



NUMBER 13-16-00692-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN THE INTEREST OF B.H.-M., A MINOR CHILD

**On appeal from the 156th District Court
of San Patricio County, Texas.**

MEMORANDUM OPINION

**Before Justices Contreras, Benavides, and Longoria
Memorandum Opinion by Justice Benavides**

By one issue, appellant B.H. (Mother)¹ challenges a jury verdict terminating her parental rights to her daughter, B.H.-M., a child (Child). See TEX. FAM. CODE ANN. § 161.001 (West, Westlaw through 2015 R.S.). We affirm.

I. BACKGROUND

This case stems from a petition to involuntarily terminate Mother's parental rights

¹ Pursuant to Rule 9.8(b) of the Texas Rules of Appellate Procedure, we will utilize aliases when referring to parties and persons related to this proceeding. See TEX. R. APP. P. 9.8(b).

to Child brought by the Texas Department of Family and Protective Services (the Department).² See *id.* The case was tried to a jury, and the record reveals the following:

On October 4, 2015, then-seven-year-old Child arrived at Dell Children's Medical Center in Austin with bruising to her cervix and a perforation to the back of her vaginal wall that had caused internal bleeding and air seepage into her abdomen. The severity of these injuries required Child to undergo surgery. Notes from hospital nurses indicated that Mother denied knowledge of any trauma or event sustained by Child that would cause these injuries. Kelly Liker, M.D., medical director of child-abuse pediatrics at Dell Children's Medical Center, testified that in addition to Child's internal injuries, she also had bruising on her shins and knees, as well as scratches to her thigh and back. Dr. Liker testified that upon interviewing family members at the hospital, she was able to discern that earlier in the day, Child was in the presence of Mother, B.I. (Maternal Grandmother), L.L. (Child's Brother), T.T. (Uncle T), N.T. (Cousin N), C.T. (Cousin N's Wife), and "two other" unnamed adult male siblings. Without being able to identify the exact object that caused Child's trauma, Dr. Liker nevertheless testified that she believed Child's injuries to be inflicted by an individual.

The next day, Austin Police Department Detective Jane Pacifico responded to the Dell Children's Medical Center for further investigation. Detective Pacifico testified that she interviewed Mother, who had had told her that she and Child had visited Maternal

² Child's father, B.P.M. (Father), was a party to the proceedings below and was represented by counsel at trial. However, he is not a party to this appeal.

Grandmother in Travis County after a camping trip earlier in the day to New Braunfels. Mother and Child then left to spend the night at Cousin N and his wife's apartment that evening. Detective Pacifico testified that Mother told her that Child was getting ready for bed in the bathroom, when Child began to scream. Mother then discovered Child bleeding from her vagina and took her to the hospital. Detective Pacifico testified that she treated this investigation as a sexual assault and at the time of trial, the criminal investigation was ongoing without any arrests and declined to testify into further detail about the criminal investigation.

Mother testified that she, Child, and Child's Brother, who was already an adult, had gone to visit Maternal Grandmother after camping in New Braunfels in October of 2015. At the time, Maternal Grandmother lived with Uncle T and his son, M.T. (Cousin M). Mother told jurors that: (1) Cousin M was a registered sex offender³; (2) she knew that Cousin M was a registered sex offender; but (3) only brought Child to visit Maternal Grandmother after assurances from Maternal Grandmother that Cousin M was not at the residence. After camping, Mother then left Child alone with Maternal Grandmother to visit with each other, and Mother left with Child's Brother to visit Cousin N at his apartment. Mother testified that at Cousin N's apartment, Cousin M also visited "for about fifteen or twenty minutes" with his girlfriend.

Later that evening, Mother picked up Child from Maternal Grandmother's care and brought her back to Cousin N's apartment to turn in for the evening. Mother asserted that Cousin M was never present at Cousin N's apartment while Child was present. At

³ The record is unclear regarding the underlying facts of Cousin M's sex-offender status.

Cousin N's apartment, Mother instructed Child to get ready for bed. Child then proceeded to the bathroom and "moments later" Mother heard screams from Child in the bathroom, and Mother ran to the bathroom. Mother discovered Child "sitting on the toilet seat with her panties down to her knees and the first thing [she] noticed was blood in the crotch of her underwear." Mother testified that she asked Child what happened, but Child did not respond. Mother then laid Child on the floor and saw blood, but could not tell whether it was coming out of Child's anus or vagina. Cousin N and his wife assisted Mother, and transported Child to the hospital. Mother denied that Cousin M was ever present around Child during their visit to the Austin area, and told jurors that Child does not know Cousin M because she has never interacted with him. Mother did not offer jurors an explanation for what happened to her daughter, other than to simply state that she believed whatever her daughter told her, which was that Child was attacked by a dog.

On October 6, 2015, the Department filed a petition for Child's protection for conservatorship and for termination of Mother's parent-child relationship with Child. The trial court subsequently issued temporary orders with regard to Child, including removing Child from Mother's possession. Mother stated that since the Department removed Child from her possession in October of 2015, she complied with the Department's family service plan, including: completing a twelve-week drug abuse program; completing a ten-week individual counseling program; attending once-a-week counseling sessions; completing a psychological evaluation; and completing an eight-week parenting class. Mother and Child continued interacting during Child's removal, and Mother stated that the visits had been "going very well." According to Mother, Child would ask when she could go home and would send her letters telling her how much she loved Mother and wanted

to go home. Lastly, Mother admitted that she stopped communicating with the Department after it placed Child with Child's paternal aunt, A.H. (Aunt), in June of 2016 in North Carolina.

Licensed professional counselor Kristie Reynolds evaluated Child from the beginning of the Department's intervention in this case until June of 2016 when Child was placed with Aunt. Reynolds described Child as "very guarded" at first, but later told Reynolds what had happened to her in "little bits and pieces." Reynolds told jurors that Child told her that she was playing in Cousin N's bedroom, where Cousin M was also present. Reynolds also stated that Child told her that she went to use the bathroom when Cousin M threw her off the toilet and onto her hands and knees and sexually assaulted her. Reynolds stated that Child told her that Mother was "on the couch either watching TV or sleeping" at the time the assault occurred. Reynolds testified that before she left for North Carolina, Child was "very clear" that she loved Mother, but Child also told Reynolds that Mother could not keep her safe.

From October of 2015 until June of 2016, Child was under the care of certified foster parent, Patricia Arroyo. According to Arroyo, during her six-month stay, Child told Arroyo a story about a dog that had hurt her. Eventually, Child stated that the "dog" that had hurt her was actually a human, and later identified the human as Cousin M. After the initial outcry, Arroyo notified Detective Pacifico, who then facilitated a forensic interview between the Children's Advocacy Center and Child.

At the Children's Advocacy Center, Child told the forensic interviewer that a "dog was doing bad things" to her and the dog "did something that it wasn't supposed to." Despite initially telling the interviewer that Cousin N's dog attacked her, she later revealed

that it was a human dressed as a dog who “pushed her down” in the bathroom and began “going back and forth in her bottom.” In a later interview, however, Child identified the “dog” as Cousin M. Child stated that Cousin M went “side to side” on her bottom and blood started to drip shortly after when she called out for Mother to help.

Jenna Edgehill, the Department’s conservatorship worker in charge of this case, testified that the Department has continuous concerns about Mother’s protective capacity for Child in light of her refusal to submit to drug testing on the day Child was taken to the hospital, her previous history of leaving Child unattended in a car,⁴ and Mother’s denials throughout the proceedings that Child was sexually assaulted.

Edgehill also testified that after removing Child from Mother’s possession, the Department placed Mother on a family service plan which outlined various tasks that Mother had to satisfactorily complete before she could reunify with Child. The tasks included that Mother: (1) participate in substance abuse assessments and counseling; (2) comply with random drug tests at the Department’s discretion; (3) maintain contact with Child; (4) become financially stable to provide for Child’s basic necessities; (5) pay monthly child support of \$224; (6) provide a safe and protective home environment for Child; (7) maintain contact with the Department to demonstrate knowledge of skills learned and provide documentation of completed classes; (8) attend, participate, and complete an eight-week parenting class and demonstrate appropriate parenting skills attained during the classes; (9) participate in a psychological assessment and follow the

⁴ The record reveals that in 2009, Mother was charged and convicted of child endangerment, a state-jail felony, after she left Child unattended in a vehicle while she hung out in a bar in Port Aransas. See TEX. PENAL CODE ANN. § 22.041 (West, Westlaw through 2015 R.S.). The Department, however, was not involved in that case.

recommendations of the therapist; and (10) attend and participate in individual counseling. According to Edgehill, Mother: (1) did not satisfactorily complete her psychological evaluation; (2) tested positive for marijuana and did not submit to three random drug-test requests by the Department, despite completing substance abuse counseling; (3) did not show that she had obtained a residence that would accommodate Child and Child's privacy needs following the sexual assault; (4) completed the parenting classes, but did not demonstrate knowledge from the classes; (5) did not establish financial stability, other than provide paperwork of denied government disability benefits; (6) did not pay her monthly child support obligation; (7) completed individual counseling. Edgehill described Mother as "hostile" toward the Department and recommended termination of Mother's parental rights, despite the Department's initial goal of reunification.

Aunt testified that Child began living with her and her husband in North Carolina on June 21, 2016 after Child's foster care ended. Aunt told jurors that she holds bachelor's and master's degrees and has been employed as a controller for seventeen years, and owns a hedge fund company, while her husband holds a bachelor's degree and is employed in the manufacturing industry. Aunt testified that she and her husband live on a rural ninety-acre property. According to Aunt, Child has emotional triggers in the bathroom and Aunt testified that it took "at least three months to get [Child] to be able to go into the bathroom and take a shower without [Aunt] being in there. She would refuse to take a shower unless [Aunt] was in there." Further, Aunt testified that Child was "scared that somebody was going to get her or hurt her." Aunt stated that Child continues to have court-ordered phone calls with Mother, but stated that several of

Mother's comments during those conversations are stressful for Child because Mother would suggest that Child would be "coming home soon." Sometimes, Child would tell Aunt that she did not want to speak to Mother. Aunt recalled one conversation with Child, in which Child stated, "I know it's not safe to be with my mom. I know it's not a safe place." Aunt also recalled that Child has told her that she was "happy" living with Aunt and "really want[ed] to stay [there]." Aunt told jurors that Child has enrolled in a trauma therapy program as well as martial arts classes. Aunt stated that she has enrolled in classes to help herself with parenting Child and described her relationship with Child as "healthy." Lastly, Aunt opined that she believes it is in Child's best interest to stay with her in North Carolina.

Mother called three witnesses to testify on her behalf, including her fiancé J.W.B., Maternal Grandmother, and her sister. All of the witnesses described Mother as an "excellent" and "loving" mother to Child. J.W.B. testified that he was retired from the military and was open to the idea of having Mother and Child live with him, and that he would financially support them.

After four days of trial, the jury returned a verdict terminating Mother's parental rights. The trial court subsequently issued an order terminating Mother's parental rights to Child, appointing the Department permanent managing conservator, and naming Father as possessory conservator. This appeal followed.

II. SUFFICIENCY CHALLENGE

By her sole issue, Mother challenges the legal and factual sufficiency of the evidence supporting the termination of her parental rights.

A. Standard of Review

A court may order the termination of a parent-child relationship if it is shown by clear and convincing evidence that a parent has met at least one of the statutory factors listed in the family code, coupled with an additional finding by clear and convincing evidence that termination is in the child's best interest. See TEX. FAM. CODE ANN. § 161.001 (West, Westlaw through 2015 R.S.); *In re J.F.C.*, 96 S.W.3d 256, 261 (Tex. 2002) (noting the two-prong test in deciding parental termination and that one act or omission of conduct satisfies the first prong).

In reviewing the legal-sufficiency of a parental rights termination order, we examine all of the evidence to determine whether the evidence viewed in the light most favorable to the finding is such that the factfinder reasonably could have formed a firm belief or conviction about the truth of the matters as to which the Department bore the burden of proof. *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005). We “must consider all of the evidence, not just that which favors the verdict.” *Id.* We “must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so,” and we “should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible.” *Id.* (internal quotations omitted). “If [an appellate court] determines that no reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true, then that court must conclude that the evidence is legally insufficient.” *J.F.C.*, 96 S.W.3d at 266. In a factual sufficiency review, we consider “in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a fact[]finder could not have reasonably formed a firm belief or conviction in the truth of its finding.” *In re M.C.T.*, 250 S.W.3d 161, 168 (Tex. App.—Fort Worth 2008, no pet.) (citing *In re*

H.R.M., 209 S.W.3d 105, 108 (Tex. 2006) (per curiam)).

B. Discussion

1. Statutory Violations

The jury found that Mother: (1) knowingly placed or knowingly allowed Child to remain in conditions or surroundings which endangered her physical and emotional well-being, see TEX. FAM. CODE ANN. § 161.001(b)(1)(D); (2) engaged in conduct or knowingly placed Child with persons who engaged in conduct which endangered her physical or emotional well-being, see *id.* § 161.001(b)(1)(E); and (3) failed to comply with the provisions of a court order that specifically established the actions necessary for Mother to obtain the return of Child who has been in the permanent or temporary managing conservatorship of the Department for not less than nine months as a result of her removal from the parent under Chapter 262 for the abuse or neglect of the child, see *id.* § 161.001(b)(1)(O).

The record in this case conclusively shows that the Department laid out in a court order ten specific tasks that Mother had to comply with and complete in order to reunify with Child. Mother admitted that she did not comply with certain tasks, specifically that: (1) she did not complete a psychological evaluation; (2) she stopped all communication and contact with the Department after Child was placed with Aunt in June of 2016; and (3) she declined to submit to three random drug tests in June, July, and August of 2016, which the Department treats as a positive result. Lastly, the record also shows that Mother did not demonstrate an ability to financially provide for Child or to provide a safe home environment for Child, as required by the family service plan. Edgehill testified that Mother showed the Department a one-bedroom recreational vehicle for her and Child

to live in, but the Department did not believe that a one-bedroom arrangement gave Child enough of a private environment.

In reviewing this evidence in a light most favorable to the trial court's order, we hold that the jurors could have reasonably formed a firm belief or conviction that Mother failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child, in violation of section 161.001(b)(1)(O) of the family code. See *J.P.B.*, 180 S.W.3d at 573.

Furthermore, in light of the entire record, we conclude that the evidence is factually sufficient to establish that Mother violated section 161.001(1)(O) of the family code. Because we conclude that the evidence is factually and legally sufficient to support the trial court's subsection (O) finding, we need not analyze the remaining findings related to this prong of the analysis. See *J.F.C.*, 96 S.W.3d at 261 (noting the two-prong test in deciding parental termination and that one act or omission of conduct satisfies the first prong).

2. Best Interest of Child

The jury also found that termination of Mother's parental rights was in Child's best interest. See *id.* § 161.001(2). In reviewing a best-interest finding, we consider, among other evidence, the non-exclusive *Holley* factors. See *In re E.N.C.*, 384 S.W.3d 796, 807 (Tex. 2012) (citing *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976)). 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.*

With regard to the first factor, we note that Child did not testify at trial. However, testimony from Aunt and counselor Reynolds indicated that Child told each of them that Mother cannot keep her safe. Aunt further testified that Child was “happy” living in North Carolina. We weigh this factor in favor of termination.

With regard to the second factor, Child’s emotional and physical needs now and in the future are tremendous in this case due to the severity of the abuse that took place. The Department’s caseworker Edgehill testified that in situations where sexual assault has occurred, a child’s privacy is paramount. The evidence shows that Aunt provides Child with the privacy that she needs and has enrolled her in therapy classes as well as martial arts. Mother did not explain how, or with what means, she could provide for Child’s emotional and physical needs. Edgehill testified that Mother showed the Department a one-bedroom recreational vehicle where she planned to live with Child, but Edgehill believed that such accommodations would not properly provide for Child’s privacy needs. This factor weighs in favor of termination.

With regard to the third factor, Aunt testified that Child has developed a fear of being alone in the bathroom, including when she showers. Aunt told jurors that Child

has asked her to accompany her in the bathroom which gives her a feeling of safety. Mother presented no evidence of whether she knew about this bathroom fear, or how she would deal with such fears moving forward. This factor also weighs in favor of termination.

With regard to the fourth, fifth, and sixth factor, Aunt has demonstrated a commitment to her parenting ability by enrolling in parenting classes and attending a “non-offending support group” composed of other parents and guardians who are experiencing similar situations of child placements such as in this case. Furthermore, Aunt admitted to the jury that she still had a lot to learn about parenting, but believes that these classes gave her a foundation to start. These factors weigh slightly in favor of termination.

With regard to the seventh factor, the Department presented evidence that Aunt lives on a ninety-acre property with lots of space for Child to play and have privacy if she desires. Additionally, Aunt testified that she owns her own hedge fund and her husband is employed with a chemical engineering degree in the manufacturing industry. This factor weighs in favor of termination.

With regard to the eighth and ninth factors, the evidence shows that Child sustained a serious injury to her vagina, which required surgery. Dr. Liker testified that she believed that Child’s injuries were caused by an individual and not a dog. Child initially told the forensic interviewer that she was attacked by a “dog,” then stated that it was a human dressed as a dog, and finally told the interviewer that the human dressed as a dog was Cousin M. The record also shows that Mother knew that Cousin M is a registered sex offender, and despite her testimony to the contrary, allowed Cousin M to be around Child, and, ultimately, sexually assault her. We further note that Edgehill

testified that Mother was “hostile” to the Department throughout the entire process. Mother also insisted to jurors that Cousin M did not sexually assault Child because he was not around her. Not once during her testimony did Mother concede or accept the possibility that Cousin M sexually assaulted Child. Instead, Mother appeared more willing to accept the explanation that the dog sexually assaulted Child rather than Cousin M. As a result, this factor weighs heavily in favor of termination.

In reviewing this evidence in a light most favorable to the jury’s finding and with the *Holley* factors in mind, we hold that the jurors reasonably could have formed a firm belief or conviction that terminating Mother’s parental rights was in Child’s best interest. Likewise, in light of the entire record weighed against the *Holley* factors, we conclude that the evidence is factually sufficient to establish that terminating Mother’s parental rights was in Child’s best interest.

We overrule Mother’s sole issue on appeal.

III. CONCLUSION

We affirm the trial court’s judgment.

GINA M. BENAVIDES,
Justice

Delivered and filed the
4th day of May, 2017.