



Fourth Court of Appeals San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00990-CV

IN THE INTEREST OF I.S., a Child

From the 25th Judicial District Court, Guadalupe County, Texas
Trial Court No. 17-2619-CV-C
Honorable Thomas Nathaniel Stuckey, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Patricia O. Alvarez, Justice
Beth Watkins, Justice

Delivered and Filed: April 3, 2019

AFFIRMED

Appellant Dad appeals the trial court's order terminating his parental rights to his child I.S.ⁱ Dad asserts the evidence is neither legally nor factually sufficient for the trial court to have found by clear and convincing evidence that his course of conduct met any of the alleged statutory grounds for termination.

Because Dad did not challenge the trial court's finding on best interest of the child, and the evidence was legally and factually sufficient to support the trial court's findings for at least one of the statutory grounds,ⁱⁱ we affirm the trial court's order.

ⁱ To protect the minor's identity, we refer to Appellant and the child using aliases. *See* TEX. R. APP. P. 9.8.

ⁱⁱ Because Dad is the only appellant, we recite only those facts that pertain to Dad or the child.

BACKGROUND

I.S. was born to Mom and Dad in late 2010. In June 2012, Dad was charged with assaulting Mom and causing her bodily injury. Because of an earlier assault conviction, Dad was convicted of felony assault causing bodily injury to a family member and sentenced to ten-years' probation. In 2015, after Dad and Mom divorced, his probation was revoked, and he was incarcerated; he was paroled in August 2017. As a condition of his parole, he could have no contact with Mom or I.S.

In December 2017, the Department of Family and Protective Services petitioned for temporary managing conservatorship of I.S. because of, *inter alia*, Mom's ongoing abuse of drugs and alcohol. The trial court granted the Department's petition and placed Mom and Dad on service plans. During the plan period, Dad was again arrested and again incarcerated.

After a one-day bench trial, citing grounds (D), (E), and (O),¹ and the best interest of the child, the trial court terminated Dad's parental rights to I.S. Dad appeals.

EVIDENCE REQUIRED, STANDARDS OF REVIEW

The evidentiary standards² the Department must meet and the statutory grounds³ the trial court must find to terminate a parent's rights to a child are well known, as are the legal⁴ and factual⁵ sufficiency standards of review. We apply them here.

BASES FOR TERMINATING DAD'S PARENTAL RIGHTS

A. Statutory Ground Finding Required

A single statutory ground finding, when accompanied by a best interest of the child finding, is sufficient to support a parental rights termination order. *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003); *In re R.S.-T.*, 522 S.W.3d 92, 111 (Tex. App.—San Antonio 2017, no pet.). The Department argues that the evidence was sufficient to support the trial court's finding on grounds (D) and (E).

We begin with ground (D). *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D).

B. Section 161.001(b)(1)(D)

Subsection (D) allows for termination of parental rights if, before the child was removed, *see In re R.S.-T.*, 522 S.W.3d 92, 109 (Tex. App.—San Antonio 2017, no pet.) (relevant period), the parent “knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child,” TEX. FAM. CODE ANN. § 161.001(b)(1)(D). In the context of the statute, “‘endanger’ means to expose to loss or injury; to jeopardize.” *Tex. Dep’t of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987).

“A child is endangered when the environment creates a potential for danger that the parent is aware of but consciously disregards.” *In re S.R.*, 452 S.W.3d 351, 360 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). “[A] parent need not know for certain that the child is in an endangering environment; awareness of such a potential is sufficient.” *In re R.S.-T.*, 522 S.W.3d at 109 (alteration in original) (quoting *In re S.M.L.*, 171 S.W.3d 472, 477 (Tex. App.—Houston [14th Dist.] 2005, no pet.)).

“[E]vidence of criminal conduct, convictions, or imprisonment is relevant to a review of whether a parent engaged in a course of conduct that [created an environment that] endangered the well-being of the child.” *In re S.R.*, 452 S.W.3d at 360–61.

“[A] single act or omission” may support terminating a parent’s rights under subsection (D). *In re R.S.-T.*, 522 S.W.3d at 109 (citing *In re R.D.*, 955 S.W.2d 364, 367 (Tex. App.—San Antonio 1997, pet. denied)).

C. Witnesses at Trial

In a one-day bench trial, the trial court heard testimony from the Department’s case worker and Dad. The trial court was the “sole judge[] of the credibility of the witnesses and the weight to give their testimony.” *See City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005); *cf. In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006) (per curiam). We briefly recite some of the evidence.

1. Dad's Failure to Protect the Child

When Dad lived with Mom and I.S., he smoked marijuana regularly and occasionally used cocaine and methamphetamine. Dad testified that Mom preferred cocaine, he heard she was now using methamphetamine, and she had a serious alcohol abuse problem. She frequently “had a 24-pack” of beer, and she drank “like [an] 18-pack a day, minimum.” Mom admitted to the case worker that when she woke up in the morning, “[s]he would shake, throw up, and not feel good. So she’d . . . take a couple [of] drinks to keep from shaking and not feeling nauseous.” The case worker observed that “[Mom] needs so much help that if she doesn’t [get it,] she’s not going to survive,” and I.S.’s health and safety were in danger when I.S. was living with Mom.

Dad knew Mom used illegal drugs and abused alcohol for years, but he took no action to protect I.S. from injury by seeking to remove I.S. from Mom’s home. *Cf. In re M.C.*, 352 S.W.3d 563, 568 (Tex. App.—Dallas 2011, no pet.); *In re Z.C.J.L.*, No. 14-13-00115-CV, 2013 WL 3477569, at *13 (Tex. App.—Houston [14th Dist.] July 9, 2013, no pet.). Dad’s failure to act to protect I.S. was sufficient evidence to support termination on ground (D). *See In re R.S.-T.*, 522 S.W.3d at 109; *In re Z.C.J.L.*, 2013 WL 3477569, at *13; *In re M.C.*, 352 S.W.3d at 568.

2. Dad's Lengthy Criminal History, Propensity to Violence

Dad also acknowledged that in the years before I.S. was removed, he was arrested once for violation of a protective order; twice for possession of marijuana; and twice for resisting arrest, search, or transport. He was convicted once for burglary of a building, twice for driving while intoxicated, and twice for assault causing bodily injury to a family member. Dad’s second conviction for assault causing bodily injury was for assaulting Mom.

Dad’s actions caused him to be incarcerated, and then prohibited by his probation conditions from having contact with I.S., which adversely affected I.S.’s living environment and emotional well-being. *See In re S.M.L.*, 171 S.W.3d at 479 (noting a parent’s repeated “criminal

acts that subject them to the possibility of incarceration . . . can negatively impact a child's living environment and emotional well-being"). Dad also physically abused Mom, which abuse could "produce an environment that endangers the physical or emotional well-being of a child." *See In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.).

Considering all the evidence in the light most favorable to the trial court's findings, we conclude the trial court could have formed a firm belief or conviction that Dad's course of conduct met statutory ground (D). *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D). Because a single ground finding, coupled with a best interest finding, is sufficient to support an order terminating a parent's rights, we need not address Dad's subsection (E) challenge. *See In re A.V.*, 113 S.W.3d at 362.

D. Best Interest of the Child

The Family Code statutory factors⁶ and the *Holley* factors⁷ for the best interest of a child are well known. Dad does not challenge the sufficiency of the evidence supporting the trial court's best interest of the child finding. *See* TEX. FAM. CODE ANN. § 161.001(b)(2).

CONCLUSION

Because the evidence was legally and factually sufficient to support the trial court's findings by clear and convincing evidence (1) of at least one predicate ground for termination and (2) that termination of Dad's parental rights is in the best interest of the child, we affirm the trial court's order.

Patricia O. Alvarez, Justice

¹ **Statutory Grounds for Termination.** The Family Code authorizes a court to terminate the parent-child relationship if, *inter alia*, it finds by clear and convincing evidence that the parent's acts or omissions met certain criteria. *See* TEX. FAM. CODE ANN. § 161.001(b). Here, the trial court found Dad's course of conduct met the following criteria or grounds:

- (D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
- (E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child; [and]

....

(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child.

Id. § 161.001(b)(1).

² Clear and Convincing Evidence. If the Department moves to terminate a parent's rights to a child, the Department must prove by clear and convincing evidence that the parent's acts or omissions met one or more of the grounds for involuntary termination listed in section 161.001(b)(1) of the Family Code and that terminating the parent's rights is in the best interest of the child. TEX. FAM. CODE ANN. § 161.001(b); *In re J.F.C.*, 96 S.W.3d 256, 261 (Tex. 2002). The same evidence used to prove the parent's acts or omissions under section 161.001(b)(1) may be used in determining the best interest of the child under section 161.001(b)(2). *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002); *In re D.M.*, 452 S.W.3d 462, 471 (Tex. App.—San Antonio 2014, no pet.); *see also* TEX. FAM. CODE ANN. § 161.001(b). The trial court may consider a parent's past deliberate conduct to infer future conduct in a similar situation. *In re D.M.*, 452 S.W.3d at 472.

³ TEX. FAM. CODE ANN. § 161.001(b)(1).

⁴ Legal Sufficiency. When a clear and convincing evidence standard applies, a legal sufficiency review requires a court to “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.L.*, 163 S.W.3d 79, 85 (Tex. 2005) (quoting *In re J.F.C.*, 96 S.W.3d at 266). If the court “determines that [a] reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true,” the evidence is legally sufficient. *See id.* (quoting *In re J.F.C.*, 96 S.W.3d at 266).

⁵ Factual Sufficiency. Under a clear and convincing standard, evidence is factually sufficient if “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 at 25; *accord* *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). We must consider “whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding.” *In re J.F.C.*, 96 S.W.3d at 266; *accord* *In re H.R.M.*, 209 S.W.3d at 108.

⁶ Statutory Factors for Best Interest of the Child. The Texas legislature codified certain factors courts are to use in determining the best interest of a child; the factors are listed in the statute. TEX. FAM. CODE ANN. § 263.307(b). Because Dad does not challenge the trial court's finding on best interest of the child, we do not recite the factors here.

⁷ Holley Factors. The Supreme Court of Texas identified several nonexclusive factors to determine the best interest of a child in its landmark case *Holley v. Adams*. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976); *accord* *In re E.N.C.*, 384 S.W.3d 796, 807 (Tex. 2012) (reciting the *Holley* factors). Because Dad does not challenge the trial court's finding on best interest of the child, we do not recite the factors here.