Affirmed and Memorandum Opinion filed March 29, 2016.

In The

Fourteenth Court of Appeals

NO. 14-15-00882-CV

IN THE INTEREST OF K.I.B.C., A CHILD

On Appeal from the 314th District Court
Harris County, Texas
Trial Court Cause No. 2013-04633J

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

T.B.C. ("father") appeals the trial court's judgment terminating his parental rights to his daughter, K.I.B.C. In a separate appeal, C.B. ("mother") also appeals the trial court's judgment terminating her parental rights to K.I.B.C. We affirm the trial court's judgment as to both mother and father.

I. FATHER'S APPEAL

Appellee, the Department of Family & Protective Services, moved to have the parental rights of father terminated. *See* Tex. Fam. Code Ann. § 161.001 (West 2014). The trial court terminated father's parental rights on the grounds that he (1)

engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangered her physical or emotional well-being (section 161.001(1)(E)); and (2) failed to comply with the provisions of a court order that specifically established the actions necessary for him to obtain the child's return (section 161.001(1)(O)). The trial court also determined that it is in the child's best interest to terminate father's parental rights (section 161.001(2)). *Id.* §§ 161.001(1)(E) & (O); 161.001(2).

Father's appointed counsel filed a brief in which counsel concludes the appeal is wholly frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967), by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *See High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978). The *Anders* procedures are applicable to an appeal from the termination of parental rights when an appointed attorney concludes that there are no non-frivolous issues to assert on appeal. *In re D.E.S.*, 135 S.W.3d 326, 329 (Tex. App.—Houston [14th Dist.] 2004, no pet.).

On December 22, 2015, father was notified of the right to obtain a copy of the record, a form to complete to obtain the record, and the right to file a pro se response. *See Stafford v. State*, 813 S.W.2d 503, 510 (Tex. Crim. App. 1991); *In re D.E.S.*, 135 S.W.3d at 329–30. As of this date, no pro se response has been filed.

We have carefully reviewed the record and counsel's brief and agree father's appeal is wholly frivolous and without merit. Further, we find no reversible error in the record. A discussion of the brief would add nothing to the jurisprudence of the state. Accordingly, we affirm the trial court's judgment terminating father's parental rights to K.I.B.C.

II. MOTHER'S APPEAL

The Department also moved for termination of mother's parental rights. *See* Tex. Fam. Code Ann. § 161.001. Following a hearing, the trial court terminated mother's parental rights on the grounds that she (1) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangered her physical or emotional well-being (section 161.001(1)(E)); and (2) failed to comply with the provisions of a court order that specifically established the actions necessary for her to obtain the child's return (section 161.001(1)(O)). The trial court also determined that it is in the child's best interest to terminate mother's parental rights (section 161.001(2)). *Id.* §§ 161.001(1)(E) & (O); 161.001(2).

On appeal, mother asserts the evidence is legally and factually insufficient to support the trial court's judgment on the two statutory grounds for termination. *See id.* § 161.001(1)(E) and (O). Mother also challenges the trial court's decision that termination is in K.I.B.C.'s best interest. *See id.* § 161.001(2).

A. Burden of Proof and Standards of Review

Parental rights can be terminated upon proof by clear and convincing evidence that (1) the parent has committed an act prohibited by section 161.001(1) of the Family Code; and (2) termination is in the best interest of the child. *Id.* § 161.001(1), (2); *In re J.O.A.*, 283 S.W.3d 336, 344 (Tex. 2009). Clear and convincing evidence is that 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 (West 2014); *In re C.H.*, 89 S.W.3d 17, 25–26 (Tex. 2002). This heightened burden of proof results in a heightened standard of review. *In re C.H.*, 89 S.W.3d at 26 ("[T]he appellate standard for reviewing termination findings is whether the evidence is such that a

factfinder could reasonably form a firm belief or conviction about the truth of the State's allegations."). *See also In re C.M.C.*, 273 S.W.3d 862, 873 (Tex. App.—Houston [14th Dist.] 2008, no pet.).

In a legal-sufficiency review, we consider 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.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002). This means we must assume the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so. *Id*. We disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible, but we do not disregard undisputed facts, regardless of whether they support the finding. *Id.* If we determine no reasonable factfinder could form a firm belief or conviction the matter to be proven is true, we must conclude the evidence is legally insufficient. *Id.*

In a factual-sufficiency review, we give due consideration to evidence the factfinder reasonably could have found to be clear and convincing. *Id.* Our inquiry is whether the evidence is such that a factfinder reasonably could form a firm belief or conviction about the truth of the Department's allegations. *Id.* We consider whether disputed evidence is such that a reasonable factfinder could not have resolved that evidence in favor of its finding. *Id.* If, in light of the entire record, the disputed evidence is so significant that the factfinder could not reasonably have formed a firm belief or conviction, we must find the evidence is factually insufficient. *Id.*

B. The Evidence

K.I.B.C. came into care of the Department following an incidence of domestic violence. When K.I.B.C. was approximately two weeks old, mother got upset with father at a baby shower and threw some clothes, tore up presents, threw

a fan at father, and knocked a hole in the wall with a doorknob. When K.I.B.C. was initially removed she was dirty and the investigative worker had to bathe her. Father stated mother was "crazy" and they both regretted having K.I.B.C.

1. *The Department's Evidence*

Thelma Taylor, the caseworker, testified the Department was seeking to terminate the parental rights of mother and father because they have not demonstrated an ability to co-parent the child and there has been ongoing endangering conduct. Also, mother has failed to address her mental health issues and mother has not completed the court-ordered services. Specifically, mother failed to complete the psychiatric and psychological assessment, domestic violence and anger management, and has not paid child support. Taylor could not attest the parents can provide a safe and stable home for K.I.B.C. because they have not addressed the reasons K.I.B.C. came into care.

Taylor testified mother completed the parenting class. The initial psychological and psychiatric exams were set up in December for a three-month window but mother did not attend. The exams were set up again in April but mother failed to attend in that three-month window as well. According to Taylor, mother was given the information needed to schedule her appointments multiple times. Mother never talked to Taylor about completing those assessments. The last time Taylor spoke to mother about services, mother said that she had initiated anger management but did not know the provider, a phone number, or have any information. Mother was unsuccessfully discharged from individual therapy because she failed to address her mental health illnesses; mother has admitted that she has mental health issues. Both mother and her mother told the Department that mother was diagnosed as bipolar in high school. Mother said she was not going to take her medication; Taylor did not know whether she is taking it or not. The

Department offered mother alternatives to receive affordable mental health care but she has not taken any of those alternatives.

Mother denies having domestic violence issues, even though her criminal history includes a charge of aggravated assault of a family member – father. Mother has not recognized the danger to K.I.B.C. and has not taken the actions necessary to reunite with her.

The Department moved visits with K.I.B.C. closer to the parents' home due to their financial difficulties but mother still missed three or four visits. Mother did not visit K.I.B.C. from August until December of 2014. At the visits, the parents provided a small pack of wipes, and another of diapers, as well as "maybe one outfit and a toy." There were problems with the parents missing or cancelling visits. Shortly before trial, mother visited K.I.B.C. every other Thursday but missed two of those visits. Mother said she was not notified by the attorney that the visit had changed.

Taylor visited the parents' home in August 2015 and the home had running water and electricity. There was food in the pantry and freezer but none in the refrigerator. The home appeared tidy in some areas but the floor was "very dirty" and not appropriate for a child to crawl on; it looked as if the floor had not been cleaned in months. There was a couch and television, but no playpen, baby bed, or baby stroller. Taylor did not see the necessary supplies for a child that is returning home.

K.I.B.C. has been in her current placement since she was two weeks old and at the time of trial she was two years old. The foster parents want to adopt and Taylor testified that K.I.B.C. "adores" them, is bonded with the other children in the home, is progressing and happy, and it is in her best interest to maintain that

relationship. The Department believes it is in the best interest of K.I.B.C. to remain in her current placement and be adopted.

On the second day of trial, Taylor testified that after she left the courtroom on the first day, mother and father were standing by the elevator. As Taylor walked to the elevator, they got behind her as if to enter the elevator. However, she walked past the elevator and went into a copy room, where she waited for about ten minutes. Taylor called her husband to pick her up. Taylor then went down the elevator and the family was standing "right there by the water fountain, kind of like they were waiting on me." Taylor left the courthouse and they followed behind her. Taylor testified that she perceived it as "intimidation."

Lisa McCarthy was the special investigator appointed by the court. McCarthy did not believe the parents have demonstrated an ability to care for or parent K.I.B.C. and have not mitigated the reasons why she came into care. McCarthy testified the parents "minimize" and do not take responsibility for their actions that placed K.I.B.C. in foster care. Further, McCarthy testified the parents have failed to recognize the significance of their past history or propensity towards violence and she would be concerned about placing K.I.B.C. back in their home. McCarthy stated mother's failure to do the court-ordered services renders her unable to determine her current status. McCarthy testified the ongoing history and the untreated mental health issues was conduct that would endanger the child's physical safety.

McCarthy observed the child in the foster placement and found her to be happy, well-adjusted, bonded with the family and engaged with the other children in the home. The foster parents were able and willing to permanently provide a safe and stable home and it would be very detrimental to remove K.I.B.C. McCarthy did not believe it was in the best interest of K.I.B.C. to leave her in the

custody of CPS, although she would still be able to live with the foster parents, and recommended the parental rights of both parents be terminated to facilitate adoption.

McCarthy did not talk to the parents' therapist or attend any visits between them and K.I.B.C. McCarthy testified she reviewed the reports and visited K.I.B.C. once, for a "few" hours.

The foster mother ("E.J.") testified K.I.B.C. is two years old and has lived continuously in her home since two weeks old. According to the court order entered after the August 2014 trial, E.J. and the parents were to arrange visits.

The first visit was scheduled for November 14, 2014, but the parents did not appear. Mother's first visit was November 21; father's first visit was April 9, 2015. In April 2015, the location of the visits changed to make it easier for the parents to get there. E.J. testified that there was no physical interaction between the parents and K.I.B.C. at the visits; mother was often on her phone and not engaged. The parents did not hug K.I.B.C. or tell her they love her or miss her.

The parents bought food for K.I.B.C. twice during visits spanning thirteen months. After the court date in August 2014, the parents were to bring a box of diapers and wipes to the visits. Nothing was brought until March 23, 2015, when the mother gave E.J. twelve diapers and a travel pack of wipes. In April, she brought 28 diapers and 52 wipes; E.J. testified that was insufficient for a child K.I.B.C.'s age. The parents did not provide any other support. Both parents missed the visit before K.I.B.C.'s birthday. E.J. expressed that her primary concern was the lack of bonding and parental skills. E.J. described one incident while K.I.B.C. was eating and they told her "you're just creepy; you know, creepy little butt, creepy little butt."

E.J. testified that K.I.B.C. looks to her and her husband as "mommy and daddy" and is bonded with her other children. E.J. testified that she and her husband want to adopt K.I.B.C. and she believes that it is in the best interest of K.I.B.C.

2. *Domestic Disturbances*

On August 14, 2014, Deputy Paul Day received a call from the maternal grandmother, Laureen Dugan, regarding father making a threatening call to them. Upon arrival, Day spoke with members of the family. Day met father as he was walking out of the apartment. Father thought Day was responding to a call he made because mother's parents were harassing him. Father allowed the deputies to go into his apartment to see if mother was in there. Day also spoke with father about the grandparents' concern that mother was "missing after she went to get some clothing."

On December 18, 2014, Deputy P.O. Roy responded to a family disturbance call and met the complainants, Dugan and mother; father had left the scene. Mother stated she and father got into a verbal altercation when they were on their way to an appointment regarding a pending case of assault. Father "pushed her on the shoulder and walked out of the room." While he was leaving the room, Dugan "beat" mother and father pushed Dugan as well.

Mother told Roy that from the very beginning she and father "had been in an off-and-on relationship, verbal and physical altercation, for over two years." No party sustained any injuries and no medical assistance was called. However, mother stated that even though she felt no pain she wanted to pursue charges so that father went to jail. The District Attorney declined to accept charges. The incident occurred at a motel and it appeared to Roy "they were living there."

Deputy Robert Mott of the Harris County Sheriff's Department ("HCSD") testified he was dispatched to the parents' home earlier in 2015. Prior to that, his contact with them concerned a family disturbance call. Mott testified father told him he was attacked by mother with a machete. According to Mott, "[s]he appeared to destroy the apartment. I observed a huge gash in the wall." The door to the oven was ripped off and the microwave "was bashed into pieces." Also, the bedroom was "torn up." Father told Mott that he had wrestled the machete away from mother and thrown it under the couch. Mott retrieved the machete. Mother was not present when he arrived. Mott contacted the district attorney and he "took aggravated assault." Mott went looking for mother and as he was leaving the apartment complex he saw her walking down the street. Mott pulled over, identified mother, and drove her to the jail. Mott then called father and let him know that he had found mother and she was going to jail. Father begged Mott not to take her to jail. Father then called Mott and a number of other officers, begging to give mother back to him. K.I.B.C. was not in the home when this incident occurred, she had already been removed. Mott agreed that it would "make sense" that the charges were dismissed because father refused to cooperate.

Mott testified that when he was last at the residence, it was dirty and unkempt but the damage he observed the first time was no longer there. There were no rails on the bed and the mattress was off the box spring and lying on the floor. The television was flipped over and clothes were all over. Father expressed concern over mother's mental state and said he knew she "was crazy" and not medicating or treating her mental health issues. Mott stated it was his opinion that mother's mental health, the violence, and the appearance of the home posed a threat to any child placed in the home. Further, the pattern of violent behavior as evidence by the multiple disturbance calls were, in his opinion, cause for concern.

Mott testified to his opinion that mother and father have not been rehabilitated and have failed to refrain from engaging in violent behavior. Since the machete incident, father was arrested following another disturbance.

Approximately two months before trial, Deputy T.L. Berry and a clinician were dispatched to a Walmart store on a crisis intervention call. During a counseling session regarding his work performance, father opened a knife and threatened to harm himself. The assistant manager calmed him down but then father wrapped his shirt around his neck like he was trying to choke himself. Berry transported father to the psychiatric crisis center for evaluation where he remained for a week.

Father agreed there were multiple instances of police coming to their home in March 2014 and May 2014 and acknowledged they were arguing. The parents married in October 2014 and are currently living together.

3. *Mother's Testimony*

Mother testified that she was diagnosed with bipolar disorder in elementary and middle school and was no longer on medication. She denied throwing a fan at father during the baby shower and said they argued but there was no violence. Regarding the machete incident, mother testified that she "accidentally hit the wall."

Mother testified she and father can safely remain in a relationship and not harm each other if K.I.B.C. is returned to them. When asked what she would do in a situation where one of them, "as this happened in the past," attacked the other with a weapon, mother said, "I've got family members to come get [K.I.B.C.]"

Mother testified that she underwent two psychological evaluations and a psychiatric evaluation. She was "almost finished" with anger management. Mother

admitted that she had done nothing to address domestic violence issues. According to mother, she visits K.I.B.C. regularly and the time period where several months passed without a visit was due to the foster parents cancelling the visit. In one instance, mother and father were going to visit K.I.B.C. with the caseworker and got into an argument. Mother got out of the car while it was on the road, but disputed that it was moving. Another time, mother refused to get in the car with a caseworker who was providing transportation to visit K.I.B.C. "because I told her I wanted to catch the bus instead." Mother missed both of those visits and they had to be reset.

Mother has not paid child support but can provide financial assistance through her husband. She has been unemployed since 2012. Mother requested more time to complete the court-ordered services.

C. Statutory Grounds

Mother argues that her "substantial compliance" with the family service plan proves the Department did not have sufficient evidence to support termination of her parental rights under subsection (O). However, mother has not cited any cases, nor are we aware of any, holding that substantial compliance is sufficient to avoid a termination finding under this subsection. To the contrary, Texas courts have held that substantial compliance is not enough to avoid a termination finding under section 161.001(O). *See In re T.T.*, 228 S.W.3d 312, 319 (Tex. App.—Houston [14th Dist.] 2007, pet. denied) (noting Texas courts have uniformly found substantial compliance with provisions of court order inadequate to avoid termination finding under subsection (O).

According to Taylor, mother did not complete the family service plan, ordered approximately thirteen months before trial, in that she did not complete (1) a psychological assessment, (2) a psychiatric assessment, (3) anger management

classes, or (4) domestic violence services. According to Taylor, mother told her that she completed 10 of 13 anger management classes. Taylor testified mother was "unsuccessfully discharged" from individual therapy because she failed to address her mental health issues. Moreover, in June 2015, mother was ordered to pay child support but as of trial in November 2015 none had been paid. Mother admitted in her testimony that she had done nothing with regards to domestic violence and has paid no child support.

Considering all the evidence in the light most favorable to the finding, and giving due consideration to evidence a fact-finder reasonably could have found to be clear and convincing, we conclude a reasonable trier of fact could have formed a firm belief or conviction that mother failed to comply with the provisions of the court-ordered plan. Thus we hold the evidence is legally and factually sufficient to support the court's finding under section 161.001(O).

Accordingly, we uphold the judgment under subsection (O). Because mother's parental rights can be terminated with a finding of best interest of the child and any one of the two section 161.001(1) grounds challenged by mother, we need not address subsection (E). *See In re U.P.*, 105 S.W.3d 222, 236 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). We therefore overrule mother's first issue.

D. Best Interest of the Child

In her second issue, mother challenges the legal and factual sufficiency of the evidence to support the trial court's finding that termination of her parental rights is in K.I.B.C.'s best interest. A strong presumption exists that the best interest of the child is served by keeping the child with the child's natural parent, and the burden is on the Department to rebut that presumption. *In re U.P.*, 105 S.W.3d at 230. Proof of acts or omissions under section 161.001(1) is probative of the issue of the child's best interest. The factors the trier of fact may use to

determine the best interest of the child include: (1) the desires of the child; (2) the present and future physical and emotional needs of the child; (3) the present and future emotional and physical danger to the child; (4) the parental abilities of the persons seeking custody; (5) the programs available to assist those persons seeking custody in promoting the best interest of the child; (6) the plans for the child by the individuals or agency seeking custody; (7) the stability of the home or proposed placement; (8) acts or omissions of the parent that may indicate the existing parent-child relationship is not appropriate; and (9) any excuse for the parents' acts or omissions. *Holley v. Adams,* 544 S.W.2d 367, 371–72 (Tex. 1976); *In re U.P.,* 105 S.W.3d at 230; *see also* Tex. Fam. Code Ann. § 263.307(b) (West 2014) (listing factors to consider in evaluating parents' willingness and ability to provide the child with a safe environment). A finding in support of "best interest" does not require proof of any unique set of factors, nor does it limit proof to any specific factors. *See Holley*, 544 S.W.2d at 371–72.

We begin with the presumption that K.I.B.C.'S best interest is served by keeping her with her natural parent. *See In re D.R.A*., 374 S.W.3d 528, 533 (Tex. App.—Houston [14th Dist.] 2012, no pet.). We also presume that prompt and permanent placement of the child in a safe environment is in the child's best interest. *See* Tex. Fam. Code Ann. § 263.307(a) (West 2014).

1. Needs of and Danger to the Child

With regard to K.I.B.C.'s present and future emotional and physical needs, and the present and future emotional and physical danger to K.I.B.C., the record reflects a pattern of domestic violence by mother. There was testimony by both Taylor and McCarthy the domestic violence endangers K.I.B.C.'S physical safety. Accordingly, this factor weighs in favor of the trial court's finding.

2. Stability and Compliance with Services

In determining the best interest of the child in proceedings for termination of parental rights, the trial court may properly consider that the parent did not comply with the court-ordered service plan for reunification with the child. *See In re E.C.R.*, 402 S.W.3d 239, 249 (Tex. 2013). Taylor testified mother failed to successfully complete her family plan of service. Although mother argues she substantially complied with the service plan, she admitted that no attempt was made to comply with the requirements concerning domestic violence and after thirteen months the anger management classes were not complete. We therefore conclude this factor weighs in favor of the trial court's finding.

3. Child's Desires and Proposed Placement

Because K.I.B.C. was approximately fourteen months old at the time of trial, she was unable to express her desires with respect to a preferred placement. When a child is too young to express her desires, the fact-finder may consider that the child has bonded with the foster family, is well cared for in the current placement, and has spent minimal time with a parent. *In re J.D.,* 436 S.W.3d 105, 118 (Tex. App.—Houston [14th Dist.] 2014, no pet.). The stability of the proposed home environment is an important consideration in determining whether termination of parental rights is in the child's best interest. *See In re J.N.R.*, 982 S.W.2d 137, 143 (Tex. App.—Houston [1st Dist.] 1998, no pet.). A child's need for permanence through the establishment of a "stable, permanent home" has been recognized as the paramount consideration in the best-interest determination. *See In re K.C.,* 219 S.W.3d 924, 931 (Tex. App.—Dallas 2007, no pet.). Therefore, evidence about the present and future placement of the child is relevant to the best-interest determination. *See In re C.H.*, 89 S.W.3d at 28.

Taylor testified K.I.B.C. is currently in a foster home and the record reflects the foster parents would like to adopt her. K.I.B.C. is bonded to her foster parents

and their children. The foster home is safe and all of K.I.B.C.'s physical and emotional needs are being met. This factor weighs in favor of the trial court's finding.

4. Parenting Abilities and Family Support

The record reflects mother did not attend all scheduled visits with K.I.B.C. and did not supply items for K.I.B.C.'s care. There was testimony that mother did not engage with K.I.B.C. or demonstrate appropriate parenting skills.

Mother testified she had family members who would support her in caring for the child. However, mother continued to live with and married father during the time this case was pending and the evidence reflects the domestic violence continued. Accordingly, this factor also weighs in favor of the trial court's finding.

Applying the applicable *Holley* factors to the evidence, we conclude that legally and factually sufficient evidence supports the trial court's finding that termination of mother's rights is in the best interest of K.I.B.C. *See In re S.B.,* 207 S.W.3d 877, 887–88 (Tex. App.—Fort Worth 2006, no pet.) (considering the failure to comply with a family service plan, among other factors, in holding the evidence supported the best-interest finding). Based on the evidence presented, the trial court reasonably could have formed a firm belief or conviction that terminating mother's rights was in K.I.B.C.'s best interest so that the child could promptly achieve permanency through adoption by a foster family. *See In re T.G.R.–M.,* 404 S.W.3d 7, 17 (Tex. App.—Houston [1st Dist.] 2013, no pet.); *In re M.G.D.*, 108 S.W.3d 508, 513–14 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). Therefore, we overrule mother's third issue and affirm the trial court's judgment terminating her parental rights to K.I.B.C.

The judgment of the trial court is affirmed.

/s/ Martha Hill Jamison
Justice

Panel consists of Justices Jamison, Donovan, and Brown.