AFFIRM; Opinion Filed August 21, 2020

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-20-00272-CV

IN THE INTEREST OF S.A.B. AND B.M.B., CHILDREN

On Appeal from the 416th Judicial District Court
Collin County, Texas
Trial Court Cause No. 416-54998-2014

MEMORANDUM OPINION

Before Chief Justice Burns, Justice Molberg, and Justice Carlyle
Opinion by Justice Carlyle

Father, proceeding pro se, appeals the trial court's order terminating his parental rights to his two children with Mother. Father challenges the sufficiency of the evidence and asserts errors regarding pretrial and trial proceedings. We affirm in this memorandum opinion.[1] *See* TEX. R. APP. P. 47.4.

[1] Though the trial court's challenged order provides that "all papers and records in this case, including the minutes of the Court, be sealed," we must hand down a public opinion explaining our decision based on the record. *In re N.G.G.*, No. 05-16-01084-CV, 2017 WL 655953, at *1 (Tex. App.—Dallas Feb. 17, 2017, pet. denied) (mem. op.) (citing TEX. R. APP. P. 47.1, 47.3; *Kartsotis v. Bloch*, 503 S.W.3d 506, 510 (Tex. App.—Dallas 2016, pet. denied)). "To the extent we include any sensitive information in this memorandum opinion, we do so only to the degree necessary to strike a fair balance between the parties' interest in keeping portions of the record confidential and our responsibilities to the public as an appellate court." *Id.*; *accord P.C. v. Tex. Dep't of Family & Protective Servs.*, No. 03-16-00784-CV, 2017 WL 2062270, at *1 n.1 (Tex. App.—Austin May 10, 2017, no pet.) (mem. op.).

Father and Mother divorced in 2015. Their daughter and son, S.A.B. and B.M.B., were ages five and four at that time. The divorce decree appointed Father and Mother as joint managing conservators and gave Mother the right to establish the children's primary residence and receive child support.

In 2019, appellees—Mother and her husband, Stepfather—filed a "Petition to Terminate Parent–Child Relationship or in the Alternative to Modify Parent–Child Relationship." They sought to terminate Father's parental rights to both children on the grounds that termination is in the children's best interest and Father has "been convicted or placed on community supervision . . . for being criminally responsible for the death or serious injury of a child" under penal code section 22.011; "knowingly engaged in criminal conduct that has resulted in his conviction of an offense and confinement or imprisonment and inability to care for the children for not less than two years from the date this petition is filed"; and "voluntarily left the children alone or in the possession of another without providing adequate support of the children and remained away for a period of at least six months." Father filed a pro se[2] general denial answer and several pretrial motions, including a January 14, 2020 motion for continuance in which he stated he "has experienced a significant delay in his receipt of documents related to this case."

[2] Father asserted in the trial court that he is "indigent" and asked the trial court to appoint an attorney for him. Father acknowledged he owns a house on which he collects monthly rental payments of $2,276.00 and has a retirement account containing more than $26,000.00. The trial court did not appoint an attorney for Father. *See* TEX. FAM. CODE § 107.021 (providing for discretionary appointment of attorney ad litem for parent in private termination suit).

On January 27, 2020, the trial court held a pretrial hearing on Father's motion for continuance. Father appeared pro se by telephone. He stated he needed the continuance because he had not received "additional evidence" he believed appellees had "presented to the Court." The trial court stated it had received no such evidence and denied the motion for continuance. Trial immediately followed.

Mother testified that in August 2019, Father was convicted and sentenced to ten years in prison for "the second degree felony of sexual assault of a child." Appellees offered into evidence without objection two 2019 final judgments showing Father pleaded guilty to charges of "sexual assault of a child under 17 years of age" based on incidents not involving S.A.B. or B.M.B. Mother testified that on the date of one of those offenses, December 23, 2016, she was out of state and, "to the best of [her] knowledge," Father "had possession" of the children. She also stated that additional charges against Father for possession of child pornography, sexual assault of a child, and sex trafficking are pending in several Texas counties. Although the children know Father is in prison, Mother has "thus far been able to protect the children from the details of [Father's] situation."

Mother testified termination is in the best interest of the children because (1) the children need a "present, loving, and supportive father figure on a full-time basis"; (2) Father did not "provide that for them" prior to his incarceration and is not currently meeting their physical or emotional needs; (3) Stepfather provides for the children's physical and emotional needs and wants to adopt the children; (4) Father

did not follow the possession schedule in the divorce decree prior to his incarceration and when Mother could not accommodate his requests to change the schedule he would "get angry," "use profanities," "verbally abuse" Mother, and "threaten to hurt the children mentally or emotionally in order to get back at [Mother]"; (5) she does not believe Father "will be able to effectively co-parent" the children after his release from prison because he "emotionally and verbally" abuses her and Stepfather, "will continue to initiate litigation against us," and told her in a text message that he will never recognize Stepfather as a non-parent joint managing conservator; (6) Father's behaviors indicate he "puts his needs above anybody else's needs," including those of his "child victims" and his own children; (7) she worries "about [S.A.B.] as a teen and her friends being around a convicted child sexual predator"; and (8) she believes that the "emotional harm" the children will experience when they learn the details of Father's crimes is "going to be compounded if [Father] still has the ability to inject himself into their lives."

Appellees introduced into evidence without objection several text messages from Father to Mother, including a 2017 exchange in which Father stated, "You can talk about my young Wendy's girls I don't mind." Mother responded, "I hope for the kids sake you look for a more stable age appropriate woman. It's your messed up life." Father's responding text message contained three laughing emojis and stated "ok and no I'm good now and for many many years in what I have going." In another 2017 text message, Mother told Father she would be unable to take S.A.B.

to a planned activity as agreed because she had a conflict. Father replied, "I'll tell [S.A.B.] and this will upset her greatly nice job mom . . . I will tell her tonite and remind her how long you have known about it." In a 2016 text message, Father stated, "In case you don't realize or forget there is no situation ever until the kids are 18 that [Stepfather] would ever be alone with my kids."

Appellees also introduced into evidence an Instagram screen shot showing that on December 23, 2016, Father posted a holiday photograph of the children taken in his home. Father stated to the trial court "the date I post something on Instagram has nothing to do with the date I may have actually taken a picture" and "none of the allegations were at my home, nor were any allegations made that the children were in my presence." The trial court told him he would be able to "make all of those arguments when it's your turn." Then, Father objected to the Instagram post on the ground that he "can't verify that it's an accurate thing" because he currently has no access to his Instagram account. The trial court overruled that objection.

Additionally, appellees introduced into evidence numerous photographs of Stepfather and the children together, which had been "eServed" to Father several days earlier. Father told the trial court "those are the evidence and documents I was referring to that I knew I had received that I am not in physical possession of." Father then stated he had no objection to admitting those photographs into evidence.

On cross-examination, Mother testified the children "enjoy their time" with Father. She stated she has not given the children any of the twenty or more letters

Father has written to them from prison because she believes the letters "offer false hopes" to the children, "don't represent reality," and "are emotionally harmful to the kids at this time." She has "spoken to the children about the letters and told them things that I thought were appropriate in the letters." Also, Mother stated that her testimony regarding Father "initiat[ing] litigation against us" referred solely to motions Father has filed in this proceeding, which was initiated by her and Stepfather.

Stepfather testified he loves the children and believes it is in their best interest that Father's parental rights be terminated "to protect them from harm and danger and violation." On cross-examination, Stepfather stated, "I'm sure [the children] admire and adore [Father] as any father—any child would adore their parent." Father asked Stepfather whether the children had "communicated their desire to have a relationship with me." Appellees' counsel objected based on hearsay and the trial court sustained the objection.

Father testified "at no time did I put the children in any harm directly. I did engage in illegal activity. It was not in their presence." He stated that although he is not able to care for the children physically while he is in prison, he is "able to provide for their emotional needs through access." He argued that the family code establishes a presumption that a parent "is . . . a possessory conservator unless possession or access would endanger children." On cross-examination, Father testified that when

he becomes eligible for parole in 2023, S.A.B. will be fourteen, which was the age of his "youngest victim."

During closing, the children's amicus attorney argued that terminating Father's parental rights is in the children's best interest because he has "engaged in an absolute pattern of conduct that has caused emotional harm to his children" and "subjected his children to a life of uncertainty in having to figure out how to address this emotionally."

The trial court signed a termination order stating it found by clear and convincing evidence that termination was in the children's best interest and Father had engaged in conduct that endangers the physical or emotional well-being of the children, been convicted for being criminally responsible for the death or serious injury of a child under penal code section 22.011, and knowingly engaged in criminal conduct that resulted in his conviction, imprisonment, and inability to care for the children for not less than two years from the date the petition was filed. The trial court appointed Mother and Stepfather as joint managing conservators.

Under Texas Family Code section 161.001, a trial court may terminate a parent's rights to a child if the court finds by clear and convincing evidence that termination is in the child's best interest and one or more statutory predicate grounds have been satisfied. *See* TEX. FAM. CODE § 161.001(b); *In re Z.N.*, 602 S.W.3d 541, 543 (Tex. 2020) (per curiam). Those predicate grounds include, among other things, that the parent has "engaged in conduct . . . which endangers the physical or

emotional well-being of the child," *see* TEX. FAM. CODE § 161.001(b)(1)(E); has been "convicted . . . for being criminally responsible for the death or serious injury of a child" under one of several penal code sections, including section 22.011 (sexual assault), *see id*. § 161.001(b)(1)(L)(vi); or has knowingly engaged in criminal conduct that has resulted in the parent's conviction, imprisonment, and inability to care for the child for not less than two years from the date the petition was filed, *see id*. § 161.001(b)(1)(Q). If a trial court terminates a parent's rights based on section 161.001(b)(1)(E) and the parent challenges that finding on appeal, due process requires the appellate court to review the finding and detail its analysis even if it affirms the termination order based on other section 161.001(b)(1) grounds. *In re C.W.*, 586 S.W.3d 405, 406 (Tex. 2019) (per curiam); *In re N.G.*, 577 S.W.3d 230, 235 (Tex. 2019) (per curiam).

Because the fundamental liberty interest of a parent in the care, custody, and control of his child is of constitutional dimensions, involuntary parental termination must be strictly scrutinized. *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000); *In re K.M.L.*, 443 S.W.3d 101, 112 (Tex. 2014). In such cases, due process requires the petitioner to justify termination by clear and convincing evidence. TEX. FAM. CODE § 161.001(b); *In re E.N.C.*, 384 S.W.3d 796, 802 (Tex. 2012). "Clear and convincing evidence" is that "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 § 101.007; *In re N.G.*, 577 S.W.3d at 235; *In re N.T.*, 474 S.W.3d 465, 475 (Tex. App.—Dallas 2015, no pet.).

On appeal, we apply a standard of review that reflects the elevated burden at trial. *In re A.B.*, 437 S.W.3d 498, 502 (Tex. 2014); *In re A.T.*, 406 S.W.3d 365, 370 (Tex. App.—Dallas 2013, pet. denied). Under both legal and factual sufficiency standards, we consider all the evidence, defer to the factfinder's credibility determinations, and determine whether the factfinder could reasonably form a firm belief or conviction that the grounds for termination were proven. *In re J.F.C.*, 96 S.W.3d 256, 265–66 (Tex. 2002); *In re N.T.*, 474 S.W.3d at 475. "The distinction between legal and factual sufficiency lies in the extent to which disputed evidence contrary to a finding may be considered." *In re A.C.*, 560 S.W.3d 624, 630–31 (Tex. 2018).

In conducting a legal-sufficiency review of an order terminating parental rights, the reviewing court cannot ignore undisputed evidence contrary to the finding, but must otherwise assume the factfinder resolved disputed facts in favor of the finding. *Id*. We "consider all the evidence, not just that which favors the verdict," and we assume the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so. *In re N.T.*, 474 S.W.3d at 475. We disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible. *Id*.

When reviewing the factual sufficiency of the evidence supporting a termination finding, we ask whether, in light of the entire record, the evidence is such that a factfinder could reasonably form a firm conviction about the truth of the allegations against the parent. *Id*.; *In re J.D.B.*, 435 S.W.3d 452, 463 (Tex. App.—Dallas 2014, no pet.). We must consider whether the disputed evidence is such that a reasonable factfinder could not have reconciled that disputed evidence in favor of its finding. *In re N.T.*, 474 S.W.3d at 475. If the disputed evidence is so significant that a factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient. *Id*.

The supreme court has identified a nonexclusive list of factors that may be relevant to a best-interest determination: (1) the child's desires, (2) the child's current and future emotional and physical needs, (3) current and future emotional and physical dangers to the child, (4) the parental abilities of those seeking custody, (5) the programs available to help those individuals promote the child's best interest, (6) those individuals' plans for the child, (7) the home's or proposed placement's stability, (8) the parent's acts or omissions indicating 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, 371–72 (Tex. 1976).

The *Holley* factors focus on the best interest of the child, not the best interest of the parent, and are not exhaustive. *Dupree v. Tex. Dep't of Protective & Regulatory Servs.*, 907 S.W.2d 81, 86 (Tex. App.—Dallas 1995, no writ); *see In re*

C.H., 89 S.W.3d 17, 27 (Tex. 2002). A best interest finding need not be supported by evidence of every *Holley* factor. *See In re C.H.*, 89 S.W.3d at 27. Further, the same evidence can be relevant to both section 161.001(b)(1) termination grounds and the child's best interest. *In re D.W.*, 445 S.W.3d 913, 925 (Tex. App.—Dallas 2014, pet. denied). Although there is a strong presumption that maintaining the parent–child relationship serves the child's best interest, there is also a presumption that promptly and permanently placing the child in a safe environment is in the child's best interest. *Id.*; *see also* TEX. FAM. CODE § 153.131(b).

In his first issue, Father contends the evidence is legally and factually insufficient to support the termination order. He asserts the evidence does not support any of the order's three statutory termination grounds—subsections (E)[3], (L), and (Q)—or a *Holley* best-interest determination.

Subsection (Q) requires finding both that the parent is incarcerated and that he is unable to care for the child for at least two years from the date the petition was filed. *In re H.R.M.*, 209 S.W.3d 105, 110 (Tex. 2006) (per curiam); TEX. FAM. CODE § 161.001(b)(1)(Q). Absent evidence that a non-incarcerated parent or other person has agreed to provide support for the child on the incarcerated parent's behalf,

[3] Though the record does not show this statutory termination ground was pleaded by appellees, the parties specifically addressed it at trial and the trial court included it as one of the termination order's alternative bases. We conclude termination under this ground was tried by consent. *See Ingram v. Deere*, 288 S.W.3d 886, 893 (Tex. 2009) (stating issue is tried by consent when both parties present evidence on issue and issue is developed during trial without objection); TEX. R. CIV. P. 67 (issues not raised in pleadings that are tried by consent are "treated in all respects as if they had been raised in the pleadings").

merely leaving a child with a non-incarcerated parent does not constitute the ability to provide care. *In re H.R.M.*, 209 S.W.3d at 110. We employ a burden-shifting analysis to assess an incarcerated parent's ability to care for a child. *In re J.G.S.*, 574 S.W.3d 101, 118–19 (Tex. App.—Houston [1st Dist.] 2019, pet. denied). The party seeking termination must first establish that the parent will remain in confinement for the requisite period. *In re B.D.A.*, 546 S.W.3d 346, 358 (Tex. App.—Houston [1st Dist.] 2018, pet. denied). The burden then shifts to the parent to produce "some evidence" as to how he would provide or arrange to provide care for the child during his incarceration. *Id*. at 358. "Cases discussing the incarcerated parent's provision of support through other people contemplate that the support will come from the incarcerated parent's family or someone who has agreed to assume the incarcerated parent's obligation to care for the child." *In re H.R.M.*, 209 S.W.3d at 110. When the incarcerated parent meets that burden of production, the person seeking termination then has the burden of persuasion to show by clear and convincing evidence that the parent's provision or arrangement would not satisfy the parent's duty to the child. *In re Caballero*, 53 S.W.3d 391, 395 (Tex. App.—Amarillo 2001, pet. denied).

Here, Father does not dispute that he knowingly engaged in criminal conduct resulting in his incarceration for at least two years from the date of the filing of the petition and he is not able to care for the children physically while he is in prison. There is no evidence of how he would provide or arrange such care during his

incarceration, and he does not address subsection (Q) on appeal. We conclude the evidence is legally and factually sufficient to support the trial court's finding that Father's knowing criminal conduct resulted in "imprisonment and inability to care for the children for not less than two years from the date the petition was filed." TEX. FAM. CODE § 161.001(b)(1)(Q); *see In re H.R.M.*, 209 S.W.3d at 110.

Additionally, as required, we address subsection (E). *See In re C.W.*, 586 S.W.3d at 406; *In re N.G.*, 577 S.W.3d at 235. The relevant inquiry under subsection (E) is whether evidence shows that the endangerment of the child's well-being was the direct result of the parent's conduct, including acts, omissions, or failures to act. *In re C.J.B.*, No. 05-19-00165-CV, 2019 WL 3940987, at *6 (Tex. App.—Dallas Aug. 21, 2019, no pet.) (mem. op.); TEX. FAM. CODE § 161.001(b)(1)(E). Termination under subsection (E) must be based on more than a single act or omission; a voluntary, deliberate, and conscious course of conduct by the parent is required. *In re D.T.*, 34 S.W.3d 625, 634 (Tex. App.—Fort Worth 2000, pet. denied). The offending conduct does not need to be directed at the child, nor does the child actually have to suffer an injury. *In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009). A parent's conduct that "subjects a child to a life of uncertainty and instability" endangers the child's physical and emotional well-being. *In re A.B.*, 412 S.W.3d 588, 599 (Tex. App.—Fort Worth 2013), *aff'd*, 437 S.W.3d 498 (Tex. 2014). "Evidence of sexual abuse of one child is sufficient to support a finding of endangerment with respect to other children." *In re J.P.T.*, No. 14-16-00156-CV,

2016 WL 3947756, at *4 (Tex. App.—Houston [14th Dist.] July 19, 2016, pet. denied) (mem. op.) (citing *In re R.W.*, 129 S.W.3d 732, 742 (Tex. App.—Fort Worth 2004, pet. denied)).

Father contends "[m]ere imprisonment" will not justify termination of his parental rights on the ground that he engaged in conduct constituting a danger to the children's physical or emotional well-being. He also "objects" to any reliance on his being in "physical possession" of the children at the time of his felony offenses because "no fact finder could have reasonably have found this fact was established by clear and convincing evidence."

Here, the evidence goes beyond "mere imprisonment." Father confessed to committing two child-sexual-assault offenses within the previous four years and was convicted of those offenses. *See In re J.P.T.*, 2016 WL 3947756, at *4. As the children's amicus attorney stated at trial, Father has "subjected his children to a life of uncertainty in having to figure out how to address this emotionally." On this record, we conclude the evidence is legally and factually sufficient to support subsection (E) as a statutory termination ground.[4] *See In re A.B.*, 412 S.W.3d at 599; *In re J.O.A.*, 283 S.W.3d at 345.

[4] In light of our conclusions regarding subsections (Q) and (E), we need not address Father's arguments regarding subsection (L). *See In re Z.N.*, 602 S.W.3d at 543; *In re C.W.*, 586 S.W.3d at 406.

As to best interest, Father contends several of appellees' assertions at trial were not supported by evidence and the trial court's *Holley* analysis "was incomplete and otherwise insufficient." We disagree.

First, Father contends the trial court erred by "excluding the children's desires in the *Holley* analysis." The record does not show the trial court excluded any testimony regarding the children's desires, other than disallowing the hearsay testimony Father sought to elicit from Stepfather, which Father does not assert as error on appeal. There was testimony that the children "enjoy" their time with Father and "adore" him. In light of that testimony, and the lack of any evidence to the contrary, this factor weighs against termination. *See In re O.T.*, No. 06-17-00114-CV, 2018 WL 1281794, at *9 (Tex. App.—Texarkana Mar. 9, 2018, pet. denied) (mem. op.).

Next, we consider together five additional *Holley* factors: the children's current and future emotional and physical needs, current and future emotional and physical dangers to the children, Father's parental abilities and plans for the children, and Father's acts or omissions indicating that the existing parent–child relationship is not a proper one. *See Holley*, 544 S.W.2d at 371–72. Father reasserts that he was not "in physical possession of the children" when he committed his sexual-assault-of-a-child offenses and contends (1) "[t]here has been no evidence outside of incarceration, that the Appellant cannot meet the emotional needs through access (phone, letters) or the physical needs (visitation)"; (2) "there are no actual claims of

evidence that I could be a danger to the children now or in the future"; (3) the emotional stress associated with a parent's incarceration "is already taken into account in the 1st prong of the test" and "it would seem redundant to include this in the *Holley* analysis"; and (4) no evidence supports appellees' assertions at trial that Father "initiate[d] litigation against them," "was not a loving father," "did not follow the possession schedule," "did not co-parent," and "would harass his children" unless his rights were terminated.

Mother testified Father (1) is not currently meeting the children's emotional or physical needs; (2) writes the children letters that "don't represent reality" and "are emotionally harmful to the kids at this time"; and (3) committed at least one of his sexual-assault-of-a-child offenses during his possession period. Father will be incarcerated until at least 2023 and has no plans for meeting the children's physical needs during that time other than having them visit him in prison. At some point, the children will learn the details of Father's crimes and will be subjected "to a life of uncertainty in having to figure out how to address this emotionally." Father's text messages indicate that he uses the children to retaliate against Mother when he is angry at her and he does not and will not accept Stepfather as a conservator. Thus, the evidence showed Father puts his own interests before the children's, acts without regard to the resulting emotional harm to the children, and does not meet the children's needs. We conclude these five *Holley* factors weigh in favor of

termination. *See id*.; *see also In re D.W.*, 445 S.W.3d at 925 (same evidence can be relevant to both section 161.001(b)(1) termination grounds and child's best interest).

As to the remaining *Holley* factors, the evidence showed Mother and Stepfather are providing a stable, safe, loving home and Stepfather wants to adopt the children. *See Holley*, 544 S.W.2d at 371–72. There was no evidence of any excuse for Father's acts or any program available to help him promote the children's best interest. *See id*. On this record, the trial court could reasonably develop a firm belief or conviction that termination was in the children's best interest. *See In re J.F.C.*, 96 S.W.3d at 265–66; *see also In re O.T.*, 2018 WL 1281794, at *9 (concluding that although first *Holley* factor weighed against termination, other factors supported best-interest determination).

Father's second and third issues pertain to the trial court's September 27, 2019 temporary order in this lawsuit, which designated him as a "temporary possessory conservator." According to Father, the trial court "inherently found" at the temporary order hearing that "[Father's] access and possession of the children would not endanger them, or the appointment of conservatorship could not have been made." Father contends the trial court erred by terminating his parental rights "after just recently" designating him as a temporary possessory conservator and "with no underlying facts changing," because the termination order "conflicts with the conclusions previously made and the testimony previously provided by the

Appellees at the temporary order hearing." Father also challenges several of the temporary order's provisions.

In a suit affecting the parent–child relationship, the trial court may make a temporary order for the safety and welfare of the child, including an order modifying a prior temporary order. *In re Eddins*, No. 05-16-01451-CV, 2017 WL 2443138, at *3 (Tex. App.—Dallas June 5, 2017, orig. proceeding) (mem. op.) (citing TEX. FAM. CODE § 105.001(a)). A temporary order is superseded by entry of a final order of termination, rendering moot any complaint about the temporary order. *In re J.D.L.*, No. 12-17-00225-CV, 2017 WL 6523183, at *2 (Tex. App.—Tyler Dec. 21, 2017, pet. denied) (mem. op.).

Here, in addition to designating Father as a temporary possessory conservator, the September 27, 2019 temporary order stated, "[Father's] periods of possession of the children shall be temporarily suspended, pending agreement of the parties or further order of this Court." A trial court, especially in family cases, has discretion to change its mind. *See Harlow v. Hayes*, 991 S.W.2d 24, 28 (Tex. App.—Amarillo 1998, pet. denied) (citing *Bi-Ed, Ltd. v. Ramsey*, 935 S.W.2d 122, 123–13 (Tex. 1996)). We do not even view the court to have changed its mind in the way Father describes; more than anything, after hearing evidence in a trial, the court concluded Father was no longer entitled to be a temporary possessory conservator.

We cannot agree that the two orders "conflict" as Father describes. Moreover, the trial court's termination order superseded the temporary order and thus Father's

complaints regarding the temporary order's provisions are moot. *See In re A.K.*, 487 S.W.3d at 683; *see also In re C.R.J.*, No. 06-13-00053-CV, 2014 WL 199209, at *2 (Tex. App.—Texarkana Jan. 17, 2014, no pet.) (mem. op.) (concluding complaints regarding temporary order hearing and temporary order were rendered moot when final termination order was entered). We decide against Father on his second and third issues.

In his fourth issue, Father contends "critical evidence" was excluded "by virtue of the trial court's non-responsiveness to [his] motions, letters, and requests." Father asserts he "prepared several motions and letters/responses for the benefit of the court" and "[i]n all but 1 motion, the trial court did not respond, set a hearing for, or otherwise rule on these matters prior to the trial before the court." Generally, as a prerequisite to presenting a complaint for appellate review, the record must show that the appellant made a timely request, objection or motion and, if the trial court refused to rule on such, that the complaining party objected to the refusal. TEX. R. APP. P. 33.1(a). Here, the record does not show Father objected to the trial court's alleged failure to rule on the complained-of "motions, letters, and requests." Thus, Father's fourth issue presents nothing for this court's review.

Father's fifth and sixth issues pertain to the trial court's conservatorship appointments.[5] "[A]n order terminating the parent–child relationship divests the parent of all legal rights and duties with respect to the child." *In re G.D.P.*, No. 05-19-01068-CV, 2020 WL 401760, at *7 (Tex. App.—Dallas, Jan. 24, 2020, pet. denied) (mem. op.) (quoting *In re C.J.B.*, 2019 WL 3940987, at *10). Because we uphold the portion of the trial court's order terminating Father's parental rights, Father lacks standing to challenge the order's conservatorship-appointment portion. *See id.* We overrule Father's fifth and sixth issues.

Having decided Father's six issues against him, we affirm the trial court's judgment.

/Cory L. Carlyle/
CORY L. CARLYLE
JUSTICE

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[5] In his fifth issue, Father asserts the trial court excluded "direct evidence" regarding appellees' "ability to adhere to, follow, and respect duties of a joint managing conservator under the Texas Family Code," and "[t]his evidence should have been included in the trial before the conservatorship decisions were made." In his sixth issue, he contends the evidence is not "sufficient" to "support that the appointment of [Stepfather] as joint managing conservator is in the best interest of the children."

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN THE INTEREST OF S.A.B. AND B.M.B., CHILDREN No. 05-20-00272-CV	On Appeal from the 416th Judicial District Court, Collin County, Texas Trial Court Cause No. 416-54998-2014. Opinion delivered by Justice Carlyle. Chief Justice Burns and Justice Molberg participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 21st day of August, 2020.