In the Matter of Z.N.-M., 2023 MT 202, --- P,3d ---, 2023 WL 7144796 (Mont., Oct. 31, 2023).

- **Holding**: While verbal confirmation by identified tribes that a child is not a member is insufficient to satisfy the rigors of the Indian Child Welfare Act (ICWA), the District court's determination that there was no reason to know Z.N. was an Indian child was harmless error, given that the Department of Child and Family Services contacted four tribes identified by mother, each tribe failed to respond or intervene, and Department verbally confirmed non-membership with each Tribe.
- **Summary**: The Montana Department of Health and Human Services, Child and Family Services Division (the Department), removed Z.N. from mother's care, and, after mother failed to complete a treatment plan, moved to terminate mother's parental rights. Both mother and father asserted they were not members of any Indian tribe. Father, however, asserted that he had an affiliation through his mother with the Blackfeet Tribe. In dealings prior to the termination hearing, the Department had received a conclusive determination from the Blackfeet Tribe that Z.N. was not eligible for membership.

  Prior to the termination hearing the mother raised the possibility that Z.N. was possibly a member of the Northern Cheyenne Tribe, an Alaskan Native tribe, or the Little Shell Tribe. Mother's counsel further suggested that Z.N. may be a member of the Chippewa Cree of the Rocky Boy's Reservation. The District Court postponed the termination hearing, and the Department undertook efforts to determine whether Z.N. was eligible for enrollment in any of the identified tribes. The Department sent notice of the proceedings to each. None of the tribes responded in writing to the notice, but the Department verbally confirmed with each Tribe that Z.N. was not eligible for membership.

  After termination of parental rights, the mother appealed, arguing that the District Court committed reversible error when it determined that there was no reason to know Z.N. was an Indian child under the Indian Child Welfare Act (ICWA). The court concluded that while the mother was correct in arguing that verbal confirmation of non-membership alone is insufficient to satisfy the rigors of ICWA, the Department had sent written notice to each possible affiliated Tribe, and none attempted to intervene in the proceedings, and the Department had pursued the inquiry by contacting each Tribe. While the court emphasized that the "Department has an obligation under the law to obtain a tribe's conclusive determination of ineligibility when there is reason to know a child may be an Indian child," the mother had failed to show "clear error in the District Court's finding that it had no reason to know that Z.N.-M. met that definition." Further, "the requirements of ICWA are not jurisdictional and are subject to harmless error review." Here, given that "the suggestion of additional tribal affiliations was weak at best, and the record demonstrates a decision by the Little Shell, Chippewa Cree, and Northern Cheyenne Tribes not to participate in the proceedings after being provided proper notice," the mother failed to demonstrate a reasonable probability that she would have obtained a more favorable result in the absence of the error, and the district court's finding was upheld.
- **Relevant (2023) Deskbook Section**: 13:18