

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-16-00489-CV**

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**IN THE INTEREST OF R.D.T.**

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**On Appeal from the 1st District Court**  
**Jasper County, Texas**  
**Trial Cause No. 35869**

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**MEMORANDUM OPINION**

Appellant E.C. appeals from an order terminating his parental rights to his minor child, R.D.T. In two appellate issues, E.C. contends that the evidence is legally and factually insufficient to show that (1) he failed to support R.D.T. in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition, and (2) terminating his parental rights was in the best interest of R.D.T. We affirm the trial court's order.

**PROCEDURAL BACKGROUND**

In January 2015, K.T., R.D.T.'s mother, filed her original petition in a suit affecting the parent-child relationship. In March 2015, the trial court conducted a

hearing and signed temporary orders appointing K.T. and E.C. temporary managing conservators of R.D.T., awarding K.T. the exclusive right to determine the primary residence of R.D.T., ordering E.C. to pay child support in the amount of \$408.84 per month beginning in April 2015, and ordering any employer of E.C. to withhold child support from his earnings. In May 2015, the trial judge signed the temporary orders.

In September 2016, K.T. filed a petition to terminate the parent-child relationship between E.C. and R.D.T. on the grounds that E.C. had (1) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition, and (2) committed the offense of injury to a child, elderly, or disabled person with intent to commit bodily injury and was incarcerated in the county jail. K.T. further alleged that termination was in the best interest of R.D.T. In November 2016, the trial court conducted a final hearing on K.T.'s petition to terminate and found, by clear and convincing evidence, that a statutory ground existed for termination of E.C.'s parental rights, and that termination of E.C.'s parental rights was in the best interest of the child. *See* Tex. Fam. Code Ann. § 161.001(b)(1)(F), (b)(2) (West Supp. 2016).

## ANALYSIS

In issue one, E.C. argues that the evidence was legally and factually insufficient to establish that he failed to support the child according to his means

during a period of one year ending within six months of the date of the filing of the petition. *See* Tex. Fam. Code Ann. § 161.001(b)(1)(F). E.C contends that because he was unemployed for approximately two months, K.T. failed to establish that E.C. had the ability to pay child support each and every month of a consecutive twelve-month period.

Under legal sufficiency review, we review all the evidence in the 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 the Interest of J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002). We assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could, and we disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible. *Id.* If no reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true, the evidence is legally insufficient. *Id.*

Under factual sufficiency review, we must determine whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the Department’s allegations. *Id.* We give due consideration to evidence that the factfinder could reasonably have found to be clear and convincing. *Id.* We consider whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding. *Id.* If, in light of the

entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, the evidence is factually insufficient. *Id.*

The decision to terminate parental rights must be supported by clear and convincing evidence, *i.e.*, “the 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.” Tex. Fam. Code Ann. § 101.007 (West 2014); *see also In the Interest of J.L.*, 163 S.W.3d 79, 84 (Tex. 2005). The movant must show that the parent committed one or more predicate acts or omissions and that termination is in the child’s best interest. *See* Tex. Fam. Code Ann. § 161.001 (West Supp. 2016); *see also In the Interest of J.L.*, 163 S.W.3d at 84. We will affirm a judgment if any one of the grounds is supported by legally and factually sufficient evidence and the best interest finding is also supported by legally and factually sufficient evidence. *In the Interest of C.A.C., Jr.*, No. 09-10-00477-CV, 2011 WL 1744139, at \*1 (Tex. App.—Beaumont May 5, 2011, no pet.) (mem. op.).

Section 161.001(1)(F) allows for termination if the trial court finds by clear and convincing evidence that the parent has “failed to support the child in accordance with the parent’s ability during a period of one year ending within six months of the date of the filing of the petition.” Tex. Fam. Code Ann. § 161.001(1)(F). The trial

court heard evidence that E.C. was ordered to pay child support in the amount of \$408.84 per month, beginning on April 1, 2015. K.T. testified that in January 2015, she filed a petition in a suit affecting the parent-child relationship because E.C. had denied paternity, and a DNA test confirmed that E.C. is the father of R.D.T. K.T. explained that as of November 2016, she had not received any child support for R.D.T., who was twenty months old when the final hearing occurred. According to K.T., E.C. had not provided any monetary or non-monetary support for the past year, although E.C.'s wife had given K.T. \$250. K.T. also testified that E.C. had failed to provide insurance for R.D.T. K.T. testified that she did not know where E.C. had worked in the past, and she had heard that he was currently working for a plant.

K.T. explained that E.C. exercised his visitation rights with R.D.T. approximately half the time, and if it were not for K.T. bringing R.D.T. to E.C., it would be less than fifty percent. According to K.T., E.C. was sleeping most of the time when she dropped R.D.T. off for visitation, and E.C. did not have anything for R.D.T. K.T. expressed concerns about E.C.'s anger issues and his ability to properly supervise R.D.T. K.T. explained that E.C. had killed one of her pets during a fit of anger, and she had witnessed other instances of E.C. being cruel to animals. K.T. testified that in May 2016, Child Protective Services (CPS) contacted her about an allegation against E.C. for injuring his current wife's child and questioned her about

E.C.'s violent nature. K.T. explained that because of the extent of the allegations against E.C., CPS put a safety plan in place for R.D.T. that required supervised visitation. K.T. testified that the safety plan expired in August 2016.

E.C. testified that he had been working for almost three months doing maintenance work in a plant. According to E.C., he makes \$17.38 per hour and works an average of sixty hours per week. Although E.C. knew that child support was not being deducted from his paycheck, he had not made any attempt to pay K.T. directly because the Attorney General's Office told him it would be considered a gift. E.C. claimed that the money K.T. received from his wife was child support. E.C. also claimed that in April 2016, he attempted to pay child support by giving his attorney a check for \$6000. The check was never delivered to K.T. because E.C. had to pay to get his vehicle fixed and to hire an attorney. E.C. testified that before he gave the check to his attorney, he did not pay child support because he only made fourteen dollars per hour and worked forty hours per week, but he agreed that his child support had been set based on his income. E.C. further testified that he did not pay child support from July 8, 2016, through September 12, 2016, because he was unemployed, and he did not receive any unemployment compensation. E.C. agreed that he never paid any child support through his attorney, but he claimed the reason

he did not pay was because there were no final orders in place. E.C. admitted that he had the ability to pay, but he chose not to.

E.C. testified that he did not know the status of the criminal case alleging that he injured his wife's child, and he explained that he had turned himself in and was out on bond. E.C. denied having knowledge that CPS had established a safety plan for R.D.T. E.C. testified that CPS had ordered him to undergo psychological testing and take anger management and parenting classes due to the allegations against him, but he failed to do so. E.C. also explained that the reason he had not exercised his visitation in the past was because he had to travel for his prior job. E.C. asked that the trial court not terminate his parental rights.

B.C., E.C.'s estranged wife who was pregnant with E.C.'s child, waived her spousal privilege and testified against E.C. concerning the best interest of R.D.T. and E.C.'s ability and willingness to pay child support for R.D.T. B.C. testified that she began dating E.C. in February 2016, married E.C. in April 2016, and separated from him in June 2016. According to B.C., E.C. has been continuously employed since they met in February 2016. According to B.C., E.C. has not provided any financial support for her and their unborn child since their separation six months ago. B.C. testified that she planned to file a petition to terminate E.C.'s parental rights to their unborn child.

B.C. testified that E.C. had told her that he did not have to pay child support for R.D.T. because the case had not been finalized. B.C. explained that before she separated from E.C., she sent K.T. money through the Attorney General's Office, because she felt bad that E.C. was not doing anything to help K.T. According to B.C., she sent the money in May 2016, and she told K.T. the money was for child support and from the kindness of her heart. B.C. claimed that the money came from her and not E.C. B.C. testified that E.C. knew he should have been paying child support and had the ability to pay, but he refused to pay.

B.C. testified that it was not in R.D.T.'s best interest to have contact with E.C. because E.C. did not have the patience to deal with a baby. B.C. explained that when E.C. watched B.C.'s nineteen-month-old baby for one day, E.C. physically injured her baby by bruising the baby's buttocks. B.C. testified that her pediatrician called CPS, which opened up an investigation concerning E.C., and E.C. was arrested for the offense of injury to a child. According to B.C., E.C. eventually admitted that he injured her baby by continuously spanking her baby because the baby would not stop crying. B.C. testified that there were other incidents of E.C.'s violent character that caused her concern about E.C. having contact with R.D.T., such as E.C. nearly choking a dog to death for not following instructions.



S.C., E.C.'s mother, testified she had no concerns about E.C. caring for R.D.T. because he does well with his nieces and nephews. S.C. testified that she is not surprised that E.C. has not paid child support and was \$7767.96 in arrears because E.C. has not been allowed to see R.D.T. and has not had an opportunity to pay child support to K.T. S.C. further testified that the Attorney General's website indicated that E.C. should not pay child support without using the Attorney General's office.

The record shows that K.T. filed a petition for termination on September 26, 2016. The one-year period means twelve consecutive months, and there must be evidence showing E.C.'s ability to pay during each month of the twelve-month period. *See In the Interest of T.B.D.*, 223 S.W.3d 515, 518 (Tex. App.—Amarillo 2006, no pet.). The evidence shows that E.C. had the ability to pay child support during the time period beginning April 1, 2015, and ending April 1, 2016, but he did not make any child support payments during that time. We note that the time period that E.C. testified that he was unemployed, July to September 2016, does not affect the relevant time period that E.C. had the ability to pay but chose not to do so. We also note that the one payment K.T. received from E.C.'s wife did not interrupt the consecutive twelve-month period because it was paid at a later date. The evidence further shows that the relevant twelve-month period ended within six months of K.T. filing the petition for termination.

Based on the evidence, the trial court could have inferred that E.C. had the ability to pay some support, but chose to pay other obligations that he considered to be more pressing. *See In the Interest of Z.W.M.*, No. 07-15-00316-CV, 2016 WL 638092, at \*7 (Tex. App.—Amarillo Feb. 9, 2016, no pet.) (mem. op.). Viewing the evidence in the light most favorable to the trial court’s finding under subsection 161.001(b)(1)(F), we conclude that the trial court could reasonably conclude that E.C. failed to support R.D.T. in accordance with E.C.’s ability during the requisite time period. *See* Tex. Fam. Code Ann. § 161.001(b)(1)(F); *In the Interest of D.M.D.*, 363 S.W.3d 916, 922 (Tex. App.—Houston [14th Dist.] 2012, no pet.); *see also In the Interest of Z.W.M.*, 2016 WL 638092, at \*7. In light of all the evidence presented, the trial court could reasonably have formed a firm belief or conviction that E.C. failed to support R.D.T. in accordance with E.C.’s ability during the requisite time period. *See* Tex. Fam. Code Ann. § 161.001(b)(1)(F); *In the Interest of D.M.D.*, 363 S.W.3d at 922; *see also In the Interest of Z.W.M.*, 2016 WL 638092, at \*7. We overrule issue one.

In issue two, E.C. argues that the evidence was legally and factually insufficient to support the finding that terminating his parental rights was in R.D.T.’s best interest. *See* Tex. Fam. Code Ann. § 161.001(b)(2). Regarding the child’s best interest, we consider a non-exhaustive list of factors: (1) desires of the child; (2)

emotional and physical needs of the child now and in the future; (3) emotional and physical danger to the child now and in the future; (4) parental abilities of the individuals seeking custody; (5) programs available to assist these individuals to promote the best interest of the child; (6) plans for the child by these individuals or by the agency seeking custody; (7) stability of the home or proposed placement; (8) acts or omissions of the parent which may indicate that the existing parent-child relationship is not proper; and (9) any excuse for the acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976); *see* Tex. Fam. Code Ann. § 263.307(b) (West Supp. 2016). No particular *Holley* factor is controlling, and evidence of one factor may be sufficient to support a finding that termination is in the child's best interest. *See In the Interest of A.P.*, 184 S.W.3d 410, 414 (Tex. App.—Dallas 2006, no pet.). The best interest determination may rely on direct or circumstantial evidence, subjective factors, and the totality of the evidence. *See In the Interest of N.R.T.*, 338 S.W.3d 667, 677 (Tex. App.—Amarillo 2011, no pet.).

In regard to the *Holley* factors, E.C. maintains that there was no evidence referring to the child's desires, the current or future needs of the child, the mother's parenting abilities, available programs to assist the mother, the mother's plan for the child, and the stability of mother's home. According to E.C., there is no clear and

convincing evidence of any acts or omissions by him indicating an improper relationship with the child.

With respect to the best interest finding, the trial court heard testimony that E.C. has a violent character, does not have the patience to deal with a baby, and had physically injured B.C.'s baby because the baby would not stop crying. The trial court heard testimony that E.C. did not have the ability to properly supervise R.D.T., that K.T. and B.C. had concerns about E.C. having contact with R.D.T. after he injured B.C.'s child, and that E.C. had failed to undergo psychological testing and take anger management and parenting classes despite being ordered to do so. The trial court also heard testimony that E.C. had not provided support for R.D.T. for over a year despite having the ability and that it was in the best interest of R.D.T. that E.C.'s parental rights be terminated.

The evidence at trial showed that E.C. had been neglectful in his supervision of R.D.T., and neglect can be just as dangerous to a child as direct physical abuse. *See In the Interest of M.C.*, 917 S.W.2d 268, 270 (Tex. 1996). The evidence further showed that E.C. has anger issues and has physically abused another child, and even though the abusive conduct was not committed in R.D.T.'s presence, such evidence is sufficient to demonstrate a course of conduct by E.C. that endangers R.D.T.'s physical or emotional well-being. *See In the Interest of B.B.*, 971 S.W.2d 160, 169

(Tex. App.—Beaumont 1998, pet. denied), *disapproved of on other grounds by In the Interest of C.H.*, 89 S.W.3d 17, 26 (Tex. 2002). Additionally, E.C. testified that he chose not to comply with orders from CPS requiring him to undergo psychological testing and attend parenting and anger management classes. E.C. also testified that despite having the ability to pay child support for R.D.T. during the requisite time period, he chose to spend his money on other things. *See In the Interest of Z.W.M.*, 2016 WL 638092, at \*7, 12.

As the sole judge of the credibility of the witnesses and the weight to be given to their testimony, the trial court could reasonably conclude that termination of E.C.'s parental rights was in the best interest of R.D.T. *See* Tex. Fam. Code Ann. §§ 161.001(b)(2), 263.307(b); *see also In the Interest of J.F.C.*, 96 S.W.3d at 266; *Holley*, 544 S.W.2d at 371-72. We conclude that K.T. established, by clear and convincing evidence, that E.C. committed the predicate act enumerated in section 161.001(b)(1)(F) and that termination of E.C.'s parental rights is in the best interest of R.D.T. *See* Tex. Fam. Code Ann. § 161.001(b)(1)(F), (b)(2); *In the Interest of C.A.C., Jr.*, 2011 WL 1744139, at \*1. We overrule issue two. Accordingly, we affirm the trial court's judgment.

AFFIRMED.

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STEVE McKEITHEN  
Chief Justice

Submitted on April 10, 2017  
Opinion Delivered May 11, 2017

Before McKeithen, C.J., Horton and Johnson, JJ.