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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-97

Filed 18 June 2024

Burke County, No. 22 JT 150

IN RE: G.L.B. Minor Child

Appeal by Respondent-Mother and Father from Order entered 12 October 2023 by Judge Robert A. Mullinax, Jr. in Burke County District Court. Heard in the Court of Appeals 29 May 2024.

Lauren Vaughan for Petitioner-Appellee Burke County Department of Social Services.

Mary McCullers Reece for Respondent-Appellant Father.

Lisa Noda for Respondent-Appellant Mother.

J.M. Durnovich for Guardian ad litem.

HAMPSON, Judge.

Factual and Procedural Background

Respondent-Appellants Mother and Father appeal from an Order terminating

their parental rights to Greyson.¹ The Record before us tends to reflect the following:

Respondent Parents met in 2017 and began cohabitating in 2018. Shortly thereafter, Respondent-Father engaged in domestic violence and abusive behavior toward Respondent-Mother that became a pattern throughout their relationship. The minor child, Greyson, was born in September 2018. Respondent-Father was incarcerated when Greyson was born, but he reunited with Respondent-Mother after his release in 2019 and the two married soon after.

In January 2020, the Caldwell County Department of Social Services (DSS) initiated contact with Respondent Parents following a domestic violence incident that resulted in law enforcement being called to the scene. Greyson was present during the incident. In August 2020, after another domestic violence incident in April 2020, DSS began providing in-home services to the family. On 18 August 2020, Respondent-Father punched Respondent-Mother in the face while she was holding Greyson. Respondent-Mother filed for a domestic violence order of protection, but she later dismissed this action and allowed Respondent-Father to move back into the home. Additional instances of domestic violence and abusive behavior by Respondent-Father followed.

On 13 October 2020, the trial court entered an Order for Nonsecure Custody placing Greyson in DSS custody. Following a disposition hearing on 10 November

¹ A pseudonym agreed upon by the parties.

2020, the trial court adjudicated Greyson neglected on 1 December 2020. Pursuant to the Juvenile Disposition Order, Respondent-Mother was ordered to complete a Comprehensive Clinical Assessment (CCA) and follow all treatment recommendations, complete a domestic violence assessment and follow all recommendations, complete parenting classes, execute necessary consent/release of information forms, disclose any prescription medications being taken and allow DSS to conduct pill counts, obtain and maintain stable housing and employment, and comply with home and office visits with DSS. Respondent-Father was ordered to complete a psychological evaluation and follow all treatment recommendations, complete a domestic violence batterer's assessment, complete parenting classes, execute necessary consent/release of information forms, disclose any prescription medications being taken and allow DSS to conduct pill counts, obtain and maintain stable housing and employment, and comply with home and office visits with DSS.

Respondent-Mother completed her mental health assessment on 15 October 2020. A DSS social worker testified that it was recommended Respondent-Mother complete "[u]p to 10 sessions" of individual therapy. She attended five sessions with her last sessions occurring in March 2021. Respondent-Mother also completed a domestic violence assessment on 16 October 2020. Based on that assessment, it was recommended she attend victim counseling and stay at a shelter. She attended only one initial counseling session in February 2021 and did not go to a shelter. Respondent-Mother completed a new mental health assessment on 7 July 2021 and

attended “three to five” group therapy sessions. Respondent-Mother reported completing five individual counseling sessions addressing domestic violence in 2022, but DSS was unable to obtain supporting records.

Respondent-Mother completed a psychological evaluation on 2 February 2021 with Dr. Debra Peters, a psychologist. During her evaluation, Respondent-Mother reported repeated instances of violence and abusive behavior by Respondent-Father toward her and the children in their home. She also expressed fears that Respondent-Father “wants to kill her” and would not “have the patience for [Greyson]” if he were given custody of the minor child. Although she reported wanting to end her marriage and having “no desire to continue a relationship with [Respondent-Father],” the Parents reconciled the same day.

Dr. Peters diagnosed Respondent-Mother with Dependent Personality Disorder and noted she was experiencing “adjustment difficulties with anxiety[.]” Dr. Peters recommended Respondent-Mother undergo “counseling to help her understand the cycle of abuse, and to learn to take care of herself.” Further, Dr. Peters recommended Greyson “not be returned to her until she had completed some significant changes in her life through psychotherapy.” Dr. Peters testified she “was concerned that [Respondent-Mother] didn’t seem uncomfortable enough about her life to make those kinds of changes . . . at the time of the evaluation.” Further, she “did not anticipate [Respondent-Mother] would be likely to do so while she was in the context of a relationship with [Respondent-Father][.]” Additionally, Dr. Peters

testified to the difficulty of treating a personality disorder and noted an extended period of time may be necessary to treat such a disorder.

Respondent-Father completed a CCA on 6 January 2020, and it was recommended he attend individual and group therapy sessions and engage in medication management. Respondent-Father generally complied with those recommendations between January and June 2021. However, during this time, he continued to exhibit violent behaviors during meetings with DSS staff. Respondent-Father reported completing a domestic violence batterer's assessment in May 2021, but he did not execute the necessary releases to allow DSS to determine what recommendations were made or to monitor his progress.

On 5 January 2021, Respondent-Father completed a psychological evaluation with Dr. Peters. Dr. Peters diagnosed Respondent-Father with Antisocial Personality Disorder with Paranoid and Narcissistic Features, Post-Traumatic Stress Disorder, and Adjustment Disorder with Depressed Mood. Dr. Peters testified “[t]he combination of those three personality disorders have significantly impaired with his functioning, and are very resistant to change.” Further, she testified treatment of a personality disorder “generally takes a long period of psychotherapy . . . on a consistent basis over a good period of time—more than a year.” According to Dr. Peters, Respondent-Father denied harming Respondent-Mother and “seemed to have no awareness” Greyson would be emotionally affected by witnessing domestic violence. Dr. Peters recommended Respondent-Father engage in anger management

counseling and treatment for domestic violence offenders; however, she noted Respondent-Father did not seem motivated to undertake such treatments.

On 20 January 2021, Respondent-Mother sought another domestic violence protective order following a violent encounter with Respondent-Father. Between January and July 2021, Respondent-Mother filed for two additional domestic violence protective orders, and Respondent-Father filed once for an order against Respondent-Mother. During this period, the Parents would separate, but they continued to reconcile. DSS social workers repeatedly offered to help Respondent-Mother move to a shelter or other safe place, but she declined.

In August 2022, the Parents separated, and Respondent-Mother moved to Maryland shortly after another incident of domestic violence on 31 July 2022. However, by December 2022, Respondent-Mother had initiated contact with Respondent-Father, who then moved in with Respondent-Mother in Maryland by February 2023. The parents then returned to North Carolina together and continued to reside together through the time of the proceeding to terminate their parental rights.

On 9 September 2022, DSS filed a Motion to Change Venue and Substitution of Party. On 26 October 2022, the trial court entered an Order transferring this case to Burke County, substituting Burke County Department of Social Services for Caldwell County DSS, and awarding custody of Greyson to Burke County DSS. This case came on for hearing on 31 August and 1 September 2023. On 12 October 2023,

the trial court entered a Termination of Parental Rights Order, which terminated both Parents' parental rights in Greyson. On 19 October 2023, Respondent-Father timely filed Notice of Appeal. On 23 October 2023, Respondent-Mother timely filed Notice of Appeal.

On appeal, counsel for Respondent-Father filed a no-merit brief pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure and advised Respondent-Father of his right to file pro se written arguments on his own behalf. Further, counsel for Respondent-Father sought review by an attorney in the Office of the Parent Defender. Respondent-Father has not filed a pro se brief.

Issues

The issues on appeal are whether the trial court properly determined grounds exist to terminate: (I) Respondent-Mother's parental rights in the minor child pursuant to N.C. Gen. Stat. § 7B-1111; and (II) Respondent-Father's parental rights in the minor child pursuant to N.C. Gen. Stat. § 7B-1111.

Analysis

I. Termination of Respondent-Mother's Parental Rights

Respondent-Mother contends the trial court erred in determining grounds existed for termination of her parental rights under N.C. Gen. Stat. § 7B-1111(a). In so arguing, Respondent-Mother challenges both the trial court's Findings of Fact and Conclusions of Law.

"At the adjudicatory stage of a termination of parental rights hearing, the

burden is on the petitioner to prove by clear, cogent, and convincing evidence that at least one ground for termination exists.” *In re O.J.R.*, 239 N.C. App. 329, 332, 769 S.E.2d 631, 634 (2015) (citations omitted); *see also* N.C. Gen. Stat. § 7B-1109(f) (2021). “If the trial court’s findings of fact are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary.” *In re S.C.R.*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909 (2009) (citation and quotation marks omitted). “[T]he trial court’s findings of fact to which an appellant does not assign error are conclusive on appeal and binding on this Court.” *Id.* at 532, 679 S.E.2d at 909. We review the trial court’s conclusions of law de novo. *In re B.S.O.*, 234 N.C. App. 706, 708, 760 S.E.2d 59, 62 (2014).

A. Findings of Fact

Respondent-Mother challenges Findings of Fact 43, 49, 51, 69, and 74 in the Order as not supported by clear, cogent, and convincing evidence. Those Findings provide:

43. [Respondent-Mother] completed a mental health evaluation on October 5, 2020, at RHA, but did not comply with the recommendations. She attended five (5) individual therapy sessions at RHA when ten (10) were recommended.

. . . .

49. [Respondent-Mother] has lived off and on with [Respondent-Father] since the entry of the Nonsecure Custody Order; in spite of multiple incidents of [d]omestic violence, some of which have taken place in the presence of the minor child. The longest period of time that the Respondent Parents have been separated is one month.

. . . .

51. The evaluations and counseling the Respondent Parents have undergone is insufficient to adequately address the underlying issues of instability and domestic violence, which led to the minor child being removed from their care.

. . . .

69. In September of 2022, [Respondent-Father] dug his nails into [Respondent-Mother]’s chest, put a hole in her lip, and referenced another “Waco” claiming that [Respondent-Mother] and her three minor children would die together and that responding law enforcement officers would also be killed. [Respondent-Mother] claimed that [Respondent-Father] hacked into her cellphone and was dangerous to others.

. . . .

74. So long as the Respondent Parents reside together, it is unlikely that the residence will be free of violence as demonstrated by the repeated incidents of domestic violence referenced herein. There is a high probability that repetition of the neglect towards the minor child will continue if left in the care of the Respondent Parents.

As to Finding 43, Respondent-Mother contends it is not supported by clear and convincing evidence because “the social worker testified that ‘up to ten’ [therapy] sessions were recommended.” As to Finding 49, Respondent-Mother contends it is not supported by clear and convincing evidence because “the uncontroverted testimony was that the parents separated from August or September 2022 to January 2023.” As to Finding 69, Respondent-Mother contends “the testimony was that this incident occurred in October 2020,” rather than in September 2022. We agree these

Findings are unsupported by evidence in the Record and therefore disregard them in our assessment of the trial court's Conclusion.

As to Finding 51, Respondent-Mother contends it is unsupported by the evidence because “[t]here was no evidence presented to the trial court of any domestic violence incidents between [Respondent-Mother] and [Respondent-Father] subsequent to 31 July 2022, over a year prior to the adjudicatory hearing.” This argument, however, misses the crux of the Finding: that the counseling Respondent Parents had completed was not sufficient to meaningfully address the issues of domestic violence and instability that led to Greyson's removal.

The evidence presented at trial indicated Respondent-Mother was diagnosed with Dependent Personality Disorder. The psychologist testified this disorder is “difficult to treat” and recommended counseling. The psychologist also recommended Greyson not be returned to Respondent-Mother until she had made significant changes in her life through psychotherapy. The psychologist testified she was concerned Respondent-Mother was not motivated to make the necessary changes and was unlikely to do so while she remained in a relationship with Respondent-Father.

Respondent-Mother asserts she completed a Comprehensive Clinical Assessment (CCA) followed by three to five group counseling sessions, five individual domestic violence counseling sessions, and two domestic violence classes. These efforts, however, fall short of the extent of treatment recommended to treat Respondent-Mother's personality disorder and help her make the significant changes

the psychologist identified as necessary prerequisites to returning Greyson to her care. Respondent-Mother also contends her decision to separate from Respondent-Father and move to Maryland is evidence she had received sufficient counseling. This separation, however, was only temporary, as Respondent-Mother initiated contact with Respondent-Father that led to him moving in with her again in Maryland. Thus, Respondent-Mother's decision to continue living with Respondent-Father after repeated incidents of abuse, as well as her failure to undergo the extent of treatment expert testimony established was necessary to help her make significant life changes is sufficient evidence to support the trial court's Finding that the counseling she had received was insufficient.

As to Respondent-Father, the evidence presented at trial showed he was diagnosed with Antisocial Personality Disorder with Paranoid and Narcissistic Features, Post-Traumatic Stress Disorder, and Adjustment Disorder with Depressed Mood. The psychologist concluded the combination of those disorders is "very resistant to change" and would require long-term therapy for more than a year. Based on these diagnoses, the psychologist recommended Respondent-Father undergo anger management counseling, trauma therapy, and domestic violence assessment and treatment.

Although Respondent-Father testified that he had completed domestic violence classes sometime around April 2021, there was no other evidence presented at trial that he engaged in any other treatment or therapy. Moreover, Respondent-Father

engaged in repeated violent incidents with Respondent-Mother after his completion of the domestic violence classes. Evidence showing Respondent-Father's failure to complete anger management counseling or any other long-term therapy recommended by the psychologist, in addition to his violent outbursts after completion of domestic violence classes, is sufficient to support the trial court's Finding that the counseling Respondent-Father had received was insufficient.

Lastly, as to Finding 74, Respondent-Mother contends it is not supported by clear and convincing evidence because "there was no evidence before the court that any incidents of domestic violence had occurred between [Respondent-Mother] and [Respondent-Father] in the year prior to the date of the adjudicatory hearing." Further, Respondent-Mother notes that since the entry of the dispositional order, she had completed a CCA, five individual counseling sessions, three domestic violence assessments, five individual domestic violence counseling sessions, and two domestic violence classes.

Although no domestic violence incidents were reported in the year prior to the TPR hearing, in this case, there is an extensive history of severe domestic abuse between the Parents and in front of Greyson. Further, both Respondent-Mother and Respondent-Father have been diagnosed with personality disorders requiring significant treatment and neither has completed the recommended treatment. This evidence, as well as Respondent-Mother's decision to reunite with Respondent-Father despite the history of abuse and lack of psychological treatment, is sufficient to

support the trial court's Finding that it is unlikely the residence will be free of violence as long as the Respondent Parents live together and there is a high probability of repetition of neglect if Greyson is returned to their care.

B. Conclusions of Law

Next, Respondent-Mother contends the trial court erred in concluding grounds exist to terminate her parental rights in Greyson pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (a)(2), and (a)(6). We disagree.

Respondent-Mother objected to several, but not all, of the trial court's Findings of Fact. "Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (citations omitted). Here, the uncontested Findings of Fact support the trial court's Conclusion that grounds existed to terminate Respondent-Mother's parental rights.

Our Courts have consistently held "a finding by the trial court that any one of the grounds for termination enumerated in N.C.G.S. § 7B-1111(a) exists is sufficient to support a termination order." *In re B.O.A.*, 372 N.C. 372, 380, 831 S.E.2d 305, 311 (2019) (citing *In re C.M.S.*, 184 N.C. App. 488, 491, 646 S.E.2d 592, 594 (2007)). Parental rights may be terminated pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) if "[t]he parent has . . . neglected the juvenile" within the meaning of N.C. Gen. Stat. § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1) (2021).

Generally, "[i]n deciding whether a child is neglected for purposes of

terminating parental rights, the dispositive question is the fitness of the parent to care for the child at the time of the termination proceeding.” *In re L.O.K., J.K.W., T.L.W., & T.L.W.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (citation and quotation marks omitted). However, when “a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible.” *Id.* (citation and quotation marks omitted). “In those circumstances, a trial court may find that grounds for termination exist upon a showing of a history of neglect by the parent and the probability of a repetition of neglect.” *Id.* (citation and quotation marks omitted).

A trial court may terminate parental rights based on prior neglect only if “the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to [his] parents.” *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (citation omitted). In determining the likelihood of future neglect, our Supreme Court has noted: “Because it lacks a crystal ball, a trial court may consider many past and present factors to make this forward-looking determination.” *In re M.B.*, 382 N.C. 82, 86, 876 S.E.2d 260, 264-65 (2022) (citing *In re L.H., I.H.*, 378 N.C. 625, 636, 862 S.E.2d 623, 631 (2021) (“[W]hile any determination of a likelihood of future neglect is inevitably predictive in nature, the trial court’s findings were not based on pure speculation.”)). “For instance, a trial

court ‘must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing.’ ” *Id.* at 86, 876 S.E.2d at 265 (quoting *In re Z.V.A.*, 373 N.C. 207, 212, 835 S.E.2d 425, 430 (2019)). Likewise, “[a] parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect.” *In re M.A.*, 374 N.C. 865, 870, 844 S.E.2d 916, 921 (2020) (citation and quotation marks omitted).

In the case *sub judice*, the trial court’s uncontested Findings of Fact indicate the trial court considered “evidence of any changed circumstances” between the time Greyson was adjudicated neglected in November 2020 and the time of the termination hearing. These Findings establish Respondent-Mother failed to comply with the recommendations made pursuant to her assessments. The trial court found “[a]fter her July 27, 2022, assessment, [Respondent-Mother] attended two group sessions of therapy and no showed for twenty-three (23) subsequently scheduled group therapy sessions.” Further, “[a]fter her third assessment on February 1, 2022, [Respondent-Mother] attended seven group sessions, the last of which was held on March 28, 2022. She no showed for twenty-nine (29) subsequently scheduled group therapy sessions and has not attended any therapy sessions since March 28, 2022.” Respondent-Mother completed a domestic violence assessment in October 2020, but has not complied with the recommendations to stay at a shelter or undergo individualized victim counseling. Rather, “[Respondent-Mother] stated that she ‘doesn’t have any interest in leaving her residence’ with [Respondent-Father] and that she ‘is worried

about her personal belongings.’ ”

During her psychological evaluation, Respondent-Mother acknowledged suffering physical abuse by Respondent-Father and having fears surrounding Respondent-Father gaining custody of Greyson and killing her. The trial court’s uncontested Finding stated Respondent-Mother suffers from “anxiety adjustment issues” and “dependent personality disorder.” Respondent-Mother does not contest the trial court’s Finding that she “failed to follow through with [the psychologist]’s express recommendations” regarding psychotherapy and domestic violence counseling. Indeed, Respondent-Mother reconciled with Respondent-Father the same day she attended her psychological evaluation and expressed her fears around Respondent-Father’s abuse. Further, the trial court’s Findings establish repeated instances of severe violence and abusive behavior by Respondent-Father which Respondent-Mother experienced and witnessed inflicted upon others, including her children. Still, after separating and moving to Maryland, Respondent-Mother initiated contact with Respondent-Father, which resulted in his moving to Maryland and living with her once again.

The evidence presented at trial demonstrates Respondent-Mother failed to make reasonable progress on her case plan or to address the underlying issues of domestic violence and psychological disorders that led to Greyson’s removal in the nearly three years since Greyson was adjudicated neglected. Thus, the trial court’s Findings of Fact support its Conclusion that there is a high probability of future

neglect if Greyson is returned to Respondent-Mother. Therefore, the trial court did not err in concluding Respondent-Mother's parental rights were subject to termination based on neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).² Consequently, we affirm the trial court's Termination of Parental Rights Order as to Respondent-Mother.

II. Respondent-Father's Parental Rights

Respondent-Father's appellate counsel's no-merit brief identified three issues that could arguably support the appeal, including whether the trial court erred by: (I) concluding grounds existed to terminate Respondent-Father's parental rights; (II) concluding it was in the child's best interests to terminate Respondent-Father's parental rights; and (III) concluding the Indian Child Welfare Act (ICWA) did not apply.

Rule 3.1(e) of our Rules of Appellate Procedure states:

When counsel for the appellant concludes that there is no issue of merit on which to base an argument for relief, counsel may file a no-merit brief. The appellant then may file a pro se brief within thirty days after the date of the filing of counsel's no-merit brief. In the no-merit brief, counsel must identify any issues in the record on appeal that arguably support the appeal and must state why those issues lack merit or would not alter the ultimate result. Counsel must provide the appellant with a copy of the no-merit brief, printed record, transcripts, copies of exhibits and other items included in the record on appeal pursuant to Rule 9(d), and any supplement prepared pursuant to Rule 11(c). Counsel must

² Because we conclude this ground has ample support in the trial court's Findings, we need not address Respondent-Mother's arguments as to the remaining termination grounds found by the trial court under N.C. Gen. Stat. § 7B-1111(a)(2) and (a)(6).

inform the appellant in writing that the appellant may file a pro se brief and that the pro se brief is due within thirty days after the date of the filing of the no-merit brief. Counsel must attach evidence of this communication to the no-merit brief.

N.C.R. App. P. 3.1(e) (2023).

Here, Respondent-Father's appellate counsel complied with Rule 3.1(e) by providing Respondent-Father with a copy of the no-merit brief, transcript, and the printed Record on appeal. Appellate counsel also notified Respondent-Father in writing that he could file a pro se brief.

Nevertheless, when a no-merit brief is filed pursuant to Rule 3.1(e), it "will, in fact, be considered by the appellate court and ... an independent review will be conducted of the issues identified therein." *In re K.M.S.*, 380 N.C. 56, 59, 867 S.E.2d 868, 870 (2022) (citation and quotation marks omitted). "On review, this Court must determine whether the trial court's findings of fact were based on clear, cogent, and convincing evidence, and whether those findings of fact support a conclusion that parental termination should occur. . ." *In re Humphrey*, 156 N.C. App. 533, 539-40, 577 S.E.2d 421, 426 (2003) (citation omitted). "So long as the findings of fact support [such] a conclusion . . . the order terminating the parental rights must be affirmed." *Id.* at 540, 577 S.E.2d at 426 (citation omitted).

In this case, we have reviewed the issues raised in the no-merit brief in light of the entire Record and are satisfied there is competent evidence supporting the Findings that Respondent-Father has "willfully failed to make reasonable progress

in complying with court ordered services which were designed to correct the conditions that led to the removal of the minor child from [his] care” and that “[t]here is a high probability that repetition of the neglect towards the minor child will continue if left in the care of the Respondent Parents.” These Findings, in turn, support the Conclusion grounds existed to terminate Respondent-Father’s parental rights under N.C. Gen. Stat. § 7B-1111(a)(1). “[A]n adjudication of any single ground in N.C.G.S. § 7B-1111(a) is sufficient to support a termination of parental rights.” *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019) (citations omitted). Accordingly, we do not address the remaining grounds for termination adjudicated by the trial court. Moreover, we are satisfied competent evidence supports the Conclusion that termination of Respondent-Father’s parental rights was in the child’s best interests.

Additionally, we are satisfied the trial court did not err in concluding ICWA did not apply. ICWA provides for special procedures in involuntary proceedings in state courts “where the court knows or has reason to know that an Indian child is involved[.]” 25 U.S.C. § 1912(a). This statute 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). Here, although Respondent-Father testified Greyson is eligible for membership in the Eastern Band of Cherokee Nation, he also testified he had not yet established membership in the tribe for

himself or Greyson. Thus, Greyson does not fall under ICWA's definition of an "Indian child." Therefore, the trial court did not err in concluding ICWA did not apply.

Conclusion

Accordingly, for the foregoing reasons, we affirm the trial court's Order terminating Respondent-Mother's and Respondent-Father's parental rights to the minor child.

AFFIRMED.

Chief Judge DILLON and Judge ARROWOOD concur.

Report per Rule 30(e).