Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00090-CV

IN THE INTEREST OF Z.D.C.P., a Child

From the 224th Judicial District Court, Bexar County, Texas
Trial Court No. 2016PA00897
Honorable Richard Garcia, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Marialyn Barnard, Justice
Rebeca C. Martinez, Justice

Delivered and Filed: June 7, 2017

AFFIRMED

This is an accelerated appeal from the trial court's order terminating appellant's parental rights to his daughter, Z.D.C.P.[1] In a single issue, appellant challenges the sufficiency of the evidence in support of the trial court's finding that termination of his parental rights was in the child's best interest. *See* TEX. FAM. CODE ANN. § 161.001(b)(2) (West Supp. 2016). We affirm.

BACKGROUND

Appellant did not appear at the termination trial or at any of the prior hearings. The only witness to testify at trial was Alkeshia Daniels, the caseworker assigned during the pendency of the case. She said she had consistent contact with appellant, the last time the week before trial.

[1] In addition to Z.D.C.P., four other children were the subject of the termination suit. However, those children are not the subject of this appeal. Z.D.C.P. was born on March 3, 2016. The State filed its petition for termination on all children on April 28, 2016. The trial court conducted the termination hearing on February 3, 2017.

According to Daniels, appellant was required to obtain stable housing, submit to a psychological evaluation, complete counseling, complete parenting classes, and visit with his child. At the time of trial, appellant was still engaged in his counseling, and he had completed his parenting classes. Daniels said appellant visits his daughter, but she did not know if appellant had "actually bonded" with his daughter. She explained the visits go well because appellant holds his daughter, she is a baby who likes to be held, and appellant is "treating her as a princess" and catering to her. She said Z.D.C.P. is a happy child who will go to anyone who asks to pick her up.

However, although appellant visits his daughter, he did not demonstrate an ability to parent a young child. Daniels said that during the last visit, about a week before trial, appellant "pretty much ignore[d] [Z.D.C.P.] . . . [and she] has to struggle to fight for attention." Daniels testified appellant had not explained his reason for not completing the services required under his Family Service Plan. Appellant remained employed during the pendency of the case and he has his own housing. However, appellant works illegally under another person's social security number, and appellant told Daniels he was about to lose his job. Daniels was concerned appellant could be deported because of his immigration status. Although appellant has housing, the house has no electricity.

Daniels did not believe appellant should be given more time to complete his services, and she did not believe appellant showed a willingness to effect a positive change in his life for the benefit of his daughter. Daniels explained appellant "is still committing criminal activities, he is not willing to show a bond, doesn't have electricity in his home, even though that's been requested for the past three — three months, to get electricity[, and according to appellant] he is about to lose his job." Daniels was not aware of anyone, such as family or friends, who could assist appellant with childcare. Despite being asked to do so, appellant had made no stable arrangements to care for Z.D.C.P. while he worked. Appellant completed his parenting classes, but he had not

demonstrated basic parenting skills during his visits. For example, Daniels taught appellant how to make a bottle and change a diaper, but appellant would walk away from Z.D.C.P. while she sat on the changing table, thus, the baby could fall. Daniels said that despite talking to appellant and telling him how he could improve his visits, appellant still chose not to follow instructions or change his behavior.

When asked what her concerns were that led to this case, Daniels responded appellant "was not protective." She explained the children's mother and appellant lived together and appellant knew the mother used drugs and there was no food in the house. Despite this knowledge, appellant continued to leave Z.D.C.P., an infant, with her mother. When asked if she discussed the issue with appellant, Daniels said he initially stated he was responsible for having food in the house and the children always had food. However, when shown photos taken during the removal of the children from the home showing no food, appellant "got quiet." When asked if she discussed the mother's drug use, Daniels responded

> A. Yes. Initially, he said he would never give mom money because he knew she used drugs.
> Q. So, he told you that?
> A. And then, he said, I didn't know that she was using drugs. And then, when I told him about, You told me that, you know, you didn't give her money because of this, he said, Well, I have to work.

The long-term plan for Z.D.C.P. is to be adopted by foster parents, with whom she has lived since September 2016.[2] Daniels stated the foster parents have demonstrated an ability to care for Z.D.C.P., and the child has "bloomed." Daniels said Z.D.C.P. knows her foster parents as "mom and dad," and she knows appellant only as "someone who visits." The foster parents of the other children indicated a desire to allow the siblings to continue to see each other.

[2] Z.D.C.P. and one of the other four children, who is Z.D.C.P.'s brother, both live with the same foster parents who wish to adopt them. The other children are with other foster parents.

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 child's best interest.[3] TEX. FAM. CODE §§ 161.001(b)(1),(2); 161.206(a) (West 2014). 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 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). 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.*

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

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, Z.D.C.P. was almost one year old; therefore, she was not old enough to express her desires. Daniels did not testify to any emotional or physical needs now or in the future, and she believed Z.D.C.P. was "on target." The future plan for Z.D.C.P. was that she be adopted by her foster parents with whom she (and her brother) have lived since September 2016. Daniels did not testify about any programs available to assist the foster parents or the stability of their home, but she believed the foster parents had demonstrated an ability to care for Z.D.C.P. and Z.D.C.P. had "bloomed" while in their care.

The same evidence proving acts or omissions under section 161.001(1) of the Texas Family Code may be probative of the child's best interest. *In Int. of D.M.*, 452 S.W.3d 462, 471 (Tex. App.—San Antonio 2014, no pet.). A factfinder may infer that past conduct endangering the well-being of a child may recur in the future if the child is returned to the parent. *Id.* One of the two statutory grounds on which the trial court terminated appellant's parental rights was that he "knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child." TEX. FAM. CODE ANN. § 161.001(b)(1)(D). The Department initially removed all the children because of their mother's drug use. According to Daniels, appellant left the children with their mother despite knowing about her drug use and the lack of food and electricity in the house. Other acts or omissions that—in Daniels's opinion—indicated the existing parent-child relationship was not a proper one was appellant's housing with no electricity, his immigration status, appellant's own belief that he might lose his job, he had no childcare in place for Z.D.C.P. while he worked, and his inability to demonstrate basic parenting skills.

Considering all the evidence in the light most favorable to the best-interest finding, we conclude the trial court reasonably could have formed a firm belief or conviction that termination of appellant's parental rights was in Z.D.C.P.'s best interest.

CONCLUSION

We overrule appellant's issue on appeal and affirm the trial court's Order of Termination.

Sandee Bryan Marion, Chief Justice