NOT FOR OFFICIAL PUBLICATION
See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

IN THE MATTER OF E.J.W. and J.N.R., adjudicated deprived children,

CARRIE WHITE,

Appellant,

and

JOHN MICHAEL WHITE SR.,

Appellant,

vs.

STATE OF OKLAHOMA,

Appellee.

Case No. 121,082
(cons. with
Case No. 121,083)

APPEAL FROM THE DISTRICT COURT OF
POTTOWATOMIE COUNTY, OKLAHOMA

HONORABLE EMILY J. MUELLER, TRIAL JUDGE

AFFIRMED

Shelley L. Levisay
SHAWNEE LITIGATOR LAW
Shawnee, Oklahoma

For Appellants

Rebecca Bauer
ASSISTANT DISTRICT ATTORNEY

Shawnee, Oklahoma — For Appellee

Mat Thomas
Shawnee, Oklahoma — For E.J.W.

OPINION BY JOHN F. FISCHER, JUDGE:

In these consolidated appeals involving the Indian Child Welfare Act (ICWA), Carrie White (Mother) and John White, also referred to in the record as "Jon" (Father), appeal the district court's decrees, entered following jury verdicts, terminating their parental rights to EJW and JNR. The district court's decrees terminating Mother's and Father's parental rights are supported by clear and convincing evidence, and the record contains clear and convincing evidence that termination of parental rights was in the children's best interest. We find no abuse of discretion or other reversible error and affirm the district court's decrees terminating Mother's parental rights to EJW and JNR, and Father's parental rights to EJW.

BACKGROUND

This case has a lengthy history. The appellate record includes nearly 1,000 pages of district court filings. The four-volume trial transcript is over 850 pages long. However, the "Summary of the Case" in the parents' brief in chief is devoid of any citation to pleadings and documents filed in the case or to the trial transcript. For this reason, and others discussed, *infra*, their brief does not comply

with the Oklahoma Supreme Court Rules. *See* Okla. Sup Ct. R. 1.11, 12 O.S.2021, ch. 15, app. 1 ("Form and Content of Briefs"). Nonetheless, we have reviewed documents filed of record and evidence presented at trial as a necessary function of outlining the background facts and procedural history of this deprived-child case.[1]

I. The Deprived Adjudication

In early October of 2017, Mother and Father's infant son EJW and his half-sisters, Mother's daughters HR and JNR, were removed from their home and placed into protective custody pursuant to an emergency order. At the time of his removal from the home, EJW was approximately eight months old. JNR was twelve years old, and HR was fifteen years-old.

The circumstances leading to the commencement of this case occurred during the summer of 2017. Mother contacted the Department of Human Services (DHS) and reported that she had seen a text message that appeared to be of a sexual nature on her daughter HR's phone. Father sent the text.

---

[1] Compliance with the Oklahoma Supreme Court Rules is required. "In case of failure to comply with any rule or order of the Court, the Court may continue or dismiss a cause, reverse or affirm the judgment appealed, render judgment, strike a filing, assess costs or take any other action it deems proper." Okla. Sup. R. 1.2, 12 O.S.2021, ch. 15, app. 1. It is within our discretion to dismiss an appeal, on our own motion, for failure to comply with one or more of the Oklahoma Supreme Court Rules. *See* Okla. Sup. Ct. R. 1.6(c)(1). However, although these rules clearly authorize it, we decline to exercise our discretion to dismiss this case. *See In re Guardianship of S.A.W.*, 1993 OK 95, ¶ 8, 856 P.2d 286, 289 (recognizing that "[t]he relationship of parents to their children is a fundamental, constitutionally protected right").

Mother voluntarily entered into an agreement with DHS to receive family-centered services. It was explained to Mother that DHS would not seek removal of the children from the home if Mother followed the recommendations based on its investigation. DHS requested that Mother remove Father from her home, which she did immediately. However, it was not long before she allowed him back into the home. Father had an explanation for sending the text. Mother accepted it.

Both parents were previously known to DHS due to referrals and proceedings involving their older children from prior relationships. Mother, as a child, was involved with DHS as a victim of sexual abuse. Mother, her daughters and their biological father, Ryan Ransom, were the subjects of past referrals based on substance abuse, domestic violence, and Mother's failure to protect her oldest daughter, HR, from sexual abuse by one, or more, of Mother's ex-boyfriends. There was an ongoing deprived-child case against Father in Seminole County, involving his three biological sons from a prior relationship. The boys had been removed from Father's care due to domestic violence. Mother was aware of the Seminole County proceedings against Father.

On October 12, 2017, the State filed a petition to adjudicate EJW, JNR and HR deprived as to Mother and Father. Both parents, through separate counsel, stipulated to the allegations of the petition. The district court adjudicated the three children deprived as to Mother on December 20, 2017. EJW was adjudicated

deprived as to Father on January 5, 2018. The adjudication orders state that the Indian Child Welfare Act applies and list the Chickasaw Nation as the tribe. The stipulated conditions which caused the children's deprived status were: "domestic violence, sexual abuse of child(ren) or failure to protect from sexual abuse, failure to protect, and threat of harm."[2]

II. Post-Adjudication Period

Mother and Father each signed an Individualized Service Plan (ISP). Mother's ISP included such steps as (1) completing a psychological evaluation and following all recommendations for further treatment; (2) completing a substance abuse assessment and submitting to random urinalysis and/or hair follicle testing due to methamphetamine and alcohol addiction; and (3) attend a non-offender's education and support class to address issues related to sexual abuse, including Father's alleged sexual abuse of his three older sons and/or exposure to adult sexual acts, and inappropriate texting to Mother's daughter, HR. Father's ISP required, among other things, completion of a (1) psychological evaluation, (2) substance abuse assessment and random testing due to methamphetamine and

[2] *See* 10A O.S.2021 § 1-4-601(D)(2) (providing that if the court finds it is in the best interest of the child, the court shall: "Accept a stipulation by the child's parent . . . that if the state presented its evidence supporting the truth of the factual allegations in the petition to a court of competent jurisdiction, such evidence would be sufficient to meet the state's burden of proving by a preponderance of the evidence that the factual allegations are true and correct . . . ."

alcohol addiction, (3) domestic violence assessment and (4) psycho-sexual evaluation, following all recommendations made by the service provider.

Initially, the Chickasaw Nation and DHS agreed that the goal for the three children was reunification. But after a series of review hearings the Chickasaw Nation's permanency plan for the children changed to termination of parental rights and adoption. JNR's and HR's father relinquished his parental rights and provided his consent to their adoption in June of 2019.

In August of 2019, the Chickasaw Nation's permanency worker and the permanency manager filed a report in the district court recommending that reunification efforts cease due to the parents' failure to correct conditions which led to the children's removal from the home, the length of time the children had been out of the home, and because it was unsafe for the children to return to the home and against their best interest. The State filed motions to terminate parental rights on August 28, 2019, and on July 28, 2020, but review hearings continued.

For more than two years, parents participated in supervised visitation for two hours, once a month. The district court increased the parents' supervised visitation to two hours, twice a month. In July 2021, HR turned eighteen and was no longer a part of the proceedings. Mother and Father requested unsupervised visitation with EJW and JNR, which the district court granted, allowing four hours of unsupervised visitation, every other week.

On December 21, 2021, counsel for EJW filed a motion to terminate Mother's and Father's parental rights. An order entered on January 10, 2022, reflects that EJW's attorney withdrew his motion to terminate, and the district court ordered that "visitation shall continue as previously ordered."

The State filed a motion on April 26, 2022, seeking permanent guardianship for JNR with a relative. The motion recites that all parties agreed to the guardianship.

III. Termination Proceedings

The State filed a third motion to terminate Mother's and Father's parental rights on August 31, 2022. The State sought termination pursuant to 10A O.S.2021 § 1-4-904(B)(5) (against both Mother and Father) (failure to correct the conditions which led to the deprived adjudication); section 1-4-904(B)(16) (against Mother) (JNR in foster care for fifteen (15) of the twenty-two (22) months preceding the filing of the parental rights termination petition); and section 1-4-904(B)(17) (against Mother and Father) (EJW, younger than four (4) years of age at the time of placement, in foster care for at least six (6) of the twelve (12) months preceding the filing of the petition or motion for termination of parental rights and the child cannot be safely returned to the home of the parent).

On November 3, 2022, Mother's and Father's attorneys filed a joint motion seeking immediate trial reunification with EJW or, in the alternative, dismissal of

the case and an order returning EJW to their home. The motion stated that, in the Seminole County deprived-child proceedings involving Father's three older biological sons, the judge had ordered reunification with Father and dismissal of the case. However, the motion included no documentary support for that statement.[3]

Trial on the motion to terminate Mother's and Father's parental rights took place over several days in January of 2023. By that time, six-year-old EJW had been in foster care for practically his entire life. JNR was almost eighteen.

Prior to calling in the jurors, the district court held the "active efforts" hearing required by the federal ICWA. *See* 25 U.S.C. § 1912(d). The child welfare permanency worker for the Chickasaw Nation, Rachel Vick, testified. Parents argued that the State failed to present clear and convincing evidence, as required by section 1912(d), that active efforts had been made. However, the district court noted that active efforts had been found at every review hearing for the last two years. The court made the necessary "predicate finding" that DHS and the Chickasaw Nation provided remedial services and rehabilitative programs to

[3] The Seminole County deprived-child case against Father is mentioned frequently in this record, not only in progress reports, but also during trial. However, the appellate record in this case does not include any pleading, order, or other document filed of record in the Seminole County proceedings. It is undisputed that DHS initially removed the three boys from Father's care based on allegations of domestic violence. And once the boys were out of the home, a subsequent referral to DHS substantiated allegations of sexual abuse involving Father's genital contact with one son. This referral also noted the other brothers' sexual behavior with each other.

Mother and Father, designed to prevent the breakup of the Indian family, and that those active efforts to correct the conditions that led to the children being adjudicated deprived "have proved unsuccessful." *Id. See In re J.S.*, 2008 OK CIV APP 15, ¶ 5, 177 P.3d 590, 591.

Another one of the State's witnesses was DHS child welfare supervisor Denise Frentz, who had been assigned to the case since February of 2020. Frentz testified regarding the DHS process of coordinating with the District Attorney to obtain a "pickup order" for children and the resulting emergency custody hearing that follows, as required by statute. Counsel for the State asked Frentz to identify certain pleadings and orders filed in the case: State's Exhibit 1 (the Assistant District Attorney's October 2017 Application to Take Minor Children into Emergency Custody), Exhibit 2 (the Order to Take Minor Children into Emergency Custody), and Exhibit 3 (the Emergency Custody Hearing Order).

When the State moved to admit Exhibits 1 through 3, Mother's and Father's attorneys objected to admission of Exhibit 1. They argued at the bench that the DHS child welfare worker's affidavit attached to the emergency custody application was hearsay, was highly prejudicial, was not authored by testifying-witness Frentz, and the DHS affiant, J.D. Hollowell, was not present for cross-examination. The parents had filed a pre-trial motion *in limine*, on similar grounds, which the district court denied. The State responded that it was "not

offering [its Exhibit 1] for the truth," but "as the mechanism that gets the kids into custody" pursuant to the state and federal ICWA.

The district court admitted State's Exhibit 1 over the parents' objection but stated that, as requested by parents, the jury would be given a limiting instruction on the exhibit. The State continued to question Frentz about DHS's investigation of the case, the decision to file the petition to adjudicate EJW, JNR and HR as deprived, and the allegations included in that petition.

Frentz and the Chickasaw Nation's child welfare specialist, Vick, testified regarding the decision to seek termination of Mother's and Father's parental rights. Both testified that it was in the children's best interest to terminate Mother's and Father's parental rights because they had not corrected the conditions that led to EJW and JNR being adjudicated deprived. Although Mother and Father had substantially completed their ISPs and had clean drug screenings, Vick and Frentz both testified that the parents had failed to show their ability to provide a safe and stable home. Both witnesses believed that the parents presented a threat of harm to both children, particularly young EJW, if returned to parents' care. For example, Vick, who was qualified as an expert witness, testified that there was still a safety threat to EJW:

> The safety threat is, although the parents have completed many of the steps in their [ISP], they have not–they do not acknowledge the sexual abuse allegations for–confirmed in investigations against [Father]. . . . [Mother,] although she's completed most of her [ISP], she does not

> acknowledge that it happened, and [both parents] they're not able to demonstrate behaviors that would deem them appropriate to have the children long term.

Vick asserted the Chickasaw Nation believed Mother's and Father's parental rights should be terminated and that serious emotional and physical harm to the children, particularly to EJW, would likely result if reunification occurred.

Vick and Frentz also testified about the importance of permanency for EJW. He was thriving in the ICWA-compliant foster care placement with his maternal aunt.

EJW's maternal aunt/foster mother testified about her concern for his safety if returned to his parents' home with Father's older boys living there. She learned from Mother that the three boys had been trying to molest each other within two weeks of returning to the home. She was aware that video cameras were installed in the home to monitor the boys' conduct. The foster mother discussed her concerns for EJW's safety with Mother, telling her: "You've got these three kids that are way bigger than [EJW] . . . . What is your plan to keep them from molesting [EJW] because obviously they're going to molest each other. They're going to eventually . . . ." The foster mother testified that she had been to the parents' home and, up until about one week before trial, the three boys, ages 11, 10 and 9, were still sharing one room. Regarding the visits when EJW was around his

half-brothers, she testified: "Those boys . . . are a little big. They do roughhouse with him a lot."

When the State questioned Father, he denied committing any sexual abuse of his sons or of Mother's daughters despite having stipulated at the December 2017 adjudication hearing "that if the state presented its evidence supporting the truth of the factual allegations in the petition to a court of competent jurisdiction, such evidence would be sufficient to meet the state's burden of proving by a preponderance of the evidence that the factual allegations are true and correct." 10A O.S.2021 § 1-4-601(D)(2). Father testified that he stipulated to allegations of sexual abuse and threat of harm because he thought it would help him "[g]et my kids back quicker."

The State questioned Mother about her December 2017 stipulations, which included failure to protect from sexual abuse and threat of harm. Mother explained why she did not believe that Father had engaged in any sexual or other inappropriate behavior with her daughters. Her testimony indicated that she did not recognize any risk of future sexual abuse risk from Father regarding any of her children. Nor did she recognize any to EJW from living with Father's three older boys, despite her specific knowledge of an incident in the home between two of the boys in early 2022, which resulted in an investigation. Mother described the incident in her testimony: "One of [the boys] came and told us -- because they

were in a different room . . . and I don't remember specifically who was doing what or who tattled, but one of them told us that the other one asked for a kiss on the mouth . . . ." When the State asked Mother why she did not report the incident to DHS, Mother responded "I'm not sure." Regarding the time EJW had started to spend with his older brothers, Mother testified that she had not seen the older ones do anything beyond "boys being boys."

The jury returned separate verdicts against Mother and Father, finding that clear and convincing evidence supported termination of their parental rights pursuant to 10A O.S.2021 § 1-4-904(B)(5), (B)(16) and (B)(17). Both parents moved for judgment notwithstanding the verdict (JNOV). The district court denied the motion. *See First Nat'l Bank in Durant v. Honey Creek Ent. Corp.*, 2002 OK 11, ¶ 8, 54 P.3d 100, 103 ("A motion for JNOV should not be granted unless there is an entire absence of proof on a material issue.").[4]

The district court entered decrees reflecting the jury's verdicts against the parents on January 13, 2023. Each decree recites the jury's findings that clear and convincing evidence supported termination of Mother's and Father's parental

[4] A trial court ruling on a motion for JNOV must "consider as true all evidence favorable to the non-moving party together with all inferences that may be reasonably drawn therefrom," and "disregard all conflicting evidence favorable to the moving party." *First Nat'l Bank in Durant v. Honey Creek Ent. Corp.*, 2002 OK 11, ¶ 8, 54 P.3d 100, 103 (citing *Franklin v. Toal*, 2000 OK 79, ¶ 13, 19 P.3d 834, 837). We note that the district court had previously denied the parents' demurrer to the State's evidence.

rights pursuant to 10A O.S. § 1-4-904(B)(5), because they failed to correct the conditions of domestic violence; sexual abuse and/or failure to protect from sexual abuse; failure to protect; lack of ability to meet the children's basic physical, emotional, developmental and educational needs; failure to maintain safe and/or sanitary home; lack of proper parental care and guardianship; and threat of harm, although given at least three months to do so. Further, the jury found clear and convincing evidence supporting termination of Mother's parental rights to JNR pursuant to section 1-4-904(B)(16), because JNR had been in foster care for fifteen of the most recent twenty-two months preceding the filing of the petition and she could not be safely returned to the home at the time of the petition's filing. The jury found that Mother's and Father's parental rights should be terminated as to EJW pursuant to section 1-4-904(B)(17) because he was under four years of age at the time of placement, had been in foster care for at least six of the twelve months preceding the filing of the petition and he could not be safely returned to the home at the time of the petition's filing. The district court's decrees found that termination of Mother's and Father's parental rights was in EJW's and JNR's best interest, and found evidence beyond a reasonable doubt, by testimony of a qualified expert witness, that returning custody to parents was likely to result in serious emotional or physical harm to the children.

Within ten days of the filing of the termination decrees, Mother, Father and JNR, represented by separate counsel, joined in filing a motion for new trial. They cited, generally, Okla. Dist. Ct. R. 17, 12 O.S.2021, ch. 2 app., as authority for their motion. The parties also cited 12 O.S.2021 § 651, but did not specify which of the nine enumerated statutory grounds warranted the relief they sought. The basis for the joint motion was admission into evidence of the State's Exhibit No. 1, the October 2017 Application to Take Minor Child(ren) into Emergency Custody with the affidavit of the then-assigned DHS caseworker, Hollowell, attached.

The parents argued that Hollowell's affidavit was inadmissible because it constituted hearsay. They also claimed that the affidavit was highly prejudicial, as one of the jurors had confirmed to them. According to the motion, one juror asked to speak with EJW's counsel after trial. With the parties' attorneys present, this juror discussed the case and his decision. Then, the attorneys questioned him about the deliberations of his fellow jurors. According to the motion for new trial, the juror told them: "[W]hen the deliberations began the jury could have gone either way, but when they read State's Exhibit 1, the Application with the Attached Affidavit, it was over, and the jury switched and decided to terminate." The moving parties argued that the juror's comments showed that his fellow jurors were "extremely swayed" by the contents of the affidavit and ignored the court's limiting instruction.

The district court denied the motion for new trial. Both Mother and Father appeal the termination of their parental rights.

ISSUES PRESERVED FOR APPELLATE REVIEW

A. The Petitions in Error and Combined Brief

Mother and Father filed separate petitions in error. They were represented by the same attorney and raised the same four allegations of error. Each parent alleged: (1) DHS did not provide active efforts to reunite the Indian family; (2) the trial court abused its discretion by allowing the introduction of "a hearsay, prejudicial exhibit," the Application to Take Minor Children into Emergency Custody, with an attached affidavit written by the DHS child welfare worker initially assigned to the case who did not testify;" (3) the State did not introduce the disposition orders and did not provide the jury with the date that the parents were ordered to complete their plan and that (90) days had passed without completing it; and (4) the State did not prove beyond a reasonable doubt that the children would suffer severe emotional or physical harm if returned to the parents.

The Oklahoma Supreme Court consolidated the parents' appeals for decision. When the Court entered its order consolidating the two appeals, it informed the parents that they were free to file separate appellate briefs and need not file a single, combined brief unless they chose to do so. Mother and Father chose to file a combined brief in chief, which contains three Propositions of Error,

addressing the subjects of the first three allegations of error raised in their petitions in error: Proposition I ("active efforts"), Proposition II (error in admission of evidence), and Proposition III (the State's failure to introduce disposition orders). Mother and Father have not briefed the "severe emotional or physical harm" issue and, therefore, we will not consider it. *See* Okla. Sup. Ct. R. 1.11(k)(1), 12 O.S.2021 ch. 15, app. 1 ("Issues raised in the Petition in Error but omitted from the brief may be deemed waived."). *See also In re Adoption of M.J.S.*, 2007 OK 44, n.12, 162 P.3d 211 ("Assignments of error not argued or supported in the brief with citations of authority are treated as waived.").

B. Effect of the Joint Motion for New Trial

"The right of a party to perfect an appeal from a judgment or final order is not conditioned upon the filing of a motion for new trial." Okla. Sup. Ct. R. 1.22(c)(1), 12 O.S.2021, ch. 15, app. 1 (amended eff. March 27, 2023). However, "if a party files a motion for new trial, then the assignments of error in a subsequent appeal are limited to those raised in the motion before the trial court." *Andrew v. Depani-Sparkes*, 2017 OK 42, ¶ 19, 396 P.3d 210, 218. *See* 12 O.S.2021 § 991(b) ("If a motion for a new trial be filed and a new trial be denied, the movant may not, on the appeal, raise allegations of error that were available to him at the time of the filing of his motion for a new trial but were not therein asserted.").

The "Statement of the Case and Facts" section of the brief in chief does not identify the motion for new trial by citation to the assembled record as required by Okla. Sup. Ct. R. 1.11(j)(i). The parents fail to even mention that they sought a new trial. The State and counsel for EJW joined in filing an answer brief, but they do not mention the motion for new trial either. Nonetheless, we have reviewed the motion and the hearing transcript to determine whether the parents have preserved Propositions of Error I through III for appellate review.

Mother and Father argued in their motion for new trial that the district court abused its discretion by admitting the State's Exhibit 1 over their objection. They asserted that "the jury members were extremely swayed by the State's Exhibit Number 1" and "ignored" the court's instruction that the Emergency Application to Take the Children into Custody with its Attached Affidavit "was not to be taken for the truth."

At the hearing on the motion for new trial, Father's counsel took the lead and announced:

> I think I put everything into the motion, so I'm going to stand – I believe I put everything in the motion that I had to say. I know the Court has read it. I know the parties have read it. I'm not going to belabor it. So I would stand on what's contained in the motion.

Mother's counsel stated: "What she said, Judge. I mean really that's what it's based on."

By filing a motion for new trial, Mother and Father limited the scope of appellate review. Consequently, this Opinion addresses only Proposition II of their brief in chief. Proposition II provides: "The Trial Court Abused Its Discretion by Allowing the Introduction of a Hearsay, Prejudicial Exhibit that Was an Application to Take the Children into Emergency Custody and Attached Affidavit that a Non-testifying Witness Authored."[5]

STANDARD OF REVIEW

When an Indian child is involved in proceedings to terminate parental rights, the State must comply with the provisions of the federal Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901-1963, and the Oklahoma ICWA, 10 O.S.2021 §§ 40 through 40.9.

> Before seeking termination of parental rights in an ICWA case, a party must show by clear and convincing evidence that there were active, but unsuccessful, efforts "to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family." 25 U.S.C. § 1912(d). And the court must determine beyond a reasonable doubt, considering testimony of qualified expert witnesses, "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." 25 U.S.C. § 1912(f).

---

[5] The parents argue for the first time, and without citation to supporting authority, that the State's failure to introduce dispositional orders constitutes "plain error," which they can raise without having presented it before the district court. However, "[t]he doctrine of plain error is rarely applied in civil cases and usually reserved to prevent a clear miscarriage of justice." *Matter of V.J.R.*, 2024 OK 66, ¶ 21, 556 P.3d 1010, 1020. The parents have not shown "plain error resulting in prejudice." *Id.*

In the Matter of J.O., 2024 OK 82, ¶ 11, 561 P.3d 1118, 1122. *See In re Adoption of G.D.J.*, 2011 OK 77, n.25, 261 P.3d 1159, 1169 ("[T]he heightened standard of proof only applies to the factual determination required by 25 U.S.C. § 1912(f) . . . and the state law mandated burden of proof of 'clear and convincing evidence' applies to all other state law requirements for termination."). In all cases, "the State must show by clear and convincing evidence that the child's best interest is served by the termination of parental rights." *In re M.R.*, 2024 OK 28, ¶ 7, 548 P.3d 120, 125 (citing *In the Matter of C.G.*, 1981 OK 131, ¶ 17, 637 P.2d 66, 70-71).

The appellate court's duty on appeal in a termination of parental rights case is to "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." *Matter of V.J.R.*, 2024 OK 66, ¶ 19, 556 P.3d 1010, 1019 (citing *In re C.D.P.F.*, 2010 OK 81, ¶ 6, 243 P.3d 21, 24). In doing so, the Court does not re-weigh the evidence presented at trial. *Id.* "[C]lear and convincing evidence is the measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established." *Matter of V.J.R.*, 2024 OK 66, ¶ 18, 556 P.3d at 1019.

We review the district court's evidentiary rulings for clear abuse of discretion. *In re K.H.*, 2021 OK 33, ¶ 24, 507 P.3d 647, 653 ("A ruling to allow or

deny the admission of evidence rests in the trial court's sound discretion."). "'A trial court abuses its discretion when it makes a decision based on an erroneous conclusion of law or its decision has no rational basis in evidence.'" *Id.* (quoting *Childers v. Childers*, 2016 OK 95, ¶ 28, 382 P.3d 1020, 1027).

ANALYSIS

I. Alleged Error in Admission of Evidence

"Pursuant to the Oklahoma Children's Code, the 'adjudicative hearings and hearings for termination of parental rights shall be conducted according to the rules of evidence.'" *In re K.H.*, 2021 OK 33, ¶ 31, 507 P.3d 647, 654 (citing 10A O.S.2021 § 1-4-503(A)). "The Evidence Code defines what evidence is relevant and admissible." *Id.* (citing 12 O.S.2021 §§ 2401-2403).

A. The Application for Emergency Custody and Attached Affidavit

In the sole proposition of error preserved for review, Mother and Father argue that the district court abused its discretion by admitting the State's Exhibit 1, which they describe as a hearsay, prejudicial exhibit authored by a non-testifying witness. They inform us that they filed a pre-trial, joint motion *in limine*, which the district court denied, seeking to exclude the DHS child welfare worker's affidavit attached to the State's Application for Emergency Custody. They also inform us that, as required, they re-urged their objection to Exhibit 1 when the State offered it during Frentz's testimony. *See Covel v. Rodriguez*, 2012 OK 5,

n.3, 272 P.3d 705, 708 (stating that "a party aggrieved by an order *in limine* must raise the issue at the appropriate time during trial "by objecting when the challenged evidence is admitted . . . ."). Mother and Father maintain they "repeatedly objected to this evidence, demurred to the evidence, and continuously argued about this." However, their brief in chief does not identify any of the alleged repeated objections and continuous arguments by citation to the trial transcript, let alone direct us, as required by Okla. Sup. Ct. R. 1.11(e), to the point during the jury trial where their attorneys first objected to State's Exhibit 1 on grounds of hearsay and prejudice.

The State's answer brief provides the transcript citation missing from the parents' brief. Contrary to what parents argue, the exchange between the court and the attorneys shows that the district court did not erroneously admit Exhibit 1 as a "business records exception" to the hearsay rule, 12 O.S.2021 § 2803(6). The State made no such argument in favor of admissibility. The court found that the affidavit attached to, and filed with, the emergency application was not hearsay. *See* Transcript, Vol. 2 at pp. 361-366.

The Oklahoma Evidence Code defines hearsay as "a statement, other than one made by a person testifying, offered to prove the truth of the matter asserted." 12 O.S.2021 § 2801(A)(3). Hearsay is inadmissible. *See* 12 O.S.2021 § 2802. However, statements of non-testifying persons, not offered to prove the truth of the

matter asserted therein, are not barred by the hearsay rule. *Matter of V.J.R.*, 2024 OK 66, ¶ 36, 556 P.3d 1010, 1025.

The district court determined that the State did not offer the October 2017 Emergency Custody Order with the DHS worker's affidavit attached, to prove the truth of the matters stated in the affidavit and it was admissible to show that the State followed the mandatory statutory process for obtaining pre-adjudication emergency custody. We find no abuse of discretion in this determination.[6]

B. Alleged Prejudice

Mother and Father have focused on State's Exhibit 1 and the attached affidavit as the cornerstone of the jury's verdicts against them. They argue that "the damage" from admitting Hollowell's affidavit as part of the State's emergency custody application "rendered the trial unfair." This argument is not persuasive.

It is insufficient for Mother and Father to label Exhibit 1 as "unduly prejudicial" and then merely recite general principles regarding prejudice without connecting them to the evidence at trial. We do not "presume prejudice from the adverse judgment entered against [parents]." *Matter of V.J.R.*, 2024 OK 66, n.32, 556 P.3d 1010, 1031. More is required.

---

[6] In proceedings involving Indian children, a court order authorizing emergency removal of the child from the home, entered in accordance with 25 U.S.C. § 1922, shall be accompanied by an affidavit that contains "[a] specific and detailed account of the circumstances that lead to that action." 10 O.S.2021 § 40.5(A)(2).

Mother and Father must also show how the exhibit affected the outcome of the trial. They must show that they were prejudiced by the introduction of State's Exhibit 1 by citation to applicable statutory authority or case law, or by argument supported with facts showing how the trial court erred. And they must show that the affidavit "inescapably and unfairly led the factfinder to the resulting judgment . . ." *Id.* They cannot make that showing in this appeal.

The trial transcript does not support the conclusion that admission of State's Exhibit 1 unfairly influenced the outcome of the trial. Frentz was not the only witness to testify about circumstances surrounding the children's removal from the home, and it is significant that she was not the first. The State did not call Frentz to testify or offer its Exhibit 1 until *after* the jury heard both parents testify.

The State first questioned Mother and Father about the circumstances which led to the children's emergency removal from the home. Each parent provided their own description and/or explanation of those underlying circumstances. Hollowell's affidavit, which provides the "specific and detailed account of the circumstances that [led] to [removal]" required by 10 O.S.2021 § 40.5(A)(2), is consistent with what the parents had already disclosed to the jury.

For example, when the State questioned Mother about the purpose of the trial and her understanding of why her children were removed from the home, the following exchange occurred:

Q: [W]hat is the purpose of today's hearing trial?
A: Relinquishing or taking my parental rights.
Q: How come your kids were removed?
A: Initially allegations of failure to protect.
Q: Failure to protect from what?
A: From sexual abuse.
Q: And who was the victim?
A: At that time it was my oldest daughter [HR].
Q: And what were the allegations that you failed to protect her from?
. . .
A: Inappropriate text message.
Q: From who?

Mother responded that she discovered a text message from Father to HR that had a series of numbers, and "six dash nine" was in the "middle of [the] numbers." When asked what happened after she discovered the message, Mother responded: "I went kind of belligerent and crazy." Mother testified that she contacted DHS to report that she "felt like [Father] was being inappropriate with [HR]." Mother also "definitely Facebook messaged some people" about it. But on further questioning, Mother attributed her alarm and concern, the fact that she "lost [her] mind" about the text, to being "severely sleep deprived" by four-month-old EJW and to being "under the influence of methamphetamines."

Mother also testified about a 2011 incident when JNR, then seven or eight-years-old, told Mother about being "touched under her panties" by her twelve-year-old cousin, Mother's nephew. This inappropriate touching was the subject of a DHS investigation. When the State asked Mother if there had ever been

allegations about her own brother being "sexually inappropriate," Mother's answer was "Yes." Mother identified herself as "the victim."

When the State questioned Father, he did not deny texting HR as Mother described when she contacted DHS to report the incident. Father had an explanation for why he did it, which was that he was teaching HR how to text in code.

Father did not deny touching his son's genitals. He had an explanation for that, too. According to Father, when his son LW was coming over on visits:

> [H]e was five years old, he hollered – he was taking a bath. He said, Dad, come here, you know, kind of that scared tone. I run in there and go to the doorway, what is it? He had a tick on his testicle, but he didn't say testicle. A tick, you know, so I go in there and I pull the tick off . . . and when that got back to [DHS] that was labeled a sexual allegation.

The trial transcript does not demonstrate that State's Exhibit 1 "inescapably and unfairly" led the jury to its verdicts against Mother and Father. *Matter of V.J.R.*, 2024 OK 66, n.32, 556 P.3d 1010, 1031. Oklahoma law on this issue is clear. "Before any claimed error concerning the admission or exclusion of evidence will be deemed reversible error, an affirmative showing of prejudicial error must be made." *Kahre v. Kahre*, 1995 OK 133, ¶ 45, 916 P.2d 1355, 1365 (citations omitted).

We will not recite the contents of the Exhibit 1 affidavit here. Suffice it to say, Hollowell's affidavit in support of emergency removal includes a description

of events in 2017 and DHS's involvement with parents and their children, both prior and subsequent to the date of their removal. His affidavit contains information that was brought before the jury in other forms, including witness testimony and closing arguments. No prejudice exists where the testimony of other witnesses is substantially equivalent to the complained-of evidence. *See Jones v. Novotny*, 1960 OK 109, ¶¶ 6-7, 352 P.2d 905, 907-08.[7]

From our review of the record, we are unable to conclude that the outcome of the trial would have been different had the district court refused to admit State's Exhibit 1. Because Mother and Father have not satisfied this requirement, we find no abuse of discretion in the district court's decision to admit Exhibit 1 and, therefore, no reversible error. *See Kahre*, 1995 OK 133, ¶ 45, 916 P.2d at 1365.

Mother and Father tried to demonstrate prejudice through alleged juror statements, and that is prohibited by 12 O.S.2021 § 2606.

> [A] juror shall not testify as to any matter or statement occurring during the course of the jury's deliberations or as to the effect of anything upon the juror's mind or another juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes during deliberations. . . .

12 O.S.2021 § 2606(B). *See Oxley v. City of Tulsa, By & Through Tulsa Airport Auth.*, 1989 OK 166, ¶ 25, 794 P.2d 742, 747 ("The cases are legion in which [the

[7] Hollowell's affidavit described Father's genital contact with one son as "oral-genital." The behavior between the other two boys was described as "forced" touching of genitals.

Oklahoma Supreme] Court has ruled that affidavits, depositions and oral testimony of jurors may not be used to impeach a jury verdict.").

III. Clear and Convincing Evidence Supports the Termination Orders

The parents' appellate brief is barely seven pages long, and even though the scope of our review is limited, we must still canvass the voluminous appellate record to determine whether the State proved, by clear and convincing evidence, at least one statutory ground for termination. *Matter of E.J.T.*, 2024 OK 14, ¶ 15, 544 P.3d 950, 951 (noting that where multiple grounds for termination exist, "a termination order may be affirmed where only one statutory ground is met"). We also must determine if the State proved by clear and convincing evidence that termination served EJW's and JNR's best interests. *See In re S.B.C.*, 2002 OK 83, ¶ 5, 64 P.3d 1080. Due to the parents' failure to comply with the Oklahoma Supreme Court's rules for appellate briefing, it is a formidable task.[8]

Mother and Father point out in their brief in chief that they both completed their ISPs in this case. "Compliance with the ISP alone is not sufficient to regain custody." *In re C.M.*, 2018 OK 93, ¶ 23, 432 P.3d 763, 769. "Where reasonable efforts to return deprived children to the parents prove fruitless and result in

[8] In its answer brief, the State points out that the parents' arguments for reversal are based on "narrative recounting [sic]," without citation to any instrument in the record or to any page of the trial transcript. The State asserts that this calls for application of what it refers to as the "*Hamid* Principle," that "legal error may not be presumed in an appellate court from a silent record." *Hamid v. Sew Original*, 1982 OK 46, ¶ 6, 45 P.2d 496, 497.

prolonged foster care placement, the Legislature clearly views such extended State custody without possibility of reunification to be so detrimental to the children's best interest as to justify termination of parental rights." *Id.* We find clear and convincing evidence that the parents, despite the progress on their ISPs, did not correct the conditions that led to adjudication of their children as deprived.

Mother and Father also maintain that the State "filed and dismissed multiple Motions to Terminate Parental Rights based on the State's perceived inability to win because the parents had three children returned to their home from Seminole County for successful completion of their Individualized Service Plans." The sparse brief in chief does not inform us whether this assertion regarding the State's perception of the Seminole County proceedings is indeed a "fact," or even a fair supposition, because it is not supported by a single citation to the record.

As previously noted, there are references in Mother's and Father's ISP progress reports to the Seminole County deprived-child proceedings against Father. And even though the trial transcript reveals that certain aspects of that case were not in dispute, no document filed of record in the Seminole County case was introduced as evidence in this case. At trial, the district court judge properly declined to take judicial notice of the Seminole County record. A district court judge cannot take judicial notice of the record of a case brought in another county. *See Salazar v. City of Oklahoma City*, 1999 OK 20, n.10, 976 P.2d 1056, 1061.

This Court cannot take judicial notice of a record in another district court case that has not been incorporated into the certified record on appeal in this case. *Id.*

Further, where multiple grounds for termination are challenged on appeal, "the appellate court can affirm termination orders where one statutory ground exists." *Matter of E.J.T.*, 2024 OK 14, ¶ 15, 544 P.3d 950, 951 (citing 10A O.S. § 1-4-904(B)). Mother and Father do not dispute that their children were in foster care for years longer than the periods required by the applicable statutes.

CONCLUSION

The parents' brief in chief is not in compliance with Okla. Sup. Ct. R. 1.11(e), (j) and (k), as it lacks even a single citation to any document in the appellate record or to any page of the four-volume trial transcript. However, we have canvassed the record and conclude that the parents have not demonstrated any reversible error regarding admission of evidence. Further, the record contains clear and convincing evidence that the best interests of EJW and JNR were served by termination. We affirm the district court's orders terminating the parental rights of Mother, Carrie White and Father, Jon White.

AFFIRMED.

WISEMAN, P. J., concurs, and BLACKWELL, J., concurs in result.

BLACKWELL, J., concurring in result:

The appellants raised three discrete legal issues in their brief-in-chief: (1) whether the state proved it provided active efforts to prevent the breakup of the family, (2) whether the introduction of a certain affidavit into evidence was an abuse of discretion, and (3) and whether the failure to introduce dispositional orders or court documents to prove that the appellants had sufficient time to correct the conditions that led to adjudication was plain error. In a joint answer brief, the state and the child addressed all three issues on the merits. Neither party raised 12 O.S. § 991(b) as a procedural bar to review any issue. While I agree we are permitted to raise this statute of our own accord, I would not do so in a case effectuating a termination of parental rights absent compelling reasons. Nevertheless, having reviewed each of the issues joined by the parties, I agree that the trial court's termination orders must be affirmed. Accordingly, I respectfully concur in the result of Court's opinion.

May 12, 2025