

2025 OK 25

**IN THE MATTER OF F.B., Alleged deprived
child,**

**GLEND A BHUIYAN, Appellant,
v.
STATE OF OKLAHOMA, Appellee.**

No. 121659

Supreme Court of Oklahoma

April 15, 2025

Mother's parental rights were terminated after a nonjury trial at which she failed to appear. Mother appealed and the Court of Civil Appeals, Division III, affirmed. We granted certiorari, vacate the Court of Civil Appeals opinion, and remand to the trial court.

Evan Humphreys, The Law Office of Evan Humphreys, Guymon, Oklahoma, for Appellant Bhuiyan

Kimberly Jantz, Jeffrey Neise, Tulsa County District Attorney Office, Tulsa, Oklahoma, for State of Oklahoma

OPINION

KUEHN, V.C.J.

¶1 The State moved to terminate Mother's parental rights, and a jury trial was set. Mother failed to appear for her jury trial. The trial court found that her failure to appear constituted a waiver of jury trial under Title 10A, Section 1-4-502. Over counsel's objection, the trial court held a nonjury trial in accordance with the statute, and Mother's rights were terminated. The Court of Civil Appeals affirmed. Mother claims the statute on which the trial court and COCA relied is unconstitutional. We vacate the COCA opinion. We find that the statute is constitutional, and remand to determine whether the record shows Mother had notice of the waiver provision.

FACTS

¶2 The child was born in August 2019. Initially, both the appellant (Mother) and the child's father shared custody. However, due to Mother's methamphetamine addiction, Child was frequently exposed to domestic violence, creating a chaotic home environment. In May 2022, the then 3-year-old was placed in emergency custody under the Department of Human Services (DHS). Although Mother entered an inpatient treatment program, she left shortly after and reunited with Father. As a result, the State filed a petition to have the child adjudicated as deprived. Mother agreed to the petition, and on June 30, 2022, the court officially determined the child to be deprived.

¶3 Mother was accepted into the Tulsa County Family Court Treatment Program (FTC) in August 2022. Her Individualized Service Plan, with the conditions she must correct to regain custody of Child, was adopted by the trial court. As the trial court observed, Mother has entered inpatient treatment at least six times since the case began. However, in each instance, she stayed only a few days, never exceeding two weeks. The record indicates that several of these short stays occurred around court dates that Mother missed. She often sought inpatient rehabilitation just before a court date but left the facility once the date had passed. Additionally, she frequently missed the weekly Family Treatment Court (FTC) check-ins, failed to complete urinalysis tests, and consistently failed to comply with her treatment program. As a result of her noncompliance, Mother was discharged from the FTC in January 2023.

¶4 The State filed a motion to terminate Mother's parental rights on April 19, 2023, alleging she failed to correct the conditions that had resulted in Child's deprived adjudication. A jury trial was set for August 28, 2023, but Mother failed to appear. Her attorney told the trial court she had been admitted for inpatient treatment two days before, and asked for a continuance of the jury trial. However, Mother's DHS caseworker testified that the week before the trial, during visitation with Child, Mother said she planned to check herself into an inpatient treatment center in a "last ditch effort"

to postpone the trial. [8/28/23 Hearing at 27].

¶5 The trial court found that, according to statute, by failing to appear Mother had waived her right to jury trial, and converted the proceeding to a nonjury trial over her attorney's objections. The trial court terminated Mother's parental rights, finding she had failed to correct the conditions causing Child to be deprived and that termination was in Child's best interests. Mother appealed, and COCA affirmed.

STANDARD OF REVIEW

¶6 Mother claims the trial court's finding that she waived her jury trial violated her right to due process. We review this claim *de novo*. *In the Matter of A.M. & R.W.*, 2000 OK 82, ¶ 6, 13 P.3d 484, 486-87. In doing so, we determine whether the trial court's decision was an abuse of discretion. *In the Matter of E.J.T.*, 2024 OK 14, ¶ 17, 544 P.3d 950, 957.

ANALYSIS

Mother Has a Constitutional Right to a Jury Trial

¶7 A parent has a constitutionally protected fundamental liberty interest in the bond with a child. *A.M. & R.W.*, 2000 OK 82, ¶ 6, 13 P.3d at 487; *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982). Parental rights "must be strenuously protected" by ensuring a parent's fundamental due process rights are preserved when the State seeks to destroy that bond. *In the Matter of the Adoption of L.B.L.*, 2023 OK 48, ¶ 11, 529 P.3d 175, 180. Among those fundamental protections is the right to trial by jury.

¶8 In 1969, the Oklahoma Constitution was amended to provide for a right to jury trial in juvenile proceedings. Okla. Const. art. 2, § 19. Interpreting this language, this Court determined in 1987 that parents have a constitutional right to jury trial in proceedings to terminate parental rights. *A.E. v. State*, 1987 OK 76, ¶ 22, 743 P.2d 1041, 1048. We recognized the final and vital nature of termination of parental rights: "the unmitigated cessation of all

natural and legal rights the parent has in his/her child, and a permanent parting of all bonds linking parent to child." *Id.* at ¶ 20, 743 P.2d at 1047 (footnote omitted). Given the importance of the right at stake, we found it could only be surrendered by consent or waiver. *Id.* at ¶ 22, 743 P.2d at 1048.

¶9 The Legislature subsequently codified this right to jury trial in Title 10A, Section 1-4-502. Initially, the statute merely afforded parents the opportunity to demand a jury trial. By 2011, the statute provided: "A party who requests a jury trial and fails to appear for such trial, after proper notice and without good cause, may be deemed by the court to have waived the right to be present at such trial." *See, e.g.*, 10A O.S.2011 § 1-4-502 (2). This Court interpreted this language in *In the Matter of H.M.W.*, 2013 OK 44, 304 P.3d 738. Father was in prison when his children were adjudicated deprived, and the State sought to terminate Father's parental rights. He requested a jury trial. Father refused a writ of habeas corpus to attend a jury trial, his lawyer requested that he have a jury trial *in absentia*, the trial court denied the request, and his rights were terminated in a nonjury trial. *Id.* at ¶ 1, 304 P.3d at 739-40. This Court concluded that the entire statutory scheme read together preserved Father's right to a jury trial; where a parent requested a jury trial, and counsel was present and specifically asked for a jury trial *in absentia*, failure to appear did not constitute waiver of a right to jury trial. *Id.* at ¶¶ 6-7, 304 P.3d at 740-41. Our analysis focused on the phrase providing that a failure to appear signified waiver of the right *to be present*. Because policy and precedent clearly protected a parent's right to a jury trial, we strictly construed the legislation in favor of the right. *Id.* at ¶ 13, 304 P.3d at 741.

¶10 Subsequently the Legislature amended Section 1-4-502 to specifically address the consequences of a parent's failure to appear for jury trial in cases terminating parental rights. The relevant section now reads:

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, and the termination of parental rights shall be by nonjury trial unless another party demands a jury trial or the court determines on its own motion to try the case to a jury.

10A O.S. § 1-4-502 (B).

¶11 Although Mother argues that these clauses essentially say the same thing, they do not. *H.M.W.* found that the phrase "right to be present" meant that, where counsel requested it, a litigant was entitled to a trial *in absentia*. *H.M.W.*, 2013 OK 44, ¶ 7, 304 P.3d at 740-41. But the amendment explicitly rejects that conclusion. It mandates that upon a finding that a parent waived jury trial by failing to appear, the proceeding *shall be* by nonjury trial. While the amendment leaves open the possibility that a trial court may conduct a jury trial despite the failure to appear, the new language leaves no room for a trial *in absentia*.

The Statutory Waiver Provision is Constitutional

¶12 Mother argues that this statutory provision -- authorizing a finding that she waived her right to jury trial by failing to appear -- violates her right to due process. COCA did not substantively address this constitutional claim.

¶13 The right to jury trial may be waived. *In the Matter of J.L.O.*, 2018 OK 77, ¶ 22, 428 P.3d 881, 889; *A.E. v. State*, 1987 OK 76, ¶ 22, 743 P.2d 1041, 1048. Waiver is "an intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). Waiver of a constitutional right such as the right to jury trial must be voluntary, knowing and intelligent, "with sufficient awareness of the relevant circumstances and likely consequences." *United States v. Ruiz*, 536 U.S. 622, 629 (2002) (*quoting* *Brady v. United States*, 397 U.S. 742, 748 (1970)); *see also* *J.L.O.*, 2018 OK 77, ¶ 22, 428 P.3d at 889 (waiver must be competent, knowing, and

intelligent). Thus, a key component of waiver is notice.

¶14 We must interpret every statute to give effect to the legislative intent and purpose expressed in its language. *Magnum Energy Inc. v. Bd. Of Adjustment for City of Norman*, 2022 OK 26, ¶ 8, 510 P.3d 818, 820. The Oklahoma Children's Code is designed to protect children who may be abused or neglected, or whose welfare is threatened. 10A O.S. 1-1-102(A)(3). In furtherance of this goal, the Code provides "expeditious and timely judicial and agency procedures for the protection" of such a child. 10A O.S. 1-1-102(B)(2). When the Legislature provided for jury trial in cases involving termination of parental rights, it specified an accelerated timeline -- a scheduling order within 30 days, and jury trial to commence within six months of that order, unless the court issued a written order with findings of fact explaining the exceptional circumstances supporting a delay, or unless the parties all agreed to a continuance past six months. 10A O.S. 1-4-502(B). In this context, the Legislature established that if a parent fails to appear for a jury trial, the trial court may treat that absence as a waiver of the right to a jury trial. This provision is designed to support the Legislature's goal of ensuring these cases are resolved quickly and efficiently.

¶15 But Section 1-4-502(B) does not mandate waiver of the right to jury trial. Rather, it allows a trial court to determine (a) whether a failure to appear constitutes such a waiver, and (b) whether even in the face of that finding, a jury trial should be held. 10A O.S. § 1-4-502 (B). If there is a finding of waiver but the trial court does not conclude a jury trial must be held, only then does the statute require the case to proceed by nonjury trial. The permissive statutory language ("may be deemed") shows the legislature intended the trial court to exercise its discretion in considering whether a parent waived her right to jury trial. Such an exercise of discretion may include consideration of the record, the trial court's own knowledge and experience of the case to that date, and any arguments or explanations offered by a parent or counsel -- all of which the record shows the

trial court considered here. This argues against any interpretation that a finding of waiver is mandatory upon a failure to appear.

¶16 We presume a statute is constitutional "unless it is clearly, palpably and plainly inconsistent with the Constitution." *Hill v. American Medical Response*, 2018 OK 57, ¶ 8, 423 P.3d 1119, 1124. If more than one interpretation is possible, we must interpret the statute so as to "render it constitutional, unless constitutional infirmity is shown beyond a reasonable doubt." *Lee v. Bueno*, 2016 OK 97, ¶ 7, 381 P.3d 736, 740. And we will not presume the Legislature to have done a vain thing. *Frank Bartel Transportation v. State ex rel. Murray State College*, 2023 OK 121, ¶ 11, 540 P.3d 481, 485.

¶17 We must interpret Section 1-4-502(B) in this light. By authorizing the trial court to determine whether a parent's failure to appear waives her right to jury trial, the Legislature implicitly intended to preserve parents' right to due process inherent in that determination. Specifically, we must assume that the Legislature intended for parents affected by this provision to receive prior notice of the possibility of waiving their right to a jury trial. Although the Legislature did not provide specific language outlining how this due process right should be upheld, it is clear that a trial court cannot determine that a parent has waived their right to a jury trial due to failure to appear unless the parent was aware that their absence could result in that consequence. The Legislature intended for parents to be notified in advance of the potential waiver of their right to a jury trial. While the specifics are not outlined, it is clear that a trial court cannot find a waiver without ensuring the parent was aware their absence could result in it.

Mother was Entitled to Notice

¶18 The record filed in this Court is silent on whether Mother had notice of the possible consequences of her failure to appear for her jury trial. She may not have; she may have been informed at one of the numerous hearings preceding the trial date. We remand the case for

an evidentiary hearing in which the trial court shall determine whether Mother received the explanation due to her, which could have informed her decision to fail to appear for trial. Within thirty (30) days, the trial court shall hold the hearing and make this determination; the court shall subsequently file findings of fact and conclusions of law in this Court within fifteen (15) days of the hearing.

Conclusion

¶19 When the State seeks to terminate parental rights, the parent has a right to a jury trial. That right may be waived. To protect the affected children and provide timely and expeditious resolution of these cases, the Legislature has provided that, should a parent request a jury trial and fail to appear for it, the trial court may deem that failure to appear to be a waiver of the right to jury trial; if no other party requests a jury trial and the trial court does not find one should occur, the trial court must proceed with a nonjury trial. We find this statutory provision constitutional. However, due process requires that the record must reflect the parent received notice of the possible consequences of her failure to appear.

¶20 The record before this Court is silent as to whether Mother received notice. The case is remanded for an evidentiary hearing, to be held within 30 (thirty) days of this Opinion, as to whether Mother received sufficient notice to preserve her right to due process. The trial court shall submit findings of fact and conclusions of law to this Court within fifteen (15) days after the hearing. Upon receipt of the trial court's findings and conclusions, this Court will resolve the appeal.

CERTIORARI PREVIOUSLY GRANTED;
COURT OF CIVIL APPEALS' OPINION
VACATED; CASE REMANDED TO TRIAL COURT

CONCUR: ROWE, C.J., KUEHN, V.C.J.,
and WINCHESTER, EDMONDSON, GURICH and
KANE, JJ.

CONCUR IN PART and DISSENT IN
PART: Darby, J.

DISSENT: COMBS, J.

COMBS, J., dissenting:

¶ 1 Although I agree with the majority's conclusion that "a trial court cannot find a waiver without ensuring the parent was aware their absence could result in it" and "cannot determine that a parent has waived their right to a jury trial due to failure to appear unless the parent was aware that their absence could result in that consequence," Majority Op. ¶ 17, I disagree with the majority's determination that section 1-4-502(B) of the Oklahoma Children's code is constitutional, *see id.* ¶ 19. Section 1-4-502(B) allows a parent to "be deemed by the court to have waived the right to [a] jury trial" just because they knew the date of such jury trial and failed to show up; it does not require any inquiry into whether the parent knew the consequence of failing to show up. In other words, without evidence regarding the

voluntary, knowing, and intelligent nature of an actual waiver by the parent, the trial court can merely "deem" ^[1] the waiver of a constitutionally protected right into existence. Such action denies the parent's due process rights and must therefore fail constitutional scrutiny. For that reason, I would find section 1-4-502(B) unconstitutional and would reverse the trial court's order terminating parental rights and remand the matter back to the trial court for further proceedings. Thus, I respectfully dissent.

Notes:

^[1] *Black's Law Dictionary* defines the term "deem" as "[t]o treat (something) as if (1) it were really something else, or (2) it has qualities that it doesn't have ." Deem, *Black's Law Dictionary* 425 (7th ed. 1999).
