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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1081

Filed 16 July 2024

Forsyth County, No. 12 JT 175

IN THE MATTER OF: N.V.

Appeal by Respondent-Mother from order entered 18 August 2023 by Judge Thomas W. Davis V in Forsyth County District Court. Heard in the Court of Appeals 29 May 2024.

*Forsyth County DSS, by Theresa A. Boucher, for Petitioner-Appellee Forsyth County DSS.*

*Matthew D. Wunsche, for Other-Appellee Guardians.*

*Elon University School Of Law, by Alan Dean Woodlief, Jr., for Other-Appellee Guardian ad litem.*

CARPENTER, Judge.

On 18 August 2023, the trial court filed an order terminating all parental rights to N.V. (“Nate”).<sup>1</sup> On appeal, Respondent-Mother argues that the trial court failed to comply with the Indian Child Welfare Act (“ICWA”). After careful review, we disagree and affirm the trial court’s order.

## **I. Factual & Procedural Background**

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<sup>1</sup> We use a pseudonym to protect the identity of the juvenile. See N.C. R. App. P. 42(b).

On 24 July 2012, the Forsyth County Department of Social Services (the “DSS”) filed a juvenile petition concerning Nate. The petition alleged that Nate was neglected and dependent. On 10 October 2012, the trial court found that ICWA may apply to Nate, and the trial court ordered the DSS to notify the Eastern Band of Cherokee Indians and inquire whether Nate was an eligible member of their tribe. The trial court did not detail why it found that ICWA may apply or why the Eastern Band of Cherokee Indians was the relevant tribe.

On 6 February 2013, the trial court found that the DSS contacted the Eastern Band of Cherokee Indians and inquired about Nate’s potential membership. The Eastern Band of Cherokee Indians confirmed that Nate was not eligible for membership in their tribe.

Almost ten years later, on 25 July 2022, the DSS filed a termination-of-parental-rights (“TPR”) petition against Respondent-Mother. On 26 June 2023, the trial court started the TPR hearing. At the beginning of the hearing, the trial court explicitly asked all parties—including Respondent-Mother—if they would like to be heard concerning ICWA and Nate’s potential tribe membership. All parties declined to be heard. The trial court stated “that there is no new information that would lead the Court to reassess whether [Nate] is an Indian child and will find that he is not, consistent with previous judicial determinations.”

On 18 August 2023, the trial court filed an order terminating all parental rights to Nate. The order found that the trial court had previously determined that

Nate was not an Indian child, and the trial court received no new information to change that determination. On 21 September 2023, Respondent-Mother filed notice of appeal from the TPR order.

On 18 January 2024, the DSS supplemented the record on appeal to include a juvenile order concerning another child of Respondent-Mother; the supplemented order concerns Nate's half sibling. In this order, the trial court found that Respondent-Mother admitted that neither she nor Nate's half sibling were Indian tribe members. On 19 January 2024, Respondent-Mother moved to object to the DSS's supplementation of the record. Because the DSS's supplement is a court order, we deny Respondent-Mother's motion objecting to its inclusion in the record. *See State v. Thompson*, 349 N.C. 483, 497, 508 S.E.2d 277, 286 (1998) ("This Court may take judicial notice of the public records of other courts within the state judicial system.").

## **II. Jurisdiction**

This Court has jurisdiction under N.C. Gen. Stat. § 7B-1001(a)(7) (2023).

## **III. Issue**

The issue on appeal is whether the trial court complied with ICWA.

## **IV. Analysis**

On appeal, Respondent-Mother argues that the trial court failed to comply with ICWA because the trial court only contacted the Eastern Band of Cherokee Indians in order to verify whether Nate was an Indian child. Respondent-Mother argues that

ICWA required the trial court to contact all Cherokee tribes. Therefore, Respondent-Mother asserts that in order to comply with ICWA, we must remand this case for the trial court to determine whether Nate was a member of the other Cherokee tribes. We disagree.

We review a trial court's ICWA compliance de novo. *See In re A.P.*, 260 N.C. App. 540, 543, 818 S.E.2d 396, 398 (2018). Under a de novo review, this Court “considers the matter anew and freely substitutes its own judgment’ for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (quoting *In re Greens of Pine Glen Ltd. P’ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

Congress passed ICWA “to establish the ‘minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes’ in order to ‘protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.’” *In re A.P.*, 260 N.C. App. at 542–43, 818 S.E.2d at 398 (quoting 25 U.S.C. § 1902).

ICWA applies to Indian children, and an Indian child is “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.” *Id.* at 543, 818 S.E.2d at 398 (quoting 25 U.S.C. § 1903(4)). When a trial court knows, or has reason to know, that an Indian child is involved in an involuntary custody proceeding, the trial court must notify the relevant tribes of the

proceeding. 25 U.S.C. § 1912(a).

Here, neither party disputes the trial court’s 2012 finding “that [ICWA] may apply to [Nate].” And neither party disputes the trial court’s 2013 finding that the Eastern Band of Cherokee Indians confirmed Nate was not an eligible member of their tribe. Therefore, those findings are binding on appeal. *See In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019) (“Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal.”).

The parties do dispute, however, whether the trial court complied with ICWA by only notifying the Eastern Band of Cherokee Indians—but not the other two recognized Cherokee tribes: Cherokee Nation and the United Keetoowah Band of Cherokee Indians in Oklahoma. *See* 86 Fed. Reg. 7554–58. To resolve this dispute, we must discern whether the trial court had “reason to know” that Nate could have been a member of Cherokee Nation or the United Keetoowah Band of Cherokee Indians in Oklahoma. *See* 25 U.S.C. § 1912(a).

In *In re C.C.G.*, the respondent-mother cited three statements in the record that indicated that her child had “possible distant Cherokee relation on her mother’s side.” 380 N.C. 23, 29, 868 S.E.2d 38, 43 (2022). Nonetheless, the North Carolina Supreme Court concluded that “these statements d[id] not provide reason to know that [the child was] an Indian child.” *Id.* at 29, 868 S.E.2d at 44. Accordingly, ICWA did not require the trial court to notify any Indian tribe of the respondent-mother’s

TPR proceeding. *See id.* at 29, 868 S.E.2d at 44.

In *In re E.J.B.*, however, the DSS indicated that the child had a Cherokee heritage, and the DSS notified all three recognized Cherokee tribes. 375 N.C. 95, 103, 846 S.E.2d 472, 477 (2020). But the United Keetoowah Band of Cherokee Indians did not respond to its notification. *Id.* at 104, 846 S.E.2d at 477. The Court held that “[i]f a tribe fails to respond, the trial court must seek assistance from the Bureau of Indian Affairs prior to making its own independent determination.” *Id.* at 106, 846 S.E.2d at 479 (citing 25 C.F.R. § 23.105(c)). Therefore, the *E.J.B.* Court reversed the trial court’s TPR order because the trial court did not “seek assistance from the Bureau of Indian Affairs” to discern whether the child was an eligible member of the United Keetoowah Band of Cherokee Indians. *Id.* at 106, 846 S.E.2d at 479.

Here, it is unclear why the trial court only ordered the DSS to contact the Eastern Band of Cherokee Indians. Indeed, nothing in the record indicates why the trial court believed Nate could have been an Indian child at all—let alone why Nate could have been a member of the Eastern Band of Cherokee Indians.

Nonetheless, this case is more like *In re C.C.G.* than *In re E.J.B.* The respondent-mother in *In re C.C.G.* only offered evidence of a “possible distant Cherokee relation on her mother’s side,” 380 N.C. at 29, 868 S.E.2d at 43, and here, nothing in the record indicates why Nate could be Cherokee. Indeed, at the beginning of the TPR proceeding, the trial court explicitly asked Respondent-Mother if she had

additional information concerning ICWA: Respondent-Mother offered none.

And this case is distinguishable from *In re E.J.B.* There, the trial court erred because it did not “seek assistance from the Bureau of Indian Affairs” after it failed to receive a response from a notified tribe. *See In re E.J.B.*, 375 N.C. at 106, 846 S.E.2d at 479. Here, on the other hand, the trial court received a response from the Eastern Band of Cherokee Indians, the only notified tribe. Moreover, the trial court reasonably concluded that Nate was not a member of the Eastern Band of Cherokee Indians and thus, not an Indian child, because the Eastern Band confirmed that Nate was not eligible for membership.

Regardless of what prompted the trial court to order the DSS to contact the Eastern Band of Cherokee Indians, nothing else in the record gave the trial court a reason to suspect Nate’s membership in any other tribe, including Cherokee Nation and the United Keetoowah Band of Cherokee Indians in Oklahoma. The trial court notified the Eastern Band of Cherokee Indians of Nate’s pending proceeding, and the Eastern Band confirmed that Nate was not a member. Therefore, the trial court complied with ICWA, *see* 25 U.S.C. § 1912(a), and we affirm the trial court’s TPR order.

## **V. Conclusion**

We conclude that the trial court complied with ICWA. We therefore affirm the trial court’s TPR order.

**AFFIRMED.**

IN RE: N.V.

*Opinion of the Court*

Judges TYSON and MURPHY concur.

Report per Rule 30(e).