



NUMBER 13-17-00208-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN THE INTEREST OF I.J., A CHILD

**On appeal from the 267th District Court
of Victoria County, Texas.**

MEMORANDUM OPINION

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

This appeal concerns an order terminating appellant J.J.'s (Father) parental rights to I.J. (Child), his 12-year-old son.¹ By one issue, Father asserts that termination was not in Child's best interest. We affirm.

¹ Pursuant to rule of appellate procedure 9.8, we will utilize aliases throughout this opinion. See TEX. R. APP. P. 9.8 (Protection of Minor's Identity in Parental-Rights Termination Cases and Juvenile Court Cases).

I. BACKGROUND

In May 2016, the Texas Department of Family and Protective Services (the Department) filed a petition to terminate Father's and C.F.'s (Mother)² rights to Child. Specifically, as to Father, the Department alleged, inter alia, that Father knowingly engaged in criminal conduct that resulted in his conviction of an offense and confinement or imprisonment and inability to care for Child for not less than two years from the date of filing the petition, and that termination was in Child's best interest. See TEX. FAM. CODE ANN. §§ 161.001(b)(1)(Q), 161.001(b)(2) (West, Westlaw through Ch. 49, 2017 R.S.).

The record shows that in January 2011, Father pleaded guilty to three separate criminal charges unrelated to Child: (1) aggravated robbery, a first-degree felony, see TEX. PENAL CODE ANN. § 29.03(a)(2) (West, Westlaw through Ch. 49, 2017 R.S.); (2) aggravated kidnapping, a first-degree felony, see *id.* § 20.04(a)(4) (West, Westlaw through Ch. 49, 2017 R.S.); and (3) assault involving family violence, a third-degree felony. See *id.* § 22.01(a), (b)(2) (West, Westlaw through Ch. 49, 2017 R.S.). The trial court sentenced Father to twenty-five years' imprisonment in the Texas Department of Criminal Justice—Institutional Division (TDCJ-ID) for the aggravated robbery and aggravated kidnapping charges and ten years' imprisonment with TDCJ-ID for the assault involving family violence charge, with the sentences to run concurrently.

At the termination hearing, Department-caseworker Jessica Alex testified that Father will not be eligible for parole until Child "will be about 17 or 18 years old." Alex testified that Child currently has "many" psychological needs and is currently in need of

² The record reveals that prior to trial, Mother signed an affidavit voluntarily relinquishing her parental rights to Child. Additionally, Mother is not a party to this appeal.

“intensive care.” Furthermore, Alex testified that Child had been previously hospitalized after becoming suicidal and currently requires “close supervision to insure his health and safety.” Alex opined that Father cannot provide the adequate support to address Child’s psychological and emotional issues and that terminating his rights was in Child’s best interest.

With regard to placement, Alex testified that Child expressed interest in being placed with his paternal great grandmother, but because she is 78 years old, she cannot properly care for Child. Child also expressed interest in being placed with another relative, but that other relative was unable to care for him at this time. Alex testified that Child stated that if he could not be placed with those relatives, he was happy to remain at the Azelway Residential Treatment Center in Tyler, Texas, where he currently resides.

Sue Billings, a volunteer court-appointed special advocate, testified that Child needs more stability in his life and that Child remarked to her that he enjoys his current treatment facility. Billings likewise opined that terminating Father’s parental rights was in Child’s best interest. Lastly, Father testified on his own behalf and asked the trial court to not terminate his parental rights. Father acknowledged his criminal past, but testified that he’s “turned around” by renouncing his gang affiliation and taking religious classes.

After the hearing, the trial court ordered Father’s parental rights terminated based upon findings that he violated section 161.001(b)(1)(Q) of the family code, and that termination was in Child’s best interest. See TEX. FAM. CODE ANN. §§ 161.001(b)(1)(Q); 161.001(b)(2). This appeal followed.

II. BEST INTEREST FINDING

By one issue, Father challenges the factual and legal sufficiency of evidence solely

as to the trial court's finding that terminating his parental rights was in Child's best interest.

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 id.*; *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 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 whether "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

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.*

Child has expressed his desires to be placed with certain family members, but neither of the identified family members can properly care for Child and provide for his needs. As a result, Child expressed his desire to remain in the current treatment facility where he now resides. Caseworker Alex testified that Child currently needs “intensive care,” including “close supervision to insure his health and safety” as well as the health and safety of those around him. The record also shows that Child has experienced suicidal thoughts, and currently visits with a therapist two to four times per month. While our conclusions today should not be construed to mean that a parent’s mere incarceration is factually or legally sufficient by itself to support a best interest finding, based on the facts of this case, it is undisputed that Father will likely remain incarcerated for the

remainder of Child's childhood, and as a result, Father cannot address and tend to Child's undoubtedly serious physical and emotional needs. The record shows that Child is in need of stability, and his physical and emotional needs are being fulfilled at his current treatment facility.

Therefore, in reviewing this evidence in a light most favorable to the trial court's finding and with the *Holley* factors in mind, we conclude that the trial court reasonably could have formed a firm belief or conviction that terminating Father's parental rights is in Child's best interest. See *In re J.P.B.*, 180 S.W.3d at 573. Likewise, in light of the entire record and weighing the *Holley* factors, we conclude that the evidence is factually sufficient to establish that terminating Father's parental rights is in Child's best interest. See *In re H.R.M.*, 209 S.W.3d at 108. We overrule Father's sole issue.

III. CONCLUSION

We affirm the trial court's judgment.

GINA M. BENAVIDES,
Justice

Delivered and filed the
10th day of August, 2017.