NO. 12-19-00399-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN THE MATTER OF J.B.D.,	***§***	***APPEAL FROM THE 87TH***
	§	***JUDICIAL DISTRICT COURT***
A CHILD		
	§	***ANDERSON COUNTY, TEXAS***

MEMORANDUM OPINION

J.H.D. appeals the termination of his parental rights. In ten issues, he challenges the legal and factual sufficiency of the evidence to support the trial court's judgment terminating his parental rights. We affirm.

BACKGROUND

J.H.D. is the father and K.D.[1] is the mother of J.B.D. On August 8, 2017, the Department of Family and Protective Services (the Department) filed an original petition for protection of J.B.D., for conservatorship, and for termination of K.D.'s parental rights. The petition stated that the father of the child was "unknown." The Department was appointed temporary managing conservator of the child, and K.D. was granted limited access to and possession of the child. The first amended original petition for protection of J.B.D. was filed on July 26, 2018, and named J.H.D. as the father of the child. The amended petition also requested termination of J.H.D.'s

[1] At the conclusion of the trial on the merits, the trial court found, by clear and convincing evidence, that K.D. engaged in one or more of the acts or omissions necessary to support termination of her parental rights under subsections (D), (E), (H), (N), (O), and (P) of Texas Family Code Section 161.001(b)(1). The trial court also found that termination of the parent-child relationship between K.D. and J.B.D. is in the child's best interest. Based on these findings, the trial court ordered that the parent-child relationship between K.D. and J.B.D. be terminated. K.D. is not a party to this appeal.

parental rights. On August 16, 2018, the trial court ordered DNA testing of J.H.D. and J.B.D. to determine paternity. In January 2019, J.H.D. was adjudicated to be J.B.D.'s father.

At the conclusion of the trial on the merits, the trial court found, by clear and convincing evidence, that J.H.D. engaged in one or more of the acts or omissions necessary to support termination of his parental rights under subsections (D), (E), (H), and (N) of Texas Family Code Section 161.001(b)(1). The trial court also found that termination of the parent-child relationship between J.H.D. and J.B.D. is in the child's best interest. Based on these findings, the trial court ordered that the parent-child relationship between J.H.D. and J.B.D. be terminated. 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. 2019); ***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. 2019); ***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. 2019); ***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 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 2019). 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).

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

In his first, second, third, and fourth issues, J.H.D. argues 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).

Applicable Law

The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence that the parent knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child. TEX. FAM. CODE ANN. § 161.001(b)(1)(D) (West Supp. 2019). 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***.

The court may order termination of the parent-child relationship if it finds by clear and convincing evidence that the parent 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. TEX. FAM. CODE ANN. § 161.001(b)(1)(E) (West Supp. 2019). Scienter is not required for an appellant's own acts under Section 161.001(b)(1)(E), although it is required when a parent places

her 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). Finally, the need for permanence is a paramount consideration for the child's present and future physical and emotional needs. ***In re N.K.***, 99 S.W.3d 295, 301 n.9 (Tex. App.—Texarkana 2003, no pet.); ***In re M.D.S.***, 1 S.W.3d at 200.

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 801, 811 (Tex. App.—Fort Worth 2001, no pet.). 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.

As a general rule, conduct that subjects a child to a life of uncertainty and instability endangers the physical and emotional well being of a child. ***In re M.R.J.M.***, 280 S.W.3d 494, 503 (Tex. App.—Fort Worth 2009, no pet.); ***In re R.W.***, 129 S.W.3d 732, 739 (Tex. App.—Fort Worth 2004, pet. denied). Endangering conduct is not limited to actions directed towards the child. ***Tex. Dep't of Human Servs. v. Boyd***, 727 S.W.2d 5131,533 (Tex. 1987). It necessarily follows that the endangering conduct may include the parent's actions before the child's birth and while the parent had custody of older children. *See* ***id.*** (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). Further, the conduct may occur before the child's birth and both before and after the child has been removed by the Department. ***Walker v. Tex. Dep't of Family & Protective Servs.***, 312 S.W.3d 608, 617 (Tex. App.—Houston [1st Dist.] 2009, pet. denied).

A parent's use of narcotics and its effect on his ability to parent may qualify as an endangering course of conduct. ***In re J.O.A.***, 283 S.W.3d 336, 345 (Tex. 2009); *see also* ***In re R.W.***, 129 S.W.3d at 739. Further, evidence that the parent continued to use illegal drugs even though the parent knew his parental rights were in jeopardy is conduct showing a voluntary,

deliberate, and conscious course of conduct, which by its nature, endangers a child's well-being. *See* ***In re M.E.-M.N.***, 342 S.W.3d 254, 263 (Tex. App.—Fort Worth 2011, pet. denied); ***Cervantes-Peterson v. Tex. Dep't of Family & Protective Servs.***, 221 S.W.3d 244, 253-54 (Tex. App.—Houston [1st Dist.] 2006, no pet.). Because it exposes the child to the possibility that the parent may be impaired or imprisoned, illegal drug use may support termination under subsection (E). ***Walker***, 312 S.W.3d at 617-18.

Though imprisonment of a parent is insufficient, standing alone, to constitute "engaging in conduct which endangers the emotional or physical well-being of the child," it is a factor to consider on the issue of endangerment. *See* ***Boyd***, 727 S.W.2d at 533-34; ***In re M.D.S.***, 1 S.W.3d at 199. Nonetheless, evidence showing a course of conduct that routinely subjects a child to the probability that he will be left alone because his parent is once again jailed, whether because of the continued violation of probationary conditions or because of a new offense growing out of a continued use of illegal drugs, or because the parent is once again committed to a rehabilitation program, endangers both the physical and emotional well being of a child. ***In re S.D.***, 980 S.W.2d 758, 763 (Tex. App.—San Antonio 1998, pet. denied).

"A fact finder 'can consider the history of abuse between the mother and the father for purposes of subsection [ ] … (E), even if the children are not always present.'" ***In re Z.M.***, 456 S.W.3d 677, 686 (Tex. App.—Texarkana 2015, no pet.) (quoting ***In re A.V.M.***, No. 13-12-00684-CV, 2013 WL 1932887, at *5 (Tex. App.—Corpus Christi May 9, 2013, pet. denied) (mem. op.) (concluding that a history of drug and alcohol abuse lends itself to an unstable home environment and weighs in favor of termination of parental rights)). "Endanger" means to expose to loss or injury or to jeopardize. ***Boyd***, 727 S.W.2d at 533; ***In re D.M.***, 58 S.W.3d at 811. 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.

Analysis

This case began when K.D. gave birth to J.B.D. in early August 2017. Both mother and child tested positive for phencyclidine (PCP) at birth. K.D. also tested positive for codeine, amphetamine, and methamphetamine. According to the Department investigator, K.D. previously tested positive for PCP during a prenatal visit. The Department investigator visited K.D. in the hospital and stated that K.D. lacked a place to live, employment, or a stable environment for the child. K.D. admitted relapsing on PCP a month prior to giving birth, but denied using

methamphetamine. However, the investigator stated that K.D.'s positive hair follicle test and urinalysis indicated her relapse was more recent.

K.D. told the investigator that she was not sure who was J.B.D.'s father. The child was subsequently removed to foster care.

Prior Department Cases. K.D. had previous Department cases, one of which involved J.H.D. The Department investigator testified that in 2016, there were allegations of neglectful supervision involving K.D. and J.H.D. regarding K.D.'s two older children. Based on the information provided to the investigator, the allegations included family violence and J.H.D.'s use of illegal narcotics. The Department found the allegations "reason to believe" and removed the children. K.D.'s older children were placed with her sister.

Criminal Record. J.H.D.'s mother testified that he had been incarcerated for "drugs, family violence, or whatever." On November 28, 2016, J.H.D. was arrested for, and pleaded guilty to, the offenses of obstruction/retaliation and assault family/household member by impeding breath or circulation against K.D. He was sentenced to five years of imprisonment and was released on August 24, 2019. The bench trial began approximately one month after J.H.D.'s release from prison. However, within two weeks of being released from prison, J.H.D. was again arrested for charges of failure to appear and public intoxication. He spent approximately five or six days in jail prior to trial. One of the caseworkers testified that J.H.D.'s criminal history dated back to 1999 and included charges for possession of controlled substances and evading arrest.

Knowledge of Paternity. Although K.D. stated that she did not know who J.B.D.'s father was, it appears from the record that her family, J.H.D., and J.H.D.'s family were all aware that he could be J.B.D.'s father. J.H.D.'s mother testified that she knew during the pregnancy, that K.D. was pregnant with her son's child. J.H.D. told his mother that he believed he was J.B.D.'s father. A relative sent J.H.D.'s sister a picture of newborn J.B.D. with a caption similar to "[t]his is your granddaughter." However, J.H.D. did nothing before paternity testing was ordered in August 2018 to determine his parentage or acknowledge that he was J.B.D.'s father. Nor did he or his family communicate with the Department suggesting that he might be J.B.D.'s father. J.H.D. did not register with the Paternity Registry despite evidence that he had reason to believe he was J.B.D.'s father. The paternity testing was conducted only after K.D. told her caseworker in May 2018 that she believed J.H.D. may be J.B.D.'s father. In January 2019, the trial court adjudicated J.H.D. to be J.B.D.'s father.

Contact with Child. The Department caseworkers heard nothing from J.H.D. before his paternity of J.B.D. was determined. In August 2018, the caseworker stated that J.H.D's mother contacted her to check on the child. J.H.D.'s mother believed that J.H.D. was J.B.D.'s father and wanted to be considered as a possible placement. Another caseworker stated that J.H.D.'s mother contacted her in the latter part of 2018 to discuss the child. In February 2019, J.H.D. sent a letter to J.B.D.'s caseworker in which he expressed a desire to be in the child's life and for his mother to obtain custody of the child. His letter indicated that he had known, since J.B.D.'s birth, that she was his child. One of J.B.D.'s caseworkers stated that she wrote to J.H.D. approximately once a month beginning in March 2019, but received no response.

At trial, J.H.D.'s mother presented letters and cards that J.H.D. sent her for the child. However, the child never received these letters and cards. Not until two weeks after J.H.D.'s release from prison did he contact the Department to request visitation. But before visitation could be approved, he was once again arrested and jailed. At the time of trial, J.H.D. had never visited or seen his child.

Service Plan. The Department did not generate a service plan for J.H.D. According to the testimony at trial, the Department generally does not initiate service plans for persons until they are certain someone is a parent. Further, if a parent is not identified until the end of a case, the Department would not generate a service plan, especially if the parent was incarcerated. According to the caseworker, a parent has limited resources or services that can be completed while incarcerated. The caseworker also stated that a history of family violence between the parents would be a factor in the Department's goals for the child. Currently, J.H.D. is living with his mother, and lacks employment and transportation.

Conclusion

From the above evidence, a reasonable fact finder could have formed a firm belief or conviction that J.H.D. has a history of illegal drug use, criminal activity, and family violence. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E). "Evidence that a person has engaged in abusive and violent conduct in the past permits an inference that the person will continue to engage in violent behavior in the future." ***In re M.D.M.***, 579 S.W.3d 744, 765 (Tex. App.—Houston [1st Dist.] 2019, no pet.). The factfinder could have also determined that J.H.D. did not seek to determine his parentage of J.B.D. when he believed he was her father, failed to communicate with the Department about his child until his parentage was adjudicated, and failed to actively pursue

visitation with his child once released from prison. *See* ***id.*** A factfinder may infer that a parent's lack of contact with the child and absence from the child's life endangered the child's emotional well-being. ***Id***. Further, because of their relationship history, J.H.D. knew that K.D. used illegal substances and that her conduct, including continued drug use, could expose the child to the possibility that K.D. may be impaired or imprisoned. *See* ***Walker***, 312 S.W.3d at 617. Yet, the record does not reveal that J.H.D. took any steps to shield the child from K.D.'s substance abuse. 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 J.H.D. knowingly placed or knowingly allowed J.B.D.. to remain in conditions or surroundings that endangered the physical or emotional well being of the child, and engaged in conduct or knowingly placed J.B.D. with persons who engaged in conduct that endangered the physical or emotional well being of the child. *See* ***In re J.F.C.***, 96 S.W.3d at 266.

Although J.H.D. argued that the Department hardly attempted to contact him once his paternity was adjudicated and never offered or generated a plan of service, this evidence is not so significant that a reasonable trier of fact could not have reconciled the evidence in favor of its finding and formed a firm belief or conviction that J.H.D. knowingly placed or knowingly allowed J.B.D. to remain in conditions or surroundings that endangered the physical or emotional well being of the child, and engaged in conduct, or knowingly placed J.B.D. with persons who engaged in conduct that endangered the physical or emotional well being of the child. *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 J.H.D.'s parental rights under subsections (D) and (E) of Texas Family Code Section 161.001(b)(1). Accordingly, we overrule J.H.D.'s first, second, third, and fourth issues as to subsections (D) and (E) of Texas Family Code Section 161.001(b)(1).[2]

[2] Because we conclude that the evidence is legally and factually sufficient to support termination of J.H.D.'s parental rights under subsection (b)(1)(D) and (E), we need not address his issues regarding subsections (b)(1)(H) and (b)(1)(N) of Section 161.001(b)(1). *See* TEX. FAM. CODE ANN. § 161.001(b)(1); TEX. R. APP. P. 47.1; *see also* ***In re K.S.***, 448 S.W.3d 521, 545 n.24 (Tex. App.—Tyler 2014, pet. denied) (when evidence is sufficient to support termination under one ground, appellate court need not address sufficiency challenges to other grounds for termination in Section 161.001(b)); *but see* ***In re N.G.***, 577 S.W.3d 230, 237 (Tex. 2019) (due process and due course of law requirements mandate that an appellate court detail its analysis in an appeal of termination of parental rights under Section 161.001(b)(1)(D) or (E) of the family code if a parent raises such issues.).

BEST INTERESTS OF THE CHILD

In his ninth and tenth issues, J.H.D. argues the evidence is legally and factually insufficient to support a finding that termination of his parental rights is in the child'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 2019). 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 abusive or assaultive conduct by the child's family or others who have access to the child's home; (5) whether there is a history of substance abuse by the child's family or others who have access to the child's home; (6) 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; (7) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time; (8) whether the child's family demonstrates adequate parenting skills, including providing the child and other children under the family's care with minimally adequate health and nutritional care, a safe physical home environment, protection from repeated exposure to violence even though the violence may not be directed at the child, and an understanding of the child's needs and capabilities; and (9) 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), (6), (7), (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 at 507. 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

From the evidence above, J.H.D. has a history of criminal activity, family violence, and substance abuse. He had no contact with the child since her birth and made no attempts to contact the Department or determine his paternity of the child even though he believed he was her father. He was incarcerated since before the child's birth until one month before trial. Shortly before trial, he was again arrested and confined for approximately one week.

According to the caseworkers and J.B.D.'s foster mother, J.B.D. is a "spunky" two year old, is thriving with her foster parent, and is "very, very" bonded to her foster parent. She is hitting all of her milestones and has visitations with her older siblings. J.B.D. has been with the current foster parent since she was three weeks old and is a part of the family. The foster parent would like to adopt the child. According to the foster parent and J.H.D.'s mother, J.H.D. has not provided any financial assistance for the child. Nor has he developed any relationship with the child or actively sought to obtain visitation with the child, until two weeks after his release from prison. At best, J.H.D. attempted to contact the child through letters and cards that he sent to his mother.

According to the Department, it is in the child's best interest for J.H.D.'s parental rights to be terminated due to his history of criminal conduct, family violence, and substance abuse. Further, the Department argued that returning the child to J.H.D. would not be in the child's best interest. One of J.B.D.'s first caseworkers stated that if J.H.D. has not developed a bond or relationship with the child, it is in the child's best interest for J.H.D.'s parental rights to be terminated. The child's ad litem likewise believed it was in the child's best interest for J.H.D.'s parental rights to be terminated, stating that he failed to provide the child with a safe environment and waited over a year before involving himself in the case, despite knowing of the child since birth. The ad litem believed that J.H.D. displayed a lack of effort towards his child.

Conclusion

After viewing the evidence in the light most favorable to the finding and applying the statutory and ***Holley*** factors, we conclude that a reasonable trier of fact could have formed a firm belief or conviction that termination of J.H.D.'s parental rights was in the best interest of the child. *See* TEX. FAM. CODE ANN. § 161.001(b)(2); ***In re J.F.C.***, 96 S.W.3d at 266. Although some evidence might weigh against the finding, such as J.H.D.'s attempt to obtain visitation with the child and sending letters and cards for the child to his mother, this evidence is not so significant that a reasonable fact finder could not have reconciled this evidence in favor of its finding and formed a firm belief or conviction that terminating J.H.D.'s parental rights is in the child's best interest. *See* TEX. FAM. CODE ANN. § 161.001(b)(2); ***In re J.F.C.***, 96 S.W.3d at 266. Accordingly, we overrule J.H.D.'s ninth and tenth issues regarding best interest.

DISPOSITION

Having overruled J.H.D.'s first, second, third, fourth, ninth, and tenth issues, we ***affirm*** the judgment of the trial court.

BRIAN HOYLE
Justice

Opinion delivered May 21, 2020.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MAY 21, 2020

NO. 12-19-00399-CV

IN THE MATTER OF J.B.D., A CHILD

Appeal from the 87th District Court
of Anderson County, Texas. (Tr.Ct.No. DCCV17-504-349)

THIS CAUSE came to be heard on the appellate record and the briefs filed herein, and the same being considered, because it is the opinion of this court that there was no error in the judgment of the court below, it is ORDERED, ADJUDGED and DECREED by this court that the trial court's judgment be **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.