



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

06-20-00021-CV

IN THE INTEREST OF J.W., A CHILD

On Appeal from the County Court at Law No. 2
Gregg County, Texas
Trial Court No. 2018-1830-CCL2

Before Morriss, C.J., Burgess and Stevens, JJ.

ORDER

As a result of a petition filed by the Texas Department of Family and Protective Services (the Department), the trial court terminated Father's parental rights to J.W. Father appeals. We abate this appeal to allow the trial court the opportunity to comply with the Indian Child Welfare Act (ICWA).

Congress passed the ICWA in response to the "rising concern in the mid-1970's over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes." *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 32 (1989). "An Indian child is defined by the ICWA as an '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.'" *In re C.C.*, No. 12-17-00114-CV, 2017 WL 2822518, at *2 (Tex. App.—Tyler June 30, 2017, no pet.) (mem. op.) (quoting 25 U.S.C.A. § 1903(4)). "The ICWA, however, does not define what constitutes being a 'member' or 'being eligible for membership.'" *Id.* (citing 25 U.S.C.A. § 1903(4)). "Each tribe has its own criteria for determining tribe membership." *Id.*

"The Bureau of Indian Affairs created guidelines for state courts to use in Indian child custody proceedings to assist with the interpretation of the ICWA." *Id.* (citing Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings (BIA Guidelines), 44 Fed. Reg. 67,584 (Nov. 26, 1979)). Under the BIA Guidelines, "[p]roceedings in state courts involving the custody of Indian children shall follow strict procedures and meet stringent requirements to

justify any result in an individual case contrary to these preferences.” *Id.* (quoting BIA Guidelines, 44 Fed. Reg. at 67,586). “Specific instructions are provided in the [BIA] Guidelines for the determination of the status of an alleged Indian child.” *Id.* (citing *In re J.J.C.*, 302 S.W.3d 896, 900 (Tex. App.—Waco 2009, no pet.)). “The burden is placed on the trial court to seek verification of the child’s status through either the Bureau of Indian Affairs or the child’s tribe.” *Id.* (citing BIA Guidelines, 44 Fed. Reg. at 67,586 (stating that “the court shall seek verification of the child’s status”))).

“Under the ICWA, an Indian tribe is entitled to notice of a custody proceeding involving an Indian child.” *Id.* (citing 25 U.S.C.A. § 1912(a)). Here, on receiving notice that J.W. might be an Indian child, notices were properly sent to the Secretary of the Interior and Regional Director of the Bureau of Indian Affairs. In response, the Bureau of Indian Affairs reported that “[t]he ICWA Notice states a possible tribal affiliation with the following tribe(s): Pima.” The letter from the Bureau of Indian Affairs asked the parties and the trial court to “[p]lease refer to the BIA Website for Receipt of Designated Tribal Agents for Service of ICWA Notices: <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/ois/pdf/idc2-061761.pdf>.” Although this website listed two separate Pima tribes—the Salt River Pima-Maricopa Indian Community and Gila River Pima-Maricopa Indian Community—our record reflects that notices were sent only to the Salt River Pima-Maricopa Indian Community. As a result, notice must also be sent to the Gila River Pima-Maricopa Indian Community.

Notices must comply with Section 23.111 and must include:

- (1) The child’s name, birthdate, and birthplace;

(2) All names known (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and Tribal enrollment numbers if known;

(3) If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents; and

....

(5) A copy of the petition, complaint, or other document by which the child-custody proceeding was initiated

25 C.F.R. § 23.111(d).

“A violation of the ICWA notice provisions may be cause for invalidation of the termination proceedings at some later, distant point in time.” *C.C.*, 2017 WL 2822518, at *2 (citing 25 U.S.C.A. § 1914 (providing that “[a]ny Indian child who is the subject of any action for . . . termination of parental rights under State law, any parent . . . from whose custody such child was removed, and the Indian child’s tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title”)).

Thus, because the inquiry required by the ICWA is necessary here, we abate the appeal in cause number 06-20-00021-CV, with the following instructions:

(1) the trial court shall send, no later than **July 14, 2020**, proper notice that complies with the ICWA’s statutory notice requirements discussed herein to

Gila River Pima-Maricopa Indian Community
Sara Bissen, Child & Family Welfare Administrator.
P.O. Box 427, Sacaton, AZ 85147;

- (2) the trial court shall thereafter conduct a hearing, no later than **August 14, 2020**, to determine whether J.W. is an Indian child under the ICWA;
- (3) the trial court shall cause a record of the proceedings to be prepared and shall make appropriate findings as to whether J.W. is an Indian child;
- (4) the reporter's record from the hearing shall be filed with this Court no later than **August 21, 2020**; and
- (5) a supplemental clerk's record (including any orders and findings resulting from the ICWA hearing) shall be filed with this Court no later than **August 21, 2020**.

See TEX. R. APP. P. 44.4. Due to the accelerated nature of parental-rights termination proceedings, the trial court shall conduct these abatement proceedings in an expedited fashion. The appeal will be reinstated in this Court following the filing of the supplemental clerk's record. Until such time, the July 22, 2020, submission date is hereby withdrawn.

IT IS SO ORDERED.

BY THE COURT

DATE: July 8, 2020