Affirmed and Opinion filed January 6, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-00700-CV

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GEORGE WILLIAMS, Appellant

V.

THE TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES, Appellee

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On Appeal from the 306th District Court
Galveston County, Texas
Trial Court Cause No. 94JV0358

O P I N I O N

George Williams appeals from the trial court's judgment and decree terminating his parental rights to his four minor children. Appellant assigns seven, interrelated points of trial court error, contending that the evidence was insufficient to support the judgment and decree because it failed to meet the clear and convincing evidence standard. We affirm.

BACKGROUND

The Texas Department of Protective and Regulatory Services began investigating the welfare of appellant's minor children in 1994, shortly after one of his five children was murdered by his former wife's paramour. Following the murder, the child's mother was convicted of injury to a child and sentenced to ten years' imprisonment. Her paramour was convicted of murder and sentenced accordingly. In 1996, appellant's former wife voluntarily relinquished her parental rights to her four remaining children. At the time of the murder, appellant was incarcerated. Between 1992 and 1997, appellant was in and out of jail no fewer than seven times. In 1998, the State filed its First Amended Original Petition to Terminate the Parent-Child Relationship between appellant and his four remaining minor children. Following a non-jury trial in April 1998, the trial court entered its Decree of Termination, which terminated appellant's parental rights to his children. The State placed the four children in the care of appellant's sister, where they have resided since 1995.

STANDARD OF REVIEW

When reviewing the sufficiency of the evidence, an appellate court must first examine the legal sufficiency of the evidence. *See Segovia v. Texas Dep't of Protective & Reg. Serv.*, 979 S.W.2d 785, 787 (Tex.App.–Houston [14th Dist.] 1998, pet. denied). In reviewing the legal sufficiency of the evidence, an appellate court considers only the evidence and inferences tending to support the trial court's findings and disregards all evidence and inferences to the contrary. *Id.* In reviewing the factual sufficiency of the evidence, an appellate court must consider all the evidence and should set aside the judgment only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Id.* The clear and convincing standard of proof required to terminate parental rights does not alter the appropriate standard of appellate review. *Id.*

DISCUSSION

We address appellant's seven points of error conjunctively.[1] The termination of parental rights involves fundamental constitutional rights. *See In the Interest of J.N.R., a child*, 982 S.W.2d 137, 141 (Tex.App.–Houston [1st Dist.] 1998, no pet.) (citing *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212-13, 31 L.Ed.2d 551 (1972)). Therefore, evidence supporting the findings to terminate parental rights must be clear and convincing, not merely preponderate. *Id.* The clear and convincing standard of proof is intentionally placed on the party seeking the termination of the parental rights, so as to create a higher burden to fulfill, because of the severity and permanence of the termination of the parent-child relationship. *Id.* This standard requires more proof than the preponderance of the evidence standard in civil cases, but less than the reasonable doubt standard in criminal cases. *Id.* The clear and convincing standard is the 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 proved. *Id.*

This proceeding to terminate appellant's parental rights was brought under the provisions of section 161.001 of the Texas Family Code. That section sets forth the circumstances under which a court may involuntarily terminate the parent-child relationship. TEX. FAM. CODE ANN. § 161.001 (Vernon Supp. 1999). Under this section, a court may order the termination of the parent-child relationship if the court finds, by clear and convincing

[1] We note that appellant's brief falls woefully short of compliance with the briefing rules set forth in the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 38.1. Appellant's brief contains a section titled "Argument and Authorities for Points of Error," which contains nothing more than random, disconnected abstract statements of law. To the extent they are addressed, all seven points of error assigned by appellant are contained within this one section. Appellant's brief contains no analysis or argument of how the cited authority applies to appellant's case. *See* TEX. R. APP. P. 38.1(h). In reviewing the record, it is apparent that appellant's brief is the identical document submitted to the trial court that was titled "Memorandum of Law." Nevertheless, we gratuitously review this matter because of the severity and permanence of the termination of the parent-child relationship. Under different circumstances, we would either dismiss appellant's appeal for failure to comply with the briefing rules or order re-briefing to secure compliance with the briefing rules. *See* TEX. R. APP. P. 38.9.

evidence, that: (1) one or more of the acts enumerated in section 161.001(1) was committed; and (2) termination is in the best interest of the child. Section 161.001 provides, in part:

> The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:
>
> (1) that the parent has:
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> . . . .
>
> (C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;
>
> (D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
>
> (E) 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;
>
> (F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;
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> . . . .
>
> (N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Protective and Regulatory Services or an authorized agency for not less than six months, and:
>
> (i) the department or authorized agency has made reasonable efforts to return the child to the parent;
>
> (ii) the parent has not visited or maintained contact with the child; and
>
> (iii) the parent has demonstrated an inability to provide the child with a safe environment.
>
> . . . .
>
> (2) that termination is in the best interest of the child.

TEX. FAM. CODE ANN. § 161.001 (Vernon Supp. 1999).[2]

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[2] In the trial court's decree and in its findings of fact and conclusions of law, it found that each of (continued...)

Concerning the legal sufficiency of the evidence in this case, the record shows that appellant engaged in a course of conduct and continues to engage in a course of conduct that endangers the emotional well-being of his children. "Endanger" means more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment. *See In the Interest of J.N.R., a child*, 982 S.W.2d at 142. It means to expose to loss or injury or to jeopardize. *Id.* Mere imprisonment will not, standing alone, constitute engaging in conduct that endangers the physical or emotional well-being of the child. *Id.*; *see also In the Matter of W.A.B.*, 979 S.W.2d 804, 806-07 (Tex.App.–Houston [14th Dist.] 1998, pet. denied). However, if all the evidence, including imprisonment shows a course of conduct that has the effect of endangering the physical or emotional well-being of the child, a finding under section 161.001(1)(E) of the Family Code is supportable. *Id.* If the imprisonment of the parent displays a voluntary, deliberate, and conscious course of conduct, it qualifies as conduct that endangers the emotional well being of the child. *Id.*; *see also In the Matter of W.A.B.*, 979 S.W.2d at 807. The conduct need not be directed toward the child or cause the child physical injury to constitute conduct that endangers the emotional well-being of the child. *Id.*

Appellant has been in and out jail multiple times since the death of one of his five minor children. Appellant's jail time was due to possession of cocaine convictions, traffic violation convictions, and because of admitted violations of the conditions of his probation, including his failure to complete drug rehabilitation programs. During appellant's incarcerations that occurred after the murder of his child, he was fully aware that the State was investigating the welfare of his remaining children. Indeed, in early 1995, in an effort to regain custody of his children, appellant discussed a Family Plan of Service with the State. The record shows that appellant failed to abide by any of the terms outlined in the plan. Further, in late 1995, appellant was convicted two counts of felony possession of cocaine for which he received a two-year sentence; appellant was required to serve only two months of

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[2] (...continued)
these grounds existed in this case to warrant a termination of appellant's parental rights.

that time. In early 1998, appellant served a ninety-day sentence in the Harris County Jail for a possession of cocaine conviction. Thus, the record indicates that even after knowing his parental rights were in jeopardy, appellant continued to engage in criminal activity that resulted in him being jailed.

The record also indicates that such termination is in the best interests of appellant's children. Some of the factors that a court may consider in ascertaining the best interest of the child include (1) the emotional and physical needs of the child now and in the future, and (2) the plans for the child by the individual seeking custody. *See In the Interest of J.N.R, a child*, 982 S.W.2d at 142. The record shows that appellant's children have experienced a number of problems, including fears of abandonment, behavioral problems, "acting out," and disruptive behavior, all of which require constant adult supervision. There is nothing in the record to indicate that appellant is able to care for his children, now or in the future.

We conclude that appellant's multiple arrests, jail time, and violations of his probation demonstrate a conscious course of conduct that supports the trial court's finding that appellant is engaged in conduct that endangers the emotional well-being of the children. *Id.* at 142-43; *see also In the Matter of W.A.B.*, 979 S.W.2d at 807. We further conclude that the evidence was legally sufficient to support such a finding as well as the finding that termination of appellant's parental rights is in the best interests of his children.

Next, we review the factual sufficiency of the evidence to support the termination of appellant's parental rights. Section 161.001 of the Family Code requires that the termination of the parent-child relationship be by clear and convincing evidence. *See* TEX. FAM. CODE ANN. § 161.001 (Vernon Supp. 1999). The Texas Supreme Court has stated the requirement of clear and convincing evidence is merely another method of stating that a cause of action must be supported by factually sufficient evidence. *See In the Interest of J.N.R., a child*, 982 S.W.2d at 143 (citing *Meadows v. Green*, 524 S.W.2d 509, 510 (Tex. 1975)) In this case, we apply the traditional factual sufficiency standard of review: the State must have proved its allegations by clear and convincing evidence, and we will set aside the judgment only if

the evidence is so weak or the finding so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Id.*

The only evidence in the record presented by appellant came from his own, brief testimony during his case-in-chief. He testified that he always maintained a close relationship with his children and that he always worked to financially support his children and that he is capable of supporting his children in the future. This was the total of all evidence presented by appellant. On the other hand, the State presented testimony from seven witnesses, including appellant's sister, his probation officer, the children's psychotherapist, a representative from the Galveston County Children's Protective Services, and the program coordinator for the CASA[3] program in Galveston County. Each of the State's witnesses testified that appellant was unable to care for his children and that a termination of his parental rights was in the best interests of the children. Further, appellant acknowledged that since the time his children were taken into custody by the State and placed in foster care with his sister, he has not paid any child support. Appellant acknowledged that he has not sent his children cards or gifts at Christmas or on their birthdays. Appellant also admitted that he is not in a position to provide his children with a stable home after he is scheduled to be released from jail for his latest cocaine possession conviction.

Appellant's demonstrated inability to provide financial support for his children, his inability to provide them with a stable home, together with his consistent inability to avoid criminal activity implies a conscious disregard for his parental responsibilities and is factually sufficient to support a finding that appellant engaged in conduct that endangers the emotional well-being of his children. We conclude that the State proved its allegations by clear and convincing evidence and that the trial court's judgment is not contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Id.*; *see also In the*

[3] Court Appointed Special Advocates.

Matter of W.A.B., 979 S.W.2d at 807. Appellant's seven points of error are respectively overruled.

We hold that the evidence was legally and factually sufficient to support the trial court's findings that appellant's course of criminal conduct endangers his children's emotional well-being and that it is in their best interests to terminate appellant's parental rights. We need not determine whether the trial court's other findings in support of the termination of appellant's parental rights were also sufficient. *See In the Interest of J.N.R., a child*, 982 S.W.2d at 144; *see also* note 2, *supra*.

The judgment is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed January 6, 2000.
Panel consists of Chief Justice Murphy and Justices Anderson and Hudson.
Do Not Publish — TEX. R. APP. P. 47.3(b).