



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

**MEMORANDUM OPINION**

No. 04-20-00272-CV

**IN THE INTEREST OF S.R.R.**, a Child

From the 166th Judicial District Court, Bexar County, Texas  
Trial Court No. 2018-PA-02839  
Honorable Charles E. Montemayor, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Sandee Bryan Marion, Chief Justice  
Luz Elena D. Chapa, Justice  
Beth Watkins, Justice

Delivered and Filed: November 4, 2020

**AFFIRMED**

Mother<sup>1</sup> appeals an order terminating her parental rights to S.R.R. Mother's sole issue is that the trial court's best-interest finding is not supported by legally and factually sufficient evidence. We affirm the trial court's order.

**BACKGROUND**

The Texas Department of Family and Protective Services filed a petition for conservatorship of S.R.R. (born in 2018) and to terminate Mother's parental rights. The Department removed S.R.R. because Mother was using drugs, S.R.R. tested positive at birth for

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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). S.R.R.'s father does not appeal the termination of his parental rights.

drugs, Mother stated she wanted S.R.R. to be adopted, and Mother's parental rights to three other children were terminated. S.R.R. was placed in foster care and then with her maternal great aunt.

The case proceeded to a bench trial. Two Department caseworkers testified,<sup>2</sup> and the trial court admitted Mother's family service plan into evidence. In its final order, the trial court found four grounds for terminating Mother's parental rights: knowing endangerment by conduct, endangerment by using a controlled substance; constructive abandonment; and failure to comply with court-ordered provisions of her family service plan. *See* TEX. FAM. CODE § 161.001(b)(1)(E), (N), (O), (P). The trial court also found termination of Mother's parental rights is in S.R.R.'s best interest.

#### DISCUSSION

Mother argues 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 Mother 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

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<sup>2</sup> Mother did not testify. Mother's trial counsel announced "not ready," stating Mother had reported she was "stuck in traffic and on her way." Before proceeding to trial, the trial court noted for the record that Mother was present at every hearing in the case, the trial was set to begin at 9:00 a.m., and the present time was 10:14 a.m. The trial court's decision to commence the trial without Mother is not challenged on appeal. The transcript does not indicate whether Mother arrived in the courtroom before the end of the trial.

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.*

Mother's family service plan recites the reasons the Department opened the case involving S.R.R.:

This CPS case opened due to [Mother] testing positive for amphetamine[s] and exposing her child to drugs, [S.R.R.] tested positive for amphetamines at birth. Mother admitted to using methamphetamines and Cocaine while pregnant. [Mother] indicated she did not want her child and wanted to put her up for adoption. [Mother] does have CPS history where she refused to participate in services and siblings were removed[,] her rights were terminated[,] and [a maternal relative] adopted the three siblings. [Mother] has been arrested for possession of a controlled substance in 2015 Xanax, and has been arrested for Driving While Intoxicated in 2016.

The first caseworker, Jordan Cuellar, testified Mother tested positive for amphetamines when S.R.R. was born, had three children removed from her care in the past, and expressed a desire for S.R.R. to be adopted. Although Cuellar testified S.R.R. appeared to be "fine" at the hospital after she was born, and did not appear to experience withdrawal from drugs, Cuellar also testified she was born prematurely and had respiratory issues.

The second caseworker, Norma Hays, testified Mother admitted she used methamphetamines while pregnant with S.R.R., and she reviewed the family service plan with Mother. Hays testified Mother understood her family service plan, and Mother started her services, but did not complete any of them. Hays elaborated the two main services Mother was required to complete were counseling and drug treatment. Hays stated Mother started drug treatment, but was discharged unsuccessfully due to lack of participation, and Mother was also discharged

unsuccessfully from counseling. Hays also stated Mother tested positive for drugs again after S.R.R. was removed, and she missed nearly twenty scheduled drug tests.

Hays further testified Mother started to have visits with S.R.R., but her last visit was on September 13, 2019, two months before trial. Hays stated Mother had not contacted the Department to resume her visits with S.R.R. Hays expressed concerns about S.R.R. being returned to Mother because Mother continued to prioritize her desires over S.R.R.'s needs, provided no proof of employment, and was also arrested during the case on an outstanding warrant. Regarding S.R.R.'s current placement, Hays testified S.R.R. was living with her maternal aunt, the Department plans on having her adopt S.R.R., and S.R.R. is doing well in the maternal aunt's care. Hays explained S.R.R. was eating and sleeping well and learning to crawl.

Mother presented no evidence contrary to the trial court's best-interest finding. Although Mother's counsel objected to much of the caseworkers' testimony, the sole question asked by Mother's counsel at trial was whether, if Mother were to execute an affidavit of voluntary relinquishment, the Department would accept the affidavit as the sole ground for termination. Hays responded affirmatively.<sup>3</sup>

S.R.R. was eleven months old at the time of trial. When, as here, a child is too young to express her desires, the trial court may consider whether 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.). Although there is no evidence about S.R.R.'s bond with her maternal aunt, the

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<sup>3</sup> In rendering judgment from the bench, the trial court stated the judgment would be reformed to reflect voluntary relinquishment as the sole grounds for termination if Mother executed an affidavit of voluntary relinquishment. No such affidavit is contained in the clerk's record.

evidence shows S.R.R. spent minimal time with Mother, and S.R.R.'s maternal aunt is caring for S.R.R. well.

The evidence also shows Mother endangered S.R.R. through drug use by using amphetamines, methamphetamines, and cocaine while she was pregnant with S.R.R. Mother did not complete drug treatment services, and continued to use drugs after S.R.R. was removed. *See In re S.B.*, 207 S.W.3d 877, 887–88 (Tex. App.—Fort Worth 2006, no pet.) (considering the parent's drug use and failure to comply with a service plan in holding the evidence supported the best-interest finding). Mother has a history of being arrested for criminal conduct, including possession of a controlled substance and driving while intoxicated. Mother was arrested again while the case was pending in the trial court. *See In re J.M.G.*, No. 04-19-00865-CV, 2020 WL 3547974, at \*3 (Tex. App.—San Antonio July 1, 2020, pet. filed) (considering history of arrests and incarcerations in a best-interest analysis). The evidence also shows the Department plans a relative adoption for S.R.R., and S.R.R. is developing well and her needs are being met in her current placement.

Mother argues no evidence shows what “extra efforts the Department made” to have her engage in services or whether Mother's visits with S.R.R. were appropriate or inappropriate. While the trial court was entitled to consider the absence of such testimony, the trial court was also entitled to give weight to the evidence showing Mother's parental rights were terminated to three other children and, in that case, Mother failed to complete her services. *See id.* Although the Department's caseworkers did not testify about their observations of Mother's parenting skills and relationship with S.R.R. during their visits, the evidence shows Mother stopped having visits with S.R.R. two months before trial and expressed no interest in resuming those visits. Considering the evidence admitted a trial, we hold legally and factually sufficient evidence supports the trial court's best-interest finding. *See J.F.C.*, 96 S.W.3d at 263–67; *Holley*, 544 S.W.2d at 371–72.

**CONCLUSION**

We affirm the trial court's order of termination.

Luz Elena D. Chapa, Justice