Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00480-CV

IN THE INTEREST OF R.S., a Child

From the 57th Judicial District Court, Bexar County, Texas
Trial Court No. 2016-PA-01925
Honorable John D. Gabriel, Jr., Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Marialyn Barnard, Justice

Delivered and Filed: October 25, 2017

AFFIRMED

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

BACKGROUND

The investigator for the Department of Family and Protective Services ("the Department"), Virginia Rodriguez, testified she investigated neglectful supervision allegations against appellant in August 2016. Rodriguez said the initial report alleged appellant was hallucinating outside her

[1] R.S. was born on February 6, 2011. The termination hearing commenced on July 17, 2017.

[2] The trial court appointed R.S.'s father as sole managing conservator.

house, and talking to people who were not there. R.S., who was five years old, called the police. The police took appellant to the hospital and R.S. to a children's shelter. Rodriguez spoke to appellant at the hospital, and appellant insisted there were people outside her house. A drug screen showed appellant tested positive for cocaine, but appellant said she did not know she had drugs in her system. Rodriguez applied to immediately remove R.S. from appellant's care on the grounds of appellant's drug use and mental issues, and because there was no one else to care for the child at the time. Rodriguez said appellant told her R.S.'s father was deceased. However, appellant gave Rodriguez her brother's name as a possible placement for R.S., but the brother did not live in Texas. The Department located R.S.'s father and placed R.S. with him in Illinois.

At the termination hearing, appellant testified by telephone from South Carolina where she had moved to from Texas. Appellant believed she was "set up" by someone who said she was hallucinating when, in fact, she did see men outside her house. Appellant said she had cocaine in her system, it was only a "slight use," and she has not used drugs since nor has she failed any drug tests. Appellant said R.S.'s paternal grandmother told her R.S.'s father was deceased, she did not know if she ever asked the father for child support, and the Department should "research" that question. She said she was diagnosed with depression, but any diagnosis that she has schizophrenia is a "plot" to take her son away. When asked if she signed a service plan, appellant responded:

> To my knowledge, I signed that plan of service, and we've been compliant with it, and we've been enjoining it, and the doctors have been tedious to it. We've been asking about when, if we're in the wrong direction, please guide us to the right direction. Please let us know how can we fulfill our needs and obligations to you. Further, any tweaking that needs to be done. I have plenty of text messages requesting that, and your very own caseworker can't even send back a reply how to do these things so -- . . . we've been doing these things since October 7th -- November -- . . . .

Appellant testified she has a degree in psychology and film degrees, she has military training, and she is "not slow to a setup." When asked how long she served in the military, appellant told the court it should "research that." Appellant testified she did not understand her service plan, but she did what she "was told to do"—engage in mental health treatment, take medication, and complete a parenting class and drug treatment. Appellant believed she could care for her son and she had the financial means to care for her son. She said she enjoys her part-time job. Although appellant lives in South Carolina, she said a South Carolina caseworker inspected her home and "liked" it. Appellant assured the court she would never again take drugs because this experience had been "horrible," and she would never want her child taken away again.

When asked if she had revoked consent for the release of her drug and psychological testing, appellant said, "no." She then explained, at length, that the Department of Veterans Affairs revoked the releases "by order of the [South Carolina Governor] because [her] doctor records were being changed" by the Department of Family and Protective Services. Appellant said the South Carolina Governor intervened in her case "because of all the fraudulent documents."

Virginia Pavon, the Department caseworker, testified appellant told her she engaged in services, but because appellant revoked her release of information, Pavon could not get records from South Carolina to verify appellant engaged in or completed any service plan requirements. Pavon said appellant visited with R.S. only four or five times over the year while she lived in Texas, had one visit after moving to South Carolina, and no other visits since moving because, according to appellant, her doctor would not release her to travel from South Carolina. However, between January 2017 and July 2017, after appellant moved to South Carolina, appellant called her son about seven times. Pavon believed appellant constructively abandoned R.S. because appellant had been living in Texas and then she moved to South Carolina. Pavon received many text messages from appellant, but generally they were long and "obscure."

Pavon stated R.S. was six years old, and, although he misses his mother, he wants to stay with his father. R.S. has bonded with his father and his father's family. Pavon believed the father is an appropriate caregiver who could meet all of R.S.'s needs now and in the future. According to Pavon, the father has a stable home and will continue to provide R.S. with a safe environment. In contrast, Pavon did not believe appellant was able to satisfy R.S.'s needs. Pavon thought allowing R.S. to return to his mother would endanger the child because Pavon did not know where appellant lived, had not been able to confirm her employment, and had concerns about appellant's continued drug use and her mental health. R.S. told Pavon he and his mother lived in motels. Pavon stated appellant received veterans disability payments and she has transportation. Appellant has had as many as five different telephone numbers during Pavon's involvement with her case.

Pavon said appellant gave her contact information for her mother and her brother who could care for R.S. By this time, R.S. was with his father and both maternal relatives expressed a desire that the child remain with his father. Pavon said both relatives believed appellant was unstable. Pavon stated appellant filed complainants and/or sought criminal charges against Pavon, Pavon's supervisor, and a previous caseworker, and appellant has alleged R.S. was sexually assaulted while in the Department's care. The Department investigated and later ruled out the allegations. Pavon also said appellant alleged the Department kidnaped R.S., and Pavon believed appellant would try to take R.S. away from his father. Pavon said appellant told her son that his father and step-mother were "trash," and his half-sister was not his sister.

R.S. has lived with his father in Illinois since December 13, 2016. The Department contacted an Illinois caseworker who visited the father's home and did not find any problems. Pavon visits the child monthly, and he is happy, cheerful, and not the shy little boy she first met. She said R.S. has friends at school and his teachers speak well of him. When Pavon asked R.S. about his home life with his mother, R.S. told Pavon he knew his mother was sick. According to

Pavon, appellant had adequate resources in Texas, but she chose to leave Texas. The Department agreed to allow appellant to work on her service plan in South Carolina and attempted to find caseworkers in that state to help appellant.

Susan Patterson, the CASA volunteer, believed it was in R.S.'s best interest to remain with his father and that appellant's parental rights be terminated because CASA could not verify any progress or obtain a release of information from appellant. Because Patterson could not verify that appellant no longer used drugs or was in a drug treatment program, she believed placing R.S. with his mother would endanger the child. Patterson observed one visit between appellant and R.S. where appellant spent the time calling friends and family rather than engaging with R.S. According to Patterson, R.S. has developed a bond not only with his father, but also with his step-mother and his younger half-sister. Patterson said R.S. was a very serious child when they first met, and he told her about living in hotels and his mother's car.

PREDICATE FINDINGS

Appellant 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 appellant: (1) engaged in conduct or knowingly placed R.S. with persons who engaged in conduct that endangered R.S.'s physical or emotional well-being; and (2) failed to comply with the provisions of a court order specifically establishing the actions necessary for appellant to obtain the return of R.S. TEX. FAM. CODE § 161.001(b)(1)(E), (O). The trial court also terminated appellant's parental rights on the grounds that:

> (1) [appellant] has a mental or emotional illness or a mental deficiency that renders the parent unable to provide for the physical, emotional, and mental needs of the child;
> (2) the illness or deficiency, in all reasonable probability, proved by clear and convincing evidence, will continue to render the parent unable to provide for the child's needs until the 18th birthday of the child; [and]
> (3) the department has been the temporary or sole managing conservator of the child of the parent for at least six months preceding the date of the hearing on the termination held in accordance with Subsection (c) . . . .

Id. § 161.003(a).

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. TEX. FAM. CODE ANN. §§ 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.*

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).

Although appellant stated she engaged in her services and she expressed her desire to live a drug free life, the witnesses who testified in favor of terminating her parental rights stated the same concerns—appellant's on-going drug use, her mental instability, and the inability to verify any information about appellant because appellant refused to sign a release of her information. The trial court was free to judge appellant's credibility and conclude appellant's continued drug use and her mental health issues posed an emotional and physical danger to R.S. now and in the future. Although there is no evidence R.S. does not love his mother, he has bonded with his father, step-mother, and half-sister and expressed a desire to continue living with his father. There is no evidence R.S. has any special needs, and his father and step-mother provide for his basic needs.

We conclude the trial court reasonably could have formed a firm belief or conviction that termination of appellant's parental rights was in R.S.'s best interest.

CONCLUSION

We overrule appellant's issue on appeal and affirm the trial court's Final Order in Suit Affecting the Parent-Child Relationship.

Sandee Bryan Marion, Chief Justice