



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

NO. 02-17-00047-CV

IN THE INTEREST OF T.S., A
CHILD

FROM THE 322ND DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 322-606335-16

MEMORANDUM OPINION¹

Appellant T.W.S. (Father) appeals the trial court's final order terminating his parental rights to his son, T.S. We will affirm as modified.

T.S.'s mother is A.B. (Mother). In June 2015, CPS received a report of physical neglect by Mother of two of her other children. At the time, Mother was homeless and unable to care for them. CPS removed the children from Mother's care, but then eleven-year-old T.S., who was living with his maternal grandmother, remained under her care. Several months later, in September 2015, T.S.'s grandmother reported that she was unable to care for him, so he

¹See Tex. R. App. P. 47.4.

was placed with I.J. T.S. subsequently experienced some behavioral issues, and I.J. reported that she was unable to care for him. TDFPS asked Mother about potential placements for T.S., and she identified Father, but the only information that Mother had about him was that he worked at a chicken restaurant. TDFPS was unable to locate Father, and in December 2015, it was appointed temporary managing conservator of T.S., who was placed in a foster home. TDFPS filed a petition to terminate the parent-child relationship between T.S. and Mother and Father.

TDFPS located Father at some point, and in late February 2016, he signed and acknowledged receiving a family service plan that was made an order of the court and that required him to visit T.S., complete parenting classes, obtain and maintain stable employment and housing, submit to drug tests, and maintain contact with TDFPS.² Father completed the parenting classes and remained employed by the chicken restaurant, but he refused to submit to drug testing (and admitted to using marijuana), attended only about half of his visits with T.S., and failed to maintain contact with TDFPS in the month leading up to the final termination trial. Mother completed no part of her service plan.

Although both knew about the final termination trial in December 2016, neither Mother nor Father attended it.³ The trial court ultimately signed an order

²Father also filed a waiver of service.

³Both Mother and Father were represented by appointed counsel at the trial.

terminating the parent-child relationship, “if any,” between T.S. and Father, finding by clear and convincing evidence not only that termination was in T.S.’s best interest but also that Father had (1) failed to timely file an admission of, or a counterclaim for, paternity under family code chapter 160; (2) constructively abandoned T.S.; and (3) failed to comply with the provisions of a court order establishing the actions necessary to obtain T.S.’s return. See Tex. Fam. Code Ann. §§ 161.001(b)(1)(N), (O), (2), 161.002(b)(1) (West Supp. 2016). The trial court also terminated Mother’s parental rights to T.S. Father appeals. Mother does not.

In two issues, Father challenges the legal and factual sufficiency of the evidence to support the trial court’s best interest and family code section 161.001(b)(1)(N) and (O) findings. The State initially responds that we should summarily overrule Father’s issues because he failed to challenge an independent ground that supports the trial court’s termination order—the section 161.002 finding. Section 161.002 provides that the parental rights of an alleged father may be terminated if “after being served with citation, he does not respond by timely filing an admission of paternity or a counterclaim for paternity under Chapter 160.” *Id.* § 161.002(b)(1). On two prior occasions, this court has declined to affirm a termination order on an unchallenged section 161.002 finding because, although the father did not assert his paternity via an admission or a counterclaim, he did appear for trial, testify that he was the child’s father, and either request that his rights not be terminated or testify that he was responsible

for the child. See *In re A.R.F.*, No. 02-13-00086-CV, 2013 WL 3874769, at *13 (Tex. App.—Fort Worth July 25, 2013, no pet.) (mem. op.); *In re D.B.*, No. 02-07-00428-CV, 2008 WL 2553343, at *7 (Tex. App.—Fort Worth June 26, 2008, no pet.) (mem. op.). However, on another occasion, we affirmed a termination order on an unchallenged section 161.002 finding because unlike in *A.R.F.* and *D.B.*, the father visited the child only once and did not appear for trial and testify that he was the child’s father. See *In re D.T.*, No. 02-13-00331-CV, 2014 WL 261408, at *2–3 (Tex. App.—Fort Worth Jan. 23, 2014, no pet.) (mem. op.). In this case, Father did not appear for trial and testify that he was T.S.’s father, but he did complete parenting classes and attend about half of his scheduled visits with T.S. Although a close call, this cause is more like *A.R.F.* and *D.B.* than it is like *D.T.* We therefore decline the State’s invitation to affirm the termination order on the section 161.002 finding and will address Father’s dispositive issues.

Termination decisions must be supported by clear and convincing evidence. See Tex. Fam. Code Ann. §§ 161.001(b), 161.206(a) (West 2014); *In re E.N.C.*, 384 S.W.3d 796, 802 (Tex. 2012). In evaluating the evidence for legal sufficiency, we determine whether the evidence is such that a factfinder could reasonably form a firm belief or conviction that TDFPS 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.*

In reviewing the evidence for factual sufficiency, we determine whether, on the entire record, a factfinder could reasonably form a firm conviction or belief that the parent violated the relevant conduct provision of section 161.001(b)(1). *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002). The same standards apply to a best-interest evidentiary sufficiency inquiry.

Father's only challenge to the trial court's section 161.001(b)(1)(O) finding is that it contains an improper reference to "mother" instead of to "father."⁴ He argues that he "has no duty by statute to comply with provisions that are necessary for the mother to obtain the return of T.S." Viewed in context, the reference to "mother" is clearly a typographical error. The section 161.001(b)(1)(O) finding is contained in section 7.3.5 of the termination order. Section 7 of the termination order is devoted entirely to "Termination of Respondent *Father* [T.W.S.'s] Parental Rights." [Emphasis added.] Indeed, section 7.2 addresses the trial court's section 161.002 finding, which could only apply to Father, and section 7.3.4—the trial court's section 161.001(b)(1)(N) finding—repeatedly references "father." We disregard the oversight and construe section 7.3.5 as if it instead said "father." See *In re D.M.*, No. 04-14-00059-CV, 2014 WL 2917458, at *3–4 (Tex. App.—San Antonio June 25, 2014, no pet.) (mem. op.) (reasoning similarly). Further, to alleviate any potential confusion in the future, we will modify the trial court's termination order so that it correctly

⁴The order states in relevant part that Father "failed to comply with the provisions of a court order that specifically established the actions necessary for the *mother* to obtain the return of the child" [Emphasis added.]

references “father.” *Cf. In re C.L., Jr. & A.J.L.*, No. 05-14-01520-CV, 2015 WL 682159, at *2 (Tex. App.—Dallas Feb. 18, 2015, no pet.) (mem. op.). We overrule Father’s first issue and do not reach his argument challenging the trial court’s section 161.001(b)(1)(N) finding. See Tex. R. App. P. 47.1.

In his second issue, Father argues that the evidence is legally and factually insufficient to support the trial court’s best-interest finding because TDFPS asked only one conclusory question that was relevant to the best-interest inquiry—whether it was TDFPS’s position that terminating both Mother’s and Father’s parental rights was in T.S.’s best interest, to which T.S.’s caseworker responded, “Yes.” This argument is frivolous. Evidence can be relevant to the best-interest inquiry even if it is not associated with a question that expressly contains the words “best interest.” Specifically, we review the entire record to determine the child’s best interest. *In re E.C.R.*, 402 S.W.3d 239, 250 (Tex. 2013). The same evidence may be probative of both the subsection 161.001(b)(1) ground and best interest. *Id.* at 249; *C.H.*, 89 S.W.3d at 28. Further, there are numerous nonexclusive factors that the trier of fact in a termination case may use in determining the best interest of the child. See *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976); see also *E.C.R.*, 402 S.W.3d at 249.

We have already determined that termination was appropriate under the trial court’s section 161.001(b)(1)(O) finding. Although Father completed parenting classes and remained employed at the chicken restaurant, he refused to submit to drug testing, admitted to using marijuana, attended only about half of

his visits with T.S., and failed to maintain contact with TDFPS. T.S.'s caseworker testified that Father could not provide T.S. with a safe and stable environment, that T.S. "has a lot of resentment towards [Father]" and "doesn't think that [Father] likes him because [Father] doesn't show up to all of the visits," and that T.S.'s foster parents may adopt him. According to the caseworker, T.S. said that "he doesn't want to go to [Father] because he doesn't show up to see him." Father has multiple criminal convictions, most of which are drug related. Viewed under the appropriate standards of review, the evidence is legally and factually sufficient to support the trial court's best-interest finding. See *J.P.B.*, 180 S.W.3d at 573; *C.H.*, 89 S.W.3d at 28. We overrule Father's second issue.

We modify section 7.3.5 of the trial court's January 24, 2017 order terminating the parent-child relationship between Father and T.S. by replacing the word "mother" with the word "father." Having overruled Father's two issues, we affirm the trial court's termination order as modified.

/s/ Bill Meier
BILL MEIER
JUSTICE

PANEL: MEIER, GABRIEL, and SUDDERTH, JJ.

DELIVERED: May 25, 2017