TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00784-CV

P.C., Appellant

v.

Texas Department of Family & Protective Services, Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 200TH JUDICIAL DISTRICT
NO. D-1-FM-15-003243, HONORABLE LORA LIVINGSTON, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

Appellant P.C. appeals the trial court's order terminating her parental rights to her child, A.C. In her sole issue, P.C. challenges the legal and factual sufficiency of the evidence supporting the trial court's determination that termination of her parental rights was in the best interest of her child. *See* Tex. Fam. Code § 161.001(b)(2). We will affirm the judgment of the trial court.

BACKGROUND[1]

P.C. gave birth to A.C. in May 2015, and shortly thereafter, the Texas Department of Family and Protective Services (TDFPS) sought to remove A.C. from P.C.'s care. At the time,

[1] Because the record in this case has been sealed by court order, we will forego an extensive discussion of the evidence underlying the trial court's determinations so as to protect the identities of the parties and limit the discussion as much as possible to those facts voluntarily disclosed in the parties' briefing.

P.C. had a pending termination case with regard to her three older children, and her parental rights to those older children were terminated in June 2015. In that case, the court found that P.C. knowingly placed or allowed the children to be placed in conditions that endangered their physical or emotional well-being and that P.C. had a mental or emotional illness that rendered her unable to provide for the physical, emotional, and mental needs of the children. The trial court also found that termination of P.C.'s rights with respect to the three children was in the children's best interest. TDFPS then sought termination of P.C.'s rights to A.C. based on the prior termination order. On November 8, 2016, after a bench trial, the trial court terminated P.C.'s parental rights to A.C., finding that P.C.'s parental rights had previously been terminated and that termination of her rights was in A.C.'s best interest. This appeal followed.

DISCUSSION

To terminate the parent–child relationship, there must be clear and convincing evidence that the parent committed one or more of the acts specifically set forth in Family Code section 161.001(1) and that termination is in the child's best interest. *See* Tex. Fam. Code §§ 161.001, .206(a); *see also Texas Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987) (both elements must be established). Evidence is clear and convincing if it "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." Tex. Fam. Code § 101.007. Due process demands this heightened standard because of the fundamental interests at issue. *In re J.F.C.*, 96 S.W.3d 256, 263 (Tex. 2002).

On appeal, we apply a standard of review that reflects this clear-and-convincing burden of proof. *Id.* at 264–66. If the legal sufficiency of the evidence supporting termination is challenged, we consider all of the evidence in the light most favorable to the termination finding and determine whether a reasonable factfinder could have formed a firm conviction that the finding was true. *Id.* at 266. In reviewing the factual sufficiency of the evidence, we must give due consideration to evidence that a factfinder could reasonably have found to be clear and convincing. *Id.* (citing *In re C.H.*, 89 S.W.3d 17, 25 (Tex. 2002)). We must also consider the disputed evidence and determine whether a factfinder could have reasonably resolved that evidence in favor of the finding. *Id.* We must give due deference to the fact finder's findings and not supplant the judgment with our own. *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006).

There is a strong presumption that the best interest of a child will be served by preserving the parent-child relationship. *See In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006). In determining a child's best interest, the factfinder may consider a number of factors, including the desires of the child, the present and future physical and emotional needs of the child, the present and future emotional and physical danger to the child, the parental abilities of the person seeking custody, programs available to assist those persons in promoting the child's best interest, plans for the child by those individuals, the acts or omissions of the parent that may indicate that the existing parent-child relationship is not appropriate, and any excuse for the acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). TDFPS need not prove all nine *Holley* factors, and the absence of some factors does not bar the factfinder from finding by clear and convincing evidence that termination is in a child's best interest. *In re C.H.*, 89 S.W.3d at 27. While

no one factor is controlling, analysis of a single factor may be adequate in a particular factual situation to support a finding that termination is in the child's best interest. *Spurck v. Texas Dep't of Family & Protective Servs.*, 396 S.W.3d 205, 222 (Tex. App.—Austin 2013, no pet.). The focus of the inquiry is on the best interest of the child, not the best interest of the parent. *See A.L. v. Texas Dep't of Family & Protective Servs.*, No. 03-13-00610-CV, 2014 WL 641456, at *3 (Tex. App.—Austin Feb. 13, 2014, no pet.) (mem. op.). However, parental rights may not be terminated merely because a child might be better off living elsewhere. *Id.*

P.C. contends that the evidence was legally and factually insufficient to support a finding that terminating her parental rights was in the child's best interest.[2] Although A.C. is too young to express her desires, in such cases a court may consider the quality and extent of the child's relationship with the prospective placements. *See L.Z. v. Texas Dep't of Family & Protective Servs.*, No. 03-12-00113-CV, 2012 WL 3629435, at *10 (Tex. App.—Austin Aug. 23, 2012, no pet.) (mem. op.) (considering quality and extent of young children's relationship with prospective placements); *In re U.P.*, 105 S.W.3d 222, 230 (Tex. App.–Houston [14th Dist.] 2003, pet. denied) (considering evidence that child was well cared for by foster family, had bonded with them, and spent minimal time with parent in assessing toddler's desires). Here, A.C. was placed with P.C.'s cousin, V.R. There was evidence that A.C. was doing well in V.R.'s care, that they had bonded well, and that V.R. wanted to adopt A.C. Additionally, while in V.R.'s care, A.C's medical and developmental needs

[2] P.C. does not challenge the finding that her parental rights had been previously terminated with respect to her other children. *See* Tex. Fam. Code § 161.001(b)(1)(M).

were being addressed with routine physical therapy, speech therapy, occupational therapy, and other medical visits, and A.C. had shown significant improvements in those areas.

With respect to A.C.'s present and future emotional needs and physical needs, there was evidence that P.C. had historically been unable to provide a stable living situation as demonstrated by the prior termination of her parental rights to three other children. Her caseworker testified that P.C. continued to be unable to provide a stable living situation for A.C. as she was not able to care for herself and that termination of P.C.'s rights was in A.C.'s best interest. Moreover, with regard to the parenting abilities of P.C., there was testimony that P.C. had been diagnosed with Schizoaffective Disorder Bipolar Type and that, even with the services provided by TDFPS, she was not currently mentally stable, did not regularly take her prescribed psychiatric medication, and continued to have paranoid tendencies and delusions. Testimony also established that she had not sought consistent prenatal care when she became pregnant again during the pendency of this case and that she had not otherwise received proper medical care for herself for an infection of a piercing.

In support of her argument that the court should have granted P.C. possessory conservatorship rather than terminating her rights, P.C. argues that there was testimony that A.C.'s maintaining a relationship with her biological parent would be beneficial. While this may be true, there was also sufficient evidence to support a finding that, despite receiving services during the pendency of this case, P.C. had not progressed to a point where she could properly care for herself or provide a stable situation for A.C. Furthermore, V.R. testified that, if she were to adopt A.C., she would be willing to allow contact between P.C. and A.C. when P.C. was mentally able, which would

allow P.C. to maintain a presence in A.C.'s life while also providing A.C. with stability that P.C. was unable to consistently provide.

In light of the entirety of the evidence in the record, a reasonable factfinder could have formed a firm belief or conviction that termination of P.C.'s parental rights was in A.C.'s best interest. Further, a factfinder could have reasonably resolved any disputed evidence in favor of the finding that termination was in the best interest of the child. We conclude that the evidence was legally and factually sufficient to support the trial court's finding that termination of P.C.'s parental rights was in A.C.'s best interest. We overrule P.C.'s first issue.

CONCLUSION

Having overruled P.C.'s single issue on appeal, we affirm the judgment of the trial court.

Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Field and Bourland

Affirmed

Filed: May 10, 2017