Opinion issued February 23, 2012

In The

Court of Appeals

For The

First District of Texas

NO. 01-11-00385-CV

C.H. AND L.L.G., Appellants

V.

DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES, Appellee

On Appeal from the 314th District Court
Harris County, Texas
Trial Court Case No. 2006–09289J

*** * * ***

NO. 01-11-00454-CV

NO. 01-11-00455-CV

K.D.G. AND L.L.G., Appellants

V.

DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES, Appellee

On Appeal from the 314th District Court
Harris County, Texas
Trial Court Case Nos. 2007–02686J & 2009–06674J

MEMORANDUM OPINION

In these three appeals, appellant, L.L.G., challenges the final decrees signed by the trial court terminating her parental rights to her four minor children, C.M.H., L.H., J.G., and K.G.[1] Appellant raises five identical issues in each appeal challenging the legal and factual sufficiency of the evidence supporting the termination of her parental rights.

We affirm the final decree in each appeal.

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[1] The Department of Protective and Family Services filed three separate suits affecting the parent-child relationship involving L.L.G.'s four children. The first suit pertains to the minor children, C.M.H. and A.H. It bears trial court cause number 2006–09289J and appellate cause number 01–11–00385-CV. In that suit, the parental rights of the children's father, C.H. were also terminated. The father filed a notice of appeal. We dismissed his appeal by interlocutory order after he failed to file his appellate brief and prosecute his appeal. *See* TEX. R. APP. P. 38.8(a), 42.3(b), 43.2(f). The second suit pertains to the minor child, J.G. It bears trial court cause number 2007–02686J and appellate cause number 01–11–00455–CV. The third suit pertains to the minor child, K.G. It bears trial court cause number 2009–06674J and appellate cause number 01-11–00454–CV. In those two suits, the parental rights of K.D.G., the father of J.G. and K.G., were also terminated. The father, K.D.G., filed a notice of appeal but failed to file an appellate brief. We dismissed K.D.G.'s appeal by interlocutory order for failing to prosecute his appeal. *See* TEX. R. APP. P. 38.8(a), 42.3(b), 43.2(f).

Background Summary

In October 2006, Appellant was charged with the felony offense of injury to a child. The charge related to Appellant's assault of her son, then seven-year-old C.M.H. Appellant later pleaded guilty to the lesser-included offense of assault—family violence, a class A misdemeanor. In relation to this incident, the Department of Family and Protective Services ("the Department") took C.M.H. and his five-year old sister, A.H., into custody. The Department filed its "Original Petition for Protection of a Child, for Conservatorship, and for Termination in a Suit Affecting the Parent-Child Relationship" in October 2006 against Appellant and the children's father, C.H.

Appellant gave birth to a baby girl, J.G., in December 2006. In March 2007, the Department filed a separate suit affecting the parent-child relationship with respect to J.G against Appellant and J.G.'s father, K.D.G.

In October of 2007, decrees were signed by the trial court regarding the three children. In the 2006 action, concerning C.M.H. and A.H., the court appointed their father, C.H., as the children's sole managing conservator. The court named Appellant as a possessory conservator. In the 2007 action, the court named Appellant and J.G.'s father, K.D.G., as J.G.'s joint managing conservators, with K.D.G. named the primary managing conservator.

In 2008, C.H. took a job overseas. As a result, C.M.H. and A.H. went to live with Appellant. Appellant had another daughter, K.L.G., on December 29, 2008. K.D.G. is K.G.'s biological father. In April 2009, Appellant married K.D.G. At that point all, four children were in Appellant's care.

On September 17, 2009, the Department received another referral alleging that Appellant had physically abused A.H. The referral stated that A.H. had complained to the school nurse that her back hurt. An examination revealed that A.H. had bruises on her thighs, bruising on her buttocks, and several linear bruises on her back with scabbing. AH stated that Appellant had hit her with a "white stick."

The Department sent an employee to Appellant's home to investigate. C.M.H. told the Department employee that Appellant hit him and A.H. with the plastic rod used to adjust the window blinds, with extension cords, and with belts. He told the employee that he was afraid because he would get "whupped" by Appellant after the employee left.

In an affidavit, the Department employee would later testify,

> Because of the visible bruising, the disclosures made by the children, [C.M.G.'s] fear of his mother and the lack of protective adults in his life, and [Appellant's] significant past history including a conviction for injury to a child based on an incident which required [C.M.G.] to have emergency medical treatment after a "whupping," . . . the decision was made to remove the children from the care of [Appellant].

The Department took all four children into custody and placed them in foster homes.

In the 2006 and 2007 suits involving the three oldest children, the Department filed an "Original Motion to Modify Conservatorship, for Termination of Parent-Child Relationship, and Suit for the Protection of a Child in an Emergency." On September 21, 2009, the Department also filed a new suit by filing its "Original Petition for Protection of a Child, for Conservatorship, and for Termination in a Suit Affecting the Parent-Child Relationship" pertaining to Appellant's fourth child, K.G. In all three suits, the Department requested that the parent-child relationship be terminated between Appellant and her four children.

To support termination, the Department relied on acts that, as defined by Family Code section 161.001(1), support termination of the parent-child relationship. The Department cited Appellant's placement on deferred adjudication community supervision for her assault of C.M.H. in October 2006, conduct supporting termination under subsection 161.001(1)(L).[2]

The Department also alleged that Appellant had "knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child, pursuant to § 161.001(1)(D), Texas Family Code" and had "engaged in conduct or knowingly

[2] *See* TEX. FAM. CODE ANN. § 161.001(1)(L) (Vernon Supp. 2011).

placed the children with persons who engaged in conduct which endangers the physical or emotional well-being of the children, pursuant to § 161.001(1)(E), Texas Family Code."[3] The Department also relied on Appellant's alleged failure, in violation of subsection 161.001(1)(O), to comply with provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the children who have been in the permanent or temporary managing conservatorship of the Department for not less than nine months as a result of the children's removal from the parent as a result of abuse or neglect of the children.[4]

In addition, the Department sought to terminate the parent-child relationship between the four children and the respective fathers. Specifically, it sought to terminate the parent-child relationship between C.H. and the two oldest children, C.M.H. and A.H., and to terminate the parent-child relationship between K.D.G. and the two youngest children, J.G. and K.G. The Department requested that, in the event the parental rights of Appellant and the fathers were terminated, it be appointed the children's sole managing conservator.

The three suits were tried together to a jury in March 2011. Incorporating the jury's findings, the trial court rendered decrees for termination in each case terminating the parent-child relationships between Appellant and her four children

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[3] *See id.* §§ 161.001(1)(D), 161.001(1)(E).

[4] *See id.* § 161.001(1)(O).

and between the children and their fathers. With respect to the termination of Appellant's parental rights, the decrees recite that the trial court found, by clear and convincing evidence, that Appellant had engaged in conduct as defined in Family Code subsections 161.001(1)(D), (E), (L), and (O). Each decree further recites that the trial court determined by clear and convincing evidence that termination of the parent-child relationship was in the children's best interest. The trial court also appointed the Department as sole managing conservator of the children.

Legal Sufficiency of the Evidence to Support Termination

Appellant presents five identical issues in each appeal. Her first four issues raise challenges to the legal and factual sufficiency of the evidence to support the predicate termination findings under Family Code subsections 161.001(1)(D), (E), (L), and (O). Appellant's fifth issue challenges the legal and factual sufficiency of the evidence to support the finding that termination was in the children's best interest.

A. Burden of Proof and Standards of Review

The burden of proof at trial in parental-termination cases is by clear and convincing evidence. TEX. FAM.CODE ANN. § 161.001; *In re J.F.C.*, 96 S.W.3d 256, 263 (Tex. 2002). Section 161.001 of the Family Code provides the method by which a court may involuntarily terminate the parent-child relationship. *See* TEX.

FAM. CODE. ANN. § 161.001. Under this section, a court may order the termination of the parent-child relationship if the court finds, by clear and convincing evidence, that (1) one or more of the acts enumerated in section 161.001(1) was committed and (2) termination is in the best interest of the child. *Id.* "Only one predicate finding under section 161.001(1) is necessary to support a judgment of termination when there is also a finding that termination is in the child's best interest." *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003).

"'Clear and convincing evidence' means 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 (Vernon 2008); *J.F.C.*, 96 S.W.3d at 264. This heightened burden of proof results in a heightened standard of review.

When determining legal sufficiency, 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." *J.F.C.*, 96 S.W.3d at 266. To give appropriate deference to the fact finder's conclusions, we must assume that the fact finder resolved disputed facts in favor of its finding if a reasonable fact finder could do so. *Id.* We disregard all evidence that a reasonable fact finder could have disbelieved or found to have been incredible. *Id.* This does not mean that we must disregard all evidence that does not support the finding. *Id.*

The disregard of undisputed facts that do not support the finding could skew the analysis of whether there is clear and convincing evidence. *Id*. Therefore, in conducting a legal-sufficiency review in a parental-termination case, we must consider all of the evidence, not only that which favors the verdict. *See City of Keller v. Wilson*, 168 S.W.3d 802, 817 (Tex. 2005).

In determining a factual-sufficiency point, the higher burden of proof in termination cases also alters the appellate standard of review. *In re C.H.*, 89 S.W.3d 17, 26 (Tex. 2002). "[A] finding that must be based on clear and convincing evidence cannot be viewed on appeal the same as one that may be sustained on a mere preponderance." *Id*. at 25. In considering whether evidence rises to the level of being clear and convincing, we must consider whether the evidence is sufficient to reasonably form in the mind of the fact finder a firm belief or conviction as to the truth of the allegation sought to be established. *Id*. We consider whether disputed evidence is such that a reasonable fact finder could not have resolved that disputed evidence in favor of its finding. *J.F.C.*, 96 S.W.3d at 266. "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 fact finder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient." *Id*.

The natural rights that exist between parents and their children are of constitutional dimension. *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985). Therefore, termination proceedings should be strictly scrutinized, and the involuntary termination statutes should be strictly construed in favor of the parent. *Id*. at 20–21. However, "[j]ust as it is imperative for courts to recognize the constitutional underpinnings of the parent-child relationship, it is also essential that emotional and physical interests of the child not be sacrificed merely to preserve that right." *C.H.*, 89 S.W.3d at 26.

B. Challenge to Predicate Finding Under Subsection 161.001(1)(L)

As mentioned, the termination of Appellant's parental rights to her four children was predicated on, among others, a violation of Family Code subsection 161.001(1)(L). In her third issue, Smith contends that the evidence was legally and factually insufficient to support that predicate finding.

Subsection L of section 161.001(1) permits termination when clear and convincing evidence shows that the parent has

> been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:
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> (i) Section 19.02 (murder);

(ii) Section 19.03 (capital murder);

(iii) Section 19.04 (manslaughter);

(iv) Section 21.11 (indecency with a child);

(v) Section 22.01 (assault);

(vi) Section 22.011 (sexual assault);

(vii) Section 22.02 (aggravated assault);

(viii) Section 22.021 (aggravated sexual assault);

(ix) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(x) Section 22.041 (abandoning or endangering child);

(xi) Section 25.02 (prohibited sexual conduct);

(xii) Section 43.25 (sexual performance by a child);

(xiii) Section 43.26 (possession or promotion of child pornography);

(xiv) Section 21.02 (continuous sexual abuse of young child or children);

(xv) Section 20A.02(a)(7) or (8) (trafficking of persons); and

(xvi) Section 43.05(a)(2) (compelling prostitution).

TEX. FAM. CODE ANN. § 161.001(1)(L).

Here, the trial court instructed the jury that Appellant's parental rights could be terminated if it found that Appellant had "caused serious injury to [C.M.H.] by

an act or acts that resulted in the parent being placed on deferred adjudication community supervision." Appellant does not dispute that the evidence at trial established that she was placed on deferred adjudication community supervision for the Class A misdemeanor offense of assault–family violence with respect to the injuries she inflicted on C.M.H. in October 2006. *See* TEX. PENAL CODE ANN. §§ 22.01(a)(1), 22.01 (b) (Vernon 2011); *see also* TEX. FAM. CODE ANN. § 71.004 (Vernon 2008). She also does not dispute that the offense of assault–family violence is a violation of Penal Code section 22.01 which can support termination under Family Code subsection 161.001(1)(L)(v) if the assault resulted in serious injury of a child. *See* TEX. FAM. CODE ANN. § 161.001(1)(L)(v).

Appellant bases her sufficiency challenge on the premise that the Department did not show that C.M.H. suffered "serious injury" as result of the assault by Appellant. Appellant points out that neither the Family Code nor the Penal Code defines "serious injury." The jury charge also did not define it for the jury.

Appellant points out that the Class A misdemeanor offense of assault–family violence requires an establishment of "bodily injury" but not "serious injury." The Penal Code defines "bodily injury" as "physical pain, illness, or any impairment of physical condition." *See* TEX. PENAL CODE ANN. § 1.07(a)(8) (Vernon Supp. 2011). Appellant asserts that, because "serious injury" is not an element of the

offense of Class A misdemeanor assault–family violence, the Department did not meet its burden to show that she was responsible for serious injury to C.M.H. Appellant posits that the Department had to show "serious bodily injury," as defined in the Penal Code, was inflicted in the commission of the offense in order for section 161.001(L) to support termination. The Penal Code defines "serious bodily injury" as "bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." *Id.* § 1.07(a)(46). Appellant contends that the Department did not offer sufficient evidence to establish that C.M.H. suffered serious bodily injury as defined in the Penal Code.

Appellant's assertion that the Department was required to show that C.M.H. suffered "serious bodily injury" as defined in the Penal Code finds no support in the law. To the contrary, a review of the offenses listed in section 161.001(1)(L) contradicts this assertion. A number of the offenses identified in subsection L do not require a showing of any form of bodily injury. For example, one means of committing the offense of indecency with a child—an offense listed in subsection L—is exposure by a person of his anus or genitals to a child under the age of 17 years if the exposure was done with intent to arouse or gratify the sexual desire of any person. TEX. PENAL CODE ANN. § 21.11 (Vernon 2011). A victim of such an offense may not suffer bodily injury but may nonetheless suffer serious injury in

the form of emotional or psychological injury. *See In re A.R.R.*, 61 S.W.3d 691, 700 (Tex. App.—Fort Worth 2001, pet. denied) (holding that evidence was sufficient to show that aggravated sexual assault victim had suffered "serious injury" for purposes of subsection L because evidence showed that she suffered damage to her emotional well-being that would be a life-long problem), *disapproved of on other grounds by In re A.V.*, 113 S.W.3d 355, 360 (Tex. 2003) *and In re C.H.*, 89 S.W.3d 17, 26 (Tex. 2002). Subsection L's inclusion of such offenses indicates that the type of "serious injury" supporting termination of parental rights does not require "bodily injury" nor is it synonymous with "serious bodily injury," as defined in the Penal Code. *Cf. In re L.S.R.*, 92 S.W.3d 529, 530 (Tex. 2002) (denying petitions for review but also disavowing any suggestion by court of appeals' opinion that "molestation of a four-year-old, or indecency with a child, generally, does not cause serious injury" for purposes of subsection L).

When, as here, a term is not defined in a statute, we give it its ordinary meaning. *See* TEX. GOV'T CODE ANN. § 312.002 (Vernon 2005); *City of San Antonio v. Hartman*, 201 S.W.3d 667, 672 n.19 (Tex. 2006). Similarly, because the jury charge did not include a definition of "serious injury," we assume that the jurors applied the plain and ordinary meaning of the word. *See Fenner v. Samson Res. Co.*, No. 01–03–00049–CV, 2005 WL 2123043, at *3 (Tex. App.—Houston [1st Dist.] Aug. 31, 2005, pet. denied) (mem. op.).

The dictionary defines "serious" in the context of "serious injury" to mean "having important or dangerous possible consequences." *Webster's New Collegiate Dictionary* 1050 (1981). Injury is defined as "hurt, damage, or loss sustained." *Id.* at 589.

At trial, the Department offered into evidence its caseworker's affidavit containing the following description of the events and the injuries that had been reported in relation to Appellant's assault of then seven-year-old C.M.H.:

> . . . . [Appellant] mother beat [C.M.H.] with a belt. Police were called to the scene. When they arrived, [C.M.H.] was being treated by Houston Fire Department paramedics. [C.M.H.] was transported to the emergency room of Texas Children's Hospital. [C.M.H.] has very heavy "railroad track" type marks across his back and across his lower stomach. [C.M.H.]'s left eye is swollen shut and there is a half-moon laceration under [C.M.H.]'s left eye. The mother's explanation for the eye injuries are that [C.M.H.] ran into a doorknob while running from mother. [C.M.H.] is small for a seven-year-old. Mother has been arrested for injury to a child.
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> . . . . When Houston Fire Department arrived they found [C.M.H.] sitting alone in the bathroom very distraught. He was shaking and scared to speak whenever mother was present. He has injuries all over his body. His eyes are swollen. He has belt marks head-to-toe. He has swollen limbs, especially his thighs and legs. The physician examining [C.M.H.] found evidence of chronic abuse. He has scars all over his body from abuse. The physician also examined [A.H.]. The physician found multiple scars on [A.H.]. There are scars in the forms of linear marks across her belly. When she was asked what happened, she said her mother cut her with a knife. [C.M.H.] could possibly be admitted due to his injuries. He is unable to walk at this point and is having to be transported by wheelchair.

Other evidence admitted at trial showed that C.M.H. was taken to the Texas Children's Hospital's emergency room following the incident. He was admitted to the hospital and stayed there for four days. "The Physicians Statement Regarding Injury to a Child" from Texas Children's Hospital was admitted into evidence. It contains a sworn physician's statement indicating that permanent injury could have resulted to C.M.H. had he not obtained immediate medical treatment. The physician specifically indicated that C.M.H.'s eye needed ophthalmologic follow-up. The physician described C.M.H.'s injuries as follows: "Patient has multiple bruises/welts over chest/abdomen, thighs and arms. Has left eye swollen shut with a laceration under orbit. Per ophthalmologist [patient] has 'corneal clouding' (suggestive of edema and trauma)."

Given the record, we conclude that the evidence, viewed in the light most favorable to the subsection 161.001(1)(L) finding, was sufficiently clear and convincing that a reasonable fact finder could have formed a firm belief or conviction that Appellant had been placed on deferred adjudication community supervision for being criminally responsible for the serious injury of [C.M.H.]. We further conclude that, viewed in light of the entire record, any disputed evidence could have been reconciled in favor of the section 161.001(1)(L) finding or was not so significant that the fact finder could not reasonably have formed a firm belief or conviction that the elements of subsection L were shown.

Accordingly, we hold that the evidence was legally and factually sufficient to support the section 161.001(1)(L) finding.

We overrule Appellant's third issue in each appellate cause.[5]

C. Best Interest Finding

1. Legal Principles

In her fifth issue, Appellant challenges the finding that termination would be in the children's best interest. *See* TEX. FAM. CODE ANN. § 161.001(2) (Vernon 2011). Some of the factors that an appellate court may consider in ascertaining the best interest of a child include the non-exhaustive list set forth in *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). Those factors include the following: (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

[5] Having determined that the evidence was legally and factually sufficient to support termination based on subsection 161.001(1)(L), we do not reach Appellant's issues asserting that the evidence was insufficient to support a finding under subsections D, E, and O. *See In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003).

(9) any excuse for the acts or omissions of the parent. *Id*. These factors are not exhaustive. *C.H.*, 89 S.W.3d at 27. "Best interest" does not require proof of any unique set of factors, nor does it limit proof to any specific factors. *Holley*, 544 S.W.2d at 371–72. The *Holley* test focuses on the best interest of the child, not the best interest of the parent. *In re R.F.*, 115 S.W.3d 804, 812 (Tex. App.—Dallas 2003, no pet.). The need for permanence is the paramount consideration for a child's physical and emotional needs. *Id*. The goal of establishing a stable, permanent home for a child is a compelling governmental interest. *Id.*

With the foregoing legal precepts in mind, we review the legal and factual sufficiency of the evidence to support the finding that termination was in the children's best interest.

2. Analysis

The evidence discussed above supporting the subsection L determination is also probative of whether termination of Appellant's parental rights is in the children's best interest. *See C.H.*, 89 S.W.3d at 28. Specifically, the evidence showing the severity of the injuries inflicted on C.M.H. is probative of the best interest finding. In addition, the record shows that A.H. had physical injuries inflicted by her mother over time.

When C.M.H. was taken to the hospital in October 2006, A.H. was also taken to the emergency room by emergency response personnel. Medical records

from Texas Children's hospital indicate that then five-year-old A.H. had bruising and scars "not typical in areas explained by active children.'" The physician indicated that his "impression" relating to A.H.'s "condition" was "non-accidental trauma." The evidence showed that when the Department investigator spoke with Appellant regarding her assault of C.M.H., Appellant admitted to hitting C.M.H. and also to hitting A.H. Appellant told the investigator that she had hit the children with a belt because she caught C.M.H. touching A.H.'s bottom. Appellant admitted that she had overreacted. She attributed her overreaction to the fact that she had been sexually abused as a child by her father.

The evidence also showed that, in September 2009, Appellant hit A.H. with a plastic rod leaving linear bruising on A.H.'s thighs, buttocks, and back "with scabbing." During a later psychological evaluation, Appellant admitted to hitting A.H. but stated that she had not realized how hard she was hitting her. The Department employee investigating the September 2009 referral also noted that C.M.H. had "old marks on his legs, arms, and face."

In addition to the assault of C.M.H. in 2006 and the abuse of A.H. in 2009 that resulted in the final removal of the children from Appellant's home, the Department introduced evidence that it had received other referrals regarding Appellant's abuse of her children. In an affidavit, a Department employee, who

investigated the September 2009 abuse involving A.H., offered the following testimony regarding earlier referrals received by the Department:

> On January 17, 2006, [the Department] received a referral alleging Physical Abuse of 6 year old [C.M.H.] by his mother . . . . The referral stated that [C.M.H.] had a cut on his lip and a missing tooth. It stated that [C.M.H.] said that he obtained the cut on his lip as well as the tooth being knocked out during a "whooping." [C.M.H.] said that his mother was angry because the teacher told his mother that he was not behaving on Friday. [C.M.H.] said his mother hit him with a belt on his face. He said the belt did not have a buckle but was a stretchy belt. [C.M.H.] said he was hit all over his body, including his face, with the belt. [C.M.H.] had no other marks or bruises from the belt. [C.M.H.] later said that his tooth did not occur from being hit with the belt but his Aunt [] pulled it out. However, [C.M.H.] was consistent about how he obtained the cut on his lip. This case was ruled Unable to Determine.
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> On March 27, 2006, [the Department] received another referral alleging Physical Abuse, Emotional Abuse and Sexual Abuse of [C.M.H.] and Sexual Abuse of [A.H.] by their mother . . . and their maternal grandparents . . . . The referral stated on Saturday March 25, 2006, [C.M.H.] was seen with a "knot" under his eye that was "puffy and red." The referral stated that [Appellant] hit [C.M.H.] in the eye and it looked like there was also a scratch possibly from a ring. [C.M.H.] stated that [Appellant] hates him and she tells him that she doesn't like him. The referral stated that [Appellant] makes [C.M.H.] sit in a dark room so "she doesn't have to look at him." The referral also stated that the maternal grandfather is a child molester that sexually abused all three of his daughters when they were children. The referral stated that the maternal grandmother did not protect her own children and is unable to protect her grandchildren. This case was Ruled Out.

The affidavit also identified six other referrals received by the Department involving Appellant and her children in which allegations of abuse or neglect had

been made. The affidavit indicated that these referrals had been "ruled out," "closed without disposition," or "unable to determine."

The forensic interviewer from the Children's Assessment Center, who had interviewed C.M.H. and A.H. following the 2009 referral, testified at trial. She stated that, from the children's descriptions of being hit with the rod from the window blinds, belts, and extension cords, she believed that Appellant's abuse of the children was not a single occurrence but was ongoing abuse.

Evidence was also presented that the children were exposed to domestic violence while living with Appellant. The evidence showed that Appellant's first husband, C.H.—the father of C.M.H. and A.H.—had been convicted of assaulting Appellant and that the children had witnessed the domestic violence. Other evidence showed that Appellant claimed that her second husband, K.D.G.—father of J.G. and K.G.—was also controlling and abusive. The record indicated that Appellant had difficulty understanding that her children could be placed at risk by being in a home where there is domestic violence.

At trial, the evidence also showed that the three girls, A.H., J.G., and K.G. were living with their maternal aunt and C.M.H. was placed with his maternal great-aunt. Testimony was given that the relatives want to adopt the children. The evidence further showed that all four children are happy in their current placements. C.M.H. and A.H. are doing well in school and are each on the honor

role. Other testimony from a Department employee working with the children in their current placements indicated that the two youngest children, J.G. and K.G., "are doing great also."

Evidence showed that, over the years, C.M.H. and A.H. expressed their fear of Appellant. The court appointed guardian ad litem for the children interviewed C.M.H. and A.H. several days before trial. Each expressed to him a desire not to return to their mother and to stay in his and her current placement. A.H. told the ad litem that she was afraid of Appellant. C.M.H. stated that he feared returning to Appellant because he thought it would ultimately result in his return to CPS custody.

At the time of trial, the two younger children, J.G. and K.G. were three years old and five years old. Thus, no evidence was presented regarding either J.G.'s or K.G.'s desire to return to Appellant.

As evidence weighing against the best-interest finding, Appellant points to the following: (1) a number of witnesses testified that the two oldest children had expressed that each missed their mother; (2) the forensic interviewer from the Children's Assessment Center testified that A.H. said that her mother was "nice" and that A.H. wanted to see her mother; (4) the forensic interviewer stated that neither C.M.H. nor A.H. indicated that he or she were afraid of Appellant; (5) the guardian ad litem testified that he observed the interaction between Appellant and

the children during scheduled visits to be "generally good"; (6) Appellant has taken parenting, anger management, and domestic violence classes; (7) Appellant has "on her own initiative" taken and paid for individual therapy and marriage classes; (8) Appellant is attending college; and (9) Appellant has paid a portion of the child support she was ordered to pay after the children were removed from her home.

Appellant also asserts in her brief as follows:

> Appellant testified that as a result of taking the services, she learned to better evaluate herself and better understand her children. In addition she was willing to continue taking anger management classes and extensive parenting classes to avoid losing her parental rights. Despite being the victim of sexual abuse as a child, the psychiatric evaluation found that she does not suffer from any major psychiatric illness that would prevent her from parenting her children.
>
> The evidence admitted at trial indicates that appellant is in the process of being rehabilitated. She was attending Remington College and making child support payments to the best of her ability. She completed anger management, parenting and domestic violence courses. On her own initiative, she was participating in individual therapy and had taken marriage classes. She was even paying for individual therapy on her own.

Undeniably, applying the *Holley* factors, some evidence exists in the record weighing against the best interest finding. The record contains evidence showing that Appellant has taken steps both to improve her life and to be a good parent. Nonetheless, evidence cannot be read in isolation; it must be read in the context of the entire record. In termination cases, like elsewhere, it is within the sole

province of the jury to weigh the credibility of witnesses. *See In re S.L.*, 188 S.W.3d 388, 394 (Tex. App.—Dallas 2006, no pet.) (citing *Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 761 (Tex. 2003) (stating fact finder "is the sole judge of the credibility of witnesses and the weight to be given to their testimony")). Here, the fact finder could have reasonably inferred that Appellant would continue her pattern and practice of physically abusing her children as she had over the years. The jury also could have inferred that, as the two younger children became older, they also might be subject to abuse. Such an inference relates directly to Appellant's ability to provide a stable and suitable home for her children and indicates that the children's physical and emotional well-being may be endangered in the future. In sum, given the evidence, the jury could have reasonably inferred that the children were at risk for abuse should they be placed with Appellant and that Appellant could not provide them with a safe and stable home.

Given the evidence, we conclude that the evidence, viewed in the light most favorable to the best-interest finding, was sufficiently clear and convincing that a reasonable fact finder could have formed a firm belief or conviction that termination of the parent-child relationship between Appellant and her four children was in the children's best interest. We further conclude that, viewed in light of the entire record, any disputed evidence could have been reconciled in

favor of the finding that termination of the parent-child relationship between Appellant and her children was in their best interest or was not so significant that the fact finder could not reasonably have formed a firm belief or conviction that termination was in the children's best interest. Thus, we hold that the evidence was legally and factually sufficient to support the best-interest finding.

We overrule Appellant's fifth issue in each appellate cause

Conclusion

We affirm the final decree in each appellate cause terminating Appellant's parental rights.

Laura Carter Higley
Justice

Panel consists of Chief Justice Radack and Justices Higley and Brown.