Opinion filed July 7, 2017

In The

Eleventh Court of Appeals

No. 11-17-00006-CV

IN THE INTEREST OF A.O., A CHILD

On Appeal from the 326th District Court
Taylor County, Texas
Trial Court Cause No. 7942-CX

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

This is an appeal from an order in which the trial court, based upon the jury's verdict, terminated the parental rights of the father of A.O. and appointed the mother to be a possessory conservator. The father timely filed a notice of appeal and presents one issue for this court's review. In his issue, Appellant challenges the legal and factual sufficiency of the evidence to support the finding as to the child's best interest. We affirm.

The termination of parental rights must be supported by clear and convincing evidence. TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2016). To determine 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).

After being instructed in accordance with Section 161.001(b), the jury answered the questions posed in the trial court's charge to the jury and determined that Appellant's parental rights should be terminated. The trial court found that Appellant had committed four of the acts listed in Section 161.001(b)(1)—those found in subsections (D), (E), (O), and (Q). Specifically, the trial court found that Appellant had knowingly placed or knowingly allowed the child to remain in conditions or surroundings that endangered the physical or emotional well-being of the child; that Appellant had engaged in conduct or knowingly placed the child with persons who engaged in conduct that endangered the physical or emotional well-being of the child; that Appellant had 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 had been in the 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 for abuse or neglect; and that Appellant had engaged in criminal conduct that resulted in his confinement and inability to care for the child for a period of not less than two years from the date the petition was filed. 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 specifically challenges the best interest finding in his issue on appeal. 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.

The record shows that Appellant has a long history with the Department and that his parental rights to at least two of his other children have been terminated. The Department became involved in this case in November 2013 when Appellant and his wife were involved in a "very significant incident of domestic violence." At the time of that incident, A.O. was three years old, and Appellant severely beat A.O.'s mother in A.O.'s presence. The person who called 9-1-1 reported, "He is killing her." The mother's face was covered in blood and her eyes were swollen shut. She had several cuts and scrapes on her face, bruises on her arm, a swollen nose, a swollen ankle, a large abrasion, and a patch of hair missing from the top of

her scalp. The responding officer explained that the mother "looked to me as if she stepped out of a horror movie." Appellant had no injuries and was arrested for assault family violence. On the way to jail, Appellant said, "Yeah, I beat her ass and I am proud of it."

In October 2014, Appellant was convicted of the third-degree felony of assault family violence and received a probated sentence for the November 2013 incident. Upon his release from jail, Appellant moved back into the home with A.O. and her mother. During the next month, the parents were involved in some incidents that concerned the Department. The mother cut herself and was found in a bathtub with approximately forty cuts on her legs. Appellant's behavior became erratic. The mother feared for her safety and that of her child and tried to run away from Appellant during an incident at the Betty Hardwick Center in December 2014. Because of the Department's fear for the child's safety—based upon the frequent and escalating nature of the incidents and the ongoing domestic violence committed by Appellant—and because Appellant would not cooperate with the Department's attempts to put safety measures in place, A.O. was removed from the parents. Appellant continued to commit acts of domestic violence against the mother after the child's removal. Appellant also had a history of committing acts of violence against other family members.

Appellant was incarcerated for the first eighteen months of the child's life and was also incarcerated during much of the time that this case was pending. Although Appellant was in court for the termination hearing, he was serving a ten-year prison sentence at that time because his community supervision had been revoked. Appellant refused to complete most of the services that were required of him in this case, including the batterer's intervention program, which Appellant said was "not necessary." Appellant faulted his wife for causing him to commit acts of domestic

violence. According to a Department employee, Appellant had shown no ability to be a protective parent or to provide a stable home for A.O.

After removal, A.O. was placed in the home of Appellant's sister. By all accounts, A.O. had developed a strong bond with her aunt and uncle and was doing well in that home. A.O. was developmentally delayed and had behavioral issues when placed with her aunt and uncle, but she improved while in their care. The Department's goal for A.O. was for her to continue to have a relationship with her mother but to remain in her aunt and uncle's home. The mother agreed that it was best for A.O. to remain with her aunt and uncle, and the aunt and uncle were willing and able to be a permanent placement for A.O. Although there was some evidence that A.O. missed her father after he was taken to jail in 2013, other evidence indicated that A.O. was terrified of her father and that the contacts between Appellant and A.O. while this case was pending had a negative impact on A.O. A.O.'s counselor testified that A.O. had never mentioned missing Appellant or wanting to see him but that A.O. had stated that she was afraid Appellant would come find her and hurt her. The counselor also testified that A.O. had made an outcry of sexual abuse against Appellant.

A.O.'s mother, Appellant's sister, Appellant's brother-in-law, and the Department's conservatorship caseworker testified that termination of Appellant's parental rights would be in A.O.'s best interest. The child's guardian ad litem also agreed that Appellant's parental rights should be terminated. A.O.'s counselor testified that it would not be in A.O.'s best interest to have any contact with Appellant in the future. Appellant disagreed. Appellant did not want his rights terminated, and he testified that he was "probably the best daddy you will ever know in your life except for [Appellant's] daddy."

We note that the trier of fact is the sole judge of the credibility of the witnesses at trial and that we are not at liberty to disturb the determinations of the trier of fact

as long as those determinations are not unreasonable. *J.P.B.*, 180 S.W.3d at 573. Based upon the *Holley* factors and the evidence in the record, we cannot hold that the best interest finding is not supported by clear and convincing evidence. *See Holley*, 544 S.W.2d at 371–72. The trier of fact could reasonably have formed a firm belief or conviction that it would be in A.O.'s best interest for her father's parental rights to be terminated. Upon considering the record as it relates to the apparent desires of the child, the emotional and physical needs of the child now and in the future, the emotional and physical danger to the child now and in the future, the parental abilities of Appellant and the relatives with whom the child has been placed, the plans for the child by the Department, the instability of Appellant's home, the stability of the placement, Appellant's criminal history, Appellant's acts of domestic violence, and the acts and omissions indicating that the parent-child relationship was not a proper one, we hold that the evidence is both legally and factually sufficient to support the best interest finding. *See id.* Appellant's sole issue on appeal is overruled.

We affirm the trial court's order of termination.

JIM R. WRIGHT
CHIEF JUSTICE

July 7, 2017

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