



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00050-CV

IN THE INTEREST OF E.M.M., a Child

From the 407th Judicial District Court, Bexar County, Texas
Trial Court No. 2016PA01731
Honorable Richard Garcia, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: May 23, 2018

AFFIRMED

Joshua¹ appeals the trial court's termination of his parental rights to his child, E.M.M. (born in 2014). He argues there is legally and factually insufficient evidence that termination of his parental rights is in E.M.M.'s best interest. We affirm the trial court's judgment.

BACKGROUND

The Department of Family and Protective Services filed an original petition for conservatorship of E.M.M. and to terminate the parental rights of Joshua and E.M.M.'s mother, Lauren. The Department obtained temporary conservatorship of the child based on allegations of neglectful supervision by Lauren. The Department's affidavit in support of removal stated Lauren

¹ To protect the identity of minor children in an appeal from an order terminating parental rights, parents are referred to by their first names and children are referred to by their initials. *See* TEX. FAM. CODE ANN. § 109.002(d) (West 2014); TEX. R. APP. P. 9.8(b)(2).

was using methamphetamines and marijuana. The trial court ordered Lauren to complete services on a family service plan, which she did. Lauren addressed all of the Department's concerns and the child was returned to Lauren.

However, the case proceeded to a bench trial regarding Joshua's parental rights. At trial, several witnesses testified, including Department caseworker Delia Longoria, Lauren, and Joshua. Generally, the witnesses' testimony showed Joshua had been incarcerated, had a criminal history, maintained little contact with E.M.M., and failed to support E.M.M.

After trial, the trial court signed a judgment terminating Joshua's parental rights to the child. The trial court found Joshua had constructively abandoned the child and failed to comply with court-ordered provisions of his family service plan. The trial court also found that termination of Joshua's parental rights is in E.M.M.'s best interest. Joshua timely appealed and argues only that there is legally and factually insufficient evidence that termination of his parental rights is in E.M.M.'s best interest.

STANDARD OF REVIEW

A judgment terminating parental rights must be supported by clear and convincing evidence. TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2017). To determine whether this heightened burden of proof was met, we employ a heightened standard of review to determine whether a "factfinder could reasonably form a firm belief or conviction about the truth of the State's allegations." *In re C.H.*, 89 S.W.3d 17, 25 (Tex. 2002). "This standard guards the constitutional interests implicated by termination, while retaining the deference an appellate court must have for the factfinder's role." *In re O.N.H.*, 401 S.W.3d 681, 683 (Tex. App.—San Antonio 2013, no pet.). We do not reweigh issues of witness credibility but defer to the factfinder's reasonable credibility determinations. *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005).

A legal sufficiency review requires us to examine 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 256, 266 (Tex. 2002). We assume the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could have done so, and we disregard all evidence that a reasonable factfinder could have disbelieved or found incredible. *Id.* When conducting a factual sufficiency review, we evaluate “whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding.” *Id.* The evidence is factually insufficient “[i]f, in light of the entire record, 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.” *Id.*

BEST INTEREST

The best-interest determination is a wide-ranging inquiry, and the Texas Supreme Court has set out some factors relevant to the determination:

- the desires of the child;
- the emotional and physical needs of the child now and in the future;
- the emotional and physical danger to the child now and in the future;
- the parental abilities of the individuals seeking custody;
- the programs available to assist these individuals to promote the best interest of the child;
- the plans for the child by these individuals or by the agency seeking custody;
- the stability of the home or proposed placement;
- the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and
- any excuse for the acts or omissions of the parent.

Holley v. Adams, 544 S.W.2d 367, 372 (Tex. 1976). The list is not exhaustive, and not every factor must be proved to find that termination is in the child’s best interest. *In re C.H.*, 89 S.W.3d at 27. Evidence of only one factor may be sufficient for a factfinder to form a reasonable belief or conviction that termination is in the child’s best interest—especially when undisputed evidence

shows that the parental relationship endangered the child's safety. *Id.* at 28. "A factfinder may infer that past conduct endangering the well-being of a child may recur in the future if the child is returned to the parent." *In re D.M.*, 452 S.W.3d 462, 471 (Tex. App.—San Antonio 2014, no pet.).

At the time of trial, E.M.M. was three years old. When a child is too young to express her desires, the factfinder may consider whether she has a bond with other caregivers, is well cared for by them, and has spent minimal time with the biological parent. *See In re M.C.L.*, No. 04-17-00408-CV, 2017 WL 5759376, at *3 (Tex. App.—San Antonio Nov. 29, 2017, no pet.) (mem. op.). Caseworker Longoria testified E.M.M. had not formed a bond with Joshua, but had a bond with Lauren. Joshua testified he had only seen E.M.M. once in her life for approximately one to two hours. *See id.; M.C. v. Tex. Dep't of Family & Protective Servs.*, 300 S.W.3d 305, 312 (Tex. App.—El Paso 2009, pet. denied) (considering minimal efforts to visit the child as support for finding that termination is in child's best interest).

The evidence at trial also showed Joshua was incarcerated throughout this case for aggravated assault with a deadly weapon; had been in and out of prison consistently since 1999; and had multiple arrests for other offenses involving forgery, family violence, a terroristic threat, and drug offenses. *See In re D.M.*, 58 S.W.3d 801, 814 (Tex. App.—Fort Worth 2001, no pet.) (considering a parent's inability to maintain a lifestyle free from arrests and incarcerations in best-interest determination). The evidence further showed Joshua failed to support E.M.M. throughout this case and failed to complete most of the services on his family service plan. *See In re A.T.L.*, No. 04-15-00379-CV, 2015 WL 6507807, at *6 (Tex. App.—San Antonio Oct. 28, 2015, pet. denied) (mem. op.) (considering failure to support a child as evidence relevant to best-interest finding); *In re S.B.*, 207 S.W.3d 877, 887–88 (Tex. App.—Fort Worth 2006, no pet.) (considering the failure to comply with a family service plan as support for finding that termination is in child's

best interest). Moreover, E.M.M. was also placed back with Lauren, the Department had no further concerns about Lauren, and E.M.M. was doing well in Lauren's care.

Having reviewed the evidence admitted at trial, we hold a factfinder could have reasonably formed a firm belief or conviction that termination of Joshua's parental rights is in the child's best interest. *See In re J.F.C.*, 96 S.W.3d at 266. We therefore hold there is legally and factually sufficient to support the trial court's best-interest finding.

CONCLUSION

We affirm the trial court's judgment.

Luz Elena D. Chapa, Justice