

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0311**

In the Matter of the Welfare of the Children of:
A. J. J. and J. D. J., Parents.

**Filed May 16, 2022
Writ denied
Segal, Chief Judge**

Itasca County District Court
File Nos. 31-JV-21-156, 31-JV-21--3069

Matti R. Adam, Itasca County Attorney, Michael J. Haig, Chief Assistant County Attorney,
Grand Rapids, Minnesota (for petitioner Itasca County Health and Human Services)

Ross Edgar Trooien, Grand Rapids, Minnesota (for respondent-mother A.J.J.)

Taylor Joseph Kesti, Grand Rapids, Minnesota (for children K.J.J., K.D.J., M.A.J.)

Erica Lynn Hill Austad, Baudette, Minnesota (for child L.R.J.)

J.D.J., Nashwauk, Minnesota (pro se respondent-father)

Kim Allen, Grand Rapids, Minnesota (guardian ad litem)

Considered and decided by Segal, Chief Judge; Reilly, Judge; and Gaïtas, Judge.

SYLLABUS

In a termination-of-parental-rights proceeding, a district court may order investigation into whether children involved in that proceeding are Indian children under the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act, notwithstanding a prior ruling in a related child-in-need-of-protection-or-services proceeding that the same children were not Indian children.

SPECIAL TERM OPINION

SEGAL, Chief Judge

In a child-in-need-of-protection-or-services (CHIPS) proceeding, the CHIPS court ruled that the children involved in that proceeding were not Indian children. *See* 25 U.S.C. § 1903(4) (2018) (defining “Indian child” for purposes of the Indian Child Welfare Act (ICWA)); Minn. Stat. § 260.755, subd. 8 (2020) (defining “Indian child” for purposes of the Minnesota Indian Family Preservation Act (MIFPA)). In a subsequent termination-of-parental-rights (TPR) proceeding involving the same children, Itasca County Health and Human Services (the county) moved the district court to rule that, based on the district court’s ruling in the CHIPS proceeding and, absent any new information to the contrary, the children were not Indian children. The district court denied that motion, along with the county’s later motion to reconsider. The district court thus required the county to re-investigate whether the children are Indian children. The county seeks a writ of prohibition to preclude the district court from enforcing its orders. This court received no response to the petition from the other parties to the proceeding. Because the county failed to establish that the district court acted in a manner unauthorized by law, we deny the writ.

DECISION

“A writ of prohibition is an extraordinary remedy,” to be used only “in extraordinary cases.” *Underdahl v. Comm’r of Pub. Safety (In re Comm’r of Pub. Safety)*, 735 N.W.2d 706, 710 (Minn. 2007). A writ of prohibition can “be issued only if . . . (1) an inferior court or tribunal is about to exercise judicial or quasi-judicial power; (2) the exercise of such power is unauthorized by law; and (3) the exercise of such power will result in injury for

which there is no adequate remedy.” *State v. Emerson (In re Leslie)*, 889 N.W.2d 13, 14-15 (Minn. 2017) (quotation omitted); *see also Klapmeier v. Cirrus Indus., Inc.*, 900 N.W.2d 386, 393 (Minn. 2017) (addressing requirements for issuing writ of prohibition); *Underdahl*, 735 N.W.2d at 710 (listing circumstances in which a writ of prohibition may be issued). While prohibition may “issue to prevent an abuse of discretion where there is no other adequate remedy at law,” *Wasmund v. Nunamaker*, 151 N.W.2d 577, 579 (Minn. 1967), “[the] writ is a preventative, not a corrective, measure,” *State v. Deal*, 740 N.W.2d 755, 769 (Minn. 2007). Mere disagreement with the district court “is unlikely to warrant an extraordinary writ.” *Klapmeier*, 900 N.W.2d at 392 n.4.

At the start of an “involuntary child-custody proceeding,” the district court is to ask each participant whether the participant “knows or has reason to know that the child is an Indian child” under ICWA. 25 C.F.R. § 23.107(a) (2021); *see* 25 U.S.C. § 1912(a) (2018) (imposing certain notice requirements in involuntary proceedings “where the court knows or has reason to know that an Indian child is involved”). Involuntary proceedings include TPR proceedings, like the one here, in which the parent does not consent to the TPR. 25 C.F.R. § 23.2 (2021). Further, TPR proceedings are child-custody proceedings under ICWA, 25 U.S.C. § 1903(1)(ii) (2018), and are separate proceedings from CHIPS proceedings involving the same children. *See In re Welfare of Child. of R.M.B.*, 735 N.W.2d 348, 352 n.6 (Minn. App. 2007), *rev. denied* (Minn. Sept. 26, 2007). If, as a result of its inquiry, the court has “reason to know” that a child is an Indian child but lacks sufficient information to know whether the child is an Indian child, the court must confirm that the petitioning agency used due diligence to resolve the question, and it must treat the

child as an Indian child until the court rules that the child is not an Indian child. 25 C.F.R. § 23.107(b) (2021). Similar requirements exist under Minnesota rules and MIFPA. Minn. Stat. § 260.771, subd. 2 (2020); Minn. R. Juv. Prot. P. 29.01.

A court has “reason to know” that a child is an Indian child if

(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;

(2) [a]ny participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(3) [t]he child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(4) [t]he court is informed that the domicile or residence of the child, the child’s parent, or the child’s Indian custodian is on a reservation or in an Alaska Native village;

(5) [t]he court is informed that the child is or has been a ward of a Tribal court; or

(6) [t]he court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.

25 C.F.R. § 23.107(c) (2021). Under the guidelines for implementing ICWA, courts “are encouraged to interpret these factors expansively.” U.S. Dep’t of the Interior, Bureau of Indian Affs., *Guidelines for Implementing the Indian Child Welfare Act* 11 (Dec. 2016) (ICWA Guidelines). The ICWA Guidelines also state that “[w]hen in doubt, it is better to conduct further investigation into a child’s status early in the case.” *Id.*

The county admits that one parent claimed Indian heritage, and the district court expressed concern about possible changes in the requirements for tribal membership. The county argues that the district court should not have required additional investigation into

the status of these children because this record is insufficient to give the district court “reason to know” that the children were Indian children. We reject this argument because the ICWA Guidelines are clear that “courts may choose to require additional investigation into whether there is a reason to know the child is an Indian child.” *Id.* Thus, the investigation required by the district court is not “unauthorized by law,” and this case is therefore not a proper case for the issuance of a writ of prohibition. *See Emerson*, 889 N.W.2d at 14-15 (quotation omitted).

The county argues that the fact that TPR and CHIPS proceedings are separate proceedings is an insufficient basis to require additional investigation. The ICWA Guidelines are clear on this point: “if a new child-custody proceeding (such as a proceeding to terminate parental rights . . .) is initiated for the same child, the court must make a finding as to whether there is ‘reason to know’ that the child is an Indian child.” *Id.* In addition, the ICWA Guidelines provide that if a “child was not identified as an Indian child in the prior proceeding, the court has a continuing duty to inquire whether the child is an Indian child.” *Id.* Thus, notwithstanding the ruling by the CHIPS court that these children were not Indian children, the district court had a separate duty in the TPR proceeding to address their status.

Finally, we reject the county’s assertion that the district court erroneously replaced the reason-to-know standard with a lower standard: that the children “might” be Indian children. “[R]eason to know” is “[i]nformation from which a person of ordinary intelligence . . . would infer that the fact in question exists or that there is a substantial enough chance of its existence that, if the person exercises reasonable care, the person can

assume the fact exists.” *Black’s Law Dictionary* 1520 (11th ed. 2019). The word “might” means “to express possibility.” *Random House Dictionary of the English Language Unabridged* 1219 (2d ed. 1987). There is significant overlap between when a court “has reason to know” that a child is an Indian child and when there is a “possibility” that a child is an Indian child. On this record, we cannot say that the district court applied an incorrect standard. Moreover, as noted, even if a court has something less than a reason to know that a child is an Indian child, the court may nevertheless “choose to require additional investigation into whether there is a “reason to know” the child is an Indian child.” ICWA Guidelines, *supra*, at 11.

Because the district court was within its authority to require additional investigation, the denial of the county’s motion was not unauthorized by law and a writ of prohibition will not be issued.

Writ denied.