NUMBER 13-20-00187-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN THE INTEREST OF G.L. III, A CHILD

On appeal from the 131st District Court of Bexar County, Texas.

MEMORANDUM OPINION

Before Chief Justice Contreras and Justices Benavides and Longoria
Memorandum Opinion by Chief Justice Contreras

This appeal concerns the termination of parental rights to G.L. III, a child.[1] Appellant G.L. Jr., the child's biological father, argues on appeal that the evidence at trial was legally and factually insufficient to support a finding that termination of his rights is in G.L. III's best

[1] We refer to the children and their parents by their initials in accordance with the rules of appellate procedure. *See* TEX. R. APP. P. 9.8(b)(2).

interests. We affirm.[2]

I. BACKGROUND

The Department of Family and Protective Services (the Department) sought termination of the parental rights of G.L. Jr. and M.B., the child's biological mother. Neither parent appeared at the termination trial on February 26, 2020. G.L. Jr.'s counsel announced not ready because he had not been able to contact appellant; however, counsel confirmed that appellant had been informed of the trial date and was not out of town. The trial court ordered trial to proceed.

The only witness to testify was Nallely Hernandez-Perez, the Department caseworker. She testified that G.L. III is five years old and came into the Department's care on April 4, 2019, as a result of "abandonment by mother and father, into the care of current caregivers, paternal uncle and aunt." She later explained that G.L. III's parents placed the child into the custody of his aunt and uncle and did not intend to pick him up later. Hernandez-Perez stated that G.L. Jr. was in a halfway house in El Paso at the time and "has not made contact with the child, due to his incarceration."

A service plan prepared by the Department in April of 2019 required G.L. Jr. to undergo substance abuse counseling, mental health counseling, and parenting classes. Hernandez-Perez testified G.L. Jr. completed his parenting classes but did not complete the other services. The parents were allowed to visit with the child twice per month, for two hours each visit. According to Hernandez-Perez, G.L. Jr. visited with the child only four times

[2] This appeal was transferred from the Fourth Court of Appeals in San Antonio pursuant to an order of the Texas Supreme Court. *See* TEX. GOV'T CODE ANN. § 73.001.

throughout the pendency of the case—he said he was unable to attend other visits because of "transportation issues." Hernandez-Perez stated she offered to help G.L. Jr. with transportation to visits, but he did not take her up on the offer.

Hernandez-Perez testified G.L. Jr. currently resides with his mother. He reported working for a "rental company," but he did not provide any paystubs or other proof of employment. He told her he had made child support payments, but Hernandez-Perez did not know if that was true. Hernandez-Perez testified that she had "concerns of substance abuse" because G.L. Jr. did not undergo any drug testing by the Department during the pendency of the case. On cross-examination, she agreed that she did not have any evidence of any illegal drug use by G.L. Jr. She agreed that G.L. Jr. told her he was drug tested every month as a parole requirement; however, he was only able to provide proof of one clean urinalysis.

Hernandez-Perez testified that she has visited the child in his current placement once per month. She said the child is "well aware of his environment"; is "bonded" with his aunt, uncle, and cousins; has "good structure of going to school" and doing homework; and is "doing well" in school. He does not have special medical needs. She believed it was in his best interests for his parents' rights to be terminated because "the parents cannot offer the child a home environment" and "have not bonded with him." She said the current caregivers are willing to adopt.

At the conclusion of the hearing, both parents' attorneys asked that their clients be given thirty days within which to file a voluntary relinquishment of parental rights, and if termination occurs, that it be based only on failure to comply with the service plan. *See* TEX.

FAM. CODE ANN. § 161.001(b)(1)(O).[3] As to both parents, the trial court found predicate grounds for termination under parts (B), (C), (N), (O), and (P) of family code § 161.001(b)(1). *See id.* § 161.001(b)(1)(B), (C), (N), (O), (P).[4] It also found that termination was in G.L. III's best interests. *See id.* § 161.001(b)(2). This appeal followed.[5]

---

[3] The trial court signed the final judgment of termination on the day of the hearing—February 26, 2020. No voluntary relinquishment of parental rights as to either parent appears in the record.

[4] The relevant parts of § 161.001(b)(1) authorize termination if a parent:

> (B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;
>
> (C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months; . . .
>
> (N) constructively abandoned the child who has 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 child to the parent;
> >
> > (ii) the parent has not regularly visited or maintained significant contact with the child; and
> >
> > (iii) the parent has demonstrated an inability to provide the child with a safe environment;
>
> (O) 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; [or]
>
> (P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:
>
> > (i) failed to complete a court-ordered substance abuse treatment program; or
> >
> > (ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance . . . .

TEX. FAM. CODE ANN. § 161.001(b)(1). G.L. Jr. does not contest the sufficiency of the evidence to support these predicate grounds.

[5] M.B. is not a party to this appeal.

II. DISCUSSION

A. Applicable Law and Standard of Review

Involuntary termination of parental rights involves fundamental constitutional rights and divests the parent and child of all legal rights, privileges, duties and powers normally existing between them, except for the child's right to inherit from the parent. *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985); *In re L.J.N.*, 329 S.W.3d 667, 671 (Tex. App.—Corpus Christi–Edinburg 2010, no pet.); *see In re K.M.L.*, 443 S.W.3d 101, 121 (Tex. 2014) (Lehrmann, J., concurring) ("Termination of parental rights, the total and irrevocable dissolution of the parent-child relationship, constitutes the 'death penalty' of civil cases."). Accordingly, termination proceedings must be strictly scrutinized. *In re K.M.L.*, 443 S.W.3d at 112. In such cases, due process requires application of the "clear and convincing" standard of proof. *Id.* (citing *Santosky v. Kramer*, 455 U.S. 745, 769 (1982); *In re J.F.C.*, 96 S.W.3d 256, 263 (Tex. 2002)). This intermediate standard falls between the preponderance of the evidence standard of ordinary civil proceedings and the reasonable doubt standard of criminal proceedings. *In re G.M.*, 596 S.W.2d 846, 847 (Tex. 1980); *In re L.J.N.*, 329 S.W.3d at 671. It is defined as the "measure or degree of 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.

In reviewing the legal sufficiency of the evidence supporting termination, we "look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true." *In re J.L.*, 163 S.W.3d 79, 85 (Tex. 2005); *In re L.J.N.*, 329 S.W.3d at 671. We must assume that the

fact finder resolved disputed facts in favor of its finding if it was reasonable to do so, and we must disregard all evidence that a reasonable fact finder could have disbelieved or found to be incredible. *In re L.J.N.*, 329 S.W.3d at 671. We must also consider undisputed evidence, if any, that does not support the finding. *In re K.M.L.*, 443 S.W.3d at 113; *see In re J.F.C.*, 96 S.W.3d at 266 ("Disregarding undisputed facts that do not support the finding could skew the analysis of whether there is clear and convincing evidence.").

When reviewing the factual sufficiency of the evidence supporting termination, we determine "whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the [Department]'s allegations." *In re C.H.*, 89 S.W.3d 17, 25 (Tex. 2002). In conducting this review, we consider whether the disputed evidence is such that a reasonable finder of fact could not have resolved the disputed evidence in favor of its finding. *In re J.F.C.*, 96 S.W.3d at 266. "If, 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 factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient." *Id.*

The court may order termination of the parent-child relationship if it finds by clear and convincing evidence that: (1) the parent committed an act or omission described in family code § 161.001(b)(1); and (2) termination is in the best interest of the child. TEX. FAM. CODE ANN. § 161.001(b); *In re J.L.*, 163 S.W.3d at 84. Here, only the best interest finding is at issue.

There is a strong, though rebuttable, presumption that keeping a child with a parent is in the child's best interest. TEX. FAM. CODE ANN. § 153.131; *In re R.R.*, 209 S.W.3d 112,

116 (Tex. 2006). Factors that we consider in determining whether termination of parental rights is in a child's best interest include: (1) the desires of the child; (2) the emotional and physical needs of the child now and in the future; (3) the emotional and physical danger to the child now and in the future; (4) the parenting abilities of the parties seeking custody; (5) the programs available to assist the parties seeking custody; (6) the plans for the child by the parties seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions committed by the parent which may indicate that the existing parent-child relationship is not proper; and (9) any excuse for the acts or omissions committed by the parent. *Holley v. Adams*, 544 S.W.2d 367, 372 (Tex. 1976). The party seeking termination is not required to prove all nine *Holley* factors; in some cases, undisputed evidence of just one factor may be sufficient to support a finding that termination is in the best interest of the child. *In re C.H.*, 89 S.W.3d at 25, 27.

B. Analysis

As to the first *Holley* factor, there was no evidence adduced as to the desires of the child. As to the second and third factors, there was no evidence adduced that G.L. III has any particular emotional or physical needs beyond those typical for a child his age, nor was there any evidence that the child would be subject to emotional or physical danger if termination was not ordered. G.L. Jr. did not appear at trial, and there was no other evidence adduced as to the sixth factor, regarding his plans for the child.

As to the fourth and fifth *Holley* factors, the Department caseworker testified that G.L. Jr. completed parenting classes as required by the service plan but did not complete mental health or substance abuse counseling. He also did not submit to any drug testing by the

Department; however, there was no evidence that the Department ever directed him to submit to drug tests.[6] Further, there was evidence that G.L. Jr. gave at least one clean urine sample as part of his parole conditions.

As to the seventh *Holley* factor, the evidence established that the G.L. III is doing well in his current placement with his paternal aunt and uncle, and that they are willing to adopt him.

Finally, as to the eighth and ninth factors, Hernandez-Perez testified that G.L. Jr. attended only four visits with the child in the nine months between the time the service plan was issued and the time of trial. There was no evidence that G.L. Jr. acted inappropriately with the child during the visits. G.L. Jr. told Hernandez-Perez that the reason he could not attend more visits was due to transportation issues, but he did not accept Hernandez-Perez's offer of assistance in that regard.

At trial, the caseworker said she had "concerns" about G.L. Jr.'s substance abuse. A parent's drug use would support a finding that termination is in the best interest of the child. *See In re M.R.*, 243 S.W.3d 807, 821 (Tex. App.—Fort Worth 2007, no pet.); *In re K.C.*, 219 S.W.3d 924, 927 (Tex. App.—Dallas 2007, no pet.) (noting that the fact-finder can give "great weight" to the "significant factor" of drug-related conduct by a parent). At the beginning of the case, G.L. Jr. was on parole, apparently having been incarcerated for a drug offense. However, there was no evidence that G.L. Jr. used drugs during the pendency of the case

[6] The temporary order adopting the service plan required G.L. Jr. to "submit urine samples, saliva samples, or hair follicle samples, *as directed by the Department and at times to be determined by the Department,* for analysis by a drug testing laboratory" (emphasis added). The service plan itself did not require G.L. Jr. to submit to drug testing.

or that he ever did so in the presence of a child. Moreover, there was no evidence that the Department ever explicitly directed G.L. Jr. to submit to drug testing after the service plan was instituted. Thus, the trial court could not have reasonably inferred from the lack of testing that G.L. Jr was using drugs. *Cf. In re W.E.C.*, 110 S.W.3d 231, 239 (Tex. App.—Fort Worth 2003, no pet.) ("The jury could reasonably infer that appellant's failure to complete the scheduled screenings indicated she was avoiding testing because she was using drugs.").

That said, even disregarding any potential substance abuse issues, the evidence established that G.L. Jr. is unable or unwilling to provide the stability necessary for raising a five-year-old child. He claimed to be employed but did not provide proof of employment. He claimed that he missed most visits due to "transportation issues," but he did not take advantage of the caseworker's offer of help. He did not appear at trial, despite being advised of the trial date by his court-appointed counsel. On the other hand, G.L. III is doing well in his current placement and has bonded with his aunt and uncle, who are willing to adopt him. A child's need for permanence through the establishment of a "stable, permanent home" has been recognized as the paramount consideration in determining best interest. *In re G.A.C.*, 499 S.W.3d 138, 141 (Tex. App.—Amarillo 2016, pet. denied); *In re K.C.*, 219 S.W.3d 924, 931 (Tex. App.—Dallas 2007, no pet.); *see* TEX. FAM. CODE ANN. § 263.307(a) (providing that, in considering whether parents are willing and able to provide a safe environment, "the prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest"). A factfinder may consider the consequences of failure to terminate parental rights and may also consider that the children's best interest may be served by termination so that adoption may occur, rather than the impermanent foster-care

arrangement that would result in the absence of termination. *See In re K.C.*, 219 S.W.3d at 931. The evidence set forth above shows that G.L. Jr. was unable to provide a stable environment for the child and therefore supports the trial court's best interest finding.

Had G.L. Jr. appeared at trial and testified as to his plans for the child or his reasons for not exercising more visitation, it is feasible that the scant evidence offered in this case would have been insufficient to overcome the strong presumption that keeping G.L. III with his father is in the child's best interest. *See* TEX. FAM. CODE ANN. § 153.131; *In re R.R.*, 209 S.W.3d at 116. But there is nothing in this record to counter the caseworker's testimony regarding best interests.

Considering all the evidence in the light most favorable to the judgment, we conclude that a reasonable trier of fact could have formed a firm belief or conviction, based on clear and convincing evidence, that termination of G.L. Jr.'s rights was in the best interest of G.L. III. *See In re J.L.*, 163 S.W.3d at 85. Further, the evidence to the contrary was not so significant as to preclude such a finding. *See In re J.F.C.*, 96 S.W.3d at 266. We overrule G.L. Jr.'s issue on appeal.

II. CONCLUSION

The trial court's judgment is affirmed.

DORI CONTRERAS
Chief Justice

Delivered and filed the
13th day of August, 2020.