



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00863-CV

IN THE INTEREST OF A.C., a Child

From the 438th Judicial District Court, Bexar County, Texas
Trial Court No. 2018-PA-01551
Honorable John D. Gabriel, Jr., Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Rebeca C. Martinez, Justice
Irene Rios, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: June 10, 2020

AFFIRMED

Appellant Father appeals the trial court's order terminating his parental rights to his daughter, Amy.¹ The only issue presented by Father is whether the evidence is legally and factually sufficient to support the trial court's finding that termination is in the child's best interest.

We affirm the trial court's order.

BACKGROUND

The Texas Department of Family and Protective Services (the "Department") initially became involved in the underlying case on July 3, 2018, when the Department received a report

¹ To protect the identity of a minor child in an appeal from an order terminating parental rights, we refer to the parents as "Mother" and "Father" and the child by the alias "Amy." See TEX. FAM. CODE ANN. § 109.002(d); TEX. R. APP. P. 9.8(b)(2). The trial court's order terminates both Mother's and Father's parental rights, but only Father appeals.

alleging drug use by Father and domestic violence between Father and his girlfriend, Emily.² The Department implemented a safety plan in which Amy and her three half-siblings³ were to be supervised by their paternal aunt.

On July 14, 2018, the Department received another allegation relating to the family. Amy's youngest half-brother, who was four months' old at the time, was hospitalized with a fractured skull and brain bleed. The injury occurred while the child was in Emily's care, in violation of the safety plan. Department investigator Jessica Sotello contacted Father regarding a new safety plan for Amy and her half-siblings but Father refused to make himself available to the Department. According to Sotello, Amy's biological mother was also unavailable,⁴ Amy could not be put into Stepmother's care, and Father would not agree to a new safety plan for Amy and her three half-siblings. The Department filed a petition for removal on July 16, 2018. Ultimately, Amy was placed with her paternal great-uncle, Robert.⁵

The trial court held a bench trial on October 16, 2019 and November 6, 2019. Father attended the November 6, 2019 hearing telephonically and testified on his own behalf. The trial court signed an order terminating Father's parental rights on December 2, 2019.

STANDARD OF REVIEW AND STATUTORY REQUIREMENTS

To terminate parental rights pursuant to 161.001 of the Texas Family Code, the Department has the burden to prove by clear and convincing evidence: (1) one of the predicate grounds in subsection 161.001(b)(1); and (2) that termination is in the best interest of the children. *See* TEX.

² We refer to Father's girlfriend by the alias "Emily." The record provides conflicting information regarding Emily's legal status as Father's wife. At times, she is referred to as a "wife" and "stepmother" and, other times, she is referred to as Father's girlfriend.

³ Amy's three younger half-siblings are the children of Father and Emily.

⁴ According to the record, Mother lives in Missouri and "could not collect [Amy] at the time."

⁵ We refer to Amy's great-uncle, with whom she is placed, by the alias "Robert."

FAM. CODE ANN. §§ 161.001(b), 161.206(a); *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). In this case, the trial court terminated Father’s parental rights on four predicate grounds, specifically Texas Family Code sections 161.001(b)(D), (E), (O), and (P).⁶ The trial court also found termination of Father’s parental rights was in the child’s best interest.

When reviewing the sufficiency of the evidence, we apply the well-established standards of review. *See* TEX. FAM. CODE ANN. §§ 101.007, 161.206(a); *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006) (factual sufficiency); *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005) (legal sufficiency). Further, in a bench trial, the trial court is the sole judge of the credibility of witnesses and the weight to be given their testimony. *Health Tronics, Inc. v. Lisa Laser USA, Inc.*, 382 S.W.3d 567, 582 (Tex. App.—Austin 2012, no pet.). This is because “the trial judge is best able to observe and assess the witnesses’ demeanor and credibility, and to sense the ‘forces, powers, and influences’ that may not be apparent from merely reading the record on appeal.” *Coburn v. Moreland*, 433 S.W.3d 809, 823 (Tex. App.—Austin 2014, no pet.) (quoting *In re A.L.E.*, 279 S.W.3d 424, 427 (Tex. App.—Houston [14th Dist.] 2009, no pet.)). We therefore defer to the trial court’s judgment regarding credibility determinations. *Id.* at 823-24.

THE CHILD’S BEST INTEREST

When considering the best interest of the child, we recognize the existence of a strong presumption that the child’s best interest is served by preserving the parent-child relationship. *In*

⁶ The trial court found Father

knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child[;] ... 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[;] ... failed to comply with the provisions of a court order[;] ... [and] used a controlled substance ... in a manner that endangered the health or safety of the child, and (1) failed to complete a court-ordered substance abuse treatment program[, or (2) after completion of a court-ordered substance abuse treatment program continued to abuse a controlled substance ...[.]

See TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O), (P).

re R.R., 209 S.W.3d 112, 116 (Tex. 2006). However, we also presume that prompt and permanent placement of the child in a safe environment is in the child's best interest. TEX. FAM. CODE ANN. § 263.307(a).

In determining whether a child's parent is willing and able to provide the child with a safe environment, we consider the factors set forth in Family Code section 263.307(b). See TEX. FAM. CODE ANN. § 263.307(b). We also apply the *Holley* factors to our analysis.⁷ See *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976). These factors are not exhaustive. *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). "The absence of evidence about some of these considerations would not preclude a factfinder from reasonably forming a strong conviction or belief that termination is in the child's best interest, particularly if the evidence were undisputed that the parental relationship endangered the safety of the child." *Id.* In analyzing these factors, the court must focus on the best interest of the child, not the best interest of the parent. *Dupree v. Tex. Dept. of Protective & Regulatory Servs.*, 907 S.W.2d 81, 86 (Tex. App.—Dallas 1995, no writ).

Evidence that proves one or more statutory ground for termination may also constitute evidence illustrating that termination is in the child's best interest. *In re C.H.*, 89 S.W.3d at 28 (holding same evidence may be probative of both section 161.001(b)(1) grounds and best interest, but such evidence does not relieve the State of its burden to prove best interest). "A best interest analysis may consider circumstantial evidence, subjective factors, and the totality of the evidence as well as the direct evidence." See *In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio

⁷ These factors include: (1) the child's desires; (2) the child's present and future emotional and physical needs; (3) any present or future emotional and physical danger to the child; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist the individuals seeking custody to promote the child's best interest; (6) the plans for the child by the individuals or agency seeking custody; (7) the stability of the home or proposed placement; (8) the parent's acts or omissions which may indicate that the existing parent-child relationship is improper; and (9) any excuse for the parent's acts or omissions. See *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976); *In re E.C.R.*, 402 S.W.3d 239, 249 n.9 (Tex. 2013).

2013, pet. denied). “A trier of fact may measure a parent’s future conduct by his past conduct and determine whether termination of parental rights is in the child’s best interest.” *Id.*

Discussion

The initial allegation in the underlying case was for domestic violence committed by Father against Emily. Edward Sanchez, the Department’s initial investigator, testified Amy told him she arrived home “right after” the incident occurred because “there was blood everywhere” and Emily’s head was bloody. Sanchez also testified Emily told him that Father hit her in the head with a stick, which caused a great deal of bleeding, while the children were present. According to Sanchez, Amy related another incident during which Father gathered the entire family into their van, drove them to a friend’s house, and locked them inside the van with the engine off while Father went inside the friend’s house “for a period of time” during which Amy did not feel safe. Amy additionally told Sanchez she was yelled at and in trouble with Father and Emily when she made outcries that she witnessed domestic violence and that Father hit her with a cord or some type of wire.

Amy’s counselor, Trevor Baker, testified that Amy informed him of two or three times she witnessed domestic violence committed by Father against Emily. When Amy was seven years’ old, Robert was called to Father’s house to collect Amy when the police had been called for a domestic violence incident. According to Robert, Father was arrested for assaulting Emily. Department caseworker Maurice Sutton testified he investigated an allegation that in August 2019 Father hit Emily in front of Amy’s half-siblings. According to Sutton, the Department determined there was “reason to believe” the allegation. *See In re S.R.*, 452 S.W.3d 351, 366 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (stating that “criminal activity, especially the history of domestic violence in front of the [c]hildren, supports the trial court’s best-interest finding”). Department caseworker Angie Steinau testified that Father continued to deny any domestic

violence had occurred. Father testified domestic violence never occurred in front of Amy and he never physically assaulted Amy. Father also testified “[t]here hasn’t been any domestic violence other than 2015.”

On the second day of trial, Father appeared telephonically because he was detained in Bexar County Jail following his arrest for assault. Father acknowledged the instant arrest was his sixth arrest for assault over a span of approximately nine years. Father testified that in 2015, he accepted a plea bargain relating to an assault charge for which Emily was the victim. *See In re C.H.*, 89 S.W.3d at 28 (considering father’s criminal history as part of acts or omissions in the best-interest analysis); *Interest of K.K.B.*, 14-19-00257-CV, 2019 WL 3432206, at *10 (Tex. App.—Houston [14th Dist.] July 30, 2019, pet. denied) (mem. op.) (noting the trial court could consider father’s criminal history in its best-interest determination).

According to Steinau, Father completed his service plan although he believed that he did not need any of the classes. Steinau testified Father “still does not understand why the Department became involved with the removal of [Amy]. He denied any type of drug use up until about four or five months after he was confronted [with] the drug use.” Sanchez testified he requested at the outset of the underlying case that Father submit to a drug test but Father did not do so. Steinau testified that Father also refused to submit to a drug test in November 2018 but then tested positive for the use of methamphetamine and marijuana in December 2018. During his testimony, Father admitted to using and testing positive to both methamphetamine and marijuana during the pendency of this case. *See In re M.R.*, 243 S.W.3d 807, 820 (Tex. App.—Fort Worth 2007, no pet.) (noting that parental drug abuse is also a factor that may be considered when determining the child’s best interest).

Father testified that prior to his arrest, he had a small valet business. Father testified he also worked as a tow truck driver, delivered newspapers, and received disability from the VA.

According to Father, his employers were holding his positions for him. Father also testified he had obtained financing for a home, which he had yet to purchase. However, Father stated he could provide a home and stability for Amy through Emily. Father also testified that he visited Amy three times and gave her money each time but admitted he did not give any money to the Department to provide to Amy's caregiver. Father also acknowledged he did not provide the Department with medical support for Amy other than Medicaid.

At the time of the trial, Amy was 11 years old. Although she did not testify, the record indicates the trial court interviewed Amy in chambers regarding the child's opinion and desires. Additionally, several witnesses testified Amy related to them that she did not want to return to Father's care. Steinau testified that "the child has stated a number ... of times that she does not wish to return to her father's care." Sotello also testified Amy told her that she wanted to be safe and gave Sotello the impression that she and her half-siblings were not physically or emotionally safe living with Father and Emily. Additionally, Sanchez testified that Amy told him she did not feel safe with Father and further gave him the impression she feared Father. Baker testified Amy expressed that she wishes to stay with Robert and "has no intention of reuniting with [Father]." *See In re I.A.M.*, No. 04-16-00095-CV, 2016 WL 4208126 at *9 (Tex. App.—San Antonio Aug. 10, 2016, no pet.) (mem. op.) (noting evidence that children expressed their wishes to remain in their current placement when affirming the trial court's best-interest finding).

Father testified he does not believe Amy feels unsafe with him or Emily. According to Father, Amy never demonstrated that she did not want to live with him. Father expressed that he does not believe Amy actually does not want to return to his care and further related that Amy did not share any concerns regarding family violence during their counseling session with Baker. Steinau testified that she observed one parent/child visit during which Amy expressed her feelings

and concerns about the things she witnessed in Father's home. According to Steinau she did not "see the compassion or the understanding" Father needed to display.

Steinau testified that the placement meets Amy's current emotional and physical needs and can do so in the future as well. According to Steinau, Amy has a bond with Robert, who has shown the ability to parent. Robert testified Amy and her three half-siblings are placed together in his home. Robert testified he believes he and his partner are providing a stable environment.

Steinau testified Amy has improved in her current placement. According to Steinau, Amy went from being withdrawn to being "an open child." Additionally, Amy became involved in community activities and sports. Steinau further testified Amy has moved away from a mothering role with her half-siblings to a big sister role. Baker, who met with Amy twice a week during the school year, testified he also observed Amy's improvement. Baker pointed out that Amy had been diagnosed with "adjustment disorder, mixed with anxiety and depression" but graduated from elementary school at the top of her class, participated in sports, wanted to start a dog-walking business, and discussed joining the military. According to Baker, returning Amy to Father's care would "be a tremendous setback" and would "create more havoc than this initial event has caused." *See Interest of A.M.M.*, 04-19-00806-CV, 2020 WL 2139308, at *4 (Tex. App.—San Antonio May 6, 2020, no pet.) (mem. op.) (indicating that evidence the child is "thriving in the current placement" in a "stable and nurturing environment" supported the trial court's best-interest determination.)

Having reviewed the record and considered all the evidence in the appropriate light for each standard of review, we conclude the trial court could have formed a firm belief or conviction that termination of Father's parental rights is in Amy's best interest. *See* TEX. FAM. CODE ANN. § 161.001(b)(2); *In re H.R.M.*, 209 S.W.3d at 108; *In re J.P.B.*, 180 S.W.3d at 573; *see also generally In re A.B.*, 437 S.W.3d 498, 503 (Tex. 2014) (recognizing an appellate court need not

detail the evidence if affirming a termination judgment). Further, in view of the entire record, we conclude that the disputed evidence is not so significant as to prevent the trial court from forming a firm belief or conviction that termination of Father's parental rights is in Amy's best interest. *See In re J.O.A.*, 283 S.W.3d at 345 (citing *In re J.F.C.*, 96 S.W.3d at 266). Accordingly, we hold that legally and factually sufficient evidence supports the trial court's best interest finding.

CONCLUSION

For the above reasons, we affirm the trial court's order terminating Father's parental rights.

Irene Rios, Justice