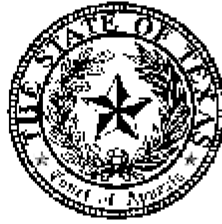
Affirmed and Opinion filed May 10, 2001.



In The

Fourteenth Court of Appeals

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NO. 14-00-00634-CV

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IN THE INTEREST OF F.J.

On Appeal from the 313th District Court
Harris County, Texas
Trial Court Cause No. 98-06908J

M E M O R A N D U M   O P I N I O N

Appellant, Melanie Schnell, appeals a final decree terminating her parental rights as to her child, F.J. In her sole point of error, appellant asserts the evidence is legally and factually insufficient to support the jury's finding that termination of her parental rights is in the best interest of the child. We affirm.

The Texas Department of Protective and Regulatory Services, appellee, moved to terminate appellant's parental rights following the bathtub drowning of F.J.'s younger sibling. In answer to a broad form question, a jury determined that appellant's parental rights should be terminated, and the trial court entered a judgment finding termination was in the best interest

of the child and that appellant had engaged in other statutory grounds supporting termination.[1]

In her sole point of error,[2] appellant asserts that the trial court erred in accepting the jury's finding that termination of appellant's parental rights is in the best interest of the child because there was no evidence, or alternatively, insufficient evidence to support such a finding. We determine that appellant has not preserved these challenges for our review.

A "no-evidence" point of error 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. v. Bank of El Paso*, 847 S.W.2d 218, 220 (Tex. 1992).

A review of the record reveals that appellant did not file a motion for instructed verdict, for judgment notwithstanding the verdict, or to disregard the jury's answer to any question. In addition, the record contains no objection to the jury charge on the basis of insufficient

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[1] The Family Code provides for the involuntary termination of parental rights when termination is in the best interest of the child and one or more statutory grounds are found by clear and convincing evidence, including the following grounds found in this case:

> (1) that the parent has:
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> * * *
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> (D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
> (E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;
>
> * * *
>
> (L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child . . . .

TEX. FAM. CODE ANN. § 161.001 (Vernon Supp. 2000).

[2] Appellant also includes discussion about the jury's findings of parental misconduct and jury charge error, but these complaints are not raised in an issue or point of error. A court of appeals may not reverse a trial court's judgment in the absence of properly assigned error. *See, e.g., Pat Baker Co., Inc. v. Wilson*, 971 S.W.2d 447, 450 (Tex. 1998); *Vawter v. Garvey*, 786 S.W.2d 263, 264 (Tex. 1990). Accordingly, we need not address these arguments.

evidence.[3] Appellant filed a motion for new trial, but her only complaint was that "the disposition in this matter was improper in light of the facts presented at trial and the right[s] of the Mother were improperly terminated." To preserve a complaint for appellate review, a party must present to the trial court a timely request, motion, or objection with sufficient specificity as to make the trial court aware of the complaint, unless the specific grounds are apparent from the context. TEX. R. APP. P. 33.1(a). Appellant's motion failed to specifically apprise the court of her complaint and thus did not preserve error. Having failed to raise her "no evidence" challenge by any of the required methods, appellant did not preserve her complaint and it is waived. *See Aero Energy, Inc. v. Circle C Drilling Co.*, 699 S.W.2d 821, 822 (Tex. 1985).

Appellant also failed to preserve her challenge to the factual sufficiency of the evidence because she did not raise factual sufficiency in her motion for new trial. A complaint that the evidence is factually insufficient to support a jury finding must be raised in a motion for new trial as a prerequisite to raising such a complaint on appeal. *Cecil v. Smith*, 804 S.W.2d 509, 510 (Tex. 1991); TEX. R. CIV. P. 324(b)(2). Texas Rule of Civil Procedure 321 requires that the motion for new trial briefly refer to the ruling of the court, the charge, the evidence, or other proceedings complained of so that the objection can be identified and understood by the court. *D/FW Commercial Roofing Co., Inc. v. Mehra,* 854 S.W.2d 182, 189 (Tex. App.—Dallas 1993, no pet.). Appellant's motion did not specify that she intended to challenge the factual sufficiency of the evidence supporting the jury's finding that termination is in the child's best interest.

Even if we were to construe appellant's motion for new trial as sufficient to preserve her factual sufficiency complaint, the record contains sufficient evidence to support the jury's finding that termination is in the best interest of the child.[4] For example, the record reflects

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[3] Appellant's only objection to the jury charge was that an additional instruction should be added to inform the jury that other options besides termination were available to the jury.

[4] The supreme court has recognized several factors that may be considered in determining when termination is in a child's best interest, including the following:

that for the first two years of F.J.'s life, appellant did not maintain a permanent job or residence. Testimony showed that F.J., who was three years old at the time of trial, had developmental, emotional, and physical problems while in her mother's care, and that these conditions improved when the child was placed in foster care. In addition, the child cried when required to visit her mother, but she went straight to her foster parent without complaint. Appellant admitted she had neglected the supervision of her children even after she had been contacted about allegations of neglect by Children's Protective Services and received repeated warnings from friends. She acknowledged she had left her children unsupervised in a bathtub with running water, even though she knew it was dangerous. Appellant's six-month old son drowned while left unattended in the bathtub with F.J., who was twenty-two months old at the time. Appellant served a year in jail after pleading guilty to negligent injury to a child.

Appellant cites to no evidence contrary to the finding that termination is in the child's best interest. *See Melendez v. Exxon Corp.* 998 S.W.2d 266, 280 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (noting that an appellate court has no duty to search the record when appellant fails to cite to it). Applying the appropriate standard of review to the *Holley* factors, we find the evidence sufficient to support the finding that termination is in the best interest of this child.

Accordingly, we overrule appellant's sole point of error and affirm the judgment of the trial court.

PER CURIAM

> (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 to promote the best interest of the child; (6) the plans for the child by these individuals or by the agency seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and (9) any excuse of the acts or omissions of the parent.

Holley v. Adams, 544 S.W.2d 367, 372 (Tex. 1976) (footnotes omitted).

Judgment rendered and Opinion filed May 10, 2001.

Panel consists of Justices Edelman and Frost and Senior Chief Justice Murphy.[5]

Do Not Publish — TEX. R. APP. P. 47.3(b).

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[5] Senior Chief Justice Paul C. Murphy sitting by assignment.