Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00034-CV

IN THE INTEREST OF C.K., N.K., B.K., R.K., N.K., Children

From the 131st Judicial District Court, Bexar County, Texas
Trial Court No. 2015-PA-01077
Honorable Charles E. Montemayor, Judge Presiding[1]

Opinion by: Rebeca C. Martinez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Irene Rios, Justice

Delivered and Filed: June 28, 2017

AFFIRMED

The mother of C.K., N.K., B.K., R.K., and N.K. appeals the trial court's order terminating her parental rights.[2] Mother contends the evidence is insufficient to support the trial court's finding that she failed to comply with the provisions of her family service plan and that termination is in the children's best interest. We affirm the trial court's order.

[1] The Honorable Martha Tanner presided over the bench trial and informally pronounced the ruling. The Honorable Charles Montemayor signed the written order.
[2] The father signed an affidavit of voluntary relinquishment, and the order also terminated his paternal rights. The father did not appeal.

BACKGROUND

The Texas Department of Family and Protective Services filed its petition in the underlying cause to terminate Mother's parental rights on May 26, 2015. A bench trial was held on November 14, 2016.

Mother did not appear at trial. Her attorney stated he had made efforts "over the last week to track her down," but "[h]er whereabouts are unknown at this time." Because Mother was not present, her attorney announced not ready. The Department's attorney stated Mother had been involved in the case, had shown up to hearings, and had engaged in services. Because Mother was "well aware" of the case, the Department urged the trial court to deny the not ready announcement. The trial court overruled the not ready announcement.

The Department's legal worker testified she had been the legal worker on the case since its inception. The children were removed from their parent's care on May 26, 2015 after R.K., who was four, was hit by a car when she was left unsupervised in a parking lot. The accident left R.K. paralyzed. At that time, Mother and father were living in different units at an apartment complex, and the children would wander back and forth between the units. On the day R.K. was hit, she was visiting the father. The legal worker testified the case changed from family to legal when N.K., who was one at the time, was left outside unsupervised by Mother. At the time of trial, C.K. was seventeen, N.K. was twelve, B.K. was eight, R.K. was six, and N.K. was three.

The legal worker testified a service plan was prepared for Mother. Because Mother spoke Nepali, the Department had an interpreter present when the Department explained the service plan to her, and Mother was able to ask questions. The legal worker testified Mother demonstrated she understood the services she was required to complete because she asked a lot of questions, including questions about the location of the services, the length of time the services would take, and whether her children would be present. Mother also demonstrated she understood the services

by engaging in services which the Department set up to "go to her." An interpreter was present during the services in which Mother engaged. Although the service plan itself was written in English, the legal worker testified Mother was given the phone number and name of Catholic Charities in Nepali to arrange the services.

The legal worker testified Mother did not complete the service plan. Although Mother would start services, she was unsuccessfully discharged from the services she started for two reasons. First, Mother was engaged in a relationship with someone who assaulted her. Second, Mother was evicted from two different residences. The legal worker testified Mother still did not have a stable home. The legal worker last spoke with Mother in September of 2016, and Mother told her she was living with a friend while working and saving money to get her own place.

The legal worker testified she communicated with Mother in court through a translator. During the year the case was pending, the legal worker and Mother learned to communicate with each other during their visits, but an interpreter was present when the legal worker believed one to be necessary. The legal worker testified Mother knew some English.

With regard to visitation, Mother was allowed two visits each month for one hour. At the beginning of the case, Mother's visits were regular and consistent when the visits were in her home, but Mother had not had a visit since March of 2016. The legal worker explained that when the visits were moved to the Department because Mother did not have a residence, Mother "was a no-show to a few." The visits were then moved to a restaurant, and Mother "just didn't show up for them." When Mother did not show up for the visits, the children were fearful of what was happening to her. Although the children sometimes expressed a desire to see their mother, the legal worker testified the children were very confused.

The legal worker testified that the Department had a concern with Mother's alcohol abuse. Mother admitted she drank alcohol but denied being an alcoholic.

The legal worker stated she did not believe Mother could care for the children. She testified Mother is unstable and does not have a place to live. Although Mother is working, she is not financially stable, and she continued to be in a relationship with a man who abused her over and over. Mother refused efforts to place her at the battered women's shelter. The legal worker testified terminating Mother's rights was in the children's best interest.

Four of the children had been placed at a ranch, and one of the directors at the ranch wanted to adopt the children but needed time to locate a bigger house. With regard to whether the children would continue to have contact with the Nepali community, the legal worker testified the targeted adoptive family indicated they would find a connection. Although the legal worker agreed it would not be in the children's best interest to be taken away from their culture, the legal worker testified the children needed to be safe.

An employee with Casey Family Programs was the only other witness called to testify. She testified she made efforts to place Mother at a battered women's shelter after observing a mark on her face; however, Mother declined to go. The employee did not believe Mother understood all that was required to be reunified with the children.

After hearing the evidence, the trial court ordered Mother's rights to be terminated because she failed to complete the service plan and termination was in the children's best interest. Mother appeals.

STANDARD OF REVIEW

To terminate parental rights pursuant to section 161.001 of the 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 ANN. § 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*. "If, after conducting [a] legal sufficiency review of the record evidence, a court determines that no reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true, then that court must conclude that the evidence is legally insufficient." *Id*.

In conducting a factual sufficiency review of a trial court's order terminating parental rights, we "must give due consideration to evidence that the factfinder could reasonably have found to be clear and convincing." *Id*. "In reviewing termination findings for factual sufficiency, a court of appeals must give due deference to a [trier of fact's] factfindings and should not supplant the [factfinder's] judgment with its own." *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006) (internal citations omitted). The evidence is only factually insufficient if "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" about the truth of the State's allegations. *In re J.F.C.*, 96 S.W.3d at 266. "The trial court is the sole judge of the weight and credibility of the evidence, including the testimony of the Department's witnesses." *In re*

F.M., No. 04-16-00516-CV, 2017 WL 393610, at *4 (Tex. App.—San Antonio Jan. 30, 2017, no pet.) (mem. op.).

STATUTORY TERMINATION GROUNDS

Mother's rights were terminated under section 161.001(b)(1)(O) based on the trial court's finding that she failed to comply with the provisions of a court order that specifically established the actions necessary for her to obtain the return of the children. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(O). In arguing the evidence is insufficient to support this finding, Mother contends her service plan was only in English, and the witnesses at trial had concerns about her ability to understand and comprehend what was required of her.

Although the evidence established the service plan was in English, the legal worker testified an interpreter was present when the service plan was explained to Mother, and Mother always had the name and phone number of the entity through which the services were to be arranged in Nepali. Mother demonstrated that she understood the services that were required by asking questions and beginning to engage in services. Although Mother demonstrated a willingness at the beginning of the case to engage in services, she was unsuccessfully discharged from the services and did not complete the service plan. Similarly, although Mother regularly visited her children at the beginning of the case, she had not visited the children since March of 2016, approximately eight months before trial. Having reviewed the record as a whole, we hold the evidence is sufficient to support the trial court's finding under section 161.001(b)(1)(O).

BEST INTEREST

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). The Texas Supreme Court has enumerated the following factors to assist courts in evaluating a child's best interest: (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. *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976). 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 17, 27 (Tex. 2002). "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." *In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio 2013, pet. denied).

The children loved their mother; however, they were confused by her failure to visit them. Although R.K. was in her father's care on the day she was hit in the parking lot, the legal worker testified both parents allowed the children to wander back and forth between the parents' apartments. In addition, Mother left N.K. outside unsupervised when he was only one year old.

Mother did not have stable housing and had not visited with the children in approximately eight months. *See In re M.R.*, 243 S.W.3d 807, 821 (Tex. App.—Fort Worth 2007, no pet.) (noting evidence of a parent's unstable lifestyle can support conclusion that termination is in the child's best interest). She also had not completed any of the services necessary to demonstrate her ability to parent the children. *See id.* (noting failure to complete service plan supports finding that

termination is in the child's best interest). The Department's concerns about Mother's alcohol abuse were not addressed, and she denied being an alcoholic. The evidence also established Mother was in an abusive relationship for which she refused any help. *See In re T.L.B. Jr.*, No. 01-16-00806-CV, 2017 WL 1019520, at *11 (Tex. App.—Houston [1st Dist.] Mar. 16, 2017, no pet.) (mem. op.) (noting evidence of domestic violence in the home even if not directed at the child is supportive of a trial court's best-interest finding). Finally, Mother did not appear for trial, and her attorney was unable to contact her.

The director of the ranch where four of the children were placed after their removal loved the children. She and her family were looking for a bigger house and planned to adopt the children.

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

CONCLUSION

The order of the trial court is affirmed.

Rebeca C. Martinez, Justice