In The
Court of Appeals
Seventh District of Texas at Amarillo

Nos. 07-18-00047-CV
07-18-00048-CV

IN THE INTEREST OF A.M. & L.R.M., CHILDREN

On Appeal from the 100th District Court
Carson County, Texas
Trial Court No. 11,580, Honorable Stuart Messer, Presiding

May 23, 2018

MEMORANDUM OPINION

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

"Alice," the fictitious name we will use for the biological mother of A.M. and L.R.M., appeals the trial court's order terminating her parental rights.[1] She contends that the evidence was insufficient to support the trial court's finding that termination of her rights was in the best interest of the children. We affirm.

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

[1] L.R.M.'s biological father relinquished his parental rights; he has not appealed the termination of his parental rights on that basis. Nor has A.M.'s father appealed the trial court termination of his rights.

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. 2017). 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 four statutory grounds warranting termination. Two related grounds involved Alice (1) knowingly placing or knowingly allowing the children to remain in conditions or surroundings that endangered the physical or emotional well-being of the children and (2) engaging in conduct or

[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 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).

knowingly placing the child with persons who engaged in conduct that endangered the physical or emotional well-being of the children. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E). The trial court also found by clear and convincing evidence that Alice failed to support the children in accordance with her ability during the period of one year ending within six months of the date of filing of the Department's petition and that she 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 children. *See id.* § 161.001(b)(1)(F), (O). 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. The two children in question are not her only ones. She has two others who are older than the children at issue here. Furthermore, the two older children were fathered by different men. One of the older children lived with the father, while she relinquished her parental rights to the other.

Other evidence indicates that Alice has a history of abusing methamphetamine and involving herself in violent, "unhealthy" relationships with men. Though she participated in numerous programs to address her drug abuse, it appears that few if any were ever completed. So too does evidence illustrate her having engaged in criminal conduct since childhood, which conduct resulted in her indictment for burglary, having the adjudication of her guilt deferred, and being granted community supervision. The latter was eventually revoked in September of 2017.[3] She was then convicted of the offense and assessed an eighteen-year prison term, which term she currently serves.

[3] Interestingly, Alice admitted at trial that she last took methamphetamines in October of 2017.

The record further illustrates that Alice suffers from mental health issues which have resulted in her placement in various mental health facilities. According to a psychologist who examined her, she suffers from bipolar disorder, unspecified anxiety disorder, alcohol use disorder, methamphetamine use disorder, and personality disorder with antisocial traits. He also observed that she has never been self-supporting, never provided good care for her children, and is prone to becoming involved with men who abuse substances, engage in physical abuse, and have criminal histories. He further doubted her ability to keep a job, support herself, and adequately care for her children. A licensed provisional supervisor who had counselling sessions with Alice described her as (1) as having "fundamental character flaws and disorders that interfere[] with her ability to be empathic," (2) being "really wrapped up in her own misery and personal state," and (3) being "self-absorbed."

Evidence further indicates that Alice visited and or contacted the children sporadically after their removal. She was also barred from seeing them until she "cleaned-up." Though Alice denied it, evidence also revealed that she failed to complete the services assigned her to secure the return of the children. The services she failed to complete included (1) attending and participating in parenting classes, (2) attending and cooperating in counseling, (3) submitting to drug screens, (4) paying child support, (5) obtaining stable housing, and (6) engaging in rational behavior therapy.

Alice testified by phone from prison. She explained that she would be eligible for parole in August 2018. If granted parole, she planned on working and returning to school. As for her plans regarding the children, she explained: "I don't know. I guess I'd put them in school." She maintained that the children would be better served by being with her.

So too did she testify that: “I know they miss me, and I think the children belong with their parents. And if I can provide a healthy, stable environment for them, I think that’s better than them being with strangers.” When asked if someone who abused methamphetamine could provide appropriate supervision for two young children, she replied that she could “when I am clean.” That led into a discussion of how she has had attempted to engage in drug programs but failed to complete them.

The “strangers” to whom Alice referred were the foster family with whom the children have resided since May of 2015. Since being placed in the foster home, though, L.R.M has become well-adjusted and happy. She also bonded with her foster family, viewed the other children in the home as her siblings, and wished to remain there. Removing the children would be “detrimental” to her, according to the counselor. A counselor who interviewed the child also opined that L.R.M. should be allowed to remain with her foster parents so the child could have permanence and stability. That the children have adapted to their foster environment, have developed a good relationship with their foster parents, and have thrived since the placement was confirmed by other witnesses. And, the plan is to have the foster parents adopt the children, a plan agreed to by the foster parents.

That Alice insisted on characterizing the foster family as nothing more than a group of “strangers” can be viewed as demonstrating an inability to consider the needs of the children above her easily-spoken platitude that children belong with their parents. Furthermore, both the Department and the foster family have well-defined plans for the children, while those of Alice tend to be vague and dependent upon the chance of her being paroled. Of further import is Alice’s past and her penchant for abusing drugs,

engaging in criminal conduct, and involving herself in violent relationships; as said in *In re Epperson*, 213 S.W.3d 541, 544 (Tex. App.—Texarkana 2007, no pet.), "[o]ftentimes, past is prologue."

Based on the record before us, we cannot say that the trial court abused its discretion when it found by clear and convincing evidence that the children's best interests would be served by terminating Alice's parental rights. We affirm the trial court's judgment terminating Alice's parental rights to A.M. and L.R.M.

Per Curiam