Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00387-CV

IN THE INTEREST OF J.M.K., J.K.C., E.J.C., E.L.C., J.C., E.J.C., and J.L.C., Children

From the 45th Judicial District Court, Bexar County, Texas
Trial Court No. 2019-PA-01370
Honorable Richard Price, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: December 9, 2020

AFFIRMED

Appellant appeals the trial court's order terminating his parental rights to his five children. On appeal, appellant challenges the sufficiency of the evidence to support the trial court's findings on the predicate statutory grounds and that termination is in the children's best interest. Appellant also asserts the trial court abused its discretion in making its conservatorship finding because termination was based on insufficient evidence. We affirm.

BACKGROUND

On July 10, 2019, the Texas Department of Family and Protective Services ("Department") filed a petition to terminate appellant's parental rights as the father of E.J.C., E.L.C., J.C., E.J.C.,

and J.L.C.[1] As to appellant, the Department sought termination pursuant to Texas Family Code section 161.001(b)(1), subsections (N) (constructive abandonment) and (O) (failure to comply with provisions of court order).

Relevant to appellant's case, three witnesses testified: Jazzmion Owens, Delia Longoria, and appellant. Owens, the Family Based Safety Services removing officer, testified as follows. The Department received its first referral on September 20, 2018, which concerned physical neglect. This referral did not involve appellant because he was incarcerated at the time. The Department received the second referral on July 8, 2019. Owens stated the concerns involving appellant involved domestic violence and substance abuse. Appellant was offered services for domestic abuse with Family Violence and Prevention, and he was already supposed to be doing services through his probation officer for substance abuse. Owens testified appellant did not complete the substance abuse program. According to Owens, the referral for alleged physical abuse was based on an arrest warrant for appellant arising from his alleged abuse of another woman. She said that at the time, neither appellant nor the mother were following the safety plan to ensure the children had adequate supervision when in their care.

Delia Longoria, the Department caseworker, became involved in the case in late August 2019. She said a service plan was in place for all the parents at the time, with each plan tailored to each parent. The "top services" the Department needed appellant to complete were: drug assessment and treatment, domestic abuse classes, engage in individual counseling, attend a parenting class, and attend his parent-child visits. She said appellant completed a psychosocial assessment on June 11, 2020, but did not complete any other services. Appellant had only five

[1] The Department sought termination of parental rights to seven children, the youngest five of which are appellant's children. These five children were born on July 22, 2014, June 15, 2015, April 17, 2016, March 15, 2017, and February 28, 2018. In addition to appellant, the Department sought termination of the parental rights of the mother of all seven children and the father of the two older children. The mother and the other father are not parties to this appeal.

visits with his children out of a total of forty-eight possible visits. Longoria testified that appellant had not demonstrated he could remain drug free, meet the basic needs of the children, or provide a safe and stable home for the children. She said appellant has not shown he can change the behavior that led to the children being removed. Longoria discussed appellant's services with him and he expressed a desire to engage in the services.

Longoria said the children have been placed with a maternal great aunt and uncle (the "Medinas") since July 2019. The Medinas are able to meet the children's physical and emotional needs, the children are doing well, most of the children have been promoted to the next grade level, and appellant's five children have shown an improvement in their behavior. The children have bonded with the Medinas and the children desire permanency.

Longoria said she texted appellant the morning of the hearing to ask if he would participate, but he did not respond. Appellant appeared at the hearing after the testimony provided by Owens and Longoria. He denied getting a copy of the service plan, but said he "got some stuff to call on a text message." He did not call anyone about the service plan. When asked if he completed some of the court-ordered services, appellant replied that he had sent Longoria a text message with certificates to show he completed parenting classes and a family violence class while incarcerated. He said he also had one counseling session. When asked why he did not complete his court-ordered services, appellant replied

> I got legal situations that are going on at the moment, and I was told [by Owens and Longoria] I was given extra time to get those squared away.
> And since I was fighting for the right to my children, I had to fight for those cases as well. So, therefore, I took them to trial. The proceedings of those courts have been a little longer than expected.
>
> Q. [by appellant's counsel] And what happened on those cases, Mr. C[]?
>
> A. Nothing. They're still set for trial. I got trial in September.

> Q. Okay. So your testimony is that you were more focused on those other issues than you were on CPS cases -- on a CPS case?
>
> A. Well, due to the fact that I was told that if got more than three years that my rights will be terminated. So that told me I needed to fight to make sure I stay home for my kids.
>
> . . .
>
> Q. And are you asking this Court to give you some more time to finish up your Court-ordered CPS services?
>
> A. Yes, sir, I do need the time. Because, like I said, my cases are not resolved yet. And, you know, those -- I need a lot of attention on those. Most of them are more than five years a piece, so like I'm really trying my best to fight for this and that at the same time. You know, like it's kind of hard to focus on either one.
>
> Q. So you need some more time on this CPS case, right?
>
> A. Yes, sir.

Appellant has three pending criminal cases. On cross-examination, the Department's attorney asked appellant how much longer his children should wait when they had already been waiting a year for him to work through his services. Appellant replied he was "going to fight for as long as it takes." He said a former caseworker would tell the court he did everything to stay on track with his children. He said he saw his children only five times because this year had been hard on him and it was hard to find a place of his own while on probation. He also stated

> Things happened on my probation – things happened on my probation and that caused me to have extra episode -- not episode -- but extra things going on, and I didn't -- it was mistakes I made. I can admit that.
>
> But as far as to say that, you know, my kids have been away from me most of the year and, you know, I ain't made no efforts, like, no. I've been focusing on all my court cases.

He agreed it was in his children's best interest to live in a safe and stable home environment, that they have parents who will be there on a daily basis, and that his children stay together. When asked what he would do if he was given additional time, he responded that he would attend parenting and anger management classes, and when he is incarcerated, he tries to

"knock off all the classes whether [he] needs them or not." He said he would engage in court-ordered services now while he is not presently incarcerated.

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 §§ 161.001(b)(1-2), 161.206(a); *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). 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, the trial court as the factfinder is the sole judge of the weight and credibility of the evidence. *In re J.O.A.*, 283 S.W.3d 336, 346 (Tex. 2009).

PREDICATE GROUND FOR TERMINATION

The Department sought termination pursuant to Texas Family Code section 161.001(b)(1), subsections (N) and (O), and the trial court terminated appellant's parental rights on both grounds. Appellant challenges the legal and factual sufficiency of establishing both grounds. Only one predicate act under section 161.001(b)(1) is necessary to support a judgment of termination in addition to the required finding that termination is in the children's best interest. *A.V.*, 113 S.W.3d at 362.

Subsection (O) has three requirements: (1) the parent's failure to comply with a court order that specifically established the actions necessary for the parent to obtain the return of the child; (2) the child was in the Department's care for at least nine months; and (3) the child was removed from the parent due to abuse or neglect. TEX. FAM. CODE § 161.001(b)(1)(O). On appeal, appellant challenges only the first requirement.

Here, the evidence was conflicting on whether appellant received his service plan. Although appellant said he did not receive his service plan, Longoria testified a service plan was

in place for appellant and she discussed his services with him and he expressed a desire to engage in the services. The trial court, as the sole judge of the weight and credibility of the evidence, was entitled to believe Longoria that appellant received his service plan and was aware of its requirements.

The parent bears the burden of complying with the court order. *In re D.N.*, 405 S.W.3d 863, 878 (Tex. App.—Amarillo 2013, no pet.). As to why he did not complete his service plan, appellant offered only the excuse that he had "legal situations" on which he was focused. Texas courts generally take a strict approach to subsection (O)'s application. *Id.* at 877; *accord In re A.M.M.*, No. 04-15-00638-CV, 2016 WL 1359342, at *3 (Tex. App.—San Antonio Apr. 6, 2016, no pet.) (mem. op.). Courts do not measure the "quantity of failure" or "degree of compliance." *Id.* Subsection (O) does not provide a means to evaluate "excuses" or "partial compliance." *Id.*; *see also In re J.S.*, 291 S.W.3d 60, 67 (Tex. App.—Eastland 2009, no pet.) (holding subsection (O) does not intend evaluation of parent's partial achievement of plan requirements). In other words, "substantial compliance is not the same as complete compliance." *A.M.M.*, 2016 WL 1359342, at *3. Because the evidence is undisputed that appellant failed to comply with the provisions of his court-ordered service plan, we conclude the evidence presented at trial and summarized above is legally and factually sufficient to support the trial court's finding under subsection (O).[2]

BEST INTEREST

Appellant also challenges the sufficiency of the evidence in support of the trial court's finding that termination of appellant's parental rights was in the children's best interest.

[2] Because establishing only one predicate act under section 161.001(b)(1) is necessary to support a judgment of termination, we do not address the sufficiency of the evidence under subsection (N).

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 presumed to be in the child's best interest." In determining whether a parent is willing and able to provide his child with a safe environment, we consider the factors set forth in Family Code section 263.307(b). *See id.* § 263.307(b). A child's need for permanence through the establishment of a stable, permanent home is the paramount consideration in a best-interest determination. *See In re J.D.*, 436 S.W.3d 105, 120 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

Considering the factors set forth in section 263.307(b), the record demonstrates appellant was not willing "to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision"; appellant lacked the "willingness and ability . . . to effect positive environmental and personal changes within a reasonable period of time"; and he did not demonstrate adequate parenting skills, including providing the child and other children under the family's care with . . . a safe physical home environment." *See* TEX. FAM. CODE § 263.307(a).

Our best-interest analysis also is guided by consideration of the non-exhaustive *Holley* factors. *See Holley v. Adams*, 544 S.W.2d 367 (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. *Id.* at 371-72. 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 the child's best interest. *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 child's best interest. *See id.*

The record demonstrates (1) Longoria stated the children desired permanency, (2) there was no testimony about the children's present and future emotional and physical needs; (3) there was no testimony about any present or future emotional and physical danger to the children; (4) Longoria praised the parental abilities of the Medinas by stating the Medinas are able to meet the children's physical and emotional needs, the children are doing well, most of the children have been promoted to the next grade level, and appellant's five children have shown an improvement in their behavior; (5) there was no testimony about the programs available to assist the Medinas to promote the children's best interest; (6) the Department's plan for the children was adoption by relatives; (7) there was no additional testimony about the stability of the Medina home, except as stated above under factor 4; (8) appellant's acts or omissions which may indicate that the existing parent-child relationship is improper included appellant's three pending criminal cases; he did not have a place of his own; out of a total of forty-eight possible visits, he only visited the children five times; and his failure to complete his court-ordered service plan; and (9) his excuse for his acts or omissions was that he had "legal situations" on which he was focused; however, he never explained why his "focus" prevented him from visiting his children or otherwise completing his service plan.

Although some of the *Holley* factors were not addressed at the hearing, after considering the relevant factors under the appropriate standards of review, we hold the evidence presented at

trial and summarized above is legally and factually sufficient to support the trial court's best interest finding by clear and convincing evidence.

CONSERVATORSHIP

Appellant challenges the trial court's appointment of the Department as permanent managing conservator on the grounds that the evidence is insufficient to support termination of his parental rights. Because we have concluded the evidence is sufficient to support both the predicate ground for termination and the best interest finding, we need not address this final issue.

CONCLUSION

For the reasons stated above, we affirm the trial court's order of termination.

Sandee Bryan Marion, Chief Justice