Opinion filed September 8, 2017

In The

Eleventh Court of Appeals

No. 11-17-00070-CV

IN THE INTEREST OF I.R.H., A CHILD

On Appeal from the County Court at Law No. 2
Ector County, Texas
Trial Court Cause No. CC2-3537-PC

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

The trial court entered an order in which it terminated the parental rights of the father of I.R.H. The father appeals. On appeal, he presents three issues in which he challenges the sufficiency of the evidence. We affirm.

Termination Standards and Findings

Termination of parental rights must be supported by clear and convincing evidence. TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2016). To determine on appeal 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 Appellant committed two of the acts listed in Section 161.001(b)(1)—those found in subsections (D) and (E).

Specifically, the trial court found that Appellant had knowingly placed or knowingly allowed the child to remain in conditions or surroundings that endangered the child's physical or emotional well-being and that Appellant had engaged in conduct or knowingly placed the child with persons who engaged in conduct that endangered the child's physical or emotional well-being. The trial court also found, pursuant to Section 161.001(b)(2), that termination of Appellant's parental rights would be in the best interest of the child. Appellant challenges each of these findings in his issues on appeal.

Analysis

The Department of Family and Protective Services removed I.R.H. from her adoptive parents, Appellant and his then-wife, when I.R.H. was three years old. The removal stemmed from allegations that involved Appellant and I.R.H.'s older sisters. The allegations were that Appellant had sexually abused his biological daughter, who was sixteen years old, and stepdaughter, who was fifteen years old. The stepdaughter testified that Appellant sexually abused both girls in a hotel room while they were on a trip to Lubbock. She testified that Appellant provided them alcohol, which he insisted they drink. Appellant admitted during cross-examination that he gave them alcohol. The stepdaughter said that Appellant then proceeded to lift his daughter's shirt and "kiss[] her on the breasts" and also made the daughter touch his penis. The stepdaughter also said that Appellant tried "to touch [her] breasts." She testified that Appellant tried to watch them change into their pajamas and that he stood next to her four times while she tried to go to sleep. Finally, the stepdaughter testified that the next morning, while the three of them were driving, Appellant told them that he had a gun under his seat and that, if they talked about the events of the previous night, "something bad" would happen. The Department also introduced into evidence a surveillance video from Appellant's house showing him

inappropriately touching his daughter. Appellant admitted during his testimony that he had an anger disorder and that he threatened to kill himself and Child Protective Services workers.

The Department placed I.R.H. in her adoptive mother's home after the mother completed her service plan. I.R.H. has done well since being placed with her mother, who also has help providing care for I.R.H. from her daughter and her daughter's boyfriend. The conservatorship caseworker testified that it would be in I.R.H.'s best interest for Appellant's parental rights to be terminated. The attorney ad litem for I.R.H. informed the trial court that termination of Appellant's parental rights would be in I.R.H.'s best interest.

The record contains clear and convincing evidence that Appellant had engaged in conduct or knowingly placed the child with persons who engaged in conduct that endangered the child's physical or emotional well-being—as required to support a finding under Section 161.001(b)(1)(E). Under subsection (E), the relevant inquiry is whether evidence exists that the endangerment of the child's well-being was the direct result of the parent's conduct, including acts, omissions, or failures to act. *In re D.O.*, 338 S.W.3d 29, 33 (Tex. App.—Eastland 2011, no pet.). Additionally, termination under subsection (E) must be based on more than a single act or omission; a voluntary, deliberate, and conscious course of conduct by the parent is required. *In re D.T.*, 34 S.W.3d 625, 634 (Tex. App.—Fort Worth 2000, pet. denied); *In re K.M.M.*, 993 S.W.2d 225, 228 (Tex. App.—Eastland 1999, no pet.). The offending conduct does not need to be directed at the child, nor does the child actually have to suffer an injury. *In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009). Additionally, "[e]vidence of sexual abuse of one child is sufficient to support a finding of endangerment with respect to other children." *In re J.P.T.*, No. 14-16-00156-CV, 2016 WL 3947756, at *4 (Tex. App.—Houston [14th Dist.] July 19,

2016, pet. denied) (mem. op.) (citing *In re R.W.*, 129 S.W.3d 732, 742 (Tex. App.—Fort Worth 2004, pet. denied)). Evidence of a propensity toward violent behavior is also evidence of endangerment. *See In re J.I.T.P.*, 99 S.W.3d 841, 845 (Tex. App.—Houston [14th Dist.] 2003, no pet.).

The evidence indicated that Appellant sexually abused his daughter and his stepdaughter. Although Appellant denied that he did anything wrong and the daughter provided conflicting testimony regarding the sexual abuse, the trial court was the "sole judge of the credibility of the witnesses" and "was free to disregard any or all" of the testimony of any of the witnesses. *In re S.R.*, 452 S.W.3d 351, 365 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). The evidence also demonstrated that Appellant had anger issues and made violent threats. Thus, clear and convincing evidence supported the finding made by the trial court pursuant to subsection (E) of Section 161.001(b)(1). We hold that the evidence is legally and factually sufficient to support that finding, and we overrule Appellant's second issue. Because it must be shown that the parent has committed only one of the acts listed in Section 161.001(b)(1)(A)–(T), we need not reach the merits of Appellant's first issue. *See* TEX. R. APP. P. 47.1.

In his third issue, Appellant challenges the sufficiency of the evidence in support of the trial court's best interest finding. Based upon the *Holley* factors and the evidence in the record, we cannot hold that the trial court's best interest finding is not supported by clear and convincing evidence. *See Holley*, 544 S.W.2d at 371–72. The trial court could reasonably have formed a firm belief or conviction that it would be in I.R.H.'s best interest for Appellant's parental rights to be terminated. The evidence at trial showed that Appellant had sexually abused his teenage daughter and stepdaughter and had anger issues. The trial court could have considered these facts and concluded that termination of Appellant's parental rights

was in the best interest of I.R.H. based upon her emotional and physical needs now and in the future and upon the emotional and physical danger to I.R.H., both now and in the future. Appellant's sexual abuse of I.R.H.'s older sisters bore upon the propriety of his relationship with I.R.H. At the time of trial, I.R.H. was in a safe, appropriate placement with her adoptive mother, who was awarded permanent managing conservatorship. We hold that the evidence is both legally and factually sufficient to support the trial court's best interest finding. We overrule Appellant's third issue.

This Court's Ruling

We affirm the order of the trial court.

JOHN M. BAILEY
JUSTICE

September 8, 2017

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