



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-20-00014-CV

IN THE INTEREST OF D.B., A CHILD

On Appeal from the 307th District Court
Gregg County, Texas
Trial Court No. 2019-364-DR

Before Morriss, C.J., Burgess and Stevens, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

Jim,¹ who has been incarcerated for all but three weeks of two-year-old D.B.’s life, appeals the termination of his parental rights. On appeal, Jim challenges only the factual sufficiency of the evidence supporting the trial court’s finding that termination of his parental rights was in the best interest of D.B.² Because we find sufficient evidence supports the best-interest finding, we affirm the judgment of the trial court.

Standard of Review

“The natural right existing between parents and their children is of constitutional dimensions.” *In re E.J.Z.*, 547 S.W.3d 339, 343 (Tex. App.—Texarkana 2018, no pet.) (quoting *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985)). “Indeed, parents have a fundamental right to make decisions concerning ‘the care, custody, and control of their children.’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). “Because the termination of parental rights implicates fundamental interests, a higher standard of proof—clear and convincing evidence—is required at trial.” *Id.* (quoting *In re A.B.*, 437 S.W.3d 498, 502 (Tex. 2014)). “This Court is therefore required to ‘engage in an exacting review of the entire record to determine if the evidence is . . . sufficient to support the termination of parental rights.’” *Id.* (quoting *A.B.*, 437 S.W.3d at 500). “[I]nvoluntary termination statutes are strictly construed in favor of the parent.” *Id.* (quoting *In re S.K.A.*, 236 S.W.3d 875, 900 (Tex. App.—Texarkana 2007, pet. denied) (quoting *Holick*, 685 S.W.2d at 20)).

¹We refer to the minor child by her initials and to her parents by pseudonyms. See TEX. R. APP. P. 9.8.

²In addition to the best-interest finding, the trial court based its termination order on statutory grounds (O) and (Q).

“In order to terminate parental rights, the trial court must find, by clear and convincing evidence, that the parent has engaged in at least one statutory ground for termination and that termination is in the child’s best interest.” *Id.* (citing TEX. FAM. CODE ANN. § 161.001; *In re E.N.C.*, 384 S.W.3d 796, 798 (Tex. 2012)). “Clear and convincing evidence” is that “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; *see In re J.O.A.*, 283 S.W.3d 336, 344 (Tex. 2009). “This standard of proof necessarily affects our review of the evidence.” *In re L.E.S.*, 471 S.W.3d 915, 920 (Tex. App.—Texarkana 2015, no pet.).

“In our review of factual sufficiency, we give due consideration to evidence the trial court could have reasonably found to be clear and convincing.” *Id.* (citing *In re H.R.M.*, 209 S.W.3d 105, 109 (Tex. 2006) (per curiam)). “We consider only that evidence the fact-finder reasonably could have found to be clear and convincing and determine ‘whether the evidence is such that a fact[-]finder could reasonably form a firm belief or conviction about the truth of the . . . allegations.’” *Id.* (quoting *H.R.M.*, 209 S.W.3d at 109 (quoting *In re C.H.*, 89 S.W.3d 17, 25 (Tex. 2002) (citing *In re J.F.C.*, 96 S.W.3d 256, 264, 266 (Tex. 2002))). “If, in light of the entire record, the disputed evidence that a reasonable fact-finder could not have credited in favor of the finding is so significant that a fact-finder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient.” *Id.* (quoting *J.F.C.*, 96 S.W.3d at 266). “[I]n making this determination,” we must undertake “an exacting review of the entire record with a healthy regard for the constitutional interests at stake.” *In re A.B.*, 437 S.W.3d 498, 503 (Tex. 2014) (quoting *C.H.*, 89 S.W.3d at 26).

“Despite the profound constitutional interests at stake in a proceeding to terminate parental rights, ‘the rights of natural parents are not absolute; protection of the child is paramount.’” *L.E.S.*, 471 S.W.3d at 920 (quoting *In re A.V.*, 113 S.W.3d 355, 361 (Tex. 2003) (quoting *In re J.W.T.*, 872 S.W.2d 189, 195 (Tex. 1994)) (citing *In re M.S.*, 115 S.W.3d 534, 547 (Tex. 2003))). “A child’s emotional and physical interests must not be sacrificed merely to preserve parental rights.” *Id.* (quoting *In re C.A.J.*, 459 S.W.3d 175, 179 (Tex. App.—Texarkana 2015, no pet.) (citing *C.H.*, 89 S.W.3d at 26)).

Background

The evidence in this case showed that Jim received deferred adjudication community supervision on August 6, 2015, for the offense of aggravated assault that occurred in November 2013. Although the record does not reflect the reason, while on community supervision, Jim was incarcerated from December 18, 2017, until November 7, 2018. This included the first nine months of D.B.’s life, who was born February 13, 2018. Three weeks after being released, Jim was again incarcerated until January 17, 2019. On that date, Jim’s guilt for the November 2013 aggravated assault was adjudicated, and Jim was sentenced to ten years’ imprisonment, which resulted from his violation of the terms of his community supervision by using cocaine and another controlled substance on or about November 20, 2018.

This case began February 25, 2019, when D.B. was removed from the care of her mother and a man accompanying her because they were found under a bridge in severely cold weather, and because of concern about the mental health and drug use of D.B.’s parents. D.B.’s mother refused to submit to a drug test, but D.B. was tested and the test came back positive for

methamphetamine. D.B.'s mother missed several appointments for drug testing during the pendency of the case and tested positive for marihuana and cocaine on the two occasions she submitted to testing.

Jim remained incarcerated during the pendency of this suit. When the final hearing was called, Jim's attorney announced that Jim had stated in writing that he did not want to participate in the hearing and that he did not want to be bench warranted to appear. Shortly after the hearing began, D.B.'s mother executed an Affidavit of Relinquishment of Parental Rights to the Department of Family and Protective Services (the Department).

Jennifer James, a conservatorship worker for the Department, testified that Jim was incarcerated but that the Department had developed a family service plan (FSP) for him. Initially, the FSP required Jim to contact James, but after a few months it required Jim to obtain counseling, along with parenting and substance abuse treatment, through the Texas Department of Criminal Justice (TDCJ). At the end of August 2019, Jim wrote to James and inquired how D.B. was doing and asked what he needed to do. James wrote him back and let him know that D.B. was doing well and that she was walking and talking. She also told him that he needed to complete court-ordered substance abuse treatment, counseling, psychosocial evaluation, random drug testing, and therapy and that he should send her a certificate documenting any of the services he completed through TDCJ. James testified that she had not heard from Jim since that time, that he had not sent any certificates, and that he had not represented to her that he had completed any of the services.

James also testified that D.B. had been in the care of the same foster family since the beginning of the case, which began eleven months before the final hearing. When D.B. first came into the Department's care, she was one year old and she was not walking, talking, or current on her medicals. James testified that D.B. had been to the emergency room multiple times for asthmatic issues and described her as "very frail" and "just a shell of a child." She testified that, since being in the foster family's care, D.B. was doing great, was loved and bonded with the family, and had other children around her. Every time she visited D.B. with the foster family, D.B. had been eating, playing, and running around. Her breathing issues were also being treated. James also testified that the foster family would provide D.B. with a forever home and that her foster parents would like to adopt her.

D.B.'s foster mother testified that, when D.B. first came to live with them, she was very sick, hungry, tired, and cold and that she could not walk and hardly talked. She said that she and her daughter had to bathe D.B. several times and shampoo her hair many times in order to get rid of a lingering odor. She also testified that D.B. had sores that her doctor diagnosed as impetigo, which was caused by not being cleaned regularly. These went away with treatment. Her foster mother testified that D.B. was then current with her medical and dental matters, running and happy, and ate whatever she wanted. Her foster mother also testified that she was a stay-at-home mother physically caring for D.B. every day and that they go to the park and have play dates. Her foster mother had also contacted one of D.B.'s siblings and planned for D.B. to maintain that relationship. She testified that she and her family love D.B. and would like to adopt her.

Analysis

“There is a strong presumption that keeping a child with a parent is in the child’s best interest.” *In re J.A.S., Jr.*, No. 13-12-00612-CV, 2013 WL 782692, at *7 (Tex. App.—Corpus Christi Feb. 28, 2013, pet. denied) (mem. op.) (citing *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam)). “Termination ‘can never be justified without the most solid and substantial reasons.’” *In re N.L.D.*, 412 S.W.3d 810, 822 (Tex. App.—Texarkana 2013, no pet.) (quoting *Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex. 1976)).

In determining the best interests of the child, we consider the following *Holley* factors:

(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.

Id. at 818–19 (citing *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976)); *see In re E.N.C.*, 384 S.W.3d 796, 807 (Tex. 2012); *see also* TEX. FAM. CODE ANN. § 263.307(b).

“It is not necessary to prove all of these factors as a condition precedent to parental[-rights] termination.” *In re M.C.*, 482 S.W.3d 675, 688 (Tex. App.—Texarkana 2016, pet. denied) (citing *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002); *In re N.L.D.*, 412 S.W.3d 810, 819 (Tex. App.—Texarkana 2013, no pet.)). “Evidence relating to a single factor may suffice in a particular situation to support a finding that termination is in the best interests of the child.” *Id.* (citing *In re K.S.*, 420 S.W.3d 852, 855 (Tex. App.—Texarkana 2014, no pet.) (citing *In re J.O.C.*, 47 S.W.3d 108, 115 (Tex. App.—Waco 2001, no pet.), *disappr’d on other grounds by In re J.F.C.*, 96 S.W.3d 256, 267

n.39 (Tex. 2002))). “When considering the child’s best interest, we may take into account that a parent is unable to provide adequate care for a child, lacks parenting skills, or exercises poor judgment.” *Id.* (citing *In re C.A.J.*, 122 S.W.3d 888, 893 (Tex. App.—Fort Worth 2003, no pet.)). “Parental drug abuse, which reflects poor judgment, is also a factor that may be considered when determining the child’s best interest.” *Id.* (citing *In re M.R.*, 243 S.W.3d 807, 820 (Tex. App.—Fort Worth 2007, no pet.)). “Further, the amount of contact between the parent and child, the parent’s failure to provide financial and emotional support, continuing criminal history and past performance as a parent are all relevant in determining the child’s best interest.” *Id.* (citing *C.H.*, 89 S.W.3d at 28). In addition, “evidence showing the parent committed acts or omissions that would be statutory grounds for termination may also be probative that termination is in the best interest of the children.” *In re J.G.*, No. 06-18-00017-CV, 2018 WL 3636875, at *6 (Tex. App.—Texarkana Aug. 1, 2018, no pet.) (citing *C.H.*, 89 S.W.3d at 28).

The evidence in this case showed that, as a result of his own actions, Jim was incarcerated for all but three weeks of D.B.’s life. When he was released from jail, he quickly began using controlled substances in violation of the terms of his community supervision. That resulted in the adjudication of his guilt for aggravated assault and his imprisonment for ten years. These acts and omissions by Jim showed that his existing parent-child relationship with D.B. was not proper, that he was, and for the foreseeable future would be, unable to provide for the emotional and physical needs of D.B, and that he could not provide her a stable home. By choosing to use controlled substances and engage in criminal activities that were almost certain to result in imprisonment, Jim demonstrated that he lacked the requisite care for his child necessary to demonstrate an

appropriate level of parenting ability. In addition, by refusing to participate in the proceedings, Jim failed to submit any evidence of his plans for D.B. or of any excuses he may have had for his acts and omissions.

By contrast, the evidence showed that D.B. was bonded with the foster family, that her foster parents demonstrated their parenting abilities and their provision for D.B.'s emotional and physical needs, that they have provided her with a stable home, and that their plans are to provide her with a permanent home and family. Based on this record, we find that the *Holley* factors weigh heavily in favor of the termination of Jim's parental rights. Therefore, we find that factually sufficient clear and convincing evidence supports the trial court's finding that termination of Jim's parental rights was in the best interests of D.B.

For the reasons stated, we affirm the judgment of the trial court.

Josh R. Morriss, III
Chief Justice

Date Submitted: May 21, 2020
Date Decided: June 18, 2020