



In The

# **Eleventh Court of Appeals**

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**No. 11-15-00332-CV**

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**IN THE INTEREST OF G.M. III AND P.C.M., CHILDREN**

**And**

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**No. 11-15-00333-CV**

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**IN THE INTEREST OF D.M.C., A CHILD**

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**On Appeal from the 318th District Court  
Midland County, Texas  
Trial Court Cause Nos. FM58,042 & FM59,531**

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## **MEMORANDUM OPINION**

These are appeals from two orders in which the trial court terminated the parental rights of the mother and the fathers of G.M. III, P.C.M., and D.M.C. The mother timely filed notices of appeal. In ten issues in each appeal, she challenges the legal and factual sufficiency of the evidence to support termination. We affirm.

The termination of parental rights must be supported by clear and convincing evidence. TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2015). To determine if the evidence is legally sufficient in a parental termination case, we review all of the evidence in the light most favorable to the finding and determine whether a rational trier of fact could have formed a firm belief or conviction that its finding was true. *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005). To determine if the evidence is factually sufficient, we give due deference to the finding and determine whether, on the entire record, a factfinder could reasonably form a firm belief or conviction about the truth of the allegations against the parent. *In re C.H.*, 89 S.W.3d 17, 25–26 (Tex. 2002). To terminate parental rights, it must be shown by clear and convincing evidence that the parent has committed one of the acts listed in Section 161.001(b)(1)(A)–(T) and that termination is in the best interest of the child. FAM. § 161.001(b).

With respect to the best interest of a child, no unique set of factors need be proved. *In re C.J.O.*, 325 S.W.3d 261, 266 (Tex. App.—Eastland 2010, pet. denied). But courts may use the non-exhaustive *Holley* factors to shape their analysis. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). These include, but are not limited to, (1) the desires of the child, (2) the emotional and physical needs of the child now and in the future, (3) the emotional and physical danger to the child now and in the future, (4) the parental abilities of the individuals seeking custody, (5) the programs available to assist these individuals to promote the best interest of the child, (6) the plans for the child by these individuals or by the agency seeking custody, (7) the stability of the home or proposed placement, (8) the acts or omissions of the parent that may indicate that the existing parent–child relationship is not a proper one, and (9) any excuse for the acts or omissions of the parent. *Id.* Additionally, evidence that proves one or more statutory grounds for termination

may also constitute evidence illustrating that termination is in the child's best interest. *C.J.O.*, 325 S.W.3d at 266.

After calling both cause numbers for trial and conducting a single bench trial on termination, the trial court found in each cause that the mother had committed four of the acts listed in Section 161.001(b)(1)—those found in subsections (D), (E), (N), and (O). Specifically, the trial court found that the mother had knowingly placed or knowingly allowed the children to remain in conditions or surroundings that endangered the children's physical or emotional well-being; that the mother had engaged in conduct or knowingly placed the children with persons who engaged in conduct that endangered the children's physical or emotional well-being; that the mother had constructively abandoned the children; and that the mother had failed to comply with the provisions of a court order that specifically established the actions necessary for her to obtain the return of the children, who had been in the managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the children's removal from the parent for abuse or neglect. The trial court also found, pursuant to Section 161.001(b)(2), that termination of the mother's parental rights would be in the best interest of the children.

The records show that the Department had previously been involved with the mother and her children and that, at the time this case was initiated, the children were between the ages of seven and thirteen years old. The intake allegations related to, among other things, the mother's use of drugs and her neglectful supervision of the children. One of the children reported ongoing drug use within the household and in the "compound" where they lived. The mother had a history with the Department that involved drug use, physical abuse by her boyfriend, and an inability to care for her children. Even though the children were originally removed in part due to the mother's drug use, the mother continued to use methamphetamine during the

pendency of this case. Also while this case was pending, the mother was arrested for forgery. She remained incarcerated at the time of the final hearing but was permitted to appear in person at that hearing.

Prior to the removal of the children, the mother and her children had stayed at various residences. At one of those, the home of a friend, domestic violence was committed in the presence of the children. The mother's stepfather lived in another home in which they stayed. He had previously been convicted of sexually assaulting the mother's oldest child. That child is not one of the three children involved in this case. Prior to her incarceration, the mother did not have a stable home, and she failed to maintain suitable employment. She stayed with friends, including one that was arrested with her. Although the mother completed some of the services required by the trial court and contained in her family service plan, she failed to complete others. Importantly, she failed to maintain contact with the Department, and she saw the children only one time in fourteen months. The mother even failed to appear for scheduled telephone visits.

The Department's goal for the children was termination of the parents' rights, with D.M.C. to remain permanently with a paternal aunt and the other two children to be adopted by a paternal aunt. The children had been placed with their respective aunts prior to the final hearing and were doing well in those placements. The aunts' homes were described by the CASA case supervisor as good, supportive, safe, and stable. A conservatorship supervisor with the Department testified that termination of the mother's parental rights would be in the best interest of all three children. A CASA case supervisor testified similarly. D.M.C. expressed a desire to continue to have a relationship with her mother, but she is happy staying with her aunt and has expressed no desire to live with her mother. G.M. III and P.C.M. wish to remain with their aunt "forever."

The record contains clear and convincing evidence that the mother had engaged in conduct or knowingly placed the children with persons who engaged in conduct that endangered the children’s physical or emotional well-being—as found by the trial court pursuant to subsection (E) of Section 161.001(b)(1). The arguments contained in the mother’s briefs relate to the children’s best interest and to subsection (O). In her briefs, the mother did not dispute that she engaged in conduct or knowingly placed the children with persons who engaged in conduct that endangered the children’s physical or emotional well-being, and she failed to set forth any argument related to the sufficiency of the evidence under subsection (E). The evidence is undisputed that the mother abused methamphetamine and that she exposed the children to drug use and domestic violence. Consequently, we hold that the evidence is legally and factually sufficient to support the trial court’s finding in each cause under Section 161.001(b)(1)(E).

We overrule the mother’s fifth and sixth issues in each appeal. Because a finding that a parent committed one of the acts listed in Section 161.001(b)(1)(A)–(T) is all that is required and because we have held that the evidence is sufficient to support the trial court’s finding in each cause under subsection (E), we need not address the mother’s third, fourth, seventh, eighth, ninth, and tenth issues in which she challenges the findings made pursuant to subsection (D), (N), and (O). *See* TEX. R. APP. P. 47.1.

In her first and second issues in each appeal, the mother challenges the finding that termination of her rights would be in the best interest of her children. We hold that, based on clear and convincing evidence presented at trial and the *Holley* factors, the trial court could reasonably have formed a firm belief or conviction that termination of the mother’s parental rights would be in the best interest of the children. *See Holley*, 544 S.W.2d at 371–72. Upon considering the record as it relates to the desires of the children, as shown through the emotional and physical

needs of the children now and in the future; the emotional and physical danger to the children now and in the future; the parental abilities of the mother and the relatives with whom the children have been placed; the plans for the children by the Department; the instability of the mother's home; the stability of the children's placements; the mother's drug use; the mother's criminal history; and the acts and omissions indicating that the parent-child relationship was not a proper one, we hold that the evidence is sufficient to support the findings that termination of the mother's parental rights is in the best interest of the children. *See id.* The mother's first and second issues in each appeal are overruled.

We affirm the trial court's orders of termination.

PER CURIAM

June 16, 2016

Panel consists of: Wright, C.J.,  
Willson, J., and Bailey, J.