In The
Court of Appeals
Seventh District of Texas at Amarillo

Nos. 07-17-00441-CV
07-17-00442-CV
07-17-00447-CV

IN THE INTEREST OF S.F., X.K., A.K. AND M.E. CHILDREN

On Appeal from the 320th District Court
Potter County, Texas
Trial Court Nos. 82,630-D, 85,587-D, 88-557-D Honorable Don Emerson, Presiding

March 20, 2018

MEMORANDUM OPINION

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

This is an appeal from final orders terminating the parental rights of S.J. to S.F., X.K., A.K., and M.E. S.J. questions the factual sufficiency of the evidence underlying the trial court's finding that termination was in the best interests of the children. We affirm.

Authority

While S.J. alludes to both the legal and factual sufficiency standards of review, she argued that "[t]here is factually insufficient evidence to find that termination is in the child's best interest under 161.001(b)(2)" and "[w]hen the case is viewed in it [sic] totality, the factors used by the Court in determining the best interest do not constitute clear and

convincing evidence that termination of S.J.'s parental rights are in the best interest of the children." Thus, she asks us to assess the trial court's decision against all evidence of record, as opposed to disregarding that which may contradict the verdict.

Thus, the standard of review we apply is that requiring us to 1) give due consideration to evidence that the factfinder could reasonably have found to be clear and convincing, 2) determine whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the ultimate factual finding in dispute, and 3) consider whether all the evidence is such that a reasonable factfinder could not have resolved the dispute in favor of the factual finding. *In re L.P.*, No. 07-17-00155-CV, 2017 Tex. App. LEXIS 8924, at *6 (Tex. App.—Amarillo Sept. 20, 2017, pet. denied) (mem. op.). If we conclude upon considering the entire record that the disputed evidence is so significant that a factfinder could not reasonably have, then we must hold the evidence to be factually insufficient. *Id.*

Next, the non-exclusive factors first itemized in *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976), help guide our best-interests inquiry. *In re A.M.*, No. 07-17-00094-CV, 2017 Tex. App. LEXIS 8994, at *6 (Tex. App.—Amarillo Sept. 21, 2017, pet. denied) (mem. op.) (per curiam). In lieu of unduly lengthening this opinion by individually mentioning those factors here, we opt to consider them in relation to the evidence of record.

Application

It is clear that the evidence underlying the statutory grounds upon which termination was secured by the Department of Family and Protective Services (Department) may be considered in assessing the children's best interests. *In re S.M.G.*,

No. 07-12-00351-CV, 2012 Tex. App. LEXIS 10470, at *8-9 (Tex. App.—Amarillo Dec. 18, 2012, no pet.) (mem.op.). Here, those statutory grounds were subsections D, E, O, and P of § 161.001(b)(1) of the Texas Family Code. The evidence underlying each included S.J.'s persistent use of marijuana and her refusal to cease abusing the illegal substance until shortly before the final hearings in November of 2017. By that time, the children had been in the custody of the Department and in foster care for over a year. And, though the children were not always present when she abused the substance, they were there often enough for three of them to test positive for the drug.

Evidence also reveals that S.J.'s mandated efforts to obtain treatment for abusing the drug met with little success. Apparently, she was dropped from the initial program attended in the Spring of 2016, resumed using the substance, and failed to attend another until shortly before the final hearing. So too had S.J. previously informed Department personnel that she would continue to use the drug, admitted to smoking the substance in August of 2017, and tested positive for marijuana twice since August of 2017.

As for compliance with her court ordered service plan, the evidence indicated she expended some effort to perform but failed to complete any services, except for the psychological examination. Regarding the latter examination, it resulted in several recommendations concerning her 1) continued education in the areas of health and parenting skills, and 2) involvement with a chemical dependency support group. These recommendations were not pursued to completion, though she did attend several AA classes which included a few while jailed for twelve to twenty days in October of 2017 because she failed to pay outstanding traffic tickets.

As for her ability to financially provide for the children, S.J. admitted that she did little in that regard once they were placed with foster parents. She did buy two of the children "expensive" sneakers, that one child refused to wear. Yet, she felt no compunction to do much else, financially, because the children were not in her possession.

Other evidence indicated that she lacked a stable home and job, stable meaning that she lived at the same location or held a job for at least six months. We did encounter evidence indicating that she began living in a mobile home suitable for the children in October of 2017 and before being jailed for the outstanding traffic tickets. So too did it appear that she obtained employment in September of 2017 which paid her about $8 an hour. Yet, S.J. also had a history of leaving the care of her children to others. It was also discovered that S.J.'s own mother smoked marijuana during periods when the children were left with her.

Upon the removal of the children, visitation was allowed. Apparently, S.J. met with them about fourteen times during the seventeen to eighteen months they resided with their foster families, but no visitation had occurred with any of the children since July of 2017. Other evidence indicated that she did not feed the children when they did visit. The Department eventually suggested to one set of foster parents that they pack food for the children to be eaten during the visitations, and they began doing so. Nonetheless, there was one instance when full baby bottles of milk were sent for use by one child only to be returned full. A Department employee also testified that despite S.J.'s sporadic visitations with her children, she never asked about their well-being.

According to the record, the two youngest children had been with the same foster family since May of 2016. The older of the two was about nineteen months at the time of the placement. The foster family consisted of a gainfully employed husband and wife without children of their own. During the time there, the children's vocabulary grew. One child also became a rather incessant talker, according to the foster father, and associated freely with adults. Both children attended in-home daycare while the foster parents worked at a local junior college. These adults provided the children with a structured living environment, routine, and intellectual stimulation through reading and watching educational programs. The children would also participate in family vacations and trips with their caretakers.

The record further discloses that seldom if ever would the children speak of their mother, even after returning from sporadic visits with her. Instead, they apparently viewed their foster parents as their mother and father. These foster parents also arranged for their wards to engage with their older siblings who were placed with a different family. The interaction normally occurred at the weekly church services attended by both sets of foster parents.

As for the two older children, they had been placed with their most recent foster family in May of 2017. The male foster parent was a lawyer working in a local district attorney's office while the female was a former elementary school teacher working part-time in the ministry field. And, like the foster parents of the younger two, they also desired that the four children maintained an ongoing relationship.

The trial court also had before it evidence that the older children 1) attended either kindergarten or pre-kindergarten at a local elementary school, 2) attended weekly play

therapy sessions, 3) grew adjusted to their circumstances, and 4) evinced happiness. According to the foster father, the children not only participate in family trips but also developed relationships with those visited during those trips. More importantly, both sets of foster parents wish to adopt their wards if given the opportunity.

No doubt, evidence appears of record suggesting that S.J. made effort to improve. However, the effort was rather belated. Delaying it until the eve of trial does not necessarily mean the change was either permanent or anything more than effort to construct a façade to present at trial. Which it was, though, is best left to the factfinder who had the ability to monitor the entire termination proceeding and assess the bona fides of the parent.

A parent's loss of a child through termination carries with it loss in other ways. Nonetheless, what lies in the child's best interests controls once statutory grounds for termination have been established. And, upon considering the entire record before us, we can say that the trial court had before it evidence permitting it to form a firm belief and conviction that termination of the parent child relationship here was in the best interests of the children.

Because the trial court's judgments have the support of factually sufficient evidence, we overrule S.J.'s issue and affirm the final orders terminating S.J.'s parental rights to S.F., X.K., A.K., and M.E.

Brian Quinn
Chief Justice