



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-17-00328-CV

**IN THE INTEREST OF J.J.T., a Child**

From the 408th Judicial District Court, Bexar County, Texas  
Trial Court No. 2016-PA-01554  
Honorable Charles E. Montemayor, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice  
Karen Angelini, Justice  
Patricia O. Alvarez, Justice

Delivered and Filed: September 13, 2017

**AFFIRMED**

Z.T., the father of J.J.T., appeals the trial court's order terminating his parental rights.<sup>1</sup> Z.T. contends the evidence is insufficient to support the trial court's finding that termination of his parental rights was in J.J.T.'s best interest. We affirm the trial court's order.

**BACKGROUND**

J.J.T. was born on October 11, 2015. Both J.J.T. and his mother, A.H., tested positive for methamphetamine at birth. The case was referred to family based safety services, and J.J.T. was placed in Z.T.'s care. Z.T. was instructed that A.H. was not allowed unsupervised contact with J.J.T. Despite these instructions, Z.T. allowed A.H. to have unsupervised contact, and J.J.T. was removed from Z.T.'s care on July 11, 2016, when A.H. was found passed out at a bus stop and

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<sup>1</sup> The order also terminated the parental rights of J.J.T.'s mother; however, she did not appeal.

J.J.T. had rolled from A.H.'s lap into the street. On July 19, 2016, the Texas Department of Family and Protective Services filed a petition to terminate Z.T.'s parental rights. A bench trial was held on April 25, 2017. Z.T. was not present at the trial, and his attorney stated he had not had "any substantive contact with [Z.T.] over the last couple of months."<sup>2</sup>

Amanda LaHue was the Department's caseworker on the case since October of 2016. LaHue testified Z.T. participated in a psychiatric evaluation in December of 2016 and was diagnosed with schizophrenia. Z.T. refused to take any medication for his mental illness and told LaHue he does not need medication despite acknowledging that he hears voices and sees things when he tries to sleep. Z.T. also told LaHue: (1) he "gets guns from the Cartel and sells them;" (2) someone sent him a Cadillac from overseas that he gave to a homeless woman; (3) he currently has four women pregnant; and (4) he has six children. Z.T. stated the mothers of the six children do not allow him to see them, and he was unable to tell LaHue how old the children were. LaHue testified Z.T. is not employed, had not been employed in a long time, and does not have housing. Z.T. told LaHue he does not need a job or housing because his friends allow him to stay with them and give him money. Z.T. would not, however, identify the friends. With regard to Z.T.'s service plan, LaHue testified he was unsuccessfully discharged from counseling because his refusal to take medication made the counselor unable to work with him.

LaHue testified J.J.T. has special needs, including a significant speech delay. Since being placed in his current foster home in December of 2016, LaHue stated J.J.T. had made a lot of progress. J.J.T. receives speech therapy twice a week and has progressed to saying his first word. Although J.J.T. had difficulty bonding in other placements, he is bonded with his foster family and is happy. J.J.T.'s current placement is a foster-to-adopt home.

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<sup>2</sup> Z.T.'s trial attorney also filed the notice of appeal and represents Z.T. in this appeal; however, there is no indication in the record that the attorney had contact with Z.T. regarding the filing of the notice of appeal.

On cross-examination, LaHue testified Z.T. had visited with J.J.T. “off and on,” but Z.T. had not seen J.J.T. since February 20, 2017. Although Z.T. would care for J.J.T. during his visits, he mainly held him while talking to LaHue about topics unrelated to J.J.T. or the case. LaHue stated Z.T.’s psychological issues likely prevented him from actively participating in his services.

J.J.T.’s foster mother, E.G., is a registered nurse who works in a neonatal intensive care unit at a hospital. She and her family have worked hard to bond with J.J.T. E.G. has J.J.T. under the care of a developmental pediatrician who is closely following his progress. E.G. testified J.J.T. had made significant progress in bonding with the family in the last four to six weeks. E.G. and her family are committed to adopting J.J.T.

Regina Lenoir-George, the Department’s removing worker supervisor, testified when J.J.T. was placed in Z.T.’s care, Z.T. was instructed A.H. could not have any contact with J.J.T. When Z.T. was contacted about J.J.T. being found in the street with A.H. passed out, Z.T. acknowledged J.J.T. was not supposed to be with A.H. but stated he believed he could determine if A.H. was using drugs. Lenoir-George testified Z.T. had a criminal history that included a 2006 conviction for assault causing bodily harm and a 2010 conviction for driving while intoxicated.

At the conclusion of the evidence, the trial court terminated Z.T.’s parental rights, and Z.T. 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.*

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.” *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002). “In reviewing termination findings for factual sufficiency, a court of appeals must give due deference to a [factfinder’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.).

#### **PREDICATE FINDINGS**

Z.T. does not challenge the sufficiency of the evidence to support the predicate statutory grounds for terminating his 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 Z.T.: (1) knowingly placed or knowingly allowed J.J.T. to remain in conditions or surroundings which endangered his physical or emotional well-being; (2) constructively abandoned J.J.T., failed to regularly visit or maintain significant contact with J.J.T. despite the Department's reasonable efforts to return J.J.T. to Z.T., and demonstrated an inability to provide J.J.T. with a safe environment; and (3) failed to comply with the provisions of a court order specifically establishing the actions necessary for Z.T. to obtain the return of J.J.T.

#### **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 the best interest of a child, courts 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 [in] determin[ing] whether termination of parental rights is in the child’s best interest.” *Id.*

J.J.T. is too young to express his desires, but he has made significant progress in his placement with his foster family and is bonded to them. *See In re Z.C.*, 280 S.W.3d 470, 476 (Tex. App.—Fort Worth 2009, pet. denied) (relying on evidence of children’s improvement in foster care to support best interest finding). J.J.T. has special needs which his foster family is addressing and his foster family wants to adopt him. *See id.* (noting stability and permanence are paramount in the upbringing of a child). When J.J.T was left in Z.T.’s care, Z.T. allowed A.H. unsupervised contact resulting in J.J.T. rolling into the street. *See In re C.J.F.*, 134 S.W.3d 343, 354 (Tex. App.—Amarillo 2003, pet. denied) (relying on evidence of parent’s failure to protect child as evidence to support finding that termination was in child’s best interest).

Z.T. was diagnosed as schizophrenic but refused to take medication despite displaying symptoms. *In re O.D.H.*, No. 14-15-00489-CV, 2015 WL 6949771, at \*9 (Tex. App.—Houston [14th Dist.] Nov. 10, 2015, no pet.) (mem. op.) (relying on parent’s untreated mental illness to support trial court’s best interest finding). Z.T. had not completed his service plan because he refused services possibly due to his refusal to take medication. *See In re S.B.*, 207 S.W.3d 877, 887-88 (Tex. App.—Fort Worth 2006, no pet.) (noting failure to comply with family service plan supports a finding that termination is in the best interest of the child). Z.T. was unemployed and without a home. *See id.* (noting parent’s inability to provide a stable home supports a finding that

termination is in the best interest of the child). Z.T.'s visitation with J.J.T. while the case was pending was sporadic and limited, and he had not visited with J.J.T. in the two months preceding trial. *See In re J.A.W.*, No. 06-09-00068-CV, 2010 WL 1236432, at \*5 (Tex. App.—Texarkana Apr. 1, 2010, pet. denied) (mem. op.) (relying on parent's failure to visit children to support best interest finding).

Having reviewed the record, we hold the evidence is sufficient to support the trial court's finding that termination of Z.T.'s parental rights was in J.J.T.'s best interest.

#### **CONCLUSION**

The order of the trial court is affirmed.

Sandee Bryan Marion, Chief Justice