



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00756-CV

IN THE INTEREST OF J.M.A.-H. and H.E.A.

From the 131st Judicial District Court, Bexar County, Texas
Trial Court No. 2017-PA-00165
Honorable Charles E. Montemayor, Associate Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Karen Angelini, Justice
Rebeca C. Martinez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: April 18, 2018

AFFIRMED

Forty-year-old Joy A. appeals the trial court's order terminating her parental rights to her eight-year-old son J.M.A.-H. and her five-year-old daughter H.E.A. On appeal, she argues the evidence is legally and factually insufficient to support the trial court's finding that termination of her parental rights is in her children's best interest. *See* TEX. FAM. CODE ANN. § 161.001(b)(2) (West Supp. 2017). We review the legal and factual sufficiency of the evidence to support the trial court's best interest finding under the standards enunciated in *In re J.O.A.*, 283 S.W.3d 336, 344 (Tex. 2009).

Under Texas law, there is a strong presumption that the best interest of a child is served by keeping the child with a parent. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006). And, in determining whether the child's parents are willing and able to provide the child with a safe environment, a

court should consider the factors set out in section 263.307 of the Family Code. *See* TEX. FAM. CODE ANN. § 263.307(b) (West Supp. 2017). In addition to these statutory factors, in considering the best interest of the children, a court may also consider the nonexclusive list of factors set forth by the Texas Supreme Court in *Holley v. Adams*, 544 S.W.2d 367, 372 (Tex. 1976). *See In re E.C.R.*, 402 S.W.3d 239, 249 (Tex. 2013). The *Holley* factors are neither all-encompassing nor does a court need to find evidence of each factor before terminating the parent-child relationship. *See In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). Additionally, in determining whether termination of the parent-child relationship is in the best interest of a child, a court may judge a parent's future conduct by her past conduct. *In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio 2013, pet. denied).

The record in this case reflects recurring family violence and drug abuse. The Department became involved in this case when it received a referral alleging neglectful supervision of the children. The family was residing in a tent, and the father had allegedly assaulted the paternal grandmother. Although the parents were referred to Family Based Safety Services, the drug abuse and domestic violence continued to occur, causing the Department to file the petition to terminate the parents' rights. The caseworker at trial testified that as a result of the domestic violence between the parents, the children showed "extreme signs of stress" and have been in ongoing therapy. Further, despite the ongoing domestic violence, there was evidence Joy A. had continued to maintain a relationship with the father. Indeed, a month before trial, Joy A. and the father jointly sent mail to the children; the day before trial, they were both at Joy A.'s therapy appointment during which Joy A. had an "altercation with the father" and the police were called. In addition to the domestic violence, Joy A. and the father had a history of ongoing drug abuse. Both she and the father had admitted to daily heroin use, and there was evidence Joy A. continued to use drugs during the pendency of this case. Further, Joy A. did not have a home of her own. Joy A. testified

that it took her a long time to engage in any services in this case because she was homeless and did not have a phone. She had been staying with “random friends,” sleeping on their couches. At the time of trial, she was staying with her eighteen-year-old nephew who had an efficiency apartment, and she was sleeping on the floor. Her nephew, who admitted he had his own history of drug abuse, testified that Joy A. staying with him was “temporary.” Thus, Joy A. did not have a stable home for her children. She also admitted that she did not have employment and did not plan to look for employment because she was on “permanent disability” for “extra chromosome, broken bones.” She admitted the children do not receive any benefits from that disability.

Since the beginning of this case, the children were placed with their maternal Great-Aunt Kelly. Aunt Kelly had been involved with the children their entire lives and had been a placement for the children during a previous case with the Department. During the pendency of this case, Aunt Kelly ensured the children were attending therapy sessions, and she communicated well with their therapist. The therapist testified J.M.A.-H. had aggressive tendencies but was making progress in therapy. According to the therapist, Aunt Kelly loved the children, and was “responsive to their needs and attentive to them.” The therapist described the children as being very affectionate with Aunt Kelly, explaining that J.M.A.-H. “identifies with Kelly as a mother figure” and wants to call her “mom.” The therapist also testified that H.E.A. had expressed that “she would be happy with staying with Kelly and likes living with Kelly, and knows she’s loved and cared for there.” According to the therapist, the children are happy, involved in extracurricular activities at school, and go to other social activities outside of school. Aunt Kelly testified she is willing to be the long-term permanency placement for the children and would like to adopt them.

The caseworker, the therapist, and Aunt Kelly all testified J.M.A.-H. did not want to live with his parents again. According to the caseworker, J.M.A.-H. had said “he is very afraid of both parents, and he does not want to visit with them.” The caseworker testified, “They [made] an outcry

to [their Aunt Kelly] about potential sexual abuse,” which was investigated. Although there “was not enough information to validate sexual abuse,” “there was enough information to validate additional physical abuse, as the children both described . . . being given alcohol, and being allowed and made to drink alcohol.” Aunt Kelly testified J.M.A.-H. told her “the fights were horrendous between [his] parents.” According to Aunt Kelly, after the previous case with the Department ended, the children were put back into Joy A.’s care, and not into the father’s care. The children stayed in Joy A.’s care for thirteen months until they were again placed with Aunt Kelly at the beginning of the instant case. J.M.A.-H. told Aunt Kelly that during this period, Joy A. and his father would take him and his sister out at night and leave them in the car while the parents went into “strange houses” for long periods of time. Aunt Kelly testified that J.M.A.-H. described eating “out of dumpsters all the time” and having “to sleep in a tent.” He described waking up at night in the tent only to find his parents gone. “He just felt very unsafe, and he was afraid.” Aunt Kelly testified she had had the opportunity to observe both parents and saw no change in their behavior; instead, she saw a pattern of abuse that would continue. Aunt Kelly testified she had observed the violence between Joy A. and the father, and their drug abuse. According to Aunt Kelly, Joy A. blames the father for her drug abuse, claiming that she “can’t get away from it because he has it [drugs] all the time.” Aunt Kelly described Joy A. coming to her “over and over throughout the years” for help in escaping the father’s violence, but Joy A. always went back to the father. Indeed, at trial, Joy A. admitted that during the previous case with the Department, an order prevented the children from having contact with the father, but Joy A. disregarded that order, claiming she did not fully understand it.

According to Aunt Kelly, the children have suffered from living with their parents. J.M.A.-H. “hoards food.” “He will wake up in the middle of the night and go in the kitchen and eat everything.” “He always wants seconds and thirds, more helpings.” “And he will eat any chance

that he gets.” H.E.A. had night terrors for months and has gotten better, but will, every once in a while, “wake up screaming.” Aunt Kelly testified that when she asked H.E.A. what was wrong, she responded that she is “scared” and “alone.”

In looking at all the evidence in the light most favorable to the trial court’s finding, we hold that the trial court could have reasonably formed a firm belief or conviction that termination of Joy A.’s parental rights was in the children’s best interest. *See In re J.O.A.*, 283 S.W.3d at 344. Thus, the evidence is legally sufficient to support the trial court’s best-interest finding.

With respect to factual sufficiency, Joy A. points to evidence that H.E.A. told the therapist “if she could live with mom, she would.” However, Joy A. does not address the rest of the therapist’s statement, “but if mom’s not an option, she’s happy with staying with Kelly.” The therapist explained that five-year-old H.E.A. does not “understand why she wasn’t able to see [her parents], except for that she knew that they used drugs.” Joy A. also points to her testimony of being free of drugs for the two months before trial as evidence that she can now parent her children. Joy A. claims her children were never exposed to the drug abuse. At trial, Joy A. testified the children were in their paternal grandmother’s home while she used drugs in the backyard. The trial court however could have reasonably viewed this testimony as not supporting Joy A.’s statement that her children were not exposed to drugs. Further, Joy A. admitted during her testimony that although she was given an opportunity to enter a drug treatment program, she decided not to enter treatment. Finally, with regard to her violent relationship with the children’s father, which Joy A. admitted at trial had lasted years, Joy A. points to her testimony at trial that she was no longer together with the father. However, Joy A. also testified she and the father had only been separated for a couple of months. With regard to the letter she and the father jointly sent the children, Joy A. claimed he had signed the letter while they were still together, but that she sent the letter when they were separated. She testified she only sent the joint letter because “he wanted both of our

names on it.” The trial court could have reasonably not believed Joy A.’s testimony. Thus, in considering the entire record, including any disputed evidence, we conclude the evidence is factually sufficient to support the trial court’s finding that termination of Joy A.’s parental rights was in her children’s best interest. *See id.*

We affirm the trial court’s order terminating Joy A.’s parental rights.

Karen Angelini, Justice