

IN THE COURT OF APPEAL OF THE CHOCTAW NATION

IN THE MATTER OF)
C.S., DOB: [REDACTED])
and L.S.M., DOB: [REDACTED])
deprived children)

Case No. AC-22-3

Case below: JD-20-7
(Branam, J.)

OPINION

Chelsea L. Smith (“Mother”) appeals the judgment of the Choctaw Nation District Court terminating her parental rights to C.S. and L.S.M. We find the district court did not err in judgment and **AFFIRM** the judgment of the district court.

The questions presented to this Court are (A) whether the Choctaw Nation presented sufficient evidence to support the judgment of termination of parental rights, and (B) whether Mother had effective assistance of counsel. We answer both questions in the affirmative.

I. BACKGROUND AND PROCEDURAL HISTORY

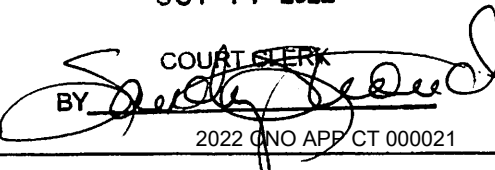
On June 26, 2020, the tribal prosecutor applied to take C.S. into custody. The tribal prosecutor detailed that C.S. had initially been placed in a guardianship by the Oklahoma Department of Human Services (“DHS”) in 2017 due to allegations of abuse, substance abuse, and inappropriate adult supervision. Prior to the guardianship, C.S. had been found on the street away from the parental home with no supervision.

On June 29, 2020, the district court ordered the Choctaw Nation Indian Child Welfare Program (“ICW”) to take C.S. into custody. On June 30, 2020, the district court held an emergency hearing on the placement of C.S. and ordered her to remain in the custody of Choctaw Nation ICW. The Petition explained that C.S. had disclosed abuse by Mother, including beatings with hangers, shoes, and belts, and that Mother had shamed C.S. for menstruation telling C.S. she was “disgusting” for having possibly been sexually abused by the guardian (an unfounded allegation made by Mother). Further, the Petition claimed Mother needed mental health treatment but had not sought such treatment. Mother also had multiple arrests in McCurtain County for failure to pay, probation violations, and drug court sanctions.

On July 6, 2020, the tribal prosecutor filed a petition to adjudicate C.S. as deprived. On August 3, 2020, the district court held an adjudication hearing at which it took testimony from the ICW worker. At the request of Mother, the district court scheduled a bench trial.

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On September 11, 2020, the district court held an adjudication trial. At the trial, Mother stipulated to the petition to adjudicate the child as deprived. The district court found it was in the best interests of the child to be adjudicated as deprived and ordered that C.S. must remain in ICW custody. The court also denied any visitation by the natural parents based on the recommendations of C.S.'s therapist. The court found the following conditions existed with Mother, which supported the deprived finding: substance abuse (illicit drugs), domestic violence and/or failing to protect C.S. from exposure to domestic violence; mental health instability; physical abuse of C.S.; lack of proper parental care; and threat of harm.

ICW and Mother agreed to an Individual Service Plan ("ISP") on September 30, 2020, with the goal of either reunification or adoption. The ISP stated Mother: "will initiate, participate, and complete services for substance abuse, mental health, domestic violence, and parenting." In addition, she will "follow all recommendations for her service providers. She will provide a safe and stable environment for herself and her child(ren)." She "will be able to demonstrate she can provide appropriate care for her child." In the ISP, Mother agreed to complete a full-scale psychological evaluation, to complete mental health counseling, to obtain certain substance abuse services, to submit to random substance abuse testing, to obtain certain domestic violence services, to attend child well-being counseling, to complete parenting education, to allow announced and unannounced ICW visits to her home, and to abstain from criminal behavior. She also agreed to provide a stable home environment including a verifiable source of income.

On October 6, 2020, the district court held a disposition hearing. The district court ordered the children to remain in ICW custody and denied parental visitation "as per doctor's orders."

On December 21, 2020, the district court held an emergency custody hearing on L.S.M. (DOB: [REDACTED]). The district court found that ICW had been unable to contact Mother since removal of the newborn after birth.

On December 31, 2020, the ICW worker filed a confidential report and recommendations to the court recommending C.S. remain in ICW custody. The report detailed how Mother had another child (L.S.M.) on [REDACTED], a pregnancy which she hid from ICW. In the hospital, Mother tested positive for methamphetamines and amphetamines. The newborn also tested positive for methamphetamines. The hospital made a referral to ICW and L.S.M. was placed in ICW custody.

As of December 31, 2020, Mother's substance abuse test results were:

- June 9, 2020 – Positive for methamphetamines, amphetamines, and marijuana

- July 23, 2020 – Did not show
- August 3, 2020 – Positive for methamphetamine and amphetamine
- October 19, 2020 – Did not show
- November 12, 2020 – Negative (not observed)
- December 17, 2020 – Positive for methamphetamine and amphetamine
- December 30, 2020 – Negative (not observed)

On January 4, 2021, the district court held a permanency review hearing. Following the hearing, the district court ordered ICW to retain custody of C.S. The court denied visitation to Mother based on the recommendation of C.S.'s therapist.

On January 7, 2021, the tribal prosecutor filed a petition to adjudicate L.S.M. as deprived. On February 2, 2021, the district court held an adjudication hearing on L.S.M. and noted that despite having been served, Mother failed to appear. The district court also consolidated the cases of C.S. and L.S.M.

On March 29, 2021, the ICW worker filed a report and recommendations with the district court. The report detailed Mother had so far failed to obtain mental health services as required by the ISP. The report also detailed additional drug testing results, as follow:

- January 14, 2021 – Refusal
- February 2, 2021 – Positive for amphetamines and methamphetamines
- February 2, 2021 – Positive for amphetamines and methamphetamines (hair)

The report also noted that Mother was not attending any counseling services required by the ISP.

On April 5, 2021, the district court held a permanency review hearing. The district court found reasonable efforts had been made to reunify the children with Mother and that those efforts were no longer consistent with the permanency plan for the children. The district court noted that a motion to terminate parental rights would be filed within thirty days. The district court also ordered that Mother could have no visitation based on the therapist's recommendation.

On May 27, 2021, the tribal prosecutor filed a motion to suspend Mother's visitation rights. That same day, the district court entered an order suspending her visitation rights. On May 28, 2021, the tribal prosecutor filed a motion to terminate Mother's parental rights.

On June 20, 2021, the ICW worker filed a parent progress report. The ICW worker noted Mother had attended no mental health services (other than a psychological evaluation) since the beginning of her ISP. The ICW worker also noted that Mother

had never initiated the substance abuse services required by her ISP. Mother's most recent drug tests revealed the following.

March 11, 2021 – Positive for amphetamine, methamphetamine, and THC

April 5, 2021 – Refusal

April 14, 2021 – Positive for amphetamine, methamphetamine, and THC

April 14, 2021 – Positive for amphetamine, methamphetamine, and THC
(hair)

May 6, 2021 – Positive for THC, MDMA, methamphetamine, and
amphetamine

May 26, 2021 – Positive for methamphetamine and amphetamine

The ICW worker also noted that although Mother was pursuing her ISP-required domestic violence services, she failed to report an incident of domestic violence occurring in April 2021 between herself and the natural father to the ICW worker or her advocate. And the ICW worker noted that Mother was not attending counseling services required by the ISP. Based on Mother's statements in the psychological evaluation, the ICW worker reported Mother was unable to verbalize the reasons for her children being in custody and would not take responsibility for her actions.

The ICW worker also reported that Mother had not completed her six-week parenting course as required by the ISP even though she had had the opportunity for over one year. Finally, the ICW worker noted that Mother lacked permanent housing. She had requested paperwork from the Idabel Community Center for housing in Broken Bow, but she had not picked up the paperwork from the Center.

On July 6, 2021, the ICW worker filed a confidential report and recommendations with the district court. Also on that date, the district court held a permanency review hearing and ordered that the permanency plan was now for adoption, with a motion to terminate parental rights pending. The district court also continued the suspension of Mother's visitation with the children because visits would not be in the best interests of the children.

On November 29, 2021, the ICW worker filed a parental progress report. The ICW worker noted that Mother had completed a psychological evaluation but was not following any recommendations or seeking mental health treatment. The ICW worker also noted that Mother was not attending any mental health services and had not yet completed a substance abuse assessment. Further, the ICW worker noted Mother had been arrested on September 1, 2021, for public intoxication and possession of drug paraphernalia. According to the ICW worker, Mother received a deferred sentence for those charges and was released from jail on November 9, 2021. She was then arrested on November 11, 2021 for assault and battery and was currently in custody in the McCurtain County Jail.

Additionally, the ICW worker noted that Mother had not reinitiated domestic violence services and was still not attending counseling services as required by the ISP. The ICW worker noted Mother had been unable to complete parenting education as required by the ISP. The ICW worker reported that Mother had been in jail the majority of the past two months and did not have stable housing or employment.

On November 29, 2021, the ICW worker submitted a confidential report and recommendations to the district court. On December 6, 2021, the district court held a permanency hearing and set a termination hearing for January 13, 2022. The termination hearing was later continued to February 7, 2022.

On February 7, 2022, the district court terminated Chelsea Louise Smith's parental rights. The district court heard testimony from the ICW worker and from Ms. Smith. The court found that Mother had failed to correct the condition that led to the deprived adjudication and that Mother had been given at least three months to correct the condition in violation of CNCC § 1-4-904(B)(5). Further, the court found that Mother has a diagnosed cognitive disorder or mental/behavioral health condition rendering her incapable of adequately and appropriately exercising her parental rights, duties, and responsibilities and that allowing Mother to have custody would cause actual harm to the children in violation of CNCC § 1-4-904(B)(13). The district court found by clear and convincing evidence that the termination of Mother's parental rights was in the best interest of the children.

Ms. Smith filed a notice of appeal on February 16, 2022, raising claims of (a) insufficient evidence to terminate parental rights, and (b) ineffective assistance of counsel. On April 14, 2022, the district court clerk completed the record for appeal.

II. ANALYSIS

A. Clear and convincing evidence

Mother raises a challenge to the termination of her parental rights based on "insufficient evidence presented to terminate Mother's parental rights." Appellant's Br. 6–11. This is essentially a challenge that the evidence in the record is insufficient to meet the clear and convincing evidence standard.

In parental termination cases, the Choctaw Nation bears the burden to show by clear and convincing evidence that the children's best interest is served by the termination of parental rights and that Section 1-4-904 requirements have been

met. *See In re J.L.O.*, 2018 OK 77, ¶ 29; *In re S.B.C.*, 2002 OK 83, ¶ 5.¹ Clear and convincing evidence is the degree of proof that produces a firm belief or conviction as to the truth of the allegation in the mind of the trier of fact. *See In re J.L.O.*, 2018 OK 77, ¶ 29. Appellate review of a termination of parental rights must show that the record contains clear and convincing evidence to support the district court's decision. *Id.* Therefore, we review *de novo*. *See id.*; *In re S.B.C.*, 2002 OK 83, ¶ 7.

The district court terminated Mother's parent rights under CNCC § 1-4-904(B)(5) and § 1-4-904(B)(13). Those sections provide:

(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 conditions 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 . . .

13. A finding that all of the following exist:

- a. the parent has a diagnosed cognitive disorder, an extreme physical incapacity, or a medical condition, including behavioral health, which renders the parent incapable of adequately and appropriately exercising parental rights, duties, and responsibilities within a reasonable time considering the age of the child, and
- b. allowing the parent to have custody would cause the child actual harm or harm in the near future.

A parent's refusal or pattern of noncompliance with treatment therapy, medication, or assistance from outside the home can be used as evidence that the parent is

¹ While Oklahoma state courts and certain federal court decisions are not binding on the courts of the Choctaw Nation, we look to those decisions as persuasive authority for cases involving termination of parental rights where Choctaw Nation decisions on the topic do not exist.

incapable of adequately and appropriately exercising parental rights, duties, and responsibilities.

A finding that a parent has a diagnosed cognitive disorder, an extreme physical incapacity, or a medical condition, including behavioral health or substance dependency shall not in and of itself deprive the parent of parental rights

CNCC § 1-4-904(B)(5), (13).

DHS removed C.S. from Mother's care in 2017. Choctaw Nation ICW become involved in June 2020 when C.S. assaulted one of her state-appointed guardians and went inpatient. According to the record, at that time Mother was in jail for stabbing an individual. C.S. had previously disclosed to a social worker that Mother beat C.S. with hangers, shoes, and belts. Also at that time C.S. had threatened to kill herself and others and had been inpatient due to suicidal and homicidal ideation. She has now been out of Mother's care for approximately five years.

Choctaw Nation removed L.S.M. from Mother's care in December 2021, removing him from the hospital after his birth due to the child testing positive for methamphetamine and amphetamine. The Mother also tested positive for the same substances. Mother was served with notice of the adjudication hearing in February 2021 but failed to appear. L.S.M.'s case was consolidated with C.S.'s case in February 2021. L.S.M. has been out of Mother's care for his entire life.

1. *Failure to correct the conditions that led to removal*

As documented by the district court and ICW, the conditions that led to removal of the children included mental health issues, substance abuse, physical abuse of C.S., homelessness, lack of secure income, domestic violence, and criminal activity. The ISP, which mother agreed to, set the following conditions for correcting the conditions leading to removal: (a) substance abuse assessment, participation in substance abuse services, and random drug testing, (b) domestic violation education services and plan to prevent future domestic violence exposure; (c) individual counseling and parenting education to address physical abuse; (d) a psychological evaluation and counseling for mental health issues; (e) abstaining from criminal behavior and reporting to ICW when she has been in contact with law enforcement; and (f) appropriate housing and verifiable source of income for safe and stable housing issues. Tr. 6–8.

The Choctaw Nation Children's Code allows at least three months to correct these conditions. CNCC § 1-4-904(B)(5). At the time of the removal hearing, Mother had had nineteen months to correct these conditions. Tr. 14. The record is clear Mother

has failed to complete many of the ISP conditions required to correct the conditions leading to removal. Specifically, she did not complete a substance abuse assessment or participate in services based on the recommendations flowing from the assessment. Tr. 7. She did not complete a counseling program to address physical abuse. Tr. 11. She did not complete or even attend any mental health counseling or substance abuse counseling. *Id.* She was involved with law enforcement but did not report such events to her ICW worker as required. Tr. 11–12. She did not obtain safe and stable housing or verifiable income sources. Tr. 12. Additionally, she tested positive for controlled substances multiple times.

The record demonstrates Mother's disregard for the ISP and lack of concern for reunification with her children until the date of the termination hearing. She never completed several of the ISP conditions, she continued to have incidents with law enforcement that she did not report to ICW. She has not maintained housing or a verifiable source of income.

Mother argues that failure to complete the ISP itself is not a ground for termination of parental rights. Appellant Br. 8. In this case, we disagree. The ISP conditions flowed directly from the conditions leading to the deprived adjudication of the children. While failure to complete ISP conditions may not always be sufficient to comply with Section 1-4-904(B)(5), here Mother's failure to complete multiple conditions which directly led to the deprived adjudications brings those failures directly in line with the requirements of Section 1-4-904(B)(5). *See Anderson v. State (In re A.A.)*, 2019 OK 34, ¶ 16 ("Although Father correctly argues that failure to comply with the ISP alone is not grounds for termination; failure to correct conditions that led to deprived adjudication, however, may lead to termination of parental rights.").

Moreover, the statute only requires three months' time for Mother to correct the conditions that led to the deprived adjudications. Yet, here, Mother had failed to correct those conditions for nineteen months on the date of the termination hearing. The statute does not require giving Mother infinite time and leeway to correct the conditions leading to the deprived adjudications, mental health issues, substance abuse, physical abuse, homelessness, lack of secure income, and criminal activity. These documented failures constitute sufficient proof to show by clear and convincing evidence that Mother's parental rights should be terminated for her failure to correct the conditions leading to the deprived adjudication of the children. *See, e.g., Anderson*, 2019 OK 34, ¶ 22 (affirming termination of parental rights where parent neglected to comply with service plan conditions for two years).

The documented activities of Mother during the life of this case also demonstrate that sufficient evidence existed for the district court to find termination in the best interests of the children. Such evidence includes her failure to notify ICW about law enforcement encounters or about her pregnancy with L.S.M. as does her failure to

attend counseling services or to find adequate housing or income to support the children.

2. *Identification of precise conditions*

Mother also argues that the district court should have identified the precise conditions Mother failed to correct for reunification. Appellant's Br. 9. Mother's contention that the district court is required to identify such precise conditions in its order is not correct. Mother relies for that argument on a state court decision in which the jury instructions did not precisely identify the uncorrected conditions and the ISP report was also unclear on what those conditions were. *State ex rel. Dep't of Human Servs. v. Jones* (In re T.T.S.), 2015 OK 36, ¶ 16. We find the better rule to be that where the termination hearing is not submitted to a jury, it is sufficient that Mother received sufficient notice of the conditions. See *Matter of Children M.B., J.R. and M.B.*, 2010 OK CIV APP 41, ¶ 10 ("We reject Mother's claim that the trial court's order must precisely detail each of the conditions that was not corrected. No Oklahoma Supreme Court case mandates such detail."); *Giles v. State* (In re E.G.), 2010 OK CIV APP 34, ¶ 7 ("Mother's argument is unpersuasive because there is no Oklahoma Supreme Court precedent mandating such precise detail in Orders terminating parental rights for failure to correct conditions, particularly where the record clearly demonstrates that the parent was provided adequate notice of the conditions requiring correction throughout the adjudication and termination proceeding. Of course, due process requires sufficient notice to the parent of the specific conditions which the law requires to be changed. Here, the specific conditions were articulated in the treatment plan which was acknowledged and approved by Mother, court-approved and adopted by the court as the judicially ordered norms of conduct.").

The district court found by clear and convincing evidence that Mother failed to correct the condition that led to the deprived adjudication of the child and the parent has been given at least three months to correct the condition. Order 1 (Feb. 7, 2022). The record, including Mother's testimony, demonstrate that she understood the required conditions. She agreed to the ISP and had nineteen months to correct the conditions. Further, the ICW worker maintained regular contact with Mother and guided her through the requirements necessary to correct the conditions that led to the deprived adjudications. So long as the court order identifies that conditions were not corrected and the record demonstrates that the parent had notice of the requirements to correct the conditions, the court order cannot be insufficient to support a termination order.

3. *Diagnosed cognitive disorder and harm*

Mother contends that there was insufficient evidence to support the finding that she has a diagnosed cognitive disorder rendering her incapable of adequately and

appropriately exercising parental rights, duties, and responsibilities within a reasonable time. CNCC § 1-4-904(B)(13). We agree. Although there is sufficient evidence that allowing Mother custody of the children would cause the children actual harm or harm in the near future as required by Section 1-4-904(B)(13)(b), there was no evidence of a diagnosed cognitive disorder as required by Section 1-4-904(B)(13)(a) other than the testimony of the ICW worker. The same standards apply to a bench trial. The psychological evaluation diagnosing Mother with substance use disorder and bipolar disorder with psychotic features was not admitted into evidence. Tr. 20.

Without sufficient evidence to support a diagnosed cognitive disorder, the district court cannot find by clear and convincing evidence that the requirements of Section 1-4-904(B)(13) have been satisfied. Had this case been tried to a jury, the jury would have been unable to find a confirmed diagnosed cognitive disorder unless it relied solely on the testimony of the ICW worker. Tr. 18. Mother's testimony demonstrates that she did not understand her alleged diagnosis and did not admit to substance abuse disorders or bipolar disorder with psychotic features. Tr. 40. Something as important as a statutorily required diagnosis cannot be based solely on the testimony of an ICW worker when the natural parent does not admit to having been diagnosed with the disorder. Clear and convincing evidence is the standard. Such testimony alone does not rise to the level of clear and convincing.

The Choctaw Nation failed to prove by clear and convincing evidence that Mother had a diagnosed cognitive disorder. The Nation, therefore, did not satisfy the requirements of Section 1-4-904(B)(13) and Mother's parental rights should not have been terminated on that basis. Nevertheless, because the Choctaw Nation satisfied the requirements of Section 1-4-904(B)(5), as discussed above, this holding will not overturn the decision of the district court terminating Mother's parental rights.

B. Ineffective assistance of counsel

Mother claims ineffective assistance of trial counsel. We perform a *de novo* review on procedural due process claims from a termination of parental rights. *See In re J.L.O.*, 2018 OK 77, ¶ 35; *In re A.M. & R.W.*, 2000 OK 82, ¶ 6. Parents have the right to effective assistance of counsel in proceedings terminating parental rights. CNCC § 1-4-306(A)(1)(a); *see also In re J.L.O.*, 2018 OK 77, ¶ 35; *In re T.M.H.*, 1980 OK 92, ¶ 7; *In re D.D.F. & S.D.F.*, 1990 OK 89, ¶ 15.

To warrant reversal, Mother 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. *See Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984).

The proper measure of attorney performance is reasonableness under prevailing professional norms. *Id.* at 688; *In re J.L.O.*, 2018 OK 77, ¶ 36. Judicial scrutiny of trial counsel's performance is highly deferential; every effort must be made to avoid hindsight, and the Court must indulge a strong presumption that counsel's conduct falls within the range of reasonable assistance. *Strickland*, 466 U.S. at 689; *In re J.L.O.*, 2018 OK 77, ¶ 36. Mother "must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Strickland*, 466 U.S. at 689; *In re J.L.O.*, 2018 OK 77, ¶ 36. If Mother shows that counsel erred unreasonably, she must next show a reasonable probability exists that the result of the proceeding would have been different without the error. *Strickland*, 466 U.S. at 694.

Mother claims she received deficient assistance, citing a lack of objections by trial counsel to lay witness testimony by the ICW worker regarding "taking classes to psychological evaluations." Appellant's Br. 11. Mother's only citation to the transcript for evidence of improper testimony of the record, Tr. 18–19, reveals testimony based on the ICW worker's personal experience and knowledge and reading from Mother's psychological evaluation.

The record reveals that trial counsel did in fact object to such testimony in at least one instance. Trial counsel objected to a question regarding Mother's behavioral health condition. Tr. 22. The district court overruled this objection on the basis that the ICW worker testifying had worked with Mother for nineteen months. *Id.* Trial counsel also objected to the introduction of Mother's psychological evaluation, which objection the district court sustained. *Id.* at 20. Other testimony by the ICW worker to which trial counsel did not object could have fairly been considered by the Judge based on the ICW worker's position, experience, and direct work with Mother in this case. Trial counsel's decision not to object could easily be regarded as sound trial strategy.

It is not clear that an objection to such testimony would have resulted in the district court sustaining the objection. What is clear, is that even if an objection to portions of the ICW worker's testimony had been sustained, the outcome would not have changed. The record is replete with Mother's failures to address the conditions leading to the deprived adjudication of the children.

Mother also claims trial counsel did not call any witnesses to support the conditions in the ISP that Mother had completed. Appellant's Br. 11. The only portion of the transcript cited for this argument pertains to the psychological evaluation, as to which all parties agreed Mother had completed. Appellant's Br. 11; Tr. 23–25, 48. Deciding not to call witnesses to confirm a fact that all parties agree on simply cannot be ineffective assistance of counsel.

Even assuming Mother intended the argument to apply to uncited portions of the transcript involving completion of conditions that the ICW worker did not have direct proof of Mother completing (stable employment, parenting education, and substance abuse conditions), the argument that trial counsel's decision not to introduce certain witnesses also fails. There is no indication that any such witnesses were available or that it was even true that Mother had in fact completed such conditions. The completion of such conditions was based entirely on Mother's word. Tr. 10 (substance abuse), 13, 28, 31 38, 39, and 45 (parent education), and 13 and 42 (stable employment). While it would be concerning if trial counsel had available proof those conditions had been completed and chose not to introduce it, Mother did not object to trial counsel's failure to introduce witnesses on those specific conditions. And such witnesses may not have in fact been available because Mother may not have been telling the truth about her fulfillment of those conditions. If documentary evidence existed proving Mother's claims on completion of those conditions, she could have provided it to the ICW worker. She did not do so. We cannot say trial counsel's decision not to provide unavailable evidence or testimony amounts to ineffective assistance of counsel.

Regardless, even assuming Mother did complete those conditions, sufficient evidence exists in the record to establish by clear and convincing evidence that Mother failed to correct other conditions that led to the deprived adjudication.

It is true that where a party's counsel takes no action, the result is a constructive denial of effective assistance of counsel. *See In re N.L.*, 2015 OK CIV APP 24, ¶ 19 (citing *Young v. State*, 1994 OK CR 84, ¶ 9). But here the record shows trial counsel was quite active during the hearing, making specific objections, at least one of which the district court sustained. Without more specific ineffectiveness claims, we cannot find trial counsel erred, let alone that the result of the proceeding would have likely been different.

Mother fails to show how trial counsel's actions were not reasonable *or* that trial counsel's performance prejudiced her, such that but for the alleged errors the result would have been different. *Strickland*, 466 U.S. at 694. Counsel's strategic choices were within the range of professionally reasonable judgment. Mother's failure to show deficient performance and sufficient prejudice defeats her ineffectiveness claim.

CONCLUSION

We find sufficient evidence existed in the record to terminate Mother's parental rights. The evidence was clear and convincing that it was in Children's best interest to terminate Mother's parental rights. Finally, trial counsel for Mother was effective. We find the district court did not err in its judgment granting the Choctaw

Nation's Motion to Terminate Parental Rights and hereby affirm. We remand to the district court for permanency proceedings.

ORDER OF THE DISTRICT COURT IS AFFIRMED.

Per Curiam