ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

IN THE MATTER OF O.M., C.M., C.M., II and C.M., Alleged Deprived Children:

JENNIFER MILLER,

Appellant,

vs.

STATE OF OKLAHOMA,

Appellee.

Case No. 121,006

APPEAL FROM THE DISTRICT COURT OF
PITTSBURG COUNTY, OKLAHOMA

HONORABLE MINDY BEARE, SPECIAL JUDGE

AFFIRMED

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For Appellant

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For Appellee

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Jennifer Miller, the mother of the four minor children at issue here, appeals the termination of her parental rights after jury trial. After review, we find sufficient evidence supporting the jury's verdict and thereby affirm.

BACKGROUND

Ms. Miller's four children were first adjudicated deprived on December 20, 2019, and again on February 1, 2022. It is undisputed that each of the children are "Indian child[ren]" as defined in the Indian Child Welfare Act ("ICWA") and that the provisions of that law applied at all stages of this case, including appeal. 25 U.S.C. § 1903(4).

On September 3, 2019, DHS received a referral regarding the Miller family which contained allegations of neglect, threat of harm, and exposure to domestic violence as to all four minor children. These allegations were based on acts of violence committed by Ms. Miller's husband, Clinton Miller, against Ms. Miller in front of their children.[1] Ultimately, the children were adjudicated deprived on those allegations on December 20, 2019. Following the adjudication hearing, on February 3, 2020, the trial court issued an individualized service plan ("ISP") for Ms. Miller. This ISP required Ms. Miller to seek assistance regarding domestic violence, substance abuse, and mental health in order to regain custody of her four children. Ms. Miller completed all the necessary tasks and assessments required by this first ISP.

In October 2020, DHS became aware of allegations that two of the children were being sexually abused by Mr. Miller. Later, in August 2021, DHS received a referral regarding new allegations of abuse as to the third child. The children were adjudicated deprived as to these new allegations on February 1, 2022. The

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[1] The parents have an extensive history of domestic violence that will be addressed in depth later in this opinion. Mr. Miller, who is the father of each of the minor children at issue, voluntarily relinquished his parental rights below.

court issued a second ISP on April 12, 2022, which Ms. Miller signed and agreed to complete.

As part of the second ISP, Ms. Miller agreed to complete a non-offender sexual abuse assessment. She did not complete this assessment because she believes her children are not telling the truth about being abused by their father. Due to the Millers' denial of the abuse, the sexual abuse program provider would not allow them to enroll in the program. Ms. Miller was also required to participate in parenting services, to learn and demonstrate how to validate the children without glorifying, justifying, or discrediting their abuse, and to contact and start services through an OKDHS approved mental health service provider. However, Ms. Miller did not complete any of these other requirements listed on the second ISP.

The state ultimately filed a petition to terminate Ms. Miller's parental rights on August 25, 2022, on the bases of failure to correct conditions that led to termination. 10A O.S. § 1-4-904(B)(5). The case was then set for jury trial and later held on January 17, 2023.

During voir dire, a potential juror, Ms. Lizik, was excused for cause by the judge after she stated that she lost her children because of domestic violence, that she did not believe in "the system," and that all children belong with their mothers. No objection to the dismissal was made by either party.

Three witnesses testified at trial: Ms. Miller, Ashley Allsup, the DHS caseworker assigned to the Miller's case, and Blair Christenberry, the Indian Child Welfare social worker also assigned to the Millers' case. Ms. Christenberry

was deemed an expert witness as required by ICWA and testified to the tribe's opinion regarding the children's best interest and preferred placement. When asked if the children were likely to suffer serious emotional or physical damage if Ms. Miller had continued custody of the children, Ms. Christenberry replied, "It is the tribe's opinion that there is evidence, beyond a reasonable doubt, that continued custody with the Indian custodian, or natural parent, would likely result in serious emotional or physical damage to the child." Ms. Miller's counsel moved to strike the "reasonable doubt" portion of the statement, asserting that it was improper for an expert to testify about a legal conclusion. The trial court agreed, sustained the objection, and instructed the jury to disregard that portion of the statement and to only consider the rest of what Ms. Christenberry said, giving it the weight they deemed appropriate. After the judge gave the instruction, Ms. Miller's counsel moved for a mistrial on the grounds that even though the words "reasonable doubt" were stricken, "the bell had been rung." The judge denied the motion.

At the end of the trial, the jury entered unanimous verdicts for termination as to all four children. The jury found that Ms. Miller had not corrected the following conditions: domestic violence, failure to protect, failure to supervise, threat of harm, failure to protect from sexual abuse, and failure to protect from mental/emotional abuse. Ms. Miller now appeals, arguing that there was not clear-and-convincing evidence to support termination of her parental rights, that the trial court erred by not allowing rehabilitation of a prospective juror, and that the trial court also erred by not sustaining appellant's motion for a mistrial.

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, termination in an ICWA case requires evidence sufficient to support a conclusion that, beyond a reasonable doubt as supported by expert testimony, continued custody by a parent would likely result in "serious emotional or physical damage to the child[ren]." 25 U.S.C. § 1912(f). However, in ICWA termination cases, the beyond a reasonable doubt standard only applies to the finding that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, whereas the lesser standard of clear-and-convincing evidence, the state law mandated burden of proof, is applicable to all other state law requirements for termination. *In re Adoption of G.D.J.*, 2011 OK, ¶ 36, 261 P.3d 1159, 1169.

As to the voir dire issue, the trial court is "vested with great discretion in excusing jurors for cause, and ... rulings with regard thereto will not be reversed absent a showing of abuse of that discretion." *Madill Bank & Tr. Co. v. Herrmann*, 1987 OK CIV APP 4, ¶ 29, 738 P.2d 567, 574. *See also McAlester Urb. Renewal Auth. v. Lorince*, 1973 OK 148, ¶ 9, 519 P.2d 1346, 1348 ("[T]he trial court's ruling on a challenge of a juror for cause will not be disturbed unless there has been an abuse of discretion shown.").

We will also review a trial court's ruling on the admissibility of expert opinions under an abuse of discretion standard. *Christian v. Gray,* 2003 OK 10, ¶ 42, 65 P.3d 591, 608. "An abuse of discretion occurs when a decision is based on an erroneous conclusion of law or where there is no rational basis in evidence for the ruling." *Spencer v. Oklahoma Gas & Elec. Co.,* 2007 OK 76, ¶ 13, 171 P.3d 890, 895.

ANALYSIS

Sufficiency of the Evidence Arguments

In her first proposition of error,[2] Ms. Miller makes several arguments related to the sufficiency of state's evidence on various issues. Under this umbrella, she argues that the trial court's decision should be vacated because the state was not "required" to file the petition to terminate. She cites to section 1-4-902(B)(3) of Oklahoma's Juvenile Code which provides that "the district attorney is not required to file a petition" to terminate if "[t]he state has not

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[2] Ms. Miller's heading for her first proposition of error is as follows: "The state failed to prove beyond a reasonable doubt that adequate trauma informed care was given to address the mother's history of severe trauma and to help her correct conditions causing the children to be deprived, and therefore termination should be vacated; the state did not even meet the burden of clear and convincing evidence." *Brief of Appellant Mother,* 3 (capitalization modified). First, we note that the beyond a reasonable doubt standard is inapplicable to the state's burden under state law. As described above, in ICWA termination cases, the state must prove beyond a reasonable doubt only that continued custody of the parent will likely cause harm to the children. 25 U.S.C. § 1912(f). The lesser standard of clear-and-convincing evidence is applicable to all other state law requirements for termination. *In re Adoption of G.D.J.*, 2011 OK, ¶ 36, 261 P.3d 1159, 1169. Thus, to the extent the state had *any* burden to prove that "adequate trauma informed care was given to address the mother's history of severe trauma," the state did not have to prove it beyond a reasonable doubt. Further, Ms. Miller does not cite to any authority or testimony from the record indicating that she was not given "adequate trauma informed care," though precisely what is meant by this term is not made clear. Upon review, we find that she did receive domestic violence counseling, a substance abuse evaluation, and mental health counseling, which could arguably fall under the term.

provided to the family of the child, consistent with the time period in the state case plan, services that the state deems necessary for the safe return of the child to the child's home, if reasonable efforts are required to be made with respect to the child."10A O.S. § 1-4-902(B)(3). Ms. Miller seemingly reads this provision to mean that the state was barred from bringing its action against her; however, while the state might not have been *required* to file the petition, it certainly had the *discretion* to do so. Ms. Miller does not allege that there were any specific services that the state failed to provide to her, but she implies that because she was not allowed to complete the non-offender sexual abuse program, she was denied necessary services.[3] However, it was not that the state failed to provide the non-offender sexual abuse service to Ms. Miller, rather, Ms. Miller could not be admitted to the program because she could not acknowledge that her children had suffered abuse from their father. In addition to the non-offender program, the state, through two ISPs, provided Ms. Miller with numerous other services that it deemed necessary for the safe return of Ms. Miller's children, and Ms. Miller was aware that she needed to complete those services. We find Ms. Miller's argument in this regard to be lacking.

Ms. Miller also argues that the record[4] does not contain clear-and-convincing evidence to support the jury's finding that she failed to correct the

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[3] As detailed in note 2, *supra*, Ms. Miller generally alleges that she was not given trauma informed care. She alleges that it was "impossible" for her to complete the second ISP, in its entirety, and that she was not "afforded the opportunity" to complete the ISP any other way. *Brief of Appellant Mother*, 4.

[4] We note that the parties have designated only the trial transcript and associated exhibits. Our review is therefore limited to the testimony and evidence presented during trial.

conditions of domestic violence, failure to protect, failure to supervise, threat of harm, failure to protect from sexual abuse, and failure to protect from mental/emotional abuse. After a careful review of the record, we find that there was clear-and-convincing evidence of failure to correct all conditions except domestic violence.

At trial, the parties focused almost exclusively on the two ISPs Ms. Miller agreed to complete. The ISP is the "method used to advise the parents of the standards of conduct expected of them in order to correct the conditions leading to the deprived adjudication." *In re S.A.*, 2007 OK CIV APP 97, ¶ 12, 169 P.3d 730, 735. "While failure to perform the service plan is not itself grounds to terminate parental rights, the parties use compliance or non-compliance with the plan as evidence showing whether the conditions leading to the adjudication have been corrected." *Id.* Thus, the dispositive issue in this case is not whether Ms. Miller did or did not complete the ISPs, but whether she had failed to correct conditions leading to adjudication of the children as deprived.

As to domestic violence, we find that there was insufficient evidence presented during trial to allow the jury to find that Ms. Miller had not corrected this condition. The second ISP, entered into evidence during trial, describes Ms. Miller's relationship with her husband as it pertains to domestic violence:

> Mrs. Miller had filed a protective order on 6/5/2019 alleging that Mr. Miller had hit and choked her in May 2019. The protective order was dismissed on 7/17/19. They were moving to different homes and were not having contact with each other. On 60 day look back, parents are wanting to reconcile again which is a pattern from all previous referrals that the parents will get into physical altercations, Ms. Miller will file a Protective Order, then the Protective Order will be dismissed and the couple will reconcile. There have been 12

> Protective Orders filed against Mr. Miller from Mrs. Miller since 2014. Safety concerns are that the Mother has not made enough progress with parenting and domestic violence since the closure of the previous referral in May 2019.

Based on the incidents described above, DHS found the domestic violence allegations to be substantiated which ultimately led to the children being adjudicated deprived for the first time in December 2019.[5] A few months later, the trial court issued the first ISP that Ms. Miller signed and agreed to complete. The first ISP required her to complete a domestic violence assessment, which she did. Tr. 104. Ms. Miller testified that she attended and completed the Choctaw Nation's domestic violence program with provider Dakota Wilson. *Id.* The state did not dispute that Ms. Miller completed the domestic violence program.[6] The record is silent as to any new incidents of violence between Ms. Miller and her husband. Therefore, because Ms. Miller attended and completed the domestic violence program, as required by the ISP, and the state presented no new evidence regarding incidents of domestic violence in the last three years, we hold that the jury could not have found that there was clear-and-convincing evidence of domestic violence.

While the jury could not have found that Ms. Miller had failed to correct the condition of domestic violence, we note that only one condition need not have been corrected in order to create a basis for termination under the language of

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[5] Ms. Miller testified that she was never a domestic violence perpetrator, rather, she was only the alleged victim of domestic violence. Tr. 103.

[6] When asked by the state's attorney if she had completed the domestic violence program, Ms. Miller answered in the affirmative. The state's attorney responded by commending Ms. Miller for completing the program. Tr. 90.

10A O.S. § 1-4-904(B)(5).[7] Therefore, our analysis for the remaining conditions continues.

As to the remaining conditions: failure to protect, failure to supervise, threat of harm, failure to protect from sexual abuse, and failure to protect from mental/emotional abuse, we find that there was clear-and-convincing evidence that Ms. Miller had failed to correct these conditions.

According to the second ISP, DHS was made aware of allegations of sexual abuse and failure to protect as to all of the children. Specifically, the first referral was received in October 2020 and the second in August 2021. The children were adjudicated as to those allegations on February 1, 2022.

Despite adjudication on these allegations, Ms. Miller vehemently denies that her children were sexually abused by their father. She testified: "When it comes to the sexual allegations, and I believe they did not happen, and I will—I will scream it as loud as I can for the rest of my life. I know it didn't happen."[8] Tr. 91. While we do not have the transcript of either adjudication hearing before us on review, Ms. Miller did testify that she has been present for "everything." Tr. 102. Specifically, she testified that she was present at the adjudication hearings where she heard her children describe the sexual abuse they experienced. *Id.* Even though the DHS investigations were substantiated as to

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[7] *See also* 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 grounds, you should sign and return the verdict form entitled Terminate Parental Rights for every such statutory ground for that parent and that child."

[8] Ms. Miller denied that her children had suffered sexual abuse five other times during trial. *See* Tr. 92, 94, 102, 107, and 111.

the sexual abuse and the court found the children to be adjudicated on these issues, Ms. Miller maintains that her children are not telling the truth and in turn defends her husband.

After the children were adjudicated deprived on these issues, the court issued a second ISP that Ms. Miller agreed to and signed. By signing this ISP, she agreed, among many other things, to start a sexual abuse non-offenders program through a DHS approved sexual abuse provider, to participate in parenting services so she will be able to meet their emotional needs regarding the abuse and trauma that her children have endured, to demonstrate how to carefully listen and validate the children without glorifying, justifying, or discrediting their abuse, to learn about how sexual abuse negatively affects her children, and to contact and start services through an OKDHS approved mental health service provider within fourteen days of the ISP being court ordered.

During trial, Ms. Miller testified that it was "impossible" for her to complete the first task in her new ISP, attending a non-offender sexual abuse program. Tr. 108. Ms. Miller alleged that it was "impossible" because the program provider denied her admittance to the program. *Id.* According to her own testimony and that of DHS caseworker Ashley Allsup, Ms. Miller was denied services because she was unable to acknowledge the abuse her children had suffered and in fact, blatantly denied it.[9] When asked if she inquired about different providers, Ms.

[9] Ms. Miller was asked by the tribe's counsel about what her understanding of why she could not attend the non-offender program was. Tr. 101. Ms. Miller responded, "[b]ecause I didn't admit that anything happened." *Id.* Ms. Miller's counsel asked Ms. Allsup if the treatment provider allowed Ms. Miller to enroll in class Ms. Allsup answered no, based on the intake Ms. Miller did. Tr. 127.

Miller maintains that she talked to her caseworker about other non-offender program options and that her caseworker told her the provider she went to was the "only one." Tr. 109. However, Ms. Allsup testified that Ms. Miller never inquired about any other providers or any alternatives to completing the ISP requirement for a sexual abuse non-offender program. Tr. 123.

Additionally, Ms. Miller testified that she did not complete any of the other requirements for her second ISP. She contends that aside from the non-offender sexual abuse program, all other requirements listed in her second ISP were the same as the requirements contained the first ISP.[10] While Ms. Miller testified that the ISPs were the same, Ms. Allsup testified that they were different. The state asked Ms. Allsup, the author of the plan, if the old ISP was incorporated into the new one, she answered "[n]o, the same to-dos aren't on there." Tr. 119. When asked by the state's attorney if she had completed one of the other requirements on the second ISP, Ms. Miller responded, "Well, then I guess no. Because I had felt that I had already completed it, so I didn't do it again." Tr. 98. Further, when asked if she had talked with her caseworkers about whether or not she needed to do the other requirements on the second ISP, Ms. Miller said. "I don't remember. I don't recall, but I probably did ... I probably did talk to them about that, and they said don't worry if you've already completed it." Tr. 99. However, according to Ms. Allsup's testimony, despite Ms. Miller believing the requirements in the second ISP were the same as the first, they were different.

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[10] As this Court does not have the first ISP in the record, we can only rely on trial testimony for review.

Ms. Allsup added recommendations to the second ISP consistent with the new allegations: sexual and emotional abuse. Therefore, while the two ISPs might have appeared to be the same, Ms. Miller needed to complete different programs and master new skills not listed in the first ISP. Regardless of any confusion, Ms. Miller had from April 2022, the date the second ISP was issued, until trial started in January 2023 to clarify what she needed to complete for her second ISP. Ultimately, it was Ms. Miller's responsibility, not DHS's, to correct the conditions leading to the deprived adjudication, and she did not.

Ms. Miller's inability to complete the second ISP is relevant to whether she had corrected her failure to protect her minor children from sexual and emotional abuse and threat of harm. The record shows that the jury considered all the evidence presented in reaching its decision to terminate, particularly Ms. Miller's consistent refusal to acknowledge that her children suffered abuse from their father. Further, the jury considered Ms. Miller's purported inability to complete the non-offender sexual abuse program and all other requirements in the second ISP. While there was conflicting testimony about whether Ms. Miller inquired about alternatives to the non-offender program and whether she still needed to complete the requirements on the second ISP, "it is within the province of the jury to determine the credibility of the witnesses and to decide the effect or weight to be given their testimony." *Walker v. St. Louis-San Francisco Ry.*, 1982 OK 25, ¶ 10, 646 P.2d 593, 597. Ms. Allsup's testimony supports the jury's finding that Ms. Miller failed to correct conditions by not inquiring about other sexual abuse programs and not inquiring about the other services listed on the second ISP.

The jury also considered that Ms. Miller had four years in total, but at least a year after the second ISP was entered, to correct the conditions that led to her children being adjudicated deprived. Instead, she still denies that they suffered abuse.

Based on the reasons articulated above, the state presented clear-and-convincing evidence that Ms. Miller had not changed her behavior at the time of trial and would thus be unwilling or unable to protect the minor children from future abuse. If the children were allowed to stay with Ms. Miller, they would still be subject to the abuse of their father and would not have a parent willing or able to protect them from the abuse: sexual, emotional, or otherwise.[11]

Ms. Miller next argues that the trial court's verdict should be vacated because there was inadequate evidence for the jury to find that the parental rights should have been terminated by "either clear and convincing evidence or beyond a reasonable doubt." We again note that this argument incorrectly conflates the burdens of proof; however, we hold that the jury could have found, beyond a reasonable doubt, as supported by expert testimony, that Ms. Miller's continued custody of the children would likely result in serious emotional or

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[11] For the same reasons we find that there was clear-and-convincing evidence of failure to correct conditions, we find that termination of Ms. Miller's rights was in the best interest of the minor children. While Ms. Miller presented evidence of a single attempt to obtain non-offender sexual abuse treatment and offered testimony that she had completed requirements for the first ISP, there was significant evidence in the record that she had not taken meaningful steps to address her own failure to protect the minor children and did not recognize such protection was required. Additionally, Ms. Christenberry testified specifically that termination was in the best interests of the children. We find that the jury's decision to terminate rights as to all four children was in their best interest and was supported by clear-and-convincing evidence.

physical damage to the children. The ICWA expert in this case, Ms. Christenberry, testified that it was the tribe's opinion that the children would be harmed emotionally and physically if they were allowed to return to Ms. Miller. Ms. Christenberry had worked on the Millers' case since September 2020. She testified that it was in the children's best interest to remain in DHS custody. She added that her opinions were based on Ms. Miller's lack of behavioral change and lack of service completion. Tr. 136. Expert witness testimony in ICWA cases is sufficient as long as, "it addresses the likelihood of future harm." *Steven H. v. Arizona Dep't of Econ. Sec.*, 218 Ariz. 566, 572, 190 P.3d 180, 186 (2008). Put simply, the expert's opinion must merely support the factfinder's conclusion that continued custody by the parent will result in harm to the child. *Id.* Therefore, we find that Ms. Christenberry's testimony did address the likelihood of future harm and supports the jury's finding that continued custody by Ms. Miller would result in physical or emotional damage to the children.

Juror Rehabilitation

Ms. Miller also argues that the trial judge erred by not allowing rehabilitation of a prospective juror during voir dire. The judge asked all prospective jurors if they had ever been involved with DHS. Tr. 28. One prospective juror, Ms. Lizik, responded that she had lost her kids to "domestic violence." Tr. 31. The judge asked her to approach and before the judge could ask another question, Ms. Lizik asserted that she did not "believe in the system." *Id.* The judge started to ask another question and, again, before she could finish, Ms. Lizik stated, "I think families belong together, and y'all took my kids so." *Id.*

The judge stated that she believed this juror should be stricken for cause. *Id.* Ms. Lizik, upon the judge's statement, added "every mom deserves their kids." *Id.* The judge then instructed Ms. Lizik to report back to the Court Clerk. Neither party objected to Ms. Lizik's dismissal. Because of the failure to object, we will review the trial court's actions only for fundamental error. *Bane v. Anderson, Bryant & Co.*, 1989 OK 140, ¶ 24, 786 P.2d 1230, 1236. ("[A] party who fails to preserve an issue for appeal, by timely objecting to the issue at the district court, waives review of that issue."); *Sullivan v. Forty-Second W. Corp.*, 1998 OK 48, ¶ 6, 961 P.2d 801, 802 ("[I]t is within the purview of this Court to review the record for fundamental error."). "Fundamental error compromises the integrity of the proceeding to such a degree that the error has a substantial effect on the rights of one or more of the parties." *Id.* ¶ 7, 803.

First, we note that there is no mandatory requirement for a court to allow "rehabilitative" questioning in civil cases. *Miller v. State*, the sole authority cited by Ms. Miller on this issue, was decided by the Oklahoma Court of Criminal Appeals. 2013 OK CR 11, 313 P.3d 934. Notably, *Miller* was a capital murder case wherein jurors were provided questionnaires prior to voir dire and then were questioned by the court about their individual answers. *Id.* The Court of Criminal Appeals held that the trial court abused its discretion when it failed to allow defense counsel to question a juror who provided conflicting answers on her questionnaire and during questioning by the court as to her ability or willingness to impose a death sentence. *Id.* ¶ 65. The Court found that her answers regarding her willingness to consider the death penalty were "equivocal, inconsistent, and

also confusing." *Id.* The same cannot be said of Ms. Lizik's responses. Ms. Lizik made it abundantly clear to the court that she could not be impartial in this case. Her answers were consistent, not confusing, and they show a clear bias and unwillingness to listen to the testimony or consider the applicable law. Under these facts, we hold that Ms. Miller was not entitled to rehabilitative questioning even if she had requested it. Accordingly, the trial court did not err—much less commit fundamental error—when it removed Ms. Lizik for cause.

Expert Testimony

In her final argument under proposition one, Ms. Miller maintains that the trial court erred in refusing to grant a mistrial when Ms. Christenberry testified that there was evidence "beyond a reasonable doubt" that continued custody with Ms. Miller would cause the children harm.[12] Ms. Miller's counsel promptly moved to strike the "reasonable doubt" portion of the statement from the record. The judge then struck the "reasonable doubt" part of the statement from the record and instructed the jury accordingly. Ms. Miller's counsel then moved for a mistrial, arguing that because the jury had already heard the phrase, the "bell had been rung." Tr. 134.

First, we note that the trial court properly sustained appellant's motion to strike the "reasonable doubt" portion of the expert's testimony. Courts have held

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[12] This argument was not briefed on appeal. Rather, it was only mentioned by Ms. Miller in her petition-in-error as a proposition on appeal and again in Ms. Miller's brief in her summary of the case. Supreme Court Rule 1.1(k) states that "issues raised in the Petition in Error but omitted from the brief may be deemed waived. Argument without supporting authority will not be considered." Because this argument was not supported by any authority or briefed, we could deem it waived on appeal. Nevertheless, given the constitutional dimension of the rights involved here, we address it.

that a tribal expert "need not opine on the ultimate issue of whether the state met its burden of proof." *See, e.g., Marcia V. v. Office of Children's Servs.*, 201 P.3d 496, 506 (Alaska 2009); *Steven H. v. Arizona Dep't of Econ. Sec.*, 218 Ariz. 566, 572, 190 P.3d 180 (2008). Here, Ms. Christenberry's testimony constituted an opinion on whether or not the state met its burden of proof and, therefore, was not necessary. Additionally, experts may not testify as to any legal conclusions. *Le v. Total Quality Logistics, LLC*, 2018 OK CIV APP 71, ¶ 46, 431 P.3d 366, 379. By testifying that there was evidence beyond a "reasonable doubt" that continued custody with Ms. Miller would be harmful, Ms. Christenberry effectively made a legal conclusion that should have been left for the jury to decide. Therefore, the motion to strike and the decision to strike the statement from the record were both proper.

However, by striking the "reasonable doubt" portion of the statement and instructing the jury to disregard it, any error in allowing the jury to hear the testimony was cured. The Oklahoma Supreme Court has held that "when a witness improperly testifies, but a motion to strike is sustained and the jury is instructed to disregard the answer, error in admitting such testimony is cured." *A. & A. Cab Operating Co. v. Mooneyham, Okla.*, 1943 OK 363, 142 P.2d 974. Here, the judge stated, "[t]he objection is gonna be sustained as to the reasonable doubt portion ...." Additionally, she instructed the jury that: "For the purposes of the witness' last statement you're to disregard just the term reasonable doubt. The rest of her statement you can take into account and give whatever weight. But just that—that statement is to be stricken." As a result, we

hold that any error caused by Ms. Christenberry's testimony was cured by the trial court and the motion for a mistrial was properly denied.

CONCLUSION

The jury was tasked with determining whether there was clear-and-convincing evidence to support the grounds for termination. Likewise, the jury was charged with deciding if the evidence could support a conclusion that, beyond a reasonable doubt, the continued custody by Ms. Miller would likely result in serious damage to the children. 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 to support termination, except for the jury's finding that Ms. Miller failed to correct the condition of domestic violence, which we hold Ms. Miller had corrected. Ultimately, Ms. Miller failed to correct all other conditions and, therefore, termination was proper and in the best interests of the four minor children.

AFFIRMED.

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

November 15, 2023