ORIGINAL

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 IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

APR 15 2026

SELDEN JONES
CLERK

IN THE MATTER OF C.N., alleged deprived child:

RICKY NICKLEBERRY,

Appellant,

vs.

THE STATE OF OKLAHOMA,

Appellee.

Rec'd (date) 4-15-26
Posted
Mailed
Distrib
Publish ___ yes X no

Case No. 123,366

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE KEVIN C. McCRAY, SPECIAL JUDGE

AFFIRMED

Louis P. Falsetti
SCHAULAT FALSETTI, PLLC
Oklahoma City, Oklahoma — For Appellant

VICKI ZEMP BEHENNA
DISTRICT ATTORNEY
Ellen Martin Watts
Kirsten Parker
Jaclyn Rivera
ASSISTANT DISTRICT ATTORNEYS
Oklahoma City, Oklahoma — For Appellee

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Ricky Nickelberry appeals from the trial court's order adjudicating his minor child, C.N., deprived. Upon review, we find that the court's decision was supported by a preponderance of the evidence and thereby affirm.

I.

C.N. was taken into custody of the Oklahoma Department of Human Services on March 25, 2025, at the age of nearly sixteen. C.N. was placed in DHS custody after Mr. Nickelberry and the child's mother, Susan Nickelberry, failed to participate in Family Centered Services. The state filed a deprived petition on April 3, 2025, alleging C.N. to be deprived as to Mr. Nickelberry for the allegations of failure to provide proper parental care and guardianship, substance abuse, domestic violence, and threat of harm.

On May 22, 2025, at the pre-adjudication hearing, Mr. Nickelberry requested a bench trial on adjudication. The trial was subsequently held on July 24, 2025. The state called several witnesses, including Mr. Nickelberry. After hearing sworn testimony and reviewing the record, the court found that the state proved by a preponderance of the evidence that Mr. Nickelberry failed to provide proper parental care and guardianship necessary for the child's physical and mental well-being due to domestic violence, threat of harm, and failure to protect. The court adjudicated C.N. deprived as to Mr. Nickelberry.[1] However, the court found that the state had not met its burden regarding the allegation of substance abuse. On October 2, 2025, the court ordered an individualized service plan for

---

[1] Ms. Nickelberry stipulated to the deprived petition.

Mr. Nickelberry; however, he refused to sign it or otherwise engage in services. Mr. Nickelberry appeals from the court's adjudication order.

II.

The state must support the allegations in a petition seeking the adjudication of a child as deprived by a preponderance of the evidence establishing that "it is in the best interests of the child and the public that the child be made a ward of the court." 10 O.S. § 7003–4.5(A); *In re J.B.,* 1982 OK 40, 643 P.2d 306. On appeal from an order declaring a child deprived, we will affirm the trial court's findings if they are supported by competent evidence. *In re T.R.W.,* 1985 OK 99, ¶ 13, 722 P.2d 1197, 1200. The trial court's decision to admit or exclude evidence will not be reversed on appeal in the absence of a clear abuse of discretion. *B–Star, Inc. v. Polyone Corp.,* 2005 OK 8, ¶ 13, 114 P.3d 1082, 1085; *see also Kerr v. Clary,* 2001 OK 90, ¶ 15, 37 P.3d 841, 844 (applying abuse of discretion standard to admission of hearsay).

III.

A.

Mr. Nickelberry first alleges that the trial court erred in ordering him to complete a substance abuse assessment as a part of his individualized service plan. The trial court found that the state did not meet its burden of proof regarding substance abuse. Therefore, Mr. Nickelberry contends that there is no basis upon which the court could then require him to obtain a substance abuse assessment. The docket sheet for this case reflects, however, that the court, upon Mr. Nickelberry's motion, removed substance abuse from his ISP. Thus, any

error in originally requiring Mr. Nickelberry to complete a substance abuse assessment has since been cured.

B.

Mr. Nickelberry also alleges that the trial court erred by allowing a witness to testify who was not endorsed by the state. The state, in its petition, listed Michelle Jaimie as an endorsed witness. However, at trial she testified that her name was Michelle Ibarra. Tr. (July 24, 2025), pg. 7. Notably, Mr. Nickelberry did not object to the witness testifying. However, on cross-examination, counsel for Mr. Nickelberry inquired about whether she was the same witness who spoke with Child Welfare Services about an occurrence of domestic violence that she witnessed between Mr. Nickelberry and Ms. Nickelberry. *Id.* at 10. The state clarified that it listed the wrong last name, Jaimie, in the petition, but confirmed that Michelle Jaimie and Michelle Ibarra were one and the same. *Id.* at 11. After Michelle finished testifying, the state called its next witness. The parties then broke for lunch. After the lunch break, counsel for Mr. Nickelberry raised an issue regarding the witness's identity again. He argued that there was no misunderstanding about Michelle's last name and that she was not the witness listed in the petition. *Id.* at 60. The parties went back and forth on this issue extensively, until the court announced that the parties were going off the record. *Id.* at 66.

When the parties went back on the record, they appeared to have come to an agreement regarding the witness's identity. Counsel for Mr. Nickelberry did not object when the court stated that the issue was resolved. *Id.* Counsel for Mr.

Nickelberry did not ask for the witness to be called back to clarify her identity and did not otherwise ask the court to disregard her testimony. In light of Mr. Nickelberry's apparent acquiescence that Michelle Ibarra and Michelle Jaimie are the same person, the absence of a specific objection and ruling from the court, and the fact that discussion was had regarding this issue off the record and beyond our review, we hold that this issue was not properly preserved for appeal.[2] *See e.g., Matter of C.A.R.*, 1994 OK CIV APP 124, ¶ 20, 882 P.2d 582, 585 ("A party who fails to preserve an issue for appeal by objecting in a timely manner to testimony has waived review of that issue in this Court.").[3]

C.

Next, Mr. Nickelberry alleges that the trial court erred by allowing witnesses to testify as to what "unidentified persons shown as collaterals said about [his] alleged actions." *Brief-in-Chief*, pg. 5. The child welfare specialist assigned to the Nickelberry case, Belinda Cross, testified that she reviewed reports from "collaterals" during her investigation regarding several instances of

---

[2] We note that Mr. Nickelberry makes no effort to argue the admission of Ms. Ibarra's testimony constituted fundamental error. *Sullivan v. Forty-Second W. Corp.*, 1998 OK 48, ¶ 5, 961 P.2d 801, 802 (quoting *Mason v. McNeal*, 1939 OK 449, ¶ 11, 100 P.2d 451) ("'[W]ithout exception saved to the instruction as required by [§ 578], we are not at liberty to review the alleged error, except for fundamental errors of law.'"). *See also Simpson v. State*, 1994 OK CR 40, ¶ 2, 876 P.2d 690, 692 (explaining statutory basis for review of fundamental or plain error).

[3] Oklahoma courts have also held that, "[i]n matters pertaining to the admission and exclusion of evidence we review both issues of fact and law under the rubric of a clear abuse of discretion standard, and our deference to the lower tribunal occurs in how we view the facts." *Christian v. Gray,* 2003 OK 10, ¶ 41, 65 P.3d 591. This is so whether the cause is tried to a jury or to the court. *Edwards v. Andrews, Davis, Legg, Bixler, Milsten & Murrah, Inc.*, 1982 OK 72, ¶ 21, 650 P.2d 857, 863. Thus, even if this argument had not been waived, because the parties agreed upon the witness's identity after the discussion off the record, we find that there was no abuse of discretion in allowing the witness to testify.

domestic abuse between Mr. Nickelberry and Ms. Nickelberry. Tr. (July 24, 2025), pg. 17. Mr. Nickelberry's counsel did not object to Ms. Cross's statement about reviewing reports from collaterals. On cross-examination, Mr. Nickelberry's counsel asked Ms. Cross if there were any names associated with the collaterals she was referring to. *Id.* at 33. The state objected, stating that she could not disclose the names of the collaterals. *Id.* Counsel for Mr. Nickelberry later clarified that his issue is that he cannot cross-examine them or test the veracity of the collateral statements. *Id.* at 38. He then asked Ms. Cross if she thought that that seemed "unfair." *Id.*

After reviewing the above-mentioned exchange and the rest of the trial transcript, it appears Mr. Nickelberry never made an objection that was ruled on by the trial court. Indeed, even in his brief, Mr. Nickelberry acknowledges that "a hearsay objection was not raised by [Mr. Nickelberry]" at trial. *Brief-in-Chief*, pg. 5. Despite acknowledging the lack of hearsay objection, Mr. Nickelberry contends in his appellate brief that the use of the "collaterals" violates 12 O.S. § 2602, § 2603, and § 2604, which are the rules of evidence pertaining to hearsay and its exceptions. *Id.* at 6. We reiterate that "[a] party who fails to preserve an issue for appeal by objecting in a timely manner to testimony has waived review of that issue in this Court." *Matter of C.A.R.*, 1994 OK CIV APP 124, ¶ 20, 882 P.2d 582, 585. Issues not raised at trial will not be considered for the first time on appeal. *Northwest Datsun v. Okla. Motor Vehicle Comm.*, 1987 OK 31, 736 P.2d 516. While Mr. Nickelberry's counsel undoubtedly expressed his frustration that he was not able to cross examine the individuals who made the reports

regarding alleged instances of domestic violence, the same cannot be construed as a specific evidentiary objection raised and ruled on by the court below. Accordingly, this proposition of error was not properly preserved for review.[4]

D.

Mr. Nickelberry's fourth proposition of error does not relate to a ruling of the trial court; rather, he contends that there is a conflict between Child Welfare Services' appellate process and the district court process, which he claims results in unfair prejudice to him. He explains that when CWS investigates allegations of a parent's neglect, it ultimately determines whether the allegations are substantiated or unsubstantiated. If CWS finds that the allegations are substantiated, the parent has the opportunity to challenge those findings by appealing to the CWS appellate section. The appellate section reviews the record to determine whether the allegations were correctly found to be substantiated. Even if a parent decides to appeal, the state may still file a deprived petition based on the substantiated findings. It appears that Mr. Nickelberry's argument is that an allegation could be found to be unsubstantiated in the CWS appeal, but because the petition has already been filed, the individual has already had to defend against the allegation.

---

[4] We again note that Mr. Nickelberry makes no effort to argue that allowing the witnesses to testify about collateral statements constituted fundamental error that could be reviewed even if not preserved. *See* note 2, *supra*.

Section 340:75-3-530 of the Oklahoma Administrative Code governs the appeal process for substantiated findings of child abuse or neglect. The relevant portion reads as follows:

> (b) **Eligibility criteria.**
> (1) An individual may be eligible to request an appeal when the individual is a person responsible for the child's (PRFC) health, safety, or welfare, per OAC 340:75-3-120, in an investigation involving abuse or neglect allegations and the investigation results in a substantiated finding regarding the PRFC.
> (2) An eligible individual may request a review through the appeal process when:
> (A) no deprived petition is filed; or
> (B) a deprived petition is filed and the court case is dismissed prior to adjudication.

340:75-3-530 OAC. Specifically, an individual is only eligible to file an appeal of the CWS findings when no deprived petition is filed or a deprived petition is filed *and* the court case is dismissed prior to adjudication.

It appears, therefore, that the purpose of the CWS appellate process is to allow parents to challenge those findings when there is no further action by the state in moving forward with adjudication. Here, Mr. Nickelberry filed the CWS appeal in February 2025 and the deprived petition was filed in April 2025. Thus, while it appears Mr. Nickelberry's appeal was *initially permitted* under 340:75-3-530, once the state decided to move forward with the adjudication and filed the deprived petition, Mr. Nickelberry was no longer eligible to participate in the appellate process with CWS, at least until the deprived action was dismissed before any adjudication, which did not occur in this case. Under this reading, there is no conflict regarding the two processes in this case as alleged by Mr. Nickelberry. Thus, this proposition of error is without merit.

E.

Mr. Nickelberry also alleges that the trial court's findings that C.N. was adjudicated deprived as to Mr. Nickelberry for lack of proper parental care and guardianship because of domestic violence, failure to protect, and threat of harm were not supported by a preponderance of the evidence. Upon review, we disagree.

Regarding the allegation of failure to protect, Mr. Nickelberry contends that it was added at trial over his objection and that "the Court never, on the record allowed the addition of this allegation nor denied [Mr. Nickelberry's] objection." *Brief-in-Chief*, pg. 10. We find that this description of what transpired at trial is inaccurate, at best. During the state's closing argument, counsel stated: "The State also moves to add an allegation of failure to protect on the father's behalf." Tr. (July 24, 2025), pg. 143. Counsel for the state clarified that this addition was due to the testimony at trial regarding Ms. Nickelberry's significant and persistent substance abuse and mental health issues and that, in spite of those issues, Mr. Nickelberry continued to allow the child to be around her. *Id.* Once the state finished its closing argument, Mr. Nickelberry's counsel began his closing argument with the following statement: "First, I'm going to object to the adding of the application at this date ... I think that's improper." *Id.* at 144. Mr. Nickelberry did not elaborate any further and he did not ask for the court to rule on that specific issue. Rather, he continued with the remainder of his closing argument. The child's attorney followed with their closing argument. After all parties had given their closings, the court found that the state had met its

burden regarding failure to protect, threat of harm, and domestic violence. By finding that the state had met its burden on the allegation of failure to protect, the court very clearly allowed the state to add this allegation on the record, over Mr. Nickelberry's objection.

Title 10A, § 1-4-302, is clear that the court "may allow amendment of the petition to conform with the evidence at any time prior to the adjudicatory ruling of the court." Here, the court found that the state presented sufficient evidence at trial of Mr. Nickelberry's failure to protect C.N. Accordingly, it allowed the state to amend its petition or add this allegation prior to its ruling that C.N. was adjudicated deprived. We find no error in this decision as it was permissible pursuant to 10A O.S. § 1-4-302 and consistent with the evidence presented at trial, as detailed below.

Regarding the merits of this allegation of error, we find that the state met its burden of showing by a preponderance of the evidence that C.N. should be adjudicated deprived as to Mr. Nickelberry because of his failure to provide proper parental care and guardianship due to domestic violence, failure to protect, and threat of harm.

The first witness called to testify at trial was Michelle Ibarra, neighbor to the Nickelberrys. She testified that she saw Mr. Nickelberry pull Ms. Nickelberry out of a vehicle and drag her by her hair up to the house. Tr. (July 24, 2025), pg. 8.

Next, the state called Belinda Cross, a child welfare specialist assigned to the Nickelberry case, who testified that there were several reported instances of

physical altercations between Mr. Nickelberry and Ms. Nickelberry. *Id.* at 17. She testified that Ms. Nickelberry would call her and tell her that she was being abused and wanted to get away. *Id.* at 18. Ms. Cross then detailed some of the mental health and substance abuse struggles Ms. Nickelberry was enduring, which led to her concerns of Mr. Nickelberry's failure to protect C.N. She explained that in any case where there are mental health and substance abuse concerns regarding one parent and the other parent refuses to affect any type of change, then that exposes the child, in this case C.N., to safety threats. *Id.* at 26. She affirmatively stated "mental health and substance abuse are the safety threats in this case." *Id.*

The state then called Shannon Weese, a DHS supervisor on the Nickelberry case. She testified that DHS became involved with the family due to domestic violence concerns between the parents. *Id.* at 77. Ms. Weese stated that there were several reports made to DHS which indicated that Ms. Nickelberry was under the control and manipulation of Mr. Nickelberry. *Id.* at 79. She described a specific instance where Ms. Nickelberry called her from a public library because Mr. Nickelberry had taken her phone away from her. *Id.* at 80. When asked about the parents' responses when confronted with domestic violence concerns, Ms. Weese testified that "at times it was very much a denial of everything. That there was no problem. That there's never been a problem. And they stuck to that story quite a bit, both of them; however, in moments of clarity, and specifically in our family team meeting, [Ms. Nickelberry] broke down and reported she actually did need help." *Id.* at 81. Ms. Weese also testified that it would be concerning and

unsafe if the child was allowed to be around Ms. Nickelberry during this time due to the largely unaddressed and serious concerns regarding domestic violence, substance abuse, and mental health. *Id.* at 84.

Next, the state called Mr. Nickelberry to the stand. He testified about the three motions for protective orders Ms. Nickelberry filed against him, all of which detail specific and serious instances of domestic violence.[5] Mr. Nickelberry also testified about a protective order he sought against Ms. Nickelberry in October 2022 because she allegedly threatened to shoot him and the child. *Id.* at 111. He described their relationship as "toxic." *Id.* at 112. Mr. Nickelberry was asked if Ms. Nickelberry had ever attacked him and C.N., to which he replied that she had and also added that she had previously stabbed him in the leg. *Id.* at 121. He also described instances where Ms. Nickelberry hit C.N. inside of the home while Mr. Nickelberry was present. *Id.* at 122. One such instance ultimately led to a criminal child abuse charge. *Id.* at 125-126. Mr. Nickelberry testified that it was common for Ms. Nickelberry to disappear for periods of time, and when she would do so, he would take C.N. to go look for her in the middle of the night. *Id.* at 136.

It is Mr. Nickleberry's position that because the protective orders were dismissed and Ms. Nickelberry recanted a prior report of domestic violence that the state could not have met its burden to show C.N. should be adjudicated deprived on the basis of domestic violence, failure to protect, or threat of harm.

---

[5] Ms. Nickelberry filed motions seeking protective orders in May 2022, January 2024, and June 2025.

However, as Ms. Cross explained, domestic violence victims often recant because they are coerced or threatened to do so. *Id.* at 58. Additionally, the state called Ms. Ibarra who was an eyewitness to an occurrence of domestic violence between Mr. Nickelberry and Ms. Nickelberry. Further, the caseworkers assigned to the Nickelberry case testified that they had reviewed reports regarding several instances of domestic violence between the couple. Mr. Nickelberry has refused to work any services or otherwise comply with DHS and CWS in their investigations, maintains that he has done nothing wrong, and blames the investigation on Ms. Nickelberry's behaviors, specifically her mental health and substance abuse struggles. However, despite acknowledging that Ms. Nickelberry is a safety concern to C.N., the record reflects that Mr. Nickelberry still allowed C.N. to be around Ms. Nickelberry after she had threatened to shoot them, had physically attacked Mr. Nickelberry by stabbing him in the leg, and had been physically violent to C.N., ultimately resulting in a child abuse charge.

The Oklahoma Children's Code mandates that in order for a child to be adjudicated deprived the court must find that "[t]he factual allegations in a petition filed by the state alleging that a child is deprived are supported by a preponderance of the evidence."[6] 10A O.S. § 1-4-603(A). Upon careful review of the record before us, we affirm the trial court's order adjudicating C.N. deprived

---

[6] The court must also find that it is in the best interests of the child to be declared deprived and made a ward of the court. 10A O.S. § 1-4-603(A)(3). The court below made such a finding, but it has not been challenged in this appeal.

because the factual allegations in the state's petition were supported by a preponderance of the evidence.

* * *

Each of appellant's propositions of error is either without merit or not properly preserved for our review. Thus, the trial court's order adjudicating C.N. deprived as to Mr. Nickelberry is affirmed in its entirety.

AFFIRMED.

BARNES, J., and HUBER, J., concur.

April 15, 2026