IN THE COURT OF APPEALS
FOR THE CHOCTAW NATION OF OKLAHOMA

GEORGE MORGAN RE: G.M.JR. AND P.M.	APPELLANT,
Vs.	DISTRICT COURT NO. JD-21-9 APPELLATE COURT NO. AC-22-1
THE CHOCTAW NATION OF OKLAHOMA,	APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE CHOCTAW NATION OKLAHOMA, THE HONORABLE RICHARD E. BRANAM

Attorney for Appellant: Pat Layden

Attorney for Appellee: Elizabeth Murphy

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CHOCTAW NATION OF OKLAHOMA
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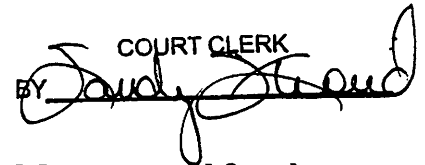
AUG 16 2022



OPINION OF THE COURT

Appellant George Morgan is the father of two children, G.M.J., a son aged 8 and a daughter, P.M., age 7. The mother's parental rights were terminated December 16, 2020. She and appellant are divorced. She is not involved in these proceedings.

On September 19, 2019, the children were adjudicated deprived in the District Court of Leflore County, Oklahoma on Petition of the Oklahoma Department of Human Service (OKDHS). Subsequently, the OKDHS also filed a Petition to Terminate Appellant's parental rights. On April 6, 2021 the case was transferred to the District Court of the Choctaw Nation pursuant to the Indian Child Welfare Act.

On June 2, 2021 a petition was filed to terminate appellant's parental rights in the District Court of the Choctaw Nation pursuant to the Choctaw Nation Children's Code,

Section 1-4-904 (A)(1). A hearing before the Court resulted in appellant's parental rights being terminated on December 21, 2021. It is from those proceedings appellant appeals.

The young girl in this case has cerebral palsy and seizures. She must have seizure medications exactly at 7 A.M. and 7 P.M. each day. The record shows that the parents were not timely administrating the medicine or administrating it at all. Before the Oklahoma Department of Human Services got involved, the girl was seen for emergency services at St. Francis Hospital in Tulsa twice for seizures. On one occasion she was transferred from Choctaw Nation Hospital in Talihina to St. Francis by ambulance because the parents went two weeks without having her special medication prescription filled. A second time she was taken to Choctaw Nation Hospital by a Talihina Police officer who thought she was dying from a seizure. She was air lifted to St. Francis where she was treated again. P.M. had a health problem after the children were removed from appellant's custody. It took appellant a week to return the Nation's call.

On May 4, 2021, Choctaw Nation Indian Child Welfare prepared and filed with the Court an Individual Services Plan (ISP) which covers the current situation with this parent, identifies issues that need corrected and the manner such corrections are to be made. The ISP outlined six areas of parenting that needed to be addressed by appellant and what should be done to make correction. The ISP conditions needed to be corrected were: (1) Child Well Being-Medical; (2) Domestic Violence; (3) Substance Abuse; (4) Child Well Being-Emotional; (5) Safe and Stable Housing and (6) Employment.

Appellant resides in the garage of a house owned by he and his brother. The brother and a nephew reside in the house living quarters proper which are separated from

the garage with a door between the two areas. The garage has a bathroom. Visits by Choctaw Nation Social Workers reveal the yard portion of the property to be littered by trash and beer cans. There is a three foot deep trench across the yard that as of the termination hearing was still open on the property.

There is a history of quarreling between the brothers with at least one fist fight. The brother has guests who are loud, sometimes using drugs and alcohol. Sounds from the brother and his guests can be heard through the door between the living quarters and the garage.

Appellant's current residence did not meet the criteria required by the Nation for safe, stable housing for the children. It fails the test for being, a wholesome environment. Appellant has made application for low rent housing with the Choctaw Nation Housing Authority. His first application was rejected because it named the children on the application when he did not have custody of them. He received a second application in June 2021 but did not submit it until five months later in October 2021. He is now on a waiting list. As a result, the requirement of safe, stable housing remains uncorrected.

According to the record, appellant has a history of domestic violence. He had a fist fight in 2019 with his brother along with lesser run-ins. Reports show he also has a history of violence toward his former wife who on at least one occasion obtained a protective order against him. The record also shows that he had incidents with co-workers and the social worker assigned to his case. On one occasion he doubled his fists toward her. Dawn Bonham, Family Violence Supervisor and Counselor, did a domestic violence inventory with appellant. It is a self-answering series of questions. It measures

the areas it is assessing on a 0-100 scale. 100 being the most problematic. The assessment found appellant's risk scale regarding violence to be 88, the problem risk range. Ms. Bonham recommended appellant complete a Certified Batterer Intervention Program (BIP). Appellant first said he would pay for it but later said he couldn't. The cost is fifty dollars a week. The Choctaw Nation will pay up to 75% of the cost. Appellant's cost would have been $ 12.50 per week. He has not attended the BIP.

The parties' briefs give much attention to whether there was a sufficient chain of custody regarding the admission into evidence seven hair and urine tests attributed to appellant. They were sent to a laboratory in Indiana for testing. The Court below admitted them into evidence over appellant's objections. Although the chain of custody was, at best disorganized, using a preponderance of evidence standard we find no error in the reception of the test results in evidence. All tests were positive for methamphetamines.

Putting aside the disputed laboratory tests, the record is replete with other evidence of appellant's drug and alcohol use. On some occasions, appellant would refuse a requested test which according to the Nation's rules is the equivalent to testing positive. According to his case worker's October 8, 2021 report "Mr. Morgan admitted to illegal substance use and has stated he would test positive if tested". Counselor Myra Mabroy reported that he told her he "uses methamphetamine and marijuana every time he misses his children, but, denies daily use because he can't afford it. It was recommended he have inpatient and outpatient treatment. He completed the intake requirements at the Choctaw Nation's Men's Treatment Center but chose not to participate because he didn't like their rules and stated "they were sitting him up to fail."

The domestic violence inventory measured appellant's use of alcohol is and severity of abuse at 73 out of 100 which is a problem risk. Ms. Bonham's recommendation was that appellant see a qualified professional and to follow their recommendations.

Appellant's drug use and abuse was measured at 94 out of 100, which is a severe problem and maximum risk. Appellant didn't fare much better on his addiction severity test which is also a self-answering test. On a scale from 0 to 4, the latter being the most severe, appellant score 3 which requires treatment for alcohol and drugs. There is some evidence he received limited counseling.

Another important concern of the Nation is appellant's ability to provide the basic needs for his children i.e., food, shelter, clothing, medicine, etc. he has a checkered history regarding employment. Appellant does not have a working vehicle to get to and from a job. He sometimes works as a day laborer for a contractor but doesn't get many hours per week. On the day of the hearing to terminate he reported a part time job three days a week at a grocery store. Employment is an important requirement for Appellant to provide basic needs of these children. Appellant has had several months to find a job. He has not satisfied this requirement.

These children have been in foster care together for almost three years. They are both in school and is reported doing well. There is a good relationship with the foster parents. P.M. receives her seizure medication as prescribed and is improving. She is also receiving her weekly cerebral palsy rehabilitation as prescribed. The foster parents drive her to and from those appointments. The social workers say the children need

stable, permanency in their lives but are doing very well with the current foster parents. The foster parents are open to adoption.

Choctaw Nation's Children's Code 1-4-904(A) provides "a court shall not terminate the rights of a parent to a child unless (1) the child has been adjudicated to be a deprived either prior to, or concurrently, with a proceeding to terminate parental rights and (2) termination of parental rights is in the best interest of the child. These children were adjudicated deprived on September 18, 2019 by the District Court of Leflore County, Oklahoma. They have been in foster care for almost three years. Appellant has visitation rights but there is no evidence he has visited the children. The visitation rights are conditioned on appellant having a negative hair follicle test.

As previously stated, these 7 and 8 year old children have been in foster care for almost 3 years. While they are doing well according to the case workers, they are at an age where they need permanency in their lives. Appellant cannot provide that.

This leaves us with the question of what is in the best interest of these children. Here the Nation "must show by clear and convincing evidence that the child's best interest is served by the termination of parental rights, " in re C.D.P.F., 2010 Ok 81, 243 P.3d 21, 23. This standard of proof "balances the parent's fundamental freedom from family disruption with the State's (Nation's) duty to protect children within its borders" id. Our review must find the presence of clear and convincing evidence to support the trial court's decision, which requires we canvass the record to determine if the evidence is such that a fact finder could reasonably form a firm belief or conviction that the grounds for termination were proven." See also In The Matter of L.M., 2012 OK CIV APP 41.

We have canvassed the record. Unfortunately, what we found was Appellant has failed to follow through on any of the Nation's requirements to be reunited with his children. Appellant had approximately 20 months, to address the Choctaw Nation Indian Child Welfare's concerns and requirements. He failed in every area. We find that the lower Court based its decision on clear and convincing evidence that terminating Appellant's parental rights was in the best interests of the children. The District Court's decision is affirmed.

ALL JUDGES CONCUR

CERTIFICATE OF MAILING

I certify that a true and correct copy of the Opinion of the Court was filed with the Appellate Court Clerk and was emailed on the 16th day of August, 2022 to the following:

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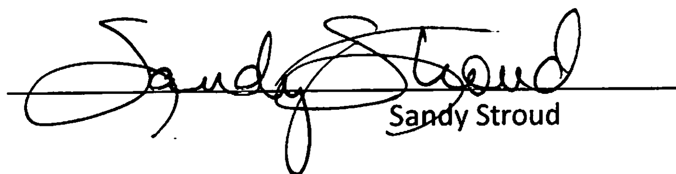

Sandy Stroud