In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-20-00134-CV

IN THE INTEREST OF T.M. AND K.M., CHILDREN

On Appeal from the 287th District Court of
Bailey County, Texas
Trial Court No. 9801, Honorable Gordon Green, Presiding

September 11, 2020

MEMORANDUM OPINION

Before QUINN, CJ., and PARKER and DOSS, JJ.

J.E., appellant and mother of the children, T.M. and K.M., appeals the judgment terminating her parental rights to her children. She raises four issues on appeal which include 1) the sufficiency of the evidence to support termination on grounds (D) and (E), 2) the evidence was insufficient to support the best interests finding, and 3) the trial court erred by denying her motion for the trial court to confer with T.M. We affirm.

Background

According to the appellate record, J.E. has had a long history involving Child Protective Services (the Department) and her children.[1] J.E. gave birth to T.M. on April 9, 2008 and one year and one month later, on May 9, 2009, she gave birth to K.M., both girls. The termination petition showed K.M.'s father to be deceased and T.M.'s to be unknown. In 2014, the girls were removed from J.E. and placed in a children's home due to neglectful supervision. Subsequently, they were returned to J.E.[2] The Department investigated J.E. again regarding the two girls in February of 2016 and April of 2017, however, both cases were closed. Then, on July 14, 2017, the Department received reports of sexual abuse of both girls by J.E.'s live-in boyfriend, Oscar Torres (Torres). Torres was arrested based on allegations of inappropriate touching of both girls.

Once, J.E. learned of the outcry by both girls, she took them to the hospital to be examined. She, further, contacted the police and made a report. According to the investigating detective, Torres admitted to the inappropriate touching and he was subsequently charged with indecency of a child. Based on J.E.'s representations that she could keep the girls safe and that she was no longer in a relationship with Torres, the Department left the girls in her care and under a safety plan. The safety plan included no contact by Torres with the girls. However, according to J.E., she was pregnant with Torres's child and they had been together for about year with plans to marry. Furthermore, she was surprised that he would harm either of the girls because they "had

[1] In 2001, the Department removed two of J.E.'s three children, none of whom are involved in the present case. Her rights were terminated to the two removed and subsequently the children were adopted. The third child remained with the child's father, with whom J.E. no longer lives.

[2] While the girls had been placed in the children's home, allegations were made and later determined unfounded that a worker sexually abused T.M.

been really getting along." Subsequently, both girls were interviewed by a forensic interviewer. J.E. was also told that they would need to be seen by a counselor.

During the forensic interviews, T.M. recanted and stated she lied because of the pregnancy and that she felt left out. K.M. did not recant and reported that she believed Torres had touched T.M. Furthermore, according to K.M., Torres had "carved out a hole through the door and watched them . . . [and] . . . he looks at them when they are changing." The interviewer suspected that T.M. had been coached. Based on its investigation, the Department placed the family in Family Based Safety Services which required J.E. to prevent Torres from living in the home or having contact with the girls. During the time that the family was involved with family-based services, J.E. avoided the subject of the sexual abuse and advised caseworkers that the girls missed Torres. J.E. did take the girls to see a counselor, Dr. Peggy Skinner, in August of 2017.

According to the doctor, during the family session, J.E. was "in charge of the sessions . . . [the children] did not talk much." Later, the doctor was allowed to speak with the children without their mother, and she was advised that J.E. had told the girls to state that nothing had happened with Torres and that they loved him. This way Torres could come back and live with them, according to T.M. and K.M. J.E., also, wanted them to call Torres "daddy." They also advised the doctor that J.E. would listen at the door during their sessions or would ask them what was said after the sessions were over.

Subsequently, after the removal, the girls saw Skinner without J.E. present. They told her of sexual and physical abuse at the hands of Torres. Skinner believed T.M. had been sexually abused because her "knowledge of sexuality is way beyond what should be for her age. Her play is often provocative. She is just a highly sexualized child."

Furthermore, according to the counselor, "she was wearing clothes that were very provocative for her age, was very into having boyfriends and wanting to impress boys. Which, again, at that age, she was nine, which is way young. Again, she would wear heavy red lipstick, big hoop earrings, short dresses, stuff her bra with padding. I mean, it was – she was trying to look like not 9, but 19." Skinner did talk to T.M. about the outcry, and T.M. stated that Torres had "touched her private parts when she would be in her bedroom [and] [t]hat [on] one incident was even at a point where the mother was in the bedroom, as well, but was supposedly asleep . . . [b]ut he had then touched her." As far as K.M., the doctor was unsure about her sexual abuse. She did talk about seeing her mother with a variety of different men and had observed sexual behavior. However, K.M. talked more about physical abuse such as being hit with belts and being drug by the hair.

When asked if J.E. believed and supported the girls after the outcry, Skinner testified that both girls were told by J.E. to protect Torres and they were to deny the abuse and that they wanted him home. Furthermore, J.E. broached with the doctor, the possibility that the girls were having flashbacks of child abuse from a time before when they were in the Department's care at a children's home, or the possibility that the girls made up the statements because a friend of the family had told them to in order to obtain custody of the girls and the child J.E. was carrying.

Around August 24, 2017, Torres bonded out of jail and reported that he was living with a friend. During this time, J.E. contacted the Department's caseworker and advised the worker that the girls were recanting their stories with Skinner and the reason for the outcries was due to a neighbor's promise to take them to McDonalds. The caseworker reminded J.E. that Torres had confessed to the inappropriate touching. The caseworker

later, on August 30, 2017, was notified about jail calls between J.E. and Torres. J.E. was heard telling Torres that she was going to "'get CPS off her back,'" and that she was collecting money to bond him out and they could be together when the baby was born. Furthermore, the girls advised that J.E. was hiding Torres at their home since his release from jail. Additional events leading up to the removal included J.E. failing to enroll the children in school from October 2017 to February of 2018, failing to take them to counseling with Skinner, failing to perform other court ordered services, and the Department receiving reports that J.E. was allowing Torres back into the home and that she was physically abusing T.M. However, J.E. denied that Torres had been back to her house or around the girls since his arrest. She, further, denied physically abusing T.M. J.E. remained adamant that the girls had recanted their stories and that Torres did not commit the offense.

Upon removal in March of 2018, the girls were placed in legal risk placements in different foster homes. This was so because the girls were experiencing a lot of "sibling conflict." According to Skinner, after the removal they were not only working on the trauma experienced by them but also on "how could they be better at being sisters and not arch enemies." The counselor had to stop seeing the girls together because there was "[l]ots of name calling, physical pushing, shoving, and trying to see them together had become impossible." Furthermore, T.M. wanted to be placed in a home where there are no other children. Neither girl wanted any contact with the other. In her opinion, the counselor believed it was in their best interest that they remain in separate placements.

Presently, K.M. is in an adoptive placement, and the foster parents plan to adopt her. She calls them "mom and dad," and the other children in the home she refers to

them as her “brothers and sisters.” K.M. is engaged in extracurricular activities such as cheerleading and swimming. T.M. was in her third placement in an emergency shelter waiting for a new placement at the time of the de novo review hearing. She continues to have anger issues with J.E. At the final hearing, neither child wanted any contact with J.E. and T.M. had written a letter to J.E. wherein she stated that she hated her and did not want to ever see her. However, that sentiment had changed from the time of the final hearing to the de novo hearing.

J.E. testified at the de novo hearing that T.M. had phoned her and wanted to come live with her. The caseworker confirmed that T.M. just recently expressed a desire to have contact with her mother. However, T.M. asked to keep the Department’s number in case her mother should hit her again and then she could come back. The reason for this change by T.M., however, coincided with her change in placement and her mother telling her that no one but her (J.E.) could love her now that she had been sexually abused, according to the caseworker. Both children had not seen their mother in over two years. This was partly because it took J.E. so long to complete requirements ordered by the court before scheduling visitations and partly because it was considered to be detrimental to the children’s well-being to have visits with their mother.

J.E. had been arrested at the time of the removal and charges were pending at the time of the final hearing. She admitted that she did not begin services until approximately a month before the first trial setting for the final hearing. She blamed this on the fact she was in jail for three months and did not have transportation or money. She began counseling with Richard Gaitlin, who testified at the final hearing. He saw her approximately seven times, but she had not successfully completed the service, and

failed to continue her counseling with him. He testified that at the first session that he did not observe "much empathy in her description of her children having been sexually abused." From the time he spent with J.E., he felt that she was not telling the truth because she denied many of the children's allegations, "save a few." "She spent much time defending herself and describing to [him] and narrating to [him] that those things did not happen." His analysis of the relationship between J.E. and her children was "a bond attachment disorder." This is so because J.E. "is really preoccupied with herself and her own personal needs, relationship needs, possibly more than the needs of her children."

J.E., at the final hearing, testified that when she learned of the sexual abuse, she took the children to the hospital. She admitted that because the girls changed their stories he was not sure what did happen. Regarding contact with Torres, J.E. testified that during family-based services, she had been told to remain in contact with Torres by the Department for the good of the baby she was carrying. J.E., testified that she subsequently had a miscarriage in January of 2018.

At the time of the final hearing, J.E. was out on bond for endangerment to a child but did not understand the charge. J.E., also, stated that she had called the police about three times reporting that Torres was in the area. She did not let him near her or her girls.

Regarding employment, J.E. had not sought employment but had begun selling Avon. Her last job was held in 2009, and her father was paying all of her bills and providing her with housing.

When questioned about the effect of having multiple boyfriends around the girls, J.E. stated that "[l]ooking at it right now, I feel that it's bad for them. I feel that it could cause them to have some emotional issues, trust issues. I also feel that it can make them

feel kind of insecure. So I really kind of feel like that's not a good thing for them to be going through."

The trial court ruled that termination was supported by clear and convincing evidence on grounds (D), (E), (J), and (O), and that it was in the children's best interests. J.E. filed for a de novo hearing, and one was held by the district court. Prior to the hearing J.E. had requested that the trial court confer with T.M. as she had written her mother and had expressed a desire to live with her. After the trial court heard evidence, it took the matter under advisement to review the record of the prior hearing that had been admitted into evidence. The trial court subsequently entered a judgment terminating J.E.'s parental rights.

Issues One and Two

J.E. contends the evidence is insufficient to support grounds (D) and (E) of the Texas Family Code. This is so because she believes the "testimony shows that [she] immediately took T.M. and K.M. to be evaluated after the initial outcry." Furthermore, according to J.E., "[t]he child's psychologist stated that J.E. was basically cooperative in getting them to sessions with her . . . [and] . . . [t]he girls never stated that J.E. was awake or present when the abuse occurred." Moreover, there were "multiple random trips by law enforcement and the Department to J.E's house [which] never showed any signs of [Torres] or his belongings."

The Law

The Texas Family Code allows for the termination of the relationship between parent and child if the Department establishes one or more acts or omissions enumerated in § 161.001(b)(1) and that termination is in the best interest of the child. TEX. FAM. CODE

ANN. § 161.001(b)(1) (West Supp. 2019). This must be shown by clear and convincing evidence. *Id.* 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." *In re J.F.C.*, 96 S.W.3d 256, 264 (Tex. 2002) (citing TEX. FAM. CODE ANN. § 101.007). "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 355, 362 (Tex. 2003).

Furthermore, the fact-finder weighs the evidence, draws reasonable inferences therefrom, and chooses between conflicting inferences. *In re D.R.C.*, 07-19-00428-CV, 2020 Tex. App. LEXIS 2524, at *6 (Tex. App.—Amarillo Mar. 25, 2020, pet. denied) (mem. op.) (citing *In re R.D.S.*, 902 S.W.2d 714, 716 (Tex. App.—Amarillo 1995, no writ)). The fact-finder also has the right to resolve credibility issues and conflicts within the evidence and may choose to believe all, some, or none of the testimony of any one particular witness. *Id.* Additionally, 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 record, the appellate court must defer to the fact-finder's determinations, as long as those determinations are not themselves unreasonable. *Id.*

As noted, only one predicate-ground finding, when combined with a best-interest finding, is necessary for termination of parental rights. And, since, here, J.E. failed to attack grounds (J) and (O), termination may be supported by them. Where, as here, parental rights are terminated on multiple predicate-ground findings, including an

endangerment finding, the parent is entitled to appellate review of the endangerment finding even if another finding alone is sufficient to uphold termination. *In re N.G.*, 577 S.W.3d 230, 235 (Tex. 2019) (per curiam); *see In re A.C.*, No. 07-20-00003-CV, 2020 Tex. App. LEXIS 2910, at *2 (Tex. App.—Amarillo Apr. 7, 2020, pet. denied) (mem. op.). Due process requirements necessitate this type of review because of the consequences an endangerment finding could have on the parent's parental rights to other children. In re N.G., 577 S.W.3d at 235; *see* TEX. FAM. CODE ANN. § 161.001(b)(1)(M) (providing parental rights may be terminated on clear and convincing proof that the parent "had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state"). Therefore, even though J.E. did not challenge the two other statutory findings, we will consider her sufficiency complaints regarding grounds (D) and (E). *See In re M.M.,* No. 07-19-00324-CV, 2020 Tex. App. LEXIS 2203, at *9 n.6 (Tex. App.—Amarillo Mar. 16, 2020, pet. denied) (mem. op.); *see also In re A.C.*, 2020 Tex. App. LEXIS 2910, at *2.

Analysis

First, subsection 161.001(b)(1)(D) permits termination when clear and convincing evidence shows that the parent "knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child." TEX. FAM. CODE ANN. § 161.001(b)(1)(D); *see In re D.T.*, No. 07-19-00071-CV, 2019 Tex. App. LEXIS 6079, at *6–7 (Tex. App.—Amarillo July 16, 2019, no pet.) (mem. op.) (providing analysis under subsection (D)). Subsection (D) requires a showing that the environment in which the child was placed posed a danger to the child's physical

or emotional health. *In re K.C.F.*, No. 01-13-01078-CV, 2014 Tex. App. LEXIS 6131, at *32 (Tex. App.—Houston [1st Dist.] June 5, 2014, no pet.) (mem. op.). Furthermore, (D) concerns the child's living environment, rather than the parent's conduct, though parental conduct may produce an endangering environment. *Jordan v. Dossey*, 325 S.W.3d 700, 721 (Tex. App.—Houston [1st Dist.] 2010, pet. denied). It is not necessary that a parent's conduct be directed at the child or that the child be injured, but the parent must at least be aware of the potential for danger to the child in such an environment and must have disregarded that risk. *In re S.M.L.*, 171 S.W.3d 472, 477 (Tex. App.—Houston [14th Dist.] 2005, no pet.). The proof requirement of subsection (D) may be satisfied by "a single act or omission." *In re R.D.*, 955 S.W.2d 364, 367 (Tex. App.—San Antonio 1997, pet. denied). Criminal activity supports a conclusion that the child's surroundings endanger his or her physical or emotional well-being. *In re B.W.*, No. 07-19-00248-CV, 2019 Tex. App. LEXIS 9845, at *8 (Tex. App.—Amarillo Nov. 12, 2019, no pet.) (mem. op.) (citing *In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.))

Here, J.E. allowed Torres back in the home after he had committed sexual offenses against the two girls, and she was also accused of physical abuse to T.M. At the time of the removal, J.E. had been arrested for child endangerment and remained in jail for three months until she was able to bond out. Ultimately, the criminal charges against her were dismissed. However, J.E. continued to believe in Torres's innocence and wished him to return to her home in time for the birth of their child.

Furthermore, when the caseworker visited prior homes where J.E. and the children lived, she found animal feces everywhere including the children's room and the homes in considerable disrepair. There was always a strong odor emanating from the home and,

on one occasion, J.E. would not allow the caseworker into the house. At the time of the final hearing, J.E. had moved in with her father, but upon visiting the home, the caseworker found that it was not set-up for the girls to live in.

At the de novo hearing, the caseworker testified that she did not know where J.E. was living. Moreover, J.E. had not performed services until a month prior to the first trial setting for the final hearing. One such service was the sexual abuse education class where she stated she learned what to look for now in terms of knowing what warning signs to look for in both an abuser and an abused. However, this class did not occur until some eight months after she was ordered to take the class and after she had already allowed Torres back in the home with her children. Based on the foregoing, we find that the fact-finder could have formed a firm belief that, at the time of the children's removal, J.E. was engaged in criminal activity (child endangerment) and exposed both girls to the potential for continuing sexual and physical abuse. *See In re J.F.C.*, 96 S.W.3d at 266–67 (discussing the standard of review of sufficiency challenges when the burden of proof is by clear and convincing evidence).

Next, we consider subsection (E) and the evidence supporting same. A violation of subsection (E) is proved by clear and convincing evidence that the parent engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangered the physical or emotional well-being of the child. TEX. FAM. CODE ANN. § 161.001(b)(1)(E). Subsection (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). Furthermore, the cause of the danger to the child may be shown 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). The specific danger to the child's well-being may be inferred from parental misconduct standing alone. *In re R.W.*, 129 S.W.3d 732, 738 (Tex. App.—Fort Worth 2004, pet. denied) (citing *Tex. Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987)).

Here, J.E. attempted to convince the children to recant their stories and state the abuse did not happen. She wanted the children to tell their therapist that they loved Torres, called him "daddy," and wanted him to return home. Both girls spoke of physical abuse at the hands of their mother through being hit with a belt, T.M. being slapped in the face and both being dragged by their hair. T.M. at one time had ran away from home because her mother had injured her leg which was evidenced by a bruise, and her desire to no longer live with her mother.

J.E. failed to initiate services to help her in reunifying with her children until a month prior to the final hearing's first setting. And, at that time she had only completed the sexual abuse education class and begun counseling. She failed to complete counseling, parenting classes, and find stable housing and stable employment.

Regarding her counseling session with Gaitlin, he believed she failed to work through counseling because she was continually defending herself. That could be construed as refusing to accept any responsibility for the basis of her children's removal, in his estimation. Furthermore, she failed to exhibit any empathy towards her children which is crucial in a parent protecting their children. Again, we find the evidence to be sufficient in supporting termination on the basis of (E). We overrule J.E.'s issues one and two.

Issue Three

In her third issue, J.E. contends that the evidence was insufficient to support best interests because 1) T.M.'s desire to return to her mother as expressed to both mother and the caseworker, 2) J.E. made three calls to the police whenever Torres came near her home, 3) once a report was made that Torres was back in the house, multiple visits were made by both law enforcement and CPS to no avail, 4) J.E. testified that the sexual abuse education classes were very helpful and taught her to recognize warning signs, 5) J.E.'s counselor stated that J.E. believed the girls when they stated Torres had sexually abused them, and 6) T.M. had been moved twice in her placements and was at the time of the de novo hearing in an emergency shelter.

A determination of best interest necessitates a focus on the children, not the parent. *In re S.B.*, 597 S.W.3d 571, 585 (Tex. App.—Amarillo 2020, pet. denied). Furthermore, we examine the entire record to decide what is in the best interest of the children. *In re E.C.R.*, 402 S.W.3d 239, 250 (Tex. 2013). There is a strong presumption that it is in the children's best interest to preserve the parent-child relationship. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006).

In assessing whether termination is in the children's best interest, the courts are guided by the non-exclusive list of factors in *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). These factors include: (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 parental abilities of the individuals seeking custody, (5) the programs available to assist these individuals to promote the best interest of the children, (6) the plans for the children by these individuals or by

the agency seeking custody, (7) the stability of the home or proposed placement, (8) the acts or omissions of the parent that may indicate that the existing parent-child relationship is not proper, and (9) any excuse for the acts or omissions of the parent. *Id.* The Department need not prove all of the factors as a condition precedent to parental termination, "'particularly if the evidence were undisputed that the parental relationship endangered the safety of the children.'" *In re C.T.E.*, 95 S.W.3d 462, 466 (Tex. App.—Houston [1st Dist.] 2002, pet. denied) (quoting *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002)). Evidence that supports one or more statutory grounds for termination may also constitute evidence illustrating that termination is in the children's best interest. *See In re E.C.R.*, 402 S.W.3d at 249. We must also remember that the children's need for permanence through the establishment of a stable, permanent home has been recognized as the paramount consideration in determining best interest. *See In re K.C.*, 219 S.W.3d 924, 931 (Tex. App.—Dallas 2007, no pet.).

At the time of the final hearing and de novo review, T.M. was 11 and K.M. was 10. K.M. had remained with the same family the entire life of the case. She wishes to be adopted by her present family and has never expressed a desire to have contact with her mother. She is involved in extracurricular activities such as swimming, cheerleading, and summer camps. She refers to the foster parents as mom and dad, and the siblings as brother and sister. She has stated that at one time she wanted to be with her sister, but because of T.M.'s treatment of her, she no longer desires that relationship. The sisters recently had contact through the computer, and K.M.'s foster parents believed it went well.

The parents have agreed to continue to cultivate a relationship between the two girls. Even though T.M. had been removed from her two prior placements, the caseworker believed it would be detrimental to return either child to J.E. due to her failure to complete services, to accept responsibility for her actions and her continued acts of placing men before her children. *See In re E.C.R.*, 402 S.W.3d at 250 (holding that the lack of evidence about definitive plans for permanent placement and adoption cannot be the dispositive factor). Furthermore, T.M. remained in need of therapy, which therapy the child would no longer receive if returned to J.E., according to the caseworker. We further note that, at the time of the de novo hearing, the caseworker did not know where J.E. was living and J.E. had been unable to provide the children with a stable environment or financial support.

Finally, we add to the mix the evidence establishing the statutory grounds for termination. Considering it and the other circumstances mentioned, we find that the trial court's finding that termination was in the best interests of the children was supported by clear and convincing evidence and overrule her third issue.

Issue Four

J.E., in her final issue, contends that the trial court erred by denying J.E.'s repeated requests "prior to and at the de novo hearing that the trial court confer with the child T.M." According to J.E., "the trial court was presented with evidence that the child had reached out to her mother and had stated to her mother and her caseworker that she wanted to speak with the Judge and that she wanted to be reunified with her mother." Because the child "had been asking for months and had been denied speaking with her mother," it was "especially important [for the trial court to confer with her] as this child's opinions and

views regarding contact with her mother had been cited over and over again to justify not allowing mother contact throughout the case." We overrule the issue.

Section 153.009 of the Texas Family Code governs interviews with children in the trial court's chambers. It states that:

> **(a)** In a nonjury trial or at a hearing, on the application of a party, the amicus attorney, or the attorney ad litem for the child, the court ***shall*** interview in chambers a child 12 years of age or older and ***may*** interview in chambers a child under 12 years of age to determine the child's wishes as to conservatorship or as to the person who shall have the exclusive right to determine the child's primary residence. The court may also interview a child in chambers on the court's own motion for a purpose specified by this subsection.
>
> **(b)** In a nonjury trial or at a hearing, on the application of a party, the amicus attorney, or the attorney ad litem for the child or on the court's own motion, the court ***may*** interview the child in chambers to determine the child's wishes as to possession, access, or any other issue in the suit affecting the parent-child relationship.
>
> **(c)** Interviewing a child does not diminish the discretion of the court in determining the best interests of the child.

TEX. FAM. CODE ANN. § 153.009 (a)–(c) (West 2014) (emphasis added). Because T.M. was eleven years old, the trial court had no obligation to interview her under the statute. *In re N.W.*, No. 02-12-00057-CV, 2013 Tex. App. LEXIS 11862, at *24 (Tex. App.—Fort Worth Sept. 19, 2013, no pet.) (mem. op.) (stating that because N.W. was eleven years old at the time that Mother filed the motion, section 153.009(a) gave the trial court discretion and did not require it to interview the child at the time); *In re C.B. & J.*, No. 13-11-00472-CV, 2012 Tex. App. LEXIS 6396, at *16 (Tex. App.—Corpus Christi Aug. 2, 2012, no pet.) (mem. op.) (stating that "we agree with appellant that section 153.009(a) confers discretion on the trial court only with regard to children under the age of 12").

Furthermore, the court also had before it evidence that up until the time of the de novo review, T.M. had maintained she did not want anything to do with her mother and continued to harbor much anger towards her. Furthermore, the reason given for her alleged change of heart was due to her recent removal from her placement and her mother telling her no one else could love her due to the molestation. T.M. believed this to be true. We find no error in the trial court's decision not to interview the child about her wishes regarding a return to her mother.

Accordingly, we affirm the trial court's order terminating J.E.'s parental rights.

Per Curiam