

**Affirmed and Memorandum Opinion filed February 7, 2017.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-16-00661-CV**

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**IN THE INTEREST OF A.S.G., A CHILD**

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**On Appeal from the 313th District Court  
Harris County, Texas  
Trial Court Cause No. 2015-04719J**

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

Appellant A.L.G. (“Mother”) appeals the trial court’s final decree terminating her parental rights and appointing the Department of Family and Protective Services (“the Department”) as sole managing conservator of her child A.S.G. (“Adam”).<sup>1</sup> On appeal Mother challenges the legal and factual sufficiency

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<sup>1</sup> We use pseudonyms to refer to appellant and her child in this case. *See* Tex. Fam. Code § 109.002(d); Tex. R. App. P. 9.8.

of the evidence to support the predicate grounds on which the trial court based its decision. We affirm.<sup>2</sup>

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Pretrial Removal Affidavit**

In August 2015, the Department received a referral alleging Mother was neglecting to supervise and physically neglecting five-year-old Adam. According to the allegations, Mother, who had been diagnosed with mental-health issues and placed on various medications several years earlier, was not taking her medications as prescribed. Other family members were living in the home with Mother and Adam and attempting to assist Mother in caring for Adam, but Mother refused any help because she believed they were trying to hurt Adam.

The referral further alleged that Mother was medicating Adam against medical-staff orders. Mother was applying various creams to Adam's genital area to treat an undiagnosed or unknown infection. Mother also was applying ammonia to her own face and genitals to treat an unknown infection.

Additionally, the referral expressed concerns over Mother's mental stability and ability to care for Adam. Mother had moved various times throughout the year and failed to provide Adam with a stable home environment. At the time of the referral, law enforcement had detained Mother, and Mother was in the care of a local psychiatric center.

During the investigation that followed, the Department's Investigator Stephany Rideaux met with Adam's maternal great aunt ("Aunt"). Aunt stated that Mother and Adam had lived in Aunt's home for about two weeks. After learning

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<sup>2</sup> The trial court also terminated the parental rights of Adam's alleged father D.R. as well as those of any unknown father during the same proceeding; that decision has not been appealed.

that Mother was living in Maryland without any support or help for Adam, Aunt had asked Mother to return to Houston.

During Mother's stay, Aunt became concerned by Mother's erratic behavior. Mother refused to eat any food cooked or purchased by anyone else in the home because she did not "trust" the food. Mother also had various bottles of ammonia, which Mother used to clean spots on her face and genitalia.

According to Aunt, Mother would take Adam into a room behind closed doors. Aunt would hear Adam scream and ask Mother not to touch him. Adam told Aunt that "mommy puts cream on my pee pee." Mother told Aunt that the cream was for infections. Although Aunt told Mother not to apply any more creams unless directed to do so by a medical professional, Mother continued to do so. Eventually, Aunt became so concerned that she contacted law enforcement.

On the same day as her meeting with Aunt, Rideaux also met with Adam. Adam confirmed that he had been living with Aunt and his cousin for several weeks. Adam showed Rideaux the medications Mother used on his private parts and stated that Mother applied them to his body. Adam also stated that Mother would give him a Tylenol pill in juice. Rideaux noticed that Adam was grabbing his genital area as though it bothered him, but he indicated that he was not in any pain.

Rideaux also met with Aunt's daughter ("Cousin"). Cousin reported that Mother would not allow Adam to eat any of the food provided in the home. Cousin also saw Mother applying herbal cream to Adam's body and giving him Tylenol to cure a "phantom" infection.

Rideaux later went to the Harris County Psychiatric Center and interviewed Mother with the assistance of a Spanish-language interpreter. Mother believed

Aunt wrongfully had her placed in the hospital. According to Mother, Adam is very sick but nobody is willing to treat him. Mother said she took Adam to a hospital in Maryland but was refused medication. Mother took Adam to the hospital in Houston but was told that nothing was wrong with Adam. Mother stated that there is a foul odor, like the smell of raw meat, coming from Adam's penis, so she uses the cream and half a Tylenol pill to "cure the sickness." Mother also confirmed allegations that she used ammonia on her own body to clear up any infections and took Tylenol every day in an attempt to get better.

According to Mother, she applied "Arnica" and "Tiger Balm" (Red Extra Strength) to Adam's genital area. Mother continued to apply these creams despite being told many times that Adam did not have an infection.

Rideaux's investigation also revealed that the Department had removed Adam from Mother's care in 2011, following a referral alleging neglectful supervision. At that time, Mother reportedly had psychotic thoughts about people coming after her.

The Department filed its original petition seeking termination of the parents' rights to Adam.

## **B. Trial**

At trial, the Department introduced the following into evidence:

- Adam's birth certificate;
- a certificate of paternity registry search to establish that no notice of intent to claim paternity had been filed;
- a copy of the search results from the Court of Continuing Jurisdiction Registry, demonstrating that Adam had not been the subject of a suit affecting the parent-child relationship in which a judgment was entered on or after January 1, 1974;

- a copy of Adam's medical records from Memorial Hermann Southwest Hospital;
- a copy of Mother's medical records from Memorial Hermann Southwest Hospital;
- a copy of Mother's psychiatric records from The University of Texas Harris County Psychiatric Center;
- photographs of a bottle of Ibuprofen, three bottles of ammonia, and Tiger Balm, all found at the house where Adam was living; and
- a printout of the drug facts for Tiger Balm.

All of this evidence was admitted without objection, except that Mother's counsel asked that relevance be demonstrated for purposes of using the drug facts for Tiger Balm.

Mother's psychiatric records revealed that Mother was admitted to the Harris County Psychiatric Center days before the Department filed its original petition, with a diagnosis of unspecified psychotic disorder. While Mother was hospitalized, doctors treated Mother's psychosis with Risperidone. Records revealed that Mother had been treated three times for syphilis with subsequent recurrence. Mother was discharged after about a week, and transferred to Ben Taub Hospital for a neurosyphilis work up.

### **1. Aunt's Testimony**

Aunt testified that Mother and Adam had been living with her for about three weeks before the Department becoming involved. Aunt had asked Mother to return to Texas from Maryland because she was concerned about Adam's well-being. When Mother and Adam moved into Aunt's house, Aunt began to notice some strange behavior. Mother would lock Adam and herself in a room, and Aunt would hear Adam screaming and crying. Aunt also witnessed Adam being afraid of Mother. When Aunt asked Mother about these things, Mother said she believed

Adam's penis smelled like raw meat and that he had cancer.

Mother took Adam to the doctor several times. Aunt accompanied them on one of the doctor visits, and she was satisfied there was nothing wrong with Adam after the doctor confirmed there was no infection. Yet, Mother continued to believe she needed to treat Adam for cancer. Adam told Aunt that Mother was applying Arnica and Tiger Balm to his penis. During Aunt's testimony about these creams, Mother interrupted and stated, "No. No. Somebody pay the doctor to don't give medication."

Aunt also testified that Mother used ammonia to clean her face and mixed it with the oil used for cooking. Again, Mother interrupted to announce that Aunt was lying. On the day the police came and removed Mother from the home, Aunt found some ham patties fried in oil mixed with ammonia. They were not given to Adam because Mother was taken away. Aunt testified that she was concerned about Adam's well-being that day.

Aunt continued to maintain contact with Mother after the Department became involved and continued to have concerns about Mother's mental health. Aunt testified that she and Adam have bonded and that she would like to provide him with a safe and stable home.

At this point in Aunt's testimony, Mother interrupted, again accusing Aunt of lying and mistreating Adam. Mother also reiterated that somebody paid the doctor to refuse medicine for Adam, which, Mother explained, is why she applied the Tiger Balm.

On cross-examination, when asked whether she believed Mother cared about Adam, Aunt stated that it does not concern Mother because Mother does not take her medicine. Again, Mother began interrupting, in both English and Spanish,

saying that she takes her medicine. Because the court had asked Mother to remain quiet many times, a bailiff removed her from the courtroom. Aunt then clarified her response, stating, “She [Mother] cares, but she’s not able to care for him.”

Aunt testified that she did not know the identity of Adam’s father. Aunt further testified that she had taken care of Adam before, during the Department’s earlier investigation. According to Aunt, Adam was removed from Mother at that time due to similar concerns over Mother’s ability to care for Adam and the state of Mother’s mental health. Mother had been exhibiting similar “bizarre behavior” at that time.

According to Aunt, Mother’s recent behavior endangered Adam’s physical well-being. Adam understands that Mother has some problems and he does not want to live with her. Since being removed from Mother’s care, Adam has spoken with Mother on the telephone. The conversations make Adam uncomfortable because Mother constantly asks him about physical problems which do not exist.

Aunt stated that Adam is happy living in her home and would like to live with her forever. Adam was promoted to the next grade in school and is in therapy. Aunt wants to adopt Adam if Mother’s parental rights are terminated.

## **2. Caseworker’s Testimony**

The Department’s caseworker Maria Garza testified that she had been assigned to Adam’s case since it came into the substitute care stage. Garza created the family-service plan. The trial court had approved the plan and had ordered compliance with its terms, which required that Mother do the following:

- participate in her services;
- participate in a random drug test;
- provide proof of medication compliance by showing a change

in the pattern of behaving that resulted in abuse of Adam;

- participate in individual and family therapy to address issues that may impact her ability to care for Adam and the reasons why Adam came into care;
- maintain employment;
- maintain safe and stable housing;
- attend all court hearings, family visits, and permanency conferences;
- complete parenting classes;
- complete a psychiatric evaluation and follow subsequent recommendations; and
- complete a psychosocial evaluation and follow subsequent recommendations.

The Department offered the service plan into evidence. Mother's counsel objected to the portion containing the reason for Adam coming into the Department's care. With that portion redacted, the trial court admitted the plan into evidence. The trial court also took judicial notice of all orders in the court's file, including the order requiring Mother's compliance with the service plan.

Garza testified that Mother had not completed some of her services. Mother had maintained contact with Garza, was employed, had a house, attended her court hearings, and attended her parenting class. But Garza testified that Mother had failed to participate in individual therapy, Mother had failed to provide proof of medication compliance, and Mother had failed to show a marked difference in her pattern of behavior.

Garza agreed that "the crux of this case" is Mother's mental health. She testified that Mother contacted Garza several times throughout the case. Initially,



Mother called because she was concerned that Adam was sick, that he “smelled bad,” and that someone had paid the doctors to say that he was not sick. More recently, however, Mother called to say “that the Mexicans were throwing something in the air, like a gas that it will turn into oil and that’s poisonous and there was a war going on that she needed to take her son back so she can go to her country [El Salvador].” This type of telephone call indicated to Garza that Mother was not compliant with her medication.

According to Garza, Mother continues to have serious mental-health issues, which Garza believes prevent Mother from being a protective parent for Adam. The Department sought termination of Mother’s parental rights based on Mother’s failure to comply with the service plan as well as her constructive abandonment of Adam. Though Mother’s visits with Adam were discontinued, Garza explained that the visits would have resumed if Mother had started taking medication and been compliant with the medication. But, Mother did not take her medication.

Garza testified that Adam’s current placement with Aunt was an adoptive placement and that Adam loved Aunt. Unlike Mother, Aunt could provide Adam with everything he would need until he turned eighteen. Garza also stated that no one had come forward to claim paternity. Nor was anyone registered as Adam’s father in the paternity registry.

On cross-examination, Garza noted that Mother also had completed her psychological and psychiatric evaluations. But, Mother did not continue with therapy or medication. Garza did not know which specific medications were prescribed to Mother, only that Mother told her she was not taking them. Mother reported to Garza that the prescriptions were sent to the pharmacy, but Mother could not afford to pay for them. Mother did not have health insurance. Garza reiterated that Mother neither enrolled in nor participated in the required individual

therapy.

### **3. Guardian Ad Litem's Testimony**

Loma Muniz-Paz, Adam's guardian ad litem, testified that Child Advocates had been assigned to Adam's case since September 2015. Muniz-Paz visited with Adam and his caregivers as well as with Mother, and the current recommendation was termination of Mother's parental rights. Muniz-Paz agreed that Adam should remain in his current placement.

Child Advocates recommended termination because of Mother's poor mental health. Muniz-Paz stated that Child Advocates had heard Mother say Adam has an infection in his penis and that Mother has tried to cure the infection with Arnica. Moreover, Mother has stated that she needs medication but does not want any kind of psychological or psychiatric help. Mother denies having any mental health issues.

Muniz-Paz testified that Mother's beliefs regarding Adam's "illness," which he characterized as "imaginary," as well as a story Mother shared regarding some "theory of prosecution" against her while living in Maryland are evidence of disorganized thinking. A certificate from a Houston pediatrician showed that Adam was healthy. Muniz-Paz had no information regarding Adam's father.

On cross-examination, Muniz-Paz testified that Mother had been diagnosed with unspecified psychotic disorder. Child Advocates was not aware of any recommended medications. According to Mother's psychological evaluation, Mother "was not forthcoming with regard to mental health issues and concerns and she responded to tests with considerably defensive and evasive approach." Referring to the evaluation, Muniz-Paz stated the recommendation was, in relevant part:

Until [Mother] is compliant with treatment, recommenda – recommendations and demonstrates rational thinking, her contact with her son should be supervised by other responsible, reliable adult[s]. She should eventually comply with the treatment and maintain improved thinking and functioning as a result. Her parenting of her son should remain closely monitored by other reliable adults, especially as she has shown a pattern of not following through on treatment in the long term.

Muniz-Paz had discussed with Mother whether she was willing to participate in her psychological evaluation but had not discussed medication.

#### **4. Evidence of Mother’s Psychological Evaluation**

Mother was called to testify, but the bailiff could not locate Mother in the hall or bathroom. Both Muniz-Paz and Garza attempted to call Mother on her cell phone, but she did not answer.

The trial court admitted, without objection, Mother’s psychological evaluation. Both sides rested.

Following argument of counsel, the court determined Mother’s parental rights should be terminated pursuant to the predicate findings under Family Code sections 161.001(b)(1)(N) and (O). The trial court also found that termination of Mother’s parental rights was in Adam’s best interest. The trial court appointed the Department as sole managing conservator.

## **II. ISSUES AND ANALYSIS**

In two issues Mother argues the evidence is legally and factually insufficient to support the termination finding under sections 161.001(b)(1)(N) and (O) of the Texas Family Code. 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(b)(1) of the Family Code; and (2) termination is in the best interest of the child. Tex. Fam. Code Ann. § 161.001(b)(1), (2); *In re J.O.A.*, 283 S.W.3d 336,

344 (Tex. 2009). Mother does not challenge the trial court’s finding that termination is in Adam’s best interest.

### **A. Standard of Review**

Involuntary termination of parental rights is a serious matter implicating fundamental constitutional rights. *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985); *In re D.R.A.*, 374 S.W.3d 528, 531 (Tex. App.—Houston [14th Dist.] 2012, no pet.). Although parental rights are of constitutional magnitude, they are not absolute. *In re C.H.*, 89 S.W.3d 17, 26 (Tex. 2002) (“Just 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.”).

Due to the severity and permanency of the termination of parental rights, the burden of proof is heightened to the clear-and-convincing-evidence standard. *See* Tex. Fam. Code Ann. § 161.001; *In re J.F.C.*, 96 S.W.3d 256, 265–66 (Tex. 2002). “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 (West 2014); *J.F.C.*, 96 S.W.3d at 264. This heightened burden of proof results in a heightened standard of review. *In re C.M.C.*, 273 S.W.3d 862, 873 (Tex. App.—Houston [14th Dist.] 2008, no pet.).

In reviewing the legal sufficiency of the evidence in a termination case, we must consider all the evidence in the light most favorable to the finding to determine whether a reasonable fact finder could have formed a firm belief or conviction that its finding was true. *See J.O.A.*, 283 S.W.3d at 344; *J.F.C.*, 96 S.W.3d at 266; *C.H.*, 89 S.W.3d at 25. We assume the fact finder resolved disputed facts in favor of its finding if a reasonable fact finder could do so, and we disregard

all evidence a reasonable fact finder could have disbelieved. *J.O.A.*, 283 S.W.3d at 344; *J.F.C.*, 96 S.W.3d at 266.

In reviewing the factual sufficiency of the evidence, we consider and weigh all of the evidence, including disputed or conflicting evidence. *J.O.A.*, 283 S.W.3d at 345. “If, in light of the entire record, the disputed evidence that a reasonable fact finder 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.* We give due deference to the fact finder’s findings and we cannot substitute our own judgment for that of the fact finder. *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). The fact finder is the sole arbiter when assessing the credibility and demeanor of witnesses. *Id.* at 109.

### **B. Predicate Termination Grounds**

Relevant to this issue, section 161.001(b)(1) provides that termination is warranted if the trial court finds by clear and convincing evidence, in addition to the best-interest finding, that the parent has:

(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child’s removal from the parent under Chapter 262 for the abuse or neglect of the child.

Tex. Fam. Code Ann. § 161.001(b)(1)(O).

Mother does not challenge that Adam was removed under Chapter 262 for abuse or neglect, or that Adam was in the Department’s conservatorship for the requisite period of time.

The record reflects that the trial court approved Mother’s service plan and

ordered compliance with its terms. *See* Tex. Fam. Code Ann. §§ 161.001(b)(1)(O); 263.101–106. The record reflects that Mother failed to participate in individual therapy and failed to offer proof of medication compliance. Mother contends the evidence adduced at trial does not satisfy the clear-and-convincing standard of proof.

We first address Mother’s contention that Garza’s testimony that Mother failed to complete individual therapy is insufficient to support termination because it amounts to nothing more than a “bald assertion.” Mother asserts, *inter alia*, there was no evidence regarding the name of the therapist, when and/or how Mother was referred to the therapist, or how many sessions Mother needed to attend.

The record reflects that Garza, who created Mother’s service plan, had been involved in Mother’s case from the outset. Garza had personal knowledge of Mother’s compliance with the plan. Garza testified that Mother had not participated in individual therapy and that Mother was not enrolled in therapy at the time of trial. Mother provided no competing or contravening evidence.

We conclude that Garza’s testimony provided legally and factually sufficient evidence to support a firm belief or conviction that Mother failed to comply with her service plan. *See In re C.M.C.*, No. 14–12–00186–CV, 2012 WL 3871359, at \*5 (Tex. App.—Houston [14th Dist.] Aug. 30, 2012, *pet. denied*) (mem. op. on reh’g) (concluding that termination was supported by legally and factually sufficient evidence where caseworker’s testimony regarding parent’s failure to comply with family service plan was presented without objection or contravention).

Because even substantial compliance with a family service plan will not negate a termination finding under subsection O, we need not address Mother’s challenge to whether there was clear and convincing evidence she failed to provide

proof of medication compliance. *See C.M.C.*, 273 S.W.3d at 875; *see also In re T.T.*, 228 S.W.3d 312, 319–20 (Tex. App.—Houston [14th Dist.] 2007, pet. denied) (noting Texas courts have uniformly found substantial compliance with the provisions of a court order inadequate to avoid a termination finding under subsection O). Mother failed to complete the service plan and so has not demonstrated the ability to provide Adam with a safe environment. *See In re A.D.*, 203 S.W.3d 407, 411–12 (Tex. App.—El Paso 2006, pet. denied) (affirming termination under subsection O because mother failed to meet her service plan’s material requirements including drug assessment, finding a job, and providing a safe home).

Having concluded the record contains legally and factually sufficient evidence of Mother’s failure to comply with the service plan, we need not address Mother’s argument that the evidence is insufficient to support the trial court’s finding under section 161.001(b)(1)(N). *See In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003) (“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.”). Mother does not challenge the court’s finding that termination was in the child’s best interest. Accordingly, we overrule Mother’s second issue.

The judgment of the trial court is affirmed.

/s/     Kem Thompson Frost  
          Chief Justice

Panel consists of Chief Justice Frost and Justices Brown and Jewell.