



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-15-00389-CV

IN THE INTEREST OF T.R.C., A.N.K. AND L.S.C., CHILDREN

On Appeal from the 316th District Court
Hutchinson County, Texas
Trial Court No. 41,273, Honorable James M. Mosley, Presiding

March 25, 2016

MEMORANDUM OPINION

Before QUINN, CJ., and CAMPBELL and PIRTLE, JJ.

This is an appeal from the trial court's order terminating the parental rights of the mother to her three children, T.R.C.,¹ A.N.K., and L.S.C., and terminating the parental rights of the father of A.N.K. and L.S.C.² Appellants challenge the order, contending the evidence presented at the final hearing was insufficient to sustain the court's order. See

¹ The rights of the father of T.R.C. also were terminated in this proceeding. He is not a party to this appeal.

² To protect the children's privacy, we will refer to appellants and the children by their initials. See TEX. FAM. CODE ANN. § 109.002(d) (West 2011); TEX. R. APP. P. 9.8(b).

TEX. FAM. CODE ANN. §§ 161.001(b)(1), 161.001(b)(2) (West 2015).³ We will affirm the trial court's order.

Background

The mother and the father met in 2006 and married in 2011. At the time of the final hearing, the mother was thirty years old, the father, thirty-three. When the couple met, the mother was pregnant with T.R.C.⁴ The mother and father moved in together, living with the father's mother. A.N.K. was born in 2010, L.S.C. in 2012. At the final hearing, T.R.C. was eight years old, A.N.K. was four and L.S.C. was three.

The father was incarcerated for much of the parties' relationship and was still in prison at the time of the final hearing. The parents routinely engaged in drug use during their time together and the father committed a number of felony criminal offenses related to that drug use.

In December 2012, after the mother tested positive for methamphetamines, the Texas Department of Family & Protective Services opened a case investigating the mother's care of the three children. Trial testimony showed the Department was concerned about the mother's drug use, the neglectful supervision of her children, and the unsanitary condition of her home. In September 2013, three-year-old A.N.K. was found about a mile from her home, after the mother left her in the care of an ailing

³ Effective April 1, 2015, this section of the Family Code was re-codified. See Act of Mar. 30, 2015, 84th Leg., R.S., S.B. 219, ch. 1, § 1.078, sec. 161.001, 2015 Tex. Sess. Law Serv. 1, 18-20 (West 2015) (to be codified as an amendment to Tex. Fam. Code Ann. § 161.001).

⁴ The mother was initially unsure who fathered that child.

grandparent. Then in April 2014, A.N.K. was found alone at a neighbor's home after 11:00 p.m. Police were contacted.

When police returned A.N.K. to the mother's home, they found it to be "very dirty." Soiled diapers lay on the floor, clothes were "ankle-deep" in several rooms, chocolate syrup was in the children's bed, and there were dirty dishes and trash throughout the home. The children were dirty with matted hair and a "black sticky" substance on their feet. The same substance was on the floor of the home. L.S.C. had an unexplained large bruise on his upper buttocks and lower back, and bruising on his face, forehead, and arms. T.R.C. also had unexplained bruising on her legs.

Days later, the Department filed pleadings with the trial court. In May 2014, the children were removed from the mother's home and placed with the mother's father and stepmother. After three months, the father and stepmother told the Department they were unable to handle the children. The children were placed in an emergency shelter in Lubbock and then placed together in a foster home in Lubbock in September 2014. T.R.C. and L.S.C. were in that same foster home at the time of the final hearing. A.N.K. had been placed in a foster home in Borger after she exhibited behaviors the family was unable to address. She remained in that placement at the time of the final hearing.

A final hearing on the termination of the parents' rights was held in September 2015. Both parents appeared and testified. A Department caseworker, a counselor, a psychologist, a family services employee, and family members also testified. The trial court's termination order found, among other grounds, the mother engaged in conduct or knowingly placed the children with persons who engaged in conduct which

endangered their physical or emotional well-being and that termination of the mother's parental rights was in the children's best interests. It made similar findings with regard to the father and his parental rights to A.N.K. and L.S.C. Both parents appealed.

Analysis

Standard of Review in Termination Cases

The natural right existing between parents and their children is of constitutional dimension. *Santosky v. Kramer*, 455 U.S. 745, 758-59, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985). Parental rights, however, are not absolute, and it is essential that the emotional and physical interests of a child not be sacrificed merely to preserve those rights. *In re C.H.*, 89 S.W.3d 17, 26 (Tex. 2002).

The Due Process Clause of the United States Constitution and section 161.001 of the Texas Family Code require application of the heightened standard of clear and convincing evidence in cases involving involuntary termination of parental rights. *In re E.N.C.*, 384 S.W.3d 796, 802 (Tex. 2012); *In re J.F.C.*, 96 S.W.3d 256, 263 (Tex. 2002). Clear and convincing evidence is that measure or degree of proof which 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); *In re C.H.*, 89 S.W.3d at 25-26.

In applying the clear and convincing standard under our legal sufficiency standard, we consider all the evidence in the light most favorable to the court's finding to determine whether a reasonable trier of fact could have formed a firm belief or

conviction that its finding was true. *In re E.N.C.*, 384 S.W.3d at 802 (citing *In re J.F.C.*, 96 S.W.3d at 266). To give appropriate deference to the factfinder's conclusions, we must assume the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so. *In re E.N.C.*, 384 S.W.3d at 802. As a corollary to this requirement, an appellate court should also disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible. *Id.* If a court determines that no reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true, then the evidence is legally insufficient. *Id.*

In a factual sufficiency review, a court of appeals must give due consideration to the evidence the factfinder could reasonably have found to be clear and convincing. *In re C.H.*, 89 S.W.3d at 25. We determine whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the Department's allegations. *Id.* In doing so we consider whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding. *Id.* If, in light of the entire record, the 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. *In re J.F.C.*, 96 S.W.3d at 266.

The Family Code permits a trial court to terminate parental rights if the Department proves by clear and convincing evidence that the parent committed an action prohibited under section 161.001(b)(1) and termination is in the child's best interests. TEX. FAM. CODE ANN. § 161.001(b)(1), (2) (West 2015); *Holley v. Adams*, 544 S.W.2d 367, 370 (Tex. 1976).

Only one predicate finding under section 161.001(1) is necessary to support an order of termination when there is also a finding that termination is in a child's best interests. *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003); *In re T.N.*, 180 S.W.3d 376, 384 (Tex. App.—Amarillo 2005, no pet.). Therefore, we will affirm the termination order if the evidence is both legally and factually sufficient to support any statutory ground on which the trial court relied in terminating parental rights as well as the best interest finding. *In re E.A.G.*, 373 S.W.3d 129, 141 (Tex. App.—San Antonio 2012, pet. denied).

Ground for Termination - Section 161.001(1)(E)

Parental rights may be terminated under paragraph (E) of section 161.001(b)(1) if there is clear and convincing evidence 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. The cause of the danger to the child must be the parent's conduct alone, and may be proven by the parent's actions as well as by omissions or failures to act. *Doyle v. Texas Dep't of Protective & Regulatory Servs.*, 16 S.W.3d 390, 395 (Tex. App.—El Paso 2000, pet. denied). Additionally, paragraph (E) requires more than a single act or omission; a voluntary, deliberate and conscious course of conduct by the parent is required. *In re D.T.*, 34 S.W.3d 625, 634 (Tex. App.—Fort Worth 2000, pet. denied). Endanger means to expose to loss or injury; to jeopardize. *In re M.C.*, 917 S.W.2d 268, 269 (Tex. 1996) (*citing Texas Dep't of Human Services v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987)). It is more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment, but it is not necessary that the conduct be directed at the child or that the child actually suffer injury. *In re M.C.*, 917 S.W.2d at 269.

Application

Proof of Endangering Conduct by the Mother

On appeal, the mother challenges only the trial court's finding that termination of her parental rights was in the children's best interests. But the evidence supporting the endangerment finding is pertinent also to the court's best interest finding, so we describe it briefly here. The record contains several instances of conduct by the mother that endangered the physical or emotional well-being of her children.

The appellate record depicts the mother's inability to properly care for her children. In addition to the evidence A.N.K., at the age of three, was twice found unsupervised outside the home, the record shows the mother frequently used controlled substances and was unable to maintain suitable conditions in the home. A psychologist testified the mother exhibited signs of depression, affecting her ability to function and make decisions. He also testified the mother was "likely to struggle in her attempts to function independently and without a lot of support" and allowed others to "overly influence" her decisions and behavior. The father testified he and the mother used drugs together while the children were in their possession.

The record further shows the mother's pattern of living with and relying on others to support her and her children. During a seven-year period, she was largely unemployed, doing only "odd jobs" and "helping out friends." She lived in Borger, moved to Houston, then to Dallas, Fort Worth, Borger, Skellytown, Pampa and back to Borger. In all of those moves, she lived with friends and family. She never lived on her own and did not support herself or her children. While she maintained her driver's license, she

did not have a car. The psychologist and the counselor testified the mother was not able to make progress unless she was held accountable by others.

She also exhibited a pattern of poor judgment in dating partners. While she was married to the father in 2011, the father spent much of their marriage incarcerated. He was convicted of aggravated assault with bodily injury after he poked the mother in the eye during a fight, causing her to lose vision. The mother dated other men, and at the time of the final hearing, was living with one with a history of criminal offenses and drug use.

As the mother's brief concedes, the trial court acted reasonably by reaching a firm conviction the mother had pursued a course of conduct, based primarily on her drug use, that endangered her children's physical and emotional well-being. *See Walker v. Tex. Dep't of Family & Protective Servs.*, 312 S.W.3d 608, 617 (Tex. App.—Houston [1st Dist.] 2009, pet. denied); *see also In the Interest of S.H.*, 07-15-00177-CV, 2015 Tex. App. LEXIS 9731, at *5 (Tex. App.—Amarillo Sept. 16, 2015, no pet.) (mem. op.) (illegal drug use may support termination under subsection 161.001(b)(1)(E)).

Proof of Endangering Conduct by the Father

On appeal, the father challenges the sufficiency of the evidence to support the grounds under which the trial court terminated his parental rights to his children. However, during his trial testimony, he acknowledged he endangered his children's health by using drugs around them. The father testified he had been using methamphetamine "daily" for ten or eleven years. He admitted to his heavy use of methamphetamine and other drugs while caring for his children. He told the court he

did drugs “almost every day” but did not keep the drugs in the home. He acknowledged he always gets “back on drugs” and had only been sober while in prison. In January 2011, the father was released from prison. At that time, A.N.K. was about two months old. The father told the court he and the mother used drugs “continuously” while T.R.C. and A.N.K. were present in the home. The father held a job for several months but quit when he began using drugs again. He stopped paying the bills and the mother took the children and moved in with her father. Contrary to the father’s appellate position, we find from the evidence presented that the trial court reasonably could have reached a firm conviction the father had pursued a course of conduct, through his chronic drug use, that endangered his children’s physical and emotional well-being. See *In the Interest of S.H.*, 07-15-00177-CV, 2015 Tex. App. LEXIS 9731, at *5; *Walker*, 312 S.W.3d at 617.

The father described an argument with the mother while the children were present. The father testified he was “poking” at the mother’s head while arguing and she “moved” and he “poked” her in the eye, causing a significant injury and loss of vision. The mother agreed with this version of events. In September 2011, the father pled guilty to aggravated assault and was sentenced to serve three years in prison. In November 2011, the father was convicted of a state jail felony. He was convicted of three additional offenses in December 2011, including one drug offense that resulted in a sentence of imprisonment for twelve years. The father committed the felony offense of escape from imprisonment in January 2012. He pled guilty to that offense in March 2012, two weeks before L.S.C. was born, and received a ten-year sentence. At the time of the final hearing, the father’s projected release date was November 23, 2017. He had

been denied parole three times. The father testified he had been arrested “too many [times] to count” and had “probably 20 arrests.” As a result of the father’s criminal behavior, he had seen L.S.C. only once and saw A.N.K. one time in “several years.” The father’s repeated criminal offenses provide further evidence of endangering conduct. See *In re V.V.*, 349 S.W.3d 548, 554 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) (citations omitted); *Boyd*, 727 S.W.2d at 533.

We conclude that the evidence, viewed in the light most favorable to a finding of endangerment, was sufficiently clear and convincing to permit a reasonable factfinder to form a firm belief or conviction that both parents engaged in conduct that endangered the children's physical or emotional welfare. We further conclude that, viewed in light of the entire record, any disputed evidence could have been reconciled in favor of the trial court's endangerment determination or was not so significant as to preclude a firm belief or conviction that each parent engaged in endangering conduct. Accordingly, we find the evidence was legally and factually sufficient to support the subsection (E) endangerment finding. See TEX. FAM. CODE ANN. § 161.001(b)(1)(E). We overrule the father’s second issue.⁵

Proof of Best Interests

Both parents challenge the sufficiency of the evidence to support the trial court’s finding that termination of their parental rights to their children was in the children’s best interests. There is a strong presumption that keeping a child with a parent is in the

⁵ Because we find the evidence sufficient to support the trial court’s finding with regard to termination of the father’s rights under section 161.001(b)(1)(E), we do not address the father’s contentions in issues one and three with regard to the remaining grounds.

child's best interests. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006). Prompt and permanent placement of the child in a safe environment is also presumed to be in the child's best interests. TEX. FAM. CODE ANN. § 263.307(a) (West 2008). The best interests analysis evaluates the best interests of the child, not that of the parent. *In the Interest of A.C.B.*, 198 S.W.3d 294, 298 (Tex. App.—Amarillo 2006, no pet.).

Among other factors supported by the evidence, the following factors may be considered in determining the best interests of the 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 interests 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*, 544 S.W.2d at 371-72.

The *Holley* factors are not exhaustive; some listed factors may be inapplicable to some cases; other factors not on the list may also be considered when appropriate. *In re C.H.*, 89 S.W.3d at 27. Furthermore, undisputed evidence of just one factor may be sufficient in a particular case to support a finding that termination is in the best interests of the child. *Id.* On the other hand, the presence of scant evidence relevant to each factor will not support such a finding. *Id.* The evidence supporting the statutory grounds for termination may also be used to support a finding that the best interests of the

children warrants termination of the parent-child relationship. *In re C.H.*, 89 S.W.3d at 28.

T.R.C. is the only child old enough to express her desires. Although she exhibited some confusion on this issue, she told the counselor she was happy in her placement and did not feel safe with her mother. Both A.N.K. and L.S.C. were doing well in their foster homes. The mother and father both testified the children appeared to be happy and healthy. The factfinder may consider whether the child has bonded with the foster family, is well-cared for by them, and has spent minimal time with a parent. *In re J.D.*, 436 S.W.3d 105, 118 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

The mother maintained significant contact with the children. At trial and on appeal, she argues termination of her parental rights would eliminate that contact, which, she argues, is not in their best interests. The mother also noted recent improvements in her life. The mother expressed her love for her children and testified to regularly visiting her children personally and by phone. The mother testified the visits went well and the caseworker testified to the same. She testified she completed some services, was employed part-time, and had completed an on-line program for medical billing. The mother testified to her efforts to obtain better employment and told the court she was trying to get a home of her own. She testified her mother had given her furniture for her children. She also testified she had been sober. Evidence showed, however, the mother had a positive drug test in August 2015.

The caseworker told the court the mother had 18 months to make progress on her services and had done so only in the most recent two or three months. See *In re*

J.O.A., 283 S.W.3d 336, 346 (Tex. 2009) (“[w]hile recent improvements made by [the parent] are significant, evidence of improved conduct, especially of short-duration, does not conclusively negate the probative value of a long history of drug use and irresponsible choices”). Moreover, the mother did not have a home of her own, was living with a man with a history of criminal behavior and drug use, and still was unable to financially support herself or her children. Neither she nor her boyfriend had a car. It was for the trial court to weigh the recent improvements in the mother’s outlook and behavior against the other evidence it heard bearing on the best interests of the children. *In re J.O.A.*, 283 S.W.3d at 346. We find the court reasonably could have concluded the evidence supported termination despite the mother’s recent attempts to improve her life for her children.

The father acknowledged he could not care for his children because he was incarcerated at the final hearing. And, he candidly admitted termination of his rights was in his children’s best interests. But, he testified, he did not want that outcome and still wanted to be part of their lives. He testified to his love for his children and his desire that they be safe and “taken care of.” The father said he “didn’t like” the circumstances in which A.N.K. was placed, but also said he thought A.N.K. was well cared-for. Otherwise, he had no complaints about the foster homes or the care his children were receiving. He told the court he wrote letters to his children “at least once per week.” He asked the court for a chance to be a father because he had “changed” and would not go back to drugs. He testified to his completion of several classes, including a parenting and a “changes” class. He also told the court he had been unable to complete additional classes and services while in prison due to his security grade. But, he

testified the Department had told him, and some documentation at the hearing indicated, he would be able to complete his services on release from prison. He also said he kept in contact with the Department and the caseworker testified the father did so. He testified that other than his drug use, he never hurt the children.

The father's mother and grandmother testified, telling the court the father was a good caretaker of the children and asking the court to give him a chance to be a father. The father told the court he had changed his outlook on life, that he wanted to be a father to his children, that he would remain sober, and also told the court he would be able to be employed at his former job after he is released from prison.

The caseworker and counselor urged the children need closure and permanency, and said those results cannot be achieved as long as the parents retain their rights to the children. The caseworker said the foster parents had expressed interest in adopting the children. The counselor testified keeping the children separated was in their best interests because T.R.C. and A.N.K. do not "get along" well and L.S.C. did not appear to be bonded to either of them. The children were all doing well in their placements. A.N.K. required specialized care and counseling because of her exhibition of inappropriate behavior and her foster parents were equipped to address those issues.

The caseworker also testified that even if the foster parents did not adopt the children, they were all "adoptable" and, after termination of the parents' rights, the Department would move forward with that effort. Given the evidence before it, the trial court could have concluded that remaining in their placements until adoption by those, or other, homes was in the best interests of the children.

Reviewing the sufficiency of evidence, we keep in mind that it was the task of the trial court to assess the credibility and demeanor of the witnesses who testified before it. *In re H.R.M.*, 209 S.W.3d 105, 109 (Tex. 2006). After viewing all of the evidence in the light most favorable to the best interests finding, we conclude the evidence was sufficiently clear and convincing that a reasonable fact finder could have formed a firm belief or conviction that termination of the parent-child relationship between the mother and her children, and between the father and his children, was in the children's best interests. We further conclude that, viewed in light of the entire record, any disputed evidence could have been reconciled in favor of the trial court's best interests finding or was not so significant that the trial court could not reasonably have formed a firm belief or conviction that termination was in their best interests. Thus, the evidence was legally and factually sufficient to support the best interests finding. We overrule the mother's sole issue and the father's fourth issue.

Conclusion

Having resolved the parents' issues against them, we affirm the order of the trial court.

James T. Campbell
Justice