



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00325-CV

IN THE INTEREST OF A.C., A
CHILD

FROM THE 323RD DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 323-102431-15

MEMORANDUM OPINION¹

Appellant M.F. (Mother) appeals the trial court's judgment terminating her parental rights to her daughter, A.C. (Ally).² Although Mother's brief does not contain an explicit issue statement, we construe the brief as raising a single contention: that the evidence is legally and factually insufficient to prove that

¹See Tex. R. App. P. 47.4.

²To protect the anonymity of people associated with this appeal, we use aliases. See Tex. Fam. Code Ann. § 109.002(d) (West 2014); Tex. R. App. P. 9.8(b)(2). The trial court also terminated the parental rights of E.C. (Father), but he has not brought an appeal.

termination is in Ally's best interest. We conclude that the evidence is legally and factually sufficient to support the trial court's finding that termination of Mother's parental rights is in Ally's best interest, so we affirm the trial court's judgment.

Background Facts

Mother met Father in 2013, conceived Ally with him, and gave birth to her in June 2015. She has three older children, each of whom has a history with the Department of Family and Protective Services (DFPS or the Department). Mother's parental rights to the child closest to Ally in age, M.F. (Mark),³ were terminated in March 2016 with findings that Mother had knowingly placed or allowed him to remain in conditions or surroundings that had endangered his physical or emotional well-being and had engaged in conduct or knowingly placed him with persons who engaged in conduct that had endangered his physical or emotional well-being. Mother maintains her parental rights to two older children, T.F. and J.F.

In October 2015, when Ally was five months old, DFPS received a referral alleging inadequate supervision of her. The referral alleged that Ally had been living with her maternal grandmother (who also cared for Mother's oldest two children) but had been allowed to have unsupervised contact with Mother and Father despite the fact that Father had a history of abusing children and had

³Mother gave birth to Mark in March 2014, so he and Ally are just over a year's age apart. Father is Mark's father, but he is not the father of Mother's oldest two children.

been barred by DFPS from having unsupervised access to children. The referral further alleged that one of Mother's children had been engaging in behavioral problems in the home; that Mother and Father had been arguing; and that as a result of the argument, Mother was attempting to send Father to jail.

Jasmine McDonald, an investigator with DFPS, talked with the maternal grandmother and Mother, and both of them denied that Mother and Father had enjoyed unsupervised access to the children. But one of the children in the home told McDonald that he, his brother, and Ally had been with Mother and Father unsupervised. Another child said that Ally had been with Mother without the supervision of the maternal grandmother. Mother acknowledged to McDonald that she was aware that Father had a history of abusing children. The Department removed Ally from her maternal grandmother's care⁴ while finding a "reason to believe" that Mother had neglected her supervision of Ally.

DFPS filed a petition in which it sought termination of Mother's parental rights to Ally if reunification between them could not be achieved. The trial court signed an order naming DFPS as Ally's temporary sole managing conservator and appointing an attorney ad litem to represent her. The court also appointed counsel to represent Mother.

⁴The Department did not remove Mother's oldest two children from the maternal grandmother, concluding that Ally was more vulnerable because of her age.

The Department filed a family service plan. The service plan expressed the Department's concern that Ally was too young to provide for or protect herself and that Mother had shown mental instability and poor choices that had placed Ally at risk of harm. The service plan required Mother to, among other acts, maintain consistent contact with her caseworker, complete parenting classes, maintain safe and stable housing, maintain employment, and complete a psychological evaluation and individual counseling. Before trial, the trial court signed a permanency order stating that Mother had not demonstrated adequate compliance with the service plan.

At a bench trial in August 2016, Mother, who was twenty-eight years old at that time, testified that she had recently lived with her mother, with a friend, and then back with her mother. Mother testified that the friend she had lived with was named Emily, but Mother did not know Emily's last name. Mother testified that she was no longer involved with Father in any way (except for seeing him while visiting Ally) and that she had separated from him near the time that she became pregnant with Ally. Mother admitted that she knew that Father had a criminal history and that he was not allowed to have unsupervised access to children. When she was asked whether she had any concerns about Father, she replied, "At one point I did but we're not together. So . . . I'm not here to talk about him. I'm here to talk about my daughter."

Mother testified that she does not have a driver's license and that she relies on her mother to provide transportation. She stated that she is currently

employed alongside her mother as a custodian at two sports stadiums and that she has previously been employed with a phone company, a store, and a restaurant. But Mother admitted that she had not provided proof of her employment to DFPS, and she testified that she forgot to bring such proof to trial.

Mother conceded that she had not completed a psychological evaluation or individual counseling even though DFPS had asked her to do so as part of both Ally's and Mark's cases and even though her caseworker had told her that doing so was important. She stated that her job schedule had prevented her from doing so. She acknowledged that she had violated a court order in Mark's case by not completing the psychological evaluation and counseling. She testified, however, that she had completed a psychiatric assessment, a drug and alcohol assessment, and parenting classes. Mother conceded that as of the date of the trial, she did not have stable housing. When Mother was asked whether it was in Ally's best interest to "keep waiting" on her to complete the services, Mother said no. After Ally's removal, Mother was entitled to have weekly visits with her, but Mother acknowledged at trial that she had missed some of the visits.

After the trial concluded, the trial court signed a judgment terminating Mother's parental rights to Ally. Among other findings, the trial court found that termination of the parent-child relationship was in Ally's best interest. Mother brought this appeal.

Ally's Best Interest

Mother contends only that the evidence is legally and factually insufficient to prove that termination is in Ally's best interest. In a termination case, the State seeks to erase parental rights permanently—to divest the parent and child of all legal rights normally existing between them, except the child's right to inherit. Tex. Fam. Code Ann. § 161.206(b) (West 2014); *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985). Termination decisions must be supported by clear and convincing evidence. See Tex. Fam. Code Ann. § 161.001(b) (West Supp. 2016); *In re E.N.C.*, 384 S.W.3d 796, 802 (Tex. 2012). Due process demands this heightened standard because a parental rights termination proceeding encumbers a value more precious than any property right. *In re E.R.*, 385 S.W.3d 552, 555 (Tex. 2012); *In re J.F.C.*, 96 S.W.3d 256, 263 (Tex. 2002); see also *E.N.C.*, 384 S.W.3d at 802. Evidence is clear and convincing if it “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.” Tex. Fam. Code Ann. § 101.007 (West 2014); *E.N.C.*, 384 S.W.3d at 802.

For a trial court to terminate a parent-child relationship, DFPS must establish by clear and convincing evidence that the parent's actions satisfy at least one ground listed in family code section 161.001(b)(1)⁵ and that termination

⁵Mother does not explicitly dispute this element of termination on appeal, and she concedes that “best interest of the child was the sole issue at trial.” The trial court's termination order concerning Ally includes findings that Mother had her parent-child relationship terminated with respect to another child based on

is in the best interest of the child. Tex. Fam. Code Ann. § 161.001(b); *E.N.C.*, 384 S.W.3d at 803; *In re J.L.*, 163 S.W.3d 79, 84 (Tex. 2005). In evaluating the evidence for legal sufficiency in parental termination cases, we determine whether the evidence is such that a factfinder could reasonably form a firm belief or conviction that DFPS proved the challenged ground for termination. *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005). We review all the evidence in the light most favorable to the finding and judgment. *Id.* We resolve any disputed facts in favor of the finding if a reasonable factfinder could have done so. *Id.* We disregard all evidence that a reasonable factfinder could have disbelieved. *Id.* We consider undisputed evidence even if it is contrary to the finding. *Id.* That is, we consider evidence favorable to termination if a reasonable factfinder could, and we disregard contrary evidence unless a reasonable factfinder could not. *See id.*

We are required to perform “an exacting review of the entire record” in determining whether the evidence is factually sufficient to support the termination of a parent-child relationship. *In re A.B.*, 437 S.W.3d 498, 500 (Tex. 2014). In reviewing the evidence for factual sufficiency, we give due deference to the

endangerment grounds and that she had failed to comply with provisions of a court order that established acts necessary for her to obtain Ally’s return. See Tex. Fam. Code Ann. § 161.001(b)(1)(M), (O). She challenges neither of these findings. And although Mother’s brief contains a discussion of endangerment grounds under subsections (D) and (E) of section 161.001(b)(1), the trial court’s order terminating her parental rights to Ally does not rely on findings under those subsections. See *id.* § 161.001(b)(1)(D), (E).

factfinder's findings and do not supplant the judgment with our own. *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). We determine whether, on the entire record, a factfinder could reasonably form a firm conviction or belief that DFPS proved grounds for termination. Tex. Fam. Code Ann. § 161.001(b); *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002).

There is a strong presumption that keeping a child with a parent is in the child's best interest. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006). The prompt and permanent placement of a child in a safe environment is also presumed to be in the child's best interest. See Tex. Fam. Code Ann. § 263.307(a) (West Supp. 2016); *In re E.P.C.*, 381 S.W.3d 670, 685 (Tex. App.—Fort Worth 2012, no pet.) (en banc). Nonexclusive factors that the trier of fact in a termination case may use in determining the best interest of the child include the desires of the child, the emotional and physical needs of the child now and in the future, the emotional and physical danger to the child now and in the future, the parental abilities of the individuals seeking custody, the programs available to assist these individuals to promote the best interest of the child, the plans for the child by these individuals or by the agency seeking custody, the stability of the home or proposed placement, the acts or omissions of the parent that may indicate the existing parent-child relationship is not a proper one, and any excuse for the acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976).

The evidence showed that before Ally's October 2015 removal from her maternal grandmother's care, DFPS had found that Mother had inadequately supervised Ally's brother, Mark, by allowing Father to have access to him "after understanding [DFPS's] concerns regarding [Father's] extensive [DFPS] and criminal history." Ally's removal occurred because after Mother and Father engaged in an argument, Father decided to "tell the truth" about their continuing contact with Ally—that he and Mother had kept Ally "for days at a time" without supervision. When DFPS investigated, one of Mother's children confirmed that he, his brother, and Ally had been with Mother and Father without supervision.⁶

Father has a volatile and troubling history with children. In 2004, he pled guilty to recklessly causing serious bodily injury to a child, and he was placed on five years' probation. The evidence indicates that the child who was the victim of that offense died as a result of Father's acts. It also indicates that the abuse consisted of Father hitting the child, grabbing the child's penis and "holding it firmly," and pushing an ear piece from a pair of glasses into the child's anus. In 2008, one of Father's daughters died from suffocation after she was sleeping with Father on a couch. In 2013, Father pled guilty to causing bodily injury to one

⁶On appeal, Mother classifies this child's statement as hearsay, but she did not object to evidence concerning the statement in the trial court, and unobjected-to hearsay has probative value. See Tex. R. Evid. 802. Mother also emphasizes that some evidence at trial contradicted the child's statement, but our standard of review recognizes the trial court's authority to resolve disputed facts. See *J.P.B.*, 180 S.W.3d at 573.

of his sons and was again placed on probation. The indictment related to that charge alleged that Father had hit the child with his hand.

As a result of these acts, DFPS prohibited Father from having unsupervised contact with any children. Shaughn Reyenga, the caseworker in Ally's case at the time of trial, testified that he was concerned about the possibility of Mother's continued contact with Father because she had refused to visit Ally separately from him, claiming that doing so would confuse Ally, and because she had expressed "some interest in continuing to want to coparent" with him. Reyenga also testified that during Ally's case, Mother reported to him that she was pregnant and stated that she "wasn't going [to] allow [DFPS] to have access to [that] child[,] . . . and she wouldn't inform us of who the father was."⁷ Reyenga testified that Mother communicates with Father's sister frequently. When Reyenga was asked if he had concerns about whether Mother and Father had been honest about the extent of their relationship, Reyenga stated that he did and explained,

[I]n different conversations when I've spoken with [Mother], she's reported that she has not been in a relationship with [Father] until right around the time of [Mark's] removal in [October 2014]. And then when I discussed the issue with [Father], he's reported that it was a little before [Ally's] removal that they were in a relationship or they ended their relationship.

⁷Mother testified at trial that after birthing Ally, she had believed she was pregnant with another child, but she had been mistaken.

Although, as Mother contends, the evidence does not establish that she knew all of the details of Father's acts with children, it shows that she knew of his prohibition from unsupervised access to them. Nonetheless, Father's unsupervised access to Mark and to Ally motivated DFPS to take custody of each of them. The trial court could have reasonably weighed Mother's failure to prevent Father's unsupervised access to Mark and to Ally and evidence suggesting her desire to continue some form of a relationship with him in favor of a finding that termination of Mother's parental rights was in Ally's best interest. See *Holley*, 544 S.W.2d at 371–72; *In re A.W.*, 444 S.W.3d 690, 699 (Tex. App.—Dallas 2014, pet. denied) (holding that termination was in children's best interest when their safety and security "was not [the mother's] number one priority"); *In re C.J.F.*, 134 S.W.3d 343, 354 (Tex. App.—Amarillo 2003, pet. denied) (considering a parent's failure to protect a child from another parent as evidence supporting a best interest finding).

Next, the evidence proves that Mother did not complete all of the services that DFPS required in either Mark's or Ally's cases. In August 2015, in Mark's case, Mother signed an agreed order requiring her to complete a psychological evaluation and counseling. She did not complete the psychological evaluation or counseling in that case or in Ally's case. Reyenga testified that he wanted Mother to complete counseling because he wanted her

to address the concerns . . . we had in terms of credibility, just being forthcoming and cooperative with the Department during the case, to . . . address the concerns regarding her understanding of [Father's

DFPS] and criminal history and how detrimental that can be to the safety and well-being of her two children and then just addressing her lifestyle as well, ensuring that she can provide [] safe and stable housing, employment, and can be a supportive parent for her children.

The trial court could have reasonably weighed Mother's repeated failure to complete services aimed at equipping her to reconcile with her children in favor of its finding that termination of her parental rights was in Ally's best interest. See *In re M.R.*, 243 S.W.3d 807, 821 (Tex. App.—Fort Worth 2007, no pet.); see also *In re J.-M. A.Y.*, Nos. 01-15-00469-CV, 01-15-00589-CV, 2015 WL 6755595, at *7 (Tex. App.—Houston [1st Dist.] Nov. 5, 2015, pets. denied) (mem. op.) (“[A] factfinder may infer from a parent's failure to take the initiative to complete the services required to regain possession of her children that she does not have the ability to motivate herself to seek out available resources needed now or in the future.”).

Furthermore, the trial court could have reasonably found that Mother would not have the capacity to support Ally financially if the court returned Ally to her care and could have considered that finding in its best interest determination. See *In re T.R.*, 491 S.W.3d 847, 856 (Tex. App.—San Antonio 2016, no pet.) (considering a parent's failure to provide proof of employment in a best interest review); *In re Z.C.*, 280 S.W.3d 470, 476 (Tex. App.—Fort Worth 2009, pet. denied) (considering a parent's “precarious” employment status). During at least part of the time when Mother's children stayed with her parents, Mother did not provide financial assistance for the children. Although Mother testified that she

was employed at the time of the trial and that she had worked at several different jobs before her current employment, she did not provide documents proving any employment to DFPS or to the trial court despite DFPS's request for her to do so. Reyenga testified that Mother's failure to provide proof of her employment concerned him because it showed a "lack of stability in terms of whether or not she [was] doing what [she was] reporting that [she was] doing[,] . . . [and] I feel like it decrease[d] her level of credibility with [DFPS]."

Similarly, the trial court could have rationally weighed Mother's admittedly unstable housing situation in favor of its best interest finding. See *Z.C.*, 280 S.W.3d at 476. Reyenga testified that about a month before trial, Mother told him that she was living with a friend but would not give him the friend's information so that he could view the home. He stated that Mother had not told him recently that she was living with her mother. Mother testified that leading up to the trial, she had lived with her mother, then with a friend whose first name was Emily and whose last name Mother did not know, and then with her mother again. When Reyenga was asked about his concerns regarding Mother's ability to provide a stable home for Ally, he testified that the concerns stemmed from Mother's

decision-making related to the credibility and terms of being honest and forthcoming with information, the lack of verification of employment, just in terms of being able to financially provide for [Ally], lack of stable housing or at least giving me the information or allowing me to be able to assess the home to ensure it is [a] safe and appropriate home, there aren't any safety hazards or people inside the home that would be concerning for [Ally] to be around and also just the suspicion that there might continue to be communication with [Father] as well.

Next, the trial court could have found that termination of Mother's parental rights was in Ally's best interest based on Ally's stable condition in her foster home; on DFPS's proposed plan for her to live there permanently; and on her bond with her brother, who lives there. See *id.* (holding that stability and permanence found in foster care and children's improving condition while living there was sufficient to support a best interest finding). Reyenga explained that at the time of trial, Ally was in a foster home where Mark, with whom Ally had a "strong bond," also lived. He testified that the foster home is licensed to adopt and that DFPS's plan was adoption by the foster family. Reyenga stated that Ally was doing well, was "receiving a lot of socialization" in daycare, and was developmentally on target.

The trial court could have also relied on Mother's failure to demonstrate consistent parenting abilities in its best interest determination. See *Holley*, 544 S.W.2d at 372. The evidence shows that Mother had her parental rights terminated with regard to Mark with a finding that she had endangered his physical or emotional well-being and that her other three children, including Ally, were being raised by Mother's mother at the time of Ally's removal.

Finally, the trial court could have reasonably relied on the recommendation of Ally's attorney ad litem as supporting the best interest finding. See *In re O.N.H.*, 401 S.W.3d 681, 688 (Tex. App.—San Antonio 2013, no pet.); *Z.C.*, 280 S.W.3d at 476. Near the end of the bench trial, Ally's attorney ad litem stated,

I have visited with [Ally] in the . . . foster home, observed visits with the parents, spoken with the caseworker numerous times, I've spoken with the parents, I've visited with the maternal grandparents, been to their home This child needs stability and most importantly she has a bond with her brother and I wanted to see how that was going to work out since they had been living in separate foster homes but it seems to have worked out really[,] really well. They look for each other. She seems to be flourishing where she is, and as much as I do not like terminating parental rights, I do feel in this case that it is appropriate as to . . . both parents.

We recognize that some evidence in the record weighs against the best interest finding. Mother expressed that she had ended her relationship with Father, that she was employed, that her employment made completing services difficult, that she loved Ally, and that she had attended most visits with Ally. The record shows that Mother completed some of the services in her service plan. When Mother's counsel asked her to tell the trial court why it should not terminate her parental rights to Ally, she stated,

[A]in't no such thing as a perfect parent. . . . I'm not on drugs. I don't . . . drink. I don't do none of that. I'm not on the street. I got two jobs. Obviously, I can't prove it right now because I forgot my paperwork. I'm willing to give the judge my [boss's] number, my manager's number, the address of my jobs, my -- luckily I got my schedule -- a picture of my schedule on my phone that I can show the judge. That's my only daughter. I don't have no other daughters. I love my daughter with all my heart. It took me, you know, to go through all this to realize, you know, the mistake I made in the past. People make mistakes and I learned from that. Ever since that mistake, I've been [focusing] on my kids and that means [Ally], even [Mark] even though he's gone. I'm trying to get him back and my two oldest. I can't just put all any concentration on one child since I'm dealing with [DFPS]. But right now I'm breaking my back, two jobs, trying to work and trying to find -- you know, go to the visits when they want me to go to the visits. I'm trying my hardest to, you know, do everything that I can to be there for my kids . . . so I would like a chance to at least be involved in my child's life.

Although this evidence and other evidence within the record weighs against the trial court's best interest finding, we conclude that the evidence in support of the finding, including the facts summarized above, could have supported a factfinder's firm belief or conviction that termination of Mother's parental rights was in Ally's best interest. Thus, we conclude that the evidence is legally and factually sufficient to support the trial court's judgment of termination. See *J.P.B.*, 180 S.W.3d at 573; *C.H.*, 89 S.W.3d at 28. We overrule Mother's sole issue.

Conclusion

Having overruled Mother's only issue, we affirm the trial court's judgment terminating her parental rights to Ally.

/s/ Terrie Livingston

TERRIE LIVINGSTON
CHIEF JUSTICE

PANEL: LIVINGSTON, C.J.; WALKER and MEIER, JJ.

DELIVERED: March 2, 2017