Opinion filed June 4, 2020

In The

Eleventh Court of Appeals

No. 11-19-00405-CV

IN THE INTEREST OF I.N.M., A CHILD

On Appeal from the 446th District Court
Ector County, Texas
Trial Court Cause No. E-18-083-PC

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

This is an appeal from an order in which the trial court terminated the parental rights of I.N.M.'s mother and father. The mother filed an appeal. On appeal, the mother presents two issues in which she challenges the trial court's best interest finding. Because the evidence is legally and factually sufficient to support the challenged finding, we affirm the trial court's order.

Termination Findings and Standards

The termination of parental rights must be supported by clear and convincing evidence. TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2019). To determine if

the evidence is legally sufficient in a parental termination case, we review all of the evidence in the light most favorable to the finding and determine whether a rational trier of fact could have formed a firm belief or conviction that its finding was true. *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005). To determine if the evidence is factually sufficient, we give due deference to the finding and determine whether, on the entire record, a factfinder could reasonably form a firm belief or conviction about the truth of the allegations against the parent. *In re C.H.*, 89 S.W.3d 17, 25–26 (Tex. 2002). To terminate parental rights, it must be shown by clear and convincing evidence that the parent has committed one of the acts listed in Section 161.001(b)(1)(A)–(U) and that termination is in the best interest of the child. FAM. § 161.001(b).

With respect to the best interest of a child, no unique set of factors need be proved. *In re C.J.O.*, 325 S.W.3d 261, 266 (Tex. App.—Eastland 2010, pet. denied). But courts may use the non-exhaustive *Holley* factors to shape their analysis. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). These include, but are not limited to, (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 that may indicate that the existing parent–child relationship is not a proper one, and (9) any excuse for the acts or omissions of the parent. *Id.* Additionally, evidence that proves one or more statutory grounds for termination may also constitute evidence illustrating that termination is in the child's best interest. *C.J.O.*, 325 S.W.3d at 266.

In this case, the trial court found that Appellant had committed four of the acts listed in Section 161.001(b)(1)—those found in subsections (D), (E), (N), and (O). *See* FAM. § 161.001(b)(1)(D), (E), (N), (O). Appellant does not challenge these findings on appeal.

The trial court also found, pursuant to Section 161.001(b)(2), that termination of Appellant's parental rights would be in the best interest of the child. *See id.* § 161.001(b)(2). In her first issue, Appellant challenges the legal sufficiency of the evidence in support of the trial court's best interest finding. In her second issue, Appellant challenges the factual sufficiency of the evidence in support of that same finding.

Evidence and Analysis

The record reflects that I.N.M. was four years old at the time of trial and that she had been placed in the home of her "stepdad," where her older half-sisters lived. I.N.M. had lived there for almost one year. During that time period, Appellant had not visited I.N.M. a single time; Appellant had not seen I.N.M. since the date of removal. Appellant had indicated that she believed it would be harmful to I.N.M. if she visited.

After the child was removed from Appellant's care, a family service plan was prepared, signed by Appellant, and made an order of the trial court. The uncontroverted evidence reflects that Appellant failed to comply with the provisions of her service plan. Appellant's "biggest problem" was her "alcohol use," and she was unable to stay sober even after I.N.M. was removed. Additionally, while the case was pending below, Appellant remained in a relationship that involved domestic violence. She also failed to maintain consistent employment, failed to obtain safe and stable housing, and continued "to put her alcohol use in front of [I.N.M.'s] needs every single time."

According to the conservatorship caseworker, I.N.M. was happy in the home in which she had been placed and wanted to remain there. I.N.M. had bonded with her kinship placement, and she was doing extremely well in their care. The Department's goal for I.N.M. was termination of the parents' rights and adoption by the kinship placement. The caseworker believed that it would be in the child's best interest to terminate Appellant's parental rights. Moreover, although Appellant did not appear for the termination hearing, she had previously indicated that she was okay with I.N.M. remaining in the kinship placement's home because Appellant knew that I.N.M.'s needs were being met there and that I.N.M. was "taken care of." Appellant had expressed no opposition to I.N.M. staying there and being adopted.

We note that the trier of fact is the sole judge of the credibility of the witnesses at trial and that we are not at liberty to disturb the determinations of the trier of fact as long as those determinations are not unreasonable. *J.P.B.*, 180 S.W.3d at 573. Based upon the *Holley* factors and the evidence in the record, as set forth above, we cannot hold that the trial court's best interest finding is not supported by clear and convincing evidence. *See Holley*, 544 S.W.2d at 371–72. Upon considering the record as it relates to the desires of the child, the emotional and physical needs of the child now and in the future, the emotional and physical danger to the child now and in the future, the parental abilities of Appellant and the kinship placement, Appellant's unstable housing and employment, Appellant's continued abuse of alcohol, the occurrence of domestic violence between Appellant and her paramour, the stability of the home in which the child had been placed, and the Department's plans for the child, the trial court could reasonably have formed a firm belief or conviction that it would be in I.N.M.'s best interest for Appellant's parental rights to be terminated. We hold that the evidence is both legally and factually sufficient to

support the trial court's best interest finding. Appellant's first and second issues are overruled.

This Court's Ruling

We affirm the trial court's order of termination.

KEITH STRETCHER
JUSTICE

June 4, 2020

Panel consists of: Bailey, C.J.,
Stretcher, J., and Wright, S.C.J.[1]

Willson, J., not participating.

[1]Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.