



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00801-CV

IN THE INTEREST OF C.A.E., ET AL., CHILDREN

From the 37th Judicial District Court, Bexar County, Texas
Trial Court No. 2016PA02691
Honorable Gloria Saldaña, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: May 23, 2018

AFFIRMED

Appellant Mother appeals the trial court's order terminating her parental rights to her three children, C.A.E., R.J.E., and J.R.L. The only issue presented by Mother is whether the evidence is legally and factually sufficient to support the trial court's finding that termination was in the children's best interest. We affirm the trial court's order.

BACKGROUND

On November 30, 2016, the Texas Department of Family and Protective Services ("Department") filed its original petition to terminate parental rights. A bench trial was held on November 14, 2017. At the time of the trial, the children were eleven, ten, and five years' old. Mother did not appear at trial, and no witnesses were called on her behalf. The only witness to testify was Department caseworker Olivia Stephens.

Stephens related that the incident leading to the removal of the children was a family get together during which a fifteen-year-old girl was given Xanax and Mother's boyfriend, M.G., sexually assaulted the girl. According to Stephens, the two younger children, R.J.E. and J.R.L. were present at the party and Mother was under the influence of Xanax at the time.

Stephens testified the Department's primary concerns regarding Mother were her history of drug use and the presence of M.G., which put the children at risk of harm. Stephens related that Mother admitted using a "white powdery substance" but recanted when Stephens attempted to place Mother in rehab. Stephens testified Mother tested positive for the use of methamphetamine on at least three separate occasions. Stephens advised the Department was also concerned with Mother's ability to properly parent while under the influence and noted the Department questioned whether the children were protected from M.G.'s criminal acts. Stephens testified the Department was also concerned, with regard to the allegation of sexual assault against M.G., because Mother explained that she believed there was no issue with the sexual assault because the fifteen-year-old girl consented.

The record shows Mother's service plan required her to submit to drug assessment and random drug testing, maintain sobriety, undergo a mental health evaluation, and attend individual counseling and parenting classes. Stephens testified Mother did not follow the recommendations or take part in services. According to Stephens, Mother "continue[d] to use and missed counseling – drug counseling regularly." Stephens further testified Mother did not attend individual counseling and was unsuccessfully discharged three times. Stephens also related she advised Mother "she needed to make a choice between her children and [M.G.]." According to Stephens, Mother "stayed with [M.G.]."

Stephens reported that during the family group conference, Mother related she was hearing voices and repeated the voices, flipping from the voices to the discussion going on around her.

Mother was admitted to Nix hospital, but was not admitted to the mental health ward because she was under the influence of drugs at the time of her admission. Mother's admission to Nix lasted only two days, and she did not undergo a mental health evaluation in that time. According to Stephens, Mother has not addressed her mental health concerns.

The affidavit in support of the Department's petition further describes the allegations leading to removal, relating Mother and M.G. used methamphetamine in the presence of the children. The affidavit also states there were allegations of ongoing domestic violence in the home. According to the affidavit, Department investigator Alexander Burton attempted to make contact with Mother, but was unable to do so. However, in the course of the investigation, Mother's neighbor informed Burton that Mother used pills, marijuana, and methamphetamine. When Burton was able to make contact with Mother, Mother refused Burton access to the children.

The affidavit also relates that in October and November 2016, prior to the children's removal, Mother failed to remain in contact with the Department and did not maintain a stable residence. During that time, Mother moved often and caused the children to change schools "multiple times."

The affidavit additionally relates Mother's history with the Department. In January 2008, the Department received a referral alleging neglectful supervision on Mother's part because C.A.E. was wandering outside the home while the adults inside were using drugs. Mother tested positive for cocaine. In April 2009, the Department received another referral alleging neglectful supervision because Mother was staying in a known drug house with C.A.E. and R.J.E. The referral further alleged the presence of drug paraphernalia and Mother's suspected drug use. The children were removed from Mother's custody but the family was later reunified. In February 2011, the Department received a referral alleging neglectful supervision when, after R.J.E. was

taken to the hospital for seizure-like activity, Mother tested positive for cocaine. C.A.E. and R.J.E. were again removed from Mother's custody, but were later returned.

At the time of the trial, the three children were placed with their maternal aunt. According to Stephens, the children have a good relationship with their aunt; the children trust her and are bonded with her. Stephens specifically related that C.A.E. is happy and well-cared for by their aunt. He received all As at school and did not have many behavioral issues. Stephens testified the current placement with the maternal aunt will lead to permanency for the children and that the children wish to be adopted by their aunt.

Stephens additionally described Mother's attempts to "sabotage placement" by bringing turtles and a cat to visitation and informing the children the animals would be their pets when they went home with her. Mother also attempted to coach the children to make outcries. Stephens testified that this behavior on Mother's part leaves the children upset and angry following the parent-child visits. Stephens testified that the two older children discussed what they saw and experienced when in Mother's custody. Stephens also testified the two older children were aware of Mother's drug use and mental health issues. Stephens related that C.A.E., in particular, has expressed that he is tired of the back and forth and "just really wants to be done, one way or another."

After considering all the evidence and the parties' arguments, the trial court terminated Mother's parental rights to her children C.A.E., R.J.E., and J.R.L. This appeal followed.

STANDARD OF REVIEW AND STATUTORY REQUIREMENTS

To terminate parental rights pursuant to section 161.001 of the Texas Family Code, the Department has the burden to prove by clear and convincing evidence: (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, 161.206(a) (West Supp. 2017); *In re A.V.*, 113 S.W.3d 355,

362 (Tex. 2003). In this case, the trial court found evidence of four predicate grounds to terminate Mother's parental rights and also found termination of Mother's parental rights was in the best interest of the children.

When reviewing the sufficiency of the evidence, we apply the well-established standards of review. *See* TEX. FAM. CODE ANN. §§ 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).

BEST INTERESTS

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). *See* TEX. FAM. CODE ANN. § 263.307(b). We also apply the non-exhaustive *Holley* factors to our analysis.¹ *See Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976). Evidence that proves one or more statutory ground for termination may also 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(b)(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." *See 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 and determine whether termination of parental rights is in the child's best interest." *Id.*

¹ These factors include: (1) the child's desires; (2) the child's present and future emotional and physical needs; (3) any present or future emotional and physical danger to the child; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist the individuals seeking custody to promote the child's best interest; (6) the plans for the child by the individuals or agency seeking custody; (7) the stability of the home or proposed placement; (8) the parent's acts or omissions which may indicate that the existing parent-child relationship is improper; and (9) any excuse for the parent's acts or omissions. *See Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976); *In re E.C.R.*, 402 S.W.3d 239, 249 n.9 (Tex. 2013).

Discussion

At the time of the trial, the children ranged in age from five to eleven years' old. The trial testimony indicates the children have a good relationship and are bonded with their current caregiver, their maternal aunt. The placement is one in which the goal is permanency. *In re J.D.*, 436 S.W.3d 105, 118 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (a stable permanent home for a child is an important consideration). According to the caseworker, the children have expressed a desire to be adopted by their aunt.

While with their mother, the children changed schools “multiple times.” *In re J.D.S.*, No. 02-11-00272-CV, 2012 WL 2135577, at *6 (Tex. App.—Fort Worth June 14, 2012, pet. denied) (mem. op) (referring to parent’s failure to ensure children’s routine and timely attendance at school as evidence showing termination was in the children’s best interest). C.A.E., in particular, is doing well in school while placed with his aunt. *Id.*

The evidence further establishes that Mother failed to complete her service plan. Mother did not undergo drug treatment and was unsuccessfully discharged from counseling three times. *In re E.C.R.*, 402 S.W.3d 239, 249 (Tex. 2013) (evidence that the appellant failed to comply with the court-ordered service plan supported the trial court’s best-interest determination). Additionally, Mother continued to use drugs. *In re L.G.R.*, 498 S.W.3d 195, 204 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) (“A parent’s drug use supports a finding that termination is in the best interest of the child.”). Although C.A.E. and R.J.E. were previously removed from Mother’s custody for allegations relating to her drug use, Mother refused to address her problems with her continuing drug use. *In re U.D.R.*, 04-16-00490-CV, 2016 WL 6772028, at *5 (Tex. App.—San Antonio Nov. 16, 2016, no pet.) (“Mother’s prior history with the Department and previous drug use was a proper consideration for the trial court in making its determination as to the best interests of the children.”).

Having reviewed the record, we hold the evidence is sufficient to support the trial court's finding that termination of Mother's parental rights was in the children's best interest. Mother's only issue is overruled.

CONCLUSION

We affirm the trial court's order terminating Mother's parental rights.

Irene Rios, Justice