Affirmed and Opinion filed March 28, 2002.

In The

Fourteenth Court of Appeals

NO. 14-01-00352-CV

IN THE INTEREST OF T.S., K.S., D.S. AND S.A.

On Appeal from the 315th District
Harris County, Texas
Trial Court Cause No. 1999-05434J

O P I N I O N

Appellant, Katina Rochelle Lynn ("Lynn") appeals the trial court's termination of her parental rights to her child, S.A. In three issues, Lynn complains that (1) the trial court erred in admitting expert testimony and (2)-(3) the evidence is legally and factually insufficient to support the termination. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

There are four minor children involved in this case. Lynn is the mother of all these children as well as two others. Tomas Segura is the father of T.S., K.S., and D.S. ("Segura children"), all of whom are the subject of the underlying suit affecting the parent-child relationship. Muhammid Abu-Ain is the father of S.A., who is also the subject of the

underlying suit. In addition, Abu-Ain and Lynn have two other children together, who are not involved in this suit.

The trial court's master, the Honorable Sherry Van Pelt, conducted a bench trial and rendered a decision terminating Lynn's parental rights to S.A., who was one year old at the time of the ruling. The trial court accepted the master's decision and signed a final decree incorporating it. Lynn filed a motion for new trial, which the trial court denied. Upon Lynn's timely request, the trial court then filed findings of fact and conclusions of law. Lynn does not contest the facts recited below, as found by the trial court. Thus, unless there is no evidence to support these findings, they are binding on this Court. *See McGalliard v. Kulhmann*, 722 S.W.2d 694 (Tex. 1986); *Mort Keshin & Co. v. Houston Chronicle Pub. Co.*, 992 S.W.2d 642, 645 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

Lynn has a long history with the Texas Department of Protective and Regulatory Services ("TDPRS"), the state agency charged with investigating alleged incidents of child abuse and neglect. In January 1999, Lynn signed a Child Safety Evaluation and Plan, which called for her completion of a number of programs aimed at addressing her drug abuse problem, equipping her with necessary parenting skills, and assuring that she received treatment for her mental illness, schizophrenia. At that time, the TDPRS agreed not to place Lynn's children in custody, so long as Lynn placed the children with family members. Lynn agreed to place the three Segura children with their maternal grandmother and the two older Abu-Ain children with their father. The TDPRS allowed Lynn to have supervised visits with all of the children. During this period of time, Lynn was supposed to have completed various services and treatment programs before the children could possibly be returned to her.

Lynn did not comply with the service plan. She removed the three Segura children from their grandmother. The grandmother reported to the TDPRS that she could no longer protect the children from their mother. The grandmother also committed Lynn to West Oaks

Hospital for psychiatric treatment. Lynn, who did not agree to the commitment, released herself from the hospital and left without completing treatment.

In August 1999, the TDPRS took the Segura children into custody. One month later, Lynn gave birth to S.A. When S.A. was two weeks old, the TDPRS took him into custody. At that time, the TDPRS prescribed a very specific program that Lynn was to complete before the children were placed back in her care. The program included a drug assessment, parenting classes, and testing and treatment for schizophrenia. After Lynn failed to comply with the TDPRS recommendations, the TDPRS asked the court to terminate Lynn's parental rights to S.A.

Evidence at the termination proceedings revealed that Lynn would leave her minor children at home alone when she went out to purchase illegal drugs. Lynn sold items from the house and took money that should have been used for food and necessities to support her drug habit. Lynn testified she began to use crack cocaine in 1996 and continued to abuse drugs in the years that followed. In January 2000, and again in September 2000, Lynn was convicted of possession of a controlled substance. Her prior criminal record also includes theft.

Lynn again failed to complete any of the services and programs TDPRS had prescribed. Lynn was discharged from the Harris County Psychiatric Hospital for sleeping through sessions and for failure to participate in treatment programs. She was also discharged from Turning Point, a drug treatment program, for non-compliance. Lynn did not take her prescribed medication nor make any effort to participate in the therapeutic programs aimed at addressing her problems related to her mental illness. In fact, at times her ongoing drug abuse exacerbated her schizophrenia. She missed many scheduled visitations with her children and the times when she did come she left early. When she did attend visitations, she was sometimes under the influence of illegal drugs and her behavior was inappropriate.

The Segura girls, ages 9 and 10 at the time of the termination proceedings, testified they did not want to live with their mother. Tomas Segura testified that he did not want his children placed with Lynn because of her drug problems, and that instead he wished for his sister and her husband to be named Joint Managing Conservators of the Segura children. Testimony revealed that Tomas Segura rarely saw his children and failed to provide any financial support for them.

As to S.A., no evidence was found to support any abuse or neglect by his father, Muhammid Abu-Ain. In fact, when Abu-Ain reported Lynn's drug abuse to the TDPRS and the TDPRS placed the two older Abu-Ain children with him, he adjusted his work schedule to care for his children. When he could not provide care for them, he sent them to live with members of his family.

The Segura Children

With the agreement of Tomas Segura and the TDPRS, the trial court placed the Segura children with Tomas Segura's sister and husband. The court also found that both Segura and Lynn had failed as parents and would not be named as Managing Conservators with Tomas Segura's sister and husband. The trial court, however, did not terminate either parent's rights to the Segura children, noting that the TDPRS had not sought that relief. Nevertheless, the court stated the evidence supported a termination of parental rights of both parents to the Segura children.

S.A.

At the request of the TDPRS, the trial court terminated Lynn's parental rights to S.A. The court found by clear and convincing evidence that Lynn had a history of engaging in conduct that placed or allowed S.A. to remain in conditions or surroundings that endangered his physical and emotional well-being. *See* TEX. FAM. CODE. ANN. 161.001 (1)(E). The trial court specifically found that Lynn continued to use crack cocaine, failed to take her

medication for her schizophrenia, and failed to comply with every program the TDPRS had requested she complete.

II. EXPERT TESTIMONY

In her first issue, Lynn contends the trial court erroneously admitted the testimony of Tammy Spiller, the Segura children's primary caretaker, on the cause of the Segura children's special needs. Lynn complains that Spiller's testimony was improper expert testimony, admitted without foundation or predicate, and that this evidence was highly prejudicial. Lynn, however, failed to preserve this complaint for appellate review.

Lynn points to the following testimony to which she objected at trial:

Q: [Mr. Cox]: Ma'am, with regard to these children [Segura children], they've been in your care some time; is that correct?

A [Tammy Spiller]: Yes, sir.

Q: Now, what do you do for a living, ma'am?

A: I'm a homemaker.

Q: And you have experience with children?

A: Yes, sir.

Q: These children have some special needs, do that [sic] not?

A: Yes, sir.

Q: And based upon your experience, is it—do you have an opinion as to whether or not their special needs were a direct result of their environment that they had been raised in?

A: Yes, sir.

Appellant's Counsel: Objection, Your Honor. I don't consider her to be an expert to decide what the reason for their special needs is.

The Court: She can answer what her opinion is. Overruled.

Q: And the environment that they were raised in, they've [Segura children] talked to you about their environment they were raised in, have they not?

A: Yes, sir.

Q: Now, without telling me what they've said-- you understand the rule, okay – the environment that they were raised through, was the environment where the mother and Mr. Abu-Ain lived; is that correct?

A: Yes, sir.

Q: All right. And based upon your experience with these children and your experience in raising children, how would you categorize the kind of problems that these children have? Is it slight, moderate, or severe?

A: Severe.

Q: And have you talked with professionals about their problems that they have as a result of their environment?

A: Yes, I have.

Q: And have those problems indicated and confirmed your believes [sic] that their problems are severe?

A: Yes.

Q: And that the severity is directly related to the environment that they were raised?

A: Yes, sir.

Q: Including the environment where the mother and Mr. Abu-Ain were living?

A: Yes, sir.

We review a trial court's decision on the admission of evidence under an abuse of discretion standard. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 906 (Tex. 2000). To obtain reversal of a judgment based on the admission of evidence, the appellant must show the trial court's ruling was in error and the error probably caused the rendition of an improper judgment. TEX. R. APP. P. 44.1; *Auld*, 34 S.W.3d at 906. Thus, if this court finds that the admission of the above testimony was harmless, we need not address whether the trial court erred in admitting it. Error in the admission of testimony is deemed harmless if the objecting party subsequently permits the same or similar evidence to be introduced without objection. *Richardson v. Green*, 677 S.W.2d 497, 501 (Tex. 1984). Running objections are an exception to the general rule that a party must continue to object and get a ruling for each individual instance of inadmissible testimony. *In the Interest of A.P. and I.P.*, 42 S.W.3d 248, 260 (Tex. App.—Waco 2001, no pet.).

Lynn lodged only one objection to Spiller's testimony and that objection was made when Spiller was asked to state her opinion as to whether the children's special needs resulted from their environment. The court overruled this objection and the examining lawyer redirected his questioning. Spiller then proceeded to testify that the Segura children had discussed their environment with her, and she also had talked with professionals about the children's problems and deduced that the children's problems resulted from living with their mother. During this testimony, Lynn failed to lodge a new objection to the substantially similar testimony elicited from Spiller. Therefore, any error in admitting Spiller's testimony was harmless because Lynn, without lodging a running objection, allowed the same or similar evidence to be introduced later without objection. *See Richardson*, 677 S.W.2d at 501. Furthermore, even if Spiller's testimony had been excluded in its entirety, the record contains sufficient evidence to support the trial court's findings that (1) termination of Lynn's parental rights to S.A. was in the best interest of the child and (2) Lynn's conduct endangered the physical and emotional well-being of S.A. *See Mancorp, Inc. v. Culpepper,* 802 S.W.2d 226, 230 (Tex. 1990) (holding that errors in admitting evidence will not require reversal unless that evidence controlled the judgment). Accordingly, we overrule Lynn's first issue.

III. LEGAL AND FACTUAL SUFFICIENCY OF THE EVIDENCE

In her second and third issues, Lynn challenges the legal and factual sufficiency of the evidence supporting the termination of her parental rights to S.A. TDPRS contends Lynn waived her complaints by failing to preserve them in the trial court. Thus, we must first determine whether Lynn properly preserved her factual and legal sufficiency challenges for appellate review.

There are four ways to preserve a challenge to the legal sufficiency of evidence: (1) a motion for instructed verdict; (2) an objection to the submission of a jury question; (3) a motion for judgment notwithstanding the verdict; or (4) a motion for new trial. *Cecil v.*

Smith, 804 S.W.2d 509, 510-11 (Tex. 1991). In contrast, a challenge to the factual sufficiency of the evidence on appeal, must have first been preserved in the trial court by a motion for new trial. TEX. R. CIV. P. 324(b)(2), (3); *Cecil*, 804 S.W.2d at 510. However, a motion for new trial fails to preserve a sufficiency argument for review if the argument urged on appeal was not raised in the motion or otherwise during trial. *See Knoll v. Neblett*, 966 S.W.2d 622, 639 (Tex. App.—Houston [14th Dist.] 1998, pet. denied) (holding that objections on appeal must conform to those made at trial or they are waived).

TDPRS argues that, although Lynn filed a motion for a new trial stating specific reasons why the evidence was both legally and factually insufficient, these reasons are not raised in this appeal. Thus, TDPRS contends, any general, unspecified challenge to the evidence was not preserved. We disagree. Although, the TDPRS is correct in noting that Lynn raised specific challenges to both the legal and factual sufficiency of the evidence that are not raised on appeal, we find that Lynn's motion for new trial preserved review of a general challenge to the sufficiency of the evidence. We therefore turn to the merits of Lynn's legal and factual sufficiency challenges.

A. Legal Sufficiency

When presented with legal and factual sufficiency challenges, the reviewing court first reviews the legal sufficiency of the evidence. *Glover v. Tex. Gen. Indem. Co.*, 619 S.W.2d 400, 401 (Tex. 1981).[1] Termination of parental rights is a drastic remedy and is of such weight and gravity that due process requires the petitioner to justify termination by "clear and convincing evidence." TEX. FAM. CODE ANN. § 161.206(a). This burden is defined as 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." *Id*. § 101.007. Parents' rights to "the companionship, care, custody and management" of their children are

[1] Although Lynn briefs her factual sufficiency challenge before her legal sufficiency challenge, we first review her third issue – the legal sufficiency challenge.

constitutional interests "far more precious than any property right." *Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982). In a termination case, the State seeks not merely to limit those rights but to end them. Thus, termination proceedings should be strictly scrutinized, and involuntary termination statutes are strictly construed in favor of the parent. *Holick v. Smith*, 685 S.W.2d 18, 20-21 (Tex. 1985).

In determining a legal sufficiency point, we consider all the evidence and inferences in the light most favorable to the judgment, and ignore all evidence to the contrary. *See Leal v. Texas Dep't. Of Protective & Regulatory Servs.*, 25 S.W.3d 315, 319 (Tex. App.—Austin 2000, no pet.). If there is more than a scintilla of evidence to support the finding, we overrule the point of error and uphold the finding. *See id.* at 321 (holding that the clear and convincing standard does not change the way the Court reviews the sufficiency of the evidence). There is some evidence when the proof supplies a reasonable basis on which reasonable minds may reach different conclusions about the existence of a vital fact. *Orozco v. Sander*, 824 S.W.2d 555, 556 (Tex. 1992).

In proceedings to terminate the parent-child relationship brought under section 161.001 of the Family Code, the petitioner must establish one or more of the acts or omissions enumerated under subdivision (1) of the statute, and that termination is in the best interest of the child. TEX. FAM. CODE ANN. § 161.001(1), (2); *Richardson v. Green*, 677 S.W.2d 497, 499 (Tex. 1984). Proof of one does not relieve the petitioner from establishing the other. *See Holley v. Adams*, 544 S.W.2d 367, 370 (Tex. 1976). In asserting the evidence is legally insufficient to support any of the statutory grounds for termination found by the court, Lynn argues there is no evidence to support the court's finding that the termination was in the best interest of the child.

1. First Prong: Statutory Proof

In this case, the trial court found: (1) Lynn knowingly placed or knowingly allowed S.A. to remain in conditions or surroundings that endangered his emotional or physical well-being; and (2) termination of the parent-child relationship between Lynn and S.A. would be in the child's best interests. *See* TEX. FAM. CODE ANN. § 161.001(1)(E). Section 161.001(1)(E) provides that termination may be ordered if 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." *See id.*

The record demonstrates that the trial court had clear and convincing evidence to terminate Lynn's parental rights to S.A. Lynn has numerous criminal convictions, two of which occurred after S.A.'s birth. Although imprisonment of a parent, standing alone, does not constitute "engaging in conduct that endangers the emotional or physical well- being of the child," it is a factor for consideration by the trial court on the issue of endangerment. *Texas Dept. of Human Serv. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987). If the evidence, including the imprisonment, shows a course of conduct which has the effect of endangering the physical or emotional well-being of the child, a finding under section 161.001(E) is supportable. *Id.* at 534; *see also Spangler v. Texas Dept. of Protective & Regulatory Servs*., 962 S.W.2d 253, 260 (Tex. App.—Waco 1998, no pet.) (upholding termination when father abused mother and was frequently in jail); *In the Interest of A.K.S.*, 736 S.W.2d 145, 146 (Tex. App.—Beaumont 1987, no writ) (holding evidence of father's imprisonment, type of crime for which imprisoned, and father's compulsive conduct of exhibiting genitals to women supported termination).

The record also shows Lynn's long and troubled history with the TDPRS, her admitted use of crack cocaine, multiple suicide attempts, and many incidents of family violence. S.A.'s father, Muhammid Abu-Ain, testified that Lynn continued to abuse drugs while she was pregnant with S.A. He further testified that Lynn would leave the children alone on

many occasions while she left to purchase illegal drugs. *See In the Matter of W.A.B.*, 979 S.W.2d 804 (Tex. App.—Houston [14th Dist.] 1998, pet denied) (holding evidence supported termination of mother's parental rights on ground that her drug abuse was conduct which endangered the physical and emotional well-being of the child). Lynn's children were aware of their mother's drug abuse and the problem behaviors that resulted from it.

Tomas Segura testified that Lynn's addiction to crack cocaine drove him out of their home. Because of her drug abuse, Segura feared for his children's safety whenever they were with her. Segura was very adamant about having his sister and brother-in-law become the managing conservators of his three children.

Barbara Brown, a caseworker, testified that TDPRS could not work with Lynn because: (1) she blamed others for her problems; (2) continued to test positive for drugs; (3) missed programs and sessions she was required to attend; (4) failed to attend scheduled visitations with her children; (5) appeared to be on drugs during visitations with her children; and (6) lacked stable housing for the children.

Finally, Lynn testified that she started abusing drugs around 1996 and, despite many attempted interventions, has continued to abuse drugs. Lynn testified that she was currently in the county jail for possession of a controlled substance and would be there for another two months. She also testified that she had a schizophrenic disorder. She acknowledged that although her mental illness required that she take medication, she had failed to take her medication on a timely basis. Lynn also admitted that, although she went to the Harris County Psychiatric Center for parenting and drug treatment classes, she frequently fell asleep or left early. A fact finder could determine by clear and convincing evidence that Lynn engaged in conduct that endangered S.A.'s physical and emotional well-being. *See* TEX. FAM. CODE ANN. § 161.001(1)(E).

2. Second Prong: Best Interest of the Child

Lynn also challenges the legal sufficiency of the trial court's finding that termination would be in the best interest of the child. In order to uphold the court's termination finding, there must also be evidence that termination is in S.A.'s best interest. There is a strong presumption that the best interest of a child is served by keeping custody in the natural parent. *In re K.C.M.*, 4 S.W.3d 392, 393-95 (Tex. App.—Houston [1st Dist.] 1999, pet. denied). *In Holley v. Adams*, the Texas Supreme Court held that a number of factors may be examined in determining the best interest of the child, including: (1) the desires of the child; (2) the present and future physical and emotional needs of the child; (3) the present and future emotional and physical danger to the child; (4) the parental abilities of the person seeking custody; (5) programs available to assist those persons in promoting the best interest of the child; (6) plans for the child by those individuals or by the agency seeking custody; (7) the acts or omissions of the parent that may indicate that the existing parent-child relationship is not appropriate; and (8) any excuse for the acts or omissions of the parent. *See Holley*, 544 S.W.2d at 371-72. "Best interest" does not require proof of any unique set of factors, nor does it limit proof to any specific factors. *Id.* Moreover, the best interest standard does not permit termination merely because a child might be better off living elsewhere. Termination should not be used to merely reallocate children to better and more prosperous parents. *See In re C.H.*, 25 S.W.3d 38, 52-53 (Tex. App.—El Paso 2000, pet. granted).

The TDPRS points primarily to Lynn's prolonged drug abuse, criminal activity, and instability as evidence supporting the trial court's best interest findings. Though Lynn's history of drug abuse and inability to maintain a lifestyle free from arrests and incarcerations support the court's endangerment finding, this evidence is also relevant to a best interest determination. We also consider the *Holley* factors that are pertinent to the evidence presented at trial.

1. Desires of the Child. Because S.A. was only a toddler at the time of termination, we cannot determine his desire. However, the two Segura girls stated that they did not wish to live with their mother. Therefore, we find this factor to weigh heavily in favor of the court's best interest finding.

2. Parental Abilities. Lynn has failed miserably in her parental duties and has failed to take advantage of many opportunities to acquire and improve her parenting skills. She repeatedly demonstrated that she is incapable of performing fundamental parental duties by continuing to abuse drugs and put her ongoing drug habit above the basic physical and emotional needs of her children. As a direct result of these bad choices, she has not been available to her children. She was incarcerated on a drug-related conviction at the time of the termination proceeding. Despite many opportunities, Lynn failed to participate in treatment programs and parenting classes designed to equip her with the skills she so desperately needed to care for her children. This second factor clearly weighs in favor of the trial court's finding.

3. Present and Future Needs of the Child. The third factor, which views the children's present and future physical and emotional needs or endangerment, also weighs heavily in favor of the trial court's finding. The children need permanency and security. The record contains substantial evidence of Lynn's inability to provide a stable and safe home for her children now or in the future.

4. Future Plans for the Child. The TDPRS' goal for S.A. is adoption. Although S.A. had not yet been adopted, the TDPRS believes he is adoptable. Lynn has failed in her attempts at parenting and there is no indication that her behavior will change. Accordingly, this factor also weighs in favor of the court's best interest finding.

5. Programs Available and Use of Programs by Parent. A TDPRS caseworker testified Lynn had been given several opportunities since 1996 to improve her lifestyle and,

more often than not, she would start the programs but fail to complete them. The evidence supports the trial court's conclusion that based on Lynn's previous experiences with the TDPRS, Lynn would not be successful even if given continued services or programs.

Our consideration of the pertinent *Holley* factors, coupled with Lynn's history of drug abuse, her admissions and conduct relating to recent drug use, and her inability to maintain a lifestyle free from arrests and incarcerations, is some evidence that termination would be in S.A.'s best interest. Though this evidence overlaps the proof required to establish endangerment by Lynn's course of conduct, it also provides legally sufficient evidence to support the finding that termination is in S.A.'s best interest. Accordingly, we overrule Lynn's third issue challenging the legal sufficiency of the evidence.

B. Factual Sufficiency

In her second issue, Lynn challenges the factual sufficiency of the evidence. As noted above, the Texas Family Code requires a trial court's findings to be made by clear and convincing evidence. TEX. FAM. CODE ANN. § 161.001. Recently, in *In re W.C.*, 56 S.W.3d 863 (Tex. App.—Houston [14th Dist.] 2001, no pet.), this Court considered whether we should apply a heightened standard when reviewing a factual sufficiency complaint in such cases. Due to the fundamental constitutional rights implicated by termination of the parent-child relationship, and in light of the Texas Supreme Court's opinion in *Turner v. KTRK Television, Inc.*, 38 S.W.3d 103 (Tex. 2000), this Court concluded that an order terminating parental rights should be subject to a heightened standard of appellate review. *In re W.C.*, 56 S.W.3d at 868. Accordingly, we may sustain Lynn's factual sufficiency challenge if (1) the evidence is factually insufficient to support the trial court's finding by clear and convincing evidence, or (2) the trial court's finding is so contrary to the weight of contradicting evidence that no trier of fact could reasonably find the evidence to be clear and convincing. *Id.* Accordingly, we may reverse only if, after reviewing all the evidence in the

record, we determine that the evidence is factually insufficient to support the trial court's finding by clear and convincing evidence. *Id.*

Lynn appears to base her factual sufficiency claim on two grounds. First, Lynn states that the evidence presents an inherent conflict because the TDPRS recommended that her parental rights to S.A. be terminated, while leaving her parental rights to the three Segura children intact. Lynn claims this evidence shows that the termination of her parental rights to S.A. was not supported by factually sufficient evidence. We disagree.

The fact that TDPRS did not seek termination with respect to Lynn's parental rights to the Segura children does not negate the ample evidence that supports the trial court's termination of her rights to S.A. In particular, even if a caseworker determined termination of an individual's parental rights was warranted, the TDPRS requires additional determinations be made before undertaking legal action. *See* 40 TEX. ADMIN. CODE ANN. § 700.1341 (Vernon 1998). One such additional determination is whether the child at issue can be adopted or be provided some other permanency plan that necessitates termination of parental rights. *See id.* The caseworker in this case testified she considered the agency's policy requirements. The Permanency Plan filed prior to trial indicated that the Segura children should remain with their paternal aunt and uncle who had been caring for them, while S.A., who was still an infant, stood a much greater chance of being adopted. Most significantly, the trial court in its Findings of Fact stated if the TDPRS had asked for termination of Lynn's parental rights to the Segura children, it would have granted termination because the evidence supported such a termination.

Lynn's second basis for her factual sufficiency claim is that the TDPRS presented evidence at trial that contradicts the court's best interest finding. In support of her argument, Lynn cites to the testimony of Barbara Brown, a caseworker for TDPRS. This testimony does not support Lynn's contention. As the TDPRS appropriately points out, Lynn misstates

the record in her brief when she claims that the TDPRS offered evidence that it was "in the best interest of the children" to leave Lynn's parental rights intact. The record, in fact, states:

> Q: [TDPRS]: Ms. Brown, let me make sure I understand this. Your plan for the agency—
>
> The Court: I can't hear you.
>
> Q: The agency's plan is—or you're requesting P.M.C. ["Possessory Managing Conservators] to the Spillers?
>
> A: [Ms. Brown, TDPRS caseworker] Correct.
>
> Q: For the three Segura children?
>
> A. Correct.
>
> Q: And what is the agency asking in regards to Katina Lynn with the Segura children?
>
> A: That she also have possessory so that when she does get herself back together, she can have supervised visits with the children and continue to have a relationship.
>
> Q: All right. Could you tell the Court when you first considered terminating Katina Lynn's parental rights to S.A.?
>
> A: After February [sic] after she continuously got kicked out of the program and we kept asking her for relatives concerning these children.

The above testimony does not indicate that Brown thought it was in the best interest of the Segura children to not terminate Lynn's rights. She was only asked what the plans for the children were. In fact, Brown later testified the best interests of the Segura children are for their paternal aunt and uncle (the Spillers) to be awarded permanent managing conservatorship. Brown further testified she believed it would be very difficult to have the Segura children adopted. Therefore, we find that Lynn has failed to offer any evidence that it would be in the best interest of S.A. to leave Lynn's parental rights to S.A. intact. Furthermore, Lynn failed to present any evidence that she was capable of changing – or was inclined to change – her ways so as to provide S.A. with a healthy, safe, non-violent, upbringing.

We find that the evidence is not factually insufficient to support a finding by clear and convincing evidence; nor is Lynn's evidence so contrary to the weight of contradicting evidence that no trier of fact could reasonably find the evidence to be clear and convincing. Accordingly, we overrule Lynn's second issue.

Having determined the evidence is both legally and factually sufficient to support the court's findings under sections 161.001(1)(E) & (2), and finding no reversible error in the trial court's admission of expert testimony, we affirm the trial court's judgment.

/s/ Kem Thompson Frost
Justice

Judgment rendered and Opinion filed March 28, 2002.

Panel consists of Chief Justice Brister and Justices Anderson and Frost. (Anderson, J. concurs in result only.)

Do Not Publish — TEX. R. APP. P. 47.3(b).