



ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

IN THE MATTER OF F.W., Z.W,
M.B., JR., and K.B., Minor Children:)
))
PATRICIA ROUSE,)
))
Appellant,)
))
vs.)
))
STATE OF OKLAHOMA,)
))
Appellee.)

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

AUG 16 2023

JOHN D. HADDEN
CLERK

Case No. 120,618

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE CASSANDRA WILLIAMS, TRIAL JUDGE

AFFIRMED

Phillip P. Owens II
OWENS LAW OFFICE, PC
Oklahoma City, Oklahoma

For Appellant

Ashton Blackburn
ASSISTANT DISTRICT ATTORNEY
Ellen Martin Watts
ASSISTANT DISTRICT ATTORNEY
Oklahoma City, Oklahoma

For Appellee

Tracey Esaw
ASSISTANT PUBLIC DEFENDER
Oklahoma City, Oklahoma

For the Minor Children

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OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Patricia Rouse,¹ the mother of the four minor children at issue here, appeals the termination of her parental rights after jury trial. We find sufficient evidence supporting the jury's verdict and thereby affirm.

I. BACKGROUND

On April 8, 2019, the State of Oklahoma obtained an emergency order taking all four minor children at issue here into state custody. The children ranged from approximately five-months to five-years old. It is undisputed that each of the children are "Indian child[ren]" as defined in the Indian Child Welfare Act (ICWA), see 25 U.S.C. § 1903(4), and that the provisions of that law applied at all stages of this case, including this appeal.

The allegations that led to emergency custody were: that Steven Walker, Patricia's live-in boyfriend at the time and father of two of the children at issue, was a meth user; that meth was used in front of the children by one or both parents; that needles and drug paraphernalia were found around the home; that the children were scared of Mr. Walker; that the children were malnourished; that there was violence between Mr. Walker and Patricia in the home; that Patricia had hit Mr. Walker with a gun that was in the home; and, that Mr. Walker had once pointed the gun at the oldest child and said he was going to kill

¹ As further discussed below, Patricia married Steven Walker (father of two of the children at issue here) during the pendency of the proceedings below and apparently changed her name to Patricia Walker. The record reveals that, at the time of trial, the couple had separated, but the status of Patricia's last name is not clear from the record. She is referred to variably as Ms. Walker, Ms. Rouse, and Ms. Rouse-Walker throughout the record. We will refer to her simply as Patricia. Neither Mr. Walker, nor the father of the other two involved children, are parties to this case.

him. Mr. Walker tested positive for meth and Patricia for marijuana use. Mr. Walker had a significant criminal history.

The state soon filed a petition seeking to adjudicate the children as deprived. On June 17, 2019, Patricia stipulated to the allegations of that petition and agreed that the following conditions had led to the deprived finding: substance abuse, physical violence, failure to protect, and lack of proper parental care and guardianship. On that same date, Patricia agreed to an individualized service plan (ISP), under which she agreed to take a number of steps, as dictated by the Department of Human Services, in order to regain custody of her children. The children were considered placed in foster care as of June 4, 2019.

The state amended its petition to seek termination as of October 2, 2020, on the bases of failure to correct the conditions that led to termination (10A O.S. § 1-4-904(B)(5)) and length of time in custody (10A O.S. § 1-4-904(B)(16)). Nevertheless, the case was not taken to trial until June 28, 2022. In the interim, Patricia continued to seek services under the ISP. After a jury trial at which Patricia, the primary DHS working on the case, Lisa Shaw, a tribal social worker, Pamela Keeton, and the children's foster parent, Tami Burke, each testified, the jury entered unanimous verdicts for termination as to all four children.

Patricia appeals arguing both that there was a lack clear-and-convincing evidence to support termination for failure to correct conditions generally and that the tribal expert's testimony was insufficient to support the jury's finding that "continued custody of the child[ren] by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child" as required

by 25 U.S.C. § 1912. Patricia also argues that termination as to length of time in custody was unavailable because of the tolling provided for in the Supreme Court's administrative orders issued in the spring of 2020.

II. STANDARD OF REVIEW

In termination cases, appellate courts must canvass the record to determine whether the evidence is such that a factfinder could reasonably form a firm belief or conviction that the grounds for termination were proven. *In the Matter of S.B.C.*, 2002 OK 83, ¶ 6, 64 P.3d 1080, 1082. Additionally, a termination in an ICWA case requires evidence sufficient to support a conclusion that, beyond a reasonable doubt and as supported by expert testimony, continued custody by a parent would result in "serious emotional or physical damage to the child[ren]." 25 U.S.C. § 1912(f).²

III. ANALYSIS

Patricia first argues that the record fails to contain clear-and-convincing evidence to support the jury's finding that she failed to correct the conditions of substance abuse, failure to protect, and lack of proper parental care and guardianship.³ After a careful review of the full record, we cannot agree with Patricia's assessment.

² The term "continued" can mean "resumed after interruption." *Adoptive Couple v. Baby Girl*, 570 U.S. 637, 648, 133 S. Ct. 2552, 2560, 186 L. Ed. 2d 729 (2013). Hence § 1912(f) applies here even though Patricia did not have custody at the time of trial.

³ We note that the jury did not find that Patricia had failed to correct the condition of "physical violence." Nevertheless, only one condition needs to not have been corrected in order to satisfy the statute. See Oklahoma Uniform Jury Instructions – Juvenile No. 2.7 ("If you find that the State has proved by clear and convincing evidence that the parental rights of the parent, [NAME], to the child, [NAME], should be terminated on one or more statutory

As to substance abuse, there was sufficient evidence to suggest that Patricia continued to abuse illicit substances at a concerning level. Although methamphetamine use was not an initial concern for Patricia, she tested positive for meth three weeks in a row in October 2021, after briefly reuniting with Mr. Walker for a three-day concert/festival. Based on this evidence alone, a reasonable juror could conclude that Patricia's reliance on drugs was worsening, not improving. Although Patricia testified she was using marijuana only at the time of trial, and that she had a medical marijuana card,⁴ the methamphetamine-positive tests, along with numerous "no shows"⁵ and "dilutes" throughout the case, offered the jury a sufficient basis on which to find that this condition had not been corrected.

As to the conditions of failure to protect and proper parental care and guardianship, the state offered a theory of the case that Patricia continued the behavior of allowing unsafe and unvetted people into her life and around the

grounds, you should sign and return the verdict form entitled Terminate Parental Rights for every such statutory ground for that parent and that child."). *Cf. Matter of T.T.S.*, 2015 OK 36, ¶ 22, 373 P.3d 1022, 1030.

⁴ We note that Patricia may have been entitled to a clarifying instruction based 63 O.S. § 425, which provides:

No licensed medical marijuana patient may be denied custody of or visitation or parenting time with a minor child, and there is no presumption of neglect or child endangerment for, unless the behavior of the person creates an unreasonable danger to the safety of the minor child.

However, no such instruction was requested and, as stated, we view the evidence as it relates to methamphetamine use as sufficient to support the jury's verdict as to the substance-abuse condition.

⁵ In March 2022, for example, Patricia skipped all but one of her random drug tests.

children, as she had with Mr. Walker, and had failed to secure adequate housing for four children despite three-plus years since the deprived adjudication.

The evidence was that prior to living with Mr. Walker, Patricia lived with Mr. Buchanan, who was physically abusive. One month after moving out of Mr. Buchanan's home, Patricia moved in with Mr. Walker, whom she knew to be addicted to methamphetamine. Nevertheless, she allowed Mr. Walker to be the primary care giver while she was working and married him during the pendency of the case. After she finally ended her relationship with Mr. Walker, she moved into her girlfriend's one-bedroom apartment, where she was living at trial. She also allowed Mr. Walker's brother, another known methamphetamine user to live with her at times, as well as her cousin—another unknown and unvetted person DHS discovered on one visit. Patricia's name was not on her girlfriend's lease—a shared one-bedroom apartment—meaning that Patricia, despite nearly three years to do so, had not secured housing adequate to support four children.

The question here is whether a reasonable juror could have formed a firm belief or conviction that Patricia had failed to correct the conditions of failure to protect and proper parental care and guardianship. We find, upon a review of the full record, that they could have. We emphasize that the question is not whether the jury was correct to form such a conviction, but whether a juror *could* form such a conviction within the bounds of reasonableness. We do not find the jury's decision to be so far outside the bounds of reasonableness that the trial court erred in failing to direct a verdict in Patricia's favor, and thus affirm.

Patricia also argues that ICWA's § 1912(f) requirement of qualified expert witness testimony was not met here. The state offered Pamala Keeton, an Indian Child Welfare (ICW) caseworker for the Wichita and Affiliated Tribes, as an expert, and neither Patricia nor any other party objected to the state's motion to qualify Ms. Keeton as an expert. Indeed, the trial court specifically afforded Patricia's attorney the opportunity to object to the introduction of her testimony as an expert, but he declined. Tr.Vol.II, pg. 169. On direct examination, Ms. Keeton was specifically asked the following question: "In your opinion, would continued custody by the mother likely result in serious, emotional or physical harm to the children?" *Id.* at 185. She responded in the affirmative and explained why she held that opinion. No objection was made, and no limits were placed on Patricia's attorney's ability to cross-examine Ms. Keeton. We find that the requirements of the federal statute were satisfied under the circumstances.

Finally, we note that Patricia argues that the trial court erred in not granting its partial motion to dismiss, made after the close of the state's evidence, that sought to remove from the jury's consideration the question of whether termination was permissible for "length of time in custody" pursuant to 10A O.S. § 1-4-904(B)(16). Patricia argued that the jury should not be permitted to consider this ground because, if the two-months of tolling arguably mandated by the Supreme Court's administrative orders during the spring of 2020 were taken into account, the children had not been in custody for fifteen months at the time the amended petition was filed as required under this ground. Because

we find that the jury's verdict is supportable under § 1-4-904(B)(5), we decline to address this proposition of error.

CONCLUSION

An ICWA termination requires evidence sufficient to support a conclusion by a rational trier of the fact, beyond a reasonable doubt, that continued custody by a parent would result in serious damage to the children. *In the Matter of IW*, 2018 OK CIV APP 6, ¶ 8, 419 P.3d 362. The jury was charged with deciding if the testimony of Ms. Keaton and the DHS worker could support such a conclusion. Likewise, it was tasked with determining if there was clear-and-convincing evidence to support the state grounds for termination. Our task on review is not to agree or disagree with the jury's conclusions, but to determine if the evidence was such that a reasonable juror *could* find that the state proved its case to the required standards. We find the evidence here sufficient.

AFFIRMED.

FISCHER, J., and HUBER, J., concur.

August 16, 2023