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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
SUPREME COURT
STATE OF OKLAHOMA

OCT 09 2026

SELDEN JONES
CLERK

IN THE MATTER OF O.B. and L.B., Alleged Deprived Children:

DOMINIQUE ROBERSON and LASHANDA BUTLER,

Appellants,

vs.

STATE OF OKLAHOMA,

Appellee.

Case No. 123,870
(Consolidated with
Case No. 123,878)

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE KAITLYN G. ALLEN, DISTRICT JUDGE

AFFIRMED IN PART, VACATED IN PART, AND REMANDED

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OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

In these consolidated appeals, Lashanda Butler and Dominique Roberson appeal the district court's orders terminating their parental rights after a bench trial. Ms. Butler appeals from the court's order terminating her rights as to both children involved in this case, O.B. and L.B., and Mr. Roberson appeals from the order terminating his rights as to O.B. only.

Upon review, we find that Mr. Roberson did not waive his right to jury trial, and the court thus erred in proceeding to a bench trial. The order terminating Mr. Roberson's rights as to O.B. is vacated and the case is remanded for a new trial. Ms. Butler, however, waived her right to jury trial,[1] and we find that the court's order terminating her parental rights was supported by sufficient evidence, reasonable efforts were made to prevent the breakup of the family, and that termination was in the children's best interest.

I.

Ms. Butler gave birth to O.B. on January 11, 2024, and he was taken into emergency custody shortly thereafter due to Ms. Butler's child welfare history. A paternity test later identified Mr. Roberson as the father.

[1] Ms. Butler does not challenge on appeal the trial court's finding of her waiver of her right to a jury trial.

The state filed a petition seeking termination of Ms. Butler's and Mr. Roberson's parental rights on January 24, 2024. The petition alleged that Ms. Butler failed to provide the proper parental care and guardianship necessary for O.B.'s well-being due to substance abuse, neglect, exposure to domestic violence, and threat of harm. The petition also stated that Ms. Butler's parental rights were previously terminated as to four other children due to failure to correct the same conditions. The state sought termination of Mr. Roberson's rights on the basis that he also failed to provide the proper parental care and guardianship necessary for O.B.'s well-being due to domestic violence, substance abuse, and threat of harm. Mr. Roberson has also had his parental rights terminated to three other children.

Both parents agreed to work individualized service plans and stipulated to the allegations in the petition. The parents began working services; however, DHS reported that their participation was inconsistent. Ms. Butler's attendance for family time, appointments, and classes required by the ISP was sporadic. She also missed several drug tests and tested positive for PCP in November 2024. Mr. Roberson did not take any UAs for many months and also tested positive for PCP in July 2024, November 2024, and February 7, 2025. He had made some progress with his Batterer's Intervention Program classes; however, he had to restart the program a few times due to absences accrued. He ultimately stopped participating in the program.

The state filed an amended petition on March 31, 2025, and served both parents with the petition at a permanency review hearing. However, a DHS report

from March 2025 indicated that Ms. Butler's participation in her programs and visitation had significantly improved.

On July 26, 2025, Ms. Butler gave birth to L.B. The state filed an application to take L.B. into emergency custody due to the ongoing child welfare case and the mother's history. On August 6, 2025, the state filed a second amended petition for the purpose of adding a subsequently born child. At the time the second amended petition was filed, the identity of L.B.'s father was unknown. Thus, the state only sought termination of Mr. Roberson's rights to O.B. in that petition.

In November 2025, Mr. Roberson was determined to be L.B.'s father. In December 2025, both parents signed notices stating they were to appear on February 9, 2026, at 8:30 a.m. for jury trial, or they would waive their right to jury trial.

On the first day of trial, the court came on the record at 8:44 or 8:45 a.m. and indicated that neither Ms. Butler nor Mr. Roberson were present. Ms. Butler's counsel stated that Ms. Butler informed him that she was prepared to proceed with a bench trial. Counsel for Mr. Roberson indicated that she had not been able to speak with Mr. Roberson and, to her knowledge, he was not incarcerated, hospitalized, or had any other circumstances preventing him from attending trial. The court ruled that it would proceed with a bench trial.

The court came back on the record after the parents arrived at or before 9:30 a.m. and stated that Mr. Roberson showed his attorney a text message from a caseworker that told him to arrive at 9:00 a.m. The court found that the

parents' failure to appear at 8:30 a.m. constituted a waiver of their rights to a jury trial and the case would proceed with a bench trial. The court heard testimony from caseworkers assigned to the Butler/Roberson case, O.B. and L.B.'s foster mother and adoptive parent to Ms. Butler's four other children, and Mr. Roberson. The court ultimately found that the state met its burden by the preponderance of the evidence and adjudicated L.B. deprived as to Ms. Butler. The court issued an order terminating her rights as to both children due to failure to correct conditions of exposure to domestic violence, neglect, threat of harm, and lack of parental care and guardianship,[2] length of time in foster care, and prior adjudication of a sibling when a parent has had an opportunity to correct. The court issued another order terminating Mr. Roberson's parental rights as to O.B., finding that he had failed to correct the conditions and length of time in foster care. It is from these orders that the parents appeal.[3]

II.

Mr. Roberson alleges that the trial court violated his constitutional right to jury trial when it determined that he had waived that right by arriving late to the first day of trial. We review the issue of waiver of the right to jury trial for

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[2] The court found that the state had not met its burden to prove Ms. Butler failed to correct the condition of substance abuse.

[3] After day one of trial, the state realized that it had not amended the petition to request termination of Mr. Roberson's rights as to L.B. The state served Mr. Roberson with a third amended petition on February 10, 2026, the second day of trial. Mr. Roberson failed to appear at L.B.'s termination trial on February 25, 2026. The court found his failure to appear constituted a waiver of his right to jury trial. The court issued an order on March 5, 2026, terminating Mr. Roberson's parental rights to L.B. Mr. Roberson did not appeal this order or amend his petition in error to include this order. Thus, Mr. Roberson's appeal concerns only his rights to O.B.

abuse of discretion. *Matter of E.J.T.*, 2024 OK 14, ¶ 17, 544 P.3d 950, 957. To the extent our review concerns statutory interpretation, a legal question is presented. "A legal question involving statutory interpretation is subject to *de novo* review, i.e., a non-deferential, plenary and independent review of the trial court's legal ruling." *Heffron v. Dist. Ct. Okla. Cnty.*, 2003 OK 75, ¶ 15, 77 P.3d 1069, 1076.

In 1987, our Supreme Court determined that parents have a constitutional right to jury trial in proceedings to terminate parental rights. *See A.E. v. State*, 1987 OK 76, ¶ 22, 743 P.2d 1041, 1048. The legislature subsequently codified this right to jury trial in 10A O.S. § 1-4-502, which dictates that a parent "shall have the right to demand a trial by jury on the sole issue of termination of parental rights ...." However, the statute also provides: "[a] party who requests a jury trial and fails to appear in person for such trial, after proper notice and without good cause, may be deemed by the court to have waived the right to such jury trial." *Id.* § 1-4-502(C)(2). Oklahoma courts have consistently held that there is "a duty to enforce strict observance of the constitutional and statutory provisions designed to preserve inviolate the right to and purity of jury trial." *In re H.M.W.*, 2013 OK 44, ¶ 13, 304 P.3d 738, 741. "Legislation ... that could be read to limit the right to jury trial must be construed strictly, resolving all doubt in favor of the right." *Id.*

The court went on the record at approximately 8:45 a.m. and stated that because Mr. Roberson was noticed to appear at 8:30 a.m., he was still not present, and counsel for Mr. Roberson was not aware of a plausible explanation

for his failure to appear, he waived his right to a jury trial. Tr. (Feb. 9, 2026) pg. 11. The court minute reflects that both parents appeared not later than 9:30 a.m. and the court proceeded with a bench trial.[4] Before starting the bench trial, the trial judge stated:

> This matter came on at 8:30 this morning, at which time neither Ms. Butler or Mr. Roberson were present. The Court found at that time that the parents' failure to appear was due to their own actions or inactions to be here. Therefore, [the court] found that their waiver to—that they waived their right to a jury trial and to proceed with a bench trial .... Prior to going on the record, Ms. Elder made an announcement that she spoke with her client this morning—before we went back on the record—and he showed her a text message from his caseworker stating that he needed to be here at 9:00. The Court provided Mr. Roberson with documentation at the last court date and the court date prior that his failure to be here at 8:30 would result in waiver of his right of a jury trial, unless it was determined that he had a valid reason for not being here, meaning he was incarcerated, he was hospitalized or something on his own accord. The Court does not find the text message to be sufficient as a waiver of his being here at 8:30 .... Therefore, we will be proceeding with a non-jury bench trial on termination of parental rights.

Id. at 12-13.

As stated above, a parent facing termination of the severance of the parent-child relationship has a constitutional right to a trial by jury. *Matter of E.J.T.*, 2024 OK 14, ¶ 19, 544 P.3d 950, 958. However, a parent's failure "to appear in person for such trial, after proper notice and without good cause, may be deemed by the court to have waived the right to such jury trial ...." 10A O.S. § 1-4-502(C)(2). Here, it is undisputed that Mr. Roberson had proper notice of when he was to appear. Indeed, the state dedicates much of its appellate brief to

[4] The parents' precise time of arrival is not apparent from the record.

explaining the numerous times Mr. Roberson was informed of the date and time of his jury trial and that his failure to appear at trial could result in waiver of that right. Thus, the relevant question is whether there was good cause for his failure to appear.

The trial court determined that Mr. Roberson did not have good cause for his failure to appear because he was not hospitalized, incarcerated, and did not have what it considered to be any other "valid reason." First, we note that Mr. Roberson did not fail to appear entirely; rather, he arrived somewhere between thirty minutes and one hour late to trial. The court's pronouncement reflects that Mr. Roberson's lateness was based at least in part on his reliance on a text message from his caseworker—an agent of the state—telling him he did not have to be there until 9 a.m. The court could have asked Mr. Roberson, the caseworker, or his attorney about the text message or asked to review it on the record but did not do so. The court also could have asked Mr. Roberson or his counsel explicitly whether, in light of Ms. Butler's waiver of jury trial that morning, he still wished to proceed with a jury trial. Instead, the court summarily determined that his constitutional right to jury trial had been waived and that, for whatever reason, Mr. Roberson's reliance on the text message from a caseworker did not constitute a "valid" reason for his late arrival.

The trial court's limitation of the good cause exception to incarceration, hospitalization, or incapacitation, is inconsistent with Oklahoma law. At no point did Mr. Roberson or his counsel expressly waive his right to jury trial. Our Supreme Court has made it clear that "[p]arental rights are too precious to be

terminated without the full panoply of protections afforded by the Oklahoma Constitution," particularly including the right to trial by jury assured by Article 2, § 19 of the Oklahoma Constitution. *A.E. v. State,* 1987 OK 76, ¶ 22, 743 P.2d 1041, 1048. Accordingly, we decline to hold that a parent who arrives approximately thirty minutes late to trial, at least in part because of an affirmative misstatement of the state's caseworker giving the parent the wrong arrival time, has waived their right to jury trial, especially when the court does not specifically inquire about the circumstances surrounding the lateness on the record and does not obtain an express waiver on the record. In this case, the trial court abused its discretion in finding that Mr. Roberson had waived his right to a jury trial because he was not present at the start of trial. Accordingly, the court's order terminating Mr. Roberson's rights to O.B. must be vacated and the matter is remanded for a jury trial, unless the same is expressly waived on remand.[5]

III.

A.

For her first proposition of error, Ms. Butler contends that the court lacked statutory authority to terminate her parental rights pursuant to 10A O.S. § 1-4-904(B)(16) because O.B. did not meet the mandatory age and foster care duration requirements. In parental termination cases, the state bears the burden to show

[5] Mr. Roberson also alleges that he was denied the right to effective assistance of counsel. We need not address this issue because if Mr. Roberson wishes to obtain new counsel on remand, he remains free to make this effort.

by clear and convincing evidence that 10A O.S. § 1-4-904 requirements have been met. *In re J.L.O., IV*, 2018 OK 77, ¶ 29, 428 P.3d 881, 890. Section 1-4-904(B)(16) provides that the court may terminate a parent's rights when the child is older than four years old and has been in foster care for fifteen of the most recent twenty-two months. *Id.* Because O.B. was only fourteen months old when the amended petition was filed, Ms. Butler contends that terminating her rights on that basis was error warranting reversal.

The state maintains that did not seek termination of Ms. Butler's rights based on § 1-4-904(B)(16); rather, the petition and amended petition seek termination pursuant to 10A O.S. § 1-4-904(B)(17). Section 1-4-904(B)(17) provides that a court may terminate the rights of a parent to a child based on:

> A finding that a child younger than four (4) years of age at the time of placement has been placed in foster care by the Department of Human Services 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.

Id. O.B. is younger than four years old, and Ms. Butler does not dispute that he has been in foster care for at least six of the twelve months preceding the filing of the petition. Ms. Butler acknowledges that O.B. legally entered foster care on March 16, 2024, and the amended petition was filed March 31, 2025, a year later. *Brief-in-Chief*, pg. 8.

Because the state sought termination pursuant to § 1-4-904(B)(17) and the evidence comports with termination on that basis, we find that the court made a scrivener's error and checked the wrong box. Indeed, the docket sheet shows the court issued an amended order terminating Ms. Butler's parental

rights on July 1, 2026, after this appeal had been filed, checking the box correlating to termination pursuant to § 1-4-904(B)(17), not § 1-4-904(B)(16). Thus, any error in checking the wrong box has since been remedied and this proposition of error is rejected. *See also* 12 O.S. § 78 ("The court, in every stage of action, must disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.").

B.

Ms. Butler next claims that the trial court violated her right to due process by extending L.B.'s emergency custody beyond the statutory limit. "In passing upon a claim that the procedure used in a proceeding to terminate parental rights resulted in a denial of procedural due process, we review the issue *de novo*." *In re A.M.*, 2000 OK 82, ¶ 6, 13 P.3d 484, 486–87.

Ms. Butler specifically alleges that the trial court allowed L.B. to be held in pre-adjudicatory emergency custody for 196 days in violation of 10A O.S. § 1-4-601. Section 1-4-601 provides that after a deprived petition has been filed the court shall hold a hearing on the petition within ninety days. The statute also provides:

> B. 1. The child shall be released from emergency custody in the event the adjudication hearing is delayed beyond ninety (90) days from the date the petition is filed unless the court issues a written order with findings of fact supporting a determination that:
>
> a. there exists reasonable suspicion that the health, safety, or welfare of the child would be in imminent danger if the child were returned to the home, and

b. there exists either an exceptional circumstance to support the continuance of the child in emergency custody or the parties and the guardian ad litem, if any, agree to such continuance.

Id. If the adjudicatory hearing is "delayed pursuant to this section, the emergency custody order shall expire unless the hearing on the merits of the petition is held within one hundred eighty (180) days after the actual removal of the child." *Id.*

L.B. was removed on July 28, 2025. The state filed its amended petition on August 6, 2025; therefore, the adjudicatory hearing should have occurred within 90 days of that filing. However, the court ultimately held the adjudication and termination trial on the same day, February 9, 2026. The court did not issue a written order in compliance with § 1-4-601(B); therefore, the provision allowing a child to remain in emergency custody 180 days after removal was not triggered.[6] Accordingly, the question presented is whether the court's failure to have an adjudicatory hearing within ninety days of the petition's file date and failure to issue a written order in compliance with § 1-4-601(B), thereby extending the 90-day limit, violated Ms. Butler's right to due process.

This court has previously held that "[a]ppellate courts will determine on a case-by-case basis whether a parent was afforded such safeguards because the due process clause does not by itself mandate any particular form of procedure." *In re T. J.*, 2012 OK CIV APP 86, ¶ 19, 286 P.3d 659. While Ms. Butler contends that the court's failure to enforce mandated statutory time limits is such a

[6] We note that 180 days after removal is January 24, 2026. Because the trial was not held until February 9, 2026, even if the court had issued an order complying with § 1-4-601, the length of time in emergency custody still exceeded the statutory limit.

violation, she fails to take into account the legislative intent of the cited statute. This court has held that the use of mandatory language in 10A O.S. 1-4-601 is clearly intended to require the hearing to be held within a certain time frame. *In re E.H.*, 2018 OK CIV APP 67, ¶ 22, 429 P.3d 1003. However, "[t]he passage of time alone does not establish an unconstitutional delay or a violation of due process." *Id.* ¶ 18. This rule is intended to benefit the parents' right to their children by avoiding undue delay by the state.

In determining whether a parent's due process rights were violated our Supreme Court applies a two-step process. *In re A.M.*, 2000 OK 82, ¶ 6, 13 P.3d 484, 486. The first step is "asking whether the individual possessed a protected interest to which due process protection applies and if so, whether the individual was afforded an appropriate level of process." *Id.* ¶ 7. The Court stated, "[i]n the context of a proceeding to terminate parental rights, the answer to the first inquiry is clear. Parents have a constitutionally protected liberty interest in the continuity of the legal bond with their children." *Id.* ¶ 8. The second prong of the inquiry "must be determined on a case-by-case basis because the due process clause does not by itself mandate any particular form of procedure. It calls for such procedural protection as the particular situation demands." *Id.* ¶ 9. The Court then held that the essence of procedural due process in parental rights termination cases is a "'meaningful and fair opportunity to defend.'" *Id.* (quoting *In re Rich,* 1979 OK 173, 604 P.2d 1248.).

This court applied the two-part test in *In re EH*, where the mother claimed her due process rights were violated by a two-year delay in the adjudication

hearing. 2018 OK CIV APP 67, ¶ 15. In analyzing the second step, this court held that "[w]hile the delay in the adjudication hearing violates the statute ... no due process violation occurred given Mother had a meaningful and fair opportunity to defend." *Id.* ¶ 25. The same is true here—nothing indicates that Ms. Butler was denied a full and fair opportunity to defend herself in this case. She was represented by counsel at all times, who cross examined the state's witnesses and presented evidence on her behalf. Importantly, § 1-4-601(C) also provides that even if an adjudication hearing is not held within the required timeframe, that failure "shall not deprive the court of jurisdiction over the child and the parties or authority to enter temporary orders the court deems necessary to provide for the health, safety, and welfare of the child pending the hearing on the petition." Thus, while the trial court failed to conduct the adjudication hearing within the time prescribed by § 1-4-601, the court maintained jurisdiction and the delay in the adjudication hearing did not violate Ms. Butler's due process rights.

C.

Ms. Butler also alleges that the trial court committed reversible error by failing to file a written adjudication order for L.B. Specifically, she contends that without an adjudication order setting forth the specific findings of conditions that led to the deprived status of the child, this court is effectively precluded from reviewing the findings of the court below. "In passing upon a claim that the procedure used in a proceeding to terminate parental rights resulted in a denial

of procedural due process, we review the issue *de novo*." *In re A.M.*, 2000 OK 82, ¶ 6, 13 P.3d 484, 486–87.

First, we note that pursuant to 10A O.S. § 1-4-904(A)(1), a parent's rights to their child may not be terminated unless the child "has been adjudicated to be deprived either prior to *or concurrently with* a proceeding to terminate parental rights." *Id.* (emphasis supplied). Accordingly, the court may adjudicate the child deprived during a proceeding to terminate parental rights. Nothing in title 10A requires an adjudication order to be in a separate document from the termination order. And, nothing prohibits Ms. Butler from challenging the underlying adjudication in her appeal.

The state filed its second amended petition for the purpose of adding L.B. on August 6, 2025, some six months before the joint adjudication/termination proceeding was held. Ms. Butler therefore had notice that the state sought to terminate her parental rights pursuant to her failure to correct conditions of a previous deprived adjudication. ROA 556. And, both the "bench trial termination order" and the final order appealed in this case contain specific findings that L.B. was adjudicated deprived. ROA 568; ROA 580. Because Ms. Butler had notice of the state's claims six months before trial and because the court's orders make the required findings for adjudication, we reject Ms. Butler's proposition that the district court's failure to file a separate written adjudication order in this case constitutes reversible error.

D.

Ms. Butler also argues that the court committed reversible error by terminating her rights to L.B. pursuant to 10A O.S. § 1-4-904(B)(14) while O.B.'s case was pending final disposition. This proposition of error raises a question of statutory interpretation, which we review *de novo. Price v. Bd. of Cnty. Comm'rs of Pawnee Cnty.*, 2016 OK 16, ¶ 5, 371 P.3d 1089, 1090.

The relevant statutory provision reads as follows:

> B. The court may terminate the rights of a parent to a child based upon the following legal grounds:
>
> ...
>
> 14. A finding that:
>
> > a. the condition that led to the deprived adjudication has been the subject of a previous deprived adjudication of this child or a sibling of this child, and
> >
> > b. the parent has been given an opportunity to correct the conditions which led to the determination of the initial deprived child;

10A O.S. § 1-4-904(B)(14). Ms. Butler reads § 1-4-904(B)(14) to mean that an adjudication of a sibling within the same active case is not a "previous" or "initial" adjudication under the plain language of the statute. She contends that although a thirteen-month gap occurred between O.B.'s adjudication and L.B.'s addition to this case, both children remained under the same "open, active, and unfinalized legal umbrella." *Brief-in-Chief*, pg. 15. Thus, because O.B.'s case remained "active" until the court terminated Ms. Butler's rights as to both him and L.B., Ms. Butler claims it cannot be a "previous" case pursuant to § 1-4-904(B)(14). Upon review, we disagree with her interpretation.

To adopt Ms. Butler's reading of the statute would involve reading words into the statute that simply are not there. If the legislature intended for § 1-4-904(B)(14) to allow for termination of a parent's rights based on a prior adjudication only once that child's status has become *final* and the case is no longer *active*, *i.e.*, the parent's rights are eventually terminated or the parent corrected the conditions and reunited with the child, it would have said so. "It is presumed 'the Legislature expressed its intent in the statute ... and ... intended what it expressed.'" *Oklahoma City Zoological Tr. v. State ex rel. Pub. Employees Relations Bd.*, 2007 OK 21, ¶ 6, 158 P.3d 461, 464 (quoting *City of Chandler v. State ex rel. Dept. of Human Services,* 1992 OK 137, ¶ 10, 839 P.2d 1352, 1354). The statute does not state that case must be final; rather, it focuses on whether the prior adjudication occurred upon the same conditions and whether the parent was given *an opportunity* to correct those conditions.

In the present case, Ms. Butler stipulated to O.B.'s deprived petition on April 1, 2024. ROA 104. She agreed that the allegations in the petition were true and that the conditions she needed to correct were: possessing/using illegal drugs/addiction, domestic violence, lack of proper parental care and guardianship, threat of harm, neglect, and substance abuse. *Id.* After L.B. was born, the state filed a second amended petition on August 6, 2025, which explicitly stated that O.B. had been previously adjudicated deprived and that L.B. should be adjudicated deprived because Ms. Butler had failed to provide L.B. with proper care and guardianship and that Ms. Butler's home is unfit for

L.B. due to domestic violence, substance abuse, neglect, and threat of harm. ROA 413.

In termination proceedings, the burden is on the state to prove by clear and convincing evidence the statutory requirements for termination. *Matter of C.G.*, 1981 OK 131, ¶ 17, 637 P.2d 66. At trial, the court took judicial notice of the case file, which included the above-referenced documents. The court's "bench trial termination order," filed on February 10, 2026, found that the state had met its burden by a preponderance of the evidence and adjudicated L.B. deprived as to Ms. Butler based on the allegations of lack of proper parental care/guardianship, domestic violence, and threat of harm.[7] The conditions that led to L.B.'s deprived adjudication were the same conditions that Ms. Butler stipulated to in April 2024, satisfying the first part of § 1-4-904(B)(14). Ms. Butler was also given an opportunity to correct the conditions because the termination trial was not held until February 9, 2026, giving Ms. Butler almost two years to correct the condition which led to O.B.'s deprived adjudication. Therefore, we find the trial court's decision to terminate Ms. Butler's rights to L.B. pursuant to 10A O.S. § 1-4-904(B)(14) was supported by clear and convincing evidence.[8]

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[7] The order also lists substance abuse and mental health instability, but a review of the subsequent order issued by the court and the transcript shows that the court did not intend to include substance abuse and mental health instability as conditions Ms. Butler failed to correct.

[8] While the state clearly asked for termination based on O.B.'s prior adjudication, we note that Ms. Butler's rights were previously terminated to four other children on what appears to be the same or similar grounds.

E.

Ms. Butler next alleges that the state failed to present sufficient evidence to support termination of her rights pursuant to 10A O.S. § 1-4-904(B)(5), which concerns the failure to correct the conditions that led to adjudication. The court found the state presented clear and convincing evidence that Ms. Butler had not corrected the following conditions: exposure to domestic violence, neglect, lack of proper parental care and guardianship, and threat of harm. Upon review, we conclude that the state met its burden.[9]

In parental termination cases, the state bears the burden to show by clear and convincing evidence that 10A O.S. § 1-4-904 requirements have been met. *In re J.L.O, IV*, 2018 OK 77, ¶ 29, 428 P.3d 881, 890. Section § 1-4-904(B)(5) provides that a court may terminate parental rights upon finding that the parent failed to correct the condition which led to the deprived adjudication of the child and that they have been given at least three months to correct the condition.

On appeal, Ms. Butler appears to conflate completing services on her individualized service plan with correcting conditions. She maintains that she completed parenting classes, completed a domestic violence assessment, and participated in other recommended services. There is no dispute that Ms. Butler engaged in services and completed much of what was required in her ISP; however, "[c]ompliance with the ISP alone is not sufficient to regain custody."

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[9] We note that the court also terminated Ms. Butler's rights to O.B. based on 10A O.S. § 1-4-904(B)(17) and her rights to L.B. based on 10A O.S. § 1-4-904(B)(14). Our Supreme Court has held that "a termination order may be affirmed where only one statutory ground is met." *Matter of E.J.T.*, 2024 OK 14, ¶ 15, 544 P.3d 950, 957. Nevertheless, we will review this proposition of error in full.

Matter of C.M., 2018 OK 93, ¶ 23, 432 P.3d 763, 769 (citing *In re B.C.*, 2010 OK CIV APP 103, ¶ 9, 242 P.3d 589, 592).

DHS caseworker Siana Greene testified that the department was never able to observe Ms. Butler's home because she would refuse their entry or not be present, that Ms. Butler was not able to understand the children's developmental needs, and that she was still engaged in an on-again-off-again relationship with Mr. Roberson, who did not complete his Batterer's Intervention Program, tested positive for PCP throughout the case, and did not otherwise meaningfully engage in any other services required in his ISP. Tr. (Feb 9, 2026), pgs. 53, 54, 57. The court appointed special advocate in this case, Anne Holzbeierlein, testified that she believed Ms. Butler had not corrected the condition of domestic violence because she was still in a dating relationship with Mr. Roberson, who was not able to demonstrate to the department that he was a safe parent. *Id.* at 146-147. She also stated that Ms. Butler would show up to visits without supplies and that she was often unable to care for both O.B. and L.B. at the same time without supervisor intervention. *Id.* at 141-142. She added that it was concerning that the parents still had to have hands-on help during visitation after almost two years. *Id.* at 147.

The testimony from the caseworkers at trial demonstrates that while Ms. Butler had made progress towards completing her ISP, she had not progressed to a point where she could safely parent O.B. and L.B. She continued to have a relationship with Mr. Roberson, she was not available or refused caseworkers entry to her residence, and she was unable to care for both children at the same

time during the one-hour supervised visitation. Upon review of the record, we find the state presented clear and convincing evidence that Ms. Butler had failed to correct the conditions of exposure to domestic violence, threat of harm, neglect, and lack of proper parental care and guardianship.

F.

Ms. Butler also alleges that the state failed to present clear and convincing evidence that reasonable efforts were made to provide her with appropriate remedial services. We review the record to determine whether the state provided clear and convincing evidence that adequate efforts were expended. *Matter of V.D.*, 2018 OK CIV APP 72, ¶ 6, 431 P.3d 381, 383. More specifically, Ms. Butler complains that her visitation time was never increased, that DHS withheld visitation of her home, that DHS did not make any effort to discern whether she was comprehending what she learned in her programs, and that DHS did not provide transportation referrals.

First, we note that reasonable efforts to prevent the removal of the children in this case and reunite them with Ms. Butler were not required pursuant to 10A O.S. § 1-4-809(A)(3). Her rights to four of O.B. and L.B.'s siblings were involuntarily terminated because Ms. Butler had failed to correct conditions which led to their adjudication in 2022. However, at the beginning of the case the state indicated that it was willing to allow the parents to work an ISP. ROA 47. The record is replete with evidence that Ms. Butler was referred to many different services and programs, which she engaged in and even completed. As stated above, DHS attempted to visit Ms. Butler's home on numerous occasions

but was unable to do so. They also maintained that extending visitation or moving to unsupervised visitation was not possible due to the lack of progress on the case. Further, although Ms. Butler was unable to obtain assistance with transportation, we note that it did not hinder her ability to attend and complete programs and services. Thus, we find that although reasonable efforts to prevent removal were not required in this case, the record reflects that reasonable efforts were made to provide Ms. Butler with the appropriate services.

G.

Ms. Butler also contends that the state failed to present clear and convincing evidence that termination was in the best interests of the children. In parental rights termination cases, the state bears the burden to show by clear and convincing evidence that the child's best interest is served by the termination of parental rights. *Matter of J.L.O., IV*, 2018 OK 77, ¶ 29, 428 P.3d 881, 890. The state called Riley Carr, foster mother to all of Ms. Butler's children, to testify. She testified that she has had custody of Ms. Butler's four older children since 2022 and has since adopted them. Tr. (Feb. 9, 2026) pg. 106. She testified that both O.B. and L.B. are attached to her and her husband, are bonded with their siblings, and are comfortable in the foster home. *Id.* at 117. She also testified that removing them from the home would be harmful to them and that it would be in the children's best interest to remain in their home. *Id.* at 118. Ms. Holzbeierlein also testified that she believed it is in the children's best interest to remain in the family with their foster parents and that it would be harmful for the children to be removed from their current environment. *Id.* at

153-155. Ms. Greene similarly testified that the children are happy and receiving good care in their foster home, and that the children would be harmed if they were removed. In light of the foregoing testimony, we find that the state presented clear and convincing evidence that termination of Ms. Butler's rights is in the best interests of the children.

H.

For her final proposition of error, Ms. Butler contends that she was denied effective assistance of counsel. We perform a *de novo* review on procedural due process claims from a termination of parental rights. *In re J.L.O., IV.*, 2018 OK 77, ¶ 35, 428 P.3d 881, 891. Parents and children have the right to effective assistance of counsel in proceedings terminating parental rights. 10A O.S. § 1-4-306(A). We review claims for ineffective assistance of counsel in termination proceedings under the same standard used in criminal trials. *In re J.L.O., IV.*, 2018 OK 77, ¶ 35.

"To warrant reversal, the claimant must show that 1) the attorney's performance was deficient, and 2) there is a reasonable probability that, but for the deficient performance, the result would have been different." *Matter of C.M.*, 2018 OK 93, ¶ 27, 432 P.3d 763, 770. The proper measure of attorney performance is reasonableness under prevailing professional norms. *Id.*; *In re J.L.O., IV.*, 2018 OK 77, ¶ 36, 428 P.3d at 891. Our review of trial counsel's performance is highly deferential and we must indulge a strong presumption that counsel's conduct falls within the range of reasonable assistance. *Id.*

Ms. Butler alleges that she was denied effective assistance of counsel because her attorney failed to advocate for L.B.'s return when the emergency custody period expired under 10A O.S. § 1-4-601 and failed to demand a written filing of L.B.'s adjudication order from which she could have appealed. Based on our resolution of these claims in Parts III-B and III-C of this opinion, we find that Ms. Butler cannot show that there is a reasonable probability that, but for the alleged deficient performance, her rights would not have been terminated.

Additionally, she alleges that her attorney advised her to stipulate to the deprived petition and that counsel failed to negotiate the appropriate conditions, which bound her to "unattainable conditions that later formed the basis for terminating her parental rights." *Brief-in-Chief*, pg. 28. She also contends that she was denied effective assistance of counsel because her attorney failed to make a timely objection when the trial court took judicial notice of the entire court file and did not object to L.B.'s adjudication. However, Ms. Butler is unable to show that even if she had not stipulated to the petition or had been able to negotiate different conditions that her rights would not have been terminated, especially when there are two statutory bases independent of her failure to correct conditions upon which her rights were terminated.

* * *

Upon review, we find that Mr. Roberson did not waive his right to jury trial, and the court's order terminating his rights to O.B. is vacated and the case is remanded for proceedings consistent with this opinion. The court's order terminating Ms. Butler's rights to O.B. and L.B. is affirmed as it was supported

by sufficient evidence, reasonable efforts were made to prevent the breakup of the family, and termination was in the children's best interest.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

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

October 9, 2026