In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-17-00436-CV

IN THE INTEREST OF C.F.M., A CHILD

On Appeal from the 316th District Court
Hutchinson County, Texas
Trial Court No. 42,530, Honorable James M. Mosley, Presiding

May 1, 2018

MEMORANDUM OPINION

Before CAMPBELL and PIRTLE and PARKER, JJ.

Following a bench trial, the trial court signed a judgment terminating the parent-child relationship between J.I.[1] and his daughter, C.F.M. J.I. challenges the legal and factual sufficiency of the evidence supporting the grounds for termination of his parental rights. We affirm the judgment of the trial court.

[1] To protect the privacy of the parties involved, we refer to them by their initials. *See* TEX. FAM. CODE ANN. § 109.002(d) (West Supp. 2017); TEX. R. APP. P. 9.8(b).

Background

On August 29, 2016, the Department of Family and Protective Services received a report citing concerns for the safety of C.F.M., a newborn, because of her mother's[2] history of drug use and prior involvement with the Department. C.F.M. tested positive for marijuana approximately one week after her birth. The Department was granted an emergency protection order for C.F.M., and filed a petition seeking conservatorship and termination of parental rights. Following an adversary hearing, the Department was appointed temporary managing conservator and C.F.M. was placed in a foster home. T.M. was named possessory conservator and ordered to work specific services. The court granted J.I.'s request for genetic testing,[3] but he was not ordered to complete any services at that time.

A plan of service was eventually developed for J.I. According to the plan, J.I. was required to complete a substance abuse assessment with Outreach, Screening, Assessment, and Referral; submit to drug testing; participate in parenting classes; undergo a psychological evaluation; complete rational behavior therapy; attend individual counseling; and maintain contact with the Department. The trial court's November 2016 status hearing order approved J.I.'s filed service plan and made it an order of the court.

At the permanency hearing on January 17, 2017, the court ordered the Department to place C.F.M. in J.I.'s home by February 1 in a monitored return. After the hearing, J.I. refused to submit to a required hair follicle drug test explaining to the Department that he

[2] T.M. is the mother of C.F.M. T.M.'s parental rights were also terminated, but she did not appeal.

[3] J.I. was adjudicated as the father of C.F.M. at the final hearing.

could not take care of the child, did not want the child, and wanted to relinquish his parental rights. J.I. reiterated his desire to relinquish his parental rights when he appeared at the permanency hearing in April 2017. The caseworker was unable to contact J.I. after that hearing. J.I. did not complete any of his court-ordered services and he did not attend the termination trial on October 5, 2017.

The trial court terminated J.I.'s parental rights on the grounds set forth in Texas Family Code section 161.001(b)(1)(B), (C), (N), (O), and (P), and found that termination would be in the child's best interest. *See* TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2017).[4]

STANDARDS OF REVIEW

When reviewing the legal sufficiency of the evidence in a termination case, the appellate court should look at all the evidence in the light most favorable to the trial 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 J.F.C.,* 96 S.W.3d 256, 266 (Tex. 2002). To give appropriate deference to the factfinder's conclusions, we must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so. *Id*. We disregard all evidence that a reasonable factfinder could have disbelieved or found to have been not credible, but we do not disregard undisputed facts. *Id.* Even evidence that does more than raise surmise or suspicion is not sufficient unless that evidence is capable of producing a firm belief or conviction that the allegation is true. *In re K.M.L.,* 443 S.W.3d 101, 113 (Tex. 2014). If, after conducting a legal sufficiency

[4] Further references to provisions of the Texas Family Code will be by reference to "section__" or "§ __."

review, we determine that no reasonable factfinder could have formed a firm belief or conviction that the matter that must be proven was true, then the evidence is legally insufficient and we must reverse. *Id*. (citing *In re J.F.C.,* 96 S.W.3d at 266).

In a factual sufficiency review, we must give due consideration to evidence that the factfinder could reasonably have found to be clear and convincing. *In re J.F.C.,* 96 S.W.3d at 266. We must 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.* We must also consider whether disputed evidence is such that a reasonable factfinder could not have resolved the disputed evidence in favor of its finding. *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.*

APPLICABLE LAW

Involuntary termination of parental rights is a serious proceeding implicating fundamental constitutional rights. *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985). A parent's right to the "companionship, care, custody, and management" of his or her child is a constitutional interest "far more precious than any property right." *Santosky v. Kramer*, 455 U.S. 745, 758-59, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); s*ee In re M.S.,* 115 S.W.3d 534, 547 (Tex. 2003). Consequently, we strictly scrutinize termination proceedings and strictly construe the involuntary termination statutes in favor of the parent. *Holick,* 685 S.W.2d at 20. However, "the rights of natural parents are not absolute" and "[t]he rights of parenthood are accorded only to those fit to accept the

accompanying responsibilities." *In re A.V.,* 113 S.W.3d 355, 361 (Tex. 2003) (citing *In re J.W.T*., 872 S.W.2d 189, 195 (Tex. 1993)). Recognizing that a parent may forfeit his or her parental rights by his or her acts or omissions, the primary focus of a termination suit is protection of the child's best interest. *In re T.G.R.-M.*, 404 S.W.3d 7, 12 (Tex. App.—Houston [1st Dist.] 2013, no pet.).

In a case to terminate parental rights by the Department under section 161.001 of the Family Code, the Department must establish, by clear and convincing evidence, that (1) the parent committed one or more of the enumerated acts or omissions justifying termination, and (2) termination is in the best interest of the child. § 161.001(b). Clear and convincing evidence is "the 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." § 101.007 (West 2014); *In re J.F.C.,* 96 S.W.3d at 264. Both elements must be established and termination may not be based solely on the best interest of the child as determined by the trier of fact. *Tex. Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987); *In re K.C.B.,* 280 S.W.3d 888, 894 (Tex. App.—Amarillo 2009, pet. denied). "Only one predicate finding under section 161.001[(b)](1) is necessary to support a judgment of termination when there is also a finding that termination is in the child's best interest." *In re A.V.,* 113 S.W.3d at 362. We will affirm the termination order if the evidence is both legally and factually sufficient to support any alleged statutory ground the trial court relied upon in terminating the parental rights if the evidence also establishes that termination is in the child's best interest. *In re K.C.B*., 280 S.W.3d at 894-95.

The clear and convincing evidence standard does not mean the evidence must negate all reasonable doubt or that the evidence must be uncontroverted. *In re R.D.S.*, 902 S.W.2d 714, 716 (Tex. App.—Amarillo 1995, no writ.) The reviewing court must recall that the trier of fact has the authority to weigh the evidence, draw reasonable inferences therefrom, and choose between conflicting inferences. *Id.* The factfinder also enjoys the right to resolve credibility issues and conflicts within the evidence and may freely choose to believe all, part, or none of the testimony espoused by any particular witness. *Id.* Where conflicting evidence is present, the factfinder's determination on such matters is generally regarded as conclusive. *In re B.R.*, 950 S.W.2d 113, 121 (Tex. App.—El Paso 1997, no writ.).

The appellate court cannot weigh witness credibility issues that depend on demeanor and appearance as the witnesses are not present. *In re J.P.B.,* 180 S.W.3d 570, 573 (Tex. 2005). Even when credibility issues are reflected in the written transcript, the appellate court must defer to the factfinder's determinations, as long as those determinations are not themselves unreasonable. *Id.*

ANALYSIS

Sufficiency of the Evidence under § 161.001(b)(1)(B), (C), (N), (O), (P)

In his first issue, J.I. challenges the legal and factual sufficiency of the evidence to support the termination of his parental rights under section 161.001(b)(1)(B), (C), (N), (O), and (P). Only one statutory ground is required to support termination. S*ee In re A.V.*, 113 S.W.3d at 362. We limit our analysis of the sufficiency of the evidence in support of subsection (O).

A trial court may terminate parental rights based on section 161.001(1)(O) if the court finds by clear and convincing evidence that the parent:

> failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child.

Generally, Texas courts undertake a strict approach to subsection (O)'s application. *In re M.A.A*., No. 07-16-00385-CV, 2017 Tex. App. LEXIS 998, at *8 (Tex. App.—Amarillo Feb. 3, 2017, no pet.) (mem. op.) (per curiam). The focus is on a parent's failure to comply with a court order; the reasons for non-compliance or the degree of compliance generally are not relevant to the analysis. *In re D.N.*, 405 S.W.3d 863, 877-78 (Tex. App.—Amarillo 2013, no pet.).

J.I. does not dispute that C.F.M. was in the custody of the Department for not less than nine months at the time of the final hearing, or that he did not comply with all of the requirements of the family service plan. Instead, J.I. argues that the Department cannot meet its burden of proof because C.F.M. was not removed as the result of abuse or neglect on his part, and he was not notified of the actions he was to take in order to have the child returned to him. It is undisputed that C.F.M. was removed from her mother, T.M. However, subsection (O) does not require that the parent who failed to comply with a court order be the same parent whose abuse or neglect of the child warranted the child's removal. *In re D.R.A.,* 374 S.W.3d 528, 532 (Tex. App.—Houston [14th Dist.] 2012, no pet.). Thus, J.I.'s contention that C.F.M. was not removed due to his abuse or neglect is without merit. Further, the court-ordered service plan provides that if J.I. is "unwilling or

unable to provide [C.F.M.] with a safe environment, [J.I.'s] parental and custodial duties and rights may be restricted or terminated or [C.F.M.] may not be returned to [J.I.]." Not only did J.I. attend the status hearing which resulted in the court's order that J.I. complete the service plan, he also attended the permanency hearing, on January 17, 2017, where the court ordered the Department to place the child in J.I.'s home on a monitored return by February 1, 2017. While the Department attempted to place the child with J.I., he prevented them from doing so by insisting that he could not take care of the child, did not want the child, and wanted to relinquish his rights to the child. This evidence belies J.I.'s assertion that he was not notified of what he needed to do in order to have the child returned.

We still must determine, however, whether the evidence is sufficient to support the trial court's finding that C.F.M. was removed from her mother's possession because of abuse or neglect. *See In re E.C.R*, 402 S.W.3d 239, 246 (Tex. 2013). The family service plan for J.I. was admitted into evidence without objection. The plan enumerated the following facts. The Department received a report alleging neglectful supervision of C.F.M. by her mother, T.M. T.M.'s appearance was consistent with possible illegal drug use. Although she provided the hospital with a negative urine drug screen on August 29, 2016, she did not complete a court-ordered drug screen on September 7, 2016. The child, C.F.M., tested positive for marijuana a week after her birth. The Department took emergency possession of C.F.M. on August 30, 2016. After an adversary hearing, the trial court issued a temporary order naming the Department as the managing conservator of C.F.M., finding, in part, that "there was a danger to the physical health or safety of the

child" and that "there is a substantial risk of a continuing danger if the child is returned home."

We conclude that the evidence is legally and factually sufficient to support the trial court's finding that C.F.M. was removed under Chapter 262 for abuse or neglect. Moreover, after reviewing the entire record, we conclude that the evidence is both legally and factually sufficient to support the trial court's termination of J.I.'s parental rights under subsection (O). We overrule J.I.'s first issue.

Best Interest of the Child

J.I. only challenges the legal and factual sufficiency of the evidence to support the grounds for termination. He does not challenge the sufficiency of the evidence to support the best interest finding; rather, he expressly "does not assert that the trial court erred in determining that termination of [J.I.'s] parental rights was in the child's best interest."

CONCLUSION

The judgment of the trial court terminating J.I.'s parental rights is affirmed.

Judy C. Parker
Justice