Affirmed and Memorandum Opinion filed April 8, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00299-CV

IN THE INTEREST OF T.G.

On Appeal from the 314th District Court
Harris County, Texas
Trial Court Cause No. 2007-09378J

MEMORANDUM OPINION

In this accelerated appeal, appellant, Ada G., challenges the trial court's decree terminating her parental rights to her minor child, T.G. In five issues, appellant contends the evidence is legally and factually insufficient to support (1) the grounds for termination under Texas Family Code subsections 161.001(E), (L), (N), and (O) and (2) the trial court's best-interest finding in favor of termination. Because all dispositive issues are settled in law, we issue this memorandum opinion and affirm. Tex. R. App. P. 47.4.

I. BACKGROUND

Appellant was the mother of three children in addition to T.G.—a boy, C.G., and two girls, J.S.G. and J.A.G. On June 18, 2007, C.G., then fifteen years old, died of a seizure at appellant's home at 4506 Brady Street in Houston. C.G. had suffered numerous medical problems including cerebral palsy, a seizure disorder, and multiple prior abdominal surgeries. At the time of C.G.'s death, J.S.G. was almost twelve years old and J.A.G. was almost a year old.

The autopsy report indicated C.G.'s death was the result of natural causes. Although appellant told investigators from the Department of Family and Protective Services ("the Department") she had prescriptions for treating C.G., she could not produce that information and was unable to provide the names of medical providers after 2005. At the time of C.G.'s death, the home had a number of safety problems, including lack of hand rails on the stairway, an extremely loose banister, and a gas water heater placed directly on the floor and open to the room. On July 12, 2007, based on allegations of neglectful supervision and medical neglect of C.G., the Department took J.S.G. and J.A.G. into its care.[1] Pursuant to an initial family plan, appellant was required to make repairs and improve safety in her home, complete a psychological assessment, submit to drug testing, and obtain employment.

At the time of J.S.G.'s and J.A.G.'s removal, appellant was pregnant with T.G and was told to contact the Department after T.G.'s birth. T.G. was born on October 10, 2007, but appellant did not inform the Department.

On October 26, 2007, the Department received a referral. According to the referral, T.G. lived with his mother, aunt, two male cousins, and a maternal grandfather. Both cousins had criminal histories. The maternal grandfather, who was the sole source of income, suffered from diabetes and other health conditions, limiting his ability to provide care for T.G. The Department had removed children of both the mother and the

[1] The date of J.S.G.'s and J.A.G.'s removal may be found in *In re J.S.G.*, No. 14-08-00754-CV, 2009 WL 1311986, at *2 (Tex. App.—Houston [14th Dist.] May 7, 2009, no pet.).

aunt and placed them with a relative. The home was in the same condition as when appellant's other children came into care. The windows were covered with wooden planks, there was no working front door, the passage way into the kitchen was partially blocked by a large chest, the kitchen walls and floors were covered with bugs, and the floors had holes and appeared very unstable.

On October 27, 2007, CPS caseworker and investigator Melvin Frederick spoke with appellant. She told him T.G. was fine and there was no need for him to be taken into custody. She also told Frederick she did not yet have employment, missed one drug assessment, and was scheduled for her psychological examination the following week. The Department determined the home was still in great disrepair and appellant had not made any progress toward improvement of the home or her personal situation.

The Department assumed temporary custody of T.G. On October 29, 2007, the Department filed a petition for conservatorship and termination of parental rights, and the court held an emergency hearing and named the Department as T.G.'s temporary sole managing conservator. T.G. was put into a kinship placement with appellant's other two children at the home of Gracie G., an alleged paternal aunt. T.G. began living with Gracie when he was two weeks old.

During the pendency of the case involving T.G., appellant's parental rights to J.S.G. and J.A.G. were terminated under Texas Family Code subsections 161.001 (D) and 161.001(O). On May 7, 2009, this court affirmed the decree, holding the evidence was legally and factually sufficient to support termination under 161.001(O).[2]

On November 8, 2007, pursuant to Texas Family Code section 263.106, the court ordered appellant to comply with each requirement in the Department's family service plan during the pendency of the suit. On January 8, 2008, the Department filed a family service plan with the court. Under the plan, appellant was to "clear up" her criminal history, participate in visitation twice a month, and attend court hearings. The same day,

[2] *In re J.S.G.*, 2009 WL 1311986, at *1, 7.

the trial court signed an order in which it specifically approved the service plan recommendations, adopting them as if set out verbatim in its order. The trial court also signed an additional temporary order for return of the child in which appellant was required to complete a psychological examination, participate in counseling as recommended, complete parenting classes, complete a drug and alcohol assessment, complete random drug tests, remain drug free, refrain from engaging in criminal activity, maintain stable housing, maintain stable employment, and complete all services outlined in the Department's family service plan.

Of the services that were the subject of the court's order, appellant completed only the psychological examination. Appellant did not participate in counseling or complete parenting classes. Appellant failed a random drug test in May 2008, testing positive for propoxyphine and morphine. Appellant claimed she tested positive for these drugs because she had dental work but could not provide a dentist's name or any prescriptions.

On July, 25, 2008, appellant assaulted J.S.G. According to the criminal complaint, J.S.G. went to her grandfather's residence at 4506 Brady Street and argued with appellant. Appellant then threw a hair brush, striking J.S.G. in the face, and also grabbed J.S.G.'s hair, knocking her to the floor. Finally, appellant hit J.S.G. in the face with a closed fist. J.S.G. subsequently freed herself and ran from the house. The reporting officer observed J.S.G.'s injuries, including a bruised lip, scratches to her eye, and a severely bloodshot eye. J.S.G. was placed in an emergency shelter.

Appellant was arrested for injury to a child. The Department told T.G.'s caregiver that appellant was no longer allowed to visit T.G. at appellant's home and that T.G. should be available for visits only at the office of Child Protective Services ("CPS").[3] Appellant did not arrange for any visits.

On September 5, 2008, pursuant to a plea bargain, appellant pleaded guilty to injury of a child under fifteen years of age. The court deferred adjudication and ordered

[3] CPS is a division of the Department.

five years' community supervision. Conditions of appellant's community supervision included working at suitable employment, submitting to random drug analyses, following all the stipulations set forth by the Department during her supervision, participating in anger management and parenting classes, and performing a total of 200 hours of community service.

On November 14, 2008, Lionel Guerrero, who lived in the same house the Department believed to be appellant's residence, was arrested for possession of marijuana. He pleaded guilty and received a three-day sentence.

On January 14, 2009, the Department's caseworker, Latoya Debose, attempted to contact appellant by certified mail, but the letter was returned unclaimed. On February 19, 2009, Debose attempted to visit appellant at her residence at 4506 Brady Street, the same place where Debose had sent the letter. Debose, however, was unable to approach the door of the home because there were three dogs loose in the front yard. A colleague took photographs of the home, showing boarded and broken windows and one of the dogs. Debose placed a family service plan and contact information in appellant's mail box and sounded her car horn for about twenty minutes.

On February 25, 2009, the Department filed a permanency progress report with the court. In the report, the Department advised the court that appellant made minimal progress on the family plans of service. The Department observed appellant (1) had been arrested and charged in 2008 for injury to her own child, (2) had not maintained contact with T.G. or the agency, and (3) had her parental rights to her other two children terminated. The Department further stated T.G's current placement was safe, met all T.G's needs, and was the same placement as that of his siblings, thus enabling him to maintain contact with them. Finally the Department noted the alleged paternal aunt who had cared for T.G. since he was two weeks old indicated she wished to adopt T.G.

On February 26, 2009, the Department's suit for termination of appellant's parental rights to T.G. was tried to the bench. The following three witnesses testified: Debose, T.G.'s case worker at the time of trial; Mark Heeg, the child advocate assigned

to T.G.; and Tracey Burns, appellant's probation department supervisor.[4] In addition, the court admitted numerous exhibits, including photographs of C.G. and J.S.G., documents related to the charges against appellant and Lionel, and documents filed during the course of the present termination proceedings.

Debose testified that T.G. came into care because of the prior abuse and neglect of C.G.[5] T.G. was put into a kinship placement with Gracie G. and had lived there since he was two weeks old. According to Debose, appellant had not visited T.G. since July 2008. Debose believed the lack of visitation was harmful to T.G.'s emotional well being. Debose was the caseworker whom appellant would call to arrange a visit and appellant knew how to contact her. Appellant, however, never called Debose to schedule a visit. Appellant also did not call or write Debose to inquire about T.G. DeBose attempted to contact appellant by telephone, but the numbers were disconnected.

Debose indicated that, on two occasions, the previous caseworker was denied access when she went to appellant's residence. Appellant had not allowed the Department to observe her home since May 2008, and a nephew living in the home had recently been convicted for marijuana possession. Debose opined appellant's home was not a safe environment for T.G. because of the nephew's possession of marijuana. Debose testified she saw the post-assault pictures of J.S.G. and described the injuries as serious.

Debose asked the court to terminate appellant's parental rights to T.G. because appellant failed to comply with her family service plan. Of the services appellant was specifically ordered to complete, she completed a psychological examination and drug and alcohol assessment, but did not participate in recommended therapy, was discharged from therapy in April of 2008, and did not complete parenting classes. Appellant also

[4] Lloyd Culp, the attorney for the unknown father, also testified, but his testimony is not relevant to the appeal.

[5] The testimony is unclear on whether risks in the home environment and presence in the home of an older cousin charged with sexual abuse were also factors in T.G.'s removal from the home or whether they were factors only in removal of J.S.G. and J.A.G.

tested positive for propoxyphine and morphine, and, although she explained she had dental work, she never gave the Department information regarding the dentist or prescription. According to Debose, appellant did not maintain stable housing or employment.

Debose testified reasonable efforts were made to return T.G. to appellant, but she failed to show she could provide a safe home. The Brady Street address was the last known address for appellant, but Debose was not sure if she still lived there or had any place to live. Appellant did not ask Debose to evaluate any other residence and did not provide any proof of employment.

Debose also testified there was a warrant for appellant's arrest at the time of the trial. According to Debose, one of the cousins living at the Brady Street address had a sexual abuse charge against him

Finally, Debose testified that T.G. had remained in the same placement since October 2007 and had developed a bond with his current caregiver, Gracie G. The caregiver expressed an interest in permanent adoption.

Heeg, the child advocate assigned to T.G.'s case, was the second witness. Heeg testified the court ordered Child Advocates to do a home study and they tried to complete it with the information appellant provided. The last time Heeg visited appellant's home was probably in April 2008. Dogs running around the home prevented him from visiting on at least two other occasions.

During November 2007, Heeg visited the home the first time. Appellant told Heeg that her father, sister, and her sister's two teenage sons (Leo and Lionel) lived in the home. There were allegations the two teenage sons used drugs. Heeg did not witness any direct evidence of drug use but did notice hand-drawn pictures of marijuana leaves and gang symbols on the walls.

When Heeg visited the home, appellant's children had already been removed. He observed the home was in general disrepair. He also observed safety hazards, including extension cords running from air-conditioning units to plugs and other areas of the home,

making the home unsafe for a toddler. The floor on the second story would give way, and he felt as if a person's foot could go through the floor. Appellant did not indicate she believed the house was insufficient for the children and thought the home was fine.

According to Heeg, the only item appellant completed on her family service plan—after months of delay—was a court-ordered psychological examination in April 2008. Heeg also testified that appellant knew she was not to commit crimes during the pendency of the case.

According to Heeg, appellant visited her children only occasionally and the visits usually occurred at the Brady Street home where Gracie G. would bring the children to see appellant. After she committed the crime of injury to a child, appellant was allowed to visit T.G. only at the CPS office, and appellant understood that opportunity was available.

Tracy Burns, appellant's probation supervisor, was the third witness. Burns testified appellant gave 4506 Brady Street as her living address. She further testified there was a warrant for appellant's arrest because she had not reported to the probation department since December 2008 and did not comply with her conditions of supervision by taking parenting and anger-management classes and performing community service. A motion had been filed to adjudicate her guilt. Tracy opined that, if appellant were taken into custody, she would not be able to care for her children.

At the close of the evidence, the court found that it was in T.G.'s best interest to terminate appellant's parental rights and that termination was warranted under Family Code sections 161.001(E), (L), (N), and (O).[6] The court decreed appellant's parental rights to T.G. terminated and appointed the Department sole managing conservator.

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[6] The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

. . .

II. STANDARD OF REVIEW

The burden of proof at trial in parental termination cases is by clear and convincing evidence. Tex. Fam. Code Ann. § 161.001 (Vernon Supp. 2009); *In re*

> (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;
>
> . . .
>
> (L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:
>
> . . .
>
> (ix) Section 22.04 (injury to a child, elderly individual, or disabled individual);
>
> . . .
>
> (N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective 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 regularly visited or maintained significant contact with the child; and
>
> (iii) the parent has demonstrated an inability to provide the child with a safe environment;
>
> (O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child . . . .

Tex. Fam. Code Ann. § 161.001(1) (Vernon Supp. 2009)

J.F.C., 96 S.W.3d 256, 263 (Tex. 2002); *In re J.I.T.P.*, 99 S.W.3d 841, 843 (Tex. App.—Houston [14th Dist.] 2003, no pet.). "Clear and convincing evidence" means 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 (Vernon 2008); *In re J.F.C.*, 96 S.W.3d at 264.

When determining legal sufficiency of the evidence in a parental-rights termination case, we review all the evidence in the light most favorable to the finding "to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true." *In re J.F.C.*, 96 S.W.3d at 266; *In re J.I.T.P.*, 99 S.W.3d at 843–44. To give appropriate deference to the factfinder's conclusions, we must assume the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so. *In re J.F.C.*, 96 S.W.3d at 266; *In re J.I.T.P.*, 99 S.W.3d at 843–44. We disregard all evidence that a reasonable fact finder could have disbelieved or found to have been incredible. *In re J.F.C.*, 96 S.W.3d at 266; *In re J.I.T.P.*, 99 S.W.3d at 844.

When reviewing factual sufficiency in a termination case, we determine "whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the State's allegations." *In re J.F.C.*, 96 S.W.3d at 266; *see In re J.I.T.P.*, 99 S.W.3d at 844. We consider whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding. *In re J.F.C.*, 96 S.W.3d at 266; *In re J.I.T.P.*, 99 S.W.3d at 844. "If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient." *In re J.F.C.*, 96 S.W.3d at 266; *In re J.I.T.P.*, 99 S.W.3d at 844.

The natural right between parents and their children is one of constitutional dimension. *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985); *In re U.P.*, 105 S.W.3d 222, 229 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). Therefore, a court should strictly scrutinize termination proceedings and strictly construe the involuntary

termination statutes in favor of the parent. *Holick*, 685 S.W.2d at 20–21; *In re U.P.*, 105 S.W.3d at 229.

III. LEGAL STANDARD AND ISSUES PRESENTED

To terminate a parent-child relationship, a trial court must find by clear and convincing evidence that (1) the parent committed one or more of the acts specifically set forth in Texas Family Code section 161.001(1) as grounds for termination, and (2) termination is in the best interest of the child. Tex. Fam. Code Ann. § 161.001. In issues one, two, three, and four, respectively, appellant challenges the legal and factual sufficiency of the evidence to support the trial court's findings appellant committed the acts set forth in subsections 161.001 (E), (N), (L), and (O). In issue five, appellant challenges the legal and factual sufficiency of the evidence to support the trial court's finding that termination was in T.G.'s best interest.

If, as here, the trial court terminated the parent-child relationship on multiple grounds under section 161.001(1), we may affirm on any one ground because, in addition to a finding termination is in the child's best interest, only one predicate violation under section 161.001(1) is necessary to support a termination decree. *See In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003) ("Only one predicate finding under section 161.001(1) is necessary to support a judgment of termination when there is also a finding that termination is in the child's best interest."); *In re E.A.K.*, 192 S.W.3d 133, 151 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) ("Because we find that there was legally sufficient evidence to support one of the predicate findings for termination of [the father's] parental rights, we need not address the sufficiency of the evidence relating to other predicate findings."). As discussed below, we conclude the evidence is legally and factually sufficient to support the trial court's finding that appellant constructively abandoned T.G. *See* Tex. Fam. Code Ann. § 161.001(1)(N). We then consider the legal and factual sufficiency of the evidence to support the trial court's finding termination was in T.G.'s best interest. *See id.*, § 161.001(2).

IV. DISCUSSION

A. Constructive Abandonment

In issue two, appellant argues the evidence was legally and factually insufficient to support a finding she constructively abandoned T.G. Before a court may terminate the parent-child relationship for constructive abandonment, the family code requires clear and convincing evidence (1) the child has been in the custody of the Department for at least six months, (2) the Department has made reasonable efforts to return the child to the parent, (3) the parent has not regularly visited or maintained significant contact with the child, and (4) the parent has demonstrated an inability to provide the child with a safe environment. *Id.* § 161.001(1)(N); *In re D.T.*, 34 S.W.3d 625, 633 (Tex. App.—Fort Worth 2000, pet. denied). Appellant challenges sufficiency of the evidence on only the third and fourth elements.

Failure to visit regularly or maintain significant contact. Heeg testified that, in the period between T.G.'s October 2007 removal and appellant's July 2008 assault of J.S.G., appellant visited her three children "only occasionally," and "usually the visits occurred on Brady Street." Debose testified that, after the assault, appellant could visit T.G. only at the CPS office, and, according to Heeg, appellant understood she could do so. Appellant, however, did not contact Debose to arrange for visits and never visited T.G. after July 2008. Thus, by the time of trial, appellant had not seen T.G. for almost seven months. Appellant never called or wrote Debose to ask about T.G.'s health or well-being. To Debose's knowledge, appellant never contacted T.G.'s caregiver to inquire about T.G.'s well-being. When Debose attempted to telephone appellant, the numbers were disconnected and a certified letter Debose sent to appellant was returned unclaimed. Thus, the uncontroverted evidence established appellant visited T.G. only sporadically from October 2007 to July 2008 and did not visit him at all for the seven months thereafter.

Appellant nevertheless implies Debose's inability to contact appellant weighs against her knowledge she could visit T.G. and thus somehow excuses the lack of

contact. We disagree. By court order, appellant was required to provide the Department and the court with her contact information and to notify them regarding any change of address.

Demonstrated inability to provide a safe environment for the child. The February 25, 2009 permanency plan and permanency progress report, which was introduced into evidence, contained the following description of the circumstances under which T.G. was removed:

> On 10/26/2007 a report came into statewide intake alleging neglectful supervision of [T.G.] by his mother . . . . The report states that [T.G.] (2 week old male) lives with his mother, aunt, two male cousins and a maternal grandfather. The mother and aunt both have several children who have been removed and placed into relative placement. The initial Family Plan had included home repairs to improve safety of the immediate environment as well as a psychological assessment, drug testing, and obtaining employment. Ada [G.] was pregnant at the time of the other children's removal and she was expected to inform CPS when the child was born. The maternal grandfather is the only source of income for this family unit. The maternal grandfather suffers from diabetes and other health conditions and would be limited to provide care for the newborn child. Teenaged cousins are living in the home and both have criminal histories (details unknown). The home environment remained the same as when [the other children] were removed. Police took pictures at the time of removal and nothing was changed from then till [sic] the time when [T.G.] was born. The windows are covered with wooden planks, there is no working front door, and the passage way into the kitchen area is partially blocked by a . . . large chest. The kitchen area is covered with bugs, on the walls and floors, in plain sight. In an adjacent room the flooring has holes and appears to be very unstable. None of the elements of the Family Plan have seen any progress. No contact was made with CPS regarding the birth of the child. The home remains in great disrepair and the responsible parent has not made any progress toward improvement of the home or of her personal situation.[7]

[7] This section of the permanency plan tracks, almost verbatim, the affidavit of investigator Melvin Frederick, which was attached to the Department's original petition.

There was also evidence appellant failed to comply with provisions of the family service plan and orders in effect following T.G.'s removal. Under the plan and court order filed January 8, 2008, appellant was to "clear up" her criminal history, participate in visitation twice a month, attend court hearings, complete a psychological examination and participate in recommended counseling, complete parenting classes, complete a drug and alcohol assessment, complete random drug tests, remain drug free, refrain from engaging in criminal activity, maintain stable housing, and maintain stable employment. According to Heeg, the only item appellant completed on her family service plan was a court-ordered psychological examination in April 2008.

Heeg observed safety hazards in the house in April 2008. These hazards included extension cords running from air conditioning units to plugs in other areas of the home, weak flooring on the second story, an open cistern, and dogs running loose in the yard.[8]

Additionally, there was uncontroverted evidence appellant tested positive for propoxyphine and morphine in May 2008, one of the nephews living at the Brady Street address was convicted of possession of marijuana in November 2008, and Heeg observed drawings of marijuana leaves and gang symbols in the house in fall 2007 or spring 2008.

Having carefully reviewed the entire record under the applicable standards of review for legal and factual sufficiency, we hold the Department established by clear and convincing evidence that appellant constructively abandoned T.G. under family code section 161.001(1)(N). *See In re R.M.*, No. 14-02-00221-CV, 2003 WL 253291, at *5 (Tex. App.—Houston [14th Dist.] Feb. 6, 2003, no pet.) (mem. op.) (holding evidence legally and factually sufficient to establish constructive abandonment when mother failed to visit child regularly, maintain significant contact with child, establish a permanent residence, maintain steady employment, or attend therapy sessions recommended to her).

[8] In cross-examining Debose about the investigation leading to removal of J.S.G. and J.A.G., appellant's counsel elicited testimony that some of the safety concerns the investigator initially noted had been remedied by June 27, 2007. Nevertheless, the February 25, 2009 permanency plan and permanency progress report and Heeg's testimony demonstrated that safety hazards continued to exist in the home.

Accordingly, we overrule appellant's second issue. We need not address her first, third, and fourth issues, in which she challenges sufficiency of the evidence supporting the other predicate violations.

B. Best Interest of the Child

In issue five, appellant contends the evidence is legally and factually insufficient to support the trial court's finding that termination is in T.G.'s best interest. There is a strong presumption that preserving the parent-child relationship is in the best interest of a child. *See In re J.I.T.P.*, 99 S.W.3d at 846 (citing Tex. Fam. Code Ann. §§ 153.131(b), 153.191, 153.252 (Vernon 2008)). The Department bears the burden to rebut this presumption. *Id.* (citing *Hall v. Harris County Child Welfare Unit*, 533 S.W.2d 121, 122–23 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ)).

The Texas Supreme Court has provided a list of nonexclusive factors for courts to consider when determining the best interest of a child, including (1) the child's desires, (2) the child's emotional and physical needs now and in the future, (3) the emotional and physical danger to the child now and in the future, (4) the parental abilities of the individuals seeking custody, (5) the programs available to assist these individuals to promote the best interest of the child, (6) the plans for the child by these individuals or by the agency seeking custody, (7) the stability of the home or proposed placement, (8) the acts or omissions of the parent that may indicate the existing parent-child relationship is not proper, and (9) any excuse for the acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976); *see In re J.I.T.P.*, 99 S.W.3d at 846. In this case, the record contains evidence pertinent to all factors except the first.[9]

The present and future physical and emotional needs of the child. T.G.'s maternal grandfather was the sole source of income, and his health conditions limited his

[9] There is no evidence regarding the first factor because T.G. was too young to express his desires. *See In re A.R.*, 236 S.W.3d 460, 480 (Tex. App.—Dallas 2007, no pet.) (determining court need not consider child's wishes in termination proceeding when there was no indication child was sufficiently mature to express parental preference).

ability to provide financial support for T.G.'s care. By the time of trial, appellant had not provided proof of employment, even though the family plan required such proof for the return of T.G.'s custody. *See Doe v. Brazoria County Child Protective Servs.*, 226 S.W.3d 563, 574 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (indicating parent's inability to maintain employment supported conclusion he was unable to meet children's physical needs).

Also, at the time of trial, there was a warrant for appellant's arrest, and her probation supervisor testified that, if appellant were found, she would be taken into custody. Additionally, the evidence, discussed above, regarding appellant's failure to visit T.G. regularly or to maintain significant contact with him supports the conclusion appellant is unable to meet T.G.'s emotional needs.

Finally, T.G. has been living with his caretaker, Gracie G., since he was two weeks old, and a bond has developed. His two sisters are in the same household. According to the Department's February 2009 permanency progress report, all T.G.'s needs were fulfilled.

The emotional and physical danger to the child now and in the future. In considering constructive abandonment, we reviewed the evidence supporting appellant's demonstrated inability to provide T.G. with a safe environment. The same evidence supports the factor of emotional and physical danger to T.G., now and in the future. *See Whitworth v. Whitworth*, 222 S.W.3d 616, 623 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (in context of custody dispute, reasoning "an adult's future conduct may be somewhat determined by recent past conduct"); *see also In re A.C.B.*, 198 S.W.3d 294, 299 (Tex. App.—Amarillo 2006, no pet.) (recognizing that, although parent had made some improvement to home conditions, such evidence did not controvert evidence she exposed children to severe conditions that endangered child's physical well-being).

The parental abilities of persons seeking custody. Appellant lost custody of her two daughters when the death of her son, C.G., led to an investigation of medical neglect,

and the court subsequently terminated parental rights to her daughters. Appellant was placed on deferred adjudication after she pleaded guilty to assaulting her daughter, J.S.G. Finally, appellant did not attend parenting classes as required by the family service plan.

Available assistance programs. Appellant failed to complete tasks outlined in the family service plan, including counseling, anger management, and remaining drug free. *See In re M.R.*, 243 S.W.3d 807, 821 (Tex. App.—Fort Worth 2007, no pet.) (recognizing parent's failure to comply with family service plan may be factor, among others, supporting best-interest finding). Debose testified that she was unable to contact appellant after several attempts, and appellant was noncompliant. *See In re J.I.T.P.*, 99 S.W.3d at 847 (considering parent's uncooperativeness and failure to complete counseling services in determining best interest of child).

Plans for the children. The Department recommended the children remain permanently in relative placement with Gracie G. According to a caseworker report filed October 29, 2007, Gracie expressed a desire to keep T.G. permanently, if necessary. At Gracie's home, T.G. will be with his older siblings, who already reside there. Additionally, Gracie works from her home and can care for T.G. without the necessity of daycare services. She is not receiving any government assistance and has no criminal or CPS history. Furthermore, T.G. has established a bond with Gracie. *See In re S.N.*, 272 S.W.3d 45, 53, 55 (Tex. App.—Waco 2008, no pet.) (comparing parents' lack of plans for child with foster parents' ability to provide a safe and stable home).

Stability of the home or proposed placement. As discussed above, appellant has not shown that she is able to provide a safe living environment for the children. Evidence of the hazardous condition at her listed home and the criminal activity of appellant and other occupants weigh in favor of the trial court's best interest finding. In contrast, Gracie is meeting T.G.'s needs and would continue to do so in the future. Additionally, appellant has conceded that, according to Debose, T.G.'s current placement is nurturing

and caring. *See In re J.I.T.P.*, 99 S.W.3d at 847 (observing trial court could have considered comparative stability of parents' and foster family's homes).

Acts or omissions of the parent. Appellant failed to complete the court-ordered services to regain custody of her children. The evidence indicated appellant used illegal drugs, medically neglected her first child, assaulted another child, exposed the children to hazardous conditions in the home, and allowed the children to live in a home with one individual convicted of a sexual crime against a child and another individual convicted of drug possession. Additionally, as discussed above, appellant never visited her children after visitations in her home were terminated. *See Dowell v. Dowell*, 276 S.W.3d 17, 22 (Tex. App.—El Paso 2008, no. pet.) (concluding failure to exercise visitation rights with children on regular basis before incarceration is relevant to *Holley* factor of acts or omissions of parent).

Any excuses for the acts or omissions committed by the parent. Appellant did not testify at the termination trial. She admits there is no evidence supporting any justification for the felony injury to J.S.G.

She refers this court to the comment in the autopsy report indicating C.G.'s death was due to natural causes. According to the Harris County Medical Examiner's supplemental report, however, C.G. missed several appointments after surgery at Memorial Hermann Children's Hospital on June 11, 2003, and appellant did not have the medication C.G. needed the day he died.

In sum, there was substantial, virtually uncontroverted, evidence supporting eight of the nine *Holly* factors. Having carefully reviewed the entire record under the applicable standards of review for legal and factual sufficiency, we hold the Department established by clear and convincing evidence that termination was in T.G.'s best interest. We therefore overrule appellant's fifth issue.

V. CONCLUSION

Having concluded the evidence is legally and factually sufficient to support a finding of one predicate violation and a finding that termination is in T.G.'s best interest, we affirm the judgment.

/s/ Charles W. Seymore
Justice

Panel consists of Justices Yates, Seymore, and Brown.