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NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

JUL 28 2022

JOHN D. HADDEN
CLERK

IN THE MATTER OF S.D.T., Deprived Child:

SUSAN TIDWELL-HENDERSON,

Appellant,

vs.

STATE OF OKLAHOMA,

Appellee.

Case No. 120,045

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APPEAL FROM THE DISTRICT COURT OF
OKMULGEE COUNTY, OKLAHOMA

HONORABLE DEBORAH REHEARD, TRIAL JUDGE

AFFIRMED

James C. Linger
LAW OFFICE OF JAMES C. LINGER
Tulsa, Oklahoma — For Appellant

Kendal Kelly
ASSISTANT DISTRICT ATTORNEY
Okmulgee, Oklahoma — For Appellee

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Ms. Susan Tidwell-Henderson appeals the trial court's denial of her motion for a new trial and/or motion to vacate the judgment terminating her parental rights as to S.D.T., a minor child. After the verdict and judgment, the trial court became aware that the bailiff had inadvertently sent a witness's unadmitted notes, used to refresh the witness's recollection, back with the jury during

deliberations along with the admitted exhibits. Ms. Tidwell-Henderson filed a motion for new trial arguing that the error so tainted the proceedings that a new trial was required. The trial court denied the motion. Upon review of the full record, we affirm.

BACKGROUND

S.D.T., a minor child, was born on February 13, 2019. The child was placed into protective custody in March 2020, following the arrest of the child's mother, Ms. Tidwell-Henderson. Ms. Tidwell Henderson's five other children had been previously removed from the home. After S.D.T. was adjudicated deprived, the state filed a petition to terminate Ms. Tidwell-Henderson's parental rights, which included failure to correct the conditions that led to the deprived adjudication (10A O.S. § 1-4-904(B)(5)) as legal grounds for termination.

At the jury trial, the state called a permanency worker with the Oklahoma Department of Human Services to testify as to Ms. Tidwell-Henderson's child welfare history. Ms. Tidwell-Henderson's history in this regard was lengthy, including seventeen DHS referrals dating back to 1998 with several prior children, none of whom were in Ms. Tidwell-Henderson's custody. The permanency worker brought handwritten notes to the stand to assist her testimony. Before testifying, those notes were copied and distributed to counsel. No party objected to their use in this fashion, but they were not offered into evidence. After the close of evidence, the bailiff inadvertently included the notes with admitted exhibits and distributed them to the jury for use in its deliberation.

The jury returned a verdict finding that the mother failed to correct conditions and that termination was in the best interest of the child. Only after the trial court entered its order of termination did it come to the attention of the parties and the trial court that the permanency worker's notes were erroneously included in the exhibits submitted to the jury. Ms. Tidwell-Henderson filed a motion for new trial or to vacate the judgment. A hearing on the motion was held, but no testimony of any juror or any other party was offered. The trial court denied the motion, reasoning that although the publication of the notes to the jury was erroneous, the error was not sufficiently prejudicial to warrant a new trial. Ms. Tidwell-Henderson appeals.

STANDARD OF REVIEW

In reviewing a trial court's decision denying a motion for new trial, the appellate court employs an abuse of discretion standard of review. *Lerma v. Wal-Mart Stores, Inc.*, 2006 OK 84, ¶ 6, 148 P.3d 880. Likewise, when reviewing a trial court's denial of a motion to vacate a judgment, the appellate standard of review is also abuse of discretion. *Wells Fargo Bank, N.A. v. Heath*, 2012 OK 54, ¶ 7, 280 P.3d 328. An abuse of discretion occurs when a court bases its decision on an erroneous conclusion of law, or when there is no rational basis in evidence for the ruling. *Id.*

ANALYSIS

The parties generally agree that the proper standard by which the trial court should have decided whether the bailiff's error was so prejudicial as to

require a new trial is borrowed from criminal cases.[1] Each cites *Edwards v. State*, 1981 OK CR 153, 637 P.2d 886, which offers the following: "In Oklahoma the law is settled. If there is any reasonable possibility that prejudice could have resulted from the jury's examination of unadmitted evidence, the appellant should be granted a new trial." *Id.* ¶ 4.

The trial court found that this admittedly low standard was not met in this case, and we agree. Here, the entire contents of the notes were, more or less, read to the jury verbatim, and the mother had the opportunity to (and did) fully cross-examine the witness as to the notes. Indeed, the case is quite similar to *Edwards*, where a bailiff delivered exhibits to the jury and included an unadmitted medical report and laboratory report. *Id.* ¶ 3. Upon a motion for new trial, the court found that though the delivery of the reports to the jury was error, the error was not so prejudicial as to require reversal. *Id* ¶ 5. The contents of the reports had largely been published to the jury by witness testimony, and thus the defendant was not prejudiced by the reports going to jury. *Id* ¶¶ 6-7.

Ms. Tidwell-Henderson argues that the publication of the notes to the jury was prejudicial because the jury could have placed "extra emphasis" on the testimony because of the inadvertently admitted notes. However, Ms. Tidwell-Henderson offered *no evidence*, in the form of juror testimony or otherwise, to support this claim at the hearing on her motion for new trial. We cannot find that the trial court abused its discretion in denying a motion for new trial based

[1] No party argues that a different standard should apply in civil cases.

on the mere supposition of undue emphasis placed on inadvertently admitted witness notes where those notes had been read into evidence nearly verbatim, and the witness had been subjected to a full cross-examination. Although the submission of the notes to the jury was error, it did not prejudice the rights of Ms. Tidwell-Henderson.

AFFIRMED.

WISEMAN, P.J., and HIXON, J. (sitting by designation), concur.

July 28, 2022