

Opinion filed May 18, 2017



In The  
**Eleventh Court of Appeals**

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No. 11-16-00344-CV

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**IN THE INTEREST OF Z.M., A.F., AND K.F., CHILDREN**

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**On Appeal from the 326th District Court  
Taylor County, Texas  
Trial Court Cause No. 8224-CX**

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**MEMORANDUM OPINION**

This is an appeal from an order terminating the parental rights of the mother and the fathers of Z.M., A.F., and K.F. The mother timely filed an appeal. In five issues on appeal, she challenges the legal and factual sufficiency of the evidence to support termination. We affirm.

*I. Termination Findings and Standards*

The termination of parental rights must be supported by clear and convincing evidence. TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2016). 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.

In this case, the trial court found that the children’s 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 their removal from the mother 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.

## *II. Evidence at Trial*

The record shows that the Department first became involved with the mother in 2003 when A.F. was born. A.F. had cocaine in his system and was going through withdrawals. Based upon various intakes throughout the years, the Department had worked with the mother and tried to help her. The intake in this case occurred on September 23, 2015, and involved medical neglect of Z.M. by the mother. Z.M. had had a seven-minute seizure at school because his mother failed to give Z.M. his medication. The Department was unable to make contact with the mother for over a month, during which time Z.M. and A.F. were absent from school; K.F. was not yet of school age. When the Department finally located the mother, she and the children were living in what the intake supervisor described as “basically a shack.” The home was extremely unsanitary, had no running water, and smelled terrible

(feces seen in the home). The children were filthy and smelled so extremely bad that “it actually was making people kind of cough and hack and near vomit.” Z.M. was not being properly medicated and had no access to his wheelchair,<sup>1</sup> which was in disrepair, and K.F. was covered with severe and swollen bug bites. The mother admitted that she had recently used drugs and believed that she would test positive for methamphetamine. The results of drug tests performed on the children caused the Department to be concerned for the children.

The evidence was uncontroverted that the mother failed to complete many of the services that were outlined in her family service plan as required by the trial court. Among other things, the mother did not obtain or maintain stable housing. Additionally, at the time of trial, the mother had not visited the children in almost eight months. The mother had a criminal history that involved drug charges, among others, and she continued to use illegal drugs while this case was pending.

The Department’s goal for all three children was termination of the parents’ rights and adoption by the foster parents. The children’s caseworker testified that termination of the mother’s parental rights would be in the children’s best interest. The children’s caseworker and their foster parents testified that the children were doing very well in their current foster-care placements and that the foster parents wished to adopt the children.

### *III. Issues Presented and Sufficiency Analysis*

In her first four issues, the mother challenges the sufficiency of the evidence to support the findings made by the trial court pursuant to subsections (D), (E), (N), and (O) of Section 161.001(b)(1), respectively. In her fifth issue, the mother challenges the best interest finding.

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<sup>1</sup>The record reflects that Z.M. was wheelchair-bound due to an incident in which he was shot in the face after a drug deal that involved the mother and another individual.

*A. Findings under Section 161.001(b)(1)*

The record contains clear and convincing evidence that the mother 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 conservatorship of the Department for more than nine months and had been removed due to abuse or neglect. The mother does not assert on appeal that she completed her services but, rather, suggests that the Department was at fault for her failure to complete the services.

The evidence is undisputed that the mother failed to obtain stable housing and failed to visit the children regularly as required by her family service plan and ordered by the trial court. Additionally, she continued to use illegal drugs, and she failed to take numerous drug tests when asked to do so. Section 161.001(b)(1)(O) does not “make a provision for excuses” for the parent’s failure to comply with the court-ordered services. *In re J.S.*, 291 S.W.3d 60, 67 (Tex. App.—Eastland 2009, no pet.) (quoting *In re T.N.F.*, 205 S.W.3d 625, 631 (Tex. App.—Waco 2006, pet. denied)). Clear and convincing evidence also reflected that the children had been removed due to abuse or neglect and that they had been in the care of the Department for over nine months. Consequently, we hold that the evidence is legally and factually sufficient to support the trial court’s finding under Section 161.001(b)(1)(O).

Furthermore, the children were originally removed due in large part to the mother’s drug use, the Department’s concern based upon the results of the children’s drug tests, the medical neglect of the children, and the condition of the children at the time of removal. Any one of these would have endangered the children. Thus, clear and convincing evidence showed 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. Consequently, we hold that the evidence is legally and factually sufficient to support the trial court's finding under Section 161.001(b)(1)(E).

We overrule the mother's second and fourth issues. 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 under subsections (E) and (O), we need not address the mother's first and third issues in which she challenges the findings made pursuant to subsections (D) and (N). *See* TEX. R. APP. P. 47.1.

*B. Best Interest of the Children*

In her final issue, 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, 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 persons seeking to adopt the children, 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 finding that termination of the mother's parental rights is in the best interest of the children. *See id.* The mother's fifth issue on appeal is overruled.

*IV. This Court's Ruling*

We affirm the trial court's order of termination.

MIKE WILLSON  
JUSTICE

May 18, 2017

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