NUMBER 13-16-00194-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN THE INTEREST OF F.C. AND G.C., CHILDREN

On appeal from the 156th District Court of Bee County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Garza and Longoria
Memorandum Opinion by Justice Longoria

Appellant G.C. ("Father") appeals the trial court's order terminating his parental rights to G.C. and F.C., his two sons.[1] By two issues, Father claims that the evidence was: (1) legally and factually insufficient to support termination based on the alleged acts under Family Code section 161.001(b)(1); and (2) legally and factually insufficient to find that termination was in the best interests of the children. *See* TEX. FAM. CODE ANN. §

[1] We refer to family members by their initials to protect identities. *See* TEX. R. APP. P. 9.8(b).

161.001(b)(1)(D), (E), (F), (O), (2) (West, Westlaw through 2015 R.S.). We affirm.

I. BACKGROUND

F.C. and G.C. are two sons of Father and T.P. ("Mother"), who is not a party to this appeal. Officer Rick Villarreal of the Bee County Sheriff's Office testified at trial that he received a call from Mother on September 12, 2014. Villarreal was dispatched to their home and spoke with Mother. Mother reported to Villarreal that she was afraid for the children's well-being around Father. She claimed that Father would shake the boys violently and at least once dropped one of the children to the floor from shoulder height. She also asserted that Father had tried to strangle her. Father was ultimately charged with assault in relation to the strangulation.

On October 3, 2014 at 10:30 a.m., Mother called Villarreal about a "welfare concern." Villarreal stayed with the children while Mother was taken to the hospital. No injuries were discovered at that time. Later that day at 8:00 p.m., Villarreal received another call from Mother. Villarreal testified that when he arrived on this occasion, Mother and Father were in the middle of a heated argument outside their home. There were beer bottles strewn about the yard, and according to Villarreal, Father was clearly intoxicated. Mother alleged that Father tried to choke her, then scratched her chest, punched her, and threw her to the ground. Villarreal testified that Mother had "markings consistent with what she said happened." Villarreal and several other officers arrested Father.

The Department of Child Protective Services (the "Department") filed a petition for emergency removal, and the children were placed with a foster family by mid-October. F.C. and G.C., twenty-two months old and three months old at the time, have lived with the foster family ever since that time. In November 2014, after a hearing, the trial court

ordered a family service plan to be prepared. The family service plan arranged for Mother and Father to have supervised visitation with F.C. and G.C. and ordered both Mother and Father to pay child support, submit to drug screenings, and attend counseling sessions. However, due to a lack of progress on the family service plan, the case moved forward to termination. On March 18, 2016, a bench trial was held to determine if Father and Mother's parental rights should be terminated with respect to F.C. and G.C.

Villarreal asserted at trial that the chain of events described above was not the first time he had interacted with Mother and Father; he had been contacted by Mother approximately eight to ten times in the past to report domestic violence. Villarreal further testified that the home conditions, both the filthiness and the continued family violence, endangered the children's well-being. On a scale of one to ten, one being the filthiest imaginable and ten being the cleanest, Villarreal testified that their home was "a two." According to Villarreal, Mother and Father's home reeked of "garbage, old food, and soiled Pampers." Furthermore, Villarreal claimed that cockroaches were everywhere in the home, including among the dishes, the child's car seat, and the children's beds.

The father of the foster family testified that when he and his wife first took custody of F.C. and G.C., they smelled of cigarettes, were wearing soiled clothing, and the younger child was wearing diapers the same size as the older child. Furthermore, the children were so filthy that the foster parents had to give them several baths in order to clean them.

Claudia Rodriguez works for the Department and was in charge of administering the family service plan. Rodriguez testified during the trial that both Mother and Father failed to comply with the family service plan, even though the timeline to comply with the

service plan was extended once when Mother and Father's third child was born. According to Rodriguez, Father failed to complete his parenting classes, continued to smoke heavily in the presence of the children, failed to keep a sanitary home, and made only minimal child support payments. Even though he was ordered to pay $125 a month in child support, he only made two $20 payments over a one-year period. In addition, Rodriguez testified that Father failed to submit to at least two different drug tests.

Each month, Mother and Father were both scheduled to have two supervised visits with the children: one in the home of the foster parents in McAllen and another in the Beeville Child Protective Services office. Despite being offered transportation and gas cards, Father never showed up for visitation in McAllen. He did regularly show up for visitation in the Beeville office; however, Rodriguez testified that Father had "very little" interaction with the children during the visits. She stated that "he would just sit in a rocking chair that's provided in the room, and that's all he did." Rodriguez further testified that F.C. and G.C. would cry hysterically when they were taken from the foster parents' home to the supervised visits in Beeville. Rodriguez claimed that the children appeared happy when they were returned to McAllen at the end of the supervised visits. Rodriguez stated that she had to remind Father several times not to smoke in front of the children during supervised visits. Rodriguez testified that Father would sometimes leave visits early without any explanation.

During trial, the Department also admitted into evidence photographs taken by Rodriguez in December of 2015. The photos were taken at Father and Mother's new residence, which was a different home than where they lived in October of 2014. However, the photographs illustrated that the living conditions in the new residence were

as unsanitary as the old residence: the new home was covered in dirty dishes, cigarette butts, and soiled clothing.

Karen Huegler, an investigator for Child Protective Services, testified at trial that initially the Department was working with Mother and Father to avoid removal of the children. She further testified, however, that the continued family violence was a major concern. Huegler had read the past reports detailing the family violence history, and Mother told her personally about many incidents. According to Huegler, the children have done "very well" since living with the foster parents. The children have received numerous immunizations because they had received no immunizations prior to the Department taking custody of them. The foster parents have expressed their desire to adopt F.C. and G.C., and Huegler testified that she believed it would be in the best interest of the children to terminate Father and Mother's parental rights so that the children could be adopted by the foster family.

Based on the above testimony, the trial court entered an order terminating both Mother and Father's parental rights to F.C. and G.C. Specifically, the trial court found that termination was in the children's best interest and that Father: (1) knowingly placed, or allowed the children to remain, in conditions that endangered the physical or emotional well-being of the children; (2) engaged in conduct that endangered the children's well-being; (3) failed to support the children during a one-year period; and (4) failed to comply with the court-ordered family service plan to have the children returned to him. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (F), and (O). This appeal by Father ensued.

II. STANDARD OF REVIEW

"Parental rights may be terminated only upon proof of clear and convincing evidence that the parent has committed an act prohibited by section 161.001(1) of the Texas Family Code, and that termination is in the best interest of the child." *In re E.A.G.*, 373 S.W.3d 129, 140 (Tex. App.—San Antonio 2012, pet. denied). Clear and convincing evidence is "proof that 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 ANN. § 101.007 (West, Westlaw through 2015 R.S.).

When the legal sufficiency of the evidence is challenged in a parental termination case, we look at all the evidence in the light most favorable to the finding to determine whether a reasonable factfinder could have formed a firm belief or conviction that the finding was true. *See In re J.O.A.*, 283 S.W.3d 336, 344 (Tex. 2009). Accordingly, we assume the finder of fact resolved all disputed facts in favor of its finding, if a reasonable fact-finder could do so; likewise, we disregard all evidence that a reasonable factfinder could have disbelieved. *Id.* When factual sufficiency is challenged in a parental termination case, we also consider the conflicting evidence. *Id.* If the disputed evidence is so "significant" that it would prevent a reasonable factfinder from forming a firm belief of the findings, then the evidence is factually insufficient. *Id.*

III. TERMINATION UNDER SECTION 161.001(b)(1)

In his first issue, Father claims that the evidence was legally and factually insufficient to support termination under any of the grounds alleged under § 161.001(b)(1).

A. Subsection 161.001(b)(1)(D)

1. Applicable Law

Subsection D permits termination of parental rights if the parent "knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child." *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D). Evidence of endangerment under subsection (D) is established by evidence related to the child's environment. *In re S.R.*, 452 S.W.3d 351, 360 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). The child's "environment" refers to the suitability of the child's living conditions as well as the conduct of parents or others in the home. *Id.* Living conditions that are merely "less-than-ideal" do not support a finding under subsection (D). *In re A.S.*, 261 S.W.3d 76, 83 (Tex. App.—Houston [14th Dist.] 2008, pet. denied) (citing *Tex. Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987)). However, "[i]nappropriate, abusive, or unlawful conduct by a parent or other persons who live in the child's home can create an environment that endangers the physical and emotional well-being of a child" as required under subsection (D). *In re S.R.*, 452 S.W.3d at 360. The relevant time frame to consider in determining whether there is evidence of endangerment is before the child is removed from the parent's care. *See Ybarra v. Tex. Dep't of Human Servs.*, 869 S.W.2d 574, 577 (Tex. App.—Corpus Christi 1993, no pet.).

2. Analysis

We agree with the Department that the record contains legally and factually sufficient evidence to support the finding that Father subjected the children to an endangering environment. Father argues that their living conditions were merely "less-than-ideal," and further argues that unsanitary living conditions alone are insufficient to support termination. *See In re J.R.*, 171 S.W.3d 558, 571 (Tex. App.—Houston [14th

Dist.] 2005, no pet.). In the *In re J.R.* case, the court of appeals found that the record did not support termination under subsection 161.001(b)(1)(D), even though there was ample evidence that the parents allowed the children to live in unsanitary conditions. *See id.* The home in that case was infested with cockroaches, dirty clothes, spoiled food, and bags of trash. *See id.* The family also had several cats but no litter box. *See id.*

However, the present case is distinguishable. Even though there was ample testimony of the deplorable living conditions in the home, this was not the only evidence suggesting that the children's well-being was endangered. "Domestic violence, want of self-control, and propensity for violence may be considered as evidence of endangerment." *In re S.R.*, 452 S.W.3d at 361 (citing *In re J.I.T.P.,* 99 S.W.3d 841, 845 (Tex. App.—Houston [14th Dist.] 2003, no pet.)). Villarreal testified that he had been involved with Mother and Father eight to ten times because of domestic abuse allegations against Father. He testified that when he arrived at their home on October 3, 2014, Mother had markings consistent with her allegation that Father had tried to choke her. The conduct which creates a dangerous environment need not be directed at the children. *See P.A.G. v. Tex. Dep't of Family & Protective Servs.*, 458 S.W.3d 595, 600 (Tex. App.—El Paso 2014, no pet.). Huegler also testified that Mother frequently spoke to her about Father's violent propensities and that she feared for her and the children's lives around Father. Thus, unlike *In re J.R.*, there is both evidence of unsanitary living conditions and continued domestic violence.

Based on the above evidence of unsanitary living conditions and continued domestic violence, we conclude that the evidence is legally sufficient because a reasonable trier of fact could form a firm belief or conviction that Father placed the

children, or at least allowed the children to remain, in an environment that endangered the emotional and physical well-being of the children. *See In re J.O.A.*, 283 S.W.3d at 344. Furthermore, the evidence is factually sufficient because the disputed evidence is not so significant that it would prevent a reasonable fact-finder from forming a firm belief of this finding. *See id.*

B. Subsection 161.001(b)(1)(E), (F), (O)

Having found that the evidence was legally and factually sufficient under subsection (D), we need not address the sufficiency of the evidence under subsections (E), (F), or (O) because the Department only needs to prove one statutory act or omission under 161.001(b)(1). *See In re E.N.C.*, 384 S.W.3d 796, 803 (Tex. 2012). Therefore, we overrule Father's first issue.

IV. Best Interests of the Children

In his second issue, Father argues that the evidence was legally and factually insufficient to support the finding that termination was in the children's best interests.

A. Standard of Review

In reviewing a best interest finding, we consider the non-exclusive *Holley* factors through the lens of our legal and factual sufficiency review. *See id*. These factors include: (1) the child's desires; (2) the child's emotional and physical needs now and in the future; (3) any 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 the individuals seeking custody to promote the best interest of the child; (6) the plans for the child by the individuals or agency seeking custody; (7) the stability of the home or proposed placement; (8) the parent's acts or omissions which may indicate that the

existing parent-child relationship is improper; and (9) any excuse for the parent's acts or omissions. *Id.*

B. Analysis

1. The Desires of the Child

At the time of trial, F.C. was a little over three years old and G.C. was almost two years old. There is no evidence that they expressed an opinion on returning to Father's care or that they are mature enough to form such an opinion. The Dallas court of appeals has concluded in similar circumstances that this factor is neutral. *See In re D.W.*, 445 S.W.3d 913, 926 (Tex. App.—Dallas 2014, pet. denied) (concluding that this factor was neutral because the child was not mature enough to express an opinion). There was evidence by Rodriguez that both F.C. and G.C. were visibly upset whenever they were forced to go to supervised visits with Father, and that they became subsequently much happier upon returning to their foster family. Regardless, the first factor only weighs marginally for termination. *See id.*

2. The Present and Future Emotional and Physical Needs of the Child; the Emotional and Physical Danger to the Child Now and in the Future

Evidence established that Father has a history of domestic violence. This presents a physical danger to the children. *See In re S.R.*, 452 S.W.3d at 361. Rodriguez testified that Father never progressed to a point where unsupervised visits were recommended. Mother mentioned to Huegler that she worried for the children's safety while around Father. Villarreal, Rodriguez, and Huegler all testified that they believed termination was in the children's best interests, given the environment of ongoing domestic violence and unsanitary living conditions. Villarreal testified that in October 2014, the home that Father lived in was a "two" out of ten on a scale of cleanliness and sanitation. A year later,

Rodriguez took photos of Father and Mother's new residence and testified that the living conditions were similar to those in the old home. The record also established that the children had not been given any medical immunizations. In sum, the record established that the children's physical and emotional well-being were endangered. Furthermore, Father provided no assurance that his behavior would improve in the future to accommodate the children's future needs.

The second and third *Holley* factors weigh in favor of termination.

3. Parental Abilities of the Individuals Seeking Custody

Rodriguez testified that Father failed to comply with the family service plan. The trial court could consider this as evidence that Father lacked the motivation to improve. *See In re D.W.*, 445 S.W.3d at 926. Father did not finish the parenting classes he was ordered to take. Rodriguez also testified that Father continually smoked in close proximity to the children and never interacted with the children during supervised visits. *See In re S.M.*, 389 S.W.3d 483, 493 (Tex. App.—El Paso 2012, no pet.) (observing that termination is favored when the record establishes a weak or nonexistent bond with the children).

The fourth *Holley* factor weighs in favor of termination.

4. Programs Available to Assist the Individuals Seeking Custody to Promote the Best Interest of the Child

The record established that parenting classes were made available to Father. He attended several but did not finish. The fifth *Holley* factor marginally favors termination.

5. Plans for the Child of the Individuals or the Agency Seeking Custody

Father offered no insight regarding any plans for the children. He did not state an intent to change his behavior significantly. Conversely, the Department plans for the

children to be adopted by the foster family that they have been living with for over nineteen months. Huegler testified that the children had been doing very well and improving since they began living with the foster family. "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). The sixth *Holley* factor weighs in favor of her termination.

6. Stability of the Home or Proposed Placement

Villarreal testified that Father and Mother have lived at several different addresses within the last few years. The foster family has been living in its current address for several years. The children witnessed domestic violence between Father and Mother on numerous occasions. The record reflects that the foster family has no history of domestic violence. The seventh factor weighs in favor of termination. *See id.*

7. The Acts or Omissions of the Parent that May Indicate that the Existing Parent-Child Relationship is not a Proper one and any Excuse for the Acts or Omissions of the Parent

The Department argues that the record contains several acts and omissions which indicate that the relationship between Father and the children might be improper. We agree. Evidence considered under the other *Holley* factors is also relevant in analyzing the eighth and ninth factors. *See In re D.W.*, 445 S.W.3d 931. As we explained in greater detail under the second and third factors, Father subjected the children to living in a series of homes with unsanitary living conditions and continually exposed the children to domestic violence.

Regarding any excuses, Father offers none. When the police arrived to arrest him on October 3, 2014, Father did offer one excuse for his behavior: "[Mother] is high on

crack so I decided to get drunk." Other than this, he offered no excuses for his failure to comply with the family service plan. Regarding improvements, Father asserts that no reports of domestic violence have been made since April of 2015. However, according to testimony at trial, Father and Mother no longer live together and did not live together for several extended time frames during 2015. Overall, Father gave no explanation as to how his care of the children would improve going forward. The eighth and ninth factors weigh in favor of termination.

C. Summary

Looking at the evidence of the *Holley* factors in the light most favorable to the trial court's verdict, we conclude that the evidence is legally sufficient because a reasonable trier of fact could form a firm belief or conviction that termination was in the best interest of the children. *See In re J.O.A.*, 283 S.W.3d at 344. Likewise, we conclude the evidence is factually sufficient because the disputed evidence regarding the *Holley* factors is not so significant it would prevent a reasonable factfinder from forming a firm belief or conviction that termination was in the children's best interests. *See id.* We overrule Father's second issue.

V. CONCLUSION

We affirm the trial court's judgment.

NORA LONGORIA,
Justice

Delivered and filed the
30th day of June, 2016.