Affirmed and Memorandum Opinion filed November 15, 2022.

In The

Fourteenth Court of Appeals

NO. 14-22-00377-CV

IN THE INTEREST OF O.H., A CHILD

On Appeal from the 313th District Court
Harris County, Texas
Trial Court Cause No. 2021-00604J

MEMORANDUM OPINION

Appellant A.E.M. ("Mother") appeals the trial court's final order terminating her parental rights to her child, O.H. In three issues we have reorganized, Mother argues that (1) the evidence is legally and factually insufficient to support a finding that she failed to comply with the provisions of a court order to obtain the return of O.H.; (2) the evidence is legally and factually insufficient to support a finding that termination of Mother's parental rights is in the best interest of O.H.; and (3) the trial court abused its discretion by not granting Mother's motion for continuance. We affirm.

I. BACKGROUND

On April 19, 2021, the Department of Family and Protective Services ("the Department") filed its original petition seeking the conservatorship of O.H. and the termination of Mother's parental rights to O.H.[1] The Department alleged Mother's parental rights should be terminated because Mother: (1) knowingly placed or knowingly allowed O.H. to remain in conditions that endangered the physical and emotional well-being of O.H.; (2) engaged in conduct or knowingly placed O.H. with persons who engaged in conduct which endangered the physical or emotional well-being of O.H.; (3) constructively abandoned O.H., who had been in the permanent or temporary managing conservatorship of the Department for at least six months, and although the Department made reasonable efforts to return O.H. to Mother, Mother did not regularly visit or maintain significant contact with O.H. and demonstrated an inability to provide O.H. with a safe environment; and (4) failed to comply with the provisions of a court order that established the actions needed to obtain the return of O.H., who had been in the permanent or temporary managing conservatorship of the Department for at least nine months as a result of O.H.'s removal under Family Code Chapter 262 for abuse or neglect of a child. *See* Tex. Fam. Code Ann. § 161.001(b)(1)(D), (E), (N), (O).

The final hearing on the Department's petition began on March 30, 2022. The trial court heard testimony from Shamaila Khan, the Department's supervisor for this case; Jessica Dunlap, the child advocate assigned to the case; and Sandra Hall, the paternal grandmother.

A. KHAN

Khan testified that O.H. was taken into the Department's care when O.H.

[1] O.H. was born in July 2020. At the time of trial, O.H. was one and a half years old.

was five months old.[2] At that time, O.H. was found inside a motel room, in his car seat, one hour after Mother was found unconscious in the motel's parking lot due to a drug overdose. O.H. was placed with Hall in August 2021. In May of 2021, the Department created a family service plan ("FSP"). The FSP required Mother to sign a release of information, obtain stable housing and employment, participate in drug testing, complete a substance abuse assessment and follow recommendations, complete a psychological assessment and follow recommendations, avoid criminal activity, complete a psychiatric evaluation and follow recommendations, and complete parenting classes. Khan testified that Mother "did not sign the family service plan, but she was provided the family service plan a few times."

Khan testified that Mother "has engaged in assessments, but she has failed to follow through with the recommendations having been discharged a few times from the service providers." Khan explained Mother was discharged because "she was a no-show no-call to most of her appointments." Additionally, Khan testified that Mother did not complete the parenting classes, did not provide any proof of stable housing or employment, and did not sign the release of information until the Friday before trial began. Mother was diagnosed with alcohol use disorder, moderate dependence, cocaine dependence abuse, and bipolar affective manic disorder. Mother did not follow the recommendations that she complete individual counseling once a week, attend anger management for fourteen weeks, complete a parenting skills program, and participate in random drug testing.[3] Mother submitted to drug tests on June 15, 2021, testing positive for cocaine; on July 16, 2021, testing positive for ethyl glucuronide and ethyl sulfate; August 2021, testing

[2] While Khan testified O.H. was five months old when he was taken into the Department's care, the record shows that O.H. was taken into the Departments care in April or May of 2021, when O.H. was eleven months old.

[3] Other evidence was adduced at trial regarding Mother's background.

positive for ethyl glucuronide and ethyl sulfate; October 15, 2021, testing positive for cocaine; and February 11 or February 20, testing positive for cocaine, benzoylecgonine, heroin, and opiates.[4]

Khan testified that Mother avoided criminal activity and that Mother notified Khan that she was employed, but Mother failed to provide any proof of employment. Further, Mother contacted Khan throughout the duration of the case regarding her desire to visit O.H.

Khan testified that Mother has not visited O.H. since O.H. was in the Department's care, has not provided any financial assistance, and has not provided any food or clothing for O.H.

Khan testified O.H. was currently placed with Hall; that the placement was meeting all of O.H.'s physical and emotional needs; that O.H.'s three brothers also lived with Hall; and that O.H. is bonded with Hall, Hall's husband, Hall's daughter, and O.H.'s brothers. Khan testified that the Department was requesting that Mother's parental rights be terminated and that Hall wishes to adopt O.H. As a result of the placement with Hall, O.H. was current on doctor and dental visits. Khan stated that Hall's home was safe, stable, and is a nurturing environment, and that Hall provided appropriate play and educational services. Hall's husband owns his own business and Hall is a stay-at-home parent. Hall has a daughter that lives in the home and works for Texas Children's Hospital.

B. DUNLAP

Dunlap testified that O.H. does very well when she visits him in Hall's

[4] Khan did not provide a year for the drug tests performed in February, but presumably they occurred in 2022. The results of Mother's drug tests were not introduced into evidence, but the Department's permanency report to the court, which was admitted into evidence, noted the results of Mother's drug tests, except for the February drug test testified to by Khan.

home, that the visits "have gone very well," that O.H. is "a very happy, happy child" and is "thriving" in the current placement, that she has no concerns about the placement with Hall, that it is a protective environment, that Hall can provide financially for O.H. and for O.H.'s physical and emotional needs, and that Hall has done a "phenomenal job with" O.H. O.H. does not have any special needs, is current on all medical appointments, and is developmentally on target. Dunlap testified that O.H. has never bonded with Mother. Dunlap requested the termination of Mother's parental rights and the adoption of O.H. by Hall.

C. HALL

Hall is sixty-one years old. She testified O.H. is doing well, is developmentally on target, is currently placed with his three brothers, and does not have any special needs. Hall's daughter sold her house and moved in with Hall to help and is "very much so" bonded with O.H. Hall testified that she and her husband can financially provide for O.H. and are willing to adopt him. Hall believes it was in O.H.'s best interest to terminate Mother's parental rights. Hall explained that her plan for O.H. was that he be healthy and "go out in society and do what he needs to do to be a good citizen and make sure that he can provide for himself when he gets older and take care [sic] of himself . . . ."

D. TRIAL COURT'S RULING

On May 3, 2022, the trial court signed a final order terminating Mother's parental rights to O.H, finding that Mother failed to comply with the provisions of a court order that established the actions needed for the return of O.H., and that termination of Mother's parental rights was in the O.H.'s best interest.[5] This appeal followed.

[5] The trial court also terminated Father's parental rights to O.H. Father has not appealed the termination for his parental rights.

II. SECTION 161.001(B)(1)(O)

In her first issue, Mother argues there was legally and factually insufficient evidence to support the trial court's finding that termination was proper pursuant to predicate ground (O).

A. APPLICABLE LAW & STANDARD OF REVIEW

Involuntary termination of parental rights involves fundamental constitutional rights and divests the parent and child of all legal rights, privileges, duties, and powers normally existing between them, except for the child's right to inherit from the parent. *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985); *see Stantosky v. Kramer*, 455 U.S. 745, 753 (1982). "Termination of parental rights, the total and irrevocable dissolution of the parent-child relationship, constitutes the 'death penalty' of civil cases." *In re K.M.L.*, 443 S.W.3d 101, 121 (Tex. 2014) (Lehrmann, J., concurring). Accordingly, termination proceedings must be strictly scrutinized. Id. at 112. In such cases, due process requires application of the "clear and convincing" standard of proof. *Id.* (citing *Stantosky*, 455 U.S. at 769; *In re J.F.C.*, 96 S.W.3d 256, 263 (Tex. 2002)).

This intermediate standard falls between the preponderance of the evidence standard of civil proceedings and the reasonable doubt standard of criminal proceedings. *In re G.M.*, 596 S.W.2d 846, 847 (Tex. 1980). "'Clear and convincing evidence' means a 'measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.'" *In re N.G.*, 577 S.W.3d 230, 235 (Tex. 2019) (per curiam) (quoting Tex. Fam. Code Ann. § 101.007); *see In re K.M.L.*, 443 S.W.3d at 112–13 ("In cases requiring clear and convincing evidence, even evidence that does more than raise surmise and suspicion will not suffice unless that evidence is capable of producing a firm belief or conviction that the allegation is true.").

The trial court may order the termination of the parent-child relationship if the court finds by clear and convincing evidence that: (1) the parent committed an act or omission described by Family Code § 161.001(b)(1) and (2) termination is in the best interest of the child. Tex. Fam. Code Ann. § 161.001(b); *In re N.G.*, 577 S.W.3d at 232. "To affirm a termination judgment on appeal, a court need uphold only one termination ground—in addition to upholding a challenged best interest finding—even if the trial court based the termination on more than one ground." *In re N.G.*, 577 S.W.3d at 232; *see* Tex. Fam. Code Ann. § 161.001(b). However, we must always review any sufficiency challenge to a termination on appeal under subsection (D) and (E). *See In re N.G.*, 577 S.W.3d at 235 ("When a parent has presented the issue on appeal, an appellate court that denies review of a section 161.001(b)(1)(D) or (E) finding deprives the parent of a meaningful appeal and eliminates the parent's only chance for review of a finding that will be binding as to parental rights to other children.").

In a legal sufficiency review, a court should view the evidence in a light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true. *In re J.F.C.*, 96 S.W.3d at 266. To give appropriate deference to the factfinder's conclusions and the role of a court conducting a legal sufficiency review, reviewing the evidence in the light most favorable to the judgment means that a reviewing court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so. *Id.* A corollary to this requirement is that a court should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible. *Id.* This does not mean that a court must disregard all evidence that does not support the finding. *Id.* Disregarding undisputed facts that do not support the finding could skew the analysis of whether there is clear and

convincing evidence. *Id.* If, after conducting its legal sufficiency review of the record evidence, a court determines that no reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true, then that court must conclude that the evidence is legally insufficient. *In re J.F.C.*, 96 S.W.3d at 266–67. In a factual-sufficiency review, the appellate court must consider whether disputed evidence is such that a reasonable fact finder could not have resolved it in favor of the finding. *In re A.C.*, 560 S.W.3d at 631. Evidence is factually insufficient if, in light of the entire record, the disputed evidence a reasonable factfinder could not have credited in favor of a finding is so significant that the factfinder could not have formed a firm belief or conviction that the finding was true. *Id.*

As alleged by the Department in this case, § 161.001(b)(1)(O) of the Family Code provides that the trial court may order the termination of the parent-child relationship if the court finds by clear and convincing evidence that the parent has:

> failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child . . . .

Tex. Fam. Code Ann. § 161.001(b)(1)(O).

B. ANALYSIS

In her first issue, Mother argues that the evidence is legally and factually insufficient to support termination under predicate ground (O) because: (1) the FSP was not signed by Mother and the trial court did not specify that the FSP was effective without Mother's signature as provided for by Family Code § 263.103(d); and (2) the FSP did not provide specific dates by which each of the recommended ten tasks were to be completed.

1. Signature

Section 263.103 in its entirety provides:

> (a) The original service plan shall be developed jointly by the child's parents and a representative of the department, including informing the parents of their rights in connection with the service plan process. If a parent is not able or willing to participate in the development of the service plan, it should be so noted in the plan.
>
> (a-1) Before the original service plan is signed, the child's parents and the representative of the department shall discuss each term and condition of the plan.
>
> (b) The child's parents and the person preparing the original service plan shall sign the plan, and the department shall give each parent a copy of the service plan.
>
> (c) If the department determines that the child's parents are unable or unwilling to participate in the development of the original service plan or sign the plan, the department may file the plan without the parents' signatures.
>
> (d) The original service plan takes effect when:
>
> > (1) the child's parents and the appropriate representative of the department sign the plan; or
> >
> > (2) the court issues an order giving effect to the plan without the parents' signatures.
>
> (e) The original service plan is in effect until amended by the court or as provided under Section 263.104.

Id. § 263.103.

Contrary to Mother's argument, § 263.103 does not provide that the FSP only takes effect when it is signed by a parent; instead, an FSP may also take effect when the court issues an order giving effect to the unsigned FSP. *See id.* § 263.103(d). Mother's argument is without merit because the Family Code does not provide that the trial court's order must specifically state it is giving effect to an FSP without a signature; instead, a trial court's order adopting a FSP that is

unsigned makes the FSP effective. *See id.* Here, the trial court's June 30, 2021, status hearing order approved Mother's FSP and made it an order of the court.

The trial court's order notes that Mother did not sign the FSP and further states:

> **IT IS ORDERED** that, except as specifically modified by this order or any subsequent order, the plan of service for [Mother], if any requested, filed with the Court, and incorporated by reference by reference [sic] as if the same were copied verbatim in this order, is **APPROVED** and made **ORDER** of this Court.

Thus, we reject Mother's argument that the evidence was legally and factually insufficient to establish that Mother's parental rights to O.H. were subject to termination under § 161.001(b)(1)(O) because Mother did not sign the FSP.

2. Specificity

Mother next argues that the evidence was legally and factually insufficient to support termination under § 161.001(b)(1)(O) because the FSP was not specific as to when Mother was to complete the requirements ordered in the FSP. Here, the FSP was signed by the Department's case workers on May 26, 2021, and provided that Mother was to complete the required actions by May 26, 2021. However, the FSP also provided that the date to achieve family reunification was May 31, 2022. This court has previously rejected this same argument because "a parent could reasonably infer from the proceedings that, at the very least, 'the deadline for compliance for each requirement would have been prior to termination.'" *See In re M.P.*, 618 S.W.3d 88, 101 (Tex. App.—Houston [14th Dist.] 2020), *rev'd in part on other grounds*, 639 S.W.3d 700 (Tex. 2022) (quoting *In re O.R.F.*, 417 S.W.3d 24, 43 (Tex. App.—Texarkana 2013, pet. denied)). Moreover, the FSP included tasks for which deadlines were inapplicable. *See id.* For example, the FSP provided that Mother was to "submit to random urinalysis drug testing twice a month and

must test negative at all times." Khan testified that Mother did not participate in drug testing. We reject Mother's argument that the evidence was legally and factually insufficient to support the trial court's subsection O finding due to a lack of deadlines in the FSP order. *See id.*

We overrule Mother's first issue.

III. BEST INTEREST FINDING

In her second issue, Mother argues that the evidence is legally and factually insufficient to support the trial court's finding that termination of her parental rights was in O.H.'s best interest.

A. APPLICABLE LAW

There is a strong presumption that the best interest of a child is served by keeping the child with a natural parent. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam) (citing Tex. Fam. Code Ann. § 153.131(b)). However, prompt and permanent placement of a child in a safe environment is also presumed to be in the child's best interest. Tex. Fam. Code Ann. § 263.307(a). The considerations the factfinder may use to determine the best interest of the child, known as the *Holley* factors, include:

> (1) the desires of the child;
>
> (2) the present and future physical and emotional needs of the child;
>
> (3) the present and future physical and emotional danger to the child;
>
> (4) the parental abilities of the person seeking custody;
>
> (5) the programs available to assist the person seeking custody in promoting the best interest of the children;
>
> (6) the plans for the child by the individuals or agency seeking custody;
>
> (7) the stability of the home or proposed placement;
>
> (8) acts or omissions of the parent that may indicate the existing

parent-child relationship is not appropriate; and

(9) any excuse for the parent's acts or omissions.

See Holley v. Adams, 544 S.W.2d 367, 371–72 (Tex. 1976); *see also* Tex. Fam. Code Ann. § 263.307(b) (listing factors to be considered in evaluating "whether the child's parents are willing and able to provide the child with a safe environment"). A best-interest finding does not require proof of any unique set of factors or limit proof to any specific factors. *See Holley*, 544 S.W.2d at 371–72.

In reviewing the legal and factual sufficiency of the evidence to support the trial court's finding on best interest, we are mindful the focus in a best-interest analysis is not only on the parent's acts or omissions, but also on the nature of the relationship the children have with the parent. *See In re E.N.C.*, 384 S.W.3d 796, 808 (Tex. 2012).

B. ANALYSIS

The desires of the child

O.H. was too young at the time of the final hearing to express any desires. Under these circumstances, the fact finder may consider with whom the child has bonded, whether the child is receiving good care in that placement, and whether the child has spent minimal time with a parent. *In re J.D.*, 436 S.W.3d 105, 118 (Tex. App.—Houston [14th Dist.] 2014, no pet.). Here, the evidence showed that O.H. receives good care through his placement with Hall, that Hall's daughter is living with Hall and assisting with the care of O.H, that O.H. is receiving and up to date on medical and dental care, and is developmentally on target. The record further demonstrates that O.H. has bonded with Hall, and with his brothers who also live with Hall, but has not bonded with Mother. The evidence shows Mother has spent minimal time with O.H.

This factor weighs in favor of the trial court's finding that termination of

Mother's parental rights was in O.H.'s best interest.

The present and future physical and emotional needs of the child; The present and future physical and emotional danger to the child

Mother concedes that the second and third factor "weigh significantly in favor of termination."

Parental abilities of the individuals seeking custody; Programs available to assist those individuals seeking custody to promote the best interest of the child; Plans for the child by the parties seeking custody; Stability of the home or proposed placement

Here, the evidence before the trial court provided that Hall and her husband had raised three children and were raising O.H. and his three siblings. Khan testified that the placement with Hall is meeting all of O.H.'s physical and emotional needs, and that O.H. is bonded with Hall, Hall's husband, Hall's daughter, and O.H.'s brothers. The evidence before the trial court also showed that Hall's home was safe, stable, and a nurturing environment, and that Hall provided appropriate play and educational services. Khan testified that Hall stayed at home with O.H. and his siblings, supporting the conclusion that the home was stable. Hall explained that her plan for O.H. was that he be healthy and "go out in society and do what he needs to do to be a good citizen and make sure that he can provide for himself when he gets older and take [sic] care of himself . . . ."

We conclude that these factors weigh in favor of a finding that termination was in O.H.'s best interest.

Parent's acts or omissions that may indicate that the existing parent-child relationship is an improper one

Here, there was evidence presented that Mother overdosed on drugs in a motel parking lot while O.H., an infant, was left unattended in a car seat in a motel room. This factor weighs in favor of termination.

Any excuses for the parties acts or omissions

Here, there is no evidence providing any excuses for Mother's acts or omissions. Thus, this factor weighs in favor of termination.

Summary

Weighing the *Holley* factors supported by the evidence, we conclude that the evidence is legally and factually sufficient to support the trial court's finding that the termination of Mother's parental rights was in the best interest of O.H. We overrule Mother's second issue.

IV. MOTION FOR CONTINUANCE

In her third issue, Mother argues that the trial court abused its discretion by denying Mother's motion for continuance.

A. STANDARD OF REVIEW & APPLICABLE LAW

The decision to grant or deny a motion for continuance is within the trial court's sound discretion. *Guzman v. City of Bellville*, 640 S.W.3d 352, 357 (Tex. App.—Houston [14th Dist.] 2022, no pet.). The trial court's action in denying a continuance will not be disturbed unless the record discloses a clear abuse of discretion. *Id.* (citing *State v. Wood Oil Distrib., Inc.*, 751 S.W.2d 863, 865 (Tex. 1988)). A trial court abuses its discretion if its decision is arbitrary, unreasonable, and without reference to guiding rules or principles. *Id.* A motion for continuance must state the specific facts that support it. *See Blake v. Lewis*, 886 S.W.2d 404, 409 (Tex. App.—Houston [1st Dist.] 1994, no writ).

The Family Code provides:

> (a) Unless the court has commenced the trial on the merits or granted an extension under Subsection (b) . . . , on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator,

the court's jurisdiction over the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child is terminated and the suit is automatically dismissed without a court order.

(b) Unless the court has commenced the trial on the merits, the court may not retain the suit on the court's docket after the time described by Subsection (a) unless the court finds that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child. If the court makes those findings, the court may retain the suit on the court's docket for a period not to exceed 180 days after the time described by Subsection (a). If the court retains the suit on the court's docket, the court shall render an order in which the court:

(1) schedules the new date on which the suit will be automatically dismissed if the trial on the merits has not commenced, which date must be not later than the 180th day after the time described by Subsection (a);

(2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and

(3) sets the trial on the merits on a date not later than the date specified under Subdivision (1).

. . .

(b-3) A court shall find under Subsection (b) that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department if:

(1) a parent of a child has made a good faith effort to successfully complete the service plan but needs additional time; and

(2) on completion of the service plan the court intends to order the child returned to the parent.

Tex. Fam. Code Ann. § 263.401(a)–(b), (b-3).

B. ANALYSIS

Here, Mother filed a motion for continuance on March 28, 2022, stating that Mother "has experienced difficulty in completing the services outlined in the" FSP and requesting an additional six months to complete the FSP. The trial court signed an order appointing the Department as O.H.'s temporary managing conservator on April 19, 2021. The final hearing, at which the trial court ruled on Mother's motion for continuance, occurred on March 30, 2022.

The motion simply stated that Mother experienced difficulty in completing the services and did not provide any detail as to how Mother made a good-faith effort to successfully complete the FSP. Tex. Fam. Code Ann. § 263.401(b-3). At the final hearing, Mother's counsel argued that Mother "experienced difficulty in completing her services" because "[a] lot of her services were virtual and she had issues completing those services using her phone." Counsel further argued that Mother had "requested on numerous occasions to be able to do services in person rather than virtually." However, Mother's motion for continuance did not state these grounds as a basis for granting the continuance. *See Blake*, 886 S.W.2d at 409. Furthermore, the trial court asked Mother's counsel whether counsel had any idea of when Mother's technological abilities would improve. Counsel answered, "I absolutely do not." The Department opposed the motion and argued that Mother "had a year to engage in services and providing the mother an extension, we believe, is not in the best interest of the child at this time."

We cannot conclude that the trial court abused its discretion when it denied Mother's motion for continuance because Mother did not demonstrate that she made a good-faith effort to comply with the FSP. *See In re E.L.T.*, 93 S.W.3d 372, 374 (Tex. App.—Houston [14th Dist.] 2002, no pet.); *Blake*, 886 S.W.2d at 409.

We overrule Mother's third issue.

V. CONCLUSION

The trial court's final order is affirmed.

/s/ Margaret "Meg" Poissant
Justice

Panel consists of Justices Spain, Poissant, and Wilson.