COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

IN THE INTEREST OF	§	No. 08-21-00196-CV
C.R.M., M.S.M., and C.R.M.,	§	Appeal from the
MINOR CHILDREN.	§	143rd District Court
	§	of Ward County, Texas
	§	(TC# 19-10-25195-CVW)

MEMORANDUM OPINION

Appellant M.N.M.[1] (Mother) appeals a trial court judgment terminating her parental rights to children C.R.M. (Son #1), M.A.M. (Son #2), and C.R.M. (Son #3). We affirm the judgment of the trial court.

I. BACKGROUND

A. Factual History

At the time of the de novo hearing, Son #1 was eleven years old, Son #2 was five years old, and Son #3 was four years old. Mother, who was 32 years old, had been together with Father D.R.M. for seventeen years, but Mother and Father were not married. Mother and Father initially

[1] We refer to the parties by pseudonyms. *See* TEX.R.APP.P. 9.8(b)(2).

resided in Michigan, but moved to Monahans, Texas, shortly before the Department began its investigation. Prior to Mother and Father's move to Texas, Michigan CPS officials had an open investigation against the family, and the removal affidavit alleged that the family moved from Michigan to Texas to evade Michigan social services.

The Department initially removed the children from the home in Monahans due to Mother and Father's methamphetamine use. The children tested positive for methamphetamine following their removal. A Department caseworker testified that at the time of the children's removal, the children did not have much food in the house, and they were "very dirty."

On September 30, 2019, the Department filed an original petition to terminate Mother and Father's parental rights. On October 24, 2019, following an adversarial hearing, the Department was named temporary managing conservator of the children, with Mother retaining temporary possessory conservatorship.

On November 21, 2019, the trial court issued a status order confirming that both Mother and Father had signed service plans and agreed to complete the terms of those plans. On February 28, 2020, the trial court issued a permanency order finding that neither Mother nor Father had demonstrated adequate and appropriate compliance with the service plan.

B. Procedural History

1. Final hearing before associate judge

An associate judge held a final hearing on August 27, 2020. At the time of the final hearing, the children had been placed with Mother's sister in New Braunfels, and had been there since shortly after the Department removed the children from the home. Father was out on bond pending charges of child endangerment that arose in connection with the CPS case, and although Mother did not have any pending criminal cases and had not been indicted on a child endangerment charge,

it was unclear from Mother's testimony whether she would eventually be charged with child endangerment.

Mother testified that she and Father had moved to Seguin from Monahans less than a month before the hearing, and they lived in an RV that she rented from Maternal Grandfather for whatever she could afford to pay him, although at the time of trial, she had not yet paid Maternal Grandfather any rent. Mother testified that there was enough room for all the children to sleep in the RV. Neither Mother nor Father were employed at the time of the final hearing, though Mother was receiving unemployment.

Mother and Father had used methamphetamine while living in Monahans, and while Mother denied using heroin in Monahans, she did admit to using heroin "years and years ago[.]" Mother further testified that she had taken a drug test two days before the hearing, and she believed the drug test would be negative, although a hair follicle test would show up positive. Mother stated that she moved from Monahans to Seguin to get away from drugs.

Mother asserted that she had completed a psychological evaluation requirement two or three months before the hearing, and that she had attended two counseling sessions, with four more to go. When asked why she only completed that requirement within the last two or three months despite signing the service plan in September 2019, Mother testified that she had trouble reaching caseworkers to coordinate services. Mother also stated that she completed an Outreach, Screening, Assessment & Referral service (OSAR) and her parenting classes online and that the Department had told her the online course was acceptable. Mother admitted that she had smoked methamphetamine in June and that she had used drugs "a couple of times" since the Department's investigation began.

Mother visited the children once a week at her sister's house in New Braunfels and video-

called them every night. Mother asked the trial court to give her until October 22, 2020, to complete the remaining services.

Father testified that he and Mother were not married, but they lived together in Seguin. Father admitted to using drugs prior to his April 16, 2020, arrest on charges of child endangerment. Father further testified that he had completed some, but not all, of the service plan requirements, blaming a seven month incarceration for causing a delay. Father visited the children every week for about an hour and talked to the children over video-chat with Mother every day. Father also asked the trial court to extend the case to allow him to settle into Seguin and complete services.

Department conservatorship caseworker Karley Raines testified that the children had been placed with Maternal Aunt, who offered a safe environment for the children. While the placement was originally slated to be a permanent adoption, Maternal Aunt was not able to care for the children because her husband worked out of town. Raines testified that she had taken over the case in March, that she had set up two psychological evaluations that Mother and Father did not complete, and that only in the last two months had Mother and Father become serious about completing services, though neither had completed all services by the final hearing date. Raines further testified that she felt Mother and Father both loved the children, but that it was in the children's best interest to have a permanent, drug-free home placement and that Mother had not fully resolved her drug use issues.

Although Raines stated that she did not know if Mother endangered her children "knowingly," she did opine that Mother's actions had caused her children to become endangered. Raines testified that she believed Mother and Father's parental rights should be terminated, since there were still outstanding drug concerns, the parents moved to another city, they had not shown stability, and both parents had employment issues. Raines explained that the current plan was to

keep the children with Maternal Aunt until another relative placement could be found, and that although Maternal Aunt could not keep the children long-term, Maternal Aunt was willing to keep the children until the Department found a relative placement.

Maternal Grandfather J.M. testified that he moved from Monahans to New Braunfels along with Mother and Father, and that moving away from Monahans had been good for Mother. He had "seen a big improvement in them" but that they "need[ed] more time." Maternal Grandfather further testified that he had also lived in Michigan, that Mother and Father had moved out to Monahans after Maternal Grandfather had moved to Monahans, that he had never seen Mother or Father have any issues while they lived in Michigan, and that Mother and Father's actions were the result of their surroundings in Monahans.

On September 8, 2020, the associate judge issued an order terminating Mother and Father's parental rights.

2. De novo hearings before district judge

On September 1, 2020, Mother filed a request for a de novo hearing before the district court. *See generally* TEX.FAM.CODE ANN. § 201.015. The district court heard this matter de novo over the course of three hearings held on October 29, 2020; January 7, 2021; and September 24, 2021.

a. <u>October 29, 2020 Hearing</u>

At the October 29, 2020, hearing, Mother testified that since the original trial, she had found a two-bedroom, one-bathroom house in New Braunfels and had been residing there two weeks. She testified that her sister also lived in New Braunfels, and that she had an aunt who would be willing to help her with the children, even if Father went to prison on his felony charges. Mother also began working at an HEB grocery story.

Mother acknowledged that although she had completed most of the requirements of the service plan, she had not completed all the requirements. She admitted that she needed inpatient care and had wanted to participate in an inpatient drug abuse program, but she could not pay for an inpatient program because the Department stopped funding services after the associate judge ordered termination. Instead, she had to participate in online classes. When asked why she had not sought inpatient treatment over the previous year, Mother stated that she did not know and that she "ran out of time." She stated that she wanted to continue services, but she was unaware that the Department would continue to help her with services after the associate judge entered the termination order. Mother acknowledged that when she lived in Michigan, CPS officials had opened a case against her, but she stated the case had been closed "right away."

Mother denied using drugs between the previous court hearing and the de novo hearing. She testified that she was not aware that her drug use had affected her children at the time, but that now she understood her drug use did affect the children. Mother stated that the Department had asked her to take an additional drug test since the previous court hearing, but that she was unable to do so because she could not get time off work. A urine analysis drug test she had taken to secure employment at HEB had come back negative. Mother testified that she was attending Narcotics Anonymous meetings.

At the time of the October hearing, Father was employed by a personnel staffing agency. Father testified that at the time the Department first became involved in the case, he had been using methamphetamine intravenously, and Mother had also used drugs, though he maintained they did drugs away from the children. He stated that he did not realize at the time that his drug use was dangerous to his children, but that now he understood. When asked how the children tested positive for methamphetamine, he testified that he was told that children can absorb

methamphetamine through the skin through sweat when a person on methamphetamine holds the child. He further testified that the last time he did drugs was in July after he was released from jail. According to Father, he and Mother attended Narcotics Anonymous meetings together and had a good support system in Seguin. He opined that he did not believe Mother needed inpatient treatment. Father had yet to complete the counseling requirement of the service plan, and while he voluntarily gave a urine sample for drug testing purposes, an apparent error by the testing service rendered the sample unusable.

Department conservatorship caseworker Raines testified that Mother had not completed substance abuse treatment, which was a "major" requirement. She also did not fully complete counseling sessions, and while she did a parenting course, the course was not fully accepted because the course was only four hours long and the normal parenting course is at least 12 hours long. Raines denied ever telling Mother that after the associate court's ruling on August 27 that she did not have to complete the services or that she was not eligible for the Department to help her with services, and Raines testified that she informed Mother and Father's attorneys on September 4 that they could still complete services with the Department. Raines testified that after the August 27 hearing, she was unable to reach Mother because Mother had changed her phone number. Raines stated that Mother failed to complete the latest drug test requested by the Department, and that she did not have proof that Mother was drug-free. Raines further testified that she believed it was in the children's best interest to have permanency, and that because Maternal Aunt could not care for the children alone while her husband worked in West Virginia, if Mother and Father's parental rights were terminated, the plan was for the children to be put in foster care for adoption.

Maternal Aunt testified that the children had been in her care for more than 11 months, and

that the children were happy and did not have any medical concerns. Maternal Aunt stated that she did not believe it was in the best interest of the children for Mother and Father's parental rights to be terminated because the children were close to their parents and wanted to live with their parents. Maternal Aunt further testified that she did not believe Mother or Father were using drugs anymore based on differences she observed in their behavior, and "[s]eeing them interact with their children is a lot different."

At the close of testimony, the trial court extended the time-period to complete services by 150 days in order to allow Mother to attend an inpatient substance abuse treatment program, counseling, and parenting classes, and to allow Father to complete counseling. The trial court also ordered Mother and Father to complete urinalysis drug testing by the Tuesday following the hearing.

b. January 7, 2021 Hearing

At the continued January 7, 2021 hearing, Department conservatorship worker Diana Sanchez testified that she had been assigned to this family, and that since the last hearing, Mother was ordered to complete a hair follicle and urinalysis drug test, both of which came back positive for methamphetamine. Father's hair follicle test was positive for methamphetamine and his urinalysis was positive for amphetamine and methamphetamine. Mother was supposed to do a follow-up urinalysis in November, but was a no-show, and according to Sanchez, Mother told the Department she could not go to a scheduled December drug test because she did not have an ID. Likewise, Father did not show up for his drug tests in November and December.

Sanchez testified that Mother had not initiated her parenting classes, her counseling sessions, or inpatient treatment, and Father had not initiated outpatient treatment as required. Sanchez testified that Mother had told her courtesy worker in her area that she would be going to

rehab in Temple, Texas, and that she was then living in her car and was unemployed. Father told his courtesy worker that he would be starting a job at an auto assembly line, but had been unemployed, and that he and Mother had been living out of a hotel. According to Sanchez, neither Mother nor Father had provided the Department with the reason why they had not complied with their obligations.

Mother testified that she was on a waiting list at an inpatient drug treatment facility in Temple, and that she was not working because she needed to be available to go to the facility. She explained that she was attempting to get identification, but that she was having difficulty doing so because she needed proof of address, which she did not have. She had moved out of her previous residence, then back to Maternal Grandfather's RV, and then had to move out of the RV and stay mainly at hotels.

Father testified that he was employed at an auto assembly line through a staffing agency, and that he and Mother were both residing together in a hotel room as of the time of the January hearing.

The reporter's record indicates that following witness testimony, the trial court adjourned the hearing without taking further action.

c. September 24, 2021 Hearing

At the September 24, 2021 hearing, counsel for Father informed the court that Father was incarcerated in Guadalupe County jail and that she had provided the jail administrator with the Zoom hearing information and reserved a timeslot for her client to appear, but that as of the beginning of the hearing, her client had not appeared for the Zoom hearing. The trial court took judicial notice that Father had been incarcerated since August. Father was incarcerated on three charges: evading arrest, unauthorized use of a vehicle, and carrying a weapon unlawfully.

Mother appeared at the hearing. She testified that she had completed an inpatient drug rehabilitation program that lasted 30 days and she was successfully discharged. She also completed the outstanding parenting classes and counseling requirements. Mother stated that she was in aftercare counseling and continued to attend Narcotics Anonymous-type meetings. Mother admitted that after being released from the drug rehabilitation facility, she relapsed twice, most recently one and a half months before the hearing by using methamphetamine. She testified that she was currently residing in Seguin at Maternal Grandfather's RV, and that she was not employed because she did not have a vehicle.

Mother stated that at the present time, she was not able to provide her children with a safe home, but that she had a job and a place in Michigan, where she was hoping to relocate. She asked the trial court not to terminate her parental rights, stating that it was difficult to stay sober in her current situation but that she believed she could stay sober in Michigan. She also asked that her children be placed with Maternal Grandmother as managing conservator.

Department caseworker Sanchez testified that Maternal Grandmother in Michigan was being considered as a placement option. Sanchez also testified that the Department did not believe it was in the best interest of the children to allow more time to see if Mother could maintain sobriety because Mother had been unable to stay sober since the case began two years before. According to Sanchez, if the Department could not place the children with Maternal Grandmother, the plan would be for the children to be placed in foster care for adoption with persons outside the family.

3. District court's ruling

Following the testimony from the September 24, 2021 hearing, the trial court ordered

Mother and Father's rights terminated on subsection (D), (E), and (O) grounds.[2] This appeal from Mother followed. Father did not appeal.

II. DISCUSSION

Mother raises four issues on appeal. In Issue One, Mother contends the evidence is legally and factually insufficient to prove that she knowingly placed or knowingly allowed her sons to remain in conditions or surroundings which endangered their physical or emotional well-being. In Issue Two, Mother maintains that the evidence is also legally and factually sufficient to show she engaged in conduct or knowingly placed her sons with persons who engaged in conduct which endangered their physical or emotional well-being. In Issue Three, Mother argues that the evidence is legally and factually insufficient to show she failed to comply with a court order that established the actions necessary to obtain the return of her children. Finally, in Issue Four, Mother maintains that the evidence is legally and factually insufficient to show termination is in the children's best interest.

[2] The standards referenced by the lower court are follows:

> (b) The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:
>
> (1) that the parent has:
>
> . . .
>
> (D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
>
> (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;
>
> . . .
>
> (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(b)(1)(D), (E), (O).

A. Standard of Review

The natural right of a parent to the care, custody, and control of their children is one of constitutional magnitude. *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985); *see also Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982) (acknowledging that a parent's rights to "the companionship, care, custody, and management" of their children are constitutional interests, "far more precious than any property right"). However, although parental rights are of constitutional magnitude, they are not absolute. *In re C.H.*, 89 S.W.3d 17, 26 (Tex. 2002). "Just as it is imperative for courts to recognize the constitutional underpinnings of the parent-child relationship, it is also essential that emotional and physical interests of the child not be sacrificed merely to preserve that right." *Id*.

Parental rights may be involuntarily terminated through proceedings brought under section 161.001 of the Texas Family Code. *See* TEX.FAM.CODE ANN. § 161.001. We review parental rights termination appeals under the clear and convincing evidence standard. *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005). In applying this standard, "the reviewing court must undertake an exacting review of the entire record with a healthy regard for the constitutional interests at stake." *In re A.B.*, 437 S.W.3d 498, 503 (Tex. 2014).

When reviewing the legal sufficiency of the evidence in a termination case, we consider all the evidence in the light most favorable to the trial court's 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.P.B.*, 180 S.W.3d at 573. We give deference to the fact finder's conclusions, indulge every reasonable inference from the evidence in favor of that finding, and presume the fact finder resolved any disputed facts in favor of its findings, so long as a reasonable fact finder could do so. *Id*. We disregard any evidence that a reasonable fact finder could have disbelieved, or found to

have been incredible, but we do not disregard undisputed facts. *Id*.

In a factual sufficiency review, the inquiry is whether the evidence is such that a fact finder could reasonably form a firm belief or conviction about the challenged findings. *See In re K.A.C.*, 594 S.W.3d 364, 372 (Tex.App.--El Paso 2019, no pet.). We must give due consideration to evidence that the fact finder could reasonably have found to be clear and convincing. *Id*. A court of appeals should consider whether disputed evidence is such that a reasonable fact finder could not have resolved that disputed evidence in favor of its finding. *Id*. If the disputed evidence that a reasonable fact finder could not have credited in favor of the finding is so significant that a fact finder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient. *Id*.

To obtain termination of parental rights, the petitioner must (1) establish one or more of the statutory acts or omissions enumerated as grounds for termination, and (2) prove that termination is in the best interest of the children. *Id*. at 371. Section 161.001(b)(1) of the Texas Family Code sets out the list of predicates for terminating parental rights. Although the existence of one predicate ground is sufficient to uphold the termination of parental rights on appeal, the court of appeals must still always review the sufficiency of any findings made under subsections (D) or (E) as part of due process, since those findings can affect a parent's right to be a parent to their other children. *See In re N.G.*, 577 S.W.3d 230, 237 (Tex. 2019).

B. Analysis

Because the trial court cited both subsections (D) and (E) as grounds for terminating Mother's rights, we will begin our analysis with the legal and factual sufficiency of those findings. We conclude that the evidence is legally and factually sufficient to support both the environmental and course-of-conduct endangerment findings.

1. Endangerment

Under section 161.001(b)(1)(D), parental rights may be terminated if clear and convincing evidence supports that the parent "knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child[.]" TEX.FAM.CODE ANN. § 161.001(b)(1)(D). Section 161.001(b)(1)(E) allows for termination of parental rights if clear and convincing evidence supports that the parent "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[.]" *Id.* § 161.001(b)(1)(E).

The word "endanger" as used in both of these subsections means "to expose to loss or injury; to jeopardize." *In re M.C.*, 917 S.W.2d 268, 269 (Tex. 1996). Although "endanger" means more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment, it is not necessary that the conduct be directed at the child or that the child actually suffers injury. *Id.* "It is enough if the youth is exposed to loss or injury or his physical or emotional well-being is jeopardized." *In re P.E.W.*, 105 S.W.3d 771, 777 (Tex.App.--Amarillo 2003, no pet.). The fact finder may infer from past conduct endangering the child's well-being that similar conduct will recur if the child is returned to the parent. *J.D.S. v. Texas Dep't of Family Protective Servs.*, 458 S.W.3d 33, 41 (Tex.App.--El Paso 2014, no pet.).

Although there is significant overlap between subsections (D) and (E), we previously explained the key difference between these two grounds in *In re B.C.S.*:

> Subsections (D) and (E) differ in one respect: the source of the physical or emotional endangerment to the child. Subsection (D) requires a showing that the environment in which the child is placed endangered the child's physical or emotional health. Conduct of a parent or another person in the home can create an environment that endangers the physical and emotional well-being of a child as required for termination under subsection D. Inappropriate, abusive, or unlawful conduct by persons who live in the child's home or with whom the child is compelled to associate on a regular basis in his home is a part of the "conditions or

> surroundings" of the child's home under subsection (D). The fact finder may infer from past conduct endangering the child's well-being that similar conduct will recur if the child is returned to the parent. Thus, subsection (D) addresses the child's surroundings and environment rather than parental misconduct, which is the subject of subsection (E).
>
> Under subsection (E), the cause of the danger to the child must be the parent's conduct alone, as evidenced not only by the parent's actions but also by the parent's omission or failure to act.

In re B.C.S., 479 S.W.3d 918, 926 (Tex.App.--El Paso 2015, no pet.) (emphasis added) (internal citations omitted).

Here, the evidence is sufficient to show that Mother both placed the children in an endangering environment and engaged in an endangering course of conduct. With respect to environmental endangerment under subsection (D), the evidence showed that Mother had a previous CPS history in Michigan prior to moving to Texas. Mother's drug use affected her children directly, as the children tested positive for methamphetamine after presumptive exposure to the drug. Mother's continued drug use throughout the duration of the case and the threat of criminal charges that could stem from that drug use are also factors the trial court could take into consideration. *See In re N.J.*, 399 S.W.3d 322, 331 (Tex.App.--Amarillo 2013, no pet.). Likewise, Mother's unstable living situation by moving between cities, hotel rooms, and an RV was a factor the trial court could properly consider in its environmental endangerment analysis. *See In re J.A.V.*, 632 S.W.3d 121, 131-32 (Tex.App.--El Paso 2021, no pet.). These factors supporting environmental endangerment under subsection (D) also support a finding of course-of-conduct endangerment under subsection (E). *See In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009) (parental use of narcotics and subsequent effect on ability to care for children may qualify as an endangering course of conduct).

Additionally, the trial court could properly consider Mother's failure to comply with the

sobriety requirement of the service plan in its course of conduct analysis. *See In re J.A.V.*, 632 S.W.3d at 132 (court may consider failure to complete service plan in endangerment analysis). The record shows that although Mother substantially complied with many of the reunification requirements after being granted numerous extensions by the de novo court and that she showed some improvement in her circumstances at various points of the case, "evidence of improved conduct, especially of short-duration, does not conclusively negate the probative value of a long history of drug use" or other past choices when conducting a legal sufficiency review of an endangerment finding. *See In re J.F.-G.*, 627 S.W.3d 304, 316-17 (Tex. 2021) *citing In re J.O.A.*, 283 S.W.3d at 346. In this case, Mother was unable to maintain consistent sobriety during the approximately two-year duration of this case, and she continued using methamphetamine even after complying with the inpatient rehabilitation requirement.

Because we find that the evidence is sufficient to support termination on subsection (D) and (E) grounds, we decline to address subsection (O) as being unnecessary to the resolution of this appeal. *See* TEX.R.APP.P. 47.1.

2. Best interest of the child

The existence of a predicate termination ground is not enough to allow a trial court to order termination of parental rights; termination of parental rights must also be in the child's best interest. *See In re B.C.S.*, 479 S.W.3d at 923. A determination of best interest necessitates a focus on the child, not the parent. *See id.* at 927. There is a strong presumption that it is in the child's best interest to preserve the parent-child relationship, but that presumption may be rebutted. *Id*. Nine non-exhaustive factors should be considered in our analysis of the best interest issue:

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 parenting abilities of the individuals seeking custody;

5. the programs available to assist those individuals to promote the child's best interest;

6. the plans for the child by those individuals or the agency seeking custody;

7. the stability of the home or proposed placement;

8. the parent's acts or omissions that may indicate that the existing parent-child relationship is not a proper one; and

9. any excuse for the parent's acts or omissions.

Holley v. Adams, 544 S.W.2d 367, 372 (Tex. 1976) (the *Holley* factors).

The Department is not required to prove all the *Holley* factors as a condition precedent to parental-rights termination. *See In re C.H.*, 89 S.W.3d at 27. We also must bear in mind that permanence is of paramount importance in considering a child's present and future needs. *In re B.C.S.*, 479 S.W.3d at 927. While no one factor is controlling, analysis of a single factor may be adequate in a particular factual situation to support a finding that termination is in the best interest of the child. *In re J.O.C.*, 47 S.W.3d 108, 115 (Tex.App.--Waco 2001, no pet.), *disappr'd on other grounds by In re J.F.C.*, 96 S.W.3d 256 (Tex. 2002).

a. <u>The Children's Desires (Factor #1)</u>

We begin with the children's desires. In this case, the three children are old enough to be able to voice their desires as to placement. While none of the children testified directly, other witnesses testified that the children are bonded with the parents and have expressed a desire to remain with their parents. This factor weighs against termination.

b. <u>The Children's Emotional and Physical Needs / Emotional and Physical Danger to the Children / Parenting Abilities / Parental Acts or Omissions Indicating Existing Parent-Child Relationship is Not a Proper One / Excuses for Parent's Acts or Omissions (Factors #2, 3, 4, 8, and 9)</u>

The children's desires to stay with Mother, however, are not dispositive of best interest under *Holley*, and those desires may be counterbalanced by other *Holley* factors. Here, other *Holley* factors tip the scale in favor of termination.

Mother has taken significant, albeit slow and belated strides, toward reunification. Despite relapsing twice since exiting inpatient rehabilitation treatment, she continued to engage in outpatient and aftercare treatment and attended weekly Narcotics Anonymous meetings. Even so, by her own admission, Mother was not ready to take care of her children as of the time of the last hearing in this case. Although the Department attempted to work with Mother for almost two years so she could keep her children, Mother's repeated methamphetamine relapses and failure to comply with mandatory drug testing requirements over that two-year period are factors the trial court could weigh in its best interest analysis. *See In re M.D.V.*, No. 14-04-00463-CV, 2005 WL 2787006, at *7 (Tex.App.--Houston [14th Dist.] Oct. 27, 2005, no pet.)(mem. op.)(upholding trial court's best interest finding in favor of termination on similar facts).

Additionally, although Mother consistently visited the children, expressed her love for the children, and appeared to have a family support system in New Braunfels that could help her take care of her children, at the time of the last hearing in this case, Mother's housing situation continued to be in flux. Moreover, Father was incarcerated and Mother had been unemployed for some time. "Without stability, income, or a home, [a parent] is unable to provide for the child's emotional and physical needs." *See In re C.A.J.*, 122 S.W.3d 888, 894 (Tex.App.--Fort Worth 2003, no pet.). These instability factors weigh in favor of termination being in the children's best interest.

Mother raised some excuses to her acts and omissions, such as not being able to obtain time off work to attend a drug test. Yet the record shows that these actions persisted over the

course of two years despite Mother being granted multiple compliance extensions. Furthermore, Mother's noncompliance did not involve only technical bureaucratic requirements, but also requirements fundamental to establishing a healthy and safe environment for her children, including maintaining sobriety. The trial court could have found that Mother's past inability to stay sober or provide stability supported an inference that this behavior would continue into the future.

These factors weigh in favor of termination.

c. Plans for the Children / Stability of the Home of Proposed Placement (Factors #6 and 7)

Finally, we address the future plans for the children and the issue of placement stability. At the last hearing in this case, the children had been placed with Maternal Aunt, but she could not care for the children long-term because her husband had been transferred to West Virginia for work. The Department informed the trial court that Maternal Grandmother in Michigan was being considered as an adoption placement and that the Department was unaware of any impediments in Texas that would prevent Maternal Grandmother from adopting the children, but the Department was still waiting for paperwork and confirmation from CPS counterparts in Michigan. And if for some reason Maternal Grandmother could not serve, the children would be placed for unrelated adoption. Mother points to this uncertainty about the future of the children's placement and cites it as a factor cutting against termination under the best interest analysis.

Evidence about placement plans and adoptions are relevant to the best interest analysis. *In re C.H.*, 89 S.W.3d at 28. "However, the lack of evidence about definitive plans for permanent placement and adoption cannot be the dispositive factor; otherwise, determinations regarding best interest would regularly be subject to reversal on the sole ground that an adoptive family has yet to be located." *Id*. "Instead, the inquiry is whether, on the entire record, a fact finder could

reasonably form a firm conviction or belief that termination of the parent's rights would be in the child's best interest--even if the agency is unable to identify with precision the child's future home environment." *Id*.

That standard has been met on these facts. Although the record shows there is a possibility that a familial adoption may not be possible if Maternal Grandmother is not deemed suitable by Michigan authorities, Mother's continued use of methamphetamines during termination proceedings, combined with her inability to provide stable housing or financial support for her children are factors that still outweigh placement uncertainties in the best interest analysis. *See In re J.K.H.*, No. 07-16-00464-CV, 2017 WL 2333797, at *4-6 (Tex.App.--Amarillo May 25, 2017, no pet.)(mem. op.)(holding that termination was in child's best interest despite the lack of permanent adoption plan and mother's love for child given mother's history of methamphetamine use, including while termination proceedings were pending).

After considering the entire record, we find that the trial court's finding that termination is in the children's best interest is supported by legally and factually sufficient evidence.

III. CONCLUSION

The evidence was legally and factually sufficient to support the trial court's termination order. We overrule Issues One, Two, and Four. We need not address Issue Three. We affirm the judgment of the trial court.

JEFF ALLEY, Justice

March 14, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.