

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00890-CV

C. W., Appellant

v.

Texas Department of Family and Protective Services, Appellee

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 419TH JUDICIAL DISTRICT
NO. D-1-FM-16-003027, HONORABLE ORLINDA NARANJO, JUDGE PRESIDING**

MEMORANDUM OPINION

After a jury trial, the trial court rendered a final order terminating the parental rights of C.W. (“Cathy”) to her two children, “Isaac” and “Aaron,”¹ who were ten and three years old, respectively, at the time of trial. Cathy appeals the termination order, contending that the evidence was legally and factually insufficient to show that (a) termination was in the children’s best interest, (b) she had committed conduct that amounts to a statutory ground for termination, and (c) the statutory elements providing for termination on the basis of a parent’s mental or emotional illness had been met. *See* Tex. Fam. Code §§ 161.001(b)(1)(D), (E), (2), .003. We will affirm the trial court’s termination order.

¹ We will refer to the children and their family members by aliases. *See* Tex. R. App. P. 9.8 (related to protection of minor’s identity in cases involving termination of parental rights).

STANDARD OF REVIEW

A trial court may terminate a parent's rights to her child if clear and convincing evidence shows that (1) a parent has committed conduct that amounts to a statutory ground for termination and (2) termination of her rights would be in the child's best interest. *Id.* § 161.001; *In re S.M.R.*, 434 S.W.3d 576, 580 (Tex. 2014). In reviewing the legal sufficiency of the evidence in such a case, we look at all the evidence in the light most favorable to the finding to determine whether a reasonable factfinder could have formed a firm belief or conviction that the finding was true. *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005) (citing *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002)). We assume that the factfinder resolved disputed facts in favor of the finding if a reasonable factfinder could do so, and we disregard all evidence that a reasonable factfinder could have disbelieved or found to be incredible. *Id.*; see *In re K.M.L.*, 443 S.W.3d 101, 112–13 (Tex. 2014).

In evaluating factual sufficiency, we view the entire record and uphold the finding unless the disputed evidence that could not reasonably have been credited in favor of a finding is so significant that the factfinder could not reasonably have formed a firm belief or conviction that the Department's allegations were true. *In re A.B.*, 437 S.W.3d 498, 502–03 (Tex. 2014) (citing *J.F.C.*, 96 S.W.3d at 266; *In re C.H.*, 89 S.W.3d 17, 25–26 (Tex. 2002)). We defer to the factfinder's reasonable determination on issues of credibility that involve an evaluation of appearance or demeanor. *J.P.B.*, 180 S.W.3d at 573 (quoting *Southwestern Bell Tel. Co. v. Garza*, 164 S.W.3d 607, 625 (Tex. 2004)); see *A.B.*, 437 S.W.3d at 503 (requiring reviewing court to defer to “factfinder, who, having full opportunity to observe witness testimony first-hand, is the sole arbiter when assessing the credibility and demeanor of witnesses”).

Sufficient evidence of only one statutory ground is necessary to support a judgment in a parental-rights-termination case. *See In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). Therefore, when, as here, multiple statutory grounds for termination are alleged and the trial court issues a broad-form question asking the jury whether the parent-child relationship should be terminated, the appellate court must uphold the jury's finding if any of the statutory grounds alleged supports it. *See Spurck v. Texas Dep't of Family & Protective Servs.*, 396 S.W.3d 205, 221 (Tex. App.—Austin 2013, no pet.).

DISCUSSION

Best-interest finding

In her first issue, Cathy contends that the evidence was legally and factually insufficient to support the jury's finding that termination of her parental rights was in the best interest of her children. She also argues that there is an alternative to termination mandated by the evidence—namely, to appoint a non-parent as managing conservator (such as Cathy's mother, "Grandmother") and Cathy as a possessory conservator of the children. *See* Tex. Fam. Code §§ 153.005, .006.

A factfinder's best-interest finding is reviewed in light of several factors set out in *Holley v. Adams*: (1) the child's wishes, if the child is of an appropriate age to express such wishes; (2) the child's present and future emotional and physical needs; (3) present and future emotional and physical danger to the child; (4) the parenting abilities of the individuals seeking custody; (5) programs available to assist those people seeking custody in promoting the child's best interest; (6) plans for the child by the people or agency seeking custody; (7) the stability of the home or

proposed placement; (8) the parent's acts or omissions that may indicate that the parent-child relationship is improper; and (9) any excuse for the parent's acts or omissions. 544 S.W.2d 367, 371–72 (Tex. 1976). This list is not exhaustive, nor is evidence required on all nine factors for the court's finding. *Id.* at 372. Evidence presented to satisfy a predicate statutory-ground finding may also be probative of the child's best interest. *C.H.*, 89 S.W.3d at 28.

To determine the legal and factual sufficiency of the evidence supporting termination as it relates to the best interest of the children, we examine the evidence in light of the *Holley* factors, some of which evidence is summarized below.

Desires of the children

Grandmother testified that Isaac recently told her he “doesn’t want to be with his mom,” and the foster mother similarly testified about Isaac’s recent statement that he wants to be adopted by Grandmother. The foster mother further testified that Isaac associates Grandmother with “good things” and with “following through” and that Isaac and Aaron do not feel the same sense of security and safety about Cathy. The foster mother testified that Aaron does not ask about seeing his mother as much as he used to, as there was “a period of five months that he didn’t see her” because Cathy missed visitations, but that Aaron does ask to see “Grandma” and loves seeing his baby brother Michael (who is currently living with Grandmother). She further testified that during the period when the boys had visitations with Cathy, Isaac would vomit before or after the visits and be more withdrawn afterwards. There was testimony from various witnesses that Aaron and Isaac have made much improvement while in the care of the foster family with respect to behavioral and speech problems (Aaron), anxiety and depression (Isaac), and socializing and schooling (both boys).

Present and future physical and emotional needs of the children

Several witnesses testified about children needing permanency, safety, and security and about Aaron's and Isaac's needs to continue attending therapy sessions to address various issues including anxiety, depression, stress, and past trauma. The children's therapist testified that as children approach adolescence, which would be soon for Isaac, it is difficult for them to form necessary relationships with peers and teachers that are critical to later success as adults if they are frequently moving from place to place, as they had been doing with Cathy. She further testified that Isaac was "elated" when he was able to have a slumber party with some friends while living at the foster home, which he had been unable to do with his mother at the homeless shelters. The children's foster mother testified that when Isaac first started living with her, there were a few nights when he woke up in the middle of the night and got himself and his brother dressed, including shoes, several times throughout the night. Other testimony indicated that when Isaac was first removed from Cathy's care and placed into a temporary children's shelter, he was distrustful of the staff and other children, attempting to "pat them down" to check for wires; this behavior subsided after he settled into his foster home. While in foster care, Aaron was able to obtain speech therapy for his delayed speech, and Isaac was given an eye exam and found to need glasses.

Present and future emotional and physical danger to the children

The children's therapist testified that Aaron was doing much better with respect to his "adjustment disorder" since he has been in therapy and living in the foster home but that if his life were to again become unstable, he could experience the adjustment disorder and emotional distress anew. She further testified that she did not think Cathy should have unsupervised contact

with the children based on their previous experiences related to her homelessness and not feeling completely safe in the environments she maintains.

A Department caseworker testified that the Department has had concerns about Cathy's mental health since 2012, when it received an allegation of her neglectful supervision of Isaac from the homeless shelter where she was staying. The Department's records from that time indicate that Cathy was allegedly hearing voices telling her to "blow up" the shelter and had a history of "homicidal and suicidal ideations" and paranoia. The caseworker testified that Cathy informed the Department in 2012 that she had been diagnosed with depression and bipolar disorder and had been taking her prescribed medication but later stopped taking it, which "concerned [the Department] about [Isaac]'s safety."

A case manager at the Salvation Army testified that Cathy made statements to her about the apartment that she helped Cathy obtain in April 2017 as "being possessed" and that Cathy "wanted to have an exorcist or an exorcism and a priest come out because of the flies coming out of the walls," even though the case manager did not observe any flies at the home despite Cathy attempting to point them out. The witness further testified that shortly after Cathy moved into the apartment, Cathy "told [her] she was concerned about the case regarding her children . . . [because she believed that] the foster parents at the time were putting the kids in an underground sex trafficking ring."

The foster mother testified that when Aaron first came into her home, he was two-years old and had some behavioral issues, such as "scratching his own face" and "rag[ing] so much he would hit his head on the ground or floor" and throw things. She explained that she "had to protect him from hurting himself and those things would happen for long lengths of time," such as

about an hour at a time, six to eight times a day. She further testified that when the children came to her home, Aaron was not yet verbal, having been evaluated as having the speech ability of a nine-month old. She testified that she worked with him “repeatedly” to “give him words” so he would “know how to use them,” and that she began ECI (early childhood intervention) with him in her home weekly as well as socializing him with peers, which has been very successful.

Parental abilities of the person(s) seeking custody

The children’s therapist testified that when she first began seeing Isaac, he was “parentified” (i.e., had assumed the role of a parent to Aaron because that role had not been filled by Cathy) but that since the children had been in foster care, Isaac had become less parentified because the foster parents were fulfilling the parenting role.

The witness from the Salvation Army testified that it was “apparent” that Cathy and her newborn “Michael”² were living in the master bathroom of the two-bedroom apartment she had helped Cathy obtain, there was broken glass on the floor of the apartment that had not been picked up, and Cathy was refusing to accept donated furniture for the apartment. A Department caseworker testified that an intake report about Cathy’s care of her infant while at her apartment indicated that she “was holding him in a [wearable baby carrier] and swatting at flies that were nonexistent and hit him in the head with the broom and didn’t appear to notice that she had done that.”

Grandmother testified that she did not believe that Cathy can be a safe parent to the children due to her “past issues that are continuing now” related to her stability, housing, and mental

² The issue of Cathy’s parental rights to Michael was not before the trial court and is not before us in this appeal.

health. The CASA (court-appointed special advocate) for the children testified that the children are bonded to Grandmother, who is warm with them, a “natural teacher,” and would provide them with a safe, stable, and permanent home. Grandmother testified about how she raised her own four now-grown children. The Department caseworker testified that Grandmother interacted “very appropriately” with the boys during visits, having the ability to manage both boys (plus baby Michael), despite their disparate ages, and redirecting their behavior as needed.

Assistance programs available to those individuals seeking custody

The Department caseworker testified that it would be in the children’s best interest for Grandmother to adopt the children, rather than be appointed permanent managing conservator (PMC), because adoptive parents receive Medicaid and other financial benefits to help them provide care for the children that they might not otherwise be able to provide and would not receive as PMCs. Further testimony indicated that it is important that the children continue attending their current therapy sessions, which would not necessarily happen under Grandmother’s care unless she received the financial benefits through adoption.

There was testimony about various assistance programs available to Cathy with respect to obtaining stable housing, improving her parenting abilities, and addressing her mental-health issues, but some evidence showed that Cathy has not always fully availed herself of those services.

Plans for the child by those individuals or by the agency seeking custody

Cathy did not articulate any permanent plan for the children’s future other than an intention to obtain her own “permanent” housing through the assistance of local organizations and

to make decisions for her children about their educational and medical needs. She testified that the fact that she is required to stay in town for the next four years due to probation will “guarantee” that she will be able to maintain stable housing once she obtains it. She explained that she had not worked very much over the past year and a half because of her “physical ailments” and the longest period of time that she has ever worked is six months.

Both the Department and the CASA recommended that Cathy’s parental rights be terminated and that Grandmother adopt the children, which Grandmother is eager and willing to do. Grandmother testified that she plans to move into a larger house to accommodate the children and that she will allow Cathy to have supervised visits with the children, under “appropriate circumstances,” depending on whether Cathy is complying with her medication and treatment plans. Grandmother testified that she is willing to take the boys to extracurricular activities and that she believes in “nurturing their own interests and hobbies,” as she did when raising her own children. She stated that her three other adult children have agreed to be a support system for her with respect to raising Cathy’s children and that she has a good friend of over thirty-five years who also serves as a support system and has been very helpful with caring for Michael.

Stability of the home or proposed placement

The evidence shows that Cathy has been unable to provide the children with a stable home for their entire lives, frequently moving from one homeless shelter to another and sometimes from one city or state to another. The CASA testified that she believed termination of Cathy’s parental rights and adoption by Grandmother is in the best interest of the children. She further testified that adoption would provide the children with a “permanent forever home” as well as

monetary assistance in the form of payments to the adoptive parent, which will provide insurance and financial security that the children need. The CASA testified that if the children returned with Cathy to a homeless shelter, they would not be safe and stable because they need predictability and routine—such as going to school and “know[ing] what is coming next . . . [which] is just critical for them in their development and feeling safe.”

The Department caseworker testified that Grandmother’s home study had already been approved and that, if Grandmother adopted the children, “there would be the opportunity for them to still have a relationship with [Cathy],” depending on Grandmother believing that Cathy “was in a good place.”

Acts or omissions of the parent

The Department caseworker testified that Cathy was ordered by the court in July 2016 to engage in mental-health treatment with a county health provider and to follow its medication recommendations, but as of a permanency hearing in August 2016, Cathy had failed to comply. The caseworker further testified that Cathy had irregular attendance at her psychotherapy sessions and ceased attending them entirely a few months after her third child, Michael, was born in March 2017, and after the Department had provided her with a “safety plan” to help her more appropriately outfit her apartment to care for herself and Michael. The caseworker testified that Cathy had a “pattern” of attempting to “evade” the Department’s efforts to meet with her and, therefore, began proceedings to obtain temporary managing conservatorship (TMC) over Michael after Cathy abruptly left town for several months shortly after obtaining the apartment, which she then forfeited.

Any excuse for the acts or omissions of the parent

The evidence suggests that Cathy suffers from mental illness—likely schizoaffective disorder, characterized by delusions and/or hallucinations. Testimony from various witnesses indicates that Cathy has been unwilling to admit that she has mental-health issues and to consistently follow through with the recommendations of mental-health experts or to establish stable support systems for herself and the children in light of her conditions. While Cathy’s health condition may constitute some form of excuse for her acts and omissions, evidence indicating that she has been uncooperative and unwilling to admit or seriously address her condition and improve her mental health weight this factor in favor of termination.

Conclusion

In sum, there was evidence that the children have experienced homelessness and housing instability for most of their lives, which has caused or contributed to anxiety, depression, stress disorders, developmental delays, and lengthy academic absences. There was evidence that Cathy suffers from serious and untreated mental illness, characterized by possible hallucinations and delusions. There was also evidence that Cathy has not exhibited a past or future intention or ability to provide the physical, emotional, and mental stability that both she and the children require to be healthy and safe. Additional evidence tended to show that the children’s well-being had improved greatly while in foster care and after receiving various services and that Grandmother was willing and able to adopt them, with the possibility of their having future, ongoing contact with Cathy at Grandmother’s discretion. After weighing this and other evidence as it relates to the nine *Holley* factors, we conclude that there is legally and factually sufficient evidence to support the jury’s

finding that termination of the parent-child relationship is in Aaron's and Isaac's best interest. We therefore overrule Cathy's first issue.

Statutory-grounds findings

In her second and third issues, Cathy contends that the evidence was legally and factually insufficient to support the jury's findings constituting "statutory grounds" for termination, specifically that she: (1) knowingly placed or knowingly allowed the children to remain in conditions or surroundings that endangered their physical or emotional well-being, *see* Tex. Fam. Code § 161.001(b)(1)(D), and (2) engaged in conduct or knowingly placed the children with persons who engaged in conduct that endangered the physical or emotional well-being of the children, *see id.* (b)(1)(E). "Endanger" in this context means "to expose to loss or injury; to jeopardize." *In re M.C.*, 917 S.W.2d 268, 269 (Tex. 1996) (quoting *Texas Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987)). "Endanger" means more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment, but it is not necessary that the alleged endangering conduct be directed at the child or that the child actually suffers injury. *Id.*

Termination under subsection (E) must be based on more than a single act or omission; the statute requires a voluntary, deliberate, and conscious "course of conduct" by the parent. *In re M.E.-M.N.*, 342 S.W.3d 254, 262 (Tex. App.—Fort Worth 2011, pet. denied). The relevant inquiry under subsection (E) is whether evidence shows that the endangerment of the child's well-being was the direct result of appellant's conduct, including acts, omissions, or failures to act. *Id.* While subsection (D) focuses on the environment as the source of endangerment, courts have noted that parental conduct is also relevant to the child's environment. *See Hanselman v.*

Texas Dep't of Family & Protective Servs., No. 03-09-00485-CV, 2010 WL 5019549, at *4 (Tex. App.—Austin Dec. 9, 2010, no pet.) (mem. op.). Inappropriate, abusive, or unlawful conduct by a parent or other persons who live in the child's home can create an environment that endangers the physical and emotional well-being of a child as required for termination under subsection (D). *In re S.R.*, 452 S.W.3d 351, 360 (Tex. App.—Houston [14th Dist.] 2014, pet. denied).

The testimony and other admitted evidence that might be relevant to the jury's finding that Cathy engaged in conduct that was endangering to the children's well-being or allowed them to remain in conditions or surroundings that were endangering includes the following:

- Witnesses testified about an incident when the children were placed in imminent physical danger when Cathy allegedly told Isaac to run (while pushing his brother Aaron in a stroller) through a busy HEB parking lot late at night while she was having an argument with Grandmother. Testimony indicated that the children remained unsupervised and alone behind the grocery store until law enforcement arrived.
- Cathy testified that, while the children were in her care, Isaac did not attend school consistently and missed at least “a couple of months” of school due to her physical injuries and to her moving the family from one location to another. Other testimony indicated that Isaac had been a year behind in school at one point as a result of his school absences while in Cathy's care.
- A psychologist who evaluated Cathy testified that Cathy revealed she had been previously diagnosed with bipolar disorder but then “denied [she was having] the symptoms that are indicative of bipolar disorder.” The psychologist further testified that Cathy does not believe that she is mentally ill, even though “many people” have “told her that she is.” Records obtained by the psychologist indicated that Cathy had previously reported being diagnosed with schizoaffective disorder.
- The psychologist testified that she believed Cathy might have been attempting to conceal her true mental state during the evaluation based on a discrepancy between the score of the IQ test that she administered to Cathy and one that Cathy had taken in a prior year, suggesting that she had “cheated” on the test. She further testified that Cathy's responses to the Personality

Assessment Inventory she administered to Cathy “suggest[ed] that she presented herself in a favorable light being free of common shortcomings that most people would admit to.”

- After the evaluation, the psychologist gave Cathy a provisional diagnosis of schizoaffective disorder, which is the combination of bipolar disorder and schizophrenia (i.e., having hallucinations and/or delusions); she noted that Cathy also had a past history of physical and sexual abuse and partner violence. She explained that a “provisional” diagnosis is given when there is sufficient information to support a definite diagnosis but there are also “pieces [of information] that [the clinician is] presented with that le[ave the clinician] with some question.” She indicated that to move the diagnosis from provisional to certain, she would need to have “a willing client who wanted to engage in services and wanted to engage in help that would report the symptoms that they were experiencing.”
- The psychologist recommended that Cathy undergo an “updated psychiatric evaluation where her thinking patterns and conditions of mood and stability are closely evaluated [and that Cathy] . . . participat[e] in a mental health IOP [intensive outpatient] program,” which would “help monitor medication effectiveness, monitor symptoms and help her gain some stability.” She further recommended that after Cathy was discharged from the IOP, she “engage in individual therapy . . . [to] assess her trauma symptoms and treat those related to symptoms.”
- The psychologist further testified that “the number one most effective treatment in schizoaffective disorder or bipolar disorder is medication, which means one would have to take their medication regularly for that to be effective,” and that such treatment plus “therapeutic interaction” and a “desire to get better” require that the patient first accept that they have the disorder and “buy in” to the diagnosis and treatment. She explained that a mental illness such as schizoaffective disorder is something that needs to be “managed over one’s lifetime”—that it is not something that can be cured by “taking something”—and that “compliance [with treatment] would be key for the[person’s] stability.”
- The psychologist opined that if a parent with schizoaffective disorder were not willing to comply with medication and therapy recommendations and monitor their symptoms, there “could be” risks to her children, including not being able to provide for their physical, emotional, or mental needs.

- The children’s therapist testified that she had been seeing the children twice a month for about seven months, during which time the children had been living in foster homes. She testified that Isaac initially exhibited symptoms of anxiety and depression, was socially withdrawn, and expressed fear about having a stable and safe home. She testified that he had expressed a “constant feeling” that things were not “going to be okay,” which is uncommon for ten-year olds unless they have had some “traumatic experiences.” The therapist testified that it is important for Isaac’s emotional well-being that his “construct” that he is not competent, that things will not be okay, and that he is going to be “defeated” be changed.
- The children’s therapist further testified that Cathy began repeatedly missing visitations with the children and that it was negatively affecting Isaac, who became “very depressed” and even more withdrawn and disengaged; he also had physical symptoms such as vomiting in response to the missed visits, indicating that he had “pretty extreme anxiety.” She further testified that Cathy’s “sudden disappearance” from Isaac’s life was detrimental to his emotional well-being.
- The children’s therapist testified that Isaac told her he was very worried that “something is really wrong” with his mother and that the instability of their previous living arrangements and frequent moving from place to place was very hard for him. She opined that if Isaac were returned to an environment like the one Cathy had provided him—with the instability and uncertainty about living arrangements—“he wouldn’t have the stability of a consistent school environment,” along with consistent friends and routines, and it would “have a very negative effect on him socially [and] academically.”
- Cathy’s therapist from about July 2016 to February 2017 testified that although Cathy had a “standing appointment” every week, she had “somewhat sporadic” attendance at their sessions. She explained that “it is highly unlikely to make progress” if a client does not consistently attend therapy sessions. The therapist determined that Cathy likely suffered from borderline personality disorder based, primarily, on her use of manipulation and her inability to be collaborative and cooperative in sessions, instead focusing on things not relevant or pertinent to her treatment.
- Cathy’s therapist explained that Cathy was “stuck” on the topic of the “trauma that she felt that her mother had caused in her life” and “was convinced that her mother had molested her son [Isaac] and that the reason her mother wanted her son was so that she could continue to have sexual experiences with him.” The therapist “had difficulty understanding” why Cathy was

“beginning to enlist her mother’s help [with the children] when she kept saying that she believed her mother had molested her son.”

- Cathy’s therapist testified that Cathy needs therapeutic services in order to become a safe and appropriate parent, based on her history of CPS involvement (both in Texas and in Washington State) and because of her trauma history. However, the therapist had to discharge Cathy from therapy when she stopped coming to sessions. The therapist opined that Cathy has difficulty taking care of herself and providing for her own needs and that it is important for a parent to be able to take care of herself so that she can appropriately take care of her children. She gave Cathy a “guarded prognosis” in her discharge summary, which means that progress is possible but not definite, as it depends on the client’s “effort and ability to engage in services,” something akin to a 50% chance of favorable progress.
- A Department investigations supervisor testified that in October 2012, Cathy told her that she believed Isaac had been sexually abused by Grandmother, with whom they had been living, but never followed up with the recommendation to take him for a SANE (Sexual Assault Nurse Examiner) exam. Additionally, Cathy continued to allow Isaac to have contact with her mother after making this allegation. The supervisor further testified that the Department found Cathy’s allegations “indeterminate” based on the “pattern of how sexual abuse allegations had been used in this particular family” and its suspicion that Cathy was using the allegations as a “technique” to “insure th[at Isaac] did not go to the grandmother as a placement option.” The supervisor further explained that Cathy had made two prior allegations against Grandmother, including one in Washington, and those allegations had been investigated and ruled out.
- The investigations supervisor testified about an incident in 2012 when Cathy—in an attempt to evade the Department’s emergency removal of Isaac from her care—“encouraged [Isaac] to run into oncoming traffic,” “physically pushed one of the case workers, attempted to put [Isaac] into strangers’ vehicles on two different attempts,” and ultimately “thr[ew Isaac] over” a six-foot fence after which he landed in a “pile of barbed wire” and was taken to the hospital.
- A Department investigator testified that she believed the children were not safe in Cathy’s care due to her frequent moving about from shelter to shelter and the Department’s resulting inability to locate her and assess her medical condition and ability to care for the children.

- The Department caseworker testified that during Cathy’s visits with her children while they were under the Department’s temporary managing conservatorship, her parenting techniques were “not on target . . . for [Aaron’s] developmental age and . . . she was recommending like swaddling and other things that you wouldn’t consider developmentally [appropriate] for a two-year old.”
- The caseworker further testified that during one of Cathy’s visits with the children, Aaron “was tantruming and [Cathy] wasn’t able to manage his behavior” so she had called 911 during the visit, explaining that she thought her son had been the victim of abuse, and firefighters and EMS arrived, checked on Aaron, and concluded that there was nothing “seemingly medically wrong with him.”

In sum, the evidence—viewed in the light most favorable to the jury’s verdict—shows that Cathy moved the children frequently from shelter to shelter and sometimes from city to city, resulting in significant missed school for Isaac and difficulty in his establishing and maintaining friendships. Both children were suffering from anxiety and depression, most likely caused by their unstable living environment and exacerbated by their concern for their mother’s well-being. Cathy failed to visit her children for several months while they were living in foster care, causing them further anxiety and depression. On more than one occasion, Cathy exhibited poor judgment in her decision-making that jeopardized her children’s physical, mental, and emotional well-being: by telling them to run through a busy parking lot on their own; by failing to visit them for several months; by throwing Isaac over a fence in an attempt to evade the Department; by alleging that Grandmother was sexually abusive to the children yet continuing to let her children be around her and later requesting that Grandmother be granted managing conservatorship; by failing to maintain stable housing and schooling; and by failing to admit that she suffers from a serious mental illness—likely characterized by delusions and/or hallucinations—and agree to undergo treatment. The evidence showed that Cathy suffers from mental illness provisionally diagnosed as schizoaffective disorder

requiring intensive treatment and lifelong management, yet she demonstrated unwillingness to acknowledge her illness or engage in treatment.

In light of this and other evidence in the record, a reasonable factfinder could have formed a firm belief or conviction that the necessary statutory findings of endangerment were true, *see J.P.B.*, 180 S.W.3d at 573, and Cathy has not identified contrary evidence that is so significant³ that a reasonable factfinder could not have formed such belief or conviction, *see A.B.*, 437 S.W.3d at 502–03. We accordingly overrule Cathy’s second and third issues.⁴

CONCLUSION

We affirm the trial court’s final order terminating Cathy’s parental rights.

David Puryear, Justice

Before Justices Puryear, Pemberton, and Bourland

Affirmed

Filed: June 6, 2018

³ The contrary evidence on which Cathy relies depends on witness credibility involving an evaluation of appearance or demeanor, issues to which we defer to the jury’s determinations. *See In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005).

⁴ Because of our rulings on Cathy’s first three issues, we need not reach her fourth issue, in which she contends that the evidence was legally and factually insufficient to establish the elements of family code section 161.003, an independent route to termination. *See* Tex. Fam. Code § 161.003(a)(1-5) (providing for termination upon finding that parent has mental or emotional illness or mental deficiency that renders parent unable to provide for physical, emotional, and mental needs of child until child is eighteen); *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003).