



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-21-00224-CV

IN THE INTEREST OF C.R., C.P.R., Z.C., CHILDREN

From the 37th Judicial District Court, Bexar County, Texas
Trial Court No. 2019PA01496
Honorable Peter A. Sakai, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Patricia O. Alvarez, Justice
Liza A. Rodriguez, Justice
Lori I. Valenzuela, Justice

Delivered and Filed: November 10, 2021

AFFIRMED

In this parental rights termination case, the trial court terminated Dad's parental rights to his children, C.R., C.P.R., and Z.C.¹ Dad challenges the legal and factual sufficiency of the evidence for the trial court's findings on statutory grounds and best interests of the children, and argues, *inter alia*, that the trial court's termination order should be reversed.

Having reviewed the evidence, we conclude it was legally and factually sufficient. We affirm the trial court's order.

BACKGROUND

The initial intake for this case began when Mom and Dad were reported for fighting in front of their children. Dad was drinking alcohol daily and acting physically abusive towards

¹ We use aliases to protect the children's identities. *See* TEX. FAM. CODE ANN. § 109.002(d); TEX. R. APP. P. 9.8.

Mom. The situation was emotionally and physically dangerous for the children. Child Protective Services implemented a family safety plan that required Dad to stay somewhere besides the family home.

After Dad moved out, Mom was diagnosed with schizophrenia and insisted that her children go into foster care due to her mental health issues. She signed custody of the children over to the Department of Family and Protective Services. The Department began services with Mom and Dad. Because this is Dad's appeal, we will only address his service plan progress leading up to trial.

Dad was required to take parenting classes, submit to a psychological evaluation, participate in supervised visits with his children, as well as complete drug treatment and domestic violence classes. Dad was able to complete many of his requirements. However, towards the end of his case he faced challenges with incarceration and a work release program as well as a sexual abuse allegation from his stepdaughter that halted his momentum in the case. By the time of trial, Dad had fallen out of contact with his caseworker and been unsuccessfully discharged from domestic violence classes three times. He also struggled with his sobriety during the case, though he ultimately completed his required drug treatment program. The Department recommended that his parental rights be terminated, and the trial court found by clear and convincing evidence that Dad's course of conduct met the grounds in Family Code section 161.001(b)(1)'s subsections (E) and (O), and that terminating Dad's parental rights was in the children's best interests.

On appeal, Dad challenges the sufficiency of the evidence.

EVIDENCE REQUIRED, STANDARDS OF REVIEW

The evidentiary standardsⁱ the Department must meet and the statutory groundsⁱⁱ the trial court must find to terminate a parent's rights to a child are well known, as are the legalⁱⁱⁱ and factual^{iv} sufficiency standards of review. We apply them here.

STATUTORY GROUNDS FOR TERMINATING DAD’S PARENTAL RIGHTS

In Dad’s first issue, he asserts that the evidence was legally and factually insufficient to support the trial court’s statutory grounds findings. *See* TEX. FAM. CODE ANN. § 161.001(b)(1) (E), (O). The Department argues the evidence was sufficient to support the trial court’s finding on each ground.

A. Statutory Ground Finding Required

A single statutory ground finding, when accompanied by a best interest of the child finding, is sufficient to support a parental rights termination order. *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003); *In re R.S.-T.*, 522 S.W.3d 92, 111 (Tex. App.—San Antonio 2017, no pet.). But even though only one predicate ground may support the trial court’s order of termination, due process requires that we address any appellate issue regarding the sufficiency of the evidence of a trial court’s finding under either (D) or (E) because a termination finding under subsection (D) or (E) may serve as the basis for a future termination of parental rights proceeding. *See In re N.G.*, 577 S.W.3d 230, 237 (Tex. 2019). *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E).

B. Section 161.001(b)(1)(E)

A parent’s rights to their child may be terminated if, inter alia, the parent “engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child.” TEX. FAM. CODE ANN. § 161.001(b)(1)(E); *In re R.S.-T.*, 522 S.W.3d at 109.

For a parent to endanger a child, “it is not necessary that the [parent’s] conduct be directed at the child or that the child actually suffers injury.” *Tex. Dep’t of Human Services v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987). “[R]ather, a child is endangered when the environment or the parent’s course of conduct creates a potential for danger which the parent is aware of but disregards.” *In re R.S.-T.*, 522 S.W.3d at 110 (quoting *In re S.M.L.*, 171 S.W.3d at 477). A parent’s

pattern of domestic violence may be considered on the question of endangerment, which can lead to termination of a parent's right to their child. *See Interest of M.L.L.*, 573 S.W.3d 353, 364 (Tex. App.—El Paso 2019, no pet.); *In re M.V.*, 343 S.W.3d 543, 547 (Tex. App.—Dallas 2011, no pet.); *In re J.I.T.P.*, 99 S.W.3d 841, 845 (Tex. App.—Houston [14th Dist.] 2003, no pet.).

C. Dad's Course of Conduct Endangering the Child

The trial court heard testimony regarding Dad's conduct that endangered C.R., C.P.R., and Z.C., including alcohol abuse and domestic violence.

1. Dad's Domestic Violence in the Home

Dad's first CPS caseworker testified that Mom and Dad were reported to Child Protective Services due to their pattern of domestic violence behavior. *See In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.) (“[A]busive or violent conduct by a parent . . . may produce an environment that endangers the physical or emotional well-being of a child.”); *see also Boyd*, 727 S.W.2d at 533 (noting that a parent's violence need not be directed at the child or the child injured to constitute endangering the child). The caseworker also testified that CPS's first intake report for this case described Mom and Dad arguing at home in front of the children along with banging coming from the home and sounds of children screaming and yelling. According to the report, Mom and Dad fought often, and the children have been injured in the past. The report also stated that a family member tried to break up the fighting at one point and was shoved down.

The caseworker stated that during the initial investigation, Mom told the CPS investigator that Dad “was always drinking beer” and that the children were present when Dad had been drinking and fought with Mom. Further, it was noted that at the time of the report, Mom had a bruise on her arm from where she said Dad grabbed her a week before. The caseworker testified

that at the time of the initial investigation, Mom's oldest daughter, D.A.,² corroborated Mom's report that Dad constantly drank alcohol and fought with Mom in front of the children.

Dad argues in his brief that no evidence was presented of ongoing domestic violence issues beyond the Department's initial investigation, i.e., since Dad left the family home. However, Dad's last caseworker identified domestic violence as the most critical issue for Dad in this case, and Dad did not manage to address it over the course of his services. According to the caseworker's testimony, Dad was unsuccessfully discharged from domestic violence classes three times prior to trial.

Based on Dad's first caseworker's testimony, domestic violence led CPS to become involved with Mom and Dad, and it is what led to Dad being required to leave the family home as part of the safety plan. According to Dad's last caseworker, the children had to stop visiting with Dad over the course of the case because they lapsed into fighting and bullying behaviors, bedwetting, and night terrors after visits with him. The caseworker inferred a connection between the children's negative behaviors and witnessing domestic violence between Mom and Dad, noting that the children's behavior improved when they did not visit with Dad, even though the visits themselves created no source for concern.

Furthermore, according to Dad's second caseworker, Dad struggled with maintaining his sobriety over the course of his case. The second caseworker testified that Dad enrolled in an alcohol treatment program but did not complete it before she left the case. Dad's last caseworker testified that Dad successfully completed his treatment program as required, but Dad did not attend trial, and we do not have any further information regarding Dad's sobriety. *In re D.M.*, 452 S.W.3d 462, 471 (Tex. App.—San Antonio 2014, no pet.) (“A factfinder may infer that past conduct

² D.A. is not a subject of this appeal.

endangering the well-being of a child may recur in the future if the child is returned to the parent.”); *In re J.D.*, 436 S.W.3d 105, 119 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (“[T]he fact finder may permissibly infer that a parent’s future conduct may be measured by recent past conduct as it relates to the same or a similar situation.”).

D. Sufficiency of the Evidence

The evidence presented through Dad’s caseworkers pertaining to Dad’s alcohol abuse and domestic violence shows a course of conduct from which the trial court could have found that Dad endangered his children’s physical and emotional well-being. *See Walker v. Tex. Dep’t of Family & Protective Servs.*, 312 S.W.3d 608, 618 (Tex. App.—Houston [1st Dist.] 2009, pet. denied); *see also In re J.O.A.*, 283 S.W.3d at 345 (drug use); *In re J.I.T.P.*, 99 S.W.3d at 845 (domestic violence).

We conclude the trial court could have “reasonably form[ed] a firm belief or conviction about the truth of the [Department’s] allegations.” *See In re C.H.*, 89 S.W.3d 17, 25 (Tex. 2002). Therefore, the evidence was sufficient to support the trial court’s finding under subsection 161.001(b)(1)(E). *See id.*; *Walker*, 312 S.W.3d at 618.

Because only a single statutory ground finding is needed to support an order terminating a parent’s rights to a child, *In re A.V.*, 113 S.W.3d at 362, we need not address the other statutory grounds, *see In re R.S.-T.*, 522 S.W.3d at 111. We overrule Dad’s first issue.

BEST INTERESTS OF THE CHILDREN

In his second issue, Dad argues the evidence was insufficient to support the trial court’s finding that terminating his parental rights was in his children’s best interests. *See TEX. FAM. CODE ANN. § 161.001(b)(2)*.

The Family Code statutory factors^v and the *Holley* factors^{vi} for best interests of the children are well known. Applying the applicable standard of review and statutory and common law best

interest factors, we examine the evidence pertaining to the best interests of the children. The same evidence we considered in the statutory grounds review may also be probative in our best interests of the children review. *See In re C.H.*, 89 S.W.3d at 28; *Walker*, 312 S.W.3d at 618.

A. Dad's Course of Conduct

As mentioned above, the record reflects that Dad was constantly fighting with Mom in front of their young children. *See* TEX. FAM. CODE ANN. § 263.307(b)(1), (3), (7); *Holley v. Adams*, 544 S.W.2d 367, 372 (Tex. 1976) (factor (C)). The testimony also established that Dad drank beer daily. *See* TEX. FAM. CODE ANN. § 263.307(b)(8); *Holley*, 544 S.W.2d at 372 (factor (C)). Once the parents were reported to CPS and Dad was required to leave the family home, the incidents of domestic violence stopped.

Dad was able to complete many of his court-ordered service requirements before trial. He completed parenting classes, a psychological evaluation, therapy sessions, and he participated in several successful visits with his children. *See* TEX. FAM. CODE ANN. § 263.307(b)(10), (12); *Holley*, 544 S.W.2d at 372 (factors (B), (D), (E), (G)). He successfully completed a drug treatment program before the end of his case, but he did not attend trial, and his current sobriety status is unknown. *See* TEX. FAM. CODE ANN. § 263.307(b)(8); *Holley*, 544 S.W.2d at 372 (factors (B), (G)).

According to the testimony of Dad's last caseworker, Dad did not address his domestic violence tendencies over the course of his case. *See* TEX. FAM. CODE ANN. § 263.307(b)(7), (11); *Holley*, 544 S.W.2d at 372 (factors (B), (C), (D), (E), (G)). He was required to complete domestic violence classes but was discharged unsuccessfully three times due to his failure to attend. The caseworker testified that Dad also failed to provide proof of income and stable housing, which were requirements of the service plan. *See* TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 372 (factors (B), (D), (G)). The caseworker also testified that Dad experienced several

setbacks, including incarceration, a sexual abuse allegation from his stepdaughter, and halted child visitations. According to the caseworker, Dad stopped communicating with him and failed to complete the steps required for him to regain custody of his children. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *Holley*, 544 S.W.2d at 372 (factors (B), (D), (F), (G)).

B. Children's Placement

Dad's last caseworker testified that the children's foster mom is an employee of the children's shelter where the children were first placed. The caseworker testified that the children and their foster mom developed a fast rapport, and the foster mom's supervisor recommended her for placement. The caseworker also testified that the children were eager to live with their foster mom and that they experienced an easy transition from the children's shelter to their foster mom's home where she lives with her husband. *See* TEX. FAM. CODE ANN. § 263.307(a); *Holley*, 544 S.W.2d at 372 (factors (B), (D), (G)). According to the caseworker, the children refer to them as Mommy and Poppy. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 372 (factors (B), (D), (G)).

Dad's caseworker testified that the children became quickly attached to their foster parents. The caseworker stated that at visits with their biological parents, the children would invite their foster parents to play, or they would go to their foster parents for comfort. The caseworker also stated that at the end of their visits, the children would ask for their foster mom. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 372 (factors (A), (B), (D), (G)).

The caseworker described how the children follow their foster parents around at home. He testified that the children rely on their foster parents for stability and consistency. *See* *Holley*, 544 S.W.2d at 372 (factors (B), (D), (G)). Also according to the caseworker's testimony, the children attend school regularly and visit their older siblings when they are available. The caseworker stated that the children do not ask for their Dad or express a desire to stay with him. *Holley*, 544

S.W.2d at 372 (factor (A)). The caseworker also stated that the children are thriving in their foster placement, and their foster parents hope to adopt them. *See Holley*, 544 S.W.2d at 372 (factors (B), (D), (G))

C. Ad Litem’s Recommendation

At trial, the children’s ad litem recommended terminating Dad’s parental rights. She noted that Dad completed substantial work on his service plan but did not meet all the requirements and did not attend trial. She did not believe that Dad’s continued involvement with the children would benefit their need for permanency or stability.

D. Legally, Factually Sufficient Evidence

Having reviewed the evidence, we conclude the trial court could have “reasonably form[ed] a firm belief or conviction” that it was in the children’s best interests for Dad’s parental rights to be terminated. *See In re J.L.*, 163 S.W.3d at 85; *In re H.R.M.*, 209 S.W.3d at 108 (citing *In re C.H.*, 89 S.W.3d at 25). The evidence was legally and factually sufficient to support the trial court’s best-interests-of-the-children findings. *See* TEX. FAM. CODE ANN. § 161.001(b)(2); *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002). We overrule Dad’s second issue.

CONCLUSION

The evidence of Dad’s alcohol abuse, domestic violence, and inability to pursue his children’s best interests was sufficient to support the trial court’s findings under subsection 161.001(b)(1)(E) and its findings on best interests of the children. Because the evidence was sufficient to support the trial court’s order terminating his parental rights, we affirm the trial court’s order.

Patricia O. Alvarez, Justice

ⁱ Clear and Convincing Evidence. If the Department moves to terminate a parent’s rights to a child, the Department must prove by clear and convincing evidence that the parent’s acts or omissions met one or more of the grounds for involuntary termination listed in section 161.001(b)(1) of the Family Code and that terminating the parent’s rights is

in the best interest of the child. TEX. FAM. CODE ANN. § 161.001(b); *In re J.F.C.*, 96 S.W.3d 256, 261 (Tex. 2002). The same evidence used to prove the parent's acts or omissions under section 161.001(b)(1) may be used in determining the best interest of the child under section 161.001(b)(2). *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002); *In re D.M.*, 452 S.W.3d 462, 471 (Tex. App.—San Antonio 2014, no pet.); *see also* TEX. FAM. CODE ANN. § 161.001(b). The trial court may consider a parent's past deliberate conduct to infer future conduct in a similar situation. *In re D.M.*, 452 S.W.3d at 472.

ii Statutory Grounds for Termination. The Family Code authorizes a court to terminate the parent-child relationship if, inter alia, it finds by clear and convincing evidence that the parent's acts or omissions met certain criteria. *See* TEX. FAM. CODE ANN. § 161.001(b). Here, the trial court found Mom's course of conduct met the following criteria or grounds:

- (D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
- (E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;
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- (N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services 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;
- (O) 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 of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child; [and]
- (P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:
 - (i) failed to complete a court-ordered substance abuse treatment program; or
 - (ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance.

Id. § 161.001(b)(1).

iii Legal Sufficiency. When a clear and convincing evidence standard applies, a legal sufficiency review requires a court to “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.*, 163 S.W.3d 79, 85 (Tex. 2005) (quoting *In re J.F.C.*, 96 S.W.3d at 266). If the court “determines that [a] reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true,” the evidence is legally sufficient. *See id.*

iv Factual Sufficiency. Under a clear and convincing standard, evidence is factually sufficient if “a factfinder could reasonably form a firm belief or conviction about the truth of the State's allegations.” *In re C.H.*, 89 S.W.3d at 25; *accord In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). We must consider “whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding.” *In re J.F.C.*, 96 S.W.3d at 266; *accord In re H.R.M.*, 209 S.W.3d at 108.

v Statutory Factors for Best Interest of the Child. The Texas legislature codified certain factors courts are to use in determining the best interest of a child:

- (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, the child's parents, other family members, or others who have access to the child's home;
- (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;

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- (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 consisting of an extended family and friends is available to the child.

TEX. FAM. CODE ANN. § 263.307(b); see *In re A.C.*, 560 S.W.3d 624, 631 (Tex. 2018) (recognizing statutory factors).

^{vi} Holley Factors. In *Holley v. Adams*, the Supreme Court of Texas identified the following factors courts may use to determine the best interest of a child:

- (A) the desires of the child;
- (B) the emotional and physical needs of the child now and in the future;
- (C) the emotional and physical danger to the child now and in the future;
- (D) the parental abilities of the individuals seeking custody;
- (E) the programs available to assist these individuals to promote the best interest of the child;
- (F) the plans for the child by these individuals or by the agency seeking custody;
- (G) the stability of the home or proposed placement;
- (H) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and
- (I) any excuse for the acts or omissions of the parent.

Holley v. Adams, 544 S.W.2d 367, 371–72 (Tex. 1976) (footnotes omitted); accord *In re E.N.C.*, 384 S.W.3d 796, 807 (Tex. 2012) (reciting the *Holley* factors).