Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00483-CV

IN THE INTEREST OF S.G.I., a Child

From the 37th Judicial District Court, Bexar County, Texas
Trial Court No. 2014-PA-00452
Honorable Charles E. Montemayor, Associate Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Karen Angelini, Justice
Luz Elena D. Chapa, Justice
Jason Pulliam, Justice

Delivered and Filed: December 30, 2015

AFFIRMED

Isabel appeals the trial court's termination of her parental rights to S.G.I., arguing there was legally and factually insufficient evidence that termination was in S.G.I.'s best interest.[1] We affirm the trial court's judgment.

BACKGROUND

In February 2014, the Department of Family & Protective Services removed S.G.I. from Isabel based on Isabel's reported drug abuse. The affidavit in support of removal states Isabel had completed various counseling sessions and "completed drug treatment and attended NA meetings as recommended." However, the affidavit stated Isabel "continues to use illegal substances and

[1] To protect the identity of the minor child, we refer to appellant by her first name and to the child by her initials. *See* TEX. FAM. CODE ANN. § 109.002(d) (West 2014); TEX. R. APP. P. 9.8(b)(2).

has not altered her behaviors in a positive manner." The Department filed a petition for termination of Isabel's parental rights alleging, among other grounds, that Isabel used a controlled substance in a manner that endangered S.G.I.'s health or safety and either failed to complete a substance abuse program or continued to use a controlled substance after completing such a program. Just less than a year after the Department filed its petition, the trial court signed an order retaining the suit on its docket and found "that extraordinary circumstances necessitate the child(ren) remaining in the temporary managing conservatorship of the Department." The parties agree that sometime thereafter, S.G.I. was "returned" to Isabel, Isabel and S.G.I. were involved in a car accident, and S.G.I. was again removed from Isabel. The case proceeded to a bench trial, and the trial court signed a final order terminating Isabel's parental rights to S.G.I. after finding several grounds for termination, including the allegation regarding Isabel's drug abuse, and that termination was in S.G.I.'s best interest. Isabel appeals.

S.G.I.'S BEST INTEREST

Isabel's sole issue is there is legally and factually insufficient evidence that termination of her parental rights is in S.G.I.'s best interest. A judgment terminating parental rights must be supported by clear and convincing evidence. TEX. FAM. CODE ANN. § 161.001 (West 2014). To determine whether this heightened burden of proof was met, we employ a heightened standard of review to determine whether a "factfinder could reasonably form a firm belief or conviction about the truth of the State's allegations." *In re C.H.*, 89 S.W.3d 17, 25 (Tex. 2002). "This standard guards the constitutional interests implicated by termination, while retaining the deference an appellate court must have for the factfinder's role." *In re O.N.H.*, 401 S.W.3d 681, 683 (Tex. App.—San Antonio 2013, no pet.). We do not reweigh issues of witness credibility but defer to the factfinder's reasonable determinations of credibility. *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005).

A legal sufficiency review requires us to examine 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). We assume the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could have done so, and we disregard all evidence that a reasonable factfinder could have disbelieved or found incredible. *Id.* But we may not simply disregard undisputed facts that do not support the finding; to do so would not comport with the heightened burden of proof by clear and convincing evidence. *Id.*

When conducting a factual sufficiency review, we evaluate "whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding." *Id.* The evidence is factually insufficient "[i]f, 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." *Id.*

The best-interest determination is a wide-ranging inquiry, and the Texas Supreme Court has set out some factors relevant to the determination:

- the desires of the child;
- the emotional and physical needs of the child now and in the future;
- the emotional and physical danger to the child now and in the future;
- the parental abilities of the individuals seeking custody;
- the programs available to assist these individuals to promote the best interest of the child;
- the plans for the child by these individuals or by the agency seeking custody;
- the stability of the home or proposed placement;
- the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and
- any excuse for the acts or omissions of the parent.

Holley v. Adams, 544 S.W.2d 367, 372 (Tex. 1976). The list is not exhaustive, and not every factor must be proved to find that termination is in the child's best interest. *In re C.H.*, 89 S.W.3d at 27.

Evidence of only one factor may be sufficient for a factfinder to form a reasonable belief or conviction that termination is in the child's best interest—especially when undisputed evidence shows that the parental relationship endangered the child's safety. *Id.* "Evidence that the parent has committed the acts or omissions prescribed by section 161.001 may also be probative in determining the child's best interest; but the mere fact that an act or omission occurred in the past does not *ipso facto* prove that termination is currently in the child's best interest." *In re O.N.H.*, 401 S.W.3d at 684 (internal citation omitted).

Two witnesses testified at trial. Isabel testified that nearly three weeks after the Department returned S.G.I. to her, Isabel, S.G.I., and another one of Isabel's children were involved in a car accident. Isabel admitted she drove her car "too fast, and a lady clipped [her] from right from behind and caused [her] to overturn [her] vehicle like two times." Isabel and her children were taken to the hospital, where Isabel tested positive for cocaine. Orlando Herrera, a Department caseworker, testified that after this incident, Isabel once again tested positive for cocaine. He further testified that S.G.I. had been placed with a maternal relative, Marsella; she was willing to care for and planned to adopt S.G.I.; and S.G.I. had lived with Marsella most of S.G.I.'s life.

There was no evidence about S.G.I.'s age. Isabel argues that, as a result, the "desires of the child" factor "is a nullity." Isabel further argues that because there was a monitored return of S.G.I. to Isabel, then "the Department must have seen a bond between the mother and child to prompt the monitored return" and "we can conclude that the Department must have been convinced that the present and future emotion[al] . . . needs of the child were provided for by the mother." Isabel also notes she completed her family service plan.

There was evidence that Isabel used cocaine in a manner that endangered S.G.I.'s life. Although this does not *ipso facto* prove that termination was in S.G.I.'s best interest, the evidence is probative in determining S.G.I.'s best interest. *See id.* There was evidence that after this incident,

Isabel again tested positive for cocaine. Although it was undisputed that Isabel completed her family service plan, there was testimony that after Isabel completed drug treatment, she tested positive for cocaine. Furthermore, no evidence was admitted at trial to explain why the Department returned S.G.I. to Isabel.[2] It was not undisputed that the Department returned S.G.I. because S.G.I. had bonded with Isabel or that Isabel would be able to provide for all of S.G.I.'s present and future needs. *See In re J.F.C.*, 96 S.W.3d at 266 (prohibiting courts from disregarding "undisputed facts" that do not support a best-interest finding). Finally, there was evidence that one of S.G.I.'s relatives planned to adopt S.G.I., had taken care of S.G.I. for most of S.G.I.'s life, and was willing to continue to care for S.G.I. Therefore, we hold legally and factually sufficient evidence supports the trial court's finding that termination of Isabel's parental rights is in S.G.I.'s best interest.

CONCLUSION

We affirm the trial court's judgment.

Luz Elena D. Chapa, Justice

[2] Although a monitored return is sometimes required for a trial court to order that a parental-termination case be retained on its docket, the trial court did not sign such an order in this case. *Compare* TEX. FAM. CODE ANN. § 263.403 (West 2014) (providing the trial court may retain a parental-termination case on its docket beyond a year if there is a monitored return of the child to the parent), *with id.* § 263.401 (providing the trial court may so retain such a case on its docket if it finds, as the trial court did in this case, "extraordinary circumstances" necessitate the child remaining with the Department).