

Supreme Court of Texas

No. 23-0420

In the Interest of A.V., a Child

On Petition for Review from the
Court of Appeals for the Seventh District of Texas

PER CURIAM

This petition for review arises from the termination of parental rights. After hearing evidence about the parents’ use of marijuana and methamphetamine during Mother’s pregnancy and their failure to complete court-ordered service plans, the trial court terminated Father’s and Mother’s parental rights on endangerment grounds. *See* TEX. FAM. CODE § 161.001(D), (E).

The court of appeals affirmed the trial court’s judgment, with each justice on the panel delivering an opinion, one in dissent. The lead opinion explained that horizontal stare decisis “coupled with our earliest decision in *In re R.M.* . . . lead a majority of us to overrule the three issues before us and affirm the order of termination.” ___ S.W.3d ___, 2023 WL 3075943, at *1 (Tex. App.—Amarillo Apr. 25, 2023) (citing *In re R.M.*, No. 07-12-00412-CV, 2012 WL 6163100 (Tex. App.—Amarillo Dec. 11, 2012, no pet.)). As the concurring opinion observed, the court followed its precedent that “mere illegal drug use, without more, would

be sufficient to warrant the termination of parental rights under predicate grounds (D) or (E)” of Section 161.001 of the Texas Family Code. *Id.* at *3 (Doss, J., concurring).

After the court of appeals’ decision, we clarified the relevance of drug-use evidence when reviewing a trial court’s termination of parental rights on endangerment grounds:

While illegal drug use alone may not be sufficient to show endangerment, a pattern of drug use accompanied by circumstances that indicate related dangers to the child can establish a substantial *risk* of harm. A reviewing court should not evaluate drug-use evidence in isolation; rather, it should consider additional evidence that a factfinder could reasonably credit that demonstrates that illegal drug use presents a risk to the parent’s “ability to parent.”

In re R.R.A., 687 S.W.3d 269, 278 (Tex. 2024) (quoting *In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009)).

In denying review of this case, we reaffirm the holistic endangerment review set forth in *R.R.A.* The facts in evidence for this case support the trial court’s order of termination under the *R.R.A.* standard. The parents used drugs together during Mother’s pregnancy and while caring for Mother’s teenage daughter. Mother tested positive for drugs three times during her pregnancy. Drug use during pregnancy supports a finding of direct injury to the child. After the child in question was born, the parents did not complete their court-ordered services, including drug testing and refraining from drug use. Attendance at their two-hour weekly visitation with the child was sporadic. Father testified that the best way for the parents to stop using drugs was to return the child to them. The evidence supports a finding that the parents’ drug use continued despite their knowledge that their

parental rights were subject to termination for continued drug use. *See In re J.O.A.*, 283 S.W.3d at 346 (listing father’s use of marijuana “shortly before the final hearing” as evidence in favor of termination). The facts show a pattern of continued substantial risk of harm to the child sufficient to support a trial court’s finding of endangerment. We therefore deny the petition for review but point to the *R.R.A.* framework for the court of appeals to apply in future endangerment cases.

OPINION DELIVERED: August 30, 2024