In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00428-CV

IN THE INTEREST OF P.V. AND A.V., CHILDREN

On Appeal from the 100th District Court
Childress County, Texas
Trial Court No. 10,561, Honorable Stuart Messer, Presiding

March 10, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

"Aaron," the fictitious name we will use for the biological father of P.V. and A.V., appeals the trial court's order terminating his parental rights.[1] He contends that the evidence was insufficient to support the trial court's finding that termination was in the best interest of the children. We affirm.

[1] P.V.'s and A.V.'s mother relinquished her parental rights to P.V. and A.V. and another daughter, D.N.C. She did not appeal, nor did D.N.C.'s father, whose parental rights were also terminated.

Authority

The Texas Family Code allows a court to terminate the relationship between a parent and a child if the party seeking termination establishes (1) one or more acts or omissions enumerated under § 161.001(b)(1) and (2) termination of that relationship is in the child's best interest. *In re H.W.*, No. 07-16-00294-CV, 2016 Tex. App. LEXIS 12846, at *4 (Tex. App.—Amarillo Dec. 5, 2016, no pet.) (mem. op.); *see* TEX. FAM. CODE ANN. § 161.001(b)(1)–(2) (West Supp. 2016). Both elements must be established by "clear and convincing evidence." *See In re H.W.*, 2016 Tex. App. LEXIS 12846, at *4. That standard is met when the evidence of record "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.* at *5. In reviewing whether the evidence is sufficient to do that, we apply the tests described in *In re K.M.L.*, 443 S.W.3d 101, 112–13 (Tex. 2014), and *In re K.V.*, No. 07-16-00188-CV, 2016 Tex. App. LEXIS 11091, at *6–8 (Tex. App—Amarillo Oct. 11, 2016, no pet.) (mem. op.). And, in applying those tests to the finding of best interest, we compare the evidentiary record to the factors itemized in *Holley v. Adams*, 544 S.W.2d 367, 372 (Tex. 1976).[2]

Application of Authority

The trial court found that the evidence established two statutory grounds warranting termination. One involved Aaron engaging in conduct or knowingly placing

[2] The *Holley* factors are as follows: (1) the desires of the children; (2) the emotional and physical needs of the children now and in the future; (3) the emotional and physical danger to the children now and in the future; (4) the parenting abilities of the parent seeking custody; (5) the programs available to assist the parent; (6) the plans for the child by the parties seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions committed by the parent which may indicate that the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions committed by the parent. *Holley*, 544 S.W.2d at 372. Furthermore, the evidence need not establish that all of the *Holley* factors support the conclusion that termination is in the children's best interest, and the absence of evidence of some factors does not preclude the fact-finder from reasonably forming a strong conviction that termination is in the children's best interest. *See In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002).

the child with persons who engaged in conduct that endangered the physical or emotional well-being of the child, *see* TEX. FAM. CODE ANN. § 161.001(b)(1)(E), and the other involved Aaron knowingly engaging in criminal conduct that resulted in a criminal conviction, imprisonment, and the inability to care for the child for not less than two years from the date of filing the petition, *see id.* § 161.001(b)(1)(Q). Those findings are not attacked on appeal. Moreover, the evidence upon which they are based may be considered when determining whether the best interest of the child warranted termination. *See In re C.H.*, 89 S.W.3d at 28.

Next, the record contains the following evidence. Aaron is currently serving three concurrent twenty-five-year sentences in Oklahoma. The sentences were assessed as a result of his two convictions for robbery with a firearm and one conviction for attempted robbery with a firearm. According to two of the judgments, he will have to serve a minimum of 85% of the twenty-five-year sentence, and he began serving those sentences in 2014. By the time the remainder of the terms is served, the children at issue will be adults. Yet, these were not his only convictions or arrests. Others included burglary, family violence committed against the mother of P.V. and A.V., interfering with an emergency call, and delivering a controlled substance.

At least one witness, the Department caseworker, testified that Aaron cannot provide for the physical and emotional needs of P.V. or A.V. Nor can he provide a stable home for them, according to the same witness. The latter also testified that Aaron's criminal activity, which included the assault charges, posed both a physical and emotional danger to the children, now and in the future. Aaron also had a history of substance abuse and lacked adequate parenting skills to provide for the children. At

least one controlled substance was also abused by the mother of A.V. and P.V. And though no evidence suggests that Aaron engaged in sexual improprieties with the children, they and their sister, D.N.C., did inform their interviewer when undergoing psychological evaluation that other family members committed such acts upon them.

Aaron's communication with and about the children has been minimal. He sent three letters to the Department about them and two letters to the children themselves, between September of 2015 and August of 2016. Though Aaron gave the Department the names of family members who could serve as alternate placements, two were deemed inappropriate. One of those deemed inappropriate was his mother, and she was so deemed because Aaron himself grew up in the child protective system. In other words, her ability to properly raise her own children was questionable. Another family member, the children's paternal aunt, had custody of the children for some time during the investigation but was also later deemed an inappropriate placement. The Department's goal is to have the children adopted into the same family.

While undergoing psychological examination, P.V. and A.V. voiced strong sentiment against being in the presence of their paternal aunt, according to the interviewer. P.V. also illustrated much anger towards her mother, though she did say she missed Aaron. The evaluator also testified that (1) Aaron's violence was "a pattern" witnessed by the children that could continue and (2) it was in the best interests of the two children to have Aaron's parental rights terminated.

A.V. and P.V. have bonded to the adults in their current placement and are thriving. They are also adjusting to the supervision and rules that were not consistently present before placement in the foster home. So too are they improving in school.

Additionally, the people with whom they reside have the ability to provide for their emotional needs.

Upon considering the evidence of record under the standard enunciated in *In re K.M.L*. and comparing it to the *Holley* factors, we conclude that it was more than ample for a fact-finder to form a firm conviction or belief that termination was in the best interests of P.V. and A.V. The evidence is both legally and factually sufficient to support the trial court's ruling. Thus, we overrule Aaron's sufficiency complaint and affirm the order of termination.

Brian Quinn
Chief Justice