

NO. 12-14-00257-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

<i>IN THE INTEREST OF A. H.,</i>	§	<i>APPEAL FROM THE 1ST</i>
<i>A CHILD</i>	§	<i>JUDICIAL DISTRICT COURT</i>
	§	<i>SAN AUGUSTINE COUNTY, TEXAS</i>

MEMORANDUM OPINION

C.L.H. appeals the termination of her parental rights. In one issue, she challenges the order of termination. We affirm.

BACKGROUND

C.L.H. is the mother of A.H., born July 21, 2005. J.C.H. is the father of the child and is not a party to this appeal. On February 6, 2013, the Department of Family and Protective Services (the Department) filed an original petition for protection of A.H., for conservatorship, and for termination of C.L.H.'s parental rights. The Department was appointed temporary managing conservator of the children, and C.L.H. was appointed temporary possessory conservator with limited rights and duties.

At the conclusion of the trial on the merits, the jury found, by clear and convincing evidence, that C.L.H. had engaged in one or more of the acts or omissions necessary to support termination of her parental rights under Section 161.001(1) of the Texas Family Code, subsections (D) and (E). The jury also found that termination of the parent-child relationship between C.L.H. and A.H. was in the child's best interest. Based on these findings, the trial court ordered that the parent-child relationship between C.L.H. and A.H. be terminated. This appeal followed.

SUFFICIENCY OF THE EVIDENCE

As part of her sole issue on appeal, C.L.H. contends that the evidence is legally insufficient to support the jury's finding that termination of the parent-child relationship was in the child's best interest. A no evidence complaint is preserved through one of the following: (1) a motion for instructed verdict; (2) a motion for judgment notwithstanding the verdict; (3) an objection to the submission of the issue to the jury; (4) a motion to disregard the jury's answer to a vital fact issue; or (5) a motion for new trial. *T.O. Stanley Boot Co., Inc. v. Bank of El Paso*, 847 S.W.2d 218, 220 (Tex. 1992); *see also In re D.J.J.*, 178 S.W.3d 424, 426-27 (Tex. App.—Fort Worth 2005, no pet). C.L.H. did not file a motion for instructed verdict regarding the evidence to support the jury's findings on best interest. Instead, she made an oral motion for a directed verdict, alleging that the Department did not prove, by clear and convincing evidence, each element of "the endangerment of the child." Nor did she file a motion for new trial or any of the other motions necessary to preserve her legal sufficiency challenge. Therefore, she has waived the right to complain about the legal sufficiency of the evidence to support the jury's finding that termination was in the best interest of the child.

In the remaining part of her sole issue on appeal, C.L.H. contends that the evidence is factually insufficient to support the jury's finding that termination of the parent-child relationship was in the child's best interest. A point in a motion for new trial is a prerequisite to a complaint of factual insufficiency of the evidence to support a jury finding. *In re A.J.L.*, 136 S.W.3d 293, 301 (Tex. App.—Fort Worth 2004, no pet.); TEX. R. CIV. P. 324(b)(2); *see also In re M.S.*, 115 S.W.3d 534, 547 (Tex. 2003) (applying Texas Rule of Civil Procedure 324(b)(2) requiring a motion for new trial to preserve a complaint of factual sufficiency to support jury finding in parental termination cases). C.L.H. did not file a motion for new trial. Therefore, she has waived the right to complain about the factual sufficiency of the evidence to support the jury's finding that termination was in the best interest of the child.

Because C.L.H. has waived the complaints she raises on appeal, we overrule her sole issue.¹

¹ There is no claim that failure to preserve error was unjustifiable or the result of ineffective assistance of counsel. *See In re J.P.B.*, 180 S.W.3d 570, 574 (Tex. 2005).

DISPOSITION

Having overruled C.L.H.'s sole issue, we *affirm* the judgment of the trial court.

BRIAN HOYLE

Justice

Opinion delivered December 10, 2014.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

DECEMBER 10, 2014

NO. 12-14-00257-CV

IN THE INTEREST OF A. H., A CHILD

Appeal from the 1st District Court
of San Augustine County, Texas (Tr.Ct.No. CV-13-9429)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.