NO. 12-16-00275-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN THE INTEREST OF	***§***	***APPEAL FROM THE 145TH***
A.B AND A.A.D.,	***§***	***JUDICIAL DISTRICT COURT***
CHILDREN	***§***	***NACOGDOCHES COUNTY, TEXAS***

NO. 12-16-00276-CV

IN THE INTEREST OF A.D.B.,	***§***	***APPEAL FROM THE 145TH***
	§	***JUDICIAL DISTRICT COURT***
A CHILD	***§***	***NACOGDOCHES COUNTY, TEXAS***

MEMORANDUM OPINION

R.B. appeals the termination of his parental rights. In three issues, he challenges the legal and factual sufficiency of the evidence to support the trial court's termination order. We affirm.

BACKGROUND

R.B. is the father of A.B. and A.D.B.[1] On December 15, 2014, the Department of Family and Protective Services (the Department) filed an original petition for protection of A.B. for conservatorship, and for termination of R.B.'s parental rights.[2] On June 1, 2015, under a separate

[1] P.M.P.-H. is the mother of A.B. and A.D.B. The trial court found that P.M.P.-H. executed an unrevoked or irrevocable affidavit of voluntary relinquishment of parental rights to each child, found that termination between P.M.P.-H. and the children were in the children's best interest, and ordered that the parent-child relationship between P.M.P.-H. and the children be terminated. The mother is not a party to this appeal.

[2] In this case, the Department's original petition also named another child, A.A.D., who had the same mother as the other children, P.M.P.-H., but a different father, A.D. The trial court found that P.M.P.-H. executed an unrevoked or irrevocable affidavit of voluntary relinquishment of parental rights, found that termination between P.M.P.-H. and A.A.D. was in the child's best interest, and ordered that the parent-child relationship between P.M.P.-

case number, the Department filed an original petition for protection of A.D.B. for conservatorship, and for termination of R.B.'s parental rights. The Department was appointed temporary managing conservator of the children, and R.B. was appointed temporary possessory conservator with limited rights and duties to the children.

Both cases were tried together. At the conclusion of the trial on the merits, the trial court found, by clear and convincing evidence, that R.B. had engaged in one or more of the acts or omissions necessary to support termination of his parental rights under subsections (D) and (E) of Texas Family Code Section 161.001(b)(1). The trial court also found that termination of the parent-child relationship between R.B., A.B., and A.D.B. was in the children's best interest. Based on these findings, the trial court ordered that the parent-child relationship between R.B., A.B., and A.D.B. be terminated. The trial court also filed findings of fact and conclusions of law. This appeal followed.

TERMINATION OF PARENTAL RIGHTS

Involuntary termination of parental rights embodies fundamental constitutional rights. ***Vela v. Marywood***, 17 S.W.3d 750, 759 (Tex. App.–Austin 2000), *pet. denied per curiam*, 53 S.W.3d 684 (Tex. 2001); ***In re J.J.***, 911 S.W.2d 437, 439 (Tex. App.–Texarkana 1995, writ denied). Because a termination action "permanently sunders" the bonds between a parent and child, the proceedings must be strictly scrutinized. ***Wiley v. Spratlan***, 543 S.W.2d 349, 352 (Tex. 1976); ***In re Shaw***, 966 S.W.2d 174, 179 (Tex. App.–El Paso 1998, no pet.).

Section 161.001 of the family code permits a court to order termination of parental rights if two elements are established. TEX. FAM. CODE ANN. § 161.001 (West Supp. 2016); ***In re J.M.T.***, 39 S.W.3d 234, 237 (Tex. App.–Waco 1999, no pet.). First, the parent must have engaged in any one of the acts or omissions itemized in the second subsection of the statute. TEX. FAM. CODE ANN. § 161.001(b)(1) (West Supp. 2016); ***Green v. Tex. Dep't of Protective & Regulatory Servs.***, 25 S.W.3d 213, 219 (Tex. App.–El Paso 2000, no pet.); ***In re J.M.T.***, 39 S.W.3d at 237. Second, termination must be in the best interest of the child. TEX. FAM. CODE ANN. § 161.001(b)(2) (West Supp. 2016); ***In re J.M.T.***, 39 S.W.3d at 237. Both elements must be established by clear and convincing evidence, and proof of one element does not alleviate the

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H. and A.A.D. be terminated. However, the trial court appointed A.D. as permanent managing conservator of A.A.D. and found this appointment to be in the child's best interest.

petitioner's burden of proving the other. TEX. FAM. CODE ANN. § 161.001; ***Wiley***, 543 S.W.2d at 351; ***In re J.M.T.***, 39 S.W.3d at 237.

The clear and convincing standard for termination of parental rights is both constitutionally and statutorily mandated. TEX. FAM. CODE ANN. § 161.001; ***In re J.J.***, 911 S.W.2d at 439. Clear and convincing evidence means "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 (West 2014). The burden of proof is upon the party seeking the deprivation of parental rights. ***In re J.M.T.***, 39 S.W.3d at 240.

STANDARD OF REVIEW

When confronted with both a legal and factual sufficiency challenge, an appellate court must first review the legal sufficiency of the evidence. ***Glover v. Tex. Gen. Indem. Co.***, 619 S.W.2d 400, 401 (Tex. 1981); ***In re M.D.S.***, 1 S.W.3d 190, 197 (Tex. App.–Amarillo 1999, no pet.). In conducting a legal sufficiency review, we must 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 findings were true. ***In re J.F.C.***, 96 S.W.3d 256, 266 (Tex. 2002). We must assume that the fact finder settled disputed facts in favor of its finding if a reasonable fact finder could do so and disregard all evidence that a reasonable fact finder could have disbelieved or found incredible. ***Id***.

The appropriate standard for reviewing a factual sufficiency challenge to the termination findings is whether the evidence is such that a fact finder could reasonably form a firm belief or conviction about the truth of the petitioner's allegations. ***In re C.H.***, 89 S.W.3d 17, 25 (Tex. 2002). In determining whether the fact finder has met this standard, an appellate court considers all the evidence in the record, both that in support of and contrary to the trial court's findings. ***Id***. at 27-29. Further, an appellate court should consider whether disputed evidence is such that a reasonable fact finder could not have reconciled that disputed evidence in favor of its finding. ***In re J.F.C.***, 96 S.W.3d at 266. The trier of fact is the exclusive judge of the credibility of the witnesses and the weight to be given their testimony. ***Nordstrom v. Nordstrom***, 965 S.W.2d 575, 580 (Tex. App.–Houston [1st Dist.] 1997, pet. denied).

In an appeal from a bench trial, the trial court's findings of fact have the same weight as a jury verdict. ***Fulgham v. Fischer***, 349 S.W.3d 153, 157 (Tex. App.—Dallas 2011, no

pet.). Findings may be overturned only if they are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. ***Ortiz v. Jones***, 917 S.W.2d 770, 772 (Tex. 1996). When the appellate record contains a reporter's record as it does in this case, findings of fact are not conclusive and are binding only if supported by the evidence. ***Fulgham***, 349 S.W.3d at 157. We review a trial court's conclusions of law de novo. ***Quick v. Plastic Sol. of Tex., Inc.***, 270 S.W.3d 173, 181 (Tex. App.–El Paso 2008, no pet.). Erroneous conclusions of law are not binding on the appellate court, but if the controlling findings of fact will support a correct legal theory, are supported by the evidence, and are sufficient to support the judgment, the adoption of erroneous legal conclusions will not mandate reversal. ***Id.***

TERMINATION UNDER SECTION 16.001(b)(1)(D) & (E)

In his first and second issues, R.B. contends the evidence is legally and factually insufficient to terminate his parental rights pursuant to subsections (D) and (E) of Texas Family Code section 161.001(b)(1). We will review these two issues together because both subsections share common facts and matters of law.

Applicable Law

The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence that the parent has knowingly placed or knowingly allowed the child to remain in conditions or surroundings that endanger the physical or emotional well-being of the child. TEX. FAM. CODE ANN. § 161.001(b)(1)(D) (West Supp. 2016). The court may also order termination of the parent-child relationship if it finds by clear and convincing evidence that the parent has engaged in conduct, or knowingly placed the child with persons who engaged in conduct, that endangers the physical or emotional well being of the child. ***Id.*** § 161.001(b)(1)(E) (West Supp. 2016). Both subsections (D) and (E) of Section 161.001(b)(1) use the term "endanger," which means to expose to loss or injury or to jeopardize. ***Tex. Dep't of Human Svcs. v. Boyd***, 727 S.W.2d 531, 533 (Tex. 1987); ***In re D.M.***, 58 S.W.3d 801, 811 (Tex. App.—Fort Worth 2001, no pet.).

Subsection (D) addresses the child's surroundings and environment. ***In re N.R.***, 101 S.W.3d 771, 775-76 (Tex. App.—Texarkana 2003, no pet.). The child's "environment" refers to the suitability of the child's living conditions as well as the conduct of parents or others in the home. ***In re S.R.***, 452 S.W.3d 351, 360 (Tex. App.—Houston [14th Dist.] 2014, pet. denied).

The relevant time frame to determine whether there is clear and convincing evidence of endangerment is before the child was removed. ***Ybarra v. Tex. Dep't of Human Servs.***, 869 S.W.2d 574, 577 (Tex. App.—Corpus Christi 1993, no pet.). Further, subsection (D) permits termination based upon only a single act or omission. ***In re R.D.***, 955 S.W.2d 364, 367 (Tex. App.—San Antonio 1997, pet. denied).

When seeking termination under subsection (D), the Department must show that the child's living conditions pose a real threat of injury or harm. ***In re N.R.***, 101 S.W.3d at 776; ***Ybarra***, 869 S.W.2d at 577. Further, there must be a connection between the conditions and the resulting danger to the child's emotional or physical well-being. ***Ybarra***, 869 S.W.2d at 577-78. It is sufficient that the parent was aware of the potential for danger to the child in such environment and disregarded that risk. ***In re N.R.***, 101 S.W.3d at 776. In other words, conduct that demonstrates awareness of an endangering environment is sufficient to show endangerment. ***In re S.M.L.***, 171 S.W.3d 472, 477 (Tex. App.—Houston [14th Dist.] 2005, no pet.). We have previously concluded it is illogical to reason that inappropriate, debauching, unlawful, or unnatural conduct of persons who live in the home of a child, or with whom a child is compelled to associate on a regular basis in his home, is not inherently a part of the "conditions and surroundings" of that place or home. ***In re B.R.***, 822 S.W.2d 103, 106 (Tex. App.—Tyler 1991, writ denied). Subsection (D) is designed to protect a child from precisely such an environment. ***Id***.

Subsection (E) requires us to look at the parent's conduct alone, including actions, omissions, or the parent's failure to act. ***In re D.J.***, 100 S.W.3d 658, 662 (Tex. App.—Dallas 2003, pet. denied); ***In re D.M.***, 58 S.W.3d at 811. The specific danger to the child's well being need not be established as an independent proposition, but may instead be inferred from parental misconduct. ***Boyd***, 727 S.W.2d at 533; ***In re J.J.***, 911 S.W.2d at 440. Further, it is not necessary that the conduct be directed at the child or that the child actually suffers injury. ***Boyd***, 727 S.W.2d at 533; ***In re J.J.***, 911 S.W.2d at 440. The endangering conduct may include the parent's actions before the child's birth and while the parent had custody of older children, including evidence of drug usage. *See* ***Boyd***, 727 S.W.2d at 533 (stating that although endanger means more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment, it is not necessary that the parent's conduct be directed at the child or that the child actually suffers injury); *see also* ***In re M.N.G.***, 147 S.W.3d 521, 536 (Tex. App.—Fort Worth

2004, pet. denied) (holding that courts may look to parental conduct both before and after child's birth to determine whether termination is appropriate).

Termination under subsection (E) must be based on more than a single act or omission. ***In re D.M.***, 58 S.W.3d at 812; ***In re D.T.***, 34 S.W.3d 625, 634 (Tex. App.—Fort Worth 2000, pet. denied). A voluntary, deliberate, and conscious "course of conduct" by the parent that endangers the child's physical and emotional well being is required. ***In re D.M.***, 58 S.W.3d at 812; ***In re D.T.***, 34 S.W.3d at 634. Scienter is not required for an appellant's own acts under subsection (E), although it is required when a parent places his child with others who engage in endangering acts. ***In re U.P.***, 105 S.W.3d 222, 236 (Tex. App.—Houston [14th Dist.] 2003, pet. denied).

Analysis

In its findings of fact and conclusions of law, the trial court found that R.B. knowingly allowed the children, A.B. and A.D.B., to remain in conditions or surroundings, and knowingly placed the children with their mother, P.M.P.-H., who engaged in conduct, that endangered their physical or emotional well-being. In support of its findings, the trial court found that P.M.P.-H. told the testifying psychologist, Angus Donald Walker, Ph.D., that she was bipolar, had attempted suicide as a teenager and as an adult, and had used marijuana, cocaine, and methamphetamine. The trial court determined that P.M.P.-H.'s needs were so great that it was difficult for her to focus on the children.

The evidence at trial showed that Walker diagnosed P.M.P.-H. with major depression, recurrent, severe, without psychotic features, and generalized anxiety disorder. According to Walker, P.M.P.-H.'s diagnosis made it difficult for her to be aware of the needs of others, including her children. Moreover, her licensed professional counselor, Sarah Joy Wilson, stated that P.M.P.-H. was unable to cope with normal life stressors or life in general. Yet, the trial court found, and the evidence showed, R.B. allowed the children to remain with P.M.P.-H.

The trial court determined that R.B. allowed the children to remain with P.M.P.-H. who was unable to grasp how her long history of drug abuse affected the children. We note that the case began when the older child, A.B., and her older half-brother were removed from R.B.'s and P.M.P.-H.'s home on December 9, 2014. They were removed because of P.M.P.-H.'s drug use. After A.D.B. was born, he was placed with a foster family because P.M.P.-H. continued to test positive for drugs. He was returned to R.B. and P.M.P.-H. in August 2015. The two older

children were returned in September 2015. However, all three children were removed again in October 2015 because P.M.P.-H. continued to test positive for drugs. Wilson testified that P.M.P.-H. had a long history of substance abuse and, eventually, the mother admitted that her behavior could be detrimental to her children. However, P.M.P.-H. had some difficulty acknowledging the harm to her children and minimized these problems. During the monitored return of the children, Wilson noted that P.M.P.-H. did not appear to be coping well, reported several problems with R.B., and was very emotional.

The trial court also found that R.B.'s counselor testified that he was unaware that the mother was using drugs while the children were still in her care. The trial court found that R.B. allowed the children to remain with the mother after she tested positive for methamphetamines in December 2014 and October 2015, and for cocaine in February 2015. According to R.B.'s brief, P.M.P.-H. "fooled" him, and he denied that there were any signs that P.M.P.-H. was using drugs. Nor could he foresee that she would relapse.

However, the evidence showed that Wilson requested R.B. research the signs and symptoms of drug use to ensure that he knew what to look for when someone was using drugs. R.B. admitted to her in later sessions that, now, he saw the past symptoms of P.M.P.-H.'s drug use. According to Wilson, R.B. understood his responsibility to remove his children from that situation if he saw signs of drug use in the future. Nonetheless, she did not believe it was realistic that R.B. did not realize that a person living in his home was using drugs. R.B. testified that he never saw P.M.P.-H. use drugs in the house or in front of him, and did not realize that she had relapsed after the children were returned. P.M.P.-H. stated that "most of the time," she did not use drugs in R.B.'s presence.

Taylor Brasher, a Department caseworker, also talked to R.B. about the warning signs that P.M.P.-H. was using drugs, how to recognize those signs, and that he could ask her to leave or leave her himself. Another Department caseworker, Kelcey Ady, testified that if R.B. did not know the signs that P.M.P.-H. was using drugs, then he may not be able to remove the children if she began using drugs again. Moreover, Ady explained to R.B. that allowing someone to use drugs and remain in his house would mean that his children could not be returned to him.

Taylor and Ady testified that R.B. knew the children were removed both times because of P.M.P.-H.'s drug use. Yet, P.M.P.-H. remained living with R.B. Ady also testified that a few days before the second day of trial, she found P.M.P.-H. at R.B.'s house and she admitted that

she was using drugs. At no time during the case did R.B. remove the children from P.M.P.-H.'s presence or call the Department to let them know that P.M.P.-H. had relapsed.

The trial court found that R.B. allowed P.M.P.-H. to stay with him after she signed an affidavit of relinquishment and after she testified that their relationship was over. The trial court found that R.B. and P.M.P.-H. had a volatile relationship with multiple fights during which she would leave only to return later. The trial court found that he would "kick [P.M.P.-H.] out of the house" only to "always" allow her to return.

The evidence supporting the trial court's finding showed that P.M.P.-H. testified that she and R.B. have never actually "broken up," or that she had never completely moved out of the house. P.M.P.-H. stated that in the two weeks before the second day of trial she and R.B. broke up and got back together twice. Brasher acknowledged the volatility of the relationship, testifying that R.B. and P.M.P.-H. would continually break up and get back together. She stated that it was a pattern in their relationship. Brasher testified that directly before P.M.P.-H. voluntarily relinquished her parental rights, P.M.P.-H. texted her that she was living with R.B. again.

However, R.B. testified that his relationship with P.M.P.-H. was "over" and that she was no longer living at his house. Brasher was unable to confirm that P.M.P.-H. had actually moved out of R.B.'s house. R.B. admitted continually talking to P.M.P.-H. after she voluntarily relinquished her parental rights to the children.

Conclusion

From this evidence, a reasonable fact finder could have determined that R.B. allowed P.M.P.-H. to remain in his house with the children even though she demonstrated severe mental health problems and continued drug use. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D). The fact finder could have also formed a firm belief or conviction that R.B. allowed P.M.P.-H. to remain in his house after she voluntarily relinquished her parental rights, after their relationship was apparently "over," and after she tested positive for drugs at least three times. *See* ***id.***

The fact finder could have also formed a firm belief or conviction that R.B. did not remove the children from P.M.P.-H.'s presence or call the Department to inform them that P.M.P.-H. had relapsed. *See* ***id.*** § 161.001(b)(1)(E). Nor did he appear to be able to ascertain if she was using drugs while living in the house with children or end the relationship even after she relapsed. *See* ***id.*** Therefore, we hold that the evidence, viewed in the light most favorable to the

finding, was sufficiently clear and convincing that a reasonable trier of fact could have formed a firm belief or conviction that R.B. knowingly placed or knowingly allowed the children to remain in conditions or surroundings, and engaged in conduct or knowingly placed the children with persons who engaged in conduct, that endangered their physical or emotional well being. *See* ***In re J.F.C.***, 96 S.W.3d at 266.

Although there is conflicting evidence that R.B. may not have known that P.M.P.-H. was using drugs while living with the children, a reasonable fact finder could have resolved these conflicts in favor of its finding. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E). While there is some disputed evidence, this evidence is not so significant that a reasonable trier of fact could not have reconciled this evidence in favor of its finding and formed a firm belief or conviction that R.B. knowingly placed or knowingly allowed the children to remain in conditions or surroundings, and engaged in conduct or knowingly placed the children with persons who engaged in conduct, that endangered their physical or emotional well being. *See* ***In re C.H.***, 89 S.W.3d at 25.

Therefore, we hold that the evidence is legally and factually sufficient to support termination of R.B.'s parental rights under Sections 161.001(b)(1)(D) and (E). *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E). Accordingly, we overrule R.B.'s first and second issues.

BEST INTEREST OF THE CHILDREN

In his third issue, R.B. contends the evidence is legally and factually insufficient to support a finding that termination of his parental rights is in the children's best interest. In determining the best interest of the child, a number of factors have been considered, including (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 parental abilities of the individuals seeking custody; (5) the programs available to assist these individuals; (6) the plans for the child by these individuals; (7) the stability of the home; (8) the acts or omissions of the parent that may indicate the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions of the parent. ***Holley v. Adams***, 544 S.W.2d 367, 371-72 (Tex. 1976).

The family code also provides a list of factors that we will consider in conjunction with the above-mentioned ***Holley*** factors. *See* TEX. FAM. CODE ANN. § 263.307(b) (West Supp. 2016).

These include (1) the child's age and physical and mental vulnerabilities; (2) the magnitude, frequency, and circumstances of the harm to the child; (3) the results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home; (4) whether there is a history of substance abuse by the child's family or others who have access to the child's home; (5) the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision; (6) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time; (7) whether the child's family demonstrates adequate parenting skills; and (8) whether an adequate social support system consisting of an extended family and friends is available to the child. *See* ***id.*** § 263.307(b)(1), (3), (8), (10), (11), (12), (13).

The evidence need not prove all statutory or ***Holley*** factors in order to show that termination of parental rights is in a child's best interest. *See* ***Holley***, 544 S.W.2d at 372; ***In re J.I.T.P.***, 99 S.W.3d 841, 848 (Tex. App.—Houston [14th Dist.] 2003, no pet.). In other words, the best interest of the child does not require proof of any unique set of factors nor limit proof to any specific factors. ***In re D.M.***, 58 S.W.3d at 814. Undisputed evidence of just one factor may be sufficient in a particular case to support a finding that termination is in the child's best interest. ***In re M.R.J.M.***, 280 S.W.3d 494, 507 (Tex. App.—Fort Worth 2009, no pet.). But the presence of scant evidence relevant to each factor will not support such a finding. ***Id.*** Evidence supporting termination of parental rights is also probative in determining whether termination is in the best interest of the child. *See* ***In re C.H.***, 89 S.W.3d at 28-29. We apply the statutory and ***Holley*** factors below.

Analysis

The trial court found that termination of R.B.'s parental rights was in the children's best interest. The evidence supporting the trial court's finding included Walker's psychological evaluation of R.B. According to Walker, R.B. indicated that "he does what he wants when he wants," and that hurting others did not bother him. R.B. also checked twelve of the seventeen items in the narcissistic category revealing that he had some characteristics of narcissism. According to Walker, R.B. had a low empathy score that indicated he may have difficulty understanding and valuing a child's needs.

The trial court also found that R.B. minimized his problems and blamed his problems on P.M.P.-H. The evidence showed that R.B. was very uncomfortable discussing any deficiencies in his parenting style. Instead, he blamed P.M.P.-H. The trial court also found that R.B. showed little motivation to change his authoritarian style of parenting that could be harmful to a child's emotional health. Further, he failed to show improvement in his parenting skills. According to Wilson, R.B.'s parenting style was "[v]ery authoritarian," or a "fear-and-power" based parenting. Wilson stated that in this style of parenting, children feel that love is conditional and based on their behavior, schoolwork, or other parental expectations. She also testified that an authoritarian parenting style could be emotionally damaging to a child. Wilson stated that R.B. appeared unwilling to change his parenting style. He described his expectations of the children as "my-way-or-the-highway," and that there would be no negotiation. R.B. also described a household in which there was a lot of yelling, but not much talking. Ady stated that if the only parent is a disciplinarian, it would probably not work in a single parent family. However, in his brief, R.B. stated that there was nothing wrong with his parenting style.

The trial court found that "it [was] not good for the children to be raised by a single, stoic parent who display[ed] no initiative to interact with the children at visits, no nurturing of the children, no idea how to meet the children's needs," no ability to take care of them by himself, and no support system to help him raise the children. There was overwhelming evidence to support these findings. Ady testified that she observed visitations between R.B. and his children. She said that the first visitation went well and that he played with the children. However, after the first visit, R.B. did not do anything with the children. According to Ady, R.B. did not appear to have any interest in the children. R.B. would "[j]ust sit[]" during visitations. He never initiated interaction with the children. The children attempted to interact with R.B. by tugging on his arm or patting his leg. Sometimes the children would get his attention, sometimes they would not. If the children gained his attention, R.B. would talk to them for a few minutes, and then return to sitting and staring at the wall. Ady testified that she talked to R.B. about interacting with the children, but he never exhibited any changes.

Brasher also testified that there was a lack of a bond or attachment between R.B. and the children. He did not seem interested in the children "at all." Brasher stated that at the end of each visitation, R.B. never hugged them or kissed them good-bye, but simply left. Ady also did not see evidence that R.B. had any parenting skills. Nor did he show that he could take care of the

children. He fed A.D.B. once and never changed his diaper. Brasher supervised one visitation between R.B. and the children when P.M.P.-H. was not present. R.B. sat on the couch and she had to direct him to feed and change the baby.

However, R.B. argues that he loved his children and was raising them as he was raised. He stated that there was no evidence that he was unable to care for his children or that he could not meet their needs in the future. The evidence does not support his contention. R.B. testified that he had never been responsible for getting his children ready for daycare or school, and that he did not know where the older child would attend school if she were returned to him. Ady had never seen R.B. demonstrate the ability to take care of the children or nurture them.

Neither Brasher nor Ady believed that R.B. had a support system to help him with the children. R.B. contends that he had a childcare plan for the children while he was working including using a relative to provide transportation. Again, the evidence does not support his contention. R.B. did not have a driver's license and had no way to transport the children to school or daycare. His only support system was P.M.P.-H.'s sister. However, this sister had five children, three of whom were disabled, one severely, and had to spend three to seven days a month in Dallas for doctor's visits. During those visits, she would be unable to transport or care for R.B.'s children. R.B. was unable to remember the name of the only other person he mentioned as a support system.

The trial court found R.B. did not protect the children from P.M.P.-H. when she was using drugs or remove the children when she was using drugs. The trial court also found that there was a "very real likelihood" that P.M.P.-H would be allowed access to the children because she had not moved out of R.B.'s house. Finally, the trial court found that R.B. could not ensure the children's safety. The evidence supporting these findings showed that Brasher did not believe R.B. demonstrated an ability to protect the children from P.M.P.-H.'s drug use. He did not voluntarily remove the children when he should have known that P.M.P.-H. was using drugs. Further, R.B. allowed the mother to remain in his home even though he knew that she was using drugs.

Brasher and Ady were concerned about P.M.P.-H. regaining access to the children. Brasher did not believe that R.B. would keep P.M.P.-H. away from the children because he would eventually need help with them. Ady stated that R.B. never demonstrated the ability to put the children's needs before his relationship with P.M.P.-H. The attorney ad litem stated that

R.B.'s parental rights should be terminated because of his "continued and repeated demonstration" of his "spectacular" inability to keep P.M.P.-H. away from the children. However, R.B. discounted the risk of P.M.P.-H. coming back into his life because, he contends, she was no longer in his life. Nonetheless, R.B. acknowledged at trial that he had spoken to P.M.P.-H. approximately eight times in the previous month.

The trial court also found that R.B. failed to comply with all of the provisions of the service plan. The evidence showed that R.B. missed every other scheduled visitation, refused to submit to drug testing as requested, and did not stay in contact with his caseworkers. Finally, the caseworkers, guardian ad litem, and attorney ad litem testified that terminating R.B.'s parental rights was in the best interest of the children.

Conclusion

Viewing the above evidence relating to the statutory and ***Holley*** factors in the light most favorable to the trial court's findings, we hold that a reasonable fact finder could have formed a firm belief or conviction that termination of R.B.'s parental rights is in the best interest of the children. *See* ***In re J.F.C.***, 96 S.W.3d at 266. R.B. argues, however, that there was no evidence, or insufficient evidence, that he was unable to take care of the children or meet their needs in the future, that the children were in danger by being placed with him, or that he should have known that P.M.P.-H. was using drugs. But this evidence is not so significant that a reasonable trier of fact could not have reconciled this evidence in favor of its finding and formed a firm belief or conviction that termination of R.B.'s parental rights is in the best interest of the children. *See* ***id.*** Therefore, we hold that the evidence is legally and factually sufficient to support the trial court's finding that termination of R.B.'s parental rights is in the children's best interest. *See* TEX. FAM. CODE ANN. § 161.001(b)(2). Accordingly, we overrule R.B.'s third issue.

DISPOSITION

Having overruled R.B.'s first, second, and third issues, we ***affirm*** the trial court's judgment.

BRIAN HOYLE
Justice

Opinion delivered March 22, 2017.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MARCH 22, 2017

NO. 12-16-00275-CV

IN THE INTEREST OF A.B AND A.A.D., CHILDREN

Appeal from the 145th District Court
of Nacogdoches County, Texas (Tr.Ct.No. C1430588)

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., Hoyle, J., and Neeley, J.

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MARCH 22, 2017

NO. 12-16-00276-CV

IN THE INTEREST OF A.D.B., A CHILD

Appeal from the 145th District Court

of Nacogdoches County, Texas (Tr.Ct.No. C1531008)

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., Hoyle, J., and Neeley, J.