

**IN THE APPELLATE COURT OF THE CHOCTAW NATION**

IN THE MATTER OF:

A.B., N.B., A.B., M.B.,

Alleged Deprived Children.

NO. ACJ-23-1

District Court No. JD-2019-15

Opinion by Judge Jones

**OPINION**

Appellant, Khadjah Brooks (hereafter "Mother"), appeals a judgment of the trial court terminating her parental rights to her children, A.B., N.B., A.B. and M.B. (hereafter "Children"). The issues Mother raised on appeal is whether there is sufficient evidence to support the trial court's finding that the Choctaw Nation (hereafter "Nation") met its burden of proving by clear and convincing evidence that termination of the Mother's parental rights was in the children's best interests; and

We, the Choctaw Nation Court of Appeals, find that there is clear and convincing evidence to support the trial court's Order terminating Mother's Parental Rights. Therefore, the Order Terminating Parental Rights, as filed of record on February 14, 2024, by the Honorable Judge Richard Branam is AFFIRMED.

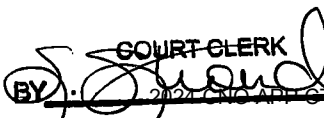
**I. BACKGROUND AND PROCEDURAL HISTORY**

On November 8, 2019, Choctaw Nation Indian Child Welfare (hereafter "ICW") received referral regarding possible substance abuse by Khadjah Brooks and the neglect of her four children, A.B., N.B., A.B., M.B. This referral was made after she and her four children entered into the Children and Family Services Office in McAlester, Oklahoma. It was alleged and reported that that Ms. Brooks entered the facility and acted in an erratic manner while the children were in her care and custody. It was further reported that three of the four children lacked sufficient clothing and shoes despite the chilly weather outside. Later, on that same day, the minor children were removed from their mother's care and placed in the custody of ICW.

The Nation filed a Petition to adjudicate the children as Deprived Children on November 19, 2019. Although both parties stated in their briefs that the children were adjudicated as deprived children on January 7, 2020, the Court minute from January 7, 2020, indicates that the trial court appointed attorneys for the parties and continued matter was continued to January 21, 2020. There is no record of any hearing on January 21, 2020, provided to this Court.

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However, the record does show that on February 4, 2020, the Mother appeared for her Adjudication Hearing and stipulated to the allegations made in the Nation's Petition, which included, in relevant part, that: 1) the mother has subjected the children to abuse or neglect by failing to provide adequate shelter, supervision and clothing; 2) the mother attempted to abandon the children at the McAlester child welfare office, resulting in the removal of the children from her custody; 3) the children's home is an unfit place by reason of depravity on the part of the Mother as all children have been exposed to a threat of harm due to the Mother's substance abuse. The Mother transported all of the children to the McAlester child welfare office while under the influence of narcotics; and 4) the Mother has failed to protect the children from exposure to the use and possession of illegal drugs. Mother tested positive for marijuana at the show cause hearing on November 12, 2019. The children were also Ordered to remain in the custody of ICW.

The Conditions to be corrected, as noted by the trial Court at the Adjudication Hearing, were as follows: 1) Substance Abuse (Illegal Drugs) and / or failing to protect the children from exposure; 2) Failure to provide a safe and stable home and / or homelessness; and 3) Threat of harm.

The Court also conducted a Disposition hearing on February 4, 2020. Pursuant to the Individual Service Plan (hereafter "ISP"), as agreed upon by the Mother and adopted by the trial court, included the following "desired results" for the Mother:

Ms. Khadjah Brooks will initiate, participate, and complete services for substance abuse, parenting, and mental health. Ms. Brooks will provide safe and stable housing for herself and her children. Ms. Brooks will follow all recommendations made by her service providers and provide Indian Child Welfare with relapse prevention plan. Ms. Brooks will be able to demonstrate sobriety and that she can provide appropriate care for her children.

The ISP further had the following "To Do" Items for the Mother to complete: 1) Mother will initiate and complete a substance abuse assessment to include Addiction Severity Index (ASI) and follow the recommendations made by the service provider; 2) Mother will submit to random drug and alcohol testing throughout the case; 3) Mother will complete a Biopsychosocial Assessment and follow all recommendations made by the service provider; 4) Mother will complete a parenting assessment and follow all recommendations made by the service provider; 5) Mother will complete Parenting Education classes and demonstrate how she will address the children's needs and show positive application of the parenting techniques she learned; 6) Mother will obtain and maintain sufficient legal income to support her and her children.

In her Brief, Mother admitted that she "had slow start on her ISP" but blamed her slow start on a "lack of understanding of these requirements." Mother further admitted that it took her approximately two years "until 2022" to complete "a number of these

requirements", namely "two to three parenting classes, substance abuse assessment, multiple mental health assessments, and relapse plan." Mother further admits that she later "refused to follow the mental health recommendations through continued drug treatment for underlying mental illness." Respondent Mother further admitted that she remained sober until August of 2021, before relapsing.

In April of 2022, ICW conducted a family team meeting with Mother. Mother was given additional tasks, which included: 1) that she stay on her mental health medication; 2) that she complete a new psychological evaluation; 3) obtain a third parenting assessment; and 4) identify supports for any potential future mental health crisis. Mother admits that she was unable to complete these requirements.

The Nation filed a Petition to Terminate the Mother's Parental Rights on July 29, 2022, alleging, in relevant part, that:

3. The minor children were adjudicated deprived by this Court on or about the 7th day of January 7, 2020 [as stated above, the children were not actually adjudicated until February 4, 2020].
4. The mother's parental rights should be terminated under Choctaw Code 1-4-904(A)(1-2); (1) The children have been adjudicated to be deprived either prior to, or concurrently, with a proceeding to terminate parental rights; and (2) Termination of parental rights is in the best interests of the children.
5. The Mother's Parental Rights should be terminated under Choctaw Code 1-4-904(B)(5)(a); the parent has failed to correct the condition which led to the deprived adjudication of the children, and (b) the parent has been given at least three (3) months to correct the conditions.

A non-jury trial on said Petition was conducted by the Honorable Richard Brannam on February 13, 2024. On February 14, 2024, Judge Brannam issued an Order Terminating the Mother's Parental Rights. In said Order, Judge Brannam found clear and convincing evidence that:

- a. Allegation One: CNCC 1-4-904(A)(1-2), The children have been adjudicated deprived prior to or concurrently w/ a proceeding to terminate parental right and Termination is in the best interests of the children.
- b. Allegation Two: CNCC 1-4-904(B)(5)(2) the parent has failed to correct the condition which led to deprived adjudication of the children, and (b) the parent has been given at least (3) three months to correct the condition.

Based on these findings, Judge Brannam Ordered that the Mother's parental rights be terminated as to all four children herein.

## II. STANDARD OF REVIEW

Section 1-4-904 of the Choctaw Code does not state the burden of proof necessary for the Nation to terminate a person's parental rights as to their children. However, a parent's right to have custody of, care for, raise, and have a relationship with their children is a fundamental right. This fundamental right is protected by both the U.S. Constitution and the laws of the Choctaw Nation.

In the Matter of K.I., S.I., and B.I., AC-23-6; 23-7, the Choctaw Appellate Court held that "the standard of proof necessary to establish any grounds to permit adoption without consent, or for termination of parental rights, is "clear and convincing evidence." In doing so, we adopted the view of the Oklahoma Supreme Court in case of Matter of the Adoption of A.J.B., 2023 OK 122.

In an action to Terminate the Parental Rights of a parent, filed by the Choctaw Nation, we also adopt the view of the Oklahoma Supreme Court as set forth in its decision of In Re. S.B.C., 2002 OK 83, which held that:

[F]reedom of choice in the care and management of one's child is a fundamental liberty interest sheltered by the Constitution, the United States Supreme Court, in Santosky v. Kramer, [455 U.S. 745, 753 (1982)] pronounced its constitutional command that before a state may sever the rights of parents in their natural child, the state must support its allegations at trial *by at least **clear-and-convincing evidence.*** That alone stands as a command that juries not use a different measure of proof.

In re S.B.C., 2002 OK 83, ¶ 5. In a proceeding to terminate a parent's rights, the paramount consideration is the health, safety, welfare and best interests of the minor child(ren). It is presumed to be in a child's best interests that the family integrity be preserved. However, this presumption can be overcome by clear and convincing evidence of the potential for parental harm to the child and that termination of parental rights is in the best interests of the child. See In Re J.C. and J.C., 2007 OK CIV APP 77, ¶¶ 4-5; In Re K.C., 2002 OKC CIV APP 58, ¶ 5. Therefore, the Nation must prove, by clear and convincing evidence, that a statutory basis exists for termination AND that termination is in the best interests of the child(ren).

"Clear and convincing evidence" is that 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 allegations

sought to be established. Matter of K.I., S.I., and B.I., 2, Nos. AC-23-7 (Choctaw Nation App. Ct. 2024).

*Appellate courts must aid in enforcing the Santosky-mandated federal constitutional standard of persuasion by canvassing the record on review to ascertain whether nisi prius fact findings rest on clear-and-convincing proof. If a lower **standard of review** were to be adopted for scrutiny of these critical findings, the courts of first instance would remain free to disregard the clear mandate of Santosky by allowing an impermissibly low burden of persuasion to govern at trial. Continued application of common-law review standard also would make reversal-proof those judgments which rest on competent evidence but stand unsupported by clear-and-convincing proof. Any level of appellate scrutiny that is less stringent than that of searching for proof of clear-and-convincing nature will undermine the higher level of protection imposed by Santosky to safeguard the parents' fundamental right to their offspring.*

In re S.B.C., 2002 OK 83, ¶ 6. Therefore, in order to assure faithful nisi prius compliance with the federal mandate in Santosky, the appellate review of a lower court's order terminating parental rights:

must be conducted by searching for the presence of clear-and-convincing proof. The heightened test that is accorded fundamental rights would be watered down—if not indeed rendered meaningless—by the use on review of ***anything less than the very same standard as that which is required in the trial courts***. In short, to warrant affirmance of nisi prius findings, appellate review in a parental-bond-severance proceeding must demonstrate the presence of **clear-and-convincing evidence** to support the first-instance decision.

Id. at ¶ 7.

While in Matter of K.I., S.I., and B.I., we used an appellate standard of review of abuse of discretion, we now join the Oklahoma Supreme Court and decide that the appellate court must review the record to ensure that there was sufficient clear-and-convincing evidence to support the termination of parental rights. Any suggestion to the contrary in Matter of K.I., S.I., and B.I. is hereby reversed.

### III. DISCUSSION

In the case at bar, the minor children were adjudicated as deprived children on February 4, 2020. The Nation filed its Petition to terminate her parental rights on July 29,

2022. The Statutory basis for termination, as cited by the Nation, was Section 1-4-904 of the Choctaw Nation Code, which reads as follows:

- A. A court shall not terminate the rights of a parent to a child unless:
  - 1. The child has been adjudicated to be deprived either prior to, or concurrently, with a proceeding to terminate parental rights; and
  - 2. Termination of parental rights is in the best interests of the child.

...

- B. The court may terminate the rights of a parent to a child based upon the following legal grounds:

- 5. A finding that:
  - a. the parent has failed to correct the condition which led to the deprived adjudication of the child, and
  - b. the parent has been given at least three (3) months to correct the condition;

In the case at bar, the minor children were adjudicated as deprived children on February 4, 2020. The Court also entered and approved a treatment plan, with the consent of the Mother, on February 4, 2020. The Nation filed its Petition seeking to terminate the Mother's parental rights on July 29, 2022. The evidence is clear and convincing that the Mother failed to complete her treatment plan within three (3) months.

However, failure to complete the treatment plan within three (3) months is not, in and of itself, sufficient for termination of parental rights. See In the Matter of K.C., 2002 OK CIV APP 58. ¶ 9. 46 P.3d 1289 (Okla. Civ. App. 2002). The Choctaw Code only requires that the parent be given, a minimum, of three months to complete his or her plan. There is not maximum time frame for completion set forth in the Code. The time necessary to complete a treatment plan, by a parent, will differ based on the facts and circumstances of the case and in determining what is in the best interests of the children involved. Only allowing a parent three months to complete a treatment plan may very well run contrary to the best interests of the child. In many cases, the provisions of the parent's treatment plan will take longer than three months to complete. Furthermore, treatment plans often require a parent to demonstrate stability (whether that be maintaining sobriety, employment, adequate housing, treatment, etc.) which can rarely be accomplished within three months.

As stated above, the ISP, as approved by the Court, identified areas of correction for the Mother. These included: substance abuse, mental health, proper parental care, and safe and stable housing. The evidence offered at trial is clear and convincing that Mother did not complete her ISP within three months. In fact, Mother was given just under 30 months to complete her treatment plan before the Nation filed its Petition to Terminate her Parental Rights.

Mother argues that she did make adequate progress on her treatment plan. She argues that she was able to remain sober until August of 2021, that she completed parenting classes, a substance abuse assessment, multiple mental health assessments and a relapse plan. Mother also argues that there was no clear and convincing proof at trial that Ms. Brooks was likely to neglect her children and that it is in the best interests of her children that they be reunified with her.

However, the evidence offered by the Nation suggest otherwise. Mother was diagnosed with bipolar disorder II with anxious distress, other specified personality disorder with paranoid and schizoid traits, and severe alcohol use disorder. The evidence showed that Mother discussed having "telepathic communications with her children" and that she and her children were a "different species besides human." The Nation produced evidence to show that Mother was unable to provide sufficient care for her minor children without following through with her mental health treatment and medication. The evidence showed that Mother refused to take the medication prescribed to her for said disorders and refused to participate in ongoing mental health services or treatment. Mother argued that she stopped taking the medication due to negative side effects. However, Mother instead chose to medicate with THC. Not only did Mother not believe she needed mental health treatment, she also believe the children did not need mental health treatment despite one child being diagnosed with posttraumatic stress disorder and ADHD, one child being diagnosed with adjustment disorder and ADHD. The evidence offered by the Nation also showed that Mother continued to struggle with addiction and substance abuse.

The evidence also shows that Mother was unable to provide appropriate parental care to her children. Mother completed multiple parenting assessments. One of the witnesses that completed a parenting assessment was Mr. Anderson. Mr. Anderson is a licensed professional counselor supervisor and has worked with Bryan County, Oklahoma, Department of Human Services for decades. Mr. Anderson testified that Mother did not appear to be engaged or bonded with the children in a way in which they would seek her for attention, and there was not a connection regarding emotions and the back-and-forth communication that one would typically see with a mother and her children. Mr. Anderson further testified that Mother "demonstrated that she did not have a relationship with the children as far as a bond and couldn't control them in a one-hour observation" and that Mother's "behavior renders her incapable to provide care for her

children." Mr. Anderson also testified that the children would be potentially be in harms way if placed back in the home with Ms. Brooks.

At trial, the Indian Child Welfare Worker assigned to the case testified that Mother failed to complete the services required by her ISP and correct the conditions that lead to the children being removed from her custody. Respondent Mother was given almost thirty (30) months to complete her plan. The trial court had sufficient evidence to prove by clear and convincing evidence that said amount of time was sufficient to allow Mother ample opportunity to complete or make adequate progress on the ISP, given the facts and circumstances of this case. The evidence is also clear and convincing that Respondent Mother failed to do so. Therefore, a statutory basis exists for termination pursuant to Section 1-4-904 of the Choctaw Code.

The Nation must also prove, by clear and convincing evidence, that termination of parental rights is in the best interests of the child(ren). Mother argues that termination of her parental rights is contrary to the children's best interests due to one child, A.B., suffering from nightmares as a result of anxiety from separation from her mother. However, the same child discussed her unwillingness to return home with the Mother and that she did not believe her mother could adequately care for her. Furthermore, all of the evidence discussed above is also sufficient for the court to find clear and convincing evidence that termination is in the best interests of the minor children.

#### **IV. CONCLUSION**

The Court finds that the District Court correctly found that the Nation met its burden of proof, by clear and convincing evidence, that termination of the Mother's parental rights was in the children's best interests and that a statutory basis exists for said termination. Therefore, the Choctaw Nation District Court Order is hereby **AFFIRMED**.

Per Curiam