AFFIRMED; Opinion Filed November 2, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00624-CV

IN THE INTEREST OF K.J., A MINOR CHILD

On Appeal from the 303rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-16-25780-V

MEMORANDUM OPINION

Before Justices Lang, Myers, and Stoddart
Opinion by Justice Stoddart

Mother appeals the termination of her parental rights to her daughter, K.J. In five issues, Mother argues the evidence is legally and factually insufficient to support termination of her parental rights and to support the appointment of the Department of Family and Protective Services (Department) as K.J.'s managing conservator. We affirm the trial court's judgment.

Mother has three minor children: K.J., who was sixteen years old at the time of trial, and twins who are a few years younger. K.J. and the twins have different fathers. At the time of trial, K.J. was living with a foster mother and the twins were with their father.

On December 2, 2016, the Department filed an original petition for protection of a child, for conservatorship, and for termination in a suit affecting the parent-child relationship seeking to terminate Mother's and K.J.'s father's parental rights.[1] After the trial court sustained Mother's

[1] K.J.'s father failed to appear despite being served in this suit. The trial court found him to be in default and terminated his parental rights. Father did not appeal.

special exceptions, the Department filed an amended petition alleging Mother knowingly placed or allowed K.J. to remain in conditions endangering her physical or emotional well-being and engaged in conduct or knowingly placed K.J. with persons who engaged in conduct endangering K.J.'s physical or emotional well-being. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E). The case proceeded to trial.

A court may terminate a parental relationship if it finds by clear and convincing evidence (1) one or more statutory grounds for termination and (2) that termination is in the child's best interest. TEX. FAM. CODE ANN. § 161.001(b)(1)–(2). Clear and convincing evidence is 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. *Id.* § 101.007. Here, the jury found the Department proved by clear and convincing evidence that Mother: (1) knowingly placed or knowingly allowed K.J. to remain in conditions or surroundings that endangered K.J.'s physical or emotional well-being, or (2) engaged in conduct or knowingly placed K.J. with persons who engaged in conduct that endangered K.J.'s physical or emotional well-being. *See* TEX. FAM. CODE ANN. § 161.001(b)(l)(D), (E). The jury also found that termination of Mother's parental rights was in K.J.'s best interest. *Id.* § 161.001(b)(2). The trial court's judgment terminated Mother's parental rights and appointed the Department as the Sole Permanent Managing Conservator of K.J. This appeal followed.

In her first two issues, Mother argues the evidence is legally and factually insufficient to support the grounds for termination of her parental rights pursuant to section 161.001(b)(1)(D) and (E). In her third and fourth issues, she argues the evidence is legally and factually insufficient support the finding that termination is in K.J.'s best interest.

When conducting a legal sufficiency review in a parental termination case, we look at 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 re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005). To give appropriate deference to the factfinder's conclusions, we look at the evidence in the light most favorable to the judgment and assume the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so. *Id.* A corollary to this requirement is that a court should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible. *Id.* This does not mean that a court must disregard all evidence that does not support the finding. *Id.* Disregarding undisputed facts that do not support the finding could skew the analysis of whether there is clear and convincing evidence. *Id.*

Therefore, when conducting a legal sufficiency review in a parental termination case, we must consider all of the evidence, not just that which favors the verdict. *Id.* However, witness credibility issues that depend on appearance and demeanor cannot be weighed by the appellate court. *Id.* Even when credibility issues are reflected in the written transcript, the appellate court must defer to the factfinder's determinations when those determinations are not unreasonable. *Id.*

When reviewing termination findings for factual sufficiency, a court of appeals must give due deference to the factfinder's findings and should not supplant the factfinder's judgment with its own. *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). The court should inquire "whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the [ ] allegations." *Id.* (quoting *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002)). "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, then the evidence is factually insufficient." *Id.* (quoting *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002)). When applying this standard, "[a]n appellate court's review must not be so rigorous that the only factfindings that could withstand review are those established beyond a reasonable doubt." *Id.* (quoting *In re C.H.*, 89 S.W.3d at 26).

The Department moved to terminate Mother's rights pursuant to section 161.001(b)(1)(D) and (E) of the family code. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E). The Department was required to show Mother (1) knowingly placed or knowingly allowed K.J. to remain in conditions or surroundings which endangered her physical or emotional well-being or (2) engaged in conduct or knowingly placed K.J. with persons who engaged in conduct which endangered her physical or emotional well-being. *See id.* "Endanger" means to expose to loss or injury, or to jeopardize a child's emotional or physical health, but it is not necessary that the conduct be directed at the child or that the child actually suffer an injury. *In re J.D.B.*, 435 S.W.3d 452, 463 (Tex. App.—Dallas 2014, no pet.). The primary distinction between the two subsections in the code is the source of the physical or emotional endangerment to the child. *Id*. Subsection (D) addresses the child's surroundings and environment while subsection (E) address parental misconduct. *Compare* TEX. FAM. CODE ANN. § 161.001(1)(D), with *id*. § 161.001(1)(E); *see also In re J.D.B.*, 435 S.W.3d at 463. Parental conduct, however, is relevant to the child's environment under subsection (D). *In re J.D.B.*, 435 S.W.3d at 463. That is, "[c]onduct of a parent or another person in the home can create an environment that endangers the physical and emotional well-being of a child as required for termination under subsection (D)." *Id.* (quoting *Castaneda v. Tex. Dep't of Protective & Regulatory Servs.*, 148 S.W.3d 509, 522 (Tex. App.—El Paso 2004, pet. denied)). Inappropriate, abusive, or unlawful conduct by persons who live in the child's home is part of the "conditions or surroundings" of the child's home under subsection (D). *Id.* (quoting *In re M.R.J.M.*, 280 S.W.3d 494, 502 (Tex. App.—Fort Worth 2009, no pet.) ("A child is endangered when the environment creates a potential for danger that the parent is aware of but disregards.")). Termination under section 161.001(b)(1)(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 Interest of*

K.S., No. 05-15-01294-CV, 2016 WL 1613126, at *14 (Tex. App.—Dallas Apr. 21, 2016, pet. denied) (mem. op.).

The record shows Mother has an "up and down personality" and becomes volatile. She was diagnosed with schizophrenia in 2009. She has delusions, visual and auditory hallucinations, sees and hears people talking to her who are not present, and hears God talking to her. The children have witnessed Mother's hallucinations. The record is not clear whether Mother takes medication, although Mother states she takes medication as prescribed. She uses marijuana "on and off" to self-medicate, including when her children are home. A licensed psychologist testified that using marijuana could interfere with Mother's ability to care for her children.

Mother contacted the Department because she believed her brother and ex-boyfriend were sexually abusing her children and she thought the children were sold for sex trafficking. Natica Worthy, a Department investigator who was assigned to the case, called Mother and they agreed on a time to meet. When Worthy arrived at Mother's home, a neighbor told Worthy that Mother "had just left." Mother called Worthy later that evening and asked Worthy to return to her apartment. Worthy told Mother she could return the following day during business hours, and Mother became "very angry" and "would not accept that. She started making verbal threats to put her child out [of] the house. She indicated that she doesn't know what would happen to the child." Based on Mother's comments, Worthy believed K.J. would be outside alone at night and in danger. Worthy called 911.

The following day, Worthy spoke to Mother and the children. Worthy and Mother discussed a plan for the children's safety during the investigation, including instituting a plan addressing Mother's marijuana use. Shortly thereafter, Mother checked the children and herself into Parkland Hospital where they were placed in the psychiatric ward. The children were on suicide watch and Mother needed to stay for at Parkland for 48 hours. Worthy asked Mother about

family members who could take care of the children, but Mother did not want her children being placed with family because she "felt that her family members were sexually abusing the children."

Mother has delusions her children are being sexually abused, and she is particularly concerned about K.J. Although the children never made outcries about sexual misconduct, Mother repeatedly took them for sexual abuse screenings, which the children did not like. Although the Department conducted investigations, the sexual abuse allegations were not substantiated. Department personnel believe the children have not been sexually abused. Even so, Mother remained convinced sexual abuse occurred and continued seeking protection for her children, including from the Department, Parkland Hospital, and a shelter. A psychologist who evaluated Mother testified Mother does not recognize that her reality is based on delusions. Worthy testified that taking children for repeated sexual abuse screenings can be emotional or physical abuse.

Mother accused K.J. of having an affair with Mother's boyfriend and becoming pregnant with his child, which K.J. denied. Mother then "punched her in the face and her mouth" and required K.J. to wear a menstrual pad across her face to hide the bruise as they shopped at Wal-Mart. After this incident, Mother told K.J. to call the Department and instructed K.J. about what to say so K.J. would be removed from her house because Mother "did not want her there anymore." The children told a therapist that Mother physically abused them.

Myrna Dartson, a licensed psychologist, evaluated Mother on April 11, 2017. Mother told Dartson that in December 2016, she accused K.J. and her then-boyfriend of having a sexual relationship. She also believed K.J. was having a sexual relationship with a 36-year-old man she met on Instagram. Mother reported the Instagram relationship to the police in September 2016. Mother told Dartson she sought medical treatment for K.J., which revealed K.J. had been sexually active. However, because the police refused to become involved, Mother contacted the

Department. Mother told Dartson that her brother raped the twins and another man sold one of the twins as a sex slave.

Mother reported a suicidal ideation and also homicidal ideations against her own mother and brother because she believes he raped her daughters. Mother did not own a weapon or know where to obtain one. Dartson stated Mother needs anger management counseling. She was not concerned that Mother's homicidal ideation would be directed toward her children, and there is no indication that she would turn her delusions toward her children and physically hurt them. Mother wants the children in a safe environment.

Mother told Dartson that the Department accused her of fabricating stories of sexual abuse of her children. Dartson noted Mother's story differed from the Department's reports. Dartson was concerned Mother has delusional thoughts about sexual abuse of her children.

Stephanie Pond, Mother's guardian ad litem, testified Mother is concerned about sexual abuse of her children. Mother's goal is to "stop the trafficking and abuse of her children and . . . have their abusers brought to justice." Pond did not know whether the abuse was real or imaginary. Pond testified Mother "has even gone so far as to say that her children cannot be with her because she is concerned that they would not be protected enough with her." Mother can be aggressive and volatile and "will react strongly and quickly, especially if she does not get what she thinks that her children need." Pond has not known Mother to leave her children in conditions that put them in danger.

Mother had the opportunity to work with the Department and have the children returned, but she failed to complete all of her services. The Department offered parenting classes, drug and alcohol assessments, individual counseling, and psychological and psychiatric evaluations. Mother completed the psychological and psychiatric evaluations, but declined other services. Based on the psychologist's recommendation, Mother was asked to seek additional mental health

care, but did not do so. Pond testified Mother was concerned the counselors would not be "neutral." The Department asked Mother five or six times to complete a drug test, but she never did. Although the Department has a duty to report mental health concerns to Adult Protective Services, no recommendation for Mother was made.

Mother did not consistently attend visitation. When she did, she sometimes was calm, but, at other times, was so aggressive that the Department's security intervened. Mother and K.J. have a "somewhat dysfunctional relationship." At some point, K.J. asked to stop attending visitation with Mother, and Mother agreed the visits were too difficult for K.J.

Mother has a criminal history, including aggravated assault causing bodily injury in 2002, aggravated assault with family violence in 2009, assault of a public officer in 2009.

Looking at the evidence in the light most favorable to the jury's verdict, giving due consideration to evidence that the jury could reasonably have found to be clear and convincing, we conclude the jury could have formed a firm belief or conviction that Mother knowingly placed K.J. in conditions endangering her physical or emotional well-being or engaged in conduct that endangered K.J.'s physical or emotional well-being. *See* TEX. FAM. CODE. ANN. § 161.001(b)(1)(D), (E). The record shows Mother's delusions cause her to believe K.J. has had sexual relationships with Mother's ex-boyfriend and an older man K.J. met on Instagram, have K.J. examined numerous times for signs of sexual abuse, check K.J. into Parkland Hospital psychiatric ward, and move her family to a shelter to protect against the alleged abuse. Mother does not understand the abuse never occurred. Further, the record shows Mother hit K.J. and forced her to walk through Wal-Mart using a pad to cover the bruise on her face before having K.J. contact the Department so K.J. would be removed from her house because Mother "did not want her there anymore." This instance is consistent with evidence about Mother's volatile personality and struggles with anger management. Mother also uses marijuana to self-medicate,

including when her children are in the house. Because the evidence is legally and factually sufficient to support the verdict, we overrule Mother's first and second issues.

The Department was required to prove by clear and convincing evidence that termination of Mother's parental right to K.J. is in K.J.'s best interest. *See* TEX. FAM. CODE ANN. § 161.001(2); *In re E.N.C.*, 384 S.W.3d 796, 807 (Tex. 2012). A strong presumption exists that the best interest of the child will be served by keeping the child with a parent. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam); *In Interest of N.G.*, No. 05-17-01255-CV, 2018 WL 1835697, at *3 (Tex. App.—Dallas Apr. 18, 2018, no pet.) (mem. op.). Prompt and permanent placement of a child in a safe environment is also presumed to be in the child's best interest. TEX. FAM. CODE ANN. § 263.307(a). Several statutory factors should be taken into account in evaluating a parent's willingness and ability to provide the child with a safe environment, including the child's age and vulnerabilities; results of psychological evaluations of the parents; whether there is a history of substance abuse by the child's family; the willingness and ability of the child's family to complete counseling services and to cooperate with an agency's close supervision; and the willingness and ability of the child's family to effect positive and personal changes within a reasonable period of time. *Id*. § 263.307(b) (1), (6), (8), (10), (11). Evidence of section 161.001(b)(1) termination grounds may be probative of a child's best interest. *See In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002); *In Interest of N.G.*, 2018 WL 1835697, at *3.

We also look to other non-exclusive factors relevant to the best-interest determination, including (1) the child's desires, (2) the child's present and future emotional and physical needs, (3) the present and future emotional and physical danger to the child, (4) the parent's parental abilities, (5) the programs available to assist a parent to promote the child's best interest, (6) the parent's plans for the child, (7) the stability of the home, (8) the parent's acts or omissions that may indicate the parent-child relationship is not a proper one, and (9) any excuse for the parent's

acts or omissions. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976); *In Interest of N.G.*, 2018 WL 1835697, at *3. A best-interest finding need not be supported by evidence of every *Holley* factor, particularly if there is undisputed evidence that the parental relationship endangered the child's safety. *See In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002); *In Interest of N.G.*, 2018 WL 1835697, at *3.

In addition to the evidence discussed above, the record also shows K.J. wanted to be adopted. Warren testified K.J. wanted Mother's rights terminated because she sought safety and the ability to bond with an adult. K.J. began calling her foster mother "Mom" and expressed love for her foster mother. K.J. also wanted to have a relationship with Mother, although her foster mother did not believe that was best for K.J. Warren believed it would be beneficial for K.J. to have ongoing visitation with Mother, but not to live primarily with Mother.

Dartson did not believe the children should be returned to Mother's care. Her report stated Mother was unable to "understand [K.J.'s] feelings and/or needs accurately, perceives the parental role to restrict her freedom, reported health concerns that could be the result of parenting stress or an additional, independent stress in the parent-child system." The report also stated Mother "poses a threat to the safety of her children as a result of her mental health issues, difficulties with anger-control, and drug use." She needs psychiatric consultation, drug treatment, domestic-violence and anger-management counseling, and parenting classes.

At the beginning of the Department's investigation, the children were "kind of shut off," anxious, and nervous. K.J. did not trust adults and was oppositional and defiant. Brooke Johnson, a Department conservatorship worker, described Mother's home as an insecure environment where the children did not know "what to expect from reactions from mom. There was the constantly being checked for sexual abuse and just the inconsistencies," much of which was directed toward K.J. Once K.J. was removed from Mother's care and living in a secure home, she made friends,

began talking more openly, became more directed, began setting goals, and considered colleges and a career path. Warren was concerned that if K.J. were returned to Mother's house, she would run away and regress in the progress she has made.

Johnson testified that terminating Mother's parental rights to K.J. would be in K.J.'s best interest because K.J. would be eligible for adoption. Brandi Henderson, K.J.'s foster mother for approximately fifteen months, testified K.J. called her "Mom." She wanted to adopt K.J. and K.J. wanted to be adopted. K.J. did not want to return to Mother or continue visiting Mother. K.J.'s first choice was adoption by Henderson. If Mother's rights were not terminated, K.J. would remain in foster care. At the time of trial, K.J. was 16 years old, had been in foster care for over a year (since January 2017), and would remain in foster care for an additional 24 months until she was 18.

Pond testified Mother did not want her parental rights terminated.

Having reviewed the evidence under the appropriate standards of review, we conclude a reasonable factfinder could have formed a firm belief or conviction that termination of Mother's parental rights was in K.J.'s best interest. *See In Interest of E.M.*, No. 05-17-00383-CV, 2017 WL 4081455, at *6 (Tex. App.—Dallas Sept. 15, 2017, no pet.) (mem. op.). The evidence shows K.J. wanted to be adopted by her foster mother and thrived in Henderson's care. In Mother's care, however, K.J. was repeatedly subjected to sexual abuse allegations and examinations as a result of Mother's delusions. Additionally, Mother has anger management problems, self-medicates with marijuana, and did not pursue counseling. We conclude the evidence is legally and factually sufficient to support the trial court's best interest finding and overrule Mother's third and fourth issues.

In her fifth issue, Mother argues the evidence is legally and factually insufficient to support the appointment of the Department as managing conservator. Conservatorship determinations are

subject to review only for abuse of discretion, and may be reversed only if the decision is arbitrary and unreasonable. *In re J.A.J.*, 243 S.W.3d 611, 616 (Tex. 2007). Family code section 161.207(a) provides in part that, if the court terminates the parent–child relationship with respect to both parents or to the only living parent, the court shall appoint "a suitable, competent adult," the Department, or a licensed child-placing agency as managing conservator of the child. TEX. FAM. CODE ANN. § 161.207(a). When the challenge to a termination is overruled, the trial court's appointment of the Department as sole managing conservator may be considered a "consequence of the termination pursuant to Family Code section 161.207." *In re N.T.*, 474 S.W.3d 465, 480 (Tex. App.—Dallas 2015, no pet.); *In Interest of C.H.*, No. 05-17-00846-CV, 2018 WL 446426, at *6 (Tex. App.—Dallas Jan. 17, 2018, no pet.) (mem. op.). Although Mother seeks appointment as the sole managing conservator, she provides no authority for the proposition that she is a "suitable, competent adult" as contemplated by section 161.207(a) or that the presumption a parent be named managing conservator, as found in section 153.131(a), applies to a parent whose parental rights have been terminated under Chapter 161. *See In re N.T.*, 474 S.W.3d at 481; *In Interest of C.H.*, 2018 WL 446426, at *6. Additionally, Mother does not explain how the appointment of the Department as managing conservator constitutes an abuse of discretion. Nor does Mother propose a different "a suitable, competent adult" who she believes should have been named. Given our determination that the evidence supports termination of Mother's parental rights as in K.J.'s best interest, and Father did not appeal the termination of his parental rights, we conclude the trial court did not abuse its discretion by appointing the Department as managing conservator. We overrule Mother's fifth issue.

We affirm the trial court's judgment.

/Craig Stoddart/
CRAIG STODDART
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN THE INTEREST OF K.J., A MINOR CHILD	On Appeal from the 303rd Judicial District Court, Dallas County, Texas
	Trial Court Cause No. DF-16-25780-V.
No. 05-18-00624-CV	Opinion delivered by Justice Stoddart.
	Justices Lang and Myers participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 2nd day of November, 2018.