor would it be in her best interest to do so because “[t]he parents have failed to alleviate the issues that necessitated placement.” The trial court found that it was in Amani’s best interest to remain in her current potential adoptive placement. The trial court further found that because Amani’s return home was unlikely within the next six months, adoption was in her best interest. Nevertheless, the trial court afforded Mother a further hearing in which to “make progress.”

The visitation schedule ordered by the Court was the same as that provided for in the 10 August 2022 adjudicatory and disposition orders: two hours of supervised visitation every other week, with telephone contact three days per week. The trial court further ordered that Mother “submit to a FIRST screening [Mecklenburg County’s family recovery court program] and engage in all recommendations. If she is unable to do that due to her location, [M]other shall engage in services recommended by [DSS]. If there is no progress by [M]other at the time of the next hearing, [DSS] shall file a TPR petition/hearing.”

Finally, the trial court noted that Mother still had not “provided to [DSS] or the Court any information about possible Native American tribal heritage.” Social worker Corretta Pellom (“Pellom”), in the DSS court report filed 20 September 2022, noted the following in the box titled, “Indian Child Welfare Act”:

The mother report[ed] to department during the 7-day hearing that her ancestors may be of the Native American Heritage. SW Pellom researched case history and has not been able to identify relatives of the Native American Heritage. SW Pellom has not been able to obtain any information from the mother or maternal relatives as it relates to her being of the Native American Heritage.

This same notation appeared in all of Pellom’s subsequent court reports.

The second permanency planning hearing was held 7 December 2022, and the trial court entered its written order on the matter on 4 January 2023. In it, the trial court found:

[M]other is not making adequate progress within a reasonable period of time under the plan. She has not engaged in any services, moved to Georgia, and is currently on bedrest due to being pregnant. [M]other reports her baby is due on 12-14-22 and then she plans to give the baby to a relative to raise.

...

[M]other is not actively participating in or cooperating with the plan, [DSS,] or the GAL due to her being on bedrest.

...

[M]other has not made herself available to the Court or GAL. [M]other moved back to Georgia.

. . .

[M]other is acting in a manner inconsistent with the health and safety of the juvenile. She has not engaged in any services, her contact with the juvenile is sporadic, and it appears she has no plans to parent the juvenile.

. . .

The parents and prior custodian have failed to alleviate the issues that necessitated placement.

. . .

[I]t is in the juvenile's best interest to remain in her current placement, where all of her needs are being met. The current home is a potential adoptive placement.

The trial court found that because Amani's return home within six months was unlikely, "adoption is in the juvenile's best interest and should be pursued," and that parental rights remaining intact posed a barrier to adoption. The trial court found that reunification efforts with a parent or prior custodian "clearly would be unsuccessful," and it found the best plan of care was adoption. It further found, "[t]he juvenile is doing well in the foster home, which is a potential adoptive placement," and that termination of parental rights was in Amani's best interest. Therefore, the trial court ordered a primary permanent plan of adoption with a secondary permanent plan of reunification. The trial court retained the visitation schedule of supervised visitation for two hours, biweekly, as well as telephone contact between Mother and Amani.



The trial court found that “ICWA has been addressed for the juvenile on the mother’s side. [M]other has not provided to [DSS] or the Court any information about possible Native American tribal heritage.”

The third permanency planning hearing was held 9 May 2023, and the trial court entered its written order on the matter on 19 July 2023. The trial court made similar findings regarding Mother’s failure to make adequate progress within a reasonable amount of time, not actively participating in or cooperating with the case plan, DSS, or the GAL, not making herself available to the Court or GAL, Mother’s contact with the juvenile remaining sporadic, and not having plans to parent Amani. The trial court further found:

Mother has had another baby while [Amani] has been in custody. Per her testimony, that child is in Georgia with his father and Mother is not parenting him. Mother did complete a parenting class in Georgia, but it was not pre-approved by the department and the department has been unable to verify the structure and content of the class despite making attempts.

The primary permanent plan remained adoption, and the secondary plan remained reunification with Mother. The trial court ordered DSS to file a petition to terminate parental rights within sixty days of the order. In this order, the trial court made the same finding regarding ICWA as it had made in the second permanency planning hearing order: “ICWA has been addressed for the juvenile on the mother’s side. [M]other has not provided to [DSS] or the Court any information about possible Native American tribal heritage.”

On 13 January 2023, DSS filed a motion to terminate Mother's and Father's parental rights, alleging the existence of four grounds permitting termination: neglect; willful failure to pay a reasonable portion of Amani's care for six months prior to the filing of the petition; dependency; and willful abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (3), (6), (7). The same day, DSS served Mother with the motion to terminate parental rights.

The termination of parental rights hearing was held 6 June and 11 July 2023. The trial court entered its order terminating parental rights on 26 July 2023. It found that Mother lived in Georgia for the majority of the case and that she "did not move to Charlotte, North Carolina, until April 2023, more than a month after the termination of parental rights motion was filed." The trial court found Mother "did not engage in case plan activities and did not make progress through 27 September 2022." It found that although Mother's ability to visit was "likely hampered by . . . living out-of-state," she "failed to make regular visits" to see Amani. In approximately March 2023, Mother stated she did not want to attend any visits until May because she had "a lot going on in [her] life that [she] need[ed] to get fixed." Mother made five visits during the life of the case, and four of those visits occurred since February 2023. The trial court found Amani "does not have a parent-child relationship with [M]other."

Mother was employed for the majority of the time Amani was in DSS custody, but Mother did not provide any financial support for her. Mother was living in a

motel at the time of the termination hearing, which the trial court found was “not stable and appropriate housing for” Amani. Mother did not participate in an appropriate parenting education program. Although Mother completed the SAVE Atlanta parenting class, DSS had not referred Mother to it; rather, she referred herself to that program. Mother did not participate in the parenting program Pellom referred her to because she lived in Georgia at the time. The trial court further found:

[Amani] has been separated from her mother for a long time, the majority of her life. The separation predated the child’s placement in [DSS] custody. [Mother] lived away from the child at the time she came into custody and just arrived back to live in North Carolina in April 2023.

...

Although [Mother] has taken some steps to stabilize herself provided at the termination hearings and at prior permanency planning hearings, the respondent mother is not stable enough or capable at this time of providing permanence for [Amani].

The trial court concluded grounds existed to terminate Mother’s parental rights to Amani due to neglect and willful failure to pay a reasonable portion of the cost of care of Amani despite the ability to do so pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (3). The trial court found Amani “has not lived with her mother for an extended time,” Amani “is thriving in her placement,” “[s]he has a strong bond with her placement providers,” and the “placement providers want to adopt” Amani. The

trial court concluded it was in Amani’s best interests for Mother’s and Father’s<sup>4</sup> parental rights to be terminated.

On 22 August 2023, Mother entered written notice of appeal pursuant to N.C. Gen. Stat. § 7B-1001(a)(7).

## **II. Analysis**

Mother argues there were four errors regarding the trial court’s order terminating her parental rights of Amani. Mother’s first argument is that the trial court failed to comply with ICWA. We agree. Because failure to comply with ICWA is a dispositive issue, we need not address Mother’s other arguments.

“[W]hen the pertinent inquiry on appeal is based on a question of law—such as whether the trial court properly interpreted and applied the language of a statute—we conduct de novo review.” *Da Silva v. WakeMed*, 375 N.C. 1, 5, 846 S.E.2d 634, 638 (2020).

ICWA governs child custody proceedings involving Indian children. The statute promotes

the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such

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<sup>4</sup> As the trial court noted in its order terminating parental rights, paternity of Amani was never established: “There is no known father. . . . No one holding himself out as the juvenile’s father has availed themselves to the Court [or] come forward.”

children in foster or adoptive homes which will reflect the unique values of Indian culture.

25 U.S.C. § 1902. Trial courts, in proceedings involving the termination of parental rights of an Indian child, must “in the absence of good cause to the contrary,” transfer such proceedings to the jurisdiction of the appropriate tribe. 25 U.S.C. § 1911(b); *see also* 25 U.S.C. § 1903(1)(ii) (defining “child custody proceeding” to include the termination of parental rights, which is further defined as “any action resulting in the termination of the parent-child relationship”).

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 U.S.C. § 1903(4). “The inquiry into whether a child is an ‘Indian child’ under ICWA is focused on only two circumstances: (1) Whether the child is a citizen of a Tribe; or (2) whether the child’s parent is a citizen of the Tribe and the child is also eligible for citizenship.” *In re C.C.G.*, 380 N.C. 23, 29, 868 S.E.2d 38, 43 (2022). The inquiry required by ICWA is not based on the child’s race but rather the child’s or parents’ political affiliation with an Indian tribe as defined by 25 U.S.C. § 1903(8). *Id.* “‘Indian tribe’ means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary [of Indian Affairs] because of their status as Indians”. 25 U.S.C. § 1903(8).

Simply stated, “ICWA includes requirements that apply whenever an Indian child is the subject of . . . [a] child-custody proceeding, including . . . termination of parental rights.” 25 C.F.R. § 23.103(a)(1)(iii) (2024). If a State termination of parental rights proceeding “concerns a child who meets the statutory definition of ‘Indian child,’ then ICWA will apply to that proceeding.” 25 C.F.R. § 23.103(c).

If a court knows *or has reason to know* an Indian child is involved in the proceeding, DSS must notify the relevant Indian tribe. Significantly, ICWA provides the following:

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) (emphasis added). It is the responsibility of the State court to

ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

25 C.F.R. § 23.107(a) (2024). The Code of Federal Regulations specifies that a court “has reason to know that a child involved in an emergency or child-custody proceeding is an Indian child if” any of the following circumstances apply:

- (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).

If the court *does* have “reason to know the child is an Indian child, but . . . does not have sufficient evidence to determine that the child is or is not an ‘Indian child,’ ” it must “[c]onfirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership),” to confirm whether the child is indeed a member or eligible for membership. 25 C.F.R. § 23.107(b)(1). The trial court also must “[t]reat the child as

an Indian child, unless and until it is determined on the record that the child does not meet the definition of an ‘Indian child’ in this part.” 25 C.F.R. § 23.107(b)(2).

“Under . . . the current federal regulations, state courts bear the burden of ensuring compliance with” ICWA. *In re E.J.B.*, 375 N.C. 95, 101, 846 S.E.2d 472, 476 (2020); *see* 25 C.F.R. § 23.107(a) (“State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child.”). Citing 25 C.F.R. § 23.107(a)–(b), this Court has stated:

We note that, now, it seems to be the case that the burden has shifted to state courts to inquire at the start of a proceeding whether the child at issue is an Indian child, and, if so, the state court must confirm that the agency used due diligence to identify and work with the Tribe and treat the child as an Indian child unless and until it is determined otherwise.

*In re L.W.S.*, 255 N.C. App. 296, 298 n.4, 804 S.E.2d 816, 819, n.4 (2020).

The issue now before us is whether the trial court knew or had reason to know Amani is an Indian child and, if it did, whether it complied with ICWA. Here, as the trial court noted in its order on the initial nonsecure custody hearing, “Mother stated during the hearing that her father is of Cherokee descent. An ICWA finding is held in abeyance.” Mother’s statement gave the trial court reason to know Amani is an “Indian child,” triggering the provisions of ICWA which require “the party seeking . . . termination of parental rights,” in this case DSS, to “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). Federal regulations provide further guidance regarding the notice requirements:

(a) When a court knows or has reason to know that the subject of an involuntary foster-care-placement or termination-of-parental-rights proceeding is an Indian child, the court must ensure that:

(1) The party seeking placement promptly sends notice of each such child-custody proceeding (including, but not limited to, any foster-care placement or any termination of parental or custodial rights) in accordance with this section; and

(2) An original or a copy of each notice sent under this section is filed with the court together with any return receipts or other proof of service.

(b) Notice must be sent to:

(1) Each Tribe where the child may be a member (or eligible for membership if a biological parent is a member) (see § 23.105 for information on how to contact a Tribe);

(2) The child’s parents; and

(3) If applicable, the child’s Indian custodian.

(c) Notice must be sent by registered or certified mail with return receipt requested. Notice may also be sent via personal service or electronically, but such alternative methods do not replace the requirement for notice to be sent by registered or certified mail with return receipt requested.

25 C.F.R. § 23.111(a)–(c) (2024). The Record does not demonstrate DSS provided any such notice as required by ICWA and applicable federal regulations. Further, although Mother identified her father to be of Cherokee descent, the trial court attempted to shift the burden to Mother to prove Amani is an Indian child by ordering that “[i]f and when [M]other does determine that she is of Native American descent and what tribe, that information shall be provided to [DSS] immediately.” Although DSS inquired of the maternal relatives about Native American ancestry, DSS did not send the notices required to the tribes identified by Mother, namely the Cherokee Tribes. In the absence of the notices required by ICWA, the trial court proceeded with the hearing; therefore, the trial court did not comply with ICWA. The trial court should have required DSS to send notices to the Cherokee Tribes of Mother’s father’s name and his lineage and waited for confirmation of whether Amani is an Indian child.

Furthermore, because the trial court had reason to know Amani is an Indian child but lacked “sufficient evidence to determine that the child is or is not an ‘Indian child,’ ” it was required to “[c]onfirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify *and work with all of the Tribes of which there is reason to know the child may be a member* (or eligible for membership)” and “verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership).” 25 C.F.R. § 23.107(b)(1) (emphasis added). While the trial court seeks to verify the

child's status, it must "[t]reat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an 'Indian child' in this part." 25 C.F.R. § 23.107(b)(2). Here, the trial court did not ensure that DSS *worked with* the Cherokee Tribes to verify whether Amani was a member or eligible for membership. To the contrary, DSS failed to send notice to any Indian Tribe concerning Amani's declared Indian heritage.

The GAL argues Mother's unilateral statement that her father is of Cherokee descent did not give the trial court reason to know Amani is an Indian child and, therefore, ICWA was not triggered. DSS further argues that the trial court left open the question of Amani's possible Indian heritage and gave Mother opportunities throughout the duration of the case to provide documentation or other proof of Amani's status. However, once Mother gave the trial court reason to know Amani may be an Indian child through her maternal grandfather, it was not Mother's burden to prove ICWA applies. Rather, it was the responsibility of the trial court to inquire into the matter and make a determination of whether ICWA applies. *See In re E.J.B.*, 375 N.C. at 101, 846 S.E.2d at 476 ("state courts bear the burden of ensuring compliance with the Act"); *In re L.W.S.*, 255 N.C. App. at 298 n.4, 804 S.E.2d at 819, n.4 (if the court has reason to know the juvenile is an Indian child, it must use "due diligence to identify and work with the Tribe and treat the child as an Indian child unless and until it is determined otherwise"). Here, the trial court found that Mother had identified "her father was of Cherokee descent" and, without any evidence of

communication with the Cherokee Tribes, subsequently found “ICWA has been addressed for the juvenile on the mother’s side. [M]other has not provided to [DSS] or the Court any information about possible Native American tribal heritage.” However, the trial court did not make a determination that Amani is not an Indian child.

Moreover, DSS did not provide “confirmation” regarding Amani’s status as an Indian child merely by researching the case history and failing to identify relatives with Indian heritage and failing to obtain further information from Mother. DSS failed to work with the Cherokee Tribes and did not send the required notice to the Tribes. 25 U.S.C. § 1912(a); 25 C.F.R. § 23.111(a)–(c). Including statements that a social worker researched the case history and could not confirm Amani’s Indian status in three separate DSS court reports to the trial court does not constitute compliance with ICWA and applicable federal regulations.

Finally, the GAL argues that this court’s opinion in *In re C.C.G.* stands for the proposition “that a mere assertion of ‘possible’ Native American ancestry was insufficient to trigger the ICWA.” In that case, however, the court examined whether three statements by the respondent-mother gave the court reason to know the child was an Indian child. The respondent-mother reported to DSS: “there is a possible distant Cherokee relation on her mother’s side of the family”; she had “Cherokee Indian Heritage”; and “there is a possible distant Cherokee relation on her mother’s side of the family but no further specifics are known.” *In re C.C.G.*, 380 N.C. at 29,

868 S.E.2d at 43 (brackets omitted). The evidence in that case suggested a mere “possible distant Cherokee relation” belonging to an unidentified person on the mother’s side of the family and unspecified “Cherokee Indian Heritage.” *Id.* Here, Mother’s report to the trial court “that her father is of Cherokee descent” triggered the provisions of ICWA requiring the trial court to investigate Amani’s Indian heritage. The trial court noted ICWA may apply because it held an ICWA finding “in abeyance.” Once it found that ICWA may apply, it was required to comply with its provisions unless it was able to subsequently determine ICWA did not apply.

Where an examination of the Record reveals that the trial court did not comply with ICWA by using due diligence to identify and work with all of the Tribes of which there is reason to know Amani may be a member or eligible for membership, and did not send the required notices, it is proper to remand the matter to the trial court so that it may comply with ICWA. For example, in *In re K.G.*, this Court remanded “to the trial court to issue an order requiring notice be sent as required by 25 U.S.C. § 1912(a)” where the “record [did] not indicate the trial court ensured ICWA’s notification requirements were complied with.” 270 N.C. App. 423, 426–27, 840 S.E.2d 914, 917 (2020).

### **III. Conclusion**

For the foregoing reasons, we hold the trial court erred as a matter of law in concluding that “ICWA has been addressed for the juvenile on the mother’s side.” The trial court failed to ensure that DSS complied with ICWA and applicable federal

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*Opinion of the Court*

regulations by sending notice to the Cherokee Tribes and other parties as may be required. We vacate the trial court's order terminating Mother's parental rights and remand the matter to the trial court for it to comply with ICWA. It is so ordered.

VACATED AND REMANDED.

Judges STROUD and COLLINS concurs.

Report per Rule 30(e).