

**NOTICE**  
Decision filed 10/20/25. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2025 IL App (5th) 250410  
NOS. 5-25-0410, 5-25-0411, 5-25-0412 cons.

IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

---

<i>In re</i> K.F., T.F., and P.H., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Saline County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	Nos. 22-JA-5, 22-JA-6, 22-JA-7
	)	
Katherine H.,	)	Honorable
	)	Amanda Byassee Gott,
Respondent-Appellant).	)	Judge, presiding.

---

JUSTICE BOIE delivered the judgment of the court, with opinion.  
Justices Moore and Barberis concurred in the judgment and opinion.

**OPINION**

¶ 1 In this consolidated appeal, the respondent, Katherine H. (Katherine), appeals from the trial court’s judgment terminating her parental rights to her minor children, K.F. (born September 15, 2012), T.F. (born October 24, 2013), and P.H. (born March 18, 2014).<sup>1</sup> On appeal, Katherine argues that the trial court failed to comply with the procedural requirements of the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 *et seq.* (2018)); specifically with the requirements concerning notice to the appropriate Indian tribes. For the following reasons, this court concludes that the trial court did not comply with ICWA’s procedural requirements, vacates the trial court’s

---

<sup>1</sup>The minors’ biological father was also a respondent in the trial court proceedings but is not a party to this appeal.

judgments terminating Katherine's parental rights, and remands this cause to the trial court with directions.

¶ 2

## I. BACKGROUND

¶ 3 Because the issue on appeal concerns compliance with the procedural requirements of the ICWA, and specifically with the ICWA's requirements governing notice of a child-custody proceeding to Indian tribes, discussion of the facts that led to the termination proceedings will be extremely limited.

¶ 4 On March 7, 2022, the Illinois Department of Children and Family Services (DCFS) took K.F., T.F., and P.H. (the minors) into protective custody and placed them in a traditional foster home. On March 9, 2022, the State filed petitions for adjudication of wardship, alleging that all three minors were neglected because their environment was injurious to their welfare pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2020)). The trial court held a temporary custody hearing for all three minors and found probable cause to believe that all three were neglected. The trial court ordered the minors into the temporary custody of the guardianship administrator of DCFS, with authorization to place the minors.

¶ 5 During the May 24, 2022, adjudicatory hearing, Katherine stipulated to one of the allegations of neglect. The trial court found that the minors were neglected and scheduled a dispositional hearing. On June 14, 2022, DCFS filed a disposition report, prepared in anticipation of the dispositional hearing. In each child's report, DCFS stated that the child's "service needs" included "referral to DCFS specialty services: Indian Child Welfare Act."

¶ 6 On June 21, 2022, the trial court held a dispositional hearing. The State called DCFS caseworker Mindy Miller to testify. During cross-examination by Katherine's attorney, Miller was asked whether she had investigated the three minors' possible Indian heritage and whether Indian

rights were involved in this case. Miller answered that “[t]he [ICWA] paperwork was filled out and sent in” almost two months earlier. In response to a question from the trial court, Miller testified that no response had yet been received. Katherine, in a representation to the trial court, stated that the three minors were “Crow and Cheyenne” through their biological father and that their father was “a tribal member,” but the minors themselves were not registered with any tribe. At the end of the dispositional hearing, the trial court found that it was in the minors’ best interests to be adjudged wards of the court, and custody and guardianship of the minors was placed with the guardianship administrator of DCFS.

¶ 7 On August 9, 2022, the clerk of the trial court received a form letter from the Crow Tribe for each of the minors. The letterhead on the forms indicated that they were completed by “Crow Tribe Social Services, ICWA Program,” with an address that was a post office box in Crow Agency, Montana. Rebecca Whiteclay was named as the “coordinator” of the Tribe’s ICWA program, and her e-mail address was given as Rebecca.Whiteclay@crow-nsn.gov. The forms were dated August 2, 2022, and gave the child’s mother’s name (Katherine) and the father’s name (Victor). Each form stated that “[t]he Crow Tribe of Indians has received an inquiry regarding a child custody proceeding” and that “[b]ased upon the information provided, the Crow Tribe of Indians \*\*\* DOES consider this child a member of the Tribe for purposes of the Indian Child Welfare Act based on the following circumstances.” There immediately followed three choices of “circumstances”—A, B, and C—and only choice C was circled. Choice C read, “The Child qualifies for descendency with the Crow Tribe of Indians.” (The form did not define “descendency.”) There immediately followed two caveats: “This determination is not a promise or guarantee of eligibility for any tribal program or benefit provided by the Crow Tribe. \*\*\* Further, actual enrollment is subject to the Crow Tribe’s enrollment application process (including

submission of required documentation).” At the bottom of each form was an indication that the child’s mother “IS NOT” an enrolled member of the Crow Tribe, but the child’s father “IS” an enrolled member of the Crow Tribe, with a “Blood Quantum” of “51/128.” The father’s enrollment number was written onto the form. On August 11, 2022, the circuit clerk filed the forms.

¶ 8 On August 16, 2022, the trial court held its first permanency review hearing in this case. The trial court referred to the forms that the circuit clerk had received from the Crow Tribe. The trial court stated that: “the children are descendants of and eligible to be members of the Crow Tribe is essentially how I read that Report in this matter.” The trial court immediately moved on to other matters. The trial court set a permanency goal of return home within 12 months and continued DCFS custody and guardianship of the minors. Custody and guardianship remained unchanged throughout the proceedings.

¶ 9 Prior to June 21, 2023, the record does not include any proof of service to indicate that a notice of the tribes right to intervention, as defined in title 25, section 23.11, of the Code of Federal Regulations (CFR) (25 C.F.R. § 23.11 (2023)) had ever been sent by certified mail to the minor’s parents, the Crow Tribe, or to a Cheyenne Tribe—the tribes from which Katherine indicated the minors had Indian ancestry.

¶ 10 On June 21, 2023, an “Indian Child Welfare Act Notice of Proceedings” was filed with the circuit clerk in each of the minors’ cases. Each notice of proceedings was directed to the “Crow Tribe Social Services / ICWA Program” at a post office box in Crow Agency, Montana; the same address appearing in the letterhead of the three forms that were received by the circuit clerk on August 9, 2022. Each notice of proceedings provided information on the minor, the parents, the proceedings in the trial court, and the rights of the parties and of the Crow Tribe in those proceedings, including its right to intervene in the proceedings. Each notice of proceedings also

stated that a hearing was scheduled in this matter on June 27, 2023, in a courtroom in the Saline County Courthouse. The notice of proceedings in K.F.’s case was signed by “Kara Agin” with no indication of who that person was or the office or agency that employed her. The notices of proceedings in T.F.’s case and in P.H.’s case were unsigned.

¶ 11 Attached to each of the three ICWA notices of proceedings was a “proof of service” (lacking any “penalty of perjury” language) also signed by “Kara Agin.” Each “proof of service” indicated that on June 21, 2023, the notice of proceedings had been e-mailed to “REBECCA.BUFFALO@CROW-NSN.GOV.” An additional proof of service was attached indicating that the proof of service was served on “REBECCA.BUFFALO@CROW-NSN.GOV” by electronic filing through Odyssey eFile IL.<sup>2</sup>

¶ 12 On June 27, 2023, the trial court held a permanency hearing. The trial court noted the filing of the “Indian Child Welfare Act Notice of Proceedings” on June 21, 2023. In response to a query from the trial court, the assistant state’s attorney stated that the ICWA notice of proceedings had been filed by the Saline County State’s Attorney’s Office. However, the assistant state’s attorney said, “we have not received a return receipt that she has reviewed them.” The trial court noted that it had “never received any court filings from anyone associated with the [Crow Tribe] or wanting jurisdiction.” The DCFS caseworker, Kelsey Hobbs, stated that “[w]hen Mindy Miller had the case,” she had contact with the Crow Tribe, and “[the minors] are part of the Crow Tribe.” According to Hobbs, Miller was also informed that the Crow Tribe did not have the funds to participate in the proceedings but requested an update from DCFS every six months. The trial court

---

<sup>2</sup>Odyssey eFileIL delivers electronic filing via a secure web portal for attorneys, self-represented litigants, and government agencies. *About eFileIL*, eFileIL, <https://efile.illinoiscourts.gov/about-e-file-page/> (last visited October 17, 2025) [<https://perma.cc/YZF3-SECP>].

then stated that “it’s important to make sure that we’re following the correct [ICWA] procedure” and urged the assistant state’s attorney to research the issue of the notice required by the ICWA.

¶ 13 On August 11, 2023, according to a docket entry from that date, the trial court searched the file in order to “review compliance with ICWA.” The trial court directed its circuit clerk “to send notice of any and all future hearings to the Crow Tribe at the address listed on the filing from August 9, 2022.” The docket entry indicates that the trial court found “[the minors] are eligible for membership with the Crow Tribe.” The trial court directed DCFS to include information and documentation for ICWA compliance in their next report. Also, on August 11, 2023, the circuit clerk, in compliance with the trial court’s order, e-mailed a notice of the permanency hearing set for September 19, 2023, to Whiteclay at the e-mail address Rebecca.Whiteclay@crow-nsn.gov. Thereafter, the circuit clerk e-mailed notices of individual hearings in this proceeding to Whiteclay at Rebecca.Buffalo@crow-nsn.gov. The last of these notices was e-mailed on November 7, 2023. After November 7, 2023, the record does not contain any indication that notice of a hearing was e-mailed to the Crow Tribe.

¶ 14 On September 5, 2023, DCFS filed a report that indicated that the DCFS caseworker had spoken to an individual regarding ICWA compliance and the minors being members of the Crow Tribe. The individual assured the caseworker that she had sent information to the tribe and that the ICWA specialist at DCFS had been updated after each court hearing. No evidence of the same was attached to the report.

¶ 15 On September 15, 2023, the circuit clerk filed, in each of the minors’ cases, a completed single-page form from the Crow Tribe Social Services, ICWA Program. These three forms were substantially identical to the three forms received by the circuit clerk on August 9, 2022, except that these later forms were dated August 31, 2023.

¶ 16 On September 19, 2023, Katherine filed, by and through her appointed attorney, a motion to dismiss and return children due to ICWA violations. The motion alleged, *inter alia*, that neither Katherine nor the Crow Tribe had received proper notice under the ICWA and that the minors' placement in foster care was not in compliance with the ICWA. That same day, at a permanency hearing, the trial court mentioned that Katherine's attorney had filed the motion to dismiss. The trial court also noted the forms from the Crow Tribe, file-stamped September 15, 2023, and commented, "I do believe that the Indian Child Welfare Act is applicable to these children." The trial court stated that no tribe had motioned to intervene in this case. "There was someone who contacted the Court and asked about appearing via Zoom for the case," the judge stated, and "I know there has been notification sent to the tribe for purposes of this hearing," but "I don't have anyone present in my Zoom room at this point in time for purposes of this case." The DCFS caseworker, Hobbs, told the trial court that DCFS had an "ICWA specialist," whom Hobbs contacted after each hearing in this case with a brief synopsis of that particular hearing. The trial court suggested that DCFS "get with" an attorney employed by DCFS in order "[t]o figure out what needs to be filed" and "what notifications were given." The trial court said it would "leave that for someone else to determine what to file as opposed to me telling you exactly what it is that you want to file." The trial court scheduled a hearing on Katherine's motion to dismiss.

¶ 17 On September 21, 2023, the circuit clerk filed a United States Postal Service (USPS) return receipt, which was file stamped September 11, 2023, in Crow Agency, Montana. The record on appeal contains only a copy of the back of a return receipt, which showed that some unspecified article had been delivered to Rebecca Buffalo, whose address was a post office box in Crow Agency, Montana. This was the first return receipt in the record.

¶ 18 On October 17, 2023, the trial court called a hearing on Katherine’s motion to dismiss due to ICWA violations. The trial court expressed concern that the court file, until recently, did not include any notices to the Crow Tribe. The trial court told everyone assembled for the hearing to note “that this may very well be that we have some voidable orders here and that we will be backtracking in this case for rehearings or findings to be made.” The trial court stated that “the filings” heretofore and “the notice from the Crow Tribe” led the trial court to conclude “that the Indian Child Welfare Act does apply in this case.”

¶ 19 The record includes a copy of the back of a second USPS return receipt, file stamped October 10, 2023, in Crow Agency, Montana. The copy showed that some unspecified article had been delivered to “Crow Tribe Social Services / ICWA Program.” This was the second, and final, return receipt in the record.

¶ 20 On October 31, 2023, the State filed its response to Katherine’s motion to dismiss due to ICWA violations. The State argued, *inter alia*, that the Crow Tribe had received proper notice, but if the trial court found that the Crow Tribe had not received proper notice, the appropriate remedy was “reversal” of the trial court’s orders and “beginning the case again pursuant to ICWA requirements.” Also on October 31, 2023, DCFS filed its response to Katherine’s motion to dismiss due to ICWA violations. DCFS argued, *inter alia*, that if the trial court found that the State did not comply with ICWA’s notice provisions, “the appropriate remedy” was to reverse the trial court’s orders, not to dismiss the case outright.

¶ 21 On November 7, 2023, the trial court conducted a hearing on Katherine’s motion to dismiss due to ICWA violations. During the hearing, the trial court questioned Katherine’s attorney on whether Katherine had ever applied for membership in the Crow Tribe on behalf of the minors, and the attorney answered that she had applied in 2014, but that membership had been denied. The



trial court noted that the court file did not include any notices to the Crow Tribe about any of the individual hearings, until recently. “I know the court was told that there had been discussions with the tribe during this case by the caseworker,” the court observed, “but no one filed anything.”

¶ 22 During the hearing, Ellen Williams, an “ICWA specialist” with DCFS, provided unsworn testimony via Zoom videoconference. Questioned by the trial court, Williams stated that she had been in contact with Buffalo, of the Crow Tribe, via e-mail and she had e-mailed Williams that the Crow Tribe would not be intervening because the minors were not eligible for enrollment. In answer to a query from the State, Williams stated that Buffalo had e-mailed her that if the children are not enrolled in any tribe, the case is not considered an ICWA case. The trial court then asked Williams whether she had asked anyone from the Crow Tribe “why it is that they have submitted a form that says that they believe ICWA is applicable because the child qualifies for descendency with the Crow Tribe.” Williams answered that she had hoped to ask that question via telephone, but she had never been able to reach Buffalo on the phone. The trial court expressed frustration that Williams, DCFS’s ICWA specialist, had not obtained a document from the Crow Tribe that explicitly stated whether the minors were eligible for membership and whether ICWA was applicable.

¶ 23 The trial court then ruled that the ICWA was inapplicable in the instant case. The trial court explained that its ruling was based on “the criteria” under the ICWA, the statements made by Katherine, and “what has been provided to the Court at this time.” The trial court stated that it would reconsider its ruling if DCFS obtained a document from the Crow Tribe stating that the minors were eligible for membership and that the Crow Tribe believed that the ICWA applied to the minors. The trial court denied Katherine’s motion to dismiss due to ICWA violations. The trial court entered a written order, entitled “Order Determining Whether the Indian Child Welfare Act

Applies Pursuant to 25 U.S.C. 1901 *et seq.*,” finding that the ICWA did not apply in the instant case. The trial court stated that the Crow Tribe had “determined and informed this Court” that the minors were not members, or eligible for membership, in the Crow Tribe.

¶ 24 On April 29, 2024, Katherine filed a *pro se* motion entitled failure of compliance, which alleged the trial court had failed to receive evidence that it ordered regarding the applicability of the ICWA. On March 5, 2024, the trial court held a permanency hearing. During the hearing, the trial court asked DCFS’s legal counsel whether DCFS had obtained a document from the Crow Tribe explicitly stating that the minors were not eligible for membership. DCFS legal counsel answered that she had tried contacting the Crow Tribe and Buffalo by telephone and by e-mail, but she had not heard back.

¶ 25 On January 2, 2025, the State filed, in each juvenile case, a motion for termination of parental rights and for appointment of a guardian with power to consent to adoption. On March 11, 2025, the trial court held a hearing on the parental-fitness portion of the involuntary-termination process in regard to Katherine. The trial court found that the State had proven by clear and convincing evidence that Katherine was an unfit parent. On April 15, 2025, the trial court held a hearing on the best-interest portion of the involuntary-termination process. The trial court found that the State had proven by a preponderance of the evidence that it was in the best interests of the minors to terminate Katherine’s parental rights. Accordingly, the trial court granted the State’s motion to terminate Katherine’s parental rights.

¶ 26 On May 13, 2025, Katherine filed, in each of the minors’ cases, a notice of appeal from the order terminating her parental rights, and the trial court appointed an attorney to represent Katherine on appeal. We consolidated the three cases on appeal.

¶ 27

## II. ANALYSIS

¶ 28 We first address the slight delay in the issuance of this opinion. This case is subject to an expedited disposition pursuant to Illinois Supreme Court Rule 311(a)(5) (eff. July 1, 2018). Rule 311(a)(5) requires the appellate court to issue its decision within 150 days after the notice of appeal is filed, except when good cause is shown. Here, the notice of appeal was filed on May 13, 2025, making our decision due by October 10, 2025. Katherine’s initial brief was due on July 14, 2025. Counsel for Katherine filed a motion for an extension of time to file her initial brief, based on the voluminous record and novel legal issues presented in this matter. That motion was granted, and the appellant brief was filed on July 17, 2025. The case was submitted on August 21, 2025. Although this court makes every effort to comply with the Rule 311(a)(5) deadline, we agree with the appellant that the record and legal issues in this matter require adequate time for careful consideration. Accordingly, we find that good cause exists for filing this decision beyond the deadline.

¶ 29 On appeal, Katherine argues that the trial court failed to comply with the procedural requirements of the ICWA; specifically, with the ICWA’s requirement of proper notice, properly delivered, to the appropriate Indian tribes. Katherine requests this court to vacate the orders entered and remand the case for recommencement in accordance with the ICWA. Katherine, however, fails to acknowledge, or address in her brief on appeal, that the trial court held a hearing on November 7, 2023, and entered an order determining that the minors do not meet the definition of Indian child in the ICWA. As such, the trial court found that the ICWA did not apply. The State argues that the trial court was correct in its determination that the ICWA did not apply as the minors did not meet the ICWA’s definition of Indian child.

¶ 30 Whether the ICWA applied and whether the trial court failed to comply with the ICWA’s notice requirements are issues subject to *de novo* review. See *In re K.T.*, 2013 IL App (3d) 120969,

¶ 9; *In re Mi'Kayla H.*, 2022 IL App (5th) 220329-U, ¶ 54; *In re T.A.*, 378 Ill. App. 3d 1083, 1087 (2008). *De novo* consideration means that a reviewing court performs “the same analysis that a trial judge would perform.” *In re F.O.*, 2014 IL App (1st) 140954, ¶ 47. The trial court’s construction of a legal document is also reviewed *de novo*. *Altenheim German Home v. Bank of America, N.A.*, 376 Ill. App. 3d 26, 32 (2007).

¶ 31 The ICWA was enacted by the United States Congress in 1978 to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families.” 25 U.S.C. § 1902 (2018). The foundation of the ICWA centers on the provisions relating to jurisdiction over Indian child custody proceedings. *In re H.D.*, 343 Ill. App. 3d 483, 487-88 (2003). The ICWA provides that:

“In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child’s tribe \*\*\* of the pending proceedings and of their right of intervention.” 25 U.S.C. § 1912(a) (2018).

¶ 32 A. Application of the ICWA

¶ 33 Prior to the termination hearing in the present case, the trial court conducted a hearing on November 7, 2023, to determine whether the ICWA applied. The trial court determined that appropriate efforts were made to locate and notify the minors’ tribe and that the Crow Tribe had determined and informed the trial court that the minors were not eligible for membership with the Crow Tribe. Based on those findings, the trial court held that the minors did not meet the definition within the ICWA of an Indian child, and thus, determined that no further inquiry by DCFS needed

to be made to the United States Bureau of Indian Affairs (BIA) or any federally recognized American tribe regarding the parents or children involved in the matter.

¶ 34 The ICWA defines an Indian child as follows: “[A]ny 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.” 25 U.S.C. § 1903(4) (2018). The party asserting the applicability of the ICWA has the burden of producing sufficient evidence for the trial court to determine if the child is an Indian child. *In re C.N.*, 196 Ill. 2d 181, 205 (2001). When determining if the child is an Indian child, only the Indian tribe for which the child is believed to be a member may determine whether the child is a member of the tribe or eligible for membership. 25 C.F.R. § 23.108(a) (2023). The State court may not substitute its own determination regarding a child’s eligibility for membership in a tribe. 25 C.F.R. § 23.108(b) (2023).

¶ 35 In the present case, the trial court had reason to believe that each minor was an Indian child as defined by the ICWA. The parties discussed the minors’ Indian heritage at a dispositional hearing on June 21, 2022, where Katherine informed the trial court that the minors were Crow and Cheyenne and that their father was a tribal member. During the hearing, DCFS caseworker Miller told the trial court that she had filled out and sent in the necessary ICWA paperwork two months prior, but that DCFS had not yet received any response. The “paperwork,” however, was never filed with the trial court. Miller informed the trial court that the minors were members of the Black Crow Tribe, and Katherine indicated that the minors were 14% Crow and Cheyenne due to their father, who was a tribal member. Katherine indicated that the minors were not registered with a tribe.

¶ 36 On August 9, 2022, and September 15, 2023, the trial court received correspondence from the Crow Tribe. The responses were nearly identical form letters, and one was filed regarding each minor in this case. The controversial portion of the letters stated as follows:

“Based upon the information provided, the Crow Tribe of Indians:

1. DOES consider this child a member of the Tribe for purposes of the Indian Child Welfare Act based on the following circumstance:

\*\*\*

C. The Child qualifies for descendency with the Crow Tribes of Indians.

2. DOES NOT consider the child a member of the Tribe for the purposes of the Indian Child Welfare Act as the child is not eligible for enrollment or recognition as a descendant.”

Letter C was circled, indicating that the Crow Tribe did consider the minors to be members of the Crow Tribe for purposes of the ICWA where the minors qualified for descendency with the Crow Tribes of Indians.

¶ 37 On November 4, 2023, DCFS filed a permanency report that addressed the agency’s efforts to comply with the ICWA. It indicated that Williams, the ICWA specialist with DCFS, had contacted Buffalo, from the Crow Tribe, who verbally stated the children were not eligible for enrollment and, therefore, did not qualify for ICWA.

¶ 38 On November 7, 2023, the trial court held a hearing wherein Williams informed the trial court that she had initially believed the minors were subject to the ICWA because she had misconstrued the Crow Tribe’s correspondence. She indicated that, in the past week, she had exchanged e-mails with Buffalo of the Crow Tribe, who had advised her that the children were not eligible for tribal enrollment and that the ICWA did not apply. During the hearing, Katherine

acknowledged that she had applied for tribal membership on behalf of the minors with the Crow Tribe but that the membership was denied.

¶ 39 After expressing frustration with DCFS in their efforts in complying with the ICWA and their failure to provide the trial court with sufficient information and documentation, the trial court found that the ICWA did not apply to the proceeding. The trial court went on to request that DCFS file “something with this Court from the tribe that corrects this notice and makes very clear that they do not believe the [ICWA] is applicable and that these children are not eligible for membership.” In February 2024, DCFS legal counsel reported that she had e-mailed the Crow Tribe to confirm that the Crow Tribe did not consider the children to be eligible and that the ICWA did not apply. An affidavit was included with the e-mail for Buffalo’s signature. The Crow Tribe, however, did not respond.

¶ 40 We note that there was confusion on the part of the agency and the State as to how to comply with the ICWA and some difficulty communicating with the Crow Tribe. If there is reason to believe a child is an Indian child, the court must confirm that the agency used active efforts to work with *all* tribes of which the child may be a member to verify whether the child is in fact a member or eligible for membership in any tribe. Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, 80 Fed. Reg. 10146, 10152-53 (Feb. 25, 2015). If the agency does not have accurate contact information for the tribes or if the tribes contacted fail to respond to written inquiries, assistance may be sought by contacting the Indian tribes from the BIA’s regional office and/or central office in Washington DC. Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, 80 Fed. Reg. 10146, 10152 (Feb. 25, 2015).

¶ 41 This court cannot agree with the trial court’s finding that the correspondence from the Crow Tribe indicated that the minors did not meet the definition of an Indian child as defined in the

ICWA. The correspondence has two distinct options to choose from: (1) the Crow Tribe does consider the child a member or (2) the Crow Tribe does not consider the child a member for purposes of the ICWA. The Crow Tribe, in the case of each minor, clearly circled the choice that indicated that it did consider the child a member of the Crow Tribe for purposes of the ICWA, where the child qualified for descendency. As written in the form letter sent by the Crow Tribe, if one proposition is true, the other must be false. Both statements cannot be true at the same time. Nonetheless, based on the record, it is evident that the parties and the trial court below were unsure of how to interpret the written correspondence from the Crow Tribe.

¶ 42 This court recognizes that the trial court heard testimony that e-mails were exchanged between Buffalo and DCFS explaining that the form indicated something different than its clear language. Those exchanges, however, were never filed with the trial court.

¶ 43 While Katherine testified that she had applied for tribal membership with the Crow Tribe on behalf of the minors and that it was denied, such testimony is also not dispositive of eligibility. Katherine provided no reason or official correspondence to explain why the application was denied. Without the same, this court cannot infer that such denial indicates a lack of eligibility.

¶ 44 As such, we are left with the form letters sent to the trial court from the Crow Tribe as the best evidence of whether the Crow Tribe considered each minor to be an Indian child under the ICWA. That leads this court to find that there is insufficient information in the record from which the trial court, or this court, could find that the ICWA did not apply. This reality was acknowledged by the trial court itself after the hearing, when it stated immediately after finding that the ICWA did not apply: “I would like the agency to file something with this Court from the tribe that corrects this notice and makes very clear that they do not believe the [ICWA] is applicable and that these children are not eligible for membership.”



¶ 45 Further, in addition to failing to file proof that the Crow Tribe was served with proper notice in conformity with the ICWA, neither DCFS nor the State filed any proof indicating that notice of the proceeding or of the right to intervene was sent to any Cheyenne Tribe. The trial court did not address the minors' affiliation with any Cheyenne Tribe in making its determination as to whether the ICWA applied. As such, the trial court did not have adequate information before it to determine that the ICWA did not apply, nor to determine that DCFS used active efforts to work with *all* tribes of which the minors may be a member, to verify whether the minors are, in fact, eligible for membership in any tribe.

¶ 46 B. Notice Requirement

¶ 47 A tribe's "right to intervene" in a State court child-custody proceeding is worth very little unless the tribe also has the right to be notified that such a proceeding is underway. Section 1912(a) of the ICWA provides for such notice and prescribes how it is to be served:

“In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent \*\*\* and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent \*\*\* and the tribe.” 25 U.S.C. § 1912(a) (2018).

¶ 48 This notice provision in ICWA is far from a mere suggestion. If any portion of section 1912 (or sections 1911 or 1913 (25 U.S.C. §§ 1911, 1913 (2018))) is violated, a parent of the

Indian child or the Indian child's tribe may use that violation as the basis for a petition to invalidate the foster care placement or termination of parental rights to the Indian child. 25 U.S.C. § 1914 (2018).

¶ 49 A regulation promulgated by the BIA regarding the ICWA slightly expands the permissible mode of service under section 1912(a) of the ICWA. The regulation states that the child's tribe must be notified by "registered or certified mail with return receipt requested." 25 C.F.R. § 23.11(a) (2023). Another regulation makes clear that an ICWA notice may be sent electronically, but this alternative method does "not replace the requirement for notice to be sent by registered or certified mail with return receipt requested." 25 C.F.R. § 23.111(c) (2023).

¶ 50 Notice, as described under section 23.111 of the CFR, must be sent to "[e]ach tribe where the child may be a member (or eligible for membership if a biological parent is a member)." 25 C.F.R. § 23.111(b) (2023). Notice should generally be directed to the tribe's agent for service of ICWA notices. 25 C.F.R. §§ 23.12, 23.105(a) (2023). "The BIA publishes a list of Tribes' designated Tribal agents for service of ICWA notice in the Federal Register each year and makes the list available \*\*\* at [www.bia.gov](http://www.bia.gov)." 25 C.F.R. § 23.105(a) (2023). The BIA publishes a list, continually updated, of all federally recognized Indian tribes. Relevant to this case, among those tribes are the "Crow Tribe of Montana," and three Cheyenne Tribes: Cheyenne and Arapaho Tribes, Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; and, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota. Indian Entities Recognized by and Eligible to Receive Services From the United States Bureau of Indian Affairs, 89 Fed. Reg. 99899-99900 (Dec. 11, 2024).

¶ 51 The BIA also promulgated nonbinding guidelines to assist the state courts with applying the ICWA. See Guidelines for State Courts and Agencies in Indian Child Custody Proceedings,

80 Fed. Reg. 10146, 10146-59 (Feb. 25, 2015). These guidelines provide that “[i]f there is any reason to believe the child is an Indian child, the agency and State court must treat the child as an Indian child, unless and until it is determined that the child is not a member or is not eligible for membership in an Indian tribe.” Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, 80 Fed. Reg. 10146, 10152 (Feb. 25, 2015). The guidelines advise that, in determining what actions an agency and State court must take under the ICWA, they must:

“[A]sk whether there is reason to believe a child that is subject to a child custody proceeding is an Indian child. If there is reason to believe that the child is an Indian child, the agency must obtain verification, *in writing*, from all tribes in which it is believed that the child is a member or eligible for membership, as to whether the child is an Indian child.” (Emphasis added.) Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, 80 Fed. Reg. 10146, 10152 (Feb. 25, 2015).

A State court may acquire reason to believe that an Indian child is involved in a child-custody proceeding through a variety of different circumstances. For example, if any participant in the child-custody proceeding “informs the court that the child is an Indian child,” the court has “reason to know” that an Indian child is involved. 25 C.F.R. § 23.107(c)(1) (2023).

¶ 52 Where the identity and location of the child’s parent, Indian custodian, or tribe is known, the party that seeks the termination of parental rights must promptly mail the notice to the tribe, and the State court must ensure that the notice is sent. 25 C.F.R. § 23.111(a)(1) (2023). The court also must ensure that “[a]n original or a copy of each notice sent under this section is filed with the court *together with* any return receipts or other proof of service.” (Emphasis added.) 25 C.F.R. § 23.111(a)(2) (2023). The notice must include the requisite information identified in section

23.111. 25 C.F.R. § 23.111 (2023); see Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, 80 Fed. Reg. 10146, 10153-54 (Feb. 25, 2015).

¶ 53 At a minimum, after the dispositional hearing the State had reason to know that the minors were Indian children as defined in the ICWA. Based on that, the State was required to send notice of the right to intervene to the parents, the Crow Tribe, and the appropriate Cheyenne Tribe by registered or certified mail with return receipt requested. 25 U.S.C. § 1912(a) (2018); 25 C.F.R. § 23.111(b), (c) (2023). There is no evidence in the record that the appropriate Cheyenne Tribe was identified, nor that any Cheyenne Tribe was ever notified. Additionally, as there was also confusion as to whether the minors were eligible for membership to the Crow Tribe and DCFS had difficulty corresponding with the Crow Tribe, notice should also have been provided to the regional director of the BIA pursuant to section 1912 of the ICWA, and title 25, section 23.11 of the Code of Federal Regulations (25 C.F.R. 23.11(a) (2023)). Section 23.111(e) of title 25 of the CFR, provides further detail, indicating that if:

“[T]he identity or location of the child’s parents, the child’s Indian custodian, or the Tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to know the child is an Indian child, notice of the child-custody proceeding must be sent to the appropriate [BIA] Regional Director \*\*\*. To establish Tribal identity, as much information as is known regarding the child’s direct lineal ancestors should be provided. The [BIA] will not make a determination of Tribal membership but may, in some instances, be able to identify Tribes to contact.” 25 C.F.R. § 23.111(e) (2023).

¶ 54 In this matter, notice should have been sent to the Minneapolis Regional Director, Bureau of Indian Affairs, 5600 American Blvd. W, Ste. 500, Bloomington, MN 55437. See 25 C.F.R.

§ 23.11(a), (b)(2) (2023). Such notice could have provided further guidance to the trial court regarding the applicability of the ICWA and assistance to the State and DCFS in communicating with the tribes.

¶ 55 Here, the record is devoid of any positive documentation showing that the State complied with section 1912(a) of the ICWA at any time. The record certainly contains several indications that notices of individual hearings were served upon the Crow Tribe via e-mail, particularly from August 11, 2023, to November 7, 2023. The record also shows that in June 2023, an “Indian Child Welfare Act Notice of Proceedings”—likely the notice for a child-custody proceeding, described in section 23.111(d) of title 25 of the CFR—was prepared for the Crow Tribe and subsequently e-mailed to rebecca.buffalo@crow-nsn.gov on June 21, 2023. The record also includes a copy of the back of two USPS return receipts—stamped September 21, 2023, and October 10, 2023, in Crow Agency, Montana—showing that “Rebecca Buffalo” or “Crow Tribe Social Services / ICWA Program” received some unspecified articles, from someone, through USPS.

¶ 56 The record, though, does not include any document that allows this court to connect the “Indian Child Welfare Act Notice of Proceedings,” filed on June 21, 2023, to either of the two USPS return receipts. There is nothing in the record that assures this court that the notice of proceedings was the article that was mailed to the Crow Tribe in September or October 2023.

¶ 57 Although we agree with the State that it is clear the Crow Tribe did receive actual notice of the proceedings, as they responded to the trial court, there is nothing appearing in the record to indicate any attempt was made to determine which, if any, Cheyenne Tribe may have been required to received notice, nor proof of any notice to the appropriate party at the BIA. It is also unclear if the notice of rights was served on the parents by registered mail. Therefore, nothing in the record indicates that the State fulfilled its obligation, under section 1912(a) of the ICWA, to notify the

minors' tribe(s) or parents by sending a notice of the pending proceedings and of their right to intervention to the appropriate tribe(s) by registered or certified mail with return receipt requested. See 25 U.S.C. § 1912(a) (2018); 25 C.F.R. § 23.11(a) (2023). Finally, although the evidence before the trial court was not definitive, notice by certified or registered mail would have been required to the appropriate tribe, if any was determined, of the petition for termination of parental rights and the date of the hearing. See Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, 80 Fed. Reg. 10146, 10153-54 (Feb. 15, 2025).

¶ 58 The trial court had an obligation to ensure that the proper notices were sent (25 C.F.R. § 23.111(a)(1) (2023)) and that “[a]n original or a copy of each notice sent under this section is filed with the court *together with* any return receipts or other proof of service.” (Emphasis added.) 25 C.F.R. § 23.111(a)(2) (2023). The trial court’s obligation, too, was unfulfilled. Compliance with ICWA requires the trial court, at minimum, to include in the record (1) the original or a copy of the actual notice sent by registered or certified mail, and (2) the original or a legible copy of the return receipt or other proof of service. See *K.T.*, 2013 IL App (3d) 120969, ¶ 14.

¶ 59 III. CONCLUSION

¶ 60 We find that there has not been an appropriate finding in the trial court, supported by evidence appearing in the record, that the minors are or are not Indian children within the meaning of the ICWA and that the ICWA did not apply. Further, the trial court erred in this case in not ensuring proper notice to the Crow and Cheyenne Tribes or the BIA, which could have aided in gathering sufficient information upon which the trial court could have found the ICWA did or did not apply. Therefore, we must address the appropriate remedy for these errors. Katherine requests that this court invalidate each of the orders entered in this case and that the case be remanded to the trial court for recommencement.

¶ 61 This court acknowledges that the ICWA is a matter that rarely arises in Illinois. Many courts have faced the question of how to proceed when there is uncertainty as to whether the ICWA is applicable and there has been a lack of adequate notice to required parties under the ICWA. We do not, however, believe that the appropriate remedy is to invalidate each court order, inclusive of the adjudicatory and dispositional orders. Katherine's notice of appeal did not provide the State with sufficient notice that she was also appealing the adjudicatory findings and the dispositional order, where it indicated she was appealing the termination order. Unlike the termination order, the time for appealing the adjudicatory findings and the dispositional order have long passed. See *In re S.P.*, 2019 IL App (3d) 180476, ¶ 47; *In re Leona W.*, 228 Ill. 2d 439, 456-57 (2008); *In re A.M.*, 2025 IL App (1st) 242325, ¶ 34. Thus, we lack jurisdiction to directly review the same. See *In re Kiera L.*, 2025 IL App (5th) 250148-U, ¶ 16.

¶ 62 We have found that the information regarding the minors' eligibility for tribal membership that appears of record is not dispositive and warrants further investigation into the status of the minors' Native American heritage. As such, the appropriate remedy is to vacate the circuit court's orders of April 15, 2025, terminating the parental rights of Katherine to the minors and appointing a guardian with the power to consent to adoption.

¶ 63 We remand the matter back to the trial court with directions to ensure the record demonstrates proper notice pursuant to the ICWA and for the trial court to make a factual determination of whether the minors are Indian children within the meaning of the ICWA. In the event that the trial court, on remand, determines that the minors are not Indian children, the trial court is directed to reinstate the order terminating the parental rights of Katherine and appointing a guardian with the right to consent to adoption. If, however, the trial court determines that the minors are Indian children, it shall reconsider foster placement and begin termination proceedings

as to the minors anew in compliance with the ICWA. See *In re H.S.*, 2016 IL App (1st) 161589, ¶ 45.

¶ 64 Based on the foregoing, the judgment of the trial court of Saline County is vacated, and the cause is remanded for additional proceedings consistent with this opinion.

¶ 65 Vacated and remanded.



---

***In re K.F., 2025 IL App (5th) 250410***

---

**Decision Under Review:** Appeal from the Circuit Court of Saline County, Nos. 22-JA-5, 22-JA-6, 22-JA-7; the Hon. Amanda Byassee Gott, Judge, presiding.

---

**Attorneys  
for  
Appellant:** James E. Hopkins, of Machicao & Associates, of Marion, for appellant.

---

**Attorneys  
for  
Appellee:** Walden Morris, State's Attorney, of Harrisburg (Patrick Delfino, Patrick D. Daly, and Trent Marshall, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.

---