Affirmed and Memorandum Opinion filed August 17, 2017.

In The

Fourteenth Court of Appeals

NO. 14-17-00238-CV

IN THE INTEREST OF R.B., A CHILD

On Appeal from the 312th District Court
Harris County, Texas
Trial Court Cause No. 2015-23409

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

Appellant R.B. appeals the trial court's final decree terminating his parental rights and appointing the Department of Family and Protective Services ("the Department") as sole managing conservator of appellant's child, R.B ("Rebecca").[1] The trial court signed its first decree of termination on December 7, 2016, following a trial at which appellant did not appear. In that decree, the trial court terminated appellant's parental rights on the predicate grounds of endangerment, abandonment,

[1] "Rebecca" is a pseudonym. Pursuant to Texas Rule of Appellate Procedure 9.8, we use fictitious names to identify the minors in this case.

and failure to comply with a family service plan. *See* Tex. Fam. Code Ann. § 161.001(b)(1)(E), (N) and (O) (West Supp. 2017). The trial court further found that termination of appellant's rights was in Rebecca's best interest.[2]

Appellant timely filed a motion for new trial in which he alleged that no evidence was presented to support the termination grounds or the best-interest finding. Appellant further alleged that he was not present for trial due to limited communication between him and his attorney.[3] Following a hearing on appellant's motion for new trial, the trial court orally granted the motion in part. On March 23, 2017, the trial court signed an amended decree of termination in which the court omitted the findings on endangerment, abandonment, and failure to follow a family service plan. The trial court found under Texas Family Code section 161.002 that appellant, after having waived service of process or being served with citation, did not respond by timely filing an admission of paternity or by filing a counterclaim for paternity or for voluntary paternity.

In a single issue on appeal, appellant challenges the legal and factual sufficiency of the evidence to support the trial court's finding that appellant failed to respond with a timely admission of paternity. Because we conclude the evidence is legally and factually sufficient to support the trial court's finding that appellant failed to timely file an admission of paternity or otherwise admit paternity, we affirm.

[2] Rebecca's mother's parental rights were terminated as to Rebecca and another child who has a different father. The other child's father's parental rights were not terminated. The children's mother has not appealed the termination of her parental rights.

[3] Prior to trial, appellant filed an answer through his court-appointed attorney.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Pretrial Proceedings

The Department received a referral stating that A.N. ("Mother") and appellant may be demonstrating a pattern of substance abuse, which may result in an inability to provide supervision for Rebecca, who was an infant at the time. The referral also stated that appellant subjected Rebecca to substantial harm by exposing her to domestic violence when he recently assaulted a female adult who was visiting the home.

Approximately four months later, when Rebecca was eleven months old, the Department received another referral stating that Rebecca was admitted to the hospital with severe chemical burns to most of her face in addition to cornea burns in both eyes. Appellant claimed another child wiped Rebecca's face with Tilex cleaner on a cloth, but the Department caseworker noted that the burns appeared to be more severe than those that would be caused by the cleaning product. Neither Mother nor appellant contacted the hospital or could be reached as their phone numbers were not valid.

Four days later the Department received yet another referral stating that Rebecca sustained burns to vital and non-vital body areas. Explanations were not clear as to how the child received the injuries. The caseworker noted concern that the parents were using illegal drugs, which impaired their ability to properly care for and supervise the child and the conditions of the home.

The caseworker concluded that the Department had concerns due to the parents not cooperating with regard to requested drug testing, the child's chemical burns, and the failure of either parent to consistently visit the child while in the hospital. Due to these concerns the Department sought temporary managing

conservatorship of Rebecca and another child.

The Department investigator interviewed appellant's nephew, who stated that appellant and his girlfriend have been known to use crack cocaine, and that the nephew has ridden in the car while appellant sold drugs. The nephew reported that "last year" appellant hit and choked Mother.

Appellant was interviewed by the investigator at a hospital. Appellant did not have a phone number, but gave the number of his aunt where he could be reached. Appellant also gave his address. Appellant stated he had been arrested, and had no medical or mental health issues. Appellant denied smoking, drinking, or using drugs. Appellant stated he is on parole for burglary of a habitation, and one of the conditions of his parole is to remain drug and alcohol free. Appellant told the investigator that Rebecca is his child.

With regard to the incident that caused Rebecca's facial burns, appellant stated he was cleaning his parents' bathroom and had Rebecca strapped in a booster seat while L.M. ("Leslie"), a two-year-old child, was in the living room watching television. Appellant sprayed the bathroom surfaces with Tilex and used a cloth to wipe everything down. As appellant was cleaning the bathtub he heard Rebecca crying. When he turned around he saw Leslie wiping Rebecca's face with the cloth soaked in Tilex. Appellant called an ambulance, and "they told him [Rebecca] was okay." After putting Rebecca down for a nap appellant noticed her face was getting red and "did not look right." Appellant contacted a friend who drove Rebecca, appellant, and Leslie to the hospital. Rebecca was taken to Memorial City Memorial Hermann Hospital, but was later transferred to Memorial Hermann Children's Hospital because the children's hospital had an eye doctor. Appellant stayed one night with Rebecca in the hospital, but Mother did not visit Rebecca.

The investigator spoke with Becky Wiersma, the children's social worker at

Memorial Hermann Hospital. Wiersma expressed concerns about the family because she had not seen Mother at the hospital at all and rarely saw appellant. Rebecca was alone in the hospital most of the day. Appellant brought Leslie to the hospital "to make her feel bad about supposedly causing [Rebecca]'s injuries." Wiersma stated that if Leslie had caused Rebecca's injuries she would have had some form of irritation on her hands from touching the cleaning product. The hospital did not have contact information for either parent and was unable to contact them if Rebecca needed medical treatment.

The investigator also spoke with Mother who said she was "common-law-married" to appellant. Mother stated they did not receive assistance because "they lost their mail key and she was unable to get the documents to keep her assistance for food stamps, WIC and Medicaid." Mother denied drug or alcohol use.

Following filing of the original petition to terminate the parents' rights, appellant was appointed counsel. Appellant was served, and through counsel filed a general denial. On May 14, 2015, the Department was appointed temporary managing conservator of Rebecca and Leslie. A temporary order following an adversary hearing signed May 28, 2015, and a permanency order signed October 15, 2015, both recite that appellant "appeared in person and through attorney of record and announced ready." At other hearings, appellant did not personally appear, but appeared through his attorney.

Appellant signed his family service plan on October 15, 2015. The plan required appellant to:

- make necessary arrangements for transportation to ensure timely completion of tasks outlined in the service plan;
- maintain valid identification for the duration of the case;

- participate in a psychiatric evaluation and follow all recommendations;
- participate in and complete a psychosocial evaluation;
- participate in a psychological examination;
- call the caseworker every morning between the hours of 6:30 a.m. and 8:00 a.m.;
- submit to random drug testing;
- schedule and actively participate in a drug/alcohol assessment and follow all recommendations from the assessment;
- register for, attend, actively participate in, successfully complete, and follow all recommendations of parenting classes that are appropriate to the age and conditions of his child;
- maintain stable and safe housing for a minimum of six months consecutively;
- be able to provide for his child through employment;
- refrain from participating in criminal activity and refrain from interacting with people who have a history of drug use and/or abuse;
- provide the caseworker with names of all physicians and/or clinics that provided medical care for his child;
- attend all scheduled court hearings, family visits, and meetings pertaining to his case and his child;
- have no unsupervised contact with his children until recommended otherwise by the agency; and
- maintain weekly contact with his assigned caseworker.

A permanency report reflects that the only items completed by appellant were transportation and release of information. Appellant partially completed the task required to show proof of housing. Appellant provided the caseworker with an address, but the worker was not able to view the inside of the residence. With regard to cooperation, the report noted that appellant attended one court hearing on October 15, 2015. Appellant missed the scheduled hearing on February 11, 2016. Appellant

completed none of the assessments that were ordered and did not appear for any drug testing.

The court's docket sheet reflects that appellant appeared at a full adversarial hearing on May 14, 2015, at the initial permanency hearing on October 14, 2015, and at a subsequent permanency hearing on March 3, 2016. After those dates appellant did not appear.

B. Trial Testimony

Prior to taking testimony, the trial court noted appearances at trial. Appellant did not appear at trial.

Bruce Jefferies of the National Screening Center testified about the drug tests performed on Mother and Leslie's father. Drug tests for Mother were positive for cocaine. Drug tests for Leslie's father were positive for cocaine and methamphetamine.

Clevell King, the Department caseworker, testified that while Rebecca was in the hospital for several days, Mother did not visit her. Appellant visited Rebecca in the hospital and reported that he thought Leslie caused Rebecca's burns by wiping her face with the cloth soaked in cleaning fluid. King testified that Rebecca does not have "any lasting effects" from the burns she received. Rebecca is currently placed with appellant's brother, Rebecca's paternal uncle, and his wife, Rebecca's aunt. Neither parent expressed issues with Rebecca's placement. The long-term plan for Rebecca is adoption by her aunt and uncle. The aunt and uncle are meeting all of Rebecca's medical and other essential needs.

The Department is unwilling to allow Rebecca to return home to appellant because (1) they have not seen appellant's home; (2) appellant has not provided the Department with documentation that he is employed or can care for Rebecca; (3)

appellant has not completed any services that would demonstrate to the Department that he's alleviated the reason the child came into care; and (4) appellant has not contacted the Department. Appellant has not been adjudicated as Rebecca's father.

Appellant's brother ("Uncle") testified that Rebecca has been with him and his wife since she was removed from the home. Uncle testified that Rebecca was doing well and receives speech therapy assistance in preschool. Uncle and his wife have no issues managing Rebecca's needs. Appellant had not visited Rebecca while she was living in Uncle's home. Appellant occasionally sends a text message to Uncle and asks for a picture of Rebecca or to tell Rebecca that he loves her. Uncle testified that appellant would text, "Tell [m]y girl I love her." Appellant did not ask about seeing Rebecca. Appellant never expressed that he did not want his child placed with Uncle. Uncle has very little contact with appellant, but thinks appellant is living with their parents. Uncle and his wife would like to adopt Rebecca and believe it is in her best interest for them to adopt her.

With regard to Rebecca's hospitalization that led to the initial referral, Uncle did not learn Rebecca was in the hospital until she had been there a few days. When he learned Rebecca was in the hospital, Uncle and his wife visited her. After their first visit to the hospital, Uncle learned that Rebecca had been left alone at the hospital. Uncle and his wife drove back from Austin to stay with Rebecca until Uncle's sister arranged for someone to stay with Rebecca. During the two days that Uncle was at the hospital, appellant visited once for approximately 30 minutes.

Mother testified that she was currently incarcerated on her third theft conviction. Prior to her incarceration she was living in appellant's parents' house. Other than parenting classes completed while in jail Mother has not completed any of her services listed on the family service plan. Mother had no concerns about Rebecca's placement with Uncle and his wife.

After the Department rested its case, the trial court commented:

> THE COURT: Mr. Tipsword [appellant's attorney], I do not show anything for your client, [appellant], where he's made any type of admission of paternity. I don't see that he submitted to do a DNA test. I don't show that he signed off on an AOP. I don't show anything in my file to indicate that he's admitted to paternity. Is that correct or am I — is there something that you have filed on his behalf that I would otherwise need to look at?
>
> MR. TIPSWORD: I would agree with the Court's assessment.

The trial court found that appellant was an alleged father only and that he failed to come before the court after being served with a paternity action to either admit paternity or contest it.

C. December 7, 2016 Decree

Following the trial, the trial court signed a decree terminating Mother's and appellant's parental rights as to Rebecca and Leslie. With regard to appellant, the trial court made findings under Texas Family Code sections 161.001 and 161.002. Section 161.001(b) authorizes a court to terminate parental rights based on a finding by clear and convincing evidence that (1) the parent committed at least one of several predicate acts or omissions enumerated in section 161.001(b)(1), and (2) that termination is in the child's best interest. Tex. Fam. Code Ann. § 161.001(b). Section 161.002(b)(1) permits the termination of an alleged father's rights if he fails to assert his paternity in some manner before the court after he is served with citation. Tex. Fam. Code Ann. § 161.002(b)(1).

In the decree of termination signed December 7, 2016, the trial court found that appellant committed the predicate acts or omissions enumerated in subsections (D), (E) (endangerment), (N) (constructive abandonment), and (O) (failure to follow the family service plan) of section 161.001(b)(1). The court also found that appellant did not admit paternity or otherwise assert his paternity to the court after being

served with citation. Tex. Fam. Code Ann. § 161.002(b)(1).

D. Motion for New Trial

Following the trial court's December 7, 2016 decree appellant filed a timely motion for new trial. In the motion appellant challenged the trial court's findings: (1) on endangerment; (2) that the children were removed for abuse or neglect, which triggered review under subsection (O); and (3) that appellant had not asserted paternity under section 161.002. Appellant's motion for new trial was supported by an affidavit stating that he was not present at trial due to limited communications between him and his attorney.

On February 2, 2017, the trial court held a hearing on appellant's motion for new trial. At the hearing, appellant's attorney noted that the motion for new trial was filed on behalf of appellant only, and only addressed the termination of his parental rights to Rebecca. Appellant's attorney spelled out the attempts he made to contact appellant and inform appellant of the trial setting. Appellant's attorney then stated that if appellant had been at trial he could have presented testimony in his own defense. The attorney argued that there was no evidence that appellant caused harm to Rebecca other than the caseworker's testimony. The attorney further argued that there was no testimony presented that appellant knowingly engaged in conduct or allowed any person to engage in conduct that would cause danger or harm to Rebecca. The attorney further argued that since Mother was incarcerated appellant had no knowledge of her drug use. The attorney also argued that the judgment was inappropriate because it was, in practical effect, a default judgment and should be set aside.

At the initial hearing a question arose as to the Department's burden with regard to subsection (O). Subsection (O) states that a parent's rights may be terminated if the parent fails 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. This subsection is not triggered unless it is shown that the child has been in the permanent or temporary managing conservatorship of the Department for not less than nine months as a result of the child's removal from the parent under Chapter 262 of the Family Code for abuse or neglect. Tex. Fam. Code Ann. § 161.001(b)(1)(O). Appellant challenged the trial court's finding that Rebecca had been removed for abuse or neglect. The trial court recessed the hearing and asked appellant's counsel to provide case authority for his proposition that subsection (O) was not triggered unless the Department showed the child was removed for abuse or neglect.

The trial court's docket sheet reflects that on February 10, 2017, the court granted a new trial as to all section 161.001(b)(1) grounds. The docket sheet notes, "The court sets entry of partial new trial order (to be drafted by [appellant's attorney]) at 9:00 a.m. on 2/17/17 and to set trial on the merits as to the other grounds if desired by the county attorney."

On March 2, 2017, the trial court held a hearing in response to the Department's motion to clarify the ruling on the motion for new trial. At this hearing the Department argued that section 161.002 was not raised in appellant's motion for new trial and that a new trial should not be granted on that ground. At the hearing the trial court concluded that appellant did not raise grounds under section 161.002 (admission of paternity) in his motion for new trial. For that reason, the trial court clarified that a new trial had been granted only on the grounds under section 161.001(b)(1).

E. March 23, 2017 Decree

On March 23, 2017, the trial court signed an Amended Decree for Termination and Decree in Suit Affecting the Parent-Child Relationship. In the March 23 decree,

the trial court omitted the findings against appellant under section 161.001(b)(1)(D), (E), (N), and (O). The trial court found by clear and convincing evidence that termination of the parent-child relationship, if any exists or could exist, between appellant and Rebecca is in the best interest of the child. The court further found that after having waived service of process or being served with citation, appellant did not respond by timely filing an admission of paternity or by filing a counterclaim for paternity or for voluntary paternity under chapter 160 of the Texas Family Code.

On March 29, 2017, appellant filed a notice of appeal from the March 23, 2017 decree.

II. ANALYSIS

A. Jurisdiction

Initially, we address our jurisdiction over this appeal. In its brief, the Department argues we lack jurisdiction over this appeal because appellant's notice of appeal was not timely filed. Appeals from actions terminating parental rights are accelerated. Tex. Fam. Code Ann. § 109.002(a); Tex. Fam. Code Ann. § 263.405(a) (West 2014); *see also* Tex. R. App. P. 28.4. In accelerated appeals, the deadline for filing a notice of appeal is twenty days from the judgment date and the filing of a motion for new trial will not extend that deadline. *In re K.A.F.*, 160 S.W.3d 923, 927 (Tex. 2005).

In this case, appellant attempts to appeal the trial court's amended decree signed March 23, 2017. The notice of appeal filed March 29, 2017 is timely if the trial court signed the amended decree within its plenary power.

Trial courts retain plenary power over a case for thirty days from the date of the judgment. "The trial court, regardless of whether an appeal has been perfected, has plenary power to grant a new trial or to vacate, modify, correct or reform the

judgment within thirty days after the judgment is signed." Tex. R. Civ. P. 329b(d). A court's plenary power is extended upon the timely filing of a motion seeking to alter the judgment, such as a motion for new trial. "[A] trial court's plenary power is extended by the timely filing of (1) a motion for new trial; (2) motion to vacate, modify, or correct the judgment; or (3) any motion seeking a substantive change in the court's judgment." *In re Gillespie*, 124 S.W.3d 699, 703 (Tex. App.—Houston [14th Dist.] 2003, orig. proceeding) (en banc).

Upon the timely filing of a motion or motions seeking to alter the judgment, a court's plenary power extends to thirty days after those motions are overruled. Tex. R. Civ. P. 329b(e). By rule, motions to alter the judgment, including motions for new trial, are overruled automatically by operation of law seventy-five days after judgment, unless the court signs a written order granting or denying the motion before expiration of the seventy-five day period. *See* Tex. R. Civ. P. 329b(c). "In the event an original or amended motion for new trial or a motion to modify, correct or reform a judgment is not determined by written order signed within seventy-five days after the judgment was signed, it shall be considered overruled by operation of law on expiration of that period." Tex. R. Civ. P. 329b(c). Within the seventy-five day period, a court order granting or denying a motion to alter the judgment is effective only if it is in writing. For example, the Supreme Court of Texas has consistently held that a written order granting a new trial is mandatory. *See Horizon/CMS Healthcare Corp., Inc. v. Fischer*, 111 S.W.3d 67, 68 (Tex. 2003) (per curiam) (declining to overrule precedent, ignore Rule 329b, and accept docket entry in lieu of written order); *Faulkner v. Culver*, 851 S.W.2d 187, 188 (Tex. 1993) (per curiam) (holding oral pronouncement and docket entry cannot be substituted for a written order). A court may not grant a new trial by implication. *See In re Lovito-Nelson*, 278 S.W.3d 773, 775-76 (Tex. 2009) (orig. proceeding); *McCormack v.*

Guillot, 597 S.W.2d 345, 346 (Tex. 1980).

In the event a motion for new trial, or motion to modify, correct, or reform the judgment, is overruled, either by written order or by operation of law, the court's plenary power is extended by thirty days from the date the motion is overruled. "If a motion for new trial is filed by any party, the trial court, regardless of whether an appeal has been perfected, has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment until thirty days after all such timely-filed motions are overruled, either by a written and signed order or by operation of law, whichever occurs first." Tex. R. Civ. P. 329b(e).

With these principles in mind, we must first determine whether appellant timely filed a notice of appeal, which affects our jurisdiction. The timeliness of appellant's notice of appeal depends on whether the March 23, 2017 decree was signed within the trial court's plenary power.

The court signed the original decree on December 7, 2016. Appellant filed a timely motion for new trial, thus triggering the seventy-five day period for extending plenary power and ruling on the motion under Rule 329b(c). The seventy-fifth day after judgment was February 20, 2017. However, February 20, 2017, was President's Day, a legal holiday. *See* Tex. Gov't Code Ann. § 662.003(a)(3) (West 2012). When the seventy-fifth day under Rule 329b(c) falls on a legal holiday, the time is extended to the next day that is not a Saturday, Sunday or legal holiday. *See* Tex. R. Civ. P. 4 (in computing time periods under the rules of civil procedure, "[t]he last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday."); *see also Sims v. Fitzpatrick*, 288 S.W.3d 93, 105 (Tex. App.—Houston [1st Dist.] 2009, no pet.) (applying rule 4 to

computation of rule 329b(c) seventy-five-day period for ruling on motion for new trial).

Accordingly, appellant's motion for new trial would have been overruled by operation of law on February 21, 2017, unless the trial court signed a written order granting or denying the motion earlier. Although the trial court stated during a hearing that he was granting the motion for new trial in part, the present record does not contain a written order granting appellant's motion for new trial on or before February 21, 2017. Additionally, the record contains no written order denying appellant's motion for new trial on or before February 21, 2017. Thus, appellant's motion for new trial was overruled by operation of law on February 21, 2017.

The trial court's plenary power, therefore, extended thirty days after February 21 until March 23, 2017. *See* Tex. R. Civ. P. 329b(3). Because the trial court signed the amended decree on March 23, 2017, the last day of its plenary power, the amended decree is valid and appellant's March 29, 2017 notice of appeal is timely. *See* Tex. R. App. P. 4.3(a) ("If a judgment is modified in any respect while the trial court retains plenary power, a period that, under these rules, runs from the date when the judgment is signed will run from the date when the modified judgment is signed."). Therefore we have jurisdiction over appellant's appeal. Having determined our jurisdiction, we turn to the issue raised in appellant's brief.

B. Sufficiency of the Evidence

1. Applicable Legal Principles

Termination of parental rights requires proof by clear and convincing evidence. Tex. Fam. Code Ann. § 161.001 (West Supp. 2017); *In re J.F.C.*, 96 S.W.3d 256, 263 (Tex. 2002). This heightened standard of review is mandated not only by the Family Code but also by the Due Process Clause of the United States

Constitution. *In re E.N.C.*, 384 S.W.3d 796, 802 (Tex. 2012); *see also Santosky v. Kramer*, 455 U.S. 745, 753–54 (1982) (recognizing fundamental liberty interest parent has in his or her child and concluding that state must provide parent with fundamentally fair procedures, including clear and convincing evidentiary standard, when seeking to terminate parental rights). The Family Code defines clear and convincing evidence as "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.

Family Code section 161.002, entitled "Termination of the Rights of an Alleged Biological Father," provides a method by which a court may involuntarily terminate the parent-child relationship. *See* Tex. Fam. Code. Ann. § 161.002. Subsection 161.002(b) provides:

> (b) The rights of an alleged father may be terminated if:
>
> (1) after being served with citation, he does not respond by timely filing an admission of paternity or a counterclaim for paternity under Chapter 160;
>
> (2) the child is over one year of age at the time the petition for termination of the parent-child relationship or for adoption is filed, he has not registered with the paternity registry under Chapter 160, and after the exercise of due diligence by the petitioner:
>
> (A) his identity and location are unknown; or
>
> (B) his identity is known but he cannot be located;

Tex. Fam. Code Ann. § 161.002(b).

Here, the trial court found that termination was warranted under Family Code subsection (b)(1).

When determining a legal sufficiency point in a termination case, 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, 25–26 (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 factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient." *Id*.

We are mindful that 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; *see also In re E.R.*, 385 S.W.3d 552, 563 (Tex. 2012). 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; *see also In re E.C.R.*, 402 S.W.3d 239, 240 (Tex. 2013).

2. Failure to Admit Paternity

Pursuant to Family Code section 161.002(b)(1), the trial court determined:

> As it relates to [appellant], the Court finds that [appellant] is an alleged father only. The Court finds that [appellant] has effectively failed to come before this Court after being served with a paternity action to either admit the paternity or do anything to come forward to then contest it or try to claim this child as his child and the Court hereby terminates his rights to [Rebecca], if in fact [Rebecca] is his child, under 161.002(b)(1).

On appeal, appellant argues that the evidence was legally and factually insufficient to sustain the 161.002(b)(1) finding because (1) appellant was represented by counsel at trial; (2) evidence at trial referred to parents and to father; and (3) Rebecca's current placement is referenced as her paternal uncle.

No particular form is required for an admission of paternity to be effective. *In re V.S.R.K.*, No. 02-08-00047-CV, 2009 WL 736751, at *4 (Tex. App.—Fort Worth Mar. 19, 2009, no pet.) (mem. op.); *Estes v. Dallas Cnty. Child Welfare Unit of Tex. Dep't of Human Servs.*, 773 S.W.2d 800, 801 (Tex. App.—Dallas 1989, writ denied); *see also Toliver v. Tex. Dep't of Family and Protective Servs.*, 217 S.W.3d 85, 105 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (stating, "[T]here is no

reference in the statute to any formalities that must be observed when 'filing' such a document.").

Relying on this principle, and citing *In re K.W.*, appellant argues that the appointment of counsel and reference to him as Rebecca's father during trial served as an admission of paternity in the context of this suit. *See In re K.W.*, 138 S.W.3d 420, 430 (Tex. App.—Fort Worth 2004, pet. denied). In *K.W.*, the court held that letters written by the father to the trial court in which he stated that he was the child's father were sufficient to constitute an admission of paternity under subsection 161.002(b)(1). *See id*. Appellant also cites *Toliver*, in which the alleged father did not file any documents with the trial court. *Toliver*, 217 S.W.3d at 105. Nonetheless, the First Court of Appeals held that the alleged father's appearance at trial—where he admitted that he was the child's father—triggered his right to require the Department to prove that he had engaged in one of the types of conduct listed in section 161.001(b)(1). *See id*.

Following the reasoning of *K.W.* and *Toliver*, the court in *V.S.R.K.* held that the father, even though he repeatedly questioned his paternity throughout the case, admitted his paternity for purposes of section 161.002 by certain acts, including the following: (1) filing a general denial in the trial court and (2) filling out a request for appointed counsel in which he stated that he was the parent of the child. *See V.S.R.K.*, 2009 WL 736751, at *4–5; *see also In re A.R.F.*, No. 02-13-00086-CV, 2013 WL 3874769, at *12–13, *18, *23 (Tex. App.—Fort Worth July 25, 2013, no pet.) (mem. op.) (declining to affirm termination on unchallenged section 161.002 ground because appellant appeared at termination trial and unequivocally testified that he was child's biological father); *In re U.B.*, No. 04-12-00687-CV, 2013 WL 441890, at *2 (Tex. App.—San Antonio Feb. 6, 2013, no pet.) (mem. op.) (holding alleged father's letter to trial court and his trial testimony constituted an admission

of paternity within the meaning of section 161.002(b)(1)).

Unlike the alleged fathers in *K.W.*, *Toliver*, and *V.S.R.K.*, appellant did not file any document in the trial court admitting paternity, and did not appear at trial. When the trial court questioned appellant's counsel about any admission of paternity, counsel agreed with the trial court that appellant had done nothing to admit paternity. Although it is accepted that there are no formalities that must be observed for an admission of paternity to be effective, appellant has cited no authority, nor have we found any, that finds compliance with the statute when the alleged father made no representation of paternity in the trial court. Although appellant was appointed counsel and filed a general denial, he at no time admitted paternity. By filing a general denial, appellant denied the Department's allegation that he was Rebecca's father. Similarly, the fact that Rebecca is placed with someone represented by others to be her paternal uncle is not evidence of appellant's admission of paternity.

In *In re K.E.S.*, No. 02-11-00420-CV, 2012 WL 4121127, at *3 (Tex. App.—Fort Worth Sept. 20, 2012, pet. denied.) (mem. op.), the court determined that the father had admitted paternity because he made statements to the Department acknowledging that he was the father and had "completely cooperated when asked to take a paternity test, the results of which were offered by [the Department] and admitted without objection by Father." In contrast, the court in *In re D.T.*, No. 02-13-00331-CV, 2014 WL 261408, at *2 (Tex. App.—Fort Worth Jan. 23, 2014, no pet.) (mem. op.) affirmed termination based on subsection 161.002(b)(1), observing that the father had not written to the trial court claiming paternity and had not appeared at trial to testify. The court also noted, "[t]here is no indication in the record that [the alleged father] offered to take a paternity test or made any effort outside of a single visit with [the child]." *Id.*

Similarly, in *In re J.L.W.*, No. 08-09-00295-CV, 2010 WL 5541187, at *6

(Tex. App.—El Paso Dec. 29, 2010, no pet.) (mem. op.), the court affirmed termination, which had been based on subsection 161.002(b)(1). There, the court observed, "although [the alleged father] expressed a willingness to undergo genetic testing, and despite both the trial court's order that testing be performed and the Department's attempts to assist [him] in being tested, [he] never submitted to testing." *Id*.

Given that appellant made no representations in the trial court that he was Rebecca's father, or otherwise admitted paternity, we hold that the trial court had legally and factually sufficient evidence to support its determination under subsection 161.002(b)(1) that appellant "[did] not respond by timely filing an admission of paternity or by filing a counterclaim for paternity or for voluntary paternity to be adjudicated under chapter 160" of the Texas Family Code. *See* Tex. Fam. Code Ann. § 161.002(b)(1). We overrule appellant's sole issue.[4]

We affirm the trial court's judgment.

/s/ Kevin Jewell
Justice

Panel consists of Justices Boyce, Donovan, and Jewell.

[4] Because the trial court's finding under subsection 161.002(b)(1) supports termination, we need not discuss the Department's cross-points asserting that termination can be affirmed on an alternate basis.