



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00539-CV

IN THE INTEREST OF G.S.M., E.M., R.M., and G.M.M., Children

From the 166th Judicial District Court, Bexar County, Texas
Trial Court No. 2016-PA-00712
Honorable Martha Tanner, Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

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

Delivered and Filed: December 27, 2017

AFFIRMED

M.-M. appeals the trial court's order terminating her parental rights to her four children, G.S.M., E.M., R.M., and G.M.M. In a single issue on appeal, M.-M. asserts the evidence is insufficient to support the trial court's finding that termination of her parental rights was in the children's best interest.¹ We affirm the trial court's order.

BACKGROUND

On April 6, 2016, the Texas Department of Family and Protective Services ("the Department") filed its petition to terminate M.-M.'s parental rights. A bench trial was held on August 8, 2017. On the date of the trial, G.S.M. was approximately eleven years old, E.M. was

¹ The trial court appointed the children's father and paternal grandmother as joint managing conservators of the children.

approximately ten years old, R.M. was approximately eight years old, and G.M.M. was approximately six years old.

At the start of the termination trial, M.-M.'s attorney asked for a continuance because M.-M. was not present and, according to her attorney, had allegedly suffered a mental breakdown. The State opposed the continuance, contending M.-M. had actually relapsed on methamphetamine. When the trial court asked M.-M.'s attorney if a guardian should be appointed for her, counsel replied that M.-M. had not gone to a hospital or been admitted to a psychiatric facility; she was at home with her husband and her mother; and she suffered from panic attacks, Stage 3 kidney cancer, and "some other ailments." The trial court denied the continuance, and trial commenced.

The State first called Dietra Marquez, the current caseworker, who had only been on the case for two months. Marquez recommended M.-M.'s parental rights be terminated and the children's father and paternal grandmother be appointed joint managing conservators.

According to Marquez, the children's father had done everything asked of him under his family service plan: he completed domestic violence, parenting, and anger management classes; and he completed his individual counseling. The children were currently living with their paternal grandmother, Elizabeth, who has been the children's primary caregiver for the entirety of the case. The children are bonded to their grandmother. Marquez said ten-year-old E.M. is autistic, and Elizabeth meets his special needs. The children's father recently moved into his mother's home because he was compliant with his service plan.

Marquez testified M.-M. admitted having a methamphetamine drug problem, and she tested positive for that drug in May 2017. After the May 2017 drug relapse, Marquez referred M.-M. to out-patient drug treatment, which she did not successfully complete. After M.-M. discontinued her out-patient drug treatment, she did not return Marquez's phone calls. M.-M. attended only one individual counseling session. However, M.-M. completed a domestic violence

class, a November 2016 out-patient drug treatment program, and a parenting class. Before M.-M.'s May 2017 drug relapse, she had engaged in counseling. M.-M. is currently married to Gabriel F. Gabriel F. had agreed to take a drug test, but never did. Marquez was also concerned about domestic violence allegations involving M.-M. and Gabriel F. M.-M. has stable housing with Gabriel F., but not stable employment.

In addition to the domestic violence allegations against her current husband, Marquez said there was domestic violence between M.-M. and the children's father, and a separate incident of domestic violence with another man. Marquez said M.-M. addressed her drug issues, but then she relapsed; she addressed domestic violence issues, but she married the alleged perpetrator of the violence. Therefore, Marquez's concerns about drug use and domestic violence in the home continue.

When asked why she recommended termination of M.-M.'s parental rights, Marquez said M.-M. had not satisfied all her family service plan requirements, the children no longer want to visit their mother due to her marrying Gabriel F., and they "are very upset." Marquez said the children told their mother they did not want her to marry Gabriel F. According to Marquez, G.S.M. wanted her mother's parental rights terminated and she wanted to remain with her father and paternal grandmother. G.S.M. was "very tearful" and believed things would go back to the way they were if her mother's rights were not terminated. Marquez said R.C.M. also expressed a desire to have his mother's parental rights terminated.

Marquez stated M.-M.'s parental rights should be terminated because M.-M. was unwilling to place her children's needs above her own, and she married a man against whom the domestic violence allegations were made. Marquez said M.-M.'s visits with her children over the past month had become sporadic. M.-M. would tell Marquez she intended to visit, but then either not come or come and leave early. For the entirety of the case, the children repeatedly asked their mother

to bring toys from her house that were special to them. M.-M. promised to bring the toys, but never did so. Marquez believed the inability to rely on their mother harmed the children.

Elizabeth, the children's paternal grandmother, testified G.S.M. told her that G.S.M.'s role in the family was to take care of her three younger brothers, which included bathing and feeding them, putting them to bed, and making sure they did not fight. When the children were placed with Elizabeth, Elizabeth told G.S.M. she could be the "big sister" and that she [Elizabeth] would be the "mother" and take care of them. Elizabeth said that during a May visit in her home with the children, M.-M. denied being "high," but admitted "she was coming down from it." Elizabeth stated that since her son, the children's father, moved in with her and the children, he has "improved a lot," and he takes the children out and plays games with them.

Elizabeth believed M.-M.'s parental rights should be terminated because the children "are not hurting anymore" and they tell her that it is "okay" for their mother to not visit. Although she allowed M.-M. to visit for as long as she pleased, even up to five hours, the children did not rely on their mother attending scheduled visits. Elizabeth said she was willing to be a joint managing conservator with her son. She meets E.M.'s needs as an autistic child by sending him to a speech therapist, and she works with him herself on his verbal skills.

M.-M.'s mother, Patricia W., testified her daughter had requested family counseling from the Department on more than one occasion, including before her drug relapse, but the Department did not provide the counseling. Patricia said M.-M. loves her children, but could not attend the trial because she was "sick." Patricia asked the court not to terminate M.-M.'s parental rights, but she did not know how long it would take her daughter "to get her act together."

After hearing the above testimony, the trial court rendered judgment terminating M.-M.'s parental rights. M.-M. timely appealed.

STANDARD OF REVIEW

To terminate parental rights pursuant to Texas Family Code section 161.001, 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(b)(1),(2) (West Supp. 2017); *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). The clear and convincing standard is the applicable burden of proof in termination cases. TEX. FAM. CODE § 161.206(a); *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 (West 2014). This heightened standard stems from the unalterable changes and permanency that termination of a parent-child relationship causes both the child and the parent. *In re D.M.*, 452 S.W.3d 462, 469 (Tex. App.—San Antonio 2014, no pet.). Consequently, termination proceedings are strictly scrutinized and “involuntary termination statutes are strictly construed in favor of the parent.” *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985).

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.” *Id.* “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) (per curiam) (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.

PREDICATE FINDINGS

The trial court found by clear and convincing evidence that M.-M. failed to comply with the provisions of a court order specifically establishing the actions necessary for her to obtain the return of her children. *See* TEX. FAM. CODE §§ 161.001(b)(1)(O). M.-M. 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).

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) (per curiam). 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) (West Supp. 2017).

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). And 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). 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." *Id.* 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 her past conduct and determine whether termination of parental rights is in the child's best interest. *Id.*

In this case, the children are all together in the care of their paternal grandmother who understands and meets the children's needs, especially the special needs of E.M. The children are bonded to their grandmother. The children's father also lives with the children at his mother's home. Two of the four children expressed a desire to remain with their father and paternal grandmother.

M.-M. has not demonstrated an ability to provide for her children's needs because she continues to use drugs and failed to complete her drug treatment program. *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 finding that termination is in child's best interest); *In re S.B.*, 207 S.W.3d 877, 887-88 (Tex. App.—Fort Worth 2006, no pet.) (parent's drug use, and failure to comply with family service plan support finding that termination is in child's best interest). Although M.-M. has stable housing, it is in the home of her current husband against whom allegations of domestic abuse exist and with whom the children do not want to live. *C.B. v. Tex. Dep't of Family & Protective Serv.*, 440 S.W.3d 756, 770 (Tex. App.—El Paso 2013, no pet.) (C.B.'s pattern of leaving her children

with unapproved men, who had been convicted of domestic assault at one time or another, showed continuous failure to put safety and welfare of her children first and that termination of C.B.'s parental rights was in children's best interest); *In the Interest of R.F.*, 115 S.W.3d 804, 812 (Tex. App.—Dallas 2003, no pet.) (termination was in children's best interest given mother's repeated relationships with men who were physically abusive and had arrest records). Although M.-M.'s mother said M.-M. asked for family counseling, M.-M.'s failure to complete her substance-abuse treatment, as well as her failure to complete her court-ordered counseling sessions, demonstrate she is unwilling to take advantage of the services offered to her by the Department. These facts cast serious doubt on M.-M.'s parenting abilities.

Viewing all the evidence in the light most favorable to the judgment, we conclude the trial court could have formed a firm belief or conviction that termination of M.-M.'s parental rights is in the best interest of her four children. Accordingly, we hold the evidence is legally and factually sufficient to support the trial court's finding that termination of the parent-child relationship is in the best interest of G.S.M., E.M., R.M., and G.M.M.

CONCLUSION

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

Rebeca C. Martinez, Justice