



**IN THE
TENTH COURT OF APPEALS**

No. 10-15-00415-CV

IN THE INTEREST OF A.H., Z.H., AND J.H., CHILDREN

**From the County Court at Law
Hill County, Texas
Trial Court No. 51943**

MEMORANDUM OPINION

Winston H. appeals from a judgment that terminated his parental rights to his children, A.H., Z.H., and J.H.¹ After a bench trial, the trial court terminated Winston's parental rights and found specifically that he had committed the predicate acts set forth in Sections 161.001(b)(1)(D), (E), (N), and (P) and that termination of his parental rights was in the children's best interest. *See* TEX. FAM. CODE ANN. § 161.001 (West 2014). Winston complains that the trial court erred by granting the termination of his parental rights pursuant to Sections 161.001(b)(1)(N) and (P) because the State had abandoned

¹ Christy, the mother of A.H., Z.H., and J.H., executed a voluntary affidavit of relinquishment and her parental rights were terminated on that basis. Christy did not appeal the judgment.

those grounds, and that the evidence was legally and factually insufficient to support the trial court's findings as to Sections 161.001(b)(1)(D), (E), and (N) and that the termination was in the children's best interest. Because we find that the evidence was legally and factually sufficient to support the trial court's findings pursuant to Section 161.001(b)(1)(E) and that termination was in the children's best interest, we affirm the judgment of the trial court.

LEGAL AND FACTUAL SUFFICIENCY

In his third issue, Winston complains that the evidence was legally and factually insufficient for the trial court to have found that he (1) knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endangered the physical or emotional well-being of the children, or (2) engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangered the physical or emotional well-being of the children. TEX. FAM. CODE ANN. § 161.001(b)(1)(D) and (E). Because the evidence as to only one predicate ground must be sufficient to support the judgment, we will restrict our discussion to Section 161.001(b)(1)(E). *See In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003).

STANDARD OF REVIEW

The standards of review for legal and factual sufficiency in termination cases are well established. *In re J.F.C.*, 96 S.W.3d 256, 264-68 (Tex. 2002) (legal sufficiency); *In re C.H.*, 89 S.W.3d 17, 25 (Tex. 2002) (factual sufficiency). In reviewing the legal sufficiency

of the evidence, we view all the evidence in the light most favorable to the finding to determine whether a trier of fact could reasonably have formed a firm belief or conviction about the truth of the Department's allegations. *In re J.L.*, 163 S.W.3d 79, 84-85 (Tex. 2005); *J.F.C.*, 96 S.W.3d at 265-66. We do not, however, disregard undisputed evidence that does not support the finding. *J.F.C.*, 96 S.W.3d at 266. In reviewing the factual sufficiency of the evidence, we must give due consideration to evidence that the factfinder could reasonably have found to be clear and convincing. *Id.* We must consider the disputed evidence and determine whether a reasonable factfinder could have resolved that evidence in favor of the finding. *Id.* If the disputed evidence is so significant that a factfinder could not reasonably have formed a firm belief or conviction, the evidence is factually insufficient. *Id.*

FACTS

Winston and Christy were married for approximately ten years before separating in 2012. During their marriage, three children were born, A.H., Z.H., and J.H. After Winston and Christy separated, Winston visited with the children very sporadically and only if Christy initiated contact with Winston to arrange visitation. Winston did not have any contact with the children after the summer of 2013.

After Winston and Christy separated, Winston moved to Abilene and moved in with his new girlfriend, Elizabeth. Elizabeth had two children from a prior relationship. W.H. was born to Elizabeth and Winston in 2013.

In September of 2014, A.H., Z.H., and J.H. were removed from Christy's home due to Christy's drug use and lack of water and food in their home. Winston was not notified of the removal until he was served in January of 2015. Winston first appeared before the trial court in February and a service plan was entered in March of 2015. Winston participated in some services in Abilene where he was residing.

Christy testified that she left Winston in 2012 because he was abusive to her. Winston drank alcohol every day but would become abusive whenever he drank too much. Winston would beat Christy with his fists or choke her. Christy testified that she had bruises and injuries from Winston's assaults. Christy testified that on one occasion, Winston held a hot iron approximately one inch from her face. A.H., being the oldest child, observed most of the domestic violence. Christy testified that one time Winston grabbed A.H.'s throat when he was angry. The other children were in the residence and either heard or saw the violent behavior as well. Christy did not call the police or report the assaults. The children were afraid of Winston because of Winston's behavior.

Christy also testified that after their separation, Winston told her that he became suicidal two times when the children were with him. Winston was hospitalized after one of those occasions and told Christy and the Department's caseworker that he was bipolar but refused to take his medicine because he did not want to take it. Additionally, Winston admitted to Christy that he had been injecting drugs after their separation.

While Winston was living with Elizabeth, Winston and Elizabeth were involved in multiple altercations while Elizabeth's children and W.H. were present. Winston was arrested for assaulting Elizabeth and the police were contacted on multiple occasions because of the volatile relationship between Winston and Elizabeth. Additionally, Winston was arrested for possession of methamphetamine and was placed on community supervision shortly before the removal of the children from Christy. Winston admitted to smoking methamphetamine with the children in the residence he shared with Elizabeth and did not think it was improper to do so, even though it resulted in W.H. testing positive for methamphetamine and marijuana.

Winston was required to take drug tests when requested as part of his service plan and his community supervision. Approximately two months before the final hearing, Winston quit a job at Denny's because he did not want to take a drug test they required. Additionally, Winston refused to take two drug tests during August leading up to the time of the final hearing on August 19. Winston admitted to using methamphetamine and marijuana shortly before trial to both the Department's caseworker and the children's guardian ad litem.

Winston did not attend the final hearing because he had to take care of his other children and because transportation was not available for him to attend. At the time of the final hearing, Winston and Elizabeth were residing with her two children and W.H. in a two bedroom apartment and Winston was unemployed.

ENDANGERMENT

Section 161.001(b)(1)(E) requires a finding that a parent “engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child.” TEX. FAM. CODE ANN. § 161.001(b)(1)(E). To constitute endangerment under subsection (E), the parent's conduct need not be directed at the child. *In re E.N.C.*, 384 S.W.3d 796, 803 (Tex. 2012). Conduct may endanger a child even if it does not cause the child to suffer actual injury. *In re M.C.*, 917 S.W.2d 268, 269 (Tex. 1996) (per curiam) (*quoting Texas Dep’t of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987)). The conduct may also include actions the parent took before the child's birth. *In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009).

It is well-established that a parent's illegal drug use may constitute endangerment. See *In re J.O.A.*, 283 S.W.3d at 345 (“[A] parent's use of narcotics and its effect on his or her ability to parent may qualify as an endangering course of conduct.”); *Walker v. Tex. Dep’t of Family & Protective Servs.*, 312 S.W.3d 608, 617 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (“Because it exposes the child to the possibility that the parent may be impaired or imprisoned, illegal drug use may support termination under [subsection (E)].”); *In the Interest of S.N.*, 272 S.W.3d 45, 52 (Tex. App.—Waco 2008, no pet.) (“Evidence of illegal drug use or alcohol abuse by a parent is often cited as conduct which will support an affirmative finding that the parent has engaged in a course of conduct which has the effect of endangering the child.”); *Vasquez*

v. Texas Dep't of Protective & Regulatory Servs., 190 S.W.3d 189, 196 (Tex. App.—Houston [1st Dist.] 2005, pet. denied) (overruling factual sufficiency challenge to termination under subsection (E) although there was no direct evidence that parent's drug use injured child); *see also N.A.B. v. Texas Dep't of Family & Protective Servs.*, No. 03-14-00377-CV, 2014 Tex. App. LEXIS 12784 at *6 (Tex. App.—Austin Nov. 26, 2014, no pet.) (mem. op.) (stating parent's use of narcotics may qualify as endangering course of conduct).

Additionally, domestic violence may also constitute endangerment, even if the violence is not directed at the child. *See In re C.J.O.*, 325 S.W.3d 261, 265 (Tex. App.—Eastland 2010, pet. denied) ("Domestic violence may be considered evidence of endangerment. If a parent abuses or neglects the other parent or other children, that conduct can be used to support a finding of endangerment even against a child who was not yet born at the time of the conduct."); *In re J.I.T.P.*, 99 S.W.3d 841, 845 (Tex. App.—Houston [14th Dist.] 2003, no pet.) ("A parent's abusive or violent conduct can produce a home environment that endangers a child's well-being. Domestic violence, want of self-control, and propensity for violence may be considered as evidence of endangerment."); *see also N.A.B.*, 2014 Tex. App. LEXIS 12784 at *2.

Winston argues that the evidence regarding his behavior prior to his separation from Christy is too remote to be considered as endangering conduct when there was no evidence of a present or future danger to the children. Even if this were the case, it is clear from his behavior subsequent to their separation that Winston has engaged in a

pattern of domestic violence as well as ongoing drug use which constitutes endangering conduct. Winston's drug use resulted in W.H. testing positive for both methamphetamine and marijuana and the evidence showed that Winston was not concerned by this. By viewing the evidence using the standards for the legal and factual sufficiency of the evidence, we find that the evidence was sufficient for the trial court to have found by clear and convincing evidence that Winston engaged in conduct that endangered the children's physical or emotional well-being. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E). We overrule issue three as it relates to Section 161.001(b)(1)(E).

Because we have found the evidence sufficient to support one predicate ground for termination, we do not reach the rest of issue three relating to the sufficiency of the evidence relating to Section 161.001(b)(1)(D), issue one relating to Section 161.001(b)(1)(P), or issue two relating to the sufficiency of the evidence relating to Section 161.001(b)(1)(N).

BEST INTEREST OF THE CHILDREN

In his fourth issue, Winston complains that the evidence was legally and factually insufficient for the trial court to have found by clear and convincing evidence that termination of the parent-child relationship was in the children's best interest. In determining the best interest of a child, a number of factors have been considered, including (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 individuals seeking custody; (5) the programs available to assist these individuals; (6) the plans for the child by these individuals; (7) the stability of the home; (8) the acts or omissions of the parent that may indicate the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976). This list is not exhaustive, but simply indicates factors that have been or could be pertinent. *Id.*

The *Holley* factors focus on the best interest of the child, not the best interest of the parent. *Dupree v. Tex. Dep't Prot. & Reg. Servs.*, 907 S.W.2d 81, 86 (Tex. App.—Dallas 1995, no writ). The goal of establishing a stable permanent home for a child is a compelling state interest. *Id.* at 87. The need for permanence is a paramount consideration for a child's present and future physical and emotional needs. *In re S.H.A.*, 728 S.W.2d 73, 92 (Tex. App.—Dallas 1987, writ ref'd n.r.e.) (en banc).

Winston argues that the Department presented no evidence of the children's best interest as it relates to the *Holley* factors. We disagree. Testimony was presented that Winston did not have visitation with the children at the children's therapist's recommendation because the children were fearful of him. In particular, A.H. was a victim of Winston's assaultive behavior according to Christy. Additionally, Winston did not attempt to have a relationship with his children after his separation from Christy unless Christy initiated it. He had not seen the children for approximately two years at the time of the final hearing.

It is also clear that Winston's parenting skills are questionable due to his smoking methamphetamine and marijuana in the house with children present. There was testimony that Winston and Elizabeth engaged in domestic violence with each other in the presence of the children. The documentation from the investigation from the Department relating to W.H. indicated that Winston did not feel that his drug use in the home was unsafe around the children and was not concerned about the children's well-being and safety while engaging in domestic violence with Elizabeth in their home. Winston admitted to continuing to use methamphetamine and marijuana in the time leading up to the final hearing and refused to take requested drug tests.

Further, Winston quit his job because he would not take a mandatory drug test for Denny's approximately two months prior to the final hearing, did not maintain stable employment in the months leading up to the final hearing, and did not even attend the final hearing in this proceeding.

The caseworker for the Department testified that the Department was working toward placing the children with the maternal grandparents in California after the final hearing. The guardian ad litem testified that the children had repeatedly expressed that they did not want to have contact with Winston and the children's therapist recommended that the children have no contact with Winston. The caseworker and the children's guardian ad litem both testified that they believed that Winston was not an appropriate option for placement of the children and that termination was in the

children's best interest. Viewing all of the evidence under the appropriate standards, we find that the evidence was both legally and factually sufficient for the trial court to have found by clear and convincing evidence that termination of Winston's parental rights was in the best interest of the children. We overrule issue four.

CONCLUSION

Having found no reversible error, we affirm the judgment of the trial court.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins

Affirmed

Opinion delivered and filed February 18, 2016
[CV06]

