Opinion filed May 3, 2018

In The

Eleventh Court of Appeals

No. 11-17-00311-CV

IN THE INTEREST OF S.J.C., A CHILD

On Appeal from the 118th District Court
Howard County, Texas
Trial Court Cause No. 51525

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 terminated the parental rights of the mother and the father of S.J.C. S.J.C.'s mother filed a notice of appeal. In her twelve issues on appeal, Appellant challenges the legal and factual sufficiency of the evidence to support the termination of her rights. We affirm.

I. *Termination Standards and Findings*

The termination of parental rights must be supported by clear and convincing evidence. TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2017). 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)–(U) and that termination is in the best interest of the child. FAM. § 161.001(b).

After the final hearing in this case, the trial court found that Appellant had committed five of the acts listed in Section 161.001(b)(1)—those found in subsections (D), (E), (N), (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 constructively abandoned the child, that Appellant had failed to comply with the provisions of a court order that specifically established the actions necessary for her to obtain the return of the child, and that Appellant had knowingly engaged in criminal conduct that resulted in her conviction of an offense and confinement or imprisonment and inability to care for the child for not less than two years from the date that the petition was filed in this case. 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.

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.

II. *Evidence at Trial*

The record shows that two-month-old S.J.C. was removed during a "drug bust" at her parents' house. A relatively large amount (less than 200 grams) of crack cocaine was in the room where S.J.C. was sleeping. Appellant and the father were arrested, and S.J.C. was placed in foster care. Appellant testified that she was aware of the presence of the cocaine and that she was also aware that cocaine was being sold from their house, although she claimed that S.J.C.'s father was the one who was dealing drugs. Appellant, however, tested positive for cocaine, which she claims was from "handling" it. In April 2017, Appellant was sentenced to serve a four-year term of imprisonment for the offense of delivery of a controlled substance. Appellant remained incarcerated for that crime at the time of trial, but she appeared at trial by telephone.

Both Appellant and S.J.C.'s father had a lengthy criminal history, much of which involved drugs. Appellant had previously been convicted twice of forgery and once of possession of cocaine between four and two hundred grams. Appellant

had five children prior to having S.J.C.—none of those children were in her custody at the time of S.J.C.'s removal.

Upon removal, a drug test was performed on S.J.C. She tested positive for a large amount of cocaine and went through withdrawals for approximately three months after she was removed from her parents' care. Testimony indicated that drug withdrawal is harmful to a baby. At the time of trial, thirteen-month-old S.J.C. remained in foster care and was doing well there. She had bonded with the foster family, and the foster parents would like to adopt her.

Appellant agreed that the foster parents were taking good care of S.J.C., but Appellant believed that she had changed and would be a better mother now. Appellant did not want her parental rights to be terminated. However, the conservatorship caseworker testified that she believed that termination of both parents' rights would be in S.J.C.'s best interest. Based on Appellant's criminal history and continued involvement with drugs, the caseworker did not believe that Appellant would provide S.J.C. with a safe and stable environment. We note additionally that, at the time of the final hearing, Appellant had recently been denied parole.

III. *Analysis*

A. Section 161.001(b)(1)(E)

In her fifth and sixth issues, Appellant challenges the legal and factual sufficiency of the evidence to support the trial court's finding under subsection (E). Under subsection (E), the relevant inquiry is whether evidence exists that the endangerment of the child's well-being was the direct result of the parent's conduct, including acts, omissions, or failures to act. *In re D.O.*, 338 S.W.3d 29, 33 (Tex. App.—Eastland 2011, no pet.). Additionally, termination under subsection (E) must be based on more than a single act or omission; a voluntary, deliberate, and conscious course of conduct by the parent is required. *In re D.T.*, 34 S.W.3d 625,

634 (Tex. App.—Fort Worth 2000, pet. denied); *In re K.M.M.*, 993 S.W.2d 225, 228 (Tex. App.—Eastland 1999, no pet.). The offending conduct does not need to be directed at the child, nor does the child actually have to suffer an injury. *In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009).

We hold that the evidence is legally and factually sufficient to support the trial court's finding under subsection (E). While in Appellant's care, S.J.C. was endangered by Appellant's knowing involvement with drugs and the sale of drugs from her home. S.J.C. had been exposed to cocaine—so much so that she had a large amount in her system at the time of removal and had to endure withdrawals for approximately three months after her removal. Thus, Appellant had engaged in conduct—or she had knowingly placed S.J.C. with the child's father who engaged in conduct—that endangered the physical or emotional well-being of S.J.C. Consequently, we overrule Appellant's fifth and sixth issues. Because a finding that a parent committed one of the acts listed in Section 161.001(b)(1)(A)–(U) is all that is required under that statute, we need not address Appellant's third, fourth, seventh, eighth, ninth, tenth, eleventh, and twelfth issues, which relate to the sufficiency of the evidence with respect to the trial court's findings under subsections (D), (N), (O), and (Q). *See* TEX. R. APP. P. 47.1.

B. Best Interest

In her first and second issues, Appellant challenges the trial court's finding that termination of her rights would be in the best interest of the child. Based on the evidence presented at trial and the *Holley* factors, the trial court could reasonably have formed a firm belief or conviction that termination of Appellant's parental rights would be in the best interest of the child. *See Holley*, 544 S.W.2d at 371–72. Based upon our review of the entire record, we hold that the evidence, as set forth above, is both legally and factually sufficient to support the finding that termination

of Appellant's parental rights is in the best interest of S.J.C. *See id.* We overrule Appellant's first and second issues.

IV. *This Court's Ruling*

We affirm the trial court's order of termination.

MIKE WILLSON
JUSTICE

May 3, 2018

Panel consists of: Willson, J.,
Bailey, J., and Wright, S.C.J.[1]

[1]Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.