



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

MEMORANDUM OPINION

No. 04-21-00168-CV

IN THE INTEREST OF S.R.M., III and M.R.M., Children

From the 285th Judicial District Court, Bexar County, Texas
Trial Court No. 2019-PA-01894
Honorable Linda A. Rodriguez, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Patricia O. Alvarez, Justice
Irene Rios, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: October 13, 2021

AFFIRMED

Appellant Mother appeals the trial court's order terminating her parental rights to her children, Seth and Amy (collectively "the children").¹ In her first issue, Mother challenges the sufficiency of the evidence supporting the trial court's finding that termination was in the children's best interests. In her second issue, Mother argues the trial court abused its discretion when it did not grant her conservatorship of the children. We affirm the trial court's order.

¹ To protect the identity of a minor child in an appeal from an order terminating parental rights, we refer to the parent as "Mother" and "Father" and the children using the pseudonyms "Seth" and "Amy." See TEX. FAM. CODE ANN. § 109.002(d); TEX. R. APP. P. 9.8(b)(2). The trial court's order terminates Mother and Father's parental rights to the children, but only Mother appeals the trial court's order.

BACKGROUND

The Department of Family and Protective Services (“the Department”) became involved in the underlying case on December 15, 2018, when it received a report that Amy was being sexually abused by Father. Initially, Amy made an outcry to Mother regarding Father’s sexual misconduct. Mother did not believe the allegations and, after Mother failed to take protective action, Amy made an outcry to her maternal aunt.² Aunt immediately reported the incident to law enforcement.

Under the Department’s safety plan, the children began living with Aunt on December 16, 2018. Father failed to make progress on his services and the Department determined that Mother continued to maintain a relationship with Father. On September 17, 2019, the Department filed a petition seeking temporary managing conservatorship of the children and termination of Mother and Father’s parental rights. The trial court granted the Department temporary managing conservatorship, and the Department placed the children in Aunt’s care.

On March 24, 2021 and April 5, 2021, the trial court held a bench trial. The trial court heard testimony from Mother; Aunt; Melissa Ponce, a social worker for the Department; Angela Christman, a supervisor for the Department;³ K.S., a CASA volunteer assigned to the case; N.W., Father’s aunt who testified on Mother’s behalf; and Monica Cervantes, Mother’s friend. At Amy’s request, the trial court conducted an in-chambers interview with Amy. Ann Smith, who was appointed to serve in the dual role as Attorney Ad Litem and Guardian Ad Litem for the children, gave an ad litem report before closing arguments.

On April 8, 2021, the trial court rendered an order terminating Mother’s parental rights to the children. Specifically, the trial court terminated Mother’s parental rights based on statutory

² We refer to the maternal aunt as “Aunt.”

³ Christman testified instead of the Department’s current caseworker who was on medical leave during the trial.

grounds (D), (E), and (O) in section 161.001(b)(1) of the Texas Family Code. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O). The trial court also found that it was in the children’s best interests to terminate Mother’s parental rights. *See id.* § 161.001(b)(2). Mother appeals.

STATUTORY REQUIREMENTS AND STANDARD OF REVIEW

To terminate parental rights pursuant to section 161.001 of the Texas Family Code, 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) that termination is in the best interests of the children. TEX. FAM. CODE ANN. § 161.001(b). 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.

When reviewing the sufficiency of the evidence, we apply well-established standards of review. *See id.* §§ 101.007, 161.206(a); *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006) (conducting a factual sufficiency review); *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005) (conducting a legal sufficiency review).

“In reviewing the legal sufficiency of the evidence to support the termination of parental rights, we must ‘look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true.’” *In re J.L.B.*, No. 04-17-00364-CV, 2017 WL 4942855, at *2 (Tex. App.—San Antonio Nov. 1, 2017, pet. denied) (mem. op.) (quoting *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002)). “[A] reviewing court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so.” *J.F.C.*, 96 S.W.3d at 266. “A corollary to this requirement is that a [reviewing] court should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible.” *Id.*

“In reviewing the factual sufficiency of the evidence to support the termination of parental rights, we ‘must give due consideration to evidence that the factfinder could reasonably have found to be clear and convincing.’” *J.L.B.*, 2017 WL 4942855, at *2 (quoting *J.F.C.*, 96 S.W.3d at 266). “A [reviewing court] should consider whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding.” *J.F.C.*, 96 S.W.3d at 266. “The [reviewing] court must hold the evidence to be factually insufficient if, in light of the entire record, the disputed evidence contrary to the judgment is so significant that a reasonable factfinder could not have resolved that disputed evidence in favor of the ultimate finding.” *In re M.T.C.*, No. 04-16-00548-CV, 2017 WL 603634, at *2 (Tex. App.—San Antonio Feb. 15, 2017, no pet.) (mem. op.).

Further, in a bench trial, the trial court is the sole judge of the credibility of witnesses and the weight to be given their testimony. *HealthTronics, Inc. v. Lisa Laser USA, Inc.*, 382 S.W.3d 567, 582 (Tex. App.—Austin 2012, no pet.). This is because “the trial judge is best able to observe and assess the witnesses’ demeanor and credibility, and to sense the ‘forces, powers, and influences’ that may not be apparent from merely reading the record on appeal.” *Coburn v. Moreland*, 433 S.W.3d 809, 823 (Tex. App.—Austin 2014, no pet.) (quoting *In re A.L.E.*, 279 S.W.3d 424, 427 (Tex. App.—Houston [14th Dist.] 2009, no pet.)). We, therefore, defer to the trial court’s judgment regarding credibility determinations. *Coburn*, 433 S.W.3d at 823–24.

BEST INTERESTS

Mother argues the evidence is legally and factually insufficient to support a finding that termination of her parental rights was in Seth and Amy’s best interests.

When considering the best interest of a child, we recognize the existence of a strong presumption that the child’s best interest is served by preserving the parent-child relationship. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006). However, we also presume that 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 parent is willing and able to provide the child with a safe environment, we consider the factors set forth in section 263.307(b) of the Texas Family Code.⁴ *See id.* § 263.307(b). We also consider the *Holley* factors.⁵ *See Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). These factors are not exhaustive. *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). “The absence of evidence about some of these considerations would not preclude a factfinder from reasonably forming a strong conviction or belief that termination is in the child's best interest, particularly if the evidence were undisputed that the parental relationship endangered the safety of the child.” *Id.* In analyzing these factors, we must focus on the best interest of the child, not the best interest of the parent. *Dupree v. Tex. Dep't of Protective & Regulatory Servs.*, 907 S.W.2d 81, 86 (Tex. App.—Dallas 1995, no writ).

⁴ These factors include:

(1) the child's age and physical and mental vulnerabilities; (2) the frequency and nature of out-of-home placements; (3) the magnitude, frequency, and circumstances of the harm to the child; (4) whether the child has been the victim of repeated harm after the initial report and intervention by the department; (5) whether the child is fearful of living in or returning to the child's home; (6) the results of psychiatric, psychological, or developmental evaluations of the child [or] the child's parents . . . ; (7) whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home; (8) whether there is a history of substance abuse by the child's family or others who have access to the child's home; (9) whether the perpetrator of the harm to the child is identified; (10) the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision; (11) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time; (12) whether the child's family demonstrates adequate parenting skills . . . ; and (13) whether an adequate social support system . . . is available to the child.

TEX. FAM. CODE ANN. § 263.307(b).

⁵ 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. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976); *see In re E.C.R.*, 402 S.W.3d 239, 249 n.9 (Tex. 2013).

Evidence that proves one or more statutory ground for termination may also constitute evidence illustrating that termination is in the child's best interest. *C.H.*, 89 S.W.3d at 28 (holding same evidence may be probative of both section 161.001(b)(1) grounds and best interest, but such evidence does not relieve the State of its burden to prove best interest). "A best-interest analysis may consider circumstantial evidence, subjective factors, and the totality of the evidence as well as the direct evidence." *See In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio 2013, pet. denied). "A trier of fact may measure a parent's future conduct by his past conduct and determine whether termination of parental rights is in the child's best interest." *Id.*

Children's Desires

Seth and Amy were seventeen and fifteen years old, respectively, at the time of trial and both were capable of expressing their desires regarding their placement and termination of Mother's parental rights. *See Yonko v. Dep't of Fam. & Protective Servs.*, 196 S.W.3d 236, 246 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (stating a nine-year-old child was capable of expressing his desires regarding termination).

The trial court heard undisputed evidence that both children desire Mother's parental rights be terminated. Angela Christman, a supervisor for the Department who took over the case prior to trial, testified she spoke with Seth and Amy three weeks before trial and both children expressed their desire for Mother's parental rights to be terminated and their desire to be adopted by Aunt. Christman also testified that both children desire to have their names changed after they are adopted by Aunt.

Additionally, the trial court conducted an in-chambers interview with Amy where she expressed her desires for Mother's parental rights to be terminated and to be adopted by Aunt. The trial court also heard evidence that Amy is concerned Mother is still dependent upon Father.

Finally, Ann Smith, the guardian ad litem for the children, stated in her ad litem report that she communicates with the children frequently and they both desire Mother's rights be terminated so they can be adopted by Aunt. Accordingly, this factor weighs in favor of termination.

Emotional and Physical Dangers to the Children

“A parent endangers her children by accepting the endangering conduct of other people.” *In re L.W.*, No. 01-18-01025-CV, 2019 WL 1523124, at *13 (Tex. App.—Houston [1st Dist.] Apr. 9, 2019, pet. denied). “Without question, sexual abuse constitutes conduct that endangers the children's physical and emotional well-being.” *Id.* “This court considers a parent's conduct before and after the Department's removal of the children.” *In re S.J.R.-Z.*, 537 S.W.3d 677, 693 (Tex. App.—San Antonio 2017, pet. denied).

The testimony of Melissa Ponce, Angela Christman, Aunt, and Mother irrefutably establishes Amy told Mother she was being sexually abused by Father, and Mother refused to believe Amy and failed to take action to protect Amy from Father. Although Mother testified she would have confronted Father if Amy agreed to confront him with her, Mother also testified she did not believe Amy's allegations. Mother admitted she did not call the police following Amy's outcry. When Mother did not take protective action, Aunt testified that Amy made an outcry to Aunt regarding the sexual abuse. According to Aunt's testimony, when Aunt asked Amy if she had told Mother about the sexual abuse, Amy replied: “[M]other said that she was sorry, hugged her[,] and said that she was go[ing to] protect her [but] that she couldn't leave [Father]” because of her financial circumstances.

Aunt contacted law enforcement following Amy's outcry. Aunt testified Mother subsequently told her “we could have just talked about it and resolved the issue.” Aunt further testified that Mother blames Aunt for the Department's intervention and told Aunt she “broke up [Mother's] family.” When Mother was asked at trial to explain why Aunt should have called

Mother instead of the police, Mother replied, “I don’t know.” Mother was also asked whether she currently believes Amy’s allegations. Mother replied, “I don’t know.”

Ponce testified the Department filed for termination of Mother’s parental rights because there was a concern that Mother continued to have a relationship with Father notwithstanding Amy’s allegations of sexual abuse. Ponce further testified that Father and Mother had signed an apartment lease together—with the children listed as residents on the lease—after the Department became involved in the case. Ponce also testified that she visited with Father in Mother’s new apartment. Christman testified it would be a danger to return the children to Mother because it is unclear whether Father is living with Mother since he has been seen in the parking lot of Mother’s apartment. The testimony from Amy’s in-chambers interview indicates Amy is concerned that Mother cannot put Amy’s safety above Mother’s desire to continue a relationship with Father. Amy further stated that she has lost trust in Mother.

Mother testified Father was only listed on the lease because she needed to show his income to qualify for the lease. Mother clarified she did not need Father’s income to pay for the apartment lease, but only to qualify for the lease. Mother testified she was unaware that Ponce visited with Father in Mother’s apartment. However, when asked why Father had a key to her apartment when he met with Ponce, Mother testified he had a key because he helped her move into the apartment. Finally, Mother testified her last contact with Father was “about two months” prior to trial.

N.W., Father’s aunt, testified that Mother was generally a good and caring Mother. However, on cross-examination, N.W. testified that from 2007 to 2018 she lived out of town and did not see Mother and the children often during that time. N.W. also conceded on cross-examination that Mother would not be doing her job if she failed to report the sexual abuse allegations to law enforcement. N.W. further testified that if it were her child that made the sexual abuse allegations, she would have called law enforcement and confronted Father.

Monica Cervantes, Mother's friend, testified that Mother was a loving and caring mother. However, Cervantes admitted she did not know why the children were removed and was not aware of the sexual abuse allegations. Further, Cervantes testified she would have believed her daughter if she made sexual abuse allegations against the father and—after verification of the abuse—a protective mother would have called law enforcement following the allegations.

Here, there is sufficient evidence indicating the children would be in emotional and physical danger if they were returned to Mother. *See E.D.*, 419 S.W.3d at 620 (“A trier of fact may measure a parent’s future conduct by his past conduct and determine whether termination of parental rights is in the child’s best interest.”). It is undisputed that Mother failed to protect Amy from Father after Amy told her about his sexual abuse. *L.W.*, 2019 WL 1523124, at *13 (“A parent endangers her children by accepting the endangering conduct of other people.”). Moreover, the equivocation in Mother’s testimony regarding the sexual abuse indicates Mother may still not believe the allegations. Mother’s inclination not to believe the sexual abuse allegations demonstrates a pattern of endangerment to the emotional well-being of her children. *See K.M. v. Tex. Dep’t of Fam. & Protective Servs.*, 388 S.W.3d 396, 404 (Tex. App.—El Paso 2012, no pet.) (holding mother’s refusal to believe sexual assaults were occurring in her home demonstrated a pattern of endangerment to the emotion well-being of the child).

The trial court heard testimony that Mother likely continued a relationship with Father after the Department placed the children with Aunt. Ponce and Christman expressed concerns that Mother would continue to have a relationship with Father if the children were returned to her. Aunt also testified she was concerned Mother has continued her relationship with Father. Although Mother denied having a relationship with Father, the trial court—as the sole judge of the credibility of the witnesses—was free to disbelieve Mother’s testimony. *See HealthTronics, Inc.*,

382 S.W.3d at 582. Likewise, the trial court was within its right to consider and weigh Ponce, Christman, and Aunt's testimony regarding Mother's current relationship status with Father. *Id.*

Regarding termination of Mother's parental rights to Seth, "it is not necessary for the sexual abuse occurring in the home to be directed at the child whose interest is in question for the home to constitute a dangerous place." *L.W.*, 2019 WL 1523124, at *14. "In fact, when one child has been sexually abused in the home, we may infer that other children in the home are endangered." *Id.*

Based on the evidence presented, the trial court could have formed a firm belief or conviction that returning the children to Mother would pose a present and future emotional and physical danger to the children.

Emotional and Physical Needs of the Children and Parental Abilities

"The need for permanence is the paramount consideration for the child's present and future physical and emotional needs." *S.J.R.-Z.*, 537 S.W.3d at 693.

Ponce testified the children were thriving and happy in Aunt's care. Ponce also attested that Aunt is protective of the children and they appear to be safe in her care. Christman testified the children are both receiving therapy weekly and are happy and thriving with Aunt. Christman further testified that the children are doing well in school and are participating in extracurricular activities. She stated the children have bonded with Aunt, Aunt is able to meet the children's present and future emotional and physical needs, and Aunt is willing to adopt the children.

Aunt testified the children are doing well in her care, she can meet the children's present and future emotional and physical needs, and she is willing to adopt the children. Aunt stated Seth was reserved when he was first placed with Aunt, but now he is more social, able to speak up for himself, discuss things that bother him, and he can vocalize his desires. Aunt further testified that Amy has become more social and confident since being placed with Aunt.

Mother testified she raised and cared for the children until the Department's intervention and would wake them in the morning, feed them, pick them up from school, and take them to extracurricular activities. Mother has maintained stable housing and has held her current job for thirteen years. According to Mother, the children were well-cared for when they were in her custody, and she met their emotional and physical needs before the Department initiated the case. Mother also testified she completed the parenting classes under the safety plan and continues to voluntarily attend additional parenting classes. At trial, Christman conceded her concern was not with Mother's ability to care for the children; rather, she was concerned with Mother's ability to protect the children from Father and put the children's safety over Mother's desire to continue a relationship with Father.

While there is some evidence that Mother could meet the children's future and present emotional and physical needs, the evidence is not so significant that the trial court could not have formed a firm conviction or belief that termination of Mother's parental rights was in the children's best interest.

History of Abusive Conduct

When reviewing a best-interest finding, we consider "whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home[.]" TEX. FAM. CODE ANN. § 263.307(b)(7). Here, the trial court heard evidence regarding allegations of Father's sexual abuse. As mentioned above, the Department presented testimony that Father may continue to have access to the children should they be returned to Mother and Mother would not protect the children from Father's abusive behavior. Accordingly, this factor weighs in favor of termination.

Plans for the Child

“[T]he prompt and permanent placement of the child in a safe environment is presumed to be in the child’s best interest.” *Id.* § 263.307(a). Christman indicated the Department’s permanency plan is for the children to be adopted by Aunt. The trial court heard evidence that the children wish to be adopted by Aunt, and Aunt testified that she is willing to adopt the children. Accordingly, this factor also weighs in favor of termination.

Having reviewed the record and considered all the evidence in the appropriate light for each standard of review, we conclude the trial court could have formed a firm belief or conviction that termination of Mother’s parental rights is in the children’s best interests. *See* TEX. FAM. CODE ANN. § 161.001(b)(2); *H.R.M.*, 209 S.W.3d at 108; *J.P.B.*, 180 S.W.3d at 573; *see also generally In re A.B.*, 437 S.W.3d 498, 503–05 (Tex. 2014) (recognizing a reviewing court need not detail the evidence if affirming a termination judgment). Accordingly, we hold the evidence is legally and factually sufficient to support the trial court’s best-interest findings.

Mother’s first issue is overruled.

CONSERVATORSHIP

In her second issue, Mother argues she should be named a possessory conservator of the children if the trial court’s best interest findings are based on insufficient evidence. However, because we have determined the trial court did not err in terminating Mother’s parental rights, Mother no longer has any legal rights with respect to the children and cannot challenge the portion of the termination order that relates to appointment of conservators for the children. *See In re J.C.R.*, No. 04-18-00949-CV, 2019 WL 2110109, at *7 (Tex. App.—San Antonio May 15, 2019, pet. denied) (mem. op.); *In re E.O.R.*, No. 04-18-00248-CV, 2018 WL 5808293, at *5 (Tex. App.—San Antonio Nov. 7, 2018, no pet.) (mem. op.); *In re L.T.P.*, No. 04-17-00094-CV, 2017 WL 3430894, at *6 (Tex. App.—San Antonio 2017, pet. denied) (mem. op.).

Mother's second issue is overruled.

CONCLUSION

The trial court's judgment is affirmed.

Irene Rios, Justice

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