



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00367-CV

IN THE INTEREST OF A.B.C., a Child

From the 407th Judicial District Court, Bexar County, Texas
Trial Court No. 2015-PA-01083
Honorable Richard Garcia, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: September 14, 2016

AFFIRMED

Maricela A. appeals the trial court's order terminating her parental rights to her daughter A.B.C. In her sole issue on appeal, Maricela asserts the evidence is legally and factually insufficient to support the trial court's finding that termination of her parental rights was in A.B.C.'s best interest. We affirm the trial court's order.

BACKGROUND

The Texas Department of Family and Protective Services filed an original petition to terminate Maricela's parental rights to A.B.C. on May 26, 2015. A.B.C. was approximately ten months old at that time, and Maricela had been arrested on a charge of child endangerment involving her older son J.A.C., who was seven years old. The case was called for trial on May 23, 2016.

Maricela testified regarding her criminal history which arose from her alcohol addiction. Also, an exhibit containing her criminal history was admitted into evidence. In December of 2009, Maricela was indicted for endangering J.A.C. The indictment alleged Maricela was intoxicated and unconscious in a motor vehicle in which J.A.C. was a passenger. Maricela was placed on five years' probation for the offense.

In July of 2012, a motion to revoke Maricela's probation was filed alleging she committed the offenses of public intoxication and child endangerment. The information for the child endangerment offense alleged Maricela was intoxicated and not supervising J.A.C. while on the San Antonio River Walk. Maricela's probation was revoked, and she was sentenced to one year in state jail.

In November of 2014, Maricela was arrested for driving while intoxicated. Although the indictment alleged A.B.C. was in the vehicle Maricela was driving, and Maricela pled guilty to the offense, Maricela testified at trial that no child was in the car when she was arrested.

On May 8, 2015, Maricela was arrested for child endangerment. The indictment alleged Maricela was intoxicated and J.A.C. was exposed to dangerous traffic while looking for someone to help.

On November 19, 2015, Maricela was sentenced to two years in state jail for both the 2014 driving while intoxicated offense and the 2015 child endangerment offense, with the sentences to run concurrently. Maricela testified she would complete her two year sentence in August of 2017. Maricela had a parole hearing scheduled for August 7, 2016; however, she was denied parole at her prior hearing in February of 2016. If Maricela was denied parole on August 7, 2016, she would not be eligible for another parole hearing for an additional six to eight months.

After being arrested in May of 2015, Maricela remained in jail through the month of July. When she was released on bond, Maricela was allowed two visits with A.B.C. per month. She

visited with A.B.C. two times in August and September and one time in October before she was sentenced and re-incarcerated in November of 2015. Although the caseworker testified Maricela and A.B.C. appeared to be bonded during their visits, Maricela had not visited with A.B.C. for almost seven months due to her incarceration. A.B.C. was almost two years old at the time of trial.

Maricela testified she completed a few of the services required in her service plan before she was incarcerated. Maricela admitted she was not in a position to care for A.B.C. at the time of trial and also was unable to pay any child support due to her incarceration. Upon her release, Maricela planned to live with her mother and to find employment based on her past work experience in cashiering and retail.

The Department's caseworker testified Maricela had not completed many requirements of her service plan and had not met the goal of the plan because she had not changed the behaviors that caused the case to be filed. The caseworker did not believe Maricela has the ability to care for A.B.C.'s physical and emotional needs because Maricela continued to disregard the need to make changes for A.B.C.'s safety and well-being. The Department previously had sought to terminate Maricela's parental rights to J.A.C. As a result of that case, Maricela's mother was named managing conservator of J.A.C., and Maricela was named possessory conservator. The caseworker testified Maricela's mother did not have sufficient protective capacity because she allowed Maricela to have contact with J.A.C. even when she was intoxicated.

A.B.C. has been in the care of her maternal grandfather and his wife since November of 2015; however, the couple recognized their age would hamper their efforts to raise A.B.C. and wanted to ensure A.B.C. has a permanent home. They are willing to care for A.B.C. until a permanent home is found. Maricela recommended her father for A.B.C.'s placement and agreed he was able to provide for her. The caseworker further testified the Department had undertaken home studies on three additional relatives who all were willing to adopt A.B.C., and those studies

were due to be completed in two weeks. All of these relatives were in continuous contact with A.B.C. and had passed background checks. The caseworker stated A.B.C. was well bonded with her maternal grandfather and with all of the relatives the Department was studying. The caseworker testified termination of Maricela's parental rights was in A.B.C.'s best interest.

At the conclusion of the evidence, the trial court announced it was terminating Maricela's parental rights. Maricela appeals.

STANDARD OF REVIEW

To terminate parental rights pursuant to section 161.001 of the Family Code, the Department has the burden to prove: (1) one of the predicate grounds in subsection 161.001(b)(1); and (2) that termination is in the best interest of the child. *See* TEX. FAM. CODE ANN. § 161.001 (West Supp. 2016); *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). The applicable burden of proof is the clear and convincing standard. TEX. FAM. CODE ANN. § 161.206(a) (West 2014); *In re J.F.C.*, 96 S.W.3d 256, 263 (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 § 101.007.

In reviewing the legal sufficiency of the evidence to support the termination of parental rights, the court must “look at 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.” *In re J.F.C.*, 96 S.W.3d at 266. “[A] reviewing court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so.” *Id.* “A corollary to this requirement is that a court should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible.” *Id.*

In reviewing the factual sufficiency of the evidence to support the termination of parental rights, a court “must give due consideration to evidence that the factfinder could reasonably have

found to be clear and convincing.” *Id.* “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.*

PREDICATE FINDINGS

Maricela does not challenge the sufficiency of the evidence to support the predicate statutory grounds for terminating her parental rights. 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). The trial court found by clear and convincing evidence that the following predicate findings supported the termination of Maricela’s parental rights: (1) Maricela knowingly placed or knowingly allowed A.B.C. to remain in conditions or surroundings which endangered her physical or emotional well-being; (2) Maricela engaged in conduct or knowingly placed A.B.C. with persons who engaged in conduct which endangered A.B.C.’s physical or emotional well-being; (3) Maricela had been convicted of injury to a child; (4) Maricela constructively abandoned A.B.C.; (5) Maricela failed to comply with the provisions of a court order that specifically established the actions necessary to obtain the return of A.B.C. who had been in the permanent or temporary managing conservatorship of the Department for not less than nine months as a result of A.B.C.’s removal for abuse or neglect; (6) Maricela had knowingly engaged in criminal conduct that resulted in her conviction and confinement and inability to care for A.B.C.; and (7) Maricela had been convicted of endangering a child.

BEST INTEREST FINDING

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 ANN. § 263.307(a) (West Supp. 2016). In determining whether a child’s parent is willing and able to provide the child with a safe environment, the court should consider: (1) the child’s age and physical and mental vulnerabilities; (2) the frequency and nature of out-of-home placements; (3) the magnitude, frequency, and circumstances of the harm to the child; (4) whether the child has been the victim of repeated harm after the initial report and intervention by the Department; (5) whether the child is fearful of living in or returning to the child’s home; (6) the results of psychiatric, psychological, or developmental evaluations of the child, the child’s parents, other family members, or others who have access to the child’s home; (7) whether there is a history of abusive or assaultive conduct by the child’s family or others who have access to the child’s home; (8) whether there is a history of substance abuse by the child’s family or others who have access to the child’s home; (9) whether the perpetrator of the harm to the child is identified; (10) the willingness and ability of the child’s family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency’s close supervision; (11) the willingness and ability of the child’s family to effect positive environmental and personal changes within a reasonable period of time; (12) whether the child’s family demonstrates adequate parenting skills; and (13) whether an adequate social support system consisting of an extended family and friends is available to the child. *Id.* at § 263.307(b).

Courts also may apply the non-exhaustive Holley factors to shape their analysis. *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976). Those factors include: (1) the desires of the child; (2) the present and future emotional and physical needs of the child; (3) the present and future emotional and physical danger to the child; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist these individuals to promote the best interest of the child; (6) the plans held by the individuals seeking custody of the child; (7) the stability of the

home of the parent and the individuals seeking custody; (8) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions of the parent. *Id.*

The foregoing factors are not exhaustive, and “[t]he absence of evidence about some of [the factors] would not preclude a factfinder from reasonably forming a strong conviction or belief that termination is in the child’s best interest.” *In re C.H.*, 89 S.W.3d at 27. “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 his past conduct and determine whether termination of parental rights is in the child’s best interest.” *Id.*

At the time of trial, A.B.C. was approximately two years old, making her physically and mentally vulnerable. Although A.B.C. was too young to express her desires, she had not seen Maricela in seven months and was bonded to the relatives seeking to adopt her.

Maricela had been arrested and convicted for endangering J.A.C. two times prior to A.B.C.’s birth, and was also arrested after A.B.C.’s birth for endangering J.A.C. because of her intoxicated state. In addition, Maricela pled guilty to driving while intoxicated, and the indictment alleged A.B.C. was in the vehicle Maricela was driving. The caseworker testified Maricela was unable to care for A.B.C.’s physical and emotional needs because she disregarded the need to change her behaviors to provide for A.B.C.’s safety. Maricela also was unable to care for A.B.C. because she was incarcerated with the possibility that she would not be released until August of 2017, over a year after trial.

The Department’s plan was to place A.B.C. with a relative who would adopt her. Home studies on three possible relatives were due to be completed within two weeks after trial. Until the Department identified the relative who would adopt A.B.C., A.B.C. would remain in the care of

her maternal grandfather and his wife who had cared for A.B.C. since November of 2015. A.B.C. was bonded with all of the relatives seeking to adopt her.

Having reviewed the record, we hold the evidence is sufficient to support the trial court's finding that termination was in A.B.C.'s best interest.

CONCLUSION

The trial court's order is affirmed.

Sandee Bryan Marion, Chief Justice