Cite as 2010 Ark. App. 564

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA 10-137

BRIAN LAUMAN AND ALIESHA BROWN APPELLANTS	Opinion Delivered September 1, 2010
V.	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT [NO. JV-2008-499]
ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	HONORABLE JIM D. SPEARS, JUDGE
	AFFIRMED

M. MICHAEL KINARD, Judge

Brian Lauman and Aliesha Brown appeal from the terminations of their parental rights, arguing that the requirements of the Indian Child Welfare Act, 25 U.S.C. §§ 1901–1963 (2006), ("ICWA") were not met throughout the proceeding. Because this argument was not raised before the court below, we affirm the terminations.

On July 18, 2008, the Arkansas Department of Human Services ("DHS") placed a seventy-two-hour hold on A.R. and S.L. due to the arrests of Aliesha Brown, the biological mother of both children, and Brian Lauman, the biological father of S.L. At the probable cause hearing on July 24, 2008, the juvenile court ordered the children to remain in DHS custody pending adjudication. Because Brown indicated to the court that one of the children's fathers may have Cherokee Indian heritage, the court also ordered DHS to notify the Cherokee Nation pursuant to ICWA.

On August 29, 2008, DHS sent a letter to the Cherokee Nation of Oklahoma that listed both children's names, identifying information, and parents' names and stated that the children had been taken into DHS custody. The Cherokee Nation responded by letter dated September 4, 2008, stating that neither A.R. nor S.L. could be traced in the tribal records and that neither child was considered an "Indian child" as defined by ICWA. Both letters were filed with the juvenile court.

The children were adjudicated dependent-neglected on September 5, 2008, and the case proceeded with a goal of reunification. At a permanency-planning hearing on July 6, 2009, the juvenile court changed the goal of the case to adoption/termination of parental rights. After a hearing on October 19, 2009, the court entered an order terminating the parental rights of both Brown and Lauman.

Appellants' sole argument on appeal is that DHS failed to comply with the notice requirements of ICWA. It is well established that failure to raise an issue before the trial court is fatal to an appellate court's consideration on appeal. *Walters v. Ark. Dep't of Human Servs.*, 77 Ark. App. 191, 196, 72 S.W.3d 533, 536 (2002). The record in this case contains no indication that the issue of ICWA compliance was ever raised by appellants. Therefore, this court cannot entertain their appeal, and the terminations are affirmed.

Even if appellants had raised the ICWA challenge below, their argument would be without merit. ICWA applies only to an "Indian child," which is defined as any unmarried person under the age of eighteen who is either (a) a member of an Indian tribe or (b) 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). Notice to an Indian tribe of an involuntary proceeding is required when a juvenile court knows or has reason to know that an Indian child is involved. 25 U.S.C. § 1912(a). In this case, the juvenile court had specific knowledge that A.R. and S.L. were *not* Indian children. Although appellants' brief states that "there is nothing in the appellate record to indicate that the Department even attempted to meet the minimum statutory requirements of notice," the supplemental record provided by DHS clearly shows that DHS contacted the Cherokee Nation as ordered and, furthermore, that the Cherokee Nation did not consider A.R. and S.L. to be "Indian children." Therefore, ICWA did not apply to any of the proceedings involving A.R. and S.L., and no further notice to the Cherokee Nation was required.

Affirmed.

PITTMAN and HENRY, JJ., agree.