



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00238-CV

IN THE INTEREST OF T.J.A., K.M.A., and T.S.A., Children

From the 45th Judicial District Court, Bexar County, Texas
Trial Court No. 2019-PA-01081
Honorable Richard Garcia, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

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

Delivered and Filed: September 2, 2020

AFFIRMED

Appellant Angela appeals the trial court's order terminating her parental rights to her three children, T.J.A., K.M.A., and T.S.A. In three issues, Angela challenges the sufficiency of the evidence supporting the trial court's predicate statutory and best interest findings, as well as its conservatorship determination. We affirm the trial court's termination order.

Background

In May 2019, the Texas Department of Family and Protective Services ("the Department") removed the children from the custody of Angela and the presumed father, Montana, "due to drug use and [because] one of the kids was left in a vehicle overnight in a parking lot." Approximately one week after this case began, Angela and Montana went to Louisiana with the intention of retrieving a vehicle and returning to San Antonio. They did not return.

The trial court held a bench trial on April 22, 2020. At the time of trial, the two older children were nine and eight years old, and the youngest child was twenty-three months old. Angela appeared at trial by telephone from Louisiana. Montana, who has had no contact with the Department since November 2019, did not appear at trial. The Department caseworker and Angela were the only witnesses to testify.

The caseworker testified the Department prepared family service plans for both parents. Angela's service plan required her to complete parenting and domestic violence classes, attend counseling, submit to a psychological evaluation, submit to drug testing, and maintain stable housing and employment. Although the Department attempted to help Angela engage in services in Louisiana, the caseworker had infrequent communication with Angela because Angela did not maintain a consistent telephone number. At the time of trial, Angela was engaged in parenting classes but otherwise not in compliance with her service plan. Angela did not complete a drug assessment and did not attend twice monthly visitation with the children. Angela also failed to maintain stable housing and was, at the time of trial, residing in a hotel with Montana. The caseworker acknowledged COVID-19 was preventing Angela from completing some services. Regardless, Angela had information about available services in Louisiana in September 2019—seven months before trial—but she did not attempt to engage in services until much later.

The caseworker testified she believes it is in the children's best interest that Angela's parental rights are terminated. The two older children know who Angela is and "love her dearly," but the youngest child does not know Angela. Angela was fifty-five minutes late to her first visit with the children and moved to Louisiana shortly thereafter. Angela last had contact with the children via telephone in January 2020. When they first came into the Department's care, the older children initially "had a hard time adjusting" and demonstrated anger and behavioral issues, including "lots of fights, cursing, major tantrums, [and] throwing stuff." While living with their

parents in a motel in San Antonio, the children did not attend school and did not have their dental needs met, resulting in severe tooth decay requiring surgeries. However, at trial the testimony established all three children reside together in a foster home, the older children attend school regularly, have “formed a bond, calmed down, and are happy, feel loved, have a warm place to sleep, food to eat every night,” and have their medical needs addressed. The foster parents hope to adopt the children. The Department considered placing the children with Angela’s brother and sister, as well as Montana’s mother, but all three were ineligible due to their or their partners’ criminal history.

Angela testified by telephone from Louisiana. Angela explained that after she and Montana went to Louisiana in an unsuccessful attempt to retrieve a vehicle, they were financially unable to return to San Antonio. Angela began counseling and therapy in Louisiana, and she started a drug assessment but has not completed it because her “Medicaid got disconnected.” Angela signed up for a domestic violence course but did not attend because her “ride fell through for that.” Until about two months before trial, when her “Medicaid got shut off,” Angela was attending group therapy to address her methamphetamine use. Angela testified she is currently sober and began working for a friend’s tile business a week before trial. Angela and Montana are staying together in a hotel while the house they are planning to move into is being remodeled. Angela anticipates the house will be ready in about one month. Although Montana recently purchased a vehicle, it is not currently drivable because it does not have license plates.

At the conclusion of trial, the trial court granted the Department’s petition for termination and terminated Angela’s and Montana’s parental rights. Angela, but not Montana, appeals the trial court’s termination order.

Standard of Review

To terminate parental rights, 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) termination is in the best interest of the child. TEX. FAM. CODE ANN. §§ 161.001(b), 161.206(a); *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). In her first two issues, Angela argues the evidence is legally and factually insufficient to support the trial court's predicate statutory and best interest findings. We review the legal and factual sufficiency of the evidence under the standard of review established by the Texas Supreme Court in *In re J.F.C.*, 96 S.W.3d 256, 266–67 (Tex. 2002). Under this standard, the trial court as the factfinder is the sole judge of the weight and credibility of the evidence. *In re H.R.M.*, 209 S.W.3d 105, 109 (Tex. 2006) (per curiam).

Predicate Statutory Grounds

The trial court found by clear and convincing evidence that Angela constructively abandoned the children and failed to comply with her family service plan. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(N), (O). Where the trial court terminates the parent-child relationship on multiple grounds, we may affirm on any one ground. *A.V.*, 113 S.W.3d at 362.

To support termination of the parent-child relationship under ground (N), the evidence must demonstrate the parent:

constructively abandoned the child who has been in the permanent or temporary managing conservatorship of [the Department] for not less than six months, and:

- (i) [the Department] has made reasonable efforts to return the child to the parent;
- (ii) the parent has not regularly visited or maintained significant contact with the child; and
- (iii) the parent has demonstrated an inability to provide the child with a safe environment.

TEX. FAM. CODE ANN. § 161.001(b)(1)(N). Angela argues the evidence is insufficient to show she constructively abandoned her children because she did not intentionally remain in Louisiana and she maintained significant contact with her children via telephone.

Although both Angela and the Department caseworker agreed Angela was effectively “stuck” in Louisiana and financially unable to return to San Antonio, the caseworker testified Angela did not need to go to Louisiana in the first place. The caseworker testified she explained to Angela and Montana that travelling to Louisiana would make it difficult for them to complete their service plans, but they left San Antonio together anyway. Since arriving in Louisiana, Angela has had no in-person visits with her children. The caseworker testified she would call Angela and allow her to speak to the children whenever Angela had a working telephone number, but there is no evidence Angela made consistent efforts to contact the children by telephone. In fact, Angela testified she only spoke to the children twice while the case was pending. The caseworker testified that since January 2020, Angela did not reach out to the Department regarding visitation with the children. Therefore, we conclude the evidence is sufficient to support the trial court’s predicate finding that Angela constructively abandoned the children. Angela’s first issue is overruled.

Best Interest

There is a strong presumption that keeping a child with a parent is in the child’s best interest. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam) (citing TEX. FAM. CODE ANN. § 153.131(b)). In determining the best interest of a child, we apply the factors set forth in section 263.307 of the Family Code, as well as the non-exhaustive *Holley* factors. *See* TEX. FAM. CODE ANN. § 263.307(b); *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). The *Holley* 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. 544 S.W.2d at 371–72. The trial court need not find evidence of each *Holley* factor in order to conclude termination is in the child’s best interest. *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). In addition, evidence that a parent has committed one of the acts or omissions listed in subsection 161.001(b)(1) also may be probative of the best interest of the child. *Id.* at 28.

Here, the record does not contain any evidence of the children’s desires, although the caseworker testified the older children love their mother, while the youngest child does not know her. The evidence is undisputed that while in Angela’s and Montana’s care, the older children did not have their educational or medical needs met, resulting in severe dental problems. In contrast, while in foster care, the older children attend school regularly, have “formed a bond, calmed down, and are happy, feel loved, have a warm place to sleep, food to eat every night,” and have their medical needs addressed. Angela testified she is sober and “trying to get back on [her] feet,” but did not otherwise indicate any plans for providing a stable and healthy environment for her children. Since the case began, Angela has not demonstrated an ability to provide a stable home. She has not maintained stable housing, employment, or a working telephone with which to communicate with her children. At the time of trial, Angela was living in a hotel with Montana, who did not communicate with the Department and made no efforts to be reunited with his children. Further, while Angela did not intend to remain in Louisiana, she intentionally left San Antonio despite being advised that doing so could impede her ability to regain custody of her children.

Therefore, after considering all of the evidence in light of the statutory and *Holley* factors, we conclude there is sufficient evidence in the record supporting the trial court's best interest finding. Angela's second issue is overruled.

Conservatorship

In her third issue, Angela argues that because the evidence is insufficient to support termination, it is also insufficient to support the trial court's determination that the Department be the children's permanent managing conservator. Because we overrule Angela's first two issues, we have no basis to sustain her third issue, and it is overruled as well.

Conclusion

Having overruled each of Angela's issues, we affirm the trial court's order of termination.

Sandee Bryan Marion, Chief Justice