In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-22-00157-CV

IN THE INTEREST OF K.A.R., A CHILD

On Appeal from the 110th District Court
Briscoe County, Texas
Trial Court No. 3602, Honorable William P. Smith, Presiding

August 25, 2022

MEMORANDUM OPINION

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

Appellant RR appeals from the trial court's judgment terminating his parental rights to his daughter, KAR, who was twelve at the time of the final hearing.[1] By a single issue, he challenges the legal and factual sufficiency of the evidence to support the trial court's best-interest finding. We affirm.

Background

Based on allegations that RR and CS neglectfully supervised KAR and exposed their daughter to a lifestyle that included drug use, the Department became involved with

[1] The parental rights of KAR's mother, CS, were also terminated at this final hearing. She did not appear at the final hearing and did not appeal the trial court's judgment.

the family. At the time, KAR lived with RR and his mother. CS would visit periodically, though the parents were divorced.

Though purportedly under the supervision of grandmother while RR was gone, KAR would be left alone at the residence from time to time. This happened when grandmother would take extended trips out of town. The Department had concerns about that as well as drug use by CS and RR and his association with others in the drug trade. So, as part of the conditions to regain possession of the child, RR was directed to take drug tests. He submitted to a urinalysis but refused repeated requests to undergo hair follicle testing. His reasons for the latter consisted of a supposed (1) disbelief in the science underlying the testing process and a fear of false positives and (2) belief that it invaded his privacy and constitutional rights.

Once removed, KAR was placed in a group home. RR also made periodic effort to remain in contact with her. Yet, his visits were inconsistent, and there were extended periods of time when he would not appear for them.

The evidence of record further illustrated that RR failed to complete most services ordered by the trial court. And though he underwent a psychological evaluation, he failed to follow through on recommendations arising from it. He also failed to take parenting classes.

At the time of the final hearing, RR was incarcerated, having been arrested on drug charges. Pending against him were also three indictments for assault, two for theft, and one for possessing a controlled substance. The alleged criminal event underlying the latter was distinct from the accusation for which he was incarcerated.

RR agreed that he failed to perform the services ordered and maintained that he intended to complete all of them in the weeks before the hearing. Yet, his incarceration purportedly thwarted that plan.

At trial, RR also asserted his Fifth Amendment right against self-incrimination multiple times. The questions being propounded when he invoked it included several about his prior drug use and events encompassed by the indictments. And, though allegedly self-employed with three businesses, he did not provide verification of employment because, allegedly, no one ever asked.

KAR was not the first child with whom CS had her parental rights terminated. There was another. Purportedly, RR did not know that. He similarly denied knowing that CS was under the influence of drugs while caring for their offspring.

Following the hearing, the trial court found that RR (1) knowingly placed or knowingly allowed his child to remain in conditions which endangered her physical and emotional well-being and (2) failed to comply with the provisions of a court order that specifically established the actions necessary to obtain the return of his child. The trial court also found that termination of RR's parental rights was in KAR's best interest. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E), (b)(1)(O), (b)(2).

Applicable Law—Best Interest

As mentioned earlier, RR questions the sufficiency of the evidence illustrating that the child's best interests favored termination of the parental relationship. We overrule the issue.

The standard of review was most recently discussed in *In re J.W.*, 645 S.W.3d 726, 740–41 (Tex. 2022). We apply it here.

Next, the burden of proof at trial lay with the Department. It was obligated to present evidence that produced in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations. TEX. FAM. CODE ANN. § 101.007 (describing that to be the definition of "clear and convincing evidence"). Consideration of the factors set forth in *Holley v. Adams*, 544 S.W.2d 367 (Tex. 1976), help in assessing whether that burden was met. Though non-exhaustive, they include (1) the desires of the child; (2) the emotional and physical needs of the child now and in the future; (3) the emotional and physical danger to the child now and in the future; (4) the parental abilities of the individual seeking custody; (5) the programs available to assist the individual to promote the best interest of the child; (6) the plans for the child by the individual 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 a proper one; and (9) any excuse for the acts or omissions of the parent. *Id.* at 371–72. We further note that evidence supporting one or more statutory grounds for termination is also relevant to the best-interest determination. *In re E.C.R.*, 402 S.W.3d 239, 249–50 (Tex. 2013). Finally, a child's need for a "stable, permanent home" is a paramount consideration. *See In re K.C.*, 219 S.W.3d 924, 931 (Tex. App.—Dallas 2007, no pet.).

Analysis

We begin our analysis by reiterating that RR does not question that he knowingly placed or knowingly allowed the twelve-year-old child to remain in conditions endangering her physical and emotional well-being. We view that as his concession to engaging in such activity and consider it in the best-interest equation.

Next, we note the six criminal indictments pending against him as well as his being jailed at the time of trial on a distinct drug charge. Admittedly, he had yet to be convicted on any of those accusations. Yet, indictments issue upon a grand jury finding probable cause to believe a crime occurred. *Ex parte Branch*, 553 S.W.2d 380, 381 (Tex. Crim. App. 1977) (stating that the return of an indictment establishes probable cause as a matter of law); *Ex parte Ransom*, No. 05-22-00241-CR, 2022 Tex. App. LEXIS 5512, at *1 (Tex. App.—Dallas Aug. 3, 2022, no pet.) (mem. op., not designated for publication) (the same). Probable cause reflects the presence of evidence indicating a fair probability about the occurrence of the act in question. *See Illinois v. Gates*, 462 U.S. 213, 246, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983) (so defining probable cause); *Parker v. State*, 206 S.W.3d 593, 599 (Tex. Crim. App. 2006) (the same). And, when offered the opportunity to dispute that fair probability of his engaging in the criminal acts, RR opted to invoke his right not to incriminate himself. He had a right to do same, just as the factfinder had the right to draw negative inferences from his doing so. *See In re I.E.*, Nos. 07-21-00040-CV, 07-21-00041-CV, 07-21-00042-CV, 2021 Tex. App. LEXIS 6089, at *5 n.4 (Tex. App.—Amarillo July 29, 2021, pet. denied) (mem. op.) (stating that, in a civil case, the factfinder may draw negative inferences from a party's assertion of the right against self-incrimination). Add to that RR's unilateral refusal to submit to most of the drug tests required of him, the trial court had before it smoke indicative of fire. The fire to which we allude is criminal conduct and RR's engagement in same, at least with regard to illegal drugs. Indeed, his refusal to submit to testing permits the trial court to infer that he would have tested positive. *See In re M.L.*, No. 07-21-00160-CV, 2021 Tex. App. LEXIS 9781, at *10 (Tex. App.—Amarillo Dec. 8, 2021, no pet.) (mem. op.). And, a parent's drug use is evidence

relevant to a best-interest finding. *In re P.F.*, No. 07-22-00026-CV, 2022 Tex. App. LEXIS 4341, at *5 (Tex. App.—Amarillo June 24, 2022, no pet. h.) (mem. op.) (quoting *In re M.R.,* 243 S.W.3d 807, 821 (Tex. App.—Fort Worth 2007, no pet.), for proposition that a parent's drug use, inability to provide a stable home, and failure to comply with a family service plan support a finding that termination favors the child's best interest).

We also note RR's safety concern, or lack thereof, regarding the child's care being left to one under the influence of drugs. He labeled it "situational" and thought it "okay" in some circumstances to leave the child's care to such a person.

According to the evidence, one could characterize RR's plans relating to KAR's care as generally more of the same. That is, he intended to return the child to his (RR's) mother's home. There, the child could "go right back to school" and "everything will [be] fine . . . [j]ust like it always has been." His mother then could care for her while he awaited matriculation through the criminal justice system. This caretaker while RR is away happened to be the same person who journeyed out of town on occasion and left the twelve-year-old child unattended. This, of course, assumes that grandmother wanted to care for the child. She did not testify. This is significant given testimony that neither parent provided the identity of a "relative who has indicated to the Department that they're able and willing to take" KAR.

Nor do we ignore RR's failure to perform or partake of the services and conditions needed to regain possession of the child. Yes, he revealed an intent to begin their performance shortly before the final hearing. Yet, that also evinces an intent to delay compliance or procrastinate until little time was left to act. His procrastination can be interpreted as reflecting a general nonchalance regarding the improvement of his

parenting abilities and mindset toward raising KAR. *See In re A.C.B*., 198 S.W.3d 294, 298 (Tex. App.—Amarillo 2006, no pet.) (stating that a parent's performance under a service plan is relevant to several of the *Holley* factors and therefore to the best-interest element of section 161.001).

As for KAR's situation at time of trial, she resides in a group home. According to one witness, the child is "doing really good," has "adjusted well," "likes" the new cottage in which she lives, "get[s] along with the other girls who are placed there," and is "doing well." Her adoption by suitable parents is the Department's goal.

Based on the evidence presented, we conclude that the trial court could have formed a firm conviction and belief that KAR's best interest supports termination of the parental relationship. Accordingly, we overrule RR's sole issue and affirm the trial court's judgment of termination.

Per Curiam