In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-19-00457-CV

IN THE INTEREST OF L.J.

On Appeal from the 317th District Court
Jefferson County, Texas
Trial Cause No. C-235,685

MEMORANDUM OPINION

B.J. appeals the trial court's order terminating her parental rights. In her first six issues, B.J. challenges the legal and factual sufficiency of the evidence supporting the best interest finding and the finding that she has a mental or emotional illness that renders her unable to provide for the child, as well as the termination grounds specified in sections 161.001(b)(1)(D), (E), (O), and (P). *See* Tex. Fam. Code Ann. §§ 161.001(b)(1)(D), (E), (O), (P), (2), 161.003(a). In issue seven, B.J. argues that the trial court failed to admonish her regarding the dangers of self-representation, and that despite having the assistance of standby counsel, she was

denied the effective assistance of counsel. We affirm the trial court's judgment terminating B.J.'s parental rights.

BACKGROUND

In July 2018, the Department of Family and Protective Services ("the Department") filed a petition seeking the termination of B.J.'s parental rights to her daughter, L.J. The trial court conducted a bench trial on the Department's petition. Dr. Nisha Amin, a licensed psychologist, testified that at the Department's request, she evaluated B.J., reviewed B.J.'s medical records, and issued a report containing her findings. Amin testified that B.J.'s severe mental illness was the primary cause of her neglect of L.J. and that B.J.'s illness will continue throughout B.J.'s life. Amin diagnosed B.J. with Bipolar I, major depressive disorder, narcissistic personality disorder with schizoid traits, and attention deficit hyperactivity disorder. Amin explained that the evidence indicates B.J. has some elements of schizophrenia.

According to Amin, B.J.'s belief that L.J. was sexually molested, despite no findings of abuse by medical practitioners or the Department, is part of B.J.'s delusions and symptomology. Amin explained that B.J. lacked the important parenting skill known as reality testing, which is the ability to recognize what is true or not true in your environment. Amin testified that B.J.'s lack of good logical reasoning skills will affect how she reacts with L.J. when dealing with L.J.'s

emotions and problems. Amin stated that it was concerning that B.J. acts on her paranoia and delusions, and B.J. has gone to significant lengths to promote her thoughts and beliefs, which could be detrimental to a child. Amin testified that she also had concerns regarding B.J.'s past aggressive behaviors, suicidal ideations. hallucinations linked with magical thinking, unstable temperament, absence of nurturing, and inability to attach with her children or other appropriate social entities. According to Amin, B.J. is not financially independent and is unable to seek out resources or sustain a support system.

Amin testified that B.J. has a severe history of noncompliance with treatment, particularly medication noncompliance, and that B.J.'s past behavior is a good predictor of her future behavior. Amin explained that B.J. was hospitalized for psychiatric reasons in 2013, 2014, 2017, and 2018, and she does not maintain long-term relationships with her mental health providers, is paranoid about the effects of certain medications, and tells the psychiatrist what medication she wants. According to Amin, even though B.J. reported that she quit using marijuana, B.J. continued to exhibit drug-seeking behavior. Amin testified that there is no consistent reasoning or logic behind B.J.'s actions or choices, which points to B.J.'s instability and her inability to parent L.J. According to Amin, B.J.'s mental illness renders her unable to provide for L.J.'s physical, emotional, and mental needs, and B.J.'s mental illness,

in all reasonable probability, will continue to render her unable to provide for L.J.'s needs until L.J. is eighteen.

Nakeshia Williams, a supervisor with the Department, testified that she was the initial caseworker for B.J., and the main issues in B.J.'s case were neglectful supervision, severe mental health problems, and the fact that B.J.'s mental health problems continued even when she was supposedly taking her medications. Nakeshia testified that B.J. stalked her and accused her of having custody of L.J., and Nakeshia filed harassment charges against B.J. Nakeshia stated that L.J. was approximately seven weeks old when she came into the Department's care due to B.J. having a psychotic break and being involuntarily committed to a psychiatric hospital. According to Nakeshia, B.J. was in the psychiatric hospital approximately three to four times during the beginning of the case, and B.J. checked herself out of the hospital before a treatment plan could be developed.

Nakeshia explained that B.J. had a history with the Department, and in 2012, B.J. was dealing with mental health issues when her son was removed for being in a dangerous situation. Nakeshia testified that B.J.'s rights to her son were terminated in 2015, and B.J. failed to comply with the services in her son's case and signed a voluntary relinquishment. According to Nakeshia, it was concerning that L.J.'s removal was due to neglectful supervision because B.J.'s failure to take care of her

mental health issues was a danger to L.J. Nakeshia explained that B.J. endangered L.J. by using marijuana while caring for her. Nakeshia testified that because B.J. was not in her right mind when L.J. was removed, B.J. endangered L.J. due to the conditions and surroundings she placed L.J. in, and B.J. also engaged in conduct that endangered L.J. Nakeshia testified that B.J. was unable to care for L.J. for weeks when L.J. was just a few weeks old, and B.J. is still unable to fully provide for L.J.

Nakeshia explained that during the case, B.J was only compliant with her medications for approximately six months, and B.J. failed to maintain employment due to her mental health issues and did not have stable housing or a support system. Nakeshia testified that B.J. had another child while L.J. was in the Department's care. Nakeshia testified that when B.J. visited with L.J., L.J. cried most of the time and B.J. was unable to console L.J. or bond with her. According to Nakeshia, during B.J.'s last visit with L.J., B.J. claimed that L.J. was bleeding from her vagina and accused the foster parents of sexually molesting L.J., but there was no evidence supporting B.J.'s allegation. Nakeshia stated that she believed that B.J. suffers from numerous delusional beliefs and has a hard time taking care of herself, and that B.J.'s mental health issues prevent her from taking proper care of L.J. currently and in the future.

Nakeshia testified that she provided B.J. with a family plan of service and explained it to B.J., and B.J. failed to comply with the plan. Nakeshia testified that in July 2019, B.J. tested positive for cocaine and codeine, and Nakeshia was concerned that B.J. was self-medicating instead of taking her mental health medications. Nakeshia explained that L.J. had been with her foster parents for approximately eight months, and she had bonded with them and was thriving and well taken care of. According to Nakeshia, terminating B.J.'s parental rights is in L.J.'s best interest.

Ashley Williams, a local permanency specialist with the Department, testified that she was the foster care worker for L.J., and B.J.'s same behavior problems continued after Ashley took over the case from Nakeshia. Ashley testified that B.J. was paranoid, delusional, aggressive, and made false allegations. According to Ashley, when L.J. was removed, B.J.'s mental health created an extreme danger to L.J. Ashley explained that due to B.J.'s behavior, her office had to get an injunction, which ordered that B.J. could only call her office twice per week, but B.J. failed to comply with the order. Ashley also explained that she had problems getting B.J. to agree to visitations with L.J., and during the visits, L.J. cried.

Ashley stated that B.J. called 911 during one of the visits because she believed L.J. was sick, and B.J. became angry when other people tried to console L.J. Ashley

also testified that B.J. failed to comply with the plan of service and that it was in L.J.'s best interest that B.J.'s rights be terminated.

B.J. testified that when she started experiencing symptoms of postpartum depression approximately one month after L.J. was born, she was taking her medication, but she started smoking marijuana again, which brought on more symptoms. B.J. testified that when L.J. was seven weeks old, an old friend visited without any notice, and B.J. became afraid for L.J. B.J. explained that after her friend left, she took L.J. to L.J.'s father's house, and when he refused to let them stay, B.J. had a severe anxiety attack and requested an ambulance. According to B.J., when the ambulance arrived, the paramedics took L.J., who was placed in the Department's care, and B.J. was placed in a short-stay psychiatric hospital where she was told she was being treated for postpartum depression and psychosis.

B.J. testified that after she was released from the hospital, she went home to find that all her belongings had been taken, and B.J. voluntarily committed herself because her medication was not working properly. After her release, B.J. sought family services, met with a counselor, and received supporting housing for functional mental health patients. According to B.J., at that point, she was approximately nine months pregnant, and she had completed her services and had everything she needed to care for L.J. B.J. testified that she currently had a lot of

anxiety, and B.J. claimed that she started the investigation concerning L.J. because she believed L.J. was bleeding from her vagina. B.J. admitted that she had been diagnosed with mental health issues and claimed that she was currently taking her mental health seriously because she wanted the best for her children. According to B.J., her mental health condition does not prevent her from being an effective and loving parent, and she has never neglected or hurt her children.

The trial court found that clear and convincing evidence supported four predicate statutory grounds for terminating B.J.'s parental rights, that termination of B.J.'s parental rights was in the best interest of L.J., and that B.J. has a mental or emotional illness that, in all probability, will continue to render her unable to provide for L.J.'s needs until L.J.'s eighteenth birthday. *See* Tex. Fam. Code Ann. §§ 161.001(b) (1)(D), (E), (O), (P), (2), 161.003(a). The trial court issued findings of fact and conclusions of law. B.J. appealed.

Analysis

In issue one, B.J. contends that the evidence was legally and factually insufficient to demonstrate that termination of her parental rights is in L.J.'s best interest. *See* Tex. Fam. Code Ann. § 161.001(b)(2). In issue two, B.J. contends that the evidence was legally and factually insufficient to support termination of her parental rights under section 161.001(b)(1)(D) of the Family Code, and in issue

three, B.J. argues that the evidence was legally and factually insufficient to support termination under section 161.001(b)(1)(E). *See id.* § 161.001(1)(D), (E). In issue four, B.J. challenges the legal and factual sufficiency of the evidence supporting termination of her parental rights under section 161.001(b)(1)(O), and in issue five, she challenges the legal and factual sufficiency of the evidence under section 161.001(b)(1)(P). *See id.* § 161.001(b)(1)(O), (P). In issue six, B.J. contends that the evidence was legally and factually insufficient to support the trial court's finding that she has a mental or emotional illness that renders her unable to provide for L.J. *See id.* § 161.003(a). We address issues one through six together.

Under legal sufficiency review, we review 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 finding was true." *In the Interest of J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002). We assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could, and we disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible. *Id*. If no reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true, the evidence is legally insufficient. *Id*.

Under factual sufficiency review, we must determine whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the

truth of the Department's allegations. *Id*. We give due consideration to evidence that the factfinder could reasonably have found to be clear and convincing. *Id*. We consider whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its ruling. *Id*. If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, the evidence is factually insufficient. *Id*.

The decision to terminate parental rights must be supported by clear and convincing evidence, *i.e.*, "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; *In the Interest of J.L.*, 163 S.W.3d 79, 84 (Tex. 2005). The movant must show that the parent committed one or more predicate acts or omissions and that termination is in the child's best interest. *See* Tex. Fam. Code Ann. § 161.001; *see also In the Interest of J.L.*, 163 S.W.3d at 84. We will affirm a judgment if any one of the grounds is supported by legally and factually sufficient evidence and the best interest finding is also supported by legally and factually sufficient evidence. *In the Interest of C.A.C., Jr.*, No. 09-10-00477-CV, 2011 WL 1744139, at *1 (Tex. App.—Beaumont May 5, 2011, no pet.) (mem. op.). However, when, as here, a parent challenges a trial court's

findings under section 161.001(b)(1)(D) or (E), we must review the sufficiency of those grounds as a matter of due process and due course of law. *In the Interest of N.G.*, 577 S.W.3d 230, 235 (Tex. 2019).

Section 161.001(b)(1)(D) of the Family Code allows for termination of a parent's rights if the trier of fact finds by clear and convincing evidence that the parent has "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). Section 161.001(b)(1)(E) allows for termination if the trier of fact finds by clear and convincing evidence that the parent has "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[.]" *Id.* § 161.001(b)(1)(E). "[A] parent's use of narcotics and its effect on his or her ability to parent may qualify as an endangering course of conduct." *In the Interest of J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009). A parent's conduct in the home can create an environment that endangers the child's physical and emotional well-being. *In the Interest of J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.). "The factfinder may infer from past conduct endangering the child's well-being that similar conduct will recur if the child is returned to the parent." *In the Interest of M.R.J.M.*, 280 S.W.3d 494, 502 (Tex. App.—Fort Worth 2009, no pet.).

For purposes of subsection (E), endangerment means to expose the child to loss or injury or to jeopardize a child's emotional or physical health. *Id.*; *In the Interest of M.L.L.*, 573 S.W.3d 353, 363 (Tex. App.—El Paso 2019, no pet.). Termination under subsection (E) must be based on more than a single act or omission and requires a voluntary, deliberate, and conscious course of conduct by the parent. *Interest of M.L.L.*, 573 S.W.3d at 363-64. A parent's conduct that subjects a child's life to instability and uncertainty endangers the emotional or physical well-being of a child. *Id.* at 363. Endangerment is not limited to actions directed toward the child and includes the parent's actions before the child's birth and while the parent had custody of older children, including evidence of drug usage. *In the Interest of J.O.A.*, 283 S.W.3d. at 345.

Courts may consider whether a parent's drug use continues after the child is removed from the parent's care, as such conduct shows a voluntary, deliberate, and conscious course of conduct that endangers a child's well-being. *In the Interest of J.S.*, 584 S.W.3d 622, 635 (Tex. App.— Houston [1st Dist.] 2019, no pet.); *see In the Interest of M.E.-M.N.*, 342 S.W.3d 254, 263 (Tex. App.— Fort Worth 2011, pet. denied). Evidence of a parent's failure to comply with services to improve her mental health is a factor that the trial court can consider in determining whether a parent has engaged in a course of conduct that endangered the physical and emotional well-

being of a child. *In the Interest of S.R.*, 452 S.W.3d 351, 365 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). A parent's untreated mental illness can expose a child to endangerment, because when a parent fails to take required medication, the parent can behave erratically and neglect the care of the child. *See In the Interest of P.H.*, 544 S.W.3d 850, 857-58 (Tex. App.—El Paso 2017, no pet.).

The trial judge heard evidence that B.J. has a severe mental illness that caused her to have a psychotic break and be involuntarily committed to a psychiatric hospital, her mental illness was the primary cause of her neglecting L.J., and the illness would continue throughout B.J.'s life. The trial court heard evidence that B.J. had a history with the Department, her son was removed because B.J. had placed him in a dangerous situation while dealing with her mental issues, and that B.J.'s rights to her son were terminated. The trial court also heard evidence that B.J. was unable to bond with L.J. and that she could not care or provide for L.J. currently or in the future.

The trial judge heard evidence that B.J. lacks good logical reasoning skills and that her delusions and symptomology have caused her to believe that L.J. was sexually molested, and because B.J. acts on her delusions, her actions could be detrimental to L.J. The trial judge heard evidence that there were concerns regarding B.J.'s past aggressive behaviors, suicidal ideations. hallucinations linked with

magical thinking, unstable temperament, absence of nurturing, and inability to bond with L.J. and sustain a support system. The trial court further heard evidence that due to B.J.'s behavior, the Department had to seek an injunction against B.J. to prevent her from excessively contacting the workers and that one worker had filed harassment charges against B.J. The trial court also heard evidence that B.J.'s mental illness renders her unable to provide for L.J.'s physical, emotional, and mental needs and that her mental illness will continue to render her unable to provide for L.J.'s needs until L.J. is eighteen.

Additionally, the trial judge heard evidence that B.J. has a severe history of noncompliance with treatment for her mental illness and that her past behavior is a good predictor of her future behavior. The trial court heard that B.J.'s mental health problems continued even when she was supposedly taking her medications and that her mental health issues created an extreme danger to L.J. The trial judge further heard that B.J. has a past pattern of drug addiction and abuse, and that she endangered L.J. by using marijuana while caring for L.J. In addition, the trial judge heard evidence that B.J. tested positive for cocaine and codeine after L.J. was removed and that the Department was concerned that she was self-medicating instead of taking her mental health medications.

Viewing the evidence in the light most favorable to the trial judge's findings, we conclude that the trial judge could reasonably have formed a firm belief or conviction that B.J. knowingly placed or knowingly allowed L.J. to remain in conditions or surroundings which endangered her physical or emotional well-being and engaged in conduct or knowingly placed L.J. with persons who engaged in conduct that endangered L.J.'s physical or emotional well-being. *See* Tex. Fam. Code Ann. § 161.001(b)(1)(D), (E); *In the Interest of J.F.C.*, 96 S.W.3d at 266; *In the Interest of J.O.A.*, 283 S.W.3d at 345; *In the Interest of J.S.*, 584 S.W.3d at 635; *In the Interest of P.H.*, 544 S.W.3d at 857-58; *In the Interest of S.R.*, 452 S.W.3d at 365; *In the Interest of M.R.J.M.*, 280 S.W.3d at 502; *In the Interest of J.T.G.*, 121 S.W.3d at 125.

Regarding the best interest inquiry, we consider a non-exhaustive list of factors: (1) the desires of the child; (2) emotional and physical needs of the child now and in the future; (3) emotional and physical danger to the child now and in the future; (4) parental abilities of the individuals seeking custody; (5) programs available to assist these individuals to promote the best interest of the child; (6) plans for the child by these individuals or by the agency seeking custody; (7) stability of the home or proposed placement; (8) acts or omissions of the parent which may indicate that the existing parent-child relationship is not proper; and (9) any excuse

for the acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976); *see* Tex. Fam. Code Ann. § 263.307(b). No particular *Holley* factor is controlling, and evidence of one factor may be sufficient to support a finding that termination is in a child's best interest. *See In the Interest of A.P.*, 184 S.W.3d 410, 414 (Tex. App.—Dallas 2006, no pet.). The best interest determination may rely on direct or circumstantial evidence, subjective facts, and the totality of the evidence. *See In the Interest of N.R.T.*, 338 S.W.3d 667, 677 (Tex. App.—Amarillo 2011, no pet.). The impact of a parent's mental illness on her ability to parent and the stability of the home are relevant facts in the best interest analysis. *In the Interest of R.J.*, 579 S.W.3d 97, 118 (Tex. App.—Houston [1st Dist.] 2019, pet. denied). A parent's potential failure to continue taking medication prescribed for mental illness is also a factor in the analysis of best interest. *See id.*; *Adams v. Tex. Dep't of Family & Protective Servs.*, 236 S.W.3d 271, 281 (Tex. App.— Houston [1st Dist.] 2007, no pet.).

With respect to the child's best interest, the trial court heard evidence that (1) B.J. lacks logical reasoning skills and is unable to recognize what is true or not true in her environment, (2) B.J. acts on her paranoia and delusions, (3) B.J. is unable to bond with L.J. or provide L.J. with safety and stability now and until L.J. turns eighteen, (4) L.J. has bonded with her foster parents and is thriving in her current

placement, and (5) termination of B.J.'s parental rights is in the best interest of L.J. The trial court also heard evidence that B.J. has severe mental illness, a history of failing to comply with her mental health treatment, a history of drug abuse, and has continued to use drugs after L.J.'s removal. The trial court further heard evidence that B.J. is not financially independent and is unable to maintain employment or sustain a support system. Prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest. *See* Tex. Fam. Code Ann. § 263.307(a). As the sole judge of the credibility of the witnesses and the weight to be given to their testimony, the trial court could reasonably conclude that termination of B.J.'s parental rights was in the best interest of L.J. *See id.* § 161.001(b)(2), 263.307(a); *see also In the Interest of J.F.C.*, 96 S.W.3d at 266; *Holley*, 544 S.W.2d at 371-72; *In the Interest of R.J.*, 579 S.W.3d at 118; *Adams*, 236 S.W.3d at 281.

We conclude that the Department established, by clear and convincing evidence, that B.J. committed the predicate acts enumerated in sections 161.001(b)(1)(D) and (E) and that termination of B.J.'s parental rights is in the best interest of L.J. *See* Tex. Fam. Code Ann. § 161.001(b)(1)(D), (E), (2); *In the Interest of C.A.C., Jr.*, 2011 WL 1744139, at *1. Accordingly, we overrule issues one, two, and three. Having concluded that the evidence was legally and factually sufficient to support the trial court's findings as to subsections 161.001(b)(1)(D), (E), and (2),

we need not reach issues four, five, and six, in which B.J. challenges the sufficiency of the evidence supporting the trial court's findings under sections 161.001(b)(1)(O) and (P) and section 161.003(a). *See In the Interest of N.G.*, 577 S.W.3d at 235; *In the Interest of C.A.C., Jr.*, 2011 WL 1744139, at *1; *see also* Tex. R. App. P. 47.1.

In issue seven, B.J. argues that she received ineffective assistance of counsel. B.J. complains that the trial court failed to admonish her regarding the dangers of self-representation, and that she was substantially disadvantaged by representing herself at trial. According to B.J., although her appointed counsel was on standby to assist her, counsel was ineffective because he made no attempt to assist her in excluding or presenting evidence at trial. The Department contends that B.J. chose for her counsel to only act in an advisory role during trial, and B.J. did not demonstrate that counsel failed to advise her as part of a trial strategy or establish that but for counsel's alleged errors, the outcome of the trial would have been different.

An indigent parent is entitled to appointed counsel in a termination proceeding, and that statutory right "embodies the right to effective counsel[.]" *In the Interest of B.G.*, 317 S.W.3d 250, 253-54 (Tex. 2010); *see* Tex. Fam. Code Ann. § 107.013. The statute does not expressly provide that an indigent parent has a right of self-representation. *See In the Interest of A.H.L., III*, 214 S.W.3d 45, 51-52 (Tex.

App.—El Paso 2006, pet. denied). However, if a trial court elects to allow a parent to proceed *pro se*, the trial court must inform the parent of the dangers of self-representation before permitting the parent to proceed *pro se*, and a parent's waiver of the right to counsel must, at the very least, be knowing and intelligent. *See In the Matter of C.L.S.*, 403 S.W.3d, 15, 19-22 (Tex. App.—Houston [1st Dist. 2012, pet. denied).

In this case, the trial court appointed counsel to represent B.J. The record shows that before trial, counsel filed a motion to withdraw, alleging that good cause existed for his withdrawal because B.J. no longer wished to be represented by him. The trial court conducted a hearing on counsel's motion to withdraw, during which counsel stated that B.J. had informed him that she wanted to hire another lawyer to represent her. After hearing B.J.'s testimony concerning her income, the trial court determined that B.J. was still indigent and qualified for a court-appointed attorney, and the judge explained to B.J. that she did not have the option to select who the trial court appointed as her attorney. B.J. stated that she wanted to represent herself and have her current counsel act in an advisory role. The judge indicated that he would allow B.J. to represent herself and that counsel would continue to make court appearances and answer B.J.'s questions. The trial court entered a pre-trial order

relieving counsel of representing B.J. and ordering counsel to be available when reasonable to answer B.J.'s legal questions.

The record shows that before the trial began, counsel indicated that he had continued to serve B.J. in an advisory role and had advised B.J. that she would be held to the same standards as an attorney, and B.J. indicated that she understood and would abide by the rules. The judge stated that he wanted counsel to continue acting as ad litem during trial and assist B.J., and counsel agreed. The record further shows that B.J. cross-examined witnesses and that counsel assisted her during trial. The trial court's order of termination states that B.J. appeared in person and through her attorney appointed for assistance. On the same day it entered the termination order, the trial court entered an order finding that good cause existed for counsel to withdraw.

The record shows that B.J.'s court-appointed counsel continued to serve as attorney ad litem for B.J. throughout the trial, and the trial court did not find good cause to relieve counsel of his duties until the trial was over. *See* Tex. Fam. Code Ann. § 107.016(2). Additionally, because the record shows that B.J. requested that the trial court allow her to proceed *pro se* during trial with her counsel operating in an advisory role, B.J. cannot complain on appeal that the trial court granted her request. *See Tittizer v. Union Gas Corp.*, 171 S.W.3d 857, 862 (Tex. 2005).

B.J. also complains that counsel was ineffective while operating in his advisory role because he failed to render proper advice and assist her in making objections to the Department's evidence and opposing counsel's summary of the evidence. In evaluating the effectiveness of counsel in parental-rights termination cases, the Texas Supreme Court adopted the *Strickland* test that sets the standards for effective assistance in criminal cases. *In the Interest of M.S.*, 115 S.W.3d 534, 544 (Tex. 2003). To establish ineffective assistance of counsel, an appellant must satisfy the following test: "First, the [appellant] must show that counsel's performance was deficient. . . . Second, the [appellant] must show that the deficient performance prejudiced the [appellant's case]. This requires showing that counsel's errors were so serious as to deprive the [appellant] of a fair trial, a trial whose result is reliable." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "Any allegation of ineffectiveness must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness." *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). "Appellate review of . . . counsel's representation is highly deferential and presumes that counsel's actions fell within the wide range of reasonable and professional assistance." *Bone v. State*, 77 S.W.3d 828, 833 (Tex. Crim. App. 2002). The record on direct appeal normally will not be sufficient to show that counsel's representation was so deficient and lacking in tactical or

strategic decisionmaking to overcome the presumption that counsel's conduct was reasonable and professional. *Id*. The appellant must prove, by a preponderance of the evidence, that there is no plausible professional reason for counsel's specific act or omission. *Id*. at 836.

B.J. did not develop a record in the trial court demonstrating that trial counsel's conduct during trial while operating in an advisory role was not part of a reasonable trial strategy. *See Bone*, 77 S.W.3d at 834. In the absence of a record that affirmatively demonstrates counsel's alleged ineffectiveness, we cannot find that counsel provided ineffective assistance. *See Thompson*, 9 S.W.3d at 813. We overrule issue seven. Having addressed each of B.J.'s issues, we affirm the trial court's judgment terminating B.J.'s parental rights.

AFFIRMED.

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STEVE McKEITHEN
Chief Justice

Submitted on April 21, 2020
Opinion Delivered June 9, 2020

Before McKeithen, C.J., Kreger and Horton, JJ.