Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00094-CV

IN THE INTEREST OF K.A.C.G.F. and J.E.G.F., Jr., Children

From the 73rd Judicial District Court, Bexar County, Texas
Trial Court No. 2015-PA-00383
Honorable Martha Tanner, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Marialyn Barnard, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: August 10, 2016

AFFIRMED

Michelle[1] appeals the trial court's termination of her parental rights to K.A.C.G.F. (born in April 2006) and J.E.G.F. (born in May 2007). She argues there is legally and factually insufficient evidence that termination of her parental rights is in the children's best interest. Because we hold there is legally and factually sufficient evidence that termination of Michelle's parental rights is in the children's best interest, we affirm the trial court's judgment.

BACKGROUND

The Department of Family and Protective Services filed a petition for conservatorship and to terminate Michelle's parental rights to her children. The children were removed from Michelle's

[1] To protect the identity of the minor children, we refer to the children's parents by their first names and to the children by their initials. *See* TEX. FAM. CODE ANN. § 109.002(d) (West 2014); TEX. R. APP. P. 9.8(b)(2).

care based on suspected physical abuse. According to the affidavit in support of removal, Michelle repeatedly slapped J.E.G.F. in the face, which ultimately bruised the left side of the child's face. The affidavit contained a history of three separate referrals to the Department for neglect and physical abuse of the children. One of the three referrals concerned physical abuse by Michelle's paramour, Jose Garcia. After the children were removed from Michelle's custody, they were placed with their father, John. The trial court ordered Michelle to complete a family service plan, which required her to engage in counseling, submit to random drug testing, and "maintain her mental health needs" because she has bipolar disorder and schizophrenia.

The case proceeded to a bench trial with testimony from Michelle, John, Department caseworker Rachel Grier, and a court-appointed special advocate for the children. The trial court terminated Michelle's parental rights on the grounds that she knowingly endangered the children's physical or emotional well-being, constructively abandoned the children, failed to comply with court-ordered provisions of her family service plan, used a controlled substance in a manner that endangered the children's health and safety, and had a mental or emotional illness or deficiency that rendered her unable to provide for the children's needs. *See* TEX. FAM. CODE ANN. §§ 161.001(b)(1)(D), (E), (N), (O), (P), 161.003(a)(1)-(4) (West Supp. 2015). The trial court also found that termination of her parental rights was in the children's best interest. *See id.* §§ 161.001(b)(2), 161.003(a)(5). It thereafter appointed John as sole managing conservator of the children. Michelle appeals.

THE CHILDREN'S BEST INTEREST

Michelle's sole issue on appeal is that the trial court erred by terminating her parental rights because there is legally and factually insufficient evidence that termination is in the children's best interest.

A. Standard of Review & Applicable Law

To terminate a parent-child relationship, the trial court must find that termination is in the child's best interest. TEX. FAM. CODE ANN. §§ 161.001(b), 161.003(a)(5) (West Supp. 2015). A judgment terminating parental rights must be supported by clear and convincing evidence. *Id.* § 161.001(b); *In re J.F.C.*, 96 S.W.3d 256, 263 (Tex. 2002). Our standard for reviewing termination findings and determining whether this heightened burden of proof was met is 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).

B. The Evidence

There was evidence Michelle exposed the children to emotional and physical danger by using illegal drugs and not consistently taking her prescribed medications. Department caseworker Rachel Grier testified the children were removed because Michelle hit J.E.G.F. so hard that he lost

consciousness. Michelle testified she hit her son three times in the face during that incident, but only did so because she had not taken her psychiatric medications. Grier testified that after the children were removed, Michelle continued to miss doses of her medication, visited with the children only twice out of the forty-nine visits the trial court permitted, and relied on the children during those visits for emotional support instead of providing the children with emotional support.

Michelle testified she was not permitted to attend the visits because she did not meet the prerequisite of submitting to drug testing and testing clean. Grier testified Michelle had drug tests "[t]he times she was tested in court and when I would go test her myself." Grier stated Michelle failed five drug tests and tested positive for cocaine, amphetamines, and methamphetamines. Although Michelle stated her drug tests were positive because of her medication, Grier testified Michelle's doctor stated that none of Michelle's medication would cause her to test positive for methamphetamine. Michelle admitted she had a history of using cocaine and J.E.G.F. "was born with a trace."

Michelle also stated she was "involved" with a man named Jose Garcia. Grier testified Garcia had a history of physically abusing the children; Garcia would punish J.E.G.F. by pulling the child's hair and scratching him. Grier testified that when J.E.G.F. had a "buzz cut," she could see "all of these white marks, like scars" and patches of skin. J.E.G.F. told Grier that "Garcia had, with his fingernails, dug out chunks of skin and pulled his hair."

There was evidence that Michelle refused to complete the required services outlined in the family service plan. Grier testified she explained the plan to Michelle, but Michelle failed to complete the required services. Michelle testified she had not attempted to complete an anger management course before trial. Although Michelle did not have a job, she stated she did not take the class because "it was inconvenient to [her]." Michelle testified she had, however, completed eleven out of twelve domestic violence classes.

The record is replete with the children's desire to live with John and fear of living with Michelle. Grier testified the children were afraid of Michelle and, although they loved her, they did not want to live with her. She testified the children were "doing great" living with their father, John; felt safe living with him; and had a bond with him and his family. According to Grier, J.E.G.F. felt safe living with John because the child stated "nobody hits me here and they're nice to me."

The evidence presented to the trial court also showed John was able to meet the emotional and physical needs of the children. Although Grier noted the children were struggling in some subjects at school, the children received tutoring and therapy. Grier further testified John completed his family service plan, had not tested positive for drugs, had no history with Child Protective Services, demonstrated proper discipline and nurtured the children, and had a large family and support network. The court-appointed special advocate testified the children were doing "very well" with John and the children "seemed very calm, very relaxed, [and] were just acting as children do." John also testified the children were doing "great" and had developed a bond with him. He stated he intended to be the permanent placement for the children and their permanent caregiver.

CONCLUSION

Having reviewed the evidence admitted at trial, we hold the trial court could have reasonably formed a firm belief or conviction that termination of Michelle's parental rights is in the children's best interest. *See In re C.H.*, 89 S.W.3d at 25. We overrule Michelle's sole issue on appeal and affirm the trial court's judgment.

Luz Elena D. Chapa, Justice