

**IN THE COURT OF APPEALS OF IOWA**

No. 0-695 / 10-0954  
Filed October 6, 2010

**IN THE INTEREST OF C.C., J.C., B.C., and J.C.,  
Minor Children,**

**T.C., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Jefferson County, William S. Owens, Associate Juvenile Judge.

A mother appeals an order adjudicating her children as children in need of assistance. **AFFIRMED.**

William C. Glass, Keosauqua, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Tim W. Dille, County Attorney, and Patrick McAvan, Assistant County Attorney, for appellee State.

Patricia Lipski, Fairfield, for minor children.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

**MANSFIELD, J.**

Tammy appeals a juvenile court order adjudicating her four children as children in need of assistance (CINA). She argues that she did not knowingly and voluntarily waive recording of the CINA proceedings and the juvenile court erred in not making a determination whether the children qualify under the Iowa Indian Child Welfare Act (ICWA) in Iowa Code chapter 232B (2009). We find the mother has failed to show prejudice from the lack of recording. Regarding the ICWA claim, we find Tammy has failed to preserve error for the present appeal and, in any event, she may still assert that claim in the juvenile court. Thus, we affirm.

**I. Background Facts and Proceedings<sup>1</sup>**

Tammy came to the attention of the Iowa Department of Human Services (DHS) in early January 2010 due to an incident of domestic abuse. Tammy's boyfriend assaulted Tammy, who threw her phone to one of her children and asked him to go to the neighbors and call the police. The boyfriend chased the child outside, where the child fell and was hurt. Based on the incident, DHS initiated a child protective assessment. The assessment found a significant history of domestic abuse in Tammy's household. Following the assessment, DHS concluded judicial oversight was necessary and filed a petition on February 17, 2010, requesting the children be adjudicated CINA.

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<sup>1</sup> As noted, the proceedings below were not recorded. Hence, some of this history comes from Tammy's statement of the evidence as approved by the district court pursuant to Iowa Rule of Appellate Procedure 6.806 ("Proceedings when transcript unavailable").

On March 3, 2010, an adjudicatory hearing on the petition was held. The parties waived reporting. At the hearing, Tammy was advised by the court that she had the right to be represented by an attorney, and that she could either hire her own attorney or apply to have an attorney appointed at public expense. Tammy indicated she understood her right to be represented, but waived the right to have counsel for the adjudicatory hearing and agreed to proceed without counsel. Tammy subsequently stipulated to adjudicating her children as CINA under Iowa Code section 232.2(6)(c)(2). The children were allowed to remain in their parents' care under DHS supervision. A dispositional hearing was then set for April 14, 2010.

At the dispositional hearing, Tammy did not want to proceed without an attorney. She submitted an application for a court-appointed attorney and was found to qualify; however, she requested an attorney who was not on the court-appointed list for Jefferson County. Therefore, the juvenile court continued the dispositional hearing until May 5, 2010, so Tammy could work out her arrangements for representation.

On May 5, 2010, Tammy again appeared without an attorney. At this time, she requested the court appoint an attorney for her. The court-appointed attorney then moved for a continuance. The juvenile court granted the continuance and reset the hearing for May 26, 2010.

At the May 26, 2010 dispositional hearing, Tammy's counsel appeared, but Tammy did not. Accordingly, Tammy's counsel requested the hearing be reset. The juvenile court denied the request. The juvenile court then upheld the

children's adjudication as CINA and the children's placement in their parents' care under a shared custody arrangement. Tammy now appeals.

## **II. Standard of Review.**

Our review of CINA proceedings is de novo. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008).

## **III. Analysis.**

Tammy first asserts she did not knowingly and voluntarily waive recording of the CINA proceedings. Even assuming the issue has been preserved, Tammy has not shown how the failure to record the CINA proceedings prejudiced her. *See In re J.L.L.*, 414 N.W.2d 133, 136 (Iowa 1987) (finding no prejudice when a voluntary termination hearing was not recorded). Tammy does not deny that she stipulated that her children were CINA. She also does not make any argument on the merits as to why her children should not have been adjudicated CINA, apart from her claim relating to the Indian Child Welfare Act, to which we now turn.

Tammy asserts the juvenile court erred in not making a determination whether the children qualify under ICWA. Tammy contends she is "three quarters Cherokee native American." There is no indication Tammy raised this issue below. *See In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994) ("As a general rule, an issue not presented in the juvenile court may not be raised for the first time on appeal."); *see also In re J.D.B.*, 584 N.W.2d 577, 581 (Iowa Ct. App. 1998) (finding our error preservation rules do not conflict with ICWA). We find Tammy has failed to preserve this issue for appeal.

We also agree with the State that Tammy still has the ability to raise her ICWA contentions in the juvenile court. At this point, the children remain in the custody of their parents. Their Indian status can and should be determined before any proceeding occurs resulting in a foster care placement, adoptive placement, preadoptive placement, or termination of parental rights. See Iowa Code §§ 232B.3-.4.

For the foregoing reasons, we affirm the order of the juvenile court.

**AFFIRMED.**