



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00049-CV

IN THE INTEREST OF J.R.H.

From the 166th Judicial District Court, Bexar County, Texas
Trial Court No. 2017-PA-00265
Honorable Charles E. Montemayor, Associate Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Karen Angelini, Justice
Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: May 23, 2018

AFFIRMED

Rosemary S. appeals the trial court's order terminating her parental rights to her young daughter, J.R.H. Her parental rights were terminated based on (E), (N), (O), and (P) grounds. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E),(N),(O),(P) (West Supp. 2017). On appeal, Rosemary S. does not contest the statutory grounds for termination but argues only the evidence is legally and factually insufficient to support the trial court's finding that termination of her parental rights is in her child's best interest. *See id.* § 161.001(b)(2). 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 parent is 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 (West Supp. 2017). In addition to these statutory factors, in considering the best interest of the child, 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 C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). Further, 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).

J.R.H. is Rosemary S.'s eleventh child. Her parental rights to her other ten children were previously terminated. After the Department of Family and Protective Services initially removed J.R.H., the trial court allowed J.R.H. to remain with her father and Rosemary S. However, J.R.H. was subsequently removed from the home a second time.

The evidence at trial showed Rosemary S. engaged in substance abuse and had an extensive psychiatric history. She and J.R.H.'s father were involved in instances of domestic violence. Rosemary S. was not able to provide stable housing or obtain and maintain stable employment. She also failed to comply with the court-ordered service plan.

The evidence at trial consisted of testimony from psychological professionals and therapists along with testimony from Department investigators and caseworkers.

Dr. Augustin Sicard, a psychologist who did a psychological assessment and treatment plan for Rosemary S., testified to his concern about domestic violence, continued substance abuse, uncontrollable anger issues, and bipolar disorder. According to Dr. Sicard, Rosemary S. was willing to comply with services offered by the Department.

Licensed psychologist Dr. Kirk Coverstone performed a psychological evaluation on Rosemary S. and testified about a number of risk factors being present in her case. According to

Dr. Coverstone, there is extensive psychiatric history for which Rosemary S. needs treatment and medication. Dr. Coverstone testified Rosemary S. has a very limited employment history, questionable marketable skills, transportation issues, healthcare issues, substance abuse issues, and long-standing issues of conflict in the relationship with J.R.H.'s father. Rosemary S. did express a desire to have her child returned, and Dr. Coverstone testified it was apparent she loved and cared about her child.

Lori Berkman, who provided therapeutic services for Rosemary S., testified that Rosemary S. attended a number of sessions, but made very little progress. According to Berkman, after Rosemary S. tested positive for drugs, she did not come in as consistently for her sessions. Berkman also testified that Rosemary S. was unable to obtain employment and stable housing. According to Berkman, Rosemary S. was slow to get started with her plan and was inconsistent toward the end. Berkman did not recommend reunification because Rosemary S. could not maintain stable housing or employment, and was not capable of caring for her child. Further, according to Beckman, Rosemary S. was living in a chaotic household with another woman. Berkman explained that Rosemary S. wanted to comply with the Department's service plan, but did not have a great track record with her prior terminations of being able to comply with service plans. According to Berkman, Rosemary S. seemed willing to work her treatment plan and expressed a desire to have her child returned. Berkman testified she helped Rosemary S. complete paperwork to apply for Social Security disability, which would allow Rosemary S. to obtain housing.

Brian Kelly, Jr., an administrative coordinator at a substance abuse treatment center, testified that he scheduled three assessment appointments for Rosemary S. before she finally appeared at an appointment. According to Kelly, at the time of the termination hearing, Rosemary S. had only been in outpatient treatment for a week.

Sarah Rodriguez, a Department investigator, prepared the removal affidavit in this case. She expressed concerns about the stability of the home, the child having access to the maternal grandmother who had her own history with the Department, and drug use and domestic violence in the home.

Angelique Adams, another Department investigator, testified she received a report of domestic violence between Rosemary S. and J.R.H.'s father, which occurred while Rosemary S. was holding J.R.H. According to Adams, domestic violence was an ongoing issue with the parents. Adams also testified she was concerned about J.R.H. having contact with the maternal grandmother because of the grandmother's drug use and prior history with the Department.

Jeanna Obemayr, a Department caseworker, testified that Rosemary S. had her parental rights terminated to ten children before J.R.H. was removed from her care. Because of these removals, the Department had offered services to Rosemary S. several times since 2006. Obemayr explained that in this case, Rosemary S. was given a service plan and understood that parental rights could be terminated if she did not comply. The plan required her to complete a psychological assessment, a drug assessment, drug counseling, individual therapy, parenting class, random drug testing, and to follow recommendations made by the service providers. According to Obemayr, Rosemary S. was not in compliance and had not been consistent with her services. Rosemary S. did complete the psychological evaluation, but did not follow through on the recommendations. Rosemary S. was referred for drug assessment, but delayed it until just before the hearing. Rosemary S. also minimized her drug use, denied she had drug issues, and did not comply with therapeutic services. Further, although Rosemary S. completed the parenting program, the program educator reported unsuccessful completion because Rosemary S. made no behavioral change. Obemayr further testified Rosemary S. failed to show for all the drug tests and did not complete drug treatment. Rosemary S. was not fully engaged or in compliance with services. According to

Obemayr, Rosemary S. has visited the child but missed some of the visits because of transportation issues and illness. Obemayr testified that even though Rosemary S. loves her child, termination of Rosemary S.'s parental rights is in the child's best interest. Obemayr explained Rosemary S. is not able to demonstrate she can provide her child with a safe, stable environment free of drugs and domestic violence. Nor can Rosemary S. provide a stable income to meet the needs of the child. Obemayr testified Rosemary S. reported she was living with a friend and had obtained a job that paid her \$50 per day. Obemayr did not believe Rosemary S. could support her child or herself. With regard to J.R.H., Obemayr testified she had seen positive improvements since J.R.H. came into the care of the Department. J.R.H. is in a stable placement and the permanency plan is adoption by the foster parents. Obemayr testified the foster parents were meeting all J.R.H.'s needs and that she had bonded to them and to two of her full-blooded siblings who live with the foster parents. According to Obemayr, the home environment was very healthy and there were no safety concerns. Obemayr explained the foster parents also maintained sibling contact with other siblings who are in other foster homes.

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 Rosemary S.'s parental rights was in the child'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, Rosemary S. points to evidence showing she did not have a mental disorder that might manifest as a delusion, hallucination, or paranoid thinking. Additionally, Rosemary S. points to evidence showing she loves and cares about J.R.H.; that she sought outpatient drug treatment and expressed her willingness to do what she needed to do to have J.R.H. returned to her; that she was willing to comply with the therapy she needs; and that she was applying for Social Security Disability, which would allow her to obtain housing.

However, Rosemary S. ignores the evidence from Department investigators and caseworkers, and psychological professionals. These professionals provided evidence that Rosemary S. is unable to care for J.R.H. because of mental health issues, drug use, domestic violence issues, lack of a stable home, lack of stable employment, and inability to comply with the Department's plan designed to help her address the issues that caused J.R.H.'s removal from her care. Therefore, 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 Rosemary S.'s parental rights was in her child's best interest. *See id.*

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

Karen Angelini, Justice