IN THE
TENTH COURT OF APPEALS

No. 10-19-00484-CV

IN THE INTEREST OF J.A.C., A CHILD

From the 74th District Court
McLennan County, Texas
Trial Court No. 2018-3859-3

MEMORANDUM OPINION

Harry C. appeals from a judgment that terminated the parent-child relationship between him and his child, J.A.C. The trial court granted the termination pursuant to Subsections 161.001(b)(1)(E), (N), and (O) of the Family Code and found that termination was in the best interest of the child. In this appeal, father challenges the legal and factual sufficiency of the evidence pursuant to each predicate ground and that termination was in the best interest of J.A.C. Because we find that the evidence was legally and factually sufficient pursuant to Section 161.001(b)(1)(E) and the best interest finding, we affirm the judgment of the trial court.

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*.

FAMILY CODE SECTION 161.001(b)(1)(E)

In his first issue, the father complains that the evidence was legally and factually insufficient for the trial court to have found that he committed the predicate act set forth in Family Code Section 161.001(b)(1)(E), (N), and (O). Because we are required to consider the sufficiency of the evidence pursuant to Section 161.001(b)(1)(E) if challenged,

we will address that ground first. *In re N.G.*, 577 S.W.3d 230, 235-36 (Tex. 2019). If the evidence is sufficient as to that ground, it will not be necessary to address the other predicate grounds because sufficient evidence as to only one ground in addition to the best interest finding is necessary to affirm a termination judgment. *Id.* at 232-33.

Section 161.001(b)(1)(E) of the Family Code provides that a parent's rights may be terminated if it is found that the parent has "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 "endanger" means to expose to loss or injury, to jeopardize. *Tex. Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987). Under Section 161.001(b)(1)(E), the relevant inquiry is whether evidence exists that the endangerment of the child's well-being was the direct result of the parent's conduct, which includes acts, omissions, or failures to act. *In re K.A.S.*, 131 S.W.3d 215, 222 (Tex. App.—Fort Worth 2004, pet. denied). It is not necessary, however, that the parent's conduct be directed at the child or that the child actually suffer injury. *Boyd*, 727 S.W.2d at 533. The specific danger to the child's well-being may be inferred from parental misconduct standing alone. *Boyd*, 727 S.W.2d at 533. In making this determination, a factfinder court may consider conduct that occurred before and after the child's birth, in the child's presence and outside the child's presence, and before and after removal by the Department. *In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009). A parent's past endangering conduct may create an inference that the parent's past conduct may recur

and further jeopardize a child's present or future physical or emotional well-being. *See In re D.M.*, 58 S.W.3d 801, 812 (Tex. App.—Fort Worth 2001, no pet.).

In our endangerment analysis, we consider a parent's criminal record and how repeated criminal activity adds instability to the child's life with repeated parental incarceration and separation. *See Boyd*, 727 S.W.2d at 533-34. Additionally, drug use may constitute evidence of endangerment. *In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009). Domestic violence and a propensity for violence may also constitute evidence of endangerment. *In re C.J.O.*, 325 S.W.3d 261, 265 (Tex. App.—Eastland 2010, pet. denied).

J.A.C. and her sibling were removed from their mother after a referral that the father claimed to have made to the Department, alleging domestic violence between the mother and her paramour, drug use around the children by the mother, disarray in the condition of the home, and concerns regarding the mother's mental health. The father did not reside with the mother but claimed to visit with J.A.C. almost daily prior to the removal. The Department placed the children with a paternal aunt, where they remained until the time of trial.

The father has an extensive criminal history. He had been arrested for an altercation where he choked the mother in 2016, although the mother did not want him to be convicted of that offense so that he could maintain a relationship with J.A.C. The father admitted to choking the mother but claimed that other than that incident, there was no domestic violence between him and the mother outside of loud verbal

disagreements regarding parenting styles. The mother agreed that other than that one occasion the father was not violent toward her but stated that things would get broken when he was angry, such as being thrown on the floor or holes being punched in walls. The father agreed that he had a problem with aggression but contended that he never displayed that behavior around the child.

The father was arrested during the pendency of this proceeding for unlawfully carrying a firearm and criminal mischief and spent two months in jail after being arrested for those offenses, which resulted in him being unable to participate in his service plan during the time of his incarceration. The father pled guilty to those offenses and was placed on community supervision. The father stated that he had found the gun laying in the street and took it because he wanted a gun. The father's criminal history showed that he had twelve arrests for criminal offenses.

The father admitted to using marijuana from the age of 13 but claimed that he had stopped prior to his most recent incarceration, which occurred approximately seven months after the removal of the child. The father claimed that he did not pay for marijuana, but that people he did not know gave it to him. He stated that he did not know how may times he had smoked marijuana in the current year because he did not keep count, but ultimately claimed it had been ten times when the attorney questioning him asked if it had been more or less than ten times that year. The father contended that he did not ever smoke marijuana in front of the child. The father's sister, with whom the

father had lived for some time, stated that she knew that the father smoked marijuana but that he had never done so in front of the child and that he had not smoked it around her since New Year's, approximately ten months prior to the final hearing.

Reviewing the evidence presented at the final hearing, using the appropriate standards for the review of the legal and factual sufficiency of the evidence, we find that the evidence is legally and factually sufficient pursuant to Section 161.001(b)(1)(E). We overrule issue one. Because we have found the evidence was legally and factually sufficient as to Section 161.001(b)(1)(E), we do not reach the remainder of this issue regarding Sections 161.001(b)(1)(N) and (O).

BEST INTEREST OF THE CHILD

In his second issue, the father complains that the evidence was legally and factually insufficient for the trial court to have found that termination was in the best interest of the child. In determining the best interest of a child, a number of factors have been considered which have been set out in the Texas Supreme Court's opinion, *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*. There is no requirement that all of these factors must be proved as a condition precedent to parental termination, and the absence of evidence about some factors does not preclude a factfinder 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). Evidence establishing one of the predicate grounds under

section 161.001(1) also may be relevant to determining the best interest of the children. *See C.H.*, 89 S.W.3d at 27-28.

The father argues that because he had a close bond with the child and there was testimony from various witnesses that it would not be in the best interest of the child for the child to never see him again, the evidence was legally and factually insufficient for the trial court to have found that it was in J.A.C.'s best interest to terminate his rights. The evidence was that J.A.C. loved her father and that he saw her regularly prior to the removal. After the removal, J.A.C. was happy to see him on the rare occasions when he would visit.

J.A.C. was eight years old at the time of the trial and she and her sibling were in a placement with the father's aunt. The father's aunt wanted to adopt J.A.C. and her sibling, and J.A.C. was thriving in the aunt's possession. J.A.C. had become an A/B honor roll student since living with her aunt. J.A.C. wanted to remain with the aunt.

The aunt lived in a town approximately twenty minutes from the father's residence; however, the father had only visited the child approximately five times after the removal. The father was allowed to visit the child at any time he and the aunt agreed, but the father claimed to be unable to visit the child more often because he did not have gas money. At times, the aunt would bring the child to the father to visit when they came to Waco.

The only thing the father completed on his service plan was the psychological

evaluation. He blamed his failure to participate in services on a lack of understanding of why he was required to complete it and his two-month incarceration seven months into the proceedings. The father's anger issues were clearly a significant impediment to his dealings with the Department and the trial court, yet he failed to address those issues through therapy or anger management.

The father lived with his sister and her three children, sleeping in her living room. J.A.C. did not have her own space or room in the residence, but shared a bed with her 15-year-old cousin when she would visit prior to the removal. The father did not have a steady job prior to the removal or during the proceedings, for which he did not have an explanation. He continued to commit new criminal offenses and continued using marijuana after the child's removal.

Certainly the bond between the father and the child is a strong consideration in determining the sufficiency of the evidence to support termination. However, the father's behavior before and after the removal, including his refusal to even address why he was ordered to participate in services, his complete failure to address how his actions and instability affected the child's life, and his lack of even minimal progress at improving his own conditions even more strongly supports the trial court's finding regarding best interest. Using the appropriate standards and considering the relevant *Holley* factors, we find that the evidence was legally and factually sufficient for the trial court to have found that termination was in the best interest of the child. We overrule issue two.

CONCLUSION

Having found that the evidence was legally and factually sufficient pursuant to Section 161.001(b)(1)(E) and that the termination was in the best interest of the child, we affirm the judgment in its entirety.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill
Affirmed
Opinion delivered and filed July 6, 2020
[CV06]