

COURT OF APPEALS FOR THE SECOND APPELLATE DISTRICT OF TEXAS
AT FORT WORTH

In the Interest of E.M., a Child

In re E.M. · No. 02-21-00326-CV · Decided March 24, 2022

SUMMARY

The Texas Court of Appeals for the Second Appellate District considers Mother’s appeal from an order terminating her parental rights to E.M. and appointing the Department of Family and Protective Services as permanent managing conservator. Mother challenged the legal and factual sufficiency of the evidence supporting the constructive-abandonment, failure-to-comply-with-court-order, and best-interest findings. The court concluded that the evidence was sufficient to support at least one conduct finding and the best-interest finding and affirmed the trial court’s judgment.

CASE DETAILS

COURT	Court of Appeals for the Second Appellate District of Texas at Fort Worth
WRITING FOR THE COURT	Elizabeth Kerr; Bassel, J.; Womack, J.
JURISDICTION	Texas
DECIDED	March 24, 2022
DOCKET	02-21-00326-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed the order terminating her parental rights to E.M. and appointing the Department of Family and Protective Services as the child's permanent managing conservator. She challenged the legal and factual sufficiency of the evidence supporting findings under Texas Family Code section 161.001(b)(1)(N) and (O) and the best-interest finding under section 161.001(b)(2).
STANDARD OF REVIEW	Termination of parental rights requires clear and convincing evidence of at least one statutory predicate ground and that termination is in the child's best interest. Legal sufficiency is reviewed in the light most favorable to the finding, disregarding contrary evidence that a reasonable factfinder could disbelieve; factual sufficiency requires an exacting review of the entire record while deferring to the factfinder's credibility determinations. The appellate court asks whether the

	factfinder could reasonably form a firm belief or conviction as to the predicate ground and best interest.
PRECEDENTIAL VALUE	published
PARTIES	J.M. (Mother) v. Texas Department of Family and Protective Services

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QUESTIONS PRESENTED

1. Whether legally and factually sufficient evidence supported termination under Texas Family Code section 161.001(b)(1)(O) for failure to comply with a court order specifically establishing the actions necessary to obtain E.M.'s return.
2. Whether legally and factually sufficient evidence supported the finding that termination of Mother's parental rights was in E.M.'s best interest under Texas Family Code section 161.001(b)(2).
3. Whether legally and factually sufficient evidence supported the section 161.001(b)(1)(N) constructive-abandonment finding.

HOLDINGS

1. The evidence was legally and factually sufficient to establish the existence of a court order specifically setting out the actions necessary for Mother to obtain E.M.'s return and to support termination under section 161.001(b)(1)(O).
2. The evidence was legally and factually sufficient to support the finding that termination of Mother's parental rights was in E.M.'s best interest.
3. The court did not reach the challenge to the subsection (N) finding because the subsection (O) finding, together with the best-interest finding, independently supported termination.

KEY QUOTATIONS

“Accordingly, we conclude that the evidence is legally and factually sufficient to satisfy Subsection (O)’s court-order requirement, and we thus conclude and hold that the evidence is legally and factually sufficient to support the trial court’s Subsection (O) finding.” (23-24)

“Viewing the evidence under the appropriate standards of review and considering the Holley factors, we conclude and hold that the evidence is legally and factually sufficient to support the trial court’s best-interest finding.” (28-29)

FACTUAL BACKGROUND

E.M. was removed from his maternal grandparents' home after evidence of drug use and exposure in the home, and he subsequently tested positive for several drugs. Mother had an extensive history of drug possession, incarceration, parole and probation, continued drug use, missed drug tests, and failure to complete required services. She had not visited E.M. in person since January 2020 and had been inconsistent with virtual visits. E.M. had lived with his maternal uncle and the uncle's longtime partner since April 2020, where he was bonded, stable, and had substantial improvements in speech and motor skills.

PROCEDURAL HISTORY

The Department removed E.M. from his grandparents' home and filed suit seeking conservatorship and termination of both parents' rights. After a bench trial, the trial court found by clear and convincing evidence that termination of Mother's parental rights was supported by the constructive-abandonment and failure-to-comply-with-court-order grounds and was in E.M.'s best interest. The court terminated Mother's and Father's parental rights and appointed the Department permanent managing conservator. Mother timely appealed; the court of appeals affirmed based on the subsection (O) and best-interest findings and did not reach the subsection (N) issue.

DISPOSITION

affirmed

CASES CITED

- In re E.N.C., 384 S.W.3d 796, 802-03, 807 (Tex. 2012)
- In re J.L., 163 S.W.3d 79, 84 (Tex. 2005)
- In re J.P.B., 180 S.W.3d 570, 573 (Tex. 2005)
- In re J.O.A., 283 S.W.3d 336, 346 (Tex. 2009)
- In re A.B., 437 S.W.3d 498, 500 (Tex. 2014)
- In re H.R.M., 209 S.W.3d 105, 108 (Tex. 2006)
- In re C.H., 89 S.W.3d 17, 27-28 (Tex. 2002)
- In re M.C., No. 02-15-00290-CV, 2016 WL 354186, at *2-3 (Tex. App.—Fort Worth Jan. 28, 2016, no pet.) (mem. op.)
- In re J.B., No. 02-18-00173-CV, 2018 WL 4626427, at *3-5, *7 (Tex. App.—Fort Worth Sept. 27, 2018, no pet.) (per curiam) (mem. op.)
- In re R.R., 209 S.W.3d 112, 116 (Tex. 2006)
- In re A.C., 560 S.W.3d 624, 631 (Tex. 2018)
- In re E.C.R., 402 S.W.3d 239, 249-50 (Tex. 2013)
- Holley v. Adams, 544 S.W.2d 367, 371-72 (Tex. 1976)
- In re J.D., 436 S.W.3d 105, 118 (Tex. App.—Houston [14th Dist.] 2014, no pet.)
- In re M.R., No. 02-19-00212-CV, 2019 WL 6606167, at *8-9 (Tex. App.—Fort Worth Dec. 5, 2019, no pet.) (mem. op.)
- In re A.V., 113 S.W.3d 355, 362 (Tex. 2003)

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