In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-20-00159-CV

IN THE INTEREST OF K.F. AND S.F., CHILDREN

On Appeal from the 222nd District Court
Deaf Smith County, Texas
Trial Court No. DR-18k-182; Honorable Roland Saul, Presiding

October 5, 2020

MEMORANDUM OPINION

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

Mother, E.P. appeals the trial court's termination of the parent child-relationship between herself and her two daughters, K.P. and S.P. On appeal, she challenges the legal and factual sufficiency of the evidence supporting each of the five predicate grounds cited in the trial court's judgment.[1] We affirm.

[1] E.P included the term "best interest" in the statement of her issues. However, no substantive analysis was undertaken within her appellant's brief on whether termination of the parental relationship was within the children's best interest. Instead, she only discussed whether the evidence sufficed to establish the statutory grounds found by the trial court to warrant termination. So, if she intended to address the best interests of the children, that matter was waived due to inadequate briefing. *See* TEX. R. APP. P. 38.1(i) (obligating an appellant to support issue asserted with "clear and concise argument for the contentions made, with appropriate citations to authorities and to the record"); *Approximately $23,606.00 U.S. Currency*

Background

The Department took custody of the girls and was named temporary managing conservator on November 9, 2018, starting the one-year dismissal deadline. By order dated October 24, 2019, that deadline was extended to May 9, 2020.

K.F. was fourteen years old at the time of trial, and S.F was thirteen years old. Mother had her parental rights to five other biological children terminated in 2005, based on the trial court's finding by clear and convincing evidence that mother had engaged in conduct which endangered those five children and allowed them to remain in endangering conditions. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E) (West Supp. 2019). A copy of that 2005 termination order was admitted into evidence without objection.

A final hearing was commenced on January 15, 2020, after which the trial court found by clear and convincing evidence that predicate acts supported termination of mother's parental rights and that termination of mother's parental rights was in the children's best interest. The final hearing was recessed until June, though. In June and upon resuming the final hearing, the court terminated the parental rights of a presumed father and signed a final order of termination as to all involved. It is from that final judgment that mother now appeals.

Analysis

The trial court terminated mother's parental rights based on five subsections of § 161.001(b)(1). The Department first addresses the termination of parental rights based on subsection (M), as do we. Section 161.001(b)(1)(M) provides that a trial court may order the termination of the parent-child relationship if the court finds by clear and

v. State, No. 07-19-00297-CV, 2020 Tex. App. LEXIS 2602, at *8 (Tex. App.—Amarillo Mar. 27, 2020, no pet.) (mem. op.) (holding that failure to adequately brief an issue results in its waiver).

convincing evidence that the parent has "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." TEX. FAM. CODE ANN. § 161.001(b)(1)(M). The trial court must also find that termination of the parent-child relationship is in the child's best interest, a finding that goes unchallenged here. *See id.* § 161.001(b)(2).

As we have noted, mother's parental rights to five older children were terminated in 2005 in trial court cause number 9098 out of the 287th District Court of Parmer County. It appears that no appeal was ever taken from that judgment of termination. This earlier termination was based only on subsections (D) and (E), relating to endangering conduct and conditions. A copy of said judgment was introduced into evidence and admitted without objection. Subsection (M) requires only that the Department establish that the mother had her parental rights as to other children terminated for her violation of subsections (D) or (E). *In re C.M.J.*, 573 S.W.3d 404, 411 (Tex. App.—Houston [1st Dist.] 2019, pet. denied). With that, the evidence was legally and factually sufficient to support the trial court's finding.

Mother contends, however, that due process requires more than simply admitting evidence of a prior termination founded upon (D) or (E) and relies upon *In re N.G.*, 577 S.W.3d 230 (Tex. 2019) (per curiam), as support for the argument. No doubt, *N.G.* addressed due process concerns wrought by the reliance upon (D) and (E) findings in a subsequent termination suit encompassing different children. Yet, mother said nothing at trial about due process and its purported mandate for additional evidence before the court may terminate the parental relationship based on (M). That ground having gone

unmentioned, it was not preserved for review. *See In re L.M.I.*, 119 S.W.3d 707, 710–11 (Tex. 2003) (holding that because Duenas failed to assert his due process argument at trial, it was not preserved for review).

Remaining on the topic of *In re N.G.*, we come to another related issue we raise *sua sponte*. Does that opinion require us to examine the evidence supporting the trial courts findings of (D) and (E) entered below and assailed here if (M) otherwise applies? Again, only one statutory ground need support the decision to terminate. *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). If (M) applies, then the parent has already been found responsible for previously endangering other of her children. So, one can wonder why a reviewing court need assess whether a parent again engaged in endangering activity. We find our answer to the question in *In re R.S.*, No. 01-20-00126-CV, 2020 Tex. App. LEXIS 5839 (Tex. App.—Houston [1st Dist.] July 28, 2020, no pet.) (mem. op.). There, the court wrote:

> The trial court also found that termination was warranted because the father endangered the emotional or physical wellbeing of his son or knowingly placed his son with people who did so. *See* [TEX. FAM. CODE ANN.] § 161.001(b)(1)(E). Ordinarily, we must review an endangerment finding like this one even if another predicate act or omission supports the trial court's decree because of the collateral consequences of endangerment findings. *See id.* § 161.001(b)(1)(M); *In re N.G.*, 577 S.W.3d [at 234–37]. But we need not do so here. The trial court's current endangerment finding does not impose any consequences to which the father is not already subject as a result of the 2018 decree terminating his parental rights with respect to his other two sons. That decree likewise contains endangerment findings, which are grounds for termination of the father's parental rights in any future suit. *See* [TEX. FAM. CODE ANN.] § 161.001(b)(1)(M). Thus, the current endangerment finding does not impose any additional consequence and does not require review.

In re R.S., 2020 Tex. App. LEXIS 5839, at *15–16. The logic expressed in *R.S.* is persuasive, and we see little reason to forgo its application here. Moreover, nothing in

(M) suggests that prior (D) and (E) findings have a legal shelf-life under (M). All it says is that termination may occur if 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 . . . (D) or (E) or a substantially equivalent provisions of the law of another state." TEX. FAM. CODE ANN. §161.101(b)(1)(M). No time limit is imposed on the implications arising from those earlier findings.

Yet, the court in *R.S.* nevertheless reviewed the quantum of evidence underlying the newest endangerment finding and did so just in case it incorrectly believed that "no additional consequences" would flow from it. *In re R.S.*, 2020 Tex. App. LEXIS 5839, at *16. We do the same here, but not because we feel *N.G.* requires it. We do so as a way of illustrating mother's continuing pattern of endangering her children since 2005.

The evidence of record established the following: 1) episodes of domestic violence between mother, her boyfriend, and a cousin about which the children were aware; 2) an episode of domestic violence resulting in the premature birth of a child; 3) mother admitting to having used drugs since her early teens, with periods of sobriety ending in relapse; 4) mother having a criminal history which included felony theft; 5) mother violating the terms of her probation, resulting in her incarceration at the time of the final hearing; 6) the children being aware of illicit drug manufacturing and use in their home while living with mother; 7) the younger of the two girls having tested positive for methamphetamine; 8) the suspension of mother's visitation because she failed to comply with court-ordered drug testing; 9) mother having nominal contact with her daughters for many months and only through letters written by the children; 10) the older child having adopted mother's penchant to engage in physical and verbal aggression as a means of

surviving; 11) one child having undergone "maltreatment . . . by her dad"; 12) the children having developed anxieties due to the instability in the household; and 13) a child having been held back a grade in school due to multiple absences from instability within the household. *See In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009) (concluding that "a parent's use of narcotics and its effect on his or her ability to parent may qualify as an endangering course of conduct"); *In re S.S.*, No. 07-19-00309-CV, 2020 Tex. App. LEXIS 1095, at *11 (Tex. App.—Amarillo Feb. 6, 2020, pet. denied) (mem. op.) (observing that "domestic violence and drug use are circumstances the trial court can consider as endangering under subsections (D) and (E)"); *In re A.B.*, 125 S.W.3d 769, 777 (Tex. App.—Texarkana 2003, pet. denied) (discussing drug abuse as it relates to endangerment). Based on the foregoing evidence, the trial court could have formed a firm conviction or belief that mother engaged in endangering conduct and allowed her daughters to remain in endangering conditions.

Having found the evidence both legally and factually sufficient to support three statutory grounds permitting termination, we need not consider if others had the support of sufficient evidence. Thus, we overrule appellant's issues and affirm the trial court's judgment terminating the parent-child relationship between mother and her daughters, K.F. and S.F.

Brian Quinn
Chief Justice