

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00120-CV

IN THE INTEREST OF J.J.F. AND B.P.F.

On Appeal from the 1st District Court
Newton County, Texas
Trial Cause No. 12746

MEMORANDUM OPINION

This is a parental-rights termination case. In February 2010, following a jury trial, the trial court rendered a judgment terminating Mother's parental rights to her children,¹ J.J.F. and B.P.F. During the trial, the trial court charged the jury on three grounds to establish the termination of Mother's relationship with the children: endangerment by conditions or surroundings, conduct endangerment, and failure to comply with a court order. *See* Tex. Fam. Code Ann. § 161.001(1)(D), (E), (O) (West Supp. 2010). The jury was also asked to determine if termination was in the best interest of the children. *See id.*

¹To protect the identities of the minors involved in this parental-rights termination case, we identify both the minors by their initials. *See* Tex. R. App. P. 9.8.

§ 161.001(2) (West Supp. 2010). The jury found that at least one of the grounds supported terminating Mother's parental rights, and that termination was in the children's best interest. The trial court rendered a judgment consistent with the jury's findings. We affirm the trial court's judgment.

In her sole issue on appeal, Mother argues the evidence is legally and factually insufficient to support the jury's finding to terminate her parental rights. The Texas Department of Family and Protective Services argues that Mother failed to preserve her legal and factual sufficiency complaints. The record shows that Mother's motion for new trial was filed more than fifteen days from the date of the trial court's judgment, so it was not timely. *See* Tex. Fam. Code Ann. § 263.405(b) (West 2008) (directing that a request for new trial must not be filed later than the fifteenth day after the date a final order is signed). Mother's untimely motion was ineffective to preserve her factual sufficiency complaints for appellate review. *See* Tex. R. Civ. P. 324(b)(2).

The record also reflects that Mother failed to preserve her legal sufficiency challenge for appellate review. A challenge to the legal sufficiency of the evidence may be raised by either (1) a motion for instructed verdict, (2) a motion for judgment notwithstanding the verdict, (3) an objection to the submission of the issue to the jury, (4) a motion to disregard the jury's answer to a vital fact issue, or (5) a motion for new trial. *Cecil v. Smith*, 804 S.W.2d 509, 510-11 (Tex. 1991); *In the Interest of D.J.J.*, 178 S.W.3d 424, 426-27 (Tex. App.—Fort Worth 2005, no pet.). While Mother raised a legal

sufficiency complaint in her motion for new trial, her motion for new trial was not timely. In addition, Mother did not file a motion for instructed verdict, a motion for judgment notwithstanding the verdict, or a motion to disregard the jury's answer to any of the issues. Mother also failed to object to the submission of the issue to the jury. We conclude that Mother's legal sufficiency challenges were not preserved for appellate review.

On appeal, Mother does not advance a claim alleging ineffective assistance of counsel based on counsel's failure to preserve her sufficiency challenges for appellate review. We note that an attorney's failure to preserve factual sufficiency issues for review on appeal does not necessarily constitute ineffective assistance. *In re M.S.*, 115 S.W.3d 534, 549 (Tex. 2003). There is a strong presumption that trial counsel's conduct fell within the wide range of reasonable professional assistance, including the possibility that the decision not to preserve a factual sufficiency challenge in the trial court was based on counsel's belief that a motion for new trial was not warranted because the evidence was sufficient. *Id.* (citing *Strickland v. Washington*, 466 U.S. 668, 689, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Smith v. State*, 17 S.W.3d 660, 662 (Tex. Crim. App. 2000)). Having reviewed the record in detail, even had Mother raised ineffective assistance on appeal, we hold that the evidence is legally and factually sufficient to support the jury's finding to terminate Mother's parental rights to J.J.F and B.P.F., and the evidence is legally and factually sufficient to support the jury's finding that termination is in each child's best

interest. *See In re J.O.A.*, 283 S.W.3d 336, 344 (Tex. 2009); *In re J.F.C.* 96 S.W.3d 256, 266 (Tex. 2002); *see also In re M.S.*, 115 S.W.3d at 550.

Having concluded that Mother failed to preserve her legal and factual sufficiency challenges, we overrule Mother's sole issue and affirm the trial court's judgment.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on March 4, 2011
Opinion Delivered May 12, 2011
Before McKeithen, C.J., Kreger and Horton, JJ.