Opinion filed May 11, 2017

In The

Eleventh Court of Appeals

No. 11-16-00330-CV

IN THE INTEREST OF M.S., A CHILD

On Appeal from the 35th District Court
Brown County, Texas
Trial Court Cause No. CV 15-06-202

M E M O R A N D U M O P I N I O N

This is an appeal from an order in which the trial court terminated the parental rights of the mother and the father of M.S. Both parents appeal. The parents each present two issues in which they challenge the sufficiency of the evidence to support the termination of their parental rights. We affirm.

After hearing the evidence presented in a trial de novo in this case, the trial court terminated the parental rights of both parents under Section 161.003 of the Family Code and appointed the Department of Family and Protective Services as the permanent managing conservator of the child. *See* TEX. FAM. CODE ANN. § 161.003

(West Supp. 2016). Pursuant to Section 161.003(a), the trial court found that the mother and the father had a mental or emotional illness or a mental deficiency that rendered each parent unable to provide for the physical, emotional, and mental needs of the child; that the illness or deficiency, in all reasonable probability, will continue to render each parent unable to provide for the child's needs until the child's eighteenth birthday; that the Department had made reasonable efforts to return the child to the parents; and that termination would be in the child's best interest. *See id.* § 161.003(a).

In their first issue, the parents challenge the sufficiency of the evidence to support the trial court's findings that the parents have a mental or emotional illness or a mental deficiency that renders them unable to provide for M.S. In their second issue, the parents challenge the sufficiency of the evidence to support the trial court's findings that the respective parent's illness or deficiency will continue to render that parent unable to provide for M.S. until she turns eighteen. Neither parent challenges the trial court's findings as to the child's best interest.

The termination of parental rights must be supported by clear and convincing evidence. *Id.* § 161.206 (West 2014). 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).

The record shows that the Department became involved with the family when M.S. was born. At that time, the father was incarcerated, and it was apparent that

the mother was unable to take care of her baby. A placement of the baby, along with the mother, in the paternal grandmother's home was attempted. However, that situation was unworkable. The mother was not taking care of M.S., and the supervised visits revealed that the mother was not capable of taking care of M.S. The paternal grandmother believed that the mother would never be able to parent M.S. on her own.

The mother had been an MHMR client for "years"—"since [she] was in school." She has received disability checks since she was ten years old. The psychological testing of the mother revealed that the mother is mildly mentally retarded; that she has an intellectual and mental health deficiency that renders her unable to provide for the physical, emotional, nutritional, and mental health needs of her child; that those deficits will continue to render her unable to provide for her child's needs "for the indefinite future and are unlikely to be amenable to remediation"; and that the mother should not "at this time or in the future" be unsupervised with her daughter. Additionally, the conservatorship caseworker, who had previously worked for MHMR, had known the mother since the mother was in high school and did not believe that the mother would be able to raise M.S. by herself.

The father testified that he could read and write and that he had obtained a driver's license. Like the mother, the father had been an MHMR client since he was a child. He graduated from high school but was enrolled in special ed classes. The father believed that he would be a capable parent.

The father's mother indicated that she had adopted the father when he was a small child and that the father's biological mother was a low-functioning, mentally retarded MHMR client. Just before the father turned eighteen, the father's mother sought and was awarded permanent guardianship of both the person and the estate

of the father. The guardianship order indicated that the father was "totally without capacity . . . to care for himself, to manage his property and financial affairs, to operate a motor vehicle, and to vote in a public election." The father's mother continued to be the father's guardian at the time of the final hearing in this case, but she was considering "dropping the guardianship." Although the father's mother believed that the father would do everything he could do to take care of M.S., she testified that the father had a mental or emotional illness or mental deficiency and that that deficiency rendered him unable to provide for M.S.'s needs without some type of assistance.

A licensed professional counselor testified that the father continued to have problems with impulse control, fits of anger, and uncontrollable rage. The father also engaged in childlike or "magical" thinking; he was immature and not realistic. The counselor noted that, in the past, the father had had at least one psychiatric hospitalization and had also lived in a group home.

The Department produced direct, clear and convincing evidence from which the trial court could reasonably have formed a firm belief that the mother had a mental or emotional illness or a mental deficiency that rendered her unable to provide for the physical, emotional, and mental needs of M.S. and that the mother's illness or deficiency, in all reasonable probability, will continue to render the mother unable to provide for M.S.'s needs until M.S.'s eighteenth birthday. Although the evidence was less direct as to the father, the Department nonetheless produced clear and convincing evidence from which the trial court could reasonably have formed a firm belief that the father had a mental or emotional illness or a mental deficiency that rendered him unable to provide for the physical, emotional, and mental needs of M.S. and that the father's illness or deficiency, in all reasonable probability, will continue to render him unable to provide for M.S.'s needs until her eighteenth

birthday. Due to each parent's mental or intellectual deficiency, neither parent could independently parent M.S. Furthermore, neither parent lived with an appropriate adult who could supervise that parent's care of M.S. We overrule the mother's and the father's first and second issues.

We affirm the trial court's order of termination.

JIM R. WRIGHT
CHIEF JUSTICE

May 11, 2017

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