Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00300-CV

IN THE INTEREST OF C.K.C.U. and N.J.U., Children

From the 37th Judicial District Court, Bexar County, Texas
Trial Court No. 2015-PA-01325
Honorable Charles E. Montemayor, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Rebeca C. Martinez, Justice

Delivered and Filed: August 24, 2016

AFFIRMED

This is an accelerated appeal from the trial court's order terminating appellant's parental rights to her two daughters, C.K.C.U. and N.J.U.[1] In a single issue, appellant challenges the sufficiency of the evidence in support of the trial court's finding that termination of her parental rights was in the children's best interest. *See* TEX. FAM. CODE ANN. § 161.001(2) (West 2014). We affirm.

BACKGROUND

Neither appellant nor the children's father was present at the termination hearing. The children's foster parents were present, but did not testify.

[1] The children were born on March 20, 2014 and May 28, 2015, respectively.

Jacqulyne Mermea, a Family Based Specialist with the Texas Department of Family and Protective Services (the "Department"), said she has been working on the case since September 2014,[2] she has seen no change regarding her concerns about appellant, and she believed C.K.C.U. and N.J.U. were currently in a stable home with their foster parents. She testified she first came into contact with appellant and the children's father ("Jeremiah") in September 2014 on a referral for an investigation into concerns regarding drug use and allegations of family violence. At the time, Jeremiah admitted to Mermea that he was using cocaine to cope with the fact that Haven for Hope, which was providing assistance to help the family avoid eviction, would not let him live with appellant and the children because of his drug use. Mermea said she was concerned that appellant left the shelter to be with Jeremiah. Although there was not enough evidence to support the allegations that led to the investigation, appellant and Jeremiah were referred to Family Based Services for assistance.

Another concern for Mermea was appellant's minimizing the domestic violence by insisting the couple's fights were only verbal in nature. Mermea testified she discovered the fights were more than merely verbal when she went, unannounced, to the couple's apartment in June 2015 and found two San Antonio Police Officers present and an ambulance leaving the apartment complex. Mermea found fifteen-month-old C.K.C.U. outside with a man who told Mermea that appellant and four-week-old N.J.U. were both in the ambulance. Mermea said the man was a co-worker of Jeremiah's and he had only known appellant and Jeremiah for about three weeks. The man told Mermea he probably would test positive for marijuana when she asked him if he would take a drug test.

[2] The termination hearing commenced on April 21, 2016.

Mermea later interviewed appellant about the incident and appellant said she was upset that Jeremiah "appeared under the influence," she and Jeremiah got into an argument, and Jeremiah punched appellant in the face several times while she held N.J.U. in her arms. Appellant told Mermea that Jeremiah pushed her and the baby hit her head on a wall.

Mermea said she had concerns about stability, drug use, and domestic violence. She said when the children were removed from the couple's home after the altercation, a large bottle of vodka was found in C.K.C.U.'s toy bin. She said the Department had to purchase a crib for one of the children because the portable pop-up crib had bed bugs. Appellant has two older children who were adopted by appellant's mother because, as appellant admitted, appellant was "unstable."

April Muzquiz, a Department caseworker, testified appellant had made "no progress" in the case. Muzquiz stated appellant had been referred to domestic violence intervention, but was later dropped from the program; she later resumed the program but was again dropped. Appellant also received counseling referrals, but did not make enough progress to be successfully discharged from counseling. Muzquiz said appellant began to attend anger management classes one month before trial, and she has completed two of the eight classes.

Muzquiz said appellant is unable to hold a steady job and has had four different jobs in eight months. Appellant also has an active warrant for her arrest in Travis County concerning alleged domestic violence against Jeremiah. According to Muzquiz, the children have no interaction with appellant during supervised visits. She said appellant has missed six visits with her children during the pendency of the case. Muzquiz testified that when the children visit with appellant they "see just a familiar face," but when the children see their foster parents "that's when their eyes light up and they run to the foster parents . . . in front of [appellant]."

Muzquiz described a March 2015 incident during which C.K.C.U. was burned by a chemical. According to appellant's version of events, a janitor had left a container of sulfuric acid

out and the child—who was not being watched by either parent—tipped the container over, causing the liquid to spill on her and her clothes to melt to her skin. The child was hospitalized for the burns, and later released to her parents. Muzquiz did not believe the parents provided the proper on-going care necessary for the burns to heal. However, C.K.C.U.'s foster parents take her to a doctor once a month to ensure the burns will not be a problem as C.K.C.U.'s body matures.

Muzquiz said she visits the foster parents once a month and many of her visits are unannounced. She described the foster parents as "awesome," and the girls as always happy, well-dressed, well-feed, and progressing. She said C.K.C.U. "has come a long ways from when she first got there till now," she is talking, walking, not afraid and is very bonded to her foster parents. The foster parents appear to love the girls and want to adopt them. Muzquiz believed termination was in the children's best interest because they have permanency and will be loved and cared for. C.K.C.U. is currently receiving speech therapy and physical therapy. C.K.C.U. also is receiving Early Childhood Intervention services because both children had been medically neglected when they came into the Department's care; C.K.C.U. did not talk, would not engage, would not eat, and "was always walking around in a daze." Muzquiz said ten-month-old N.J.U. was beginning to crawl and speak a few words.

Muzquiz believed it was in the children's best interest to terminate appellant's parental rights and allow the children to be adopted by their foster parents.

The final witness to testify was Angelica Ramirez, who provided counseling services to appellant. She said, during the pendency of the case, appellant began her counseling in September 2015, but dropped out in November 2015, re-engaged in counseling in March 2016 and has been

"somewhat consistent" since then.[3] However, her concerns about appellant's ability to parent her children included her inconsistent attendance at counseling, anger issues, that appellant was both the victim and the perpetrator of domestic violence, and appellant lied about her attending domestic violence classes. Ramirez noted that some of appellant's bonding issues with her children may have had a basis in the fact that appellant herself grew up in the CPS system. Ramirez believed that, given more time, appellant could develop the skill set to appropriately care for her children.

At the conclusion of the termination hearing, the trial court terminated appellant's parental rights.[4] The trial court appointed the Department managing conservator of the children pending further placement for adoption.

BEST INTEREST

A trial court may order termination of the parent-child relationship only if the court finds by clear and convincing evidence one or more statutory grounds for termination and that termination is in the children's best interest.[5] TEX. FAM. CODE § 161.001(1), (2); § 161.206(a). There is a strong presumption that keeping a child with a parent is in the child's best interest. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006). However, when the court considers factors related to the best interest of the child, "the prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest." TEX. FAM. CODE § 263.307(a). In

[3] Ramirez stated she started counseling appellant and Jeremiah when Family Services began assisting the couple in 2014. Ramirez said the counseling was consistent at that time because she went to the couple's apartment, but she admitted the counseling did not help even then.

[4] Jeremiah's parental rights were also terminated, and he is not a party to this appeal.

[5] Appellant does not challenge the sufficiency of the evidence to support the predicate findings that she engaged in conduct or knowingly placed the children with persons who engaged in conduct that endangered the physical or emotional well-being of the children; and failed to comply with the provisions of a court order that specifically established the actions necessary to obtain the return of the children who had been in the permanent or temporary managing conservatorship of the Department for not less than nine months as a result of the children's removal from the parent for abuse or neglect.

determining whether a child's parent is willing and able to provide the child with a safe environment, we consider the factors set forth in Family Code section 263.307(b).

We also apply the non-exhaustive *Holley* factors to our analysis. *See Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976). And finally, evidence that proves one or more statutory grounds for termination may constitute evidence illustrating that termination is in the child's best interest. *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002) (holding same evidence may be probative of both section 161.001(1) grounds and best interest, but such evidence does not relieve the State of its burden to prove best interest). A best interest analysis may consider circumstantial evidence, subjective factors, and the totality of the evidence as well as the direct evidence. *In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio 2013, pet. denied). A trier of fact may measure a parent's future conduct by her past conduct and determine whether termination of parental rights is in the child's best interest. *Id.*

When reviewing the sufficiency of the evidence, we apply the well-established standard of review. *See* TEX. FAM. CODE §§ 101.007, 161.206(a); *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005) (legal sufficiency); *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006) (factual sufficiency).

At the time of the termination hearing, CK.C.U. was approximately two years old and N.J.U. was about eleven months old. Therefore, neither child was old enough to speak on her own behalf. However, there was testimony that the children have no interaction with appellant during supervised visits, and when the children visit with appellant they "see just a familiar face," but when the children see their foster parents "that's when their eyes light up and they run to the foster parents . . . in front of [appellant]." The counselor testified appellant's inability to bond with her children may stem from appellant's own childhood experiences within the Department. The record contains evidence of concerns regarding appellant's stability, inability to hold steady employment, domestic violence, and inability to show progress in the programs devised to assist her.

The Department provided family-based services to assist appellant and Jeremiah as early as September 2014 following a referral for an investigation into drug use and domestic violence. The children were eventually removed from their parents' care after the June 24, 2015 altercation between appellant and Jeremiah during which N.J.U was injured and C.K.C.U. was found under the supervision of a man who had known the couple for only a short time. Prior to this incident, in March 2015, C.K.C.U. sustained chemical burns because the child was not being supervised by either parent. Muzquiz did not believe the parents provided the proper on-going care necessary for the burns to heal, although C.K.C.U.'s foster parents now take her to a doctor once a month to ensure the burns will not be a problem as C.K.C.U.'s body matures.

The record contains no information about the parental abilities of the foster parents or the programs available to assist them to promote the children's best interest. However, the foster parents were present at the termination hearing (although not called to testify), they want to adopt both children, and, during both announced and unannounced visits by the Department, the two children appeared happy and were well-dressed and well-fed. According to Muzquiz, C.K.C.U. receives speech therapy and physical therapy, as well as Early Childhood Intervention services. Muzquiz said ten-month-old N.J.U. was beginning to crawl and speak a few words.

On this record, we must conclude the evidence permits a reasonable factfinder to form a firm conviction and belief that termination of the parent-child relationship was in the children's best interest.

CONCLUSION

We overrule appellant's issue on appeal and affirm the trial court's judgment.

Sandee Bryan Marion, Chief Justice