In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-20-00094-CV

IN THE INTEREST OF C.C.

On Appeal from the 323rd District Court
Tarrant County, Texas
Trial Court No. 323-110380-19

Before Birdwell, Bassel, and Womack, JJ.
Memorandum Opinion by Justice Birdwell

MEMORANDUM OPINION

Appellant Father challenges the factual sufficiency of the evidence to support the termination of his parental rights to C.C. We affirm.

Nine days after C.C.'s birth, the Department filed a petition to terminate Mother's and Father's parental rights. Mother filed an affidavit relinquishing her parental rights, and she does not appeal.

When the case went to trial in March 2020, the Department argued that Father had constructively abandoned C.C. To that end, the Department endeavored to prove that C.C. had been in the Department's temporary managing conservatorship for longer than six months (which was undisputed), and that Father had demonstrated an inability to provide a safe environment for C.C. and had not regularly visited or maintained significant contact with the child despite the Department's reasonable efforts to reunite the family, as well as that termination served the child's best interest. *See* Tex. Fam. Code Ann. § 161.001(b)(1)(N), (2).

The Department's caseworker Arlet Martinez testified that she drafted a family service plan for Father in an effort to reunite him with his son, but Father did not complete any of the services. Instead, a few months after C.C.'s removal, Father relocated to Illinois with Mother, and Father had not made any effort to contact C.C. in the nearly eight months since the move. According to Martinez, she tried to help Father find services in Illinois, but he did not engage in those services. She also sent

Father videos of C.C., and whereas Mother sent a video of herself in return, Father did not reciprocate by sending letters, videos, or resources for C.C.'s care.

By Martinez's account, Father told her that he wanted to sign an affidavit of relinquishment, but he had not been "able" to do so; his efforts had been hindered by his recent stay in a mental institution. Martinez reported that after Father's release from the institution, he texted Martinez that "he just wanted his case closed" and that he had no interest in discussing the case further. Father also informed her of an incident a few weeks prior to trial in which Mother and Father were physically violent with one another. In Martinez's view, Father was unable to provide C.C. with a safe environment.

Ultimately, Martinez believed that Father had constructively abandoned C.C. She also believed that termination of Father's parental rights would be in C.C.'s best interest, both because of Father's circumstances and because C.C. was already placed with loving foster parents who intended to adopt him.

After Martinez's testimony, the trial court heard from C.C.'s foster mother, who related that she and her husband (a pastor) were very bonded to C.C., that they intended to adopt him, and that she believed C.C. would continue to flourish in their care.

Father did not appear at trial, and his counsel did not contest any of the Department's evidence in support of termination. To wit, the only questions that Father's counsel asked during the entire proceeding were ones in which he intentionally *supported* the State's case for termination by offering further proof of Father's inability

to provide C.C. with a safe environment: counsel represented that Father was living in a tent in his mother's backyard, and Martinez agreed that living in a tent in the middle of winter in Chicago "would not be a good idea."

The trial court then heard closing argument, during which the Department and Mother both requested termination. For his part, Father's counsel gave a very brief closing in which he also endorsed the termination: "Your Honor, in speaking with my client, he has no objections to what the Court is doing here today. He knows his son is in a good home and will be well provided for."

The trial court found by clear and convincing evidence that Father constructively abandoned C.C. and that termination was in C.C.'s best interest.

On appeal, Father does not contest the trial court's best interest finding. Rather, he argues only that the evidence is factually insufficient to establish constructive abandonment.

In response, the Department insists that under the doctrines of invited error and equitable estoppel, Father may not challenge the sufficiency of the evidence to support a judgment that he induced. The Department argues that because Father stated that he had "no objection" to the termination and gave many other indications that he desired termination, Father effectively invited the trial court to grant the termination, and he should be precluded from challenging it on appeal. Because the evidence is sufficient to demonstrate constructive abandonment, we do not decide whether Father invited the trial court's ruling. *See In re D.J.L.*, No. 14-16-00342-CV, 2016 WL 6108341, at *3

(Tex. App.—Houston [14th Dist.] Oct. 18, 2016, no pet.) (mem. op.) (using the same approach).

In parental termination cases, due process mandates a clear and convincing evidence standard of proof. *In re N.G.*, 577 S.W.3d 230, 235 (Tex. 2019) (per curiam). "Clear and convincing evidence" means a "measure or degree of 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.* (quoting Tex. Fam. Code Ann. § 101.007). Given this heightened standard of proof, a heightened standard of appellate review is also warranted in parental termination cases. *In re A.B.*, 437 S.W.3d 498, 502 (Tex. 2014). Under that standard, a factual sufficiency review requires us to determine whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the State's allegations. *Id.* If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient. *Id.* at 503.

The Texas Family Code allows for involuntary termination of parental rights if clear and convincing evidence demonstrates that a parent engaged in one or more of the twenty-one enumerated grounds for termination and that termination is in the best interest of the child. *In re C.W.*, 586 S.W.3d 405, 406 (Tex. 2019) (per curiam) (citing Tex. Fam. Code Ann. § 161.001(b)). One of those grounds is constructive abandonment; there is a ground for termination if the court finds by clear and

convincing evidence that the parent has constructively abandoned the child who has been in the Department's permanent or temporary managing conservatorship 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. Tex. Fam. Code. Ann. § 161.001(b)(1)(N).

It is undisputed that C.C. was in the Department's temporary managing conservatorship for not less than six months. But Father disputes the finding that the Department made reasonable efforts to reunite C.C. and Father. Father questions the adequacy of the Department's efforts to provide him with services, particularly once he moved to Illinois.

We hold the evidence factually sufficient to establish this element. "[T]he implementation of a family service plan by the Department is considered a reasonable effort to return a child to its parent if the parent has been given a reasonable opportunity to comply with the terms of the plan." *In re G.T.*, No. 02-17-00279-CV, 2017 WL 6759036, at *3 (Tex. App.—Fort Worth Dec. 28, 2017, no pet.) (mem. op.). Martinez testified that she implemented a family service plan for Father that offered a range of resources to benefit him as a parent. She further testified that instead of taking advantage of those resources, Father moved to Illinois—a place that was beyond the reach of the Department's funding. Nonetheless, Martinez explained that she attempted to maintain contact with Father and to arrange services for him in Illinois.

But Father did not take advantage of those services; instead, he expressed interest in signing an affidavit of relinquishment and then declined further contact with her, telling her that he simply wanted the case to be over. Father did not present any evidence that tended to contradict these facts or to otherwise cut against termination. On balance, this evidence would reasonably justify a firm belief or conviction in favor of this element. *See In re J.S.*, No. 02-19-00231-CV, 2019 WL 5655254, at *5 (Tex. App.—Fort Worth Oct. 31, 2019, pet. denied) (mem. op.).

Next, Father contends the evidence is factually insufficient to prove that he failed to regularly visit or maintain significant contact with C.C. According to Martinez's testimony, Father did not have any contact with C.C. from June 2019 through the trial in March 2020, and Father did not present any contrary evidence. The undisputed fact that Father had no contact with C.C. for eight months is factually sufficient to establish this element. *See In re K.G.*, 350 S.W.3d 338, 355 (Tex. App.—Fort Worth 2011, pet. denied) (deeming the evidence factually sufficient to support this element where it was undisputed that the parent had not seen the child in the five months prior to trial).

Finally, Father disputes the factual sufficiency of the evidence to show an inability to provide C.C. with a safe environment. But Father himself told Martinez of his recent domestic violence episode and his stay in a mental institution. Martinez opined that Father was unable to provide C.C. with a safe environment. And Father's counsel represented in open court that Father was living in a tent in Chicago during the coldest months of the year. This was a "quasi-admission" that the trial court, as the

trier of fact, was entitled to give some evidentiary weight. *See Mendoza v. Fid. & Guar. Ins. Underwriters, Inc.*, 606 S.W.2d 692, 694 (Tex. 1980) (noting that "quasi-admissions"—a party's testimonial declarations that are contrary to his position—are "some evidence" that the trier of fact may weigh); *see also Tex. Tax Sols., LLC v. City of El Paso*, 593 S.W.3d 903, 910 (Tex. App.—El Paso 2019, no pet.) (holding that declarations in open court by a party's attorney may also constitute admissions of this kind). Taking this evidence together—and with no countervailing evidence that could count in Father's favor—we hold the evidence factually sufficient to support this element as well. *See M.C. v. Tex. Dep't of Family & Protective Servs.*, 300 S.W.3d 305, 310 (Tex. App.—El Paso 2009, pet. denied) (counting a mother's unstable housing, mental illness, and anger management problems among the facts that rendered the evidence factually sufficient to establish this element).[1]

Having concluded that the evidence is factually sufficient to establish all of the elements that Father has challenged, we affirm the trial court's judgment terminating Father's parental rights.

/s/ Wade Birdwell
Wade Birdwell
Justice

Delivered: July 2, 2020

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[1]Father also argues that the evidence is insufficient to demonstrate the reason that C.C. was removed from Father's care. However, that was not an element which the Department was required to prove in order to establish constructive abandonment.