STATE OF MICHIGAN

COURT OF APPEALS

In re BANKS, Minors.

UNPUBLISHED
February 18, 2021

Nos. 354060; 354062
Wayne Circuit Court
Family Division
LC No. 17-001203-NA

Before: CAVANAGH, P.J., and SERVITTO and CAMERON, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother, K. Banks, and respondent-father, E. McCarter, appeal as of right the trial court's order terminating their parental rights to their children, EJB, KAB, and KMB. The trial court terminated the parental rights of both respondents pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j). We conditionally reverse and remand for further proceedings.

On June 24, 2017, respondents and two of the children, EJB and KAB, were staying in a hotel in Redford, Michigan. KMB was apparently with the maternal grandmother. The children and respondent-mother had previously lived with the maternal grandmother, and the children were frequently in the grandmother's care. While executing a well-being check of the children at the hotel, the police found respondent-father in possession of drugs and respondent-mother in an incoherent state. The hotel room was littered with drugs and drug paraphernalia, and newborn EJB was sleeping in an unsafe position on the bed.

After these events, the children were placed in the grandmother's care pursuant to a safety plan. Respondents were taken into police custody on outstanding warrants. Respondent-father would remain incarcerated on a parole violation charge until September 2018.

Petitioner, the Department of Health and Human Services (DHHS), filed a temporary-custody petition in July 2017. In September 2017 and November 2017, respectively, respondent-mother and respondent-father entered no-contest pleas to the petition and the court took jurisdiction over the children. Respondents were ordered to comply with parent-agency treatment plans designed to address the reasons the children came into care. Substance abuse and domestic violence were the primary barriers to reunification. When respondents failed to make sufficient progress with their treatment plans, petitioner sought termination of their parental rights. After a

seven-day termination hearing that concluded in March 2020, the trial court found that the statutory grounds to terminate respondents' parental rights had been established by clear and convincing evidence, and that termination of respondents' parental rights was in the children's best interests. Thereafter, these appeals ensued.

I. DOCKET NO. 354060 (RESPONDENT-MOTHER)

Respondent-mother challenges the trial court's findings regarding the existence of the statutory grounds for termination. After reviewing the record, we find no merit to respondent-mother's arguments.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). This Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(K). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been committed. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court terminated respondent-mother's parental rights pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j), which permit termination of parental rights under the following circumstances:

> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
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> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
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> (*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
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> * * *
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> (g) The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
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> * * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The record supports the trial court's reliance on these statutory grounds.

As referenced above, on June 24, 2017, respondents and two of the children, EJB and KAB, were staying in a hotel in Redford, Michigan. While executing a well-being check of the children, the police were greeted at the hotel room door by respondent-father. The police found several bags of marijuana in respondent-father's possession. Respondent-father was taken into custody on outstanding warrants, one of which was for a probation violation. Respondent-mother was found on the bathroom floor slouched over a bag containing pill bottles. Although the police were eventually able to rouse her, she could not walk on her own and she was barely coherent. Two-month-old EJB was sleeping on the bed on his stomach. A syringe in the room was within reach of six-year-old KAB. The pill bottles underneath respondent-mother contained Ranitidine Hydrochloride, and Alprazolam. Other pill bottles strewn about the room, both labeled and unlabeled, contained controlled substances, including Oxycodone and Alprazolam.

Respondents had a history of prior encounters with Children's Protective Services (CPS) or the police. In the past, CPS had investigated and substantiated four complaints related to respondent-mother's substance abuse. Respondents were also investigated multiple times for domestic violence issues. In 2012, CPS offered to place Families First services in the home, but respondent-mother's whereabouts became unknown. In 2016, a no-contact order was entered precluding respondents from interacting, let alone sharing a hotel room together.

After the June 2017 events, the children were removed from respondents' care, the court took jurisdiction, and respondent-mother was ordered to comply with a treatment plan that included participating in a psychological evaluation and complying with any recommendations that followed, participating in a substance abuse assessment and complying with the recommendations that followed, submitting to weekly random drug screening, participating in weekly individual counseling with a domestic violence component, and obtaining and maintaining suitable housing and a legal source of income. Respondent-mother was also offered parenting time to be supervised by the designee, the children's maternal grandmother. In lieu of a parenting class, petitioner also requested that respondent-mother participate in Infant Mental Health services. Despite being offered a multitude off services, some of which were satisfactorily completed, respondent-mother was unable to demonstrate that she could lead a substance-free lifestyle and provide a safe and stable home for her children.

Respondent-mother's substance abuse issues were the primary barrier to reunification. She was referred for substance abuse therapy and was required to submit to weekly random drug screens. Respondent-mother was initially referred to individual and substance abuse counseling in October 2017, but was terminated from services in June 2018 for noncompliance. In January 2019, the caseworker made another referral for individual counseling, but by the end of January respondent-mother was again terminated from treatment. During this time, respondent-mother's screens were frequently positive for cocaine and other drugs for which it was unclear whether she had a valid prescription.

In October 2018, respondent-mother completed a 30-day inpatient substance abuse treatment program. A few weeks after her discharge, she tested positive for cocaine. Although a screen that immediately followed was negative, respondent-mother thereafter simply stopped complying with her screening requirements. During the case, respondent-mother missed approximately 50% of the requested screens.

Although respondent-mother failed to comply with the court's requirement that she participate in random weekly drug screening, there was clear and convincing evidence that she was abusing cocaine and other illicit drugs. Dr. John Kitzmiller treated respondent-mother in the spring and summer of 2019 for chronic pain associated with injuries from a car accident. As part of his treatment, Dr. Kitzmiller routinely drug screened respondent-mother. Although she denied using illicit drugs, both in this court matter and to her physician, the multiple screens administered by Dr. Kitzmiller came back positive for cocaine, hydromorphone, Norco, and Klonopin. Dr. Kitzmiller informed respondent-mother that because he was prescribing very powerful drugs for pain treatment, the use of other drugs could be fatal. Dr. Kitzmiller wrote pain medication prescriptions for one week. After writing these prescriptions, respondent-mother requested that Dr. Kitzmiller write a full month's supply of the medications without seeing her. Because of these drug-seeking behaviors and the positive screens, Dr. Kitzmiller discharged respondent-mother from his practice in August 2019. In a second correspondence, dated October 3, 2019, respondent-mother was again discharged from the practice "due to noncompliance in the addiction program." The letter further provided: "Dr. Kitzmiller does not feel he can adequately manage your addiction health care need. Inpatient rehabilitation is strongly urged."

Despite the foregoing evidence, respondent-mother relies on her own testimony at the termination hearing that she was no longer treating with Dr. Kitzmiller and had stopped using medication to address her chronic pain. The trial court properly could find that her testimony was not credible considering the dubious testimony she provided regarding her treatment with Dr. Kitzmiller. Incredulously, respondent-mother testified that Dr. Kitzmiller did not do drug screens in his office, that she did not recall testing positive for cocaine, and that she had no recollection of being discharged from Dr. Kitzmiller's practice for being noncompliant with treatment. Considering the overwhelming evidence of respondent-mother's continued drug abuse, despite her testimony to the contrary, there was clear and convincing evidence that substance abuse remained an overwhelming barrier to reunification.

The evidence also established that respondent-mother was unable to provide a safe and stable home for her children. During the 2½ years that the children were in care, respondent-mother never obtained stable and suitable housing. While she intermittently claimed to have housing, she never cooperated with the efforts of past and current case managers to assess the suitability of that housing. Respondent-mother frequently claimed to be too busy to schedule a home assessment. At one point, she claimed to have a two-bedroom trailer suitable for her children. However, her brother's name was on the lease because the landlord refused to contract with a convicted felon. In any event, at the time of termination, respondent-mother was no longer living in the trailer and the caseworker had not been advised of her current housing arrangements. Similarly, respondent-mother never demonstrated that she had obtained and maintained a legal source of income. Both the past and current caseworkers requested that respondent-mother verify her employment, but she never provided credible proof that she was gainfully employed.

Respondent-mother's actions also demonstrated that she was not committed to maintaining a relationship with her children. During various times in the proceedings, parenting time was moved from the caregiver's home or in the community back to the agency. This occurred at different points for various reasons. In any event, when the visits were returned to the agency, respondent-mother failed to attend parenting time. At the time of termination, respondent-mother had not been visiting her children for several weeks.

At the time of termination, there was clear and convincing evidence that the conditions that led to the adjudication continued to exist, that respondent-mother was unable to provide a safe and stable home for her children, and that the children would be at risk of harm in her care. Moreover, there was clear and convincing evidence to conclude that the barriers to reunification were not going to be rectified within a reasonable time considering the children's ages. The children had been in care for approximately 2½ years. At the time of termination, respondent-mother was in no better position to parent her children than when they were removed from her care. Respondent-mother was afforded more than sufficient time to demonstrate a commitment to her children. However, she was unmotivated and unwilling to lead a substance-free lifestyle. Throughout the entire case, respondent-mother engaged in a course of denial, blame, and obfuscation. She took no responsibility for her positive drugs screen. Indeed, even in the face of irrefutable evidence to the contrary, respondent-mother continued to deny that she abused substances, let alone that she had a substance abuse issue. She frequently clung to the theory that her tests were false-positives because of inaccurate drug-testing facilities. And without anything to substantiate her claims, she asserted that medications such as amoxicillin could yield a false-positive screen for cocaine. Considering respondent-mother's extensive history, there was no credible evidence that she would be in a position to parent her children anytime soon. Accordingly, the trial court did not err when it found clear and convincing evidence to terminate respondent-mother's parental rights pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j).

Respondent-mother also challenges the trial court's finding that termination of her parental rights was in the children's best interests. We find no merit to her arguments. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The court may consider several factors when deciding if termination of parental rights is in a child's best interests, including the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012). The court may also consider psychological evaluations, the child's age, continued involvement in domestic violence, and a parent's history. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009). This Court reviews for clear error a trial court's finding that termination of parental rights is in a child's best interests. *Id.* at 129.

The trial court did not clearly err when it found that termination of respondent-mother's parental rights was in the children's best interests. A preponderance of the evidence established that respondent-mother had not adequately addressed her substance abuse issues and she could not provide a safe and stable home for the children. Although respondent-mother asserts that a bond existed between her and the children, the nature and strength of that bond is questionable. While past and present caseworkers testified that a bond existed between respondent and the children,

none of the workers had spent much time observing the interaction between respondent-mother and her children. The caseworkers were relying nearly exclusively on their conversations with the children. However, even the children did not want to live with respondent-mother and they had voiced a reluctance to leave their grandmother's home, where they had spent a majority of their lives. Further, any bond that respondent-mother had with the children was clearly weakened by respondent-mother's failure to consistently attend parenting time. In any event, while respondent-mother and the children may have a bond, that factor does not outweigh in this case the children's need for a safe and stable home that is free from drug abuse and unresolved substance abuse issues.

Contrary to what respondent-mother argues, the trial court did not fail to consider that the children were placed in the home of their maternal grandmother. The fact that a child is living with relatives must be considered when determining a child's best interests. *In re Olive/Metts*, 297 Mich App at 43. In general, placement with a relative weighs against termination of parental right. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). However, while a trial court must consider this factor, a child's placement with relatives is not dispositive of the best-interest determination, and termination of parental rights is still appropriate if it is in the child's best interests. *In re Olive/Metts*, 297 Mich App at 43.

In this case, the trial court acknowledged the relative placement, but still found that termination served the children's best interest. The maternal grandmother had expressed an interest in adopting the children. When considering a child's best interest, it is appropriate to consider the possibility of adoption. *In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014). Guardianship had been discussed with the grandmother, but she preferred adoption over a guardianship because she no longer wished to be engaged in respondent-mother's instability and drama, and she did not have a particularly good relationship with respondent-father.

The court also properly considered the advantages to the children living with the maternal grandmother. It is also appropriate to weigh the advantages of a foster home over the parent's when evaluating a child's best interests. *Id.* at 713-714. The children were ages 11, 9, and 3, at the time of termination. Even before they were made court wards, the children had primarily lived in the grandmother's home. Indeed, the youngest child had essentially spent his entire life in the grandmother's care. Even respondent-mother acknowledged that the grandmother's home was the only one the children had ever really known. The children were bonded to the grandmother and had conflicting feelings about leaving their grandmother's home. Moreover, the grandmother had provided stability for the children, who were all doing well in her care. According to the caseworker, it would be detrimental to the children's well-being to be removed from the grandmother's care. Contrary to respondent-mother's assertions, the trial court carefully considered the children's relative placement before finding that it was in the children's best interests to terminate her parental rights. Termination was necessary to provide the children with the avenue by which they would achieve stability, permanence, and finality.

In sum, considering respondent-mother's unresolved substance abuse issues, the children's tenuous bond with respondents, the children's clear bond with the maternal grandmother, the advantages of the grandmother's home over respondent's home, the possibility of adoption, the grandmother's reluctance to enter into a guardianship because of her strained relationship with respondents, and the children's needs for permanence, stability, and finality, the trial court did not

clearly err when it found that termination of respondent-mother's parental rights was in the children's best interests.

II. DOCKET NO. 354062 (RESPONDENT-FATHER)

Respondent-father argues that petitioner did not make reasonable efforts at reunification. This Court generally reviews a trial court's finding that "reasonable efforts were made to preserve and reunify the family" for clear error. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). However, in *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000), this Court held that "the time for asserting the need for accommodation in services is when the court adopts a service plan" and the issue is deemed unpreserved if a respondent "fail[s] to object or indicate that the services provided to them were somehow in adequate." In this case, respondent-father did not timely object to the service plan. Therefore, this claim of error is unpreserved. As such, we review the issue for plain error affecting respondent-father's substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

In general, before a court may contemplate termination of a parent's parental rights, the DHHS must make reasonable efforts to reunite the family. MCL 712A.19a(2). The purpose of a treatment plan is to facilitate the return of the children to their parents. *In re Mason*, 486 Mich at 156. DHHS's statutory duties to update a parent's treatment plan and provide the parent with necessary and relevant reunification services continue throughout the case. *Id.* "The adequacy of the [DHHS]'s efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009). After reviewing the record, it is readily apparent that petitioner made reasonable efforts to reunify respondent-father with his children and that termination of respondent-father's parental rights was a product of his failure to participate in and benefit from the treatment plan, rather than the adequacy of petitioner's efforts.

Respondent-father became incarcerated in July 2017, at the same time when the children were removed from his care. During his incarceration, he pleaded no contest to the allegations in the petition, the court took jurisdiction, and the court ordered respondent-father to comply with a treatment plan that included a psychological evaluation, a psychiatric evaluation if recommended, a substance abuse assessment and treatment if recommended, weekly random drug screens, and individual counseling with a domestic violence component. Because respondent-father was incarcerated at the time, the treatment plan also required him to comply with the rules and regulations of the correctional facility. Further, upon his release, respondent-father was required to maintain suitable housing, income, and regular contact with the foster care specialist. At the dispositional hearing, respondent-father indicated that, while incarcerated, he had completed a psychological evaluation and was participating in domestic violence and substance abuse classes. At a review hearing in May 2018, respondent-father reported that he had completed all of the services that were available to him in the correctional facility.

Respondent-father was released from incarceration on September 4, 2018. He failed to attend the September 12, 2018 review hearing and his whereabout were unknown. At the December 19, 2018 review hearing, it was reported that while he had participated in services available in prison, he had not been working on his treatment plan since his release. Respondent-

father stated that he had a problem with his caseworker, T. Elliott, and did not intend to cooperate with her any further.

Shortly after his release, the caseworker referred respondent-father twice for a psychological evaluation. He did not complete this referral until March 2019. The clinician recommended that respondent-father participate in individual counseling, domestic violence and anger management classes, parenting classes, and substance abuse treatment. Referrals and re-referrals for these services were made pursuant to the clinician's recommendations, but there was little evidence that respondent-father complied with the referrals.

Respondent-father did not comply with the substance abuse component of his treatment plan. The caseworker reported that respondent-father refused substance abuse treatment and he failed to comply with weekly random drug screens. Between September 2018 and March 2019, respondent-father completed only 3 of the requested 27 screens. Of those three screens, two were negative, but one submitted in October 2018 was positive for cocaine. Although there was only one reported positive screen, there was compelling evidence that respondent-father regularly abused controlled substances.

Similar to respondent-mother, for six months in the middle of 2019, including while the termination hearing was ongoing, respondent-father also treated with Dr. Kitzmiller for opioid dependency and chronic pain syndrome. Between April 2019 and September 2019, respondent-father tested positive for cocaine and other unexpected unprescribed prescription medications on at least six occasions. During a September 26, 2019 appointment, when shown the results of his positive urine screen, respondent-father "totally denied" using cocaine. Similar to respondent-mother, Dr. Kitzmiller discharged respondent-father from his practice.

Respondent-father also claimed that he had suitable housing, but he failed to cooperate with the caseworkers to complete a home assessment. T. Elliot did not complete a home assessment during her tenure on the case because, after respondent-father became verbally violent with her over the phone, she did not feel safe going to the home. Judson Center caseworker M. Kinder attempted on several occasions to schedule a home assessment, similarly with no success. The initial address respondent-father provided for his home assessment scheduled in September 2019 turned out to be an abandoned church. Thereafter, respondent-father gave another address and Kinder made several attempts to schedule a home assessment with respondent-father. Finally, in November 2019, Kinder met respondent-father at his home, but after respondent-father became hostile, Kinder left the premises without entering the dwelling. From the exterior, the home did not appear suitable.

Respondent-father also did not demonstrate that he had a legal source of income. Although he claimed to be gainfully employed, and at one point testified that he had three jobs at once, none of caseworkers could verify employment. On one occasion, in response to a request to document his income, respondent-father merely texted a picture of money, but neglected to disclose the source of the cash.

Respondent-father also failed to maintain a relationship with his children. After he was released from prison, the maternal grandmother supervised respondent-father's parenting time as petitioner's designee. By December 2018, only two months after his release, the grandmother

reported that respondent-father was not regularly attending parenting time. When the visits were moved to the agency, respondent-father made no effort to visit the children. At the January 2020 continued termination hearing, the caseworker testified that respondent-father's last documented visit with the children was in October 2019.

Respondent-father asserts that petitioner failed to provide him with appropriate services. However, the record demonstrates that petitioner offered respondent-father a multitude of services, but he failed to cooperate with, participate in, and benefit from the services offered. Although the agency is required to make reasonable efforts to provide services to secure reunification, the parent has a commensurate responsibility to participate in the services offered. *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

Respondent-father asserts that petitioner should have provided him with a parenting partner and ordered him into anger management counseling and an inpatient substance abuse program. Regarding the referral for inpatient substance abuse treatment, respondent-father ignores his wholesale failure to participate in the substance abuse services that were offered, namely, random drug screens and substance abuse therapy. He also ignores that he reported to his doctor and testified more than once that he did not use drugs, specifically cocaine. Respondent-father failed to comply with referrals that would have assisted in determining what additional treatment avenues could or should be pursued. Considering this track record, it is unlikely that even if petitioner had the authority to directly admit respondent-father into an inpatient substance abuse program, that he would have complied. Regarding the failure to refer respondent-father to an anger management class, respondent-father again ignores that referrals were made for individual counseling and domestic violence treatment. Had he complied with these services, progress could have been made toward addressing his anger management issues.

Finally, respondent-father asserts that he should have been offered the services of a parent-partner. He contends that services of this nature would have helped foster a better relationship between him and the caseworkers. He also submits that a parent-partner would have impressed upon him the need to comply with his treatment plan. Although the record is unclear, it appears that a parent-partner referral was made. The Judson Center caseworker testified that a referral was "pending" for a parent-partner for respondent-father. She explained that when a referral is pending, it is awaiting the signature of DHHS. Even if the referral was not made, respondent-father has not explained how a parent-partner referral would have yielded a different outcome. *In re Fried*, 266 Mich App at 543. Throughout the proceedings, respondent-father was hostile, uncooperative, resistant, difficult, and belligerent with the individuals who were attempting to assist him in navigating the child protective system. Specifically, he was very vocal about his disdain for at least two caseworkers and he frequently represented that he had retained counsel to replace his court-appointed attorney. Considering this record, it is unlikely that he would have been cooperative or receptive to the assistance of a parent-partner. His suggestions to the contrary are mere speculation. It is more probable that the parent-partner would join respondent-father's growing list of individuals who he perceives had slighted him.

Contrary to respondent-father's assertions, the record shows that petitioner made the referrals necessary to assist him in removing the barriers to reunification. Unfortunately, respondent-father refused to participate in and benefit from the services offered. Petitioner is not required to offer every conceivable service before termination of parental rights may be ordered.

Accordingly, we find no merit to respondent-father's claims that petitioner failed to make reasonable efforts to reunify him with his children.

II. ICWA AND MIFPA

Although neither respondent raise this issue on appeal, petitioner correctly acknowledges that it and the trial court failed to comply with the notice provisions of the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.*, and the Michigan Indian Family Preservation Act (MIFPA), MCL 712B.1 *et seq*., which are "mandatory, regardless of how late in the proceeding" a child's possible Indian heritage is uncovered." *In re TM*, 245 Mich App 181, 188; 628 NW2d 570 (2001), overruled on other grounds by *In re Morris*, 491 Mich 81, 115 n 26; 815 NW2d 62 (2012). Accordingly, although neither respondent has raised this issue on appeal, it is one that should be considered by this Court. Thus, we address this issue pursuant to MCR 7.216(A)(7) (recognizing that this Court may, at any time, "enter any judgment or order or grant further or different relief as the case may require").

Both ICWA and MIFPA were enacted in an effort to "protect[] the best interests of [American] Indian children and promot[e] the stability and security of [American] Indian tribes and families." *In re England*, 314 Mich App 245, 251; 887 NW2d 10 (2016) (quotation marks and citation omitted). The notice provisions of ICWA and MIFPA require, in general, that a tribe be notified "when there are sufficient indications that [a] child may be an [American] Indian child . . . ." *In re Morris*, 491 Mich at 100. Specifically, the ICWA requires that the relevant Indian tribe be notified by registered mail, return receipt requested, where there is "reason to know" that an Indian child may be involved in the child protective proceeding. 25 USC 1912(a). The "reason to know" standard has been held by the Michigan Supreme Court to "set a rather low bar" for triggering the notice requirement. *In re Morris*, 491 Mich at 105. In other words, "sufficiently reliable information of virtually any criteria on which membership might be based is adequate to trigger the notice requirement[.]" *Id*. at 108. The Court in *Morris* indicated that "indicia sufficient to trigger tribal notice includes[, in part,] situations in which (1) the trial court has information suggesting that the child, a parent of the child, or members of a parent's family are tribal members, [or] (2) the trial court has information indicating that the child has Indian heritage, even though no particular Indian tribe can be identified[.]" *Id*. at 108 n 18.

According to allegations in the original petition, respondent-father explicitly disclosed to petitioner on June 28, 2017, that both he and the children had Native American ancestry. At the July 21, 2017 preliminary hearing, the court inquired into the children's Indian heritage. When respondent-mother indicated that she had no Native American heritage, the court found that there were no ICWA issues and then attempted to move on. When it was brought to the court's attention that respondent-father, then only a putative father, had indicated that he may have Indian heritage, the court found this information irrelevant because respondent-father had yet to establish paternity. The court indicated that once respondent-father was deemed the legal father, the ICWA issue could be revisited. However, there is no indication in the record, either at a hearing or filings in the court file, that the children's Indian heritage was ever reexamined after respondent-father established paternity.

Respondent-father informed petitioner that he had Native American heritage. This information was imparted to the court. Accordingly, the court had "information suggesting that

the child, a parent of the child, or members of a parent's family [were] tribal members[.]" *Id.* at 108 n 18. Therefore, the notice requirement of 25 USC 1912(a) and MCL 712B.9(1) were triggered. However, there is nothing in the record to suggest that steps were taken to satisfy the notice requirement of 25 USC 1912(a) or MCL 712B.9(1).

In *In re Morris*, the Supreme Court held that the proper remedy for ICWA-notice violations is to conditionally reverse the trial court's order terminating parental rights and remand for resolution of the ICWA-notice issues. *In re Morris*, 491 Mich at 122-123. Accordingly, because the trial court otherwise properly terminated respondents' parental rights, we conditionally reverse the trial court's order and remand this matter to the trial court. On remand, the trial court shall first ensure that notice is properly made to the appropriate entities. If the court then determines that ICWA and MIFPA do not apply to the proceedings, either because the children are not Indian children or because the properly noticed tribes did not respond within the allotted time, the trial court's order terminating respondents' parental rights shall be reinstated. *Id.* If, however, the trial court concludes that ICWA and MIFPA does apply to this child protective proceeding, the court's termination order must be vacated and all proceedings must begin anew in accordance with the procedural and substantive requirements of the statutes. *Id.*

We affirm the trial court's order with respect to the substantive issues raised by respondents on appeal. However, for the reasons explained above, we conditionally reverse the trial court's termination order and remand for the limited purpose of ICWA and MIFPA notice compliance. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto
/s/ Thomas C. Cameron