



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-20-00118-CV

**IN THE INTEREST OF Z.E.L.B.H., a Child**

From the 150th Judicial District Court, Bexar County, Texas  
Trial Court No. 2018-PA-01989  
Honorable Linda A. Rodriguez, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Sandee Bryan Marion, Chief Justice  
Luz Elena D. Chapa, Justice  
Liza A. Rodriguez, Justice

Delivered and Filed: July 22, 2020

**AFFIRMED**

Dana<sup>1</sup> appeals an order terminating her parental rights to her child, Z.E.L.B.H. Dana's sole issue challenges the sufficiency of the evidence supporting the trial court's best-interest finding. We affirm the trial court's order.

**BACKGROUND**

On September 4, 2018, the Texas Department of Family and Protective Services filed a petition for conservatorship of Z.E.L.B.H. (born in 2017) and to terminate Dana's parental rights. The Department removed Z.E.L.B.H. based on concerns that Dana was using drugs and allowing her mental health to go unmanaged. Z.E.L.B.H. was placed with her great aunt.

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<sup>1</sup> To protect the identity of the minor child, we refer to the appellant by a fictitious name and the child by her initials. See TEX. FAM. CODE § 109.002(d); TEX. R. APP. P. 9.8(b)(2). Z.E.L.B.H.'s father voluntarily relinquished his parental rights and is not a party to this appeal.

The case proceeded to a bench trial on February 10, 2020. The Department's two legal caseworkers and Dana testified. The trial court admitted into evidence certificates showing Dana had completed certain programs. In its final order, the trial court found three grounds for terminating Dana's parental rights: knowing endangerment by conduct, knowing endangerment by surroundings, and failure to comply with court-ordered provisions of her family service plan. *See* TEX. FAM. CODE § 161.001(b)(1)(D), (E), (O). The trial court also found termination of Dana's parental rights is in Z.E.L.B.H.'s best interest.

### DISCUSSION

On appeal, Dana's sole issue is that the evidence is not legally and factually sufficient to support the trial court's best-interest finding. To terminate parental rights, a trial court must find by clear and convincing evidence one of the statutory predicate grounds and that termination is in the child's best interest. TEX. FAM. CODE § 161.001(b). Because Dana does not challenge the findings of predicate grounds for termination, we consider only whether legally and factually sufficient evidence supports the best-interest finding, applying our familiar standards of review. *See In re J.F.C.*, 96 S.W.3d 256, 263–67 (Tex. 2002).

In determining the best interest of a child, courts apply the non-exhaustive *Holley* factors. *See Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). Those factors include: (1) the desires of the child; (2) the present and future emotional and physical needs of the child; (3) the present and future physical danger to the child; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist these individuals to promote the best interest of the child; (6) the plans held by the individuals seeking custody; (7) the stability of the home of the parent and the individuals seeking custody; (8) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions of the parent. *Id.*

The Department's first caseworker, Paula Bentacourt, testified Z.E.L.B.H. came into the Department's care because her grandfather, with whom Dana lived, called the police and reported Dana was hallucinating. Bentacourt testified Dana was arrested that night due to "altercations." At that time, Z.E.L.B.H. was under one year of age. Bentacourt explained the Department asked Dana to complete several services, but as of the time of trial, Dana had no stable place to live that was safe and appropriate for a child. Bentacourt also testified Dana had a psychological evaluation and was diagnosed with "mental health conditions," and stated Dana had not addressed the Department's concerns about her mental health and substance abuse.

Bentacourt elaborated that Dana admitted she had used heroin. Bentacourt testified that although Dana completed an outpatient drug treatment program in July 2019, Dana relapsed that same month. Upon learning of Dana's relapse, Bentacourt drove Dana to an inpatient drug treatment program. Within a week, Dana was discharged from the program for acting erratically, and she was then transferred to an inpatient program at Haven for Hope to address both her substance abuse and mental health. A month later, Dana was discharged from the new program for failing to comply with the program's requirements, and she did not thereafter enroll in a program for drug treatment or to address her mental health. Bentacourt testified Dana said she did not believe she needed a treatment program.

Bentacourt also testified she enrolled Dana in parenting and counseling programs, which Dana did not complete.

Bentacourt further testified the Department's plans for Z.E.L.B.H. included relative adoption, specifically by her great aunt. Bentacourt stated Z.E.L.B.H. is doing well and thriving in her current placement and is bonded with her great aunt, who had adopted Z.E.L.B.H.'s older sister. Bentacourt described Z.E.L.B.H.'s positive living conditions and her bond with her great

aunt in detail, such as her interactions with her great aunt, and stated Z.E.L.B.H.'s great aunt ensures she attends all of her medical and dental check-ups.

Bentacourt also described Z.E.L.B.H.'s visits with Dana. At the beginning of the case, Dana's visits with Z.E.L.B.H. were at a church and, on one visit, Bentacourt received a call that Dana "was there about two hours in the restroom almost unconscious." However, Bentacourt stated Dana continues to have visits with Z.E.L.B.H., Dana missed a few visits, and the visits "go okay."

Bentacourt opined that she believed termination of Dana's parental rights is in Z.E.L.B.H.'s best interest "[b]ecause [Dana] has not addressed her mental health nor her substance abuse issues. She does not have a place to reside. She does not have employment. She has no way to support her child or meet her needs." She also testified she believes Z.E.L.B.H. will be in danger if placed with Dana.

The second caseworker who testified, Venessa Hynes, was the legal caseworker originally assigned to the case. Hynes echoed many of the facts to which Bentacourt testified, such as Z.E.L.B.H.'s bond with her current caregivers, concerns she had with Dana's drug use and mental health, and that Dana's visits with Z.E.L.B.H. were "okay." Hynes also testified Dana admitted she had used meth. Hynes stated Dana enrolled in a drug treatment program, and Dana reported that she had completed the program, but Hynes verified Dana was discharged for not completing the program. Hynes stated that, at the beginning of the case, Dana completed a parenting class, but because of ongoing issues, Dana was required to engage in a more extensive program. Hynes stated the Department recommended that Dana seek psychiatric care, but Dana did not do so.

Dana testified she did not have a job, but expected to be hired at a *Michael's* store the week of trial. Dana also testified she was living with her grandparents and taking care of her elderly grandfather. She also testified she completed several courses, including outpatient drug treatment, parenting, and nutrition, and that she was in counseling and attending AA and NA meetings. Dana

also testified she did not currently have an issue with drugs, was taking all of her medications, and attending all of her appointments.

Dana explained her family lost their belongings and business when her mother died, and another family member named in her mother's will inherited the assets. She also explained her family was bonded and many problems started when the Department first got involved. Dana also stated the programs required by the Department interfered with her ability to get a job and maintain her own housing. Dana stated her visits with Z.E.L.B.H. are "great," and she described her positive interactions with Z.E.L.B.H. during those visits.

On cross-examination, Dana testified that the day Z.E.L.B.H. was removed, she jumped out of the second-story window at her grandparents' house because a group of people had been at the house, and the police were called. She explained the group of people "were like in the ditch and they were messing with the house and stuff." When asked if she was using drugs that day, Dana responded:

I told [my grandmother] that I was really bad with my paralysis at that time and she wanted me to move a bunch of furniture. And the whole thing is that she wanted her whole house clean and it's a stupid mistake but I told her that I was going to smoke a little bit of meth so I can move a bunch of furniture for her downstairs and everywhere, and she like -- she let it go until they, you know -- until my grandfather, I guess, until I was finished cleaning her house to her satisfaction, I guess.

Dana confirmed she relapsed after completing a drug treatment program. When asked whether she understood why the Department was concerned about her drug use, Dana responded, "Well, obviously."

When, as here, a child is too young to express her desires, the trial court may consider that the child has bonded with her current caregivers, is well cared for by them, and has spent minimal time with the parent. *See In re D.A.B.*, No. 04-19-00629-CV, 2020 WL 1036433, at \*7 (Tex. App.—San Antonio Mar. 4, 2020, no pet.) (mem. op.). The evidence permits a reasonable

inference that Dana had not adequately addressed her drug abuse and the Department's concerns about her mental health, and that she would not be able to provide for Z.E.L.B.H.'s needs and would be a danger to Z.E.L.B.H. presently and in the future. The evidence further shows Dana had no employment or safe, stable housing for a child. The evidence—including the certificates of completion—also shows Dana completed several programs at the beginning of her case, but she thereafter relapsed and did not reengage in her services. Although the evidence shows Dana's visits with Z.E.L.B.H. were "okay" or "great," not every *Holley* factor must be shown to establish that termination of a parent's rights is in a child's best interest. *See In re R.H.*, No. 04-17-00745-CV, 2018 WL 1831630, at \*3 (Tex. App.—San Antonio Apr. 18, 2018, pet. denied) (mem. op.). We hold legally and factually sufficient evidence supports the trial court's best interest finding.

#### CONCLUSION

We affirm the order of termination.

Luz Elena D. Chapa, Justice