

TEXAS LAWYER

COMMENTARY

Is Drug Abuse Alone Enough to Terminate Parental Rights?

Elisa Reiter and Daniel Pollack | August 7, 2024



A report by Texans Care for Children informs us that “substance use in and of itself is not child abuse or neglect. However, substance use is a risk factor for child maltreatment and child welfare involvement.” The report adds that:

“In fact, substance use is the primary reason Child Protective Services (CPS) interacts with families in Texas.” How many reports involve

allegations of substance abuse? “About 43% of child abuse and neglect investigations are initiated due to concerns about a caregiver’s substance use. For two-thirds of Texas children removed from their homes and placed in foster care, a parent’s or caregiver’s substance use was a primary reason for removal.” A recent Court of Appeals decision delves into one such case.

In the Interest of J.A.R., an appellate opinion issued by the Fourteenth District Court in Houston on July 22, 2024, stemmed from an involuntary termination of parental rights case. The mother, V.B., and father, J.R., appealed the trial court’s termination of their parental rights of their child J.A.R., arguing that the Texas Department of Family and Protective Services (TDFPS) should not have been named as J.A.R.’s permanent managing conservator. Involuntary termination of parental rights mandates that due process rights are assured.

J.A.R. was the mother’s fifth child and the third child for the father. One of the parties’ other children, J.R., died at just over the age of four months. At the time of J.A.R.’s birth, V.B. (mother), and J.R. (father) were the subject of an open TDFPS case regarding the parties’ older son, J.P.R. As part of that open case, the parties were ordered to submit to drug testing. The drug test results for the parties were as follows: The mother tested positive for cocaine, and the father tested positive for benzoylecgonine, methamphetamine and marijuana. TDFPS removed J.A.R. from his parents’ home approximately two weeks after the child’s parents tested positive for drugs. J.A.R. was placed in the same foster home that his older brother, J.P.R. was already in. J.A.R. was 16 months-old at the time he was removed from his parents’ care and placed in a

foster home. Three days after the child's removal, TDFPS filed a petition seeking the termination of parental rights.

TDFPS' supporting affidavit reflected that one of the parties' other children—the baby who died at four months—died as a result of suffocation when the parents rolled over on the baby when the three were co-sleeping. Both parties had cocaine in their systems at the time. In addition, both parents had extensive criminal histories. The mother had five criminal charges between 2002 and 2015, ranging from aggravated robbery to possession of a controlled substance. The father had 35 charges between 2002 and 2018, including charges of drug possession, evading arrest, and burglary of a vehicle. In addition, TDFPS' supporting affidavit noted that the parents had been the subject of four prior protective services' cases.

A history of drug test results for the parents, from the baby's death in 2020, through mid-October, 2021, with mixed results, was also included in TDFPS' supporting affidavit. Both parents signed off on family service plans committing to take part in some type of program focused on "relapse prevention" such as Narcotics Anonymous or Alcoholics Anonymous.

Approximately six months later, TDPFS filed a permanency report, which was admitted into evidence. The mother provided proof of stable housing via a copy of a lease. However, the lease reflected that the father was on the lease. The mother's mixed results on hair follicle and urinalysis testing were also part of the report. The mother complied with TDFPS recommendations for substance abuse therapy, but she did not attend all the recommended group sessions. As to recommended 12-step

programs, the mother claimed she was not asked to complete such programs. The father completed his substance abuse assessment in mid-2022, denying any drug use other than marijuana in the preceding two and one-half years. By contrast, the father's drug screens from December 2021 through May 2022 reflected positive hair follicle test results for cocaine monthly during that time frame. TDFPS urged the father to engage in further drug treatment, but he failed to provide proof of attending.

At trial, TDFPS caseworker Tate testified that the parents had seven prior cases; each of those cases revolved in part on the parents' drug use. The mother began using drugs at 15, and her use spanned the following decade. Tate also testified that neither parent completed the family service plan. Tate also testified that the parents were faithful in attending bi-weekly two-hour visits with J.A.R. However, Tate felt that while J.A.R. was bonded with the father, the child was not "necessarily" bonded with the mother. By contrast, Tate described J.A.R. as bonded with his foster parents and happy in the foster home.

The parents testified at trial. The mother acknowledged her drug history and her baby's death. She testified that she earned approximately \$1,500 per month working two jobs, and that the parties' apartment lease was \$800 per month. She explained away her failure to complete a twelve-step program and to find a sponsor based on her reluctance to open up to others, and the fact that there were not many people her age in the program(s). The father testified that his sponsor had suffered from COVID-19, leaving him without a sponsor. He could not explain why he continued to have many positive hair follicle drug test results.

The trial court found that the termination of the parents' parental rights was in J.A.R.'s best interests, and that termination was appropriate pursuant to Tx. Fam. Code Sections 161.001(b)(1)(E), (O) and (P). Subsection (E) provides for termination where a parent engages in conduct that endangers the physical and/or emotional well-being of the child, as a result of the parents' acts, omissions or failure to act. One omission or act is insufficient; there must be evidence of a pattern of conduct. "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." In the instant case, the court was presented with the following history regarding the parents:

1. One child died due to the parents' drug use.
2. A second child had been removed from the parents' care due to their drug use.
3. They had seven TDFPS cases as a result of their drug use.
4. The mother failed to care for her five children properly.
5. Each parent engaged in drug use for more than 10 years.
6. Each party had a criminal history.

Prior Texas appellate opinions provide that:

1. "When a pattern of drug use is coupled with credible evidence of attendant risks to employment, housing, and prolonged absence from children, a factfinder reasonably can find endangerment to the child's physical or emotional well-being under (D) and (E)."
2. "A parent's use of narcotics and its effect on his or her ability to parent may qualify as an endangering course of conduct."

3. “A parent’s conduct that subjects a child to a life of uncertainty and instability endangers the child’s physical and emotional well-being.”

The appellate court turned to the *Holley* factors, noting that the *Holley* factors are “non-exclusive, and the best interest finding does not require proof of any unique set of factors.” Justice Margaret Poissant noted, in addition to the facts presented above, that:

“Mother has five children, all of whom have been removed from her care, and the same is true of Father’s three children. There is evidence in the record that Mother at times has suggested signing away her rights to some of her relatives ... the Department’s records note that at the time J.P. [sic: the baby] died ‘the house looked like it had not been cleaned in years and the conditions are unsanitary.’”

While the parents testified that they were each employed at the time of trial, that they each had a home and a support network, the appellate court concluded that: “Viewing the evidence in the light most favorable to the trial court’s finding, we conclude that the evidence is legally sufficient that termination of Mother and Father’s parental rights was in J.A.R.’s best interest.”

In conclusion, the intricate relationship between poverty, substance abuse and termination of parental rights forms a complex and often devastating cycle. Here, the court recognized a “horse to water” problem. Sadly, termination of parental rights can be warranted when parents prioritize their addictions over serving their children’s best interests.

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