TEXAS LAWYER

Commentary

Unfit to Parent: A Texas Perspective

To determine the fitness of a parent, courts should look at many factors, as established by the Texas Supreme Court in Holley v. Adams.

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When is a parent considered unfit to parent their own children? Allegations of being "unfit" must be shown by offering supporting documentation such as police reports, medical files or other authoritative documentation. Courts should look at many factors, as established by the Texas Supreme Court in ***Holley v. Adams***. These include:

- Failure to support a child in accordance with the parent's ability during a period of one year ending within six months of the date of filing a petition to terminate parental rights;
- Endangering the emotional well-being of the child;
- Evidence of significant criminal history;
- Commitment(s) to mental health facilities;
- Acts or omissions of the parent that may indicate that the existing parent-child relationship is not a proper one, *and* termination of parental rights is in the best interest of the child;
- Any excuse for the foregoing acts or omissions;
- Failure to support the child within the two-year period preceding the filing of the case commensurate with the party's financial ability;
- The desires of the child;
- The emotional and physical needs of the child now and in the future;
- The emotional and physical danger to the child now and in the future;
- The parental abilities of the individuals seeking custody;
- The programs available to assist these individuals to promote the best interest of the child;
- The plans for the child by these individuals or by the agency seeking custody;
- The stability of the home or proposed placement;
- The acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and
- Any credible excuse for the acts or omissions of the parent.

In a more recent case, I**n Re S.V.H. v. TDFPS**, the mother had a long drug history, a series of referrals to CPS for neglectful supervision and drug use, and there was testimony by a CASA volunteer that, not only did the mother and child not seem very bonded, but that the child seemed to display a series of adverse reactions to visits with or by mother for days following visits. This was particularly evident because the mother and grandfather engaged in conversations about things like where the child would be living in the future, and with whom, and whether the child could go on a trip to the beach with the mother. The standard of review was established as:

A **trial court may order termination** of the parent-child relationship if DFPS proves, by clear and convincing evidence, one of the statutorily enumerated predicate findings for termination and that termination of parental rights is in the best interest of the children. **TEX. FAM. CODE ANN. § 161.001(b)**; see **In re E.N.C., 384 S.W.3d 796, 802 (Tex. 2012)** (stating that federal due process clause and Texas Family Code both mandate "heightened" standard of review of clear and convincing evidence in parental-rights termination cases). DFPS must prove both elements—a statutorily prescribed predicate finding and that termination is in the children's best interest—by clear and convincing evidence. **In re E.N.C., 384 S.W.3d at 803.** The Family Code defines "clear and convincing evidence" 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." **TEX. FAM. CODE ANN. § 101.007**; **In re E.N.C., 384 S.W.3d at 802**.

Where there is an extensive and recent history of drug use by a parent, including positive drug screenings during the pendency of a termination case, positive drug results while the mother is pregnant, or multiple failures to report for drug screenings during the pendency of a termination case, such evidence can and should carry weight as factors used to decide whether termination of parental rights would be in a child's best interest.

Depending on the level of severity, abandonment, abuse and neglect are among the factors that can lead to a claim of unfitness to parent. In Texas, a parent's drug use no longer stands alone. It is just one factor for a court to consider in determining whether or not there is clear and convincing evidence that a parent's rights should be terminated. Similarly, the court can consider the number and frequency of relapses in determining whether a parent is indeed fit to parent.

In the recent unanimous verdict rendered by the Texas Supreme Court in **In Re C.J.C.**, where a trial court granted rights to a non-parent (the former fiancé of the deceased mother) over the objection of the child's father, the Court noted:

We have similarly recognized that '[t]he presumption that the best interest of the child is served by awarding custody to [a] parent is deeply embedded in Texas law.' The government may not 'infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a 'better decision' could be made.' Texas jurisprudence underscores this fundamental right, and we too recognize that it gives rise to a "legal presumption" that it is in a child's best interest to be raised by his or her parents. Although the best interest of the child is the paramount issue in a custody determination, "[t]he presumption is that the best interest of the children" is served "by awarding them" to a parent. Thus, the fit-parent presumption is "deeply embedded in Texas law" as part of the determination of a child's best interest.

Ending a marriage isn't easy. Nonetheless, knowing that the divorce process will bring a chance to start fresh usually makes the process endurable. Both parents will want as much time as possible with their children. But, when one party believes their soon-to-be-ex is someone who is unfit to take care of the kids, this can be unbearable. The definition of an "unfit parent" varies from state to state. In Texas, even after all of the aforementioned factors are reviewed, determinations of "unfitness" will still take in account that the best interests of the child will be properly served. And that's a good thing.

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