NUMBER 13-17-00287-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN THE INTEREST OF M.V. AND N.V., CHILDREN

On appeal from the 36th District Court of Bee County, Texas.

MEMORANDUM OPINION

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

This appeal follows a jury verdict and subsequent judgment terminating appellant K.V.'s (Mother) parental rights to her two minor children, M.V. (Child M) and N.V. (Child N) (collectively the Children).[1] By two issues, Mother asserts that: (1) the trial court improperly entered an order of termination that failed to state specific grounds for termination; and (2) the evidence is insufficient to support a finding that termination of

[1] We will identify all parties by aliases in order to protect the identities of the minor children involved. *See* TEX. R. APP. P. 9.8(b).

Mother's rights were in the Children's best interest. We affirm.

I. BACKGROUND

On December 7, 2015, the Texas Department of Family and Protective Services (the Department) filed a petition seeking protection and conservatorship of Child M, age 5 at the time, and Child N, age 3 at the time. By its petition, the Department also sought termination of Mother's and father, B.V.'s (Father)[2] parental rights to the Children. According to an affidavit attached to its petition, the Department received information alleging that Mother and Father had neglectfully supervised the Children by using drugs and possessing drug paraphernalia in the Children's presence. Additionally, the Department received information that the Children had been used by Mother's sister, D.B., who lived with Mother and Father to commit a theft at a local Wal-Mart store. The Department's affidavit further states that on December 4, 2015, Beeville police arrested Mother for outstanding warrants stemming from theft charges out of Victoria County and Father for violating a protective order in place prohibiting contact with Mother. Also on that day, the Department received an order of emergency removal from the trial court to take custody of the Children.

The record shows that at the time of the Department's involvement in this case, Mother was on probation for five years for two separate criminal offenses in Bee County: (1) burglary, a state-jail felony, *see* TEX. PENAL CODE ANN. § 30.02 (West, Westlaw through 2017 R.S.); and (2) theft in an amount greater than $1,500 but less than $20,000, a state-jail felony. *See* Acts 2011, 82d Leg., ch. 1234 (S.B. 694), § 21 (amended 2015)

[2] Father is not a party to this appeal.

(current version at TEX. PENAL CODE ANN. § 31.03 (West, Westlaw through 2017 R.S.). In March 2016, the State filed a motion to revoke Mother's probation for a variety of reasons, including: failure to report, failure to attend and complete an intensive outpatient substance-abuse program, failure to report a change of address, and failure to submit to urinalysis two times per month as directed. Eventually, Mother was incarcerated on May 27, 2016 and was later transferred to an inpatient substance-abuse treatment facility until February 15, 2017. After her discharge from the inpatient substance abuse treatment facility, Mother transferred her probation from Bee County, Texas to the State of Arkansas in order to live with her father, T.C. (Maternal Grandfather).

Mother, who was age 33 at the time of trial, testified that she started using methamphetamines at age 18, stopped using at age 20, and began using again when she turned "around 28 or 29." Mother admitted to using and being under the influence of methamphetamines when she was with Father and around the Children. Mother agreed that using methamphetamines around her children was dangerous. Mother also admitted that Father would physically assault her in front of the children, and agreed that her lifestyle of drug use and physical confrontations with Father in front of the Children was not good. Mother also admitted that the underlying criminal offenses for which she was on probation were the result of her being under the influence of drugs.

While she was in custody as a result of the motion to revoke, Mother testified that she did not have any visitation with the Children. After her discharge from the inpatient substance-abuse treatment facility in February 2017, Mother moved to Arkansas to live with her father and her 19-year-old son. Mother told jurors that she recently gained employment cleaning houses and earns $200 per week. Mother also testified that she

had recently filed for divorce from Father. Mother testified that she completed several programs, required by the Family Service Plan that the Department issued, including: cognitive therapy, individual counseling, and courses concerning life-healing choices, theft awareness, health, and work place skills. Mother denied using any drugs since leaving the inpatient substance-abuse treatment facility and stated that she is not the same person as when her children were removed by the Department.

Department caseworker Jennifer Knapp testified that Mother failed to complete some aspects of her Family Service Plan, including individual counseling and couple's counseling to address her previous drug use and family violence. Knapp also testified that Mother was uncooperative with the Department, including failing to submit to six separate drug tests. Knapp has visited with the Children once a month since their immediate placement with their foster parents. Knapp described the Children's relationship with their foster parents as a "parent/child relationship" as compared to "more of a friend-type relationship" that they share with Mother. Knapp testified that the Children have thrived in their foster home, have built a "very strong" bond with their foster parents, and the Children told Knapp that they did not want to go back to living with Mother. Knapp stated that the Children told her that they had witnessed Mother and Father fighting, including "mom and dad stabbing one another." Knapp further testified that the Department was unable to conduct a home study on Maternal Grandfather's home in Arkansas because Maternal Grandfather had a padlock on a room in his home, and he would not unlock it for the home inspectors. Finally, Knapp opined that if the Children were removed from their current foster-home placement, the Children would be "traumatized."

Court-appointed special advocate (CASA) volunteer Janet Kern testified that she spends approximately ten hours per week with the Children. According to Kern, Child M "is an A student" in school, and Child N is enrolled in a Head Start program and is doing "very well." Kern also testified that the children have built a "very strong bond" with their foster parents and have told her that "they don't want to go back" to their Mother. Kern stated that the Children appear to have a better relationship with their foster parents than with Mother and opined that Mother's parental rights should be terminated.

Foster mother, P.L. (Foster Mother), testified that the Children began living with her and her husband (Foster Father) on December 4, 2015. According to Foster Mother, when the Children initially arrived, they were "nervous, scared, [and] terrified." Specifically, Foster Mother testified that Child M is "smart" and thriving in school and now brings home higher marks in class than he did when he first started. Foster Mother told jurors that the Children call her "mommy" and her husband "daddy." Foster Mother described the daily structure that she and her husband have built for the Children from the time that they wake up every morning, until they go to sleep. Foster Mother stated that she currently works for the local school district, while her husband works for an energy company. Foster Mother stated that she and Foster Father have plans to adopt the Children, but were advised to wait to begin the process until the current case is resolved. Finally, Foster Mother opined that if the Children were removed from their foster placement, they would go "downhill."

Following the close of evidence at trial, a Bee County jury rendered a verdict terminating Mother's parental rights, after finding by clear and convincing evidence that Mother "has done at least one of the following":

(1) knowingly placed or knowingly allowed the Children to remain in conditions or surroundings which endangered the physical or emotional well-being of the children, *see* TEX. FAM. CODE ANN. § 161.001(b)(1)(D) (West, Westlaw through 2017 R.S.);

(2) engaged in conduct or knowingly placed the Children with persons who engaged in conduct which endangers the physical or emotional well-being of the Children, *see id.* § 161.001(b)(1)(E) (West, Westlaw through 2017 R.S.);

(3) constructively abandoned the Children who have been in the permanent or temporary managing conservatorship of the Department for not less than six months, and: (i) the Department has made reasonable efforts to return the children to Mother, (ii) Mother has not regularly visited or maintained significant contact with the Children, and (iii) Mother has demonstrated an inability to provide the Children with a safe environment, *see id.* § 161.001(b)(1)(N) (West, Westlaw through 2017 R.S.); and

(4) failed to comply with the provisions of a court order that specifically established the actions necessary for Mother to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services 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. *See id.* § 161.001(b)(1)(O) (West, Westlaw through 2017 R.S.).

Furthermore, the jury also found by clear and convincing evidence that termination of Mother's parental rights to Child M and Child N was in the Children's best interests.

This appeal followed.

II. SPECIFICITY OF ORDER OF TERMINATION

By her first issue, Mother asserts that the trial court erred by entering judgment on the jury's verdict of termination because the jury failed to state specific grounds for termination.

A. Applicable Law

The charge in parental rights cases should be the same as in other civil cases. *Tex. Dep't of Human Servs. v. E.B.*, 802 S.W.2d 647, 649 (Tex. 1990). The Texas Supreme Court stated that the controlling question in a parental-rights termination case

is whether the parent-child relationship between the parent and the children should be terminated, not what specific statutory ground or grounds under the family code the jury relied on to answer affirmatively the questions posed. *See id.*

With regard to the judgments in parental-rights termination cases, the judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. TEX. R. CIV. P. 301. Furthermore, in a suit for termination of the parent-child relationship, the judgment must state the specific grounds for termination. *Id.* R. 306.

B. Discussion

In this case, the trial court submitted a broad-form jury instruction stating the following, in relevant part:

> For the parent-child relationship in this case to be terminated with respect to [Mother], . . . it must be proven by clear and convincing evidence that at least one of the following events has occurred:
>
> [Enumeration of the four statutory allegations under Texas Family Code Sections 161.001(b)(1)(D), (E), (N), and (O)]
>
> . . . .
>
> In addition, it must also be proven by clear and convincing evidence that termination of the parent-child relationship would be in the best interest of the child. . . . .
>
> **Question No. 1: Termination of the Parental Rights of [Mother]**
>
> Should the parent-child-relationship between [Mother] and the Children . . . be terminated?
>
> Answer "Yes" or "No" as to the children:
>
> [Child M] [ ] Yes [ ] No

[Child N] [ ] Yes [ ] No

. . . .

The jury found that Mother's rights should be terminated with regard to the Children. The trial court's subsequent order of termination states the following, in relevant part:

> The Jury finds by clear and convincing evidence that [Mother] has done at least one of the following:
>
> [Enumeration of the four statutory allegations under Texas Family Code Sections 161.001(b)(1)(D), (E), (N), and (O)]
>
> Further, the Jury finds by clear and convincing evidence that termination of the parent-children relationship between [Mother] and the Children . . . is in the Children's best interest.

Mother argues that because the trial court's order of termination does not state the specific grounds for which termination is found, it does not comport with the requirement of rule of civil procedure 306. We disagree.

The charge undisputedly shows that it did not ask the jurors to specifically find by clear and convincing evidence which of the four statutory violations that Mother allegedly committed. However, as held in *E.B.*, such a charge is not required. *See E.B.*, 802 S.W.2d at 649. Accordingly, the trial court's order of termination accurately stated that the jury found at least one of the four specific grounds alleged by the Department in support of its verdict to terminate Mother's rights. Absent any authority to the contrary, we conclude that the trial court's order complied with the requirements of Texas Rule of Civil Procedure 306 by stating the specific grounds for termination found by the jury. Accordingly, we find no error. We overrule Mother's first issue.

III. BEST INTEREST FINDINGS

By her second issue, Mother challenges the legal and factual sufficiency of evidence in support of the jury's finding that terminating her parental rights to Child M and Child N was in their best interests.

A. Standard of Review and Applicable Law

A court may order the termination of a parent-child relationship if it is shown by clear and convincing evidence that at least one of the statutory factors listed in the family code has occurred, 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(b) (West, Westlaw through 2017 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

One of the burdens borne by the Department in a parental-rights termination case is to show that termination is in the child's best interest. Mother challenges the legal and factual sufficiency of the jury's findings solely on that ground.

In reviewing a best-interest finding, we consider, among other things, 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 *Holley* factor, the Department presented evidence from CASA volunteer Kern and Department caseworker Knapp. Kern testified that the Children have a "strong bond" with their foster parents and even described their

relationship with their foster parents as better than with Mother. Kern also testified that the Children have expressed to her that "they don't want to go back" to living with Mother and have remarked that they want to stay with their foster parents. Knapp likewise testified to the strength of the Children's bond with their foster parents, and have also expressed to her that they do not want to go back and live with Mother.

With regard to the second and third *Holley* factors, Kern testified that when the Children were removed from Mother's custody, they acted "standoffish" and were not sure whom they could trust. Kern testified, however, that after eighteen months in their foster-home, the children have thrived in their foster home. For example, Kern indicated that Child M is an "A-student" in school, and Child N is doing "very well" in a Head Start program. Kern and Knapp both testified to the strong bond that the Children hold with their foster parents. Foster Mother similarly testified to the positive emotional changes that the Children experienced under her and Foster Father's care. Finally, Kern, Knapp, and Foster Mother all testified that if the Children were removed from their foster-home setting, the removal would have a negative impact on their lives.

With regard to the fourth, fifth, sixth, and seventh factors, Mother testified that a significant portion of her motherhood of the Children was consumed by methamphetamine use, crime, and family violence. Mother admitted to using drugs either in the presence of the Children or while she cared for the Children. The record also shows that Mother was unable to visit with her Children during a substantial portion of their foster care due to her incarceration and placement in the inpatient substance-abuse treatment facility. Mother blamed much of her past troubles on her drug use, and told jurors that she is not the same person that she was when her children were removed

from her home because she no longer uses drugs. Mother recently obtained employment as a house cleaner, earning $200 per week. Furthermore, Mother testified that she lives with Maternal Grandfather in Arkansas along with her adult son. The record further shows that Mother completed several cognitive and life-skills classes during her time in inpatient treatment. However, Knapp testified that Mother has failed to complete counseling classes to address her previous drug abuse as required by the Family Service Plan. Knapp also labeled Mother as "uncooperative" with the Department during this proceeding. On the other hand, Foster Mother has built what has been labeled a "very strong" bond with Child M and Child N. Foster Mother also testified that she and her husband are employed and provide a structured life for Child M and Child N, and the Children are responding positively to their new life.

With regard to the remaining two *Holley* factors, we focus on Mother's lifestyle choices leading up to the Department's involvement and the results of those choices after the Department's involvement. Mother admitted that she used drugs and committed family violence in front of or in the presence of the Children. Mother also admitted that such actions were harmful to the Children. These negative lifestyle choices have also left a lasting and negative impression on the Children. Knapp told jurors that they recall Mother and Father fighting and "stabbing one another" and also refer to their Mother's home as the "bad house." As a result of actions stemming from her drug use, Mother spent months incarcerated or in an inpatient substance-abuse treatment facility and unable to visit with her children. Mother blamed her actions on her drug addiction and her inability to cope and "be able to deal with" unspecified traumatic experiences in her life. Mother told jurors, however, that she is a "different person" and has learned to "deal

with things" and "put a lot of things behind [her]" and "heal from a lot of trauma" that she has experienced.

In reviewing this evidence in a light most favorable to the jury's finding, we hold that the jurors reasonably could have formed a firm belief or conviction that terminating Mother's parental rights was in the Children's best interests. *See J.F.C.*, 96 S.W.3d at 266. Likewise, in light of the entire record, we conclude that the evidence is factually sufficient to establish that terminating Mother's parental rights was in the Children's best interests. *See H.R.M.*, 209 S.W.3d at 108.

We overrule Mother's second issue.

IV. CONCLUSION

We affirm the trial court's judgment.

GINA M. BENAVIDES,
Justice

Delivered and filed the
31st day of August, 2017.