In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-17-00094-CV

IN THE INTEREST OF A.M., A CHILD

On Appeal from the 100th District Court
Collingsworth County, Texas
Trial Court No. 8001, Honorable Stuart Messer, Presiding

September 21, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

R.M., mother of A.M., appeals the order terminating her parental rights. She contends that the evidence is neither legally nor factually sufficient to support the two statutory grounds for termination found by the trial court. Nor does it allegedly support the finding that termination is in the best interest of A.M. We affirm.

Standard of Review – Statutory Ground

The trial court found the evidence to be clear and convincing on grounds D and E of § 161.001(b)(1) of the Texas Family Code. We need only find that one ground was sufficiently supported by the evidence to affirm the termination of R.M.'s parental rights. *See In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). Furthermore, the standard by which

we review the order is that discussed in *In re K.M.L.*, 443 S.W.3d 101, 112–13 (Tex. 2014), *In re C.H.*, 89 S.W.3d 17, 25–26 (Tex. 2002), and *In re B.P.*, No. 07-14-00037-CV, 2014 Tex. App. LEXIS 8127, at 8–10 (Tex. App.—Amarillo July 25, 2014, pet. denied) (mem. op.).

Here, we conclude that the evidence supported termination under § 161.001(b)(1)(D) of the Family Code. That provision allows a trial court to order termination when the parent knowingly placed or knowingly allowed the child to remain in conditions or surroundings endangering the physical or emotional well-being of the child. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D) (West Supp. 2016).

To endanger means to expose to loss or injury or to jeopardize. *In re H.L.*, No. 07-17-00070-CV, 2017 Tex. App. LEXIS 6533, at *13 (Tex. App.—Amarillo July 13, 2017, no pet.) (mem. op.). That requires more than a threat of metaphysical injury or potential ill effects of a less-than-ideal family environment. *In re N.M.*, No. 07-17-00003, 2017 Tex. App. LEXIS 4466, at *4 (Tex. App.—Amarillo May 16, 2017, pet. denied) (mem. op.) (per curiam). Yet, inappropriate, abusive, or unlawful conduct of the parent or of another who lives in the child's home may create an environment that endangers the physical and emotional well-being of a child. *In re R.S.-T.*, No. 04-16-00724-CV, 2017 Tex. App. LEXIS 4486, at *36 (Tex. App.—San Antonio May 17, 2017, no pet.). Examples of such an environment include one in which the parent or caregiver engages in illegal drug use. *See In re T.B.*, No. 07-12-00538-CV, 2013 Tex. App. LEXIS 6728, at *15 (Tex. App.—Amarillo May 31, 2013, no pet.) (mem. op.). And, one instance of endangerment suffices. *See In re R.S.-T*, 2017 Tex. App. LEXIS 4486, at *36.

Furthermore, satisfying the *mens rea* element of the statute does not require proof that the parent knew "for certain" that the child was in an endangering environment; it need only be shown that the parent was aware of the potential for endangering the child created by the environment and disregarded the risk. *See In re M.T.C.*, No. 04-16-00548-CV, 2017 Tex. App. LEXIS 1257, at *7–8 (Tex. App.—San Antonio, Feb. 15, 2017, no pet.) (mem. op.); *In re T.B.*, 2013 Tex. App. LEXIS 6728, at *14.

The record before us contains evidence of R.M. and her mother being found unconscious atop household furniture while A.M., a fifteen-month-old toddler, walked about the area. Pill bottles and medications were within the area and reach of the child. This circumstance was witnessed by a worker for Early Childhood Intervention Services. The latter person then contacted the local sheriff. When the sheriff arrived, he also found R.M. and her mother unconscious, and took pictures of the two as they slept. Though they would rouse momentarily, they soon returned to unconsciousness. The sheriff contacted Children's Protective Service (CPS) and emergency medical services.

Investigation led to the discovery of hydrocodone and like opioids in R.M.'s body. R.M. would later attempt to explain the incident as her reaction to NyQuil taken due to a bout with the flu, however. Yet, she consumed the substance at 9 a.m., knew it would cause her to sleep, and remained semi-unconscious or asleep for well into the mid-afternoon. When asked how she intended to watch her child while under the influence of the medicine, R.M. responded that the toddler was also asleep. In other words, her plan was to hope that the child slept through the day as well; yet, that did not happen. At the very least, this evidence indicates that R.M. was aware of the need to supervise

the child but nevertheless took the medicine knowing of its likely effect without instituting a viable manner of caring for the fifteen month old. The simplistic plan went awry when the child awoke long before either R.M. or the child's grandmother. This left the child free to wander unsupervised through an area strewn with medicine and pills.

The events resulted in the indictment of R.M. for the crime of child endangerment. She pled guilty, had the adjudication of her guilt deferred, and received five years of probation.

Apparently NyQuil was not the only substance affecting R.M. at the time. She was also taking Ambien to help her sleep, Tylenol 4 (i.e., acetaminophen and codeine) to help her live with knee pain, and Buspirone or Ativan for anxiety.

Evidence further illustrated that, six weeks earlier, R.M. was discharged from the Wellington Pain Clinic for violating her "pain contract." Apparently, she had given away pills prescribed to her and solicited "controlled substances" in place of her regular medications. Pain medication no longer being available from that clinic, R.M. began receiving them from a physician in Oklahoma.

Staying awake tended to be a continuing problem with R.M. After A.M. was removed and placed in foster care, a CPS employee periodically transported R.M. to visit the child. According to that employee, R.M. would sleep most of the time. The employee also saw R.M. doze-off once while the mother visited with her child. And though R.M. would later represent that she stopped ingesting codeine, testing found the representation to be false.

Admittedly, the circumstances at bar are not as extreme as those in many other cases. Yet, our role is not that of a fact-finder. We do not retry the case but, rather,

assess whether the fact-finder could legitimately arrive at the conclusion it did. That requires us to afford deference to the fact-finder's authority to weigh witness credibility and resolve factual disputes. And, we conclude that the evidence of record would permit a fact-finder to form a firm conviction and belief that R.M.'s history of ingesting multiple and diverse drugs which affect her ability to stay awake and care for the fifteen-month-old child knowingly placed the child in conditions or surroundings endangering her physical well-being. Though R.M.'s drug use may not have been illegal, the end is the same; the over-indulgence in prescribed medication had the potential for endangering the child. *See In re T.D.L.,* No. 02-05-00250-CV, 2006 Tex. App. LEXIS 1071, at *21–23 (Tex. App.—Fort Worth Feb. 9, 2006, no. pet.) (mem. op.) (wherein parent's abuse of prescription drugs and instances of unconsciousness caused by it were indicia supporting decision to terminate parent-child relationship due to endangerment). Her awareness of that danger can reasonably be inferred from the evidence, and despite that, she continued to take the pills while A.M. remained within her sole care.

Best Interest

The standard of review discussed in *In re K.M.L.*, *In re C.H.*, and *In re B.P.*, is the same one we apply in determining whether the evidence supports the fact-finder's decision regarding the child's best interest. And, in assessing the child's best interest the non-exclusive factors mentioned in *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976), guide our analysis. *See In re C.V.*, No. 07-17-00072-CV, 2017 Tex. App. LEXIS 8205, at *8 (Tex. App.—Amarillo Aug. 25, 2017, no pet. h.). So too is the evidence

satisfying the statutory ground for termination relevant in assessing the child's best interest. *See In re C.H.*, 89 S.W.3d at 27.

According to the record, R.M. is about thirty-nine years old, 100% disabled, has a below average IQ of 76, lives with and takes care of her mother who is sixty-six and disabled, and has no sustained full-time employment. According to expert testimony (i.e., a psychologist who examined R.M.), some people with an IQ like R.M.'s may hold a job and live independently but will require help and support from others. As previously stated, R.M. had no job. Being 100% disabled, her sole income approximated $544 per month, and it was derived from her receipt of social security benefits.

When asked about the father of A.M., R.M. could not specifically identify the person. Instead, the names of three men were given by her as potential candidates. Nor was she able to identify problems or concerns in her parenting technique, problems or concerns with A.M., the reason why CPS removed the child, the reason why she was performing services to gain the return of A.M., and the goals associated with the services being performed. Given these circumstances, the aforementioned psychologist opined that R.M. was likely to continue parenting in the future as she did in the past and that R.M. exuded depression, a "chronic quality of discouragement and low functioning and low interest in the outside world." The expert viewed her "functioning . . . to be very tenuous, very marginal, [and] easily disrupted by any external stresses." In the absence of continuing CPS involvement, "it wouldn't take much of anything at all for her functioning to seriously deteriorate to a point that she would not be able to provide adequate care for her child," so said the psychologist.

Other evidence illustrated that R.M. (1) failed to complete her parenting classes, (2) regularly visited the child since removal, (3) tested positive for opiates since removal of the child, (4) is unable to financially support A.M., (5) has not mitigated the reason for the removal of A.M., that is, mitigated her inability to stay awake while A.M. was awake, (6) did not modify her late night activities and general sleep schedule to facilitate her ability to remain awake during the day while A.M. was awake, (7) cannot meet the emotional and physical needs of A.M., (8) will not likely change her lifestyle, and (9) cannot provide a safe and stable environment for A.M.

As for A.M., she was developmentally delayed when removed from R.M.'s care. Since being placed in a foster home, A.M. has progressed developmentally and bonded with the foster family. She has also received dental care, including dental surgery, to address her decaying teeth. According to a CPS representative, the foster family provides a stable and safe environment for the child. That foster family also expressed an interest in adopting A.M. if CPS were unable to find a suitable relative with whom to place the child.

The record also indicates that CPS conducted home studies of relatives to assess the viability of A.M.'s placement with a relative. One such study was done on the home of R.S., an aunt of A.M. It proved favorable, with some caveats, and the Department recommended placement of A.M. with R.S. R.M. apparently acquiesced in that placement, as well. Furthermore, R.S. has the ability to care for A.M. Finally, termination of R.M.'s parental rights would facilitate permanency in A.M.'s life and enhance the likelihood of her adoption.

From the foregoing, a rational fact-finder could form a firm conviction and belief that not only would R.M. be incapable of providing a safe and stable home for A.M., but also retaining her parental rights would impede the child's ability to have such a nurturing home. Thus, termination was in the best interest of A.M.

We overrule R.M.'s issues and conclude that the evidence is both legally and factually sufficient to support the findings of the trial court regarding ground (D) of § 161.001 of the Family Code and the best interest of the child. So too do we affirm the order of termination.

Per Curiam