Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00372-CV

IN THE INTEREST OF S.N.P., a Child

From the 285th Judicial District Court, Bexar County, Texas
Trial Court No. 2019-PA-01051
Honorable John D. Gabriel, Jr., Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

Sitting: Rebeca C. Martinez, Justice
Luz Elena D. Chapa, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: December 16, 2020

AFFIRMED

Appellant ("Mother") appeals the trial court's order terminating her parental rights to S.N.P. Mother challenges the legal and factual sufficiency of the evidence to support the trial court's findings that predicate grounds exist for termination and that termination is in the child's best interest. *See* TEX FAM. CODE ANN. § 161.001(b). We affirm.

BACKGROUND

On May 22, 2019, the Texas Department of Family and Protective Services (the "Department") filed a petition to terminate Mother's parental rights. The trial court held a bench trial on July 10, 2020. At the time of trial, S.N.P. was nine years old.

Department's investigator, Allison Deines, testified that the Department first became involved with Mother, the child, and the child's father ("Father") in April 2019, based upon

concerns that Mother was using methamphetamine in the presence of the S.N.P. At that time, Father stated to Deines that Mother smoked methamphetamine in the family's home and in a car in the driveway while in S.N.P.'s presence. Father also stated to Deines that Mother once "had gone into a meth rage" and had to be restrained. Deines created a family service plan with Father that excluded Mother from the home and prohibited her unsupervised visitation with S.N.P.

In May 2019, the Department received a second referral based upon concerns that Father had engaged in a physical fight with a relative and that both Father and Mother used drugs. Following this referral, Father refused to participate in the Department's investigation. Deines asked Father to take a drug test, and when his results came back positive, the Department removed the child and initiated the suit. After S.N.P.'s removal, Deines contacted Mother, and Mother admitted to methamphetamine use.

In June 2019, Delia Longoria became the Department's caseworker, and she was the Department's second witness at trial. As caseworker, Longoria created a service plan for Mother. The service plan was filed with the trial court, and a copy was admitted as a trial exhibit. Although Mother did not sign the service plan admitted as an exhibit, Longoria testified that Mother signed another copy that was filed with the trial court.

Longoria testified that, pursuant to the service plan, Mother was ordered to complete a parenting class, a domestic violence class, a drug assessment, drug treatment, random drug testing, individual counseling, and a psychological evaluation. Mother also was required to maintain stable housing and employment, to remain in contact with the Department, and to visit S.N.P. According to Longoria, the only service Mother completed was a "psychosocial assessment[,] which is typically required when a client needs to start individual counseling." Longoria testified that Mother did not complete a drug assessment because she failed to attend several scheduled appointments. Longoria also testified that she was not aware of whether Mother was able to obtain

assistance related to her substance abuse. In January 2020, Mother admitted to Longoria that she had consumed methamphetamine earlier that month.

At the time of trial, Mother and Father lived together. Longoria informed Mother about the trial, but Mother did not attend. Meanwhile, S.N.P. lived with a foster family, which was designated as "foster-to-adopt." According to Longoria, S.N.P. had been diagnosed with ADHD and took medication for that disorder and for insomnia. Longoria also testified that S.N.P. "ha[d] some trouble expressing her anger" and had been admitted to a psychiatric hospital at least once while in the Department's care. S.N.P. was "still adjusting" following her release from hospitalization, but, according to Longoria, the child got along well with her foster family, and the family was able to meet her needs.

After hearing the evidence, the trial court terminated the parental rights of Mother and Father, concluding, as to each parent, that there was clear and convincing evidence that the parent (1) failed to comply with the provisions of a court order specifically establishing the actions necessary to obtain the return of the child and (2) used a controlled substance in a manner that endangered the health or safety of the child and failed to complete a court-ordered substance abuse treatment program or, after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(O), (P). The trial court also found that termination was in S.N.P's best interest. *Id.* § 161.001(b)(2). Only Mother appeals.

STANDARD OF REVIEW

A parent-child relationship may be terminated only if the trial court finds by clear and convincing evidence one of the predicate grounds enumerated in section 161.001(b)(1) of the Family Code and that termination is in a child's best interest. *Id.* § 161.001(b)(1), (2). Clear and convincing evidence requires "proof that will produce in the mind of the trier of fact a firm belief

or conviction as to the truth of the allegations sought to be established." *Id.* § 101.007. We review the legal and factual sufficiency of the evidence under the standards of review established by the Texas Supreme Court in *In re J.F.C.*, 96 S.W.3d 256, 266–67 (Tex. 2002). Under these standards, "[t]he trial court is the sole judge of the weight and credibility of the evidence, including the testimony of the Department's witnesses." *In re F.M.*, No. 04-16-00516-CV, 2017 WL 393610, at *4 (Tex. App.—San Antonio Jan. 30, 2017, no pet.) (mem. op.) (first citing *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006) (per curiam); then citing *City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005)).

PREDICATE GROUNDS

The trial court found the Department had proved statutory ground section 161.001(b)(1)(O). Subsection (O) allows for termination of parental rights if the trial court finds by clear and convincing evidence that the parent has "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 "for not less than nine months as the result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child." *See* TEX. FAM. CODE ANN. § 161.001(b)(1); *see also id.* §§ 262.001–.352. Mother argues the evidence as to this finding is insufficient because it relies on "conclusory statements." According to Mother, Longoria's testimony regarding Mother's failure to complete court-ordered services is conclusory because Longoria did not offer specific evidence regarding which services Mother engaged in and Mother's level of engagement.

We disagree with Mother's characterization of Longoria's statements as conclusory. "Testimony is conclusory when it consists of conclusions and does not provide the underlying facts to support the opinion." *In re S.N., Jr.*, No. 05-16-01010-CV, 2017 WL 2334241, at *3 (Tex.

App.—Dallas May 30, 2017, no pet.); *see also Gunn v. McCoy*, 554 S.W.3d 645, 662 (Tex. 2018) (explaining testimony offered with no basis to support it is "merely a conclusory statement and cannot be considered probative evidence, regardless of whether there is no objection"). "Conclusory statements are not susceptible to being readily controverted." *In re S.N., Jr.*, 2017 WL 2334241, at *3. Longoria's testimony that Mother did not complete any required services other than a psychosocial assessment is a statement of purported fact that could be readily controverted; it is not conclusory. *See id.* (explaining that testimony that a parent failed to comply with a court order was not conclusory and was a statement of fact).

Longoria also explained certain specific failings, including Mother's failure to take a drug assessment. In addition, Longoria stated that Mother admitted to methamphetamine use in January 2020, which was after Mother signed her court-ordered service plan. Although Longoria did not elaborate on Mother's level of completion, if any, as to every required service, we do not require such detail to support a subsection O finding. "Texas courts generally take a strict approach to subsection (O)'s application." *In re S.J.R.-Z.*, 537 S.W.3d 677, 690 (Tex. App.—San Antonio 2017, pet. denied) (quoting *In re C.A.W.*, No. 01-16-00719-CV, 2017 WL 929540, at *4 (Tex. App.—Houston [1st Dist.] Mar. 9, 2017, no pet.) (mem. op.)). "Courts do not measure the 'quantity of failure' or 'degree of compliance'" with a court order. *Id.* (quoting *In re D.N.*, 405 S.W.3d 863, 877 (Tex. App.—Amarillo 2013, no pet.)). "A parent's failure to complete one requirement of her family service plan supports termination under subsection (O)." *In re D.D.R.*, No. 04-18-00585-CV, 2019 WL 360657, at *2 (Tex. App.—San Antonio Jan. 30, 2019, pet. denied) (mem. op.) (internal quotation marks and brackets omitted) (quoting *In re J.M.T.*, 519 S.W.3d 258, 267 (Tex. App.—Houston [1st Dist.] 2017, pet. denied)). Here, evidence of Mother's failure to take a drug assessment and her failure to maintain sobriety, as ordered by the trial court, is legally and factually sufficient evidence to support the subsection O finding. *See In re Z.M.M.*,

No. 04-18-00099-CV, 2019 WL 4805399, at *5 (Tex. App.—San Antonio Oct. 2, 2019, no pet.) (holding that evidence of one unexcused violation of a trial court's order was sufficient to support the trial court's subsection O finding).

We hold the evidence is legally and factually sufficient to sustain the trial court's subsection O finding. Accordingly, we need not consider whether sufficient evidence also supports the trial court's subsection P finding. *See In re A.R.R.*, No. 04-18-00578-CV, 2018 WL 6517148, at *1 (Tex. App.—San Antonio Dec. 12, 2018, pet. denied) (mem. op.) (explaining that an appellate court can affirm on any one predicate ground when also finding that termination is in a child's best-interest).

BEST INTEREST

Mother also challenges the legal and factual sufficiency of the trial court's best interest finding. *See* TEX. FAM. CODE ANN. § 161.001(b)(2). There is a strong presumption that keeping a child with a parent is in a child's best interest. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam). However, it is equally presumed that "the prompt and permanent placement of the child in a safe environment is . . . in the child's best interest." TEX. FAM. CODE ANN. § 263.307(a). In determining whether a child's parent is willing and able to provide the child with a safe environment, we consider the factors set forth in Texas Family Code section 263.307(b). *See id.* § 263.307(b).

Our best-interest analysis is guided by consideration of the non-exhaustive *Holley* factors. *See Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). These factors include: (1) the child's desires; (2) the child's present and future emotional and physical needs; (3) any present or future emotional and physical danger to the child; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist the individuals seeking custody to promote the child's best interest; (6) the plans for the child by the individuals or agency seeking custody; (7) the

stability of the home or proposed placement; (8) the parent's acts or omissions which may indicate that the existing parent-child relationship is improper; and (9) any excuse for the parent's acts or omissions. *See id.*; *accord In re E.C.R.*, 402 S.W.3d 239, 249 n.9 (Tex. 2013). The Department is not required to prove each factor, and the absence of evidence regarding some of the factors does not preclude the factfinder from reasonably forming a strong conviction that termination is in a child's best interest, particularly if the evidence is undisputed that the parent-child relationship endangered the safety of the child. *See In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). The focus of our review is whether the evidence, as a whole, is sufficient for the trial court to have formed a strong conviction or belief that termination of the parent-child relationship is in the best interest of the child. *Id.*

Here, the trial court's finding is supported by legally and factually sufficient evidence. According to Deines and Longoria, Mother admitted to methamphetamine use and Father asserted that Mother habitually used methamphetamine in S.N.P.'s presence before the child's removal. The trial court was free to credit this testimony and draw the reasonable inferences that Mother's admission and Father's assertion were true. *See In re J.F.C.*, 96 S.W.3d at 266 (instructing appellate courts to "look at all the evidence in the light most favorable to the finding" in support of termination). Mother's drug use presented an emotional and physical danger to S.N.P., imposed emotional and physical needs on S.N.P., and negatively affected the stability of the home. *See Holley*, 544 S.W.2d at 371–72; *In re A.N.*, No. 04-19-00584-CV, 2020 WL 354773, at *3 (Tex. App.—San Antonio Jan. 22, 2020, no pet.) (explaining that a parent's drug use is relevant to multiple *Holley* factors). Mother's failure to comply with her service plan requirements to maintain sobriety and to complete a drug assessment, among other failures, indicate that Mother did not have the motivation or ability to address her drug abuse and seek out needed services. *See In re J.M.T.*, 519 S.W.3d at 270 ("A fact finder may infer from a parent's failure to take the

initiative to complete the services required to regain possession of his child that he does not have the ability to motivate himself to seek out available resources needed now or in the future."); *see also* TEX. FAM. CODE ANN. § 263.307(b)(10), (11) (providing courts may consider willingness and ability of the child's family to seek out, accept, and complete counseling services and willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time); *Holley*, 544 S.W.2d at 371–72 (listing parental abilities of an individual seeking custody and programs available to assist the individual as a best-interest factor).

According to testimony, Mother failed to maintain stable housing or employment and often could not be located by the Department's investigator and caseworker. This evidence of Mother's instability weighs in favor of the trial court's best-interest finding. *See In re L.G.R.*, 498 S.W.3d at 205 ("A child's need for permanence through the establishment of a stable, permanent home has been recognized as the paramount consideration in a best-interest determination." (internal citation omitted)); *see also In re K.J.G.*, No. 04-19-00102-CV, 2019 WL 3937278, at *8 (Tex. App.—San Antonio Aug. 21, 2019, no pet. h.) (mem. op.) (considering a parent's drug use and failure to obtain and maintain stable housing and employment supportive of the trial court's best-interest finding for termination because the parent's conduct subjected the children to a life of uncertainty and instability).

S.N.P. took medication for ADHD and insomnia and "ha[d] some trouble expressing her anger." She was hospitalized for psychiatric treatment, and her foster family was able to meet her needs upon release. Although the Department did not represent that S.N.P. would be adopted by her foster family, any uncertainty as to her future did not prohibit the trial court from reaching its best-interest determination. *See In re C.H.*, 89 S.W.3d at 28 (holding termination may be in a child's best interest "even if the agency is unable to identify with precision the child's future home environment").

Having reviewed the record, we hold the evidence is legally and factually sufficient to support the trial court's finding that termination of Mother's parental rights was in S.N.P.'s best interest.

CONCLUSION

We affirm the trial court's order.[1]

Rebeca C. Martinez, Justice

[1] After presenting her two issues as to the predicate grounds and the best-interest finding, Mother includes a section in her brief titled "Additional Due Process Concerns." In this section, Mother asserts, without citations to the record or authority: "Without evidence that [Mother] was given reasonable notice and access to the trial which was conducted telephonically and outside the Court's usual location, the Court erred." We hold that Mother has waived error on this additional point because the issue is inadequately briefed. *See ERI Consulting Eng'rs, Inc. v. Swinnea*, 318 S.W.3d 867, 880 (Tex. 2010) ("The Texas Rules of Appellate Procedure require adequate briefing." (citing TEX. R. APP. P. 38.1(i))); *In re S.R.V.*, No. 04-17-00556-CV, 2018 WL 626533, at *3 (Tex. App.—San Antonio Jan. 31, 2018, no pet.) (mem. op.) ("When an appellant fails to comply with the briefing rules as set out in the Texas Rules of Appellate Procedure—fails to cite applicable authority, fails to provide relevant citations to the record, or fails to provide substantive analysis for an issue presented in the brief—nothing is presented for our review, i.e., error is waived.").