



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

**MEMORANDUM OPINION**

No. 04-17-00478-CV

**IN THE INTEREST OF K.D.F., a Child**

From the 285th Judicial District Court, Bexar County, Texas  
Trial Court No. 2015PA02340  
Honorable John D. Gabriel, Jr., Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice  
Patricia O. Alvarez, Justice  
Luz Elena D. Chapa, Justice

Delivered and Filed: November 22, 2017

**AFFIRMED**

M.F., the mother of K.D.F., appeals the trial court's order terminating her parental rights. The only issue M.F. presents is a challenge to the sufficiency of the evidence to support the trial court's finding that termination of her parental rights was in K.D.F.'s best interest. We affirm the trial court's order.

**BACKGROUND**

On November 4, 2015, the Department filed its petition to terminate M.F.'s parental rights. A bench trial was held on July 5, 2017. On the date of the trial, K.D.F. was thirteen years old.

The only witness to testify was the Department's case worker who was appointed to the case in November of 2015. The case worker testified that the case actually started in 2014 when K.D.F.'s older sister, T.F., tested positive for cocaine when she gave birth, and an investigation

established she tested positive because M.F., her mother, and her father were smoking crack cocaine while caring for T.F. and K.D.F. While the case was pending, T.F. turned eighteen and elected to stay in the Department's care.

The case worker testified the family has a significant history with the Department, including allegations of physical abuse and sexual abuse of T.F. by her older brother while in her parents' care. Because of this history, K.D.F. had spent about six years of her life in the Department's care while various cases were pending. K.D.F. suffers from mood disorders and ADHD and has required hospitalization a few times. The case worker testified K.D.F. needs "a more specialized level of attention," but her parents took no actions to address those concerns. K.D.F. also has a learning disability.

M.F.'s service plan required her to undertake a drug assessment, drug treatment, random drug testing, and a psychological evaluation. M.F. also was required to engage in individual counseling and to participate in parent-child visits. Finally, M.F. was required to obtain stable housing. M.F. completed the services and did not use drugs from February of 2016 to October of 2016; however, she relapsed in March of 2017, just before K.D.F. was to be returned home. K.D.F. informed the case worker about the relapse and told him she did not want to return home. When the case worker spoke with M.F., she admitted to using marijuana and cocaine and to taking more than her prescribed dosage of Xanax. At that time, M.F. refused to undertake a hair follicle test; however, she submitted to the test a few weeks later and tested positive for cocaine. Although another drug treatment program was recommended, M.F. did not complete the program. On cross-examination, the case worker admitted M.F. told him on the day of trial that she had been unable to start the program because of a lack of availability. The case worker stated he had been unable to confirm whether or not space was available. The case worker also stated M.F.'s phone was disconnected, and he did not have a phone number to call her. M.F. left the case worker only two

voice mails in the three months after she tested positive, and she never left a phone number where the case worker could return her calls.

Prior to K.D.F. reporting M.F.'s relapse, the trial court signed an order authorizing a monitored return of K.D.F. to M.F.'s care; however, the monitored return did not occur because M.F. lied about not being in a relationship with K.D.F.'s father who had refused to engage in services. The case worker believed M.F. and K.D.F.'s father were still involved in a relationship because K.D.F. called her father's phone to speak with M.F. M.F. told the case worker K.D.F.'s father was selling his prescription medication for \$3,000-\$4,000 each month.

The case worker testified M.F. had not made the necessary changes for K.D.F. to be returned to her care. The case worker explained M.F. had been abusing drugs for many years causing K.D.F. to cycle in and out of the Department's care when M.F. relapsed. When M.F. agreed to a drug test the morning of trial, she told the case worker she had taken double her prescribed dose of Xanax. The case worker stated that allowing K.D.F. to have contact with M.F. stresses K.D.F. and causes her guilt when she is truthful with the Department about M.F.'s drug use.

The case worker testified K.D.F.'s behavior has improved while in the Department's care, and she is learning coping skills to manage her mood disorder. Although K.D.F. loves M.F., she wants to be adopted, move forward, and be free of the stress.

At the conclusion of the evidence, the trial court terminated M.F.'s parental rights, and M.F. 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**

M.F. 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 M.F.: (1) knowingly placed or knowingly allowed K.D.F. to remain in conditions or surroundings which endangered her physical or emotional well-being; (2) engaged in conduct or knowingly placed K.D.F. with persons who engaged in conduct which endangered her physical or emotional well-being; (3) failed to comply with the provisions of a court order specifically establishing the actions necessary for M.F. to obtain the return of K.D.F.; and (4) used a controlled substance in a manner that endangered K.D.F.'s health or safety, and (a) failed to complete a court-ordered substance abuse treatment program; or (b) after completion of a court-ordered substance abuse treatment program continued to abuse a controlled substance.

### **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.*

Although K.D.F. loves M.F., she wants to move forward with her life. K.D.F. suffers from mood disorders, and contact with M.F. causes K.D.F. stress and guilt. M.F. has abused drugs for a long period of time causing K.D.F. to cycle in and out of and spend approximately six of her thirteen years in the Department’s care. *See In re L.G.R.*, 498 S.W.3d 195, 204 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) (noting parent’s drug use supports a finding that termination is in best interest of the child). M.F. smoked crack cocaine while her older daughter was pregnant which led to K.D.F.’s most recent removal from M.F.’s care. M.F. admitted to abusing her prescription drug when she was tested the morning of trial and had not started a new drug treatment program after her latest relapse. Because of her drug abuse, M.F. had not demonstrated an ability to parent K.D.F. or provide her with a stable home. *See In re S.B.*, 207 S.W.3d 877, 887-88 (Tex. App.—Fort Worth 2006, no pet.) (noting parent’s inability to provide a stable home supports a finding that termination is in the best interest of the child). K.D.F.’s

behavior improved while in the Department's care, and upon termination of M.F.'s parental rights, the Department planned to explore an adoptive placement for K.D.F. *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).

Having reviewed the record, we hold the evidence is sufficient to support the trial court's finding that termination of M.F.'s parental rights was in K.D.F.'s best interest.

#### **CONCLUSION**

The order of the trial court is affirmed.

Sandee Bryan Marion, Chief Justice