AFFIRMED and Opinion Filed September 11, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-20-00373-CV

IN THE INTEREST OF E.L.C., C.R.C., AND G.E.C., CHILDREN

On Appeal from the 382nd Judicial District Court
Rockwall County, Texas
Trial Court Cause No. 1-18-0465

MEMORANDUM OPINION

Before Justices Molberg, Carlyle, and Browning
Opinion by Justice Browning

Following a jury trial, Mother and Father appeal the trial court's final order terminating Mother's parental rights to E.L.C., C.R.C., and G.E.C. and Father's parental rights to G.E.C. In two issues, Mother argues the evidence is legally and factually insufficient to support the jury's findings. In eleven issues, Father[1] argues

[1] We note the clerk's record in this case contains an affidavit for voluntary relinquishment of parental rights signed by Father under oath on August 2, 2019. The affidavit is a six-page document in which, among other things, Father acknowledges he is the father of G.E.C.; he is aware that a lawsuit has been filed to terminate his parental rights to G.E.C.; termination of the parent-child relationship is in the best interest of the child, and he understands he makes termination possible by executing the affidavit; he should not sign the affidavit if there is "any thought in [his] mind that [he] might someday seek to gain custody of his child"; the affidavit was irrevocable for sixty days; and the affidavit remained in full force and effect after that time until he revoked it. There is no evidence in the record that Father ever revoked the affidavit, and none of the parties refer to the affidavit. Accordingly, we address the issues here presented without addressing the consequences of the affidavit.

the evidence is legally and factually insufficient to support the jury's findings; the court violated his due process rights by holding numerous hearings and the trial in his absence and without notice to him; the trial court's order establishing the actions necessary to obtain the return of G.E.C. was not sufficiently specific to be enforceable; and the Department failed to present sufficient evidence that it took "reasonable efforts" to reunify Father with G.E.C. We affirm the trial court's judgment.

At trial, Mother testified she is the mother of one daughter, E.L.C., and two boys, C.R.C. and G.E.C. W.C. is the father of E.L.C and C.R.C., and Father is the father of G.E.C., who was born in March 2018. When Mother was eighteen years old, W.C. moved in with her at her apartment, and they married in 2010. E.L.C. was born in 2008, and C.R.C. was born in 2012. Mother testified she and W.C. "argued a lot," and W.C. hit Mother. Mother "injured many broken bones and fractures" fighting with W.C., and "there came a point where guns were drawn." Mother testified the children "were either not there or in their rooms" when the domestic violence occurred and were "very sheltered from it."

The children did not know about the domestic violence until "the last two fights," and one of the fights "was the day guns got drawn and our first CPS case opened up." On that day in February 2017, the children were at home when Mother and W.C. each pulled a gun on the other inside the house. W.C. "left for a few minutes," and Mother called her father. Mother's "collarbone was fractured, and

[she] needed medical attention." W.C. came back to the house. Mother's father and brother and Father came to the house, and they could see through the windows and the door "that guns were involved." Mother's father called the police, and the police arrested W.C.

As a result of the "gun incident," CPS investigated and Mother "did their services" which consisted of parenting classes and counseling. CPS closed the case and determined Mother was "safe for the kids" but advised that W.C. not be around the children. At that time, the children were not removed from Mother's custody. Mother testified the classes and counseling did not have "a big impact" on her.

Mother described the "second altercation" that occurred in "the front yard" of W.C.'s house:

> I think [W.C.] had like a 90-day no contact order with the kids, and after that was up, I let the children go over to his house, and I don't recall exactly what it was that made me mad. I think it had something to do with him having friends over. I don't know, but I went to go get my children, and when I did, [W.C.] pushed me, and when he shoved me, I hit the concrete, and I was bleeding. And from – and [Father] was with me at the time, and so it just ended up in a big fight.

Mother testified Father was with her because he had come with her when she went to pick up the children. When Mother fell, Father got out of the car to try to help her. W.C., who had gone inside, came back outside and started to fight with Father. Once W.C. and Father "split up," Mother "slapped [W.C.] several times in his face, and then he hit [Mother], and it just kept going." Mother testified a neighbor called police, and the police came and arrested W.C. for assault.

On August 8, 2018, Mother smoked marijuana "right after [she] woke up" and proceeded to take care of G.E.C. As soon as Father left for work, E.L.C. came to Mother and said Father gave her a pill and "she thought [Father] did something inappropriate." In response to Mother's questions, E.L.C. said she thought Father "rubbed" her. "Within the hour," Mother took E.L.C. to the doctor. Mother told the doctor she "thought maybe something had happened to [her] daughter and that [she] thought she was drugged." The doctor tested E.L.C., and the test "came back positive for Xanax." Although Mother "believed [E.L.C.] immediately," she did not "give [the doctor] any more details of what [she] thought." The doctor advised Mother to "go to the hospital" emergency room.

At the emergency room, Mother "told them that [she] thought something may have happened to [her] daughter," she had come from the doctor, and E.L.C. had been drugged with Xanax." Mother and E.L.C. were placed in a "curtained area" where they could hear other people speaking. E.L.C. was "getting upset" and said "something about she didn't want to see the cops." Mother "had previously been in a CPS case," and she feared she could lose her children. At "the thought of CPS entering [her] life again and losing [her] children," Mother "got nervous and scared, and so [she] left." Elsewhere in her testimony, when asked why she left the hospital with E.L.C., Mother answered:

> We were in the room outside of the nurses' station when [E.L.C.] had heard cops, whom [E.L.C.] is naturally afraid of cops because she saw cops draw guns on her father, and I heard CPS, and I had just gotten out

> of a case, and we both were scared, and [E.L.C.] wanted to leave, and I took her.

After she left the ER, Mother was contacted by police, and she told police that she "would meet them anywhere" at 5:00 o'clock. At this point, E.L.C. and the other children were at Mother's sister's house. E.L.C. called Mother and said "the police are here." Mother went to her sister's house where she saw "all of [her] family outside, [E.L.C.] sitting on the steps with [Mother's] mom," and "everyone looking real scared, not knowing what was going on." Mother also saw a CPS investigator and two police officers who prevented Mother from talking with E.L.C.

The CPS investigator took E.L.C. to the hospital, and police instructed Mother to go to her home and get "the clothes [E.L.C.] was wearing, a towel that they found on the floor," and E.L.C.'s sheet. Mother consented to a search of her home, and police recovered Xanax pills that were prescribed to Mother's mother. Mother then returned to the hospital at approximately 6:00 p.m., but she was not permitted to speak to E.L.C.

Mother admitted that, at her sister's house, she "yelled it across the yard" that E.L.C. should not "tell anybody anything." When asked why she told E.L.C. not to say anything to CPS, Mother explained:

> When I said to [E.L.C.] not to say anything, it was because Lauren Butcher, the investigator that came and initially took my children from me – I felt like I was being bullied, and I was scared, and I didn't know what to do, and she was rude to me and made it seem like I had done something, and I just reacted in telling her not to say anything, but I did go back later and apologize to her and tell her that it was okay to speak about anything and that I was sorry to put her in that position.

The day after the children were removed, Mother was arrested on charges of failure to report a felony, possession of Xanax, and interfering with an investigation. Mother testified that, at the time of her arrest, she was "drunk," and she woke up and "police were in the house because [her] mother called the ambulance because [she] was having a seizure." Mother asked the police to leave, but they did not leave. During the arrest, Mother "accidentally kicked his leg, and they got [Mother] with assaulting a police officer."

"Maybe six months" before trial, in a supervised visitation room, E.L.C. told Mother that Father "gave her a pill with some Sprite," she spit the pill out, Father "took her panties off," and he rubbed his "private parts" between her legs but "did not penetrate her." E.L.C. said she was scared and "she tried to scream, but [Father] covered her mouth" with his hand. Mother testified she remained "friends" with Father and visited him in jail every week "up until [E.L.C.] told [her] exactly what happened." Mother admitted that, while she continued to visit Father in jail, she knew Father had given E.L.C. Xanax and E.L.C. "had concerns about that and had told [Mother] something inappropriate had happened."

Mother testified she started smoking marijuana when she was twenty years old, and she smoked marijuana every day "because [she] enjoyed it." Mother testified "Smoking marijuana did not in any way impair [her] judgment with [her] kids." Mother stopped smoking marijuana when her children were removed. Mother testified it was "true" that she "stopped smoking marijuana when there were

eyes on [her]" and "start[ed] smoking marijuana when there's no eyes on [her]." Mother admitted she tried cocaine "one time" with W.C. W.C. testified Mother drank a "quarter of a tequila bottle a day." Mother started smoking marijuana with W.C. when they "were all at a friend's house." W.C. testified Mother continued to smoke marijuana after he and Mother separated. W.C. testified Father used marijuana and cocaine.

Mother testified about an incident where her mother came home and found Father in bed with E.L.C. as follows:

> My mother was staying with me. [E.L.C.] woke up in the middle of the night and came to me and [Father] and said that she had a bad dream. [Father] and I went and tried to put her back to bed, and we both went into the bed with [E.L.C.]. I woke up to go get something to drink, and in that amount of time, my mom happened to wake up and find [Father] at the foot of [E.L.C.'s] bed asleep. We were both there. [Father] hadn't done anything. And my mom freaked out thinking that he could have done something. And [Father]–she tried to assault [Father]. [Father] restrained her, and I got in the crossfire, and she hit me. But, no, [Father] didn't do anything, and it was completely innocent.

Royse City police detective Jaime Torrez testified he investigated a possible sexual assault on August 8, 2018. Initially, Torrez attempted to locate Mother, and he reached her by telephone that afternoon. Mother would not tell Torrez "who the actor was or the perpetrator was," but she said she would tell him later. Mother also said "[Father] didn't do anything." Torrez was present when another officer telephoned Mother and determined her children were at a house in Royse City. When Torrez arrived at the house, he saw E.L.C., her brother, and her grandmother sitting on the front steps of the house. Torrez saw Mother approach on foot. Mother

yelled out, "'You will not say anything, you got that' or something to that effect." Torrez later followed Mother to her house.

At the house, Torrez saw Father and asked him if he would come to the police department for an interview. Father refused but said he would give a written statement "as long as he remained at the house." Mother consented to Torrez entering the house, and Torrez testified he was "immediately hit with a strong odor of urine" upon entering the house. The house was "extremely dirty" with "several piles of dirty clothes on the floor," no sheets on any of the beds, and food left in pans in the sink. In E.L.C.'s room, Torrez saw a towel on the bed and a Sprite bottle on the floor. Torrez asked Mother if E.L.C. slept with sheets on the bed, and Mother answered that E.L.C. "usually uses a towel to cover herself." Torrez also entered C.R.C.'s bedroom, which "was in the exact same condition." In Mother's bedroom, Mother showed Torrez a prescription bottle for Xanax prescribed to Mother's mother. Mother said she and her mother "share the medication." Torrez took some of the pills as samples.

Torrez returned to the hospital and waited for the SANE examination to be completed on E.L.C. However, the examination could not be completed because E.L.C. refused. Because of E.L.C.'s refusal, a CPS case worker took E.L.C. to the Dallas Children's Advocacy Center for an emergency forensic interview. Forensic interviewer Michael Margolis testified he interviewed E.L.C. for "a little over an

hour." Throughout the interview, E.L.C. continued to say "she told me not to tell" and "started getting really upset."

CPS investigator Lauren Butcher testified she was present when police called Mother and Mother refused to tell police where her children were. Butcher and Torrez and Butcher checked files searching for an address where the children might be located, and they found the address and went to the house where E.L.C. and her grandmother were sitting on the steps of the house. Butcher saw Mother arrive at the house and get out of a vehicle that then "took off." Mother approached and said "several times" that "she wanted to talk to [E.L.C.] by herself and that she didn't want her to go to the hospital for a SANE exam." At one point, Mother "started yelling across the yard for [E.L.C.] not to talk or tell us anything." Butcher told Mother she could talk to E.L.C., but "she wasn't going to be able to talk to her alone and attempt to coerce her or change her statements." After hearing this, Mother "wasn't happy."

Butcher drove E.L.C. to the hospital and checked her in to the emergency room. Mother also showed up at the hospital and spoke with Butcher. When she first arrived, Mother "made the comment that she thought [E.L.C.] was lying, and she wanted to just make sure she understood her words before she said something to anyone." Mother was "adamant that she knows she did the right thing, she [didn't] regret taking E.L.C. from the hospital," she knew she did the right thing, she had been abused as a child and had forgiven her abuser, and "she knew that she was

going to forgive [Father] also." Mother said "something probably did happen between [Father] and [E.L.C.]." Mother admitted that Father "told her that he had crushed up the Xanax and given that to her and that her panties were wet." After the removal, Mother took a drug test at the request of some of Butcher's coworkers. Butcher later spoke with Mother, who said the test was "going to be positive for marijuana and probably cocaine."

Mother testified her stepfather sexually abused her when she was five years old, and the abuse "went on for a couple of years." Mother testified she now has "a great relationship" with her stepfather, and he pays Mother's bills and takes care of her financially. Mother occasionally works at her stepfather's moving company. Mother testified she hopes E.L.C. forgives Father "for herself." In response to questioning, Mother clarified that she wants E.L.C. to forgive Father so she can "move on and have a life."

Psychologist Ann-Marie Roberts testified she evaluated Mother in October 2018. Roberts testified Mother "struggles with anxiety" and potentially had narcissistic personality disorder and bipolar II. Roberts testified someone with narcissistic personality disorder "has trouble empathizing with other people or nurturing other people" and has fragile self-esteem. Bipolar II is characterized by moodiness, irritability, and "episodes of depression that cycle with episodes of overactivity and irritability."

Mother's cousin, T.T., testified she was working with the Department to adopt all three of the children and keep them together. T.T. testified she has a plan for schooling the children and providing for their medical needs. T.T. testified she had visits with the children, including overnight visits. T.T. owns a bakery in Las Vegas and lives in a three-bedroom home. T.T. became involved in seeking adoption of the children when she "first found out they were in foster care, they were being placed with [W.C.'s] sister, and then they were put back for whatever reason." T.T. called "different people" until she finally made contact with a CPS caseworker, and T.T. pursued adoption since that first contact. T.T. testified she has employees and her parents to help her prepare to adopt the children. Because G.E.C. is not old enough to be in school, T.T. converted her bakery office into a playroom for G.E.C. In order for T.T. to have more flexibility with her schedule, she has one employee willing to be at the bakery at 8:00 a.m. every day and another employee willing to stay late and close the bakery every night. T.T. testified she is willing to let the children have contact with Mother and W.C., and she is "just trying to get them in a home where they are together and they are loved and they know that they are priority over anything."

Licensed mental health therapist Cari Foote testified she counseled E.L.C. weekly since December 2018. Foote testified E.L.C. is "fairly insecure" because she has not had "stable, safe adults to look out for her on a consistent basis." Foote asked E.L.C. if there was "anything that ever happened in her home where she was

hurt and might have made CPS worry, and she said, yes." As therapy continued, E.L.C. agreed to tell Foote more details about what happened to her. E.L.C. told Foote the following:

> What she said was that she woke up in her – she said what she had to tell me was about [Father]. And she said she woke up in bed, and her bra and nightgown were up. And she gestured to up here. They were up above her breasts. And then – and so she – and she was alone in her bed, and so she pulled them down, and then she looked over and saw that her panties were on the floor and that they were wet, but she saw that a glass had been spilled. It was, like, a glass of water that had been spilled, so she assumed that that's how they got wet.

E.L.C. said Father "brought her medicine," took her panties somewhere, and "then he came back naked." Father "laid on top of [E.L.C.]. He pulled her bra up and her nightgown back up, and then he laid on top of her." Then E.L.C. said "she didn't know what happened," but "when she did know what happened again that he got up and left and that she told her mom."

Foote told E.L.C. that "CPS thinks that [her] mom still has contact with [Father]" and asked if E.L.C. wanted to live with Mother if that was true. E.L.C. said no. When Foote asked E.L.C. about living with T.T., E.L.C. "brightened up, and energy came back in her voice, and she said, yes." E.L.C.'s visits with Mother "differed over time." Before one visit, E.L.C. "mumbled under her breath that [Father] was gross and her mother was stupid." After another visit, a caseworker reported to Foote that E.L.C. "interrogated her mom and confronted her." E.L.C. confirmed to Foote that she asked Mother if she could bring the dogs to the next

visit, and Mother told E.L.C. "she had gotten rid of the dogs and gave [E.L.C.] no explanation and no comfort, and [E.L.C.] was really distraught about that."

CPS supervisor Anne-Marie Jordan testified the goal in this case changed in March 2019 from reunification to "a primary goal of termination and adoption." The reason for the change, Jordan testified, was lack of parental progress and the "numerous phone calls and visitation occurring between" Mother and Father. Jordan testified she did not believe Mother has the ability to be protective of her children or to emotionally and physically support the children. Jordan testified she believed Mother could potentially put the children in "emotional or physical danger in the future." Jordan testified she did not think that Mother "values counseling," and she was concerned about whether Mother would continue to allow E.L.C. to go to counseling.

Regarding Father, Jordan testified Father did not work any services in this case, despite the fact that there was a service plan imposed by the court and made into a court order that set out services for him to do. Although Father was in jail during "a period in this case," he bonded out of jail in "May or June of 2019" but made no effort to perform any services. Father never requested the opportunity to visit G.E.C. and, in fact, never visited G.E.C.

Jordan testified the Department was asking the jury to terminate the parental rights of Mother and Father and appoint the Department as the permanent managing conservator of all three children, with the understanding that the goal was to place

the children with Mother's cousin T.T. Jordan testified she had not seen in any of the documents or exhibits in this case that Mother had "taken responsibility for any of this." Jordan testified she believed it was in the best interest of all three children to terminate Mother's parental rights, and it was in the best interest of G.E.C. to have Father's parental rights terminated.

The jury found by clear and convincing evidence that Mother (1) knowingly placed or knowingly allowed all three children to remain in conditions or surroundings which endangered their physical or emotional well-being and (2) engaged in conduct or knowingly placed all three children with persons who engaged in conduct which endangered their physical or emotional well-being, and termination of Mother's parental rights was in the best interests of all three children.

As for Father, the jury found by clear and convincing evidence that Father (1) knowingly placed or knowingly allowed G.E.C. to remain in conditions or surroundings which endangered his physical or emotional well-being and (2) engaged in conduct or knowingly placed G.E.C. with persons who engaged in conduct which endangered his physical or emotional well-being, and termination of Father's parental rights was in the best interests of G.E.C. In addition, the jury found by clear and convincing evidence that Father failed to comply with the provisions of a court order that specifically established the actions necessary for him to obtain the return of the children. This appeal followed.

In two issues, Mother argues the evidence is legally and factually insufficient to support the jury's findings that she (1) knowingly placed or knowingly allowed all three children to remain in conditions or surroundings which endangered their physical or emotional well-being and (2) engaged in conduct or knowingly placed all three children with persons who engaged in conduct which endangered their physical or emotional well-being. Father groups his first eight issues together and challenges the identical jury findings as to his conduct with respect to G.E.C. Because of the interrelated nature of Mother's and Father's arguments, we address their issues together.

Because the fundamental liberty interest of a parent in the care, custody, and control of his child is one 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 re C.V.L.*, 591 S.W.3d 734, 748 (Tex. App.—Dallas 2019, pet. denied). In parental termination cases, due process requires the petitioner to justify termination by clear and convincing evidence. TEX. FAM. CODE ANN. § 161.001(b); *see In re E.N.C.*, 384 S.W.3d 796, 802 (Tex. 2012) (citing *Santosky v. Kramer*, 455 U.S. 745, 753–54 (1982)). "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." *In re N.G.*, 577 S.W.3d 230, 235 (Tex. 2019) (per curiam)

(quoting TEX. FAM. CODE ANN. § 101.007); *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). "As a matter of logic, a finding that must be based on clear and convincing evidence cannot be viewed on appeal the same as one that may be sustained on a mere preponderance." *In re A.C.*, 560 S.W.3d 624, 630 (Tex. 2018) (quoting *In re C.H.*, 89 S.W.3d 17, 25 (Tex. 2002)). Under both legal and factual sufficiency standards, we (i) consider all the evidence, (ii) defer to the factfinder's credibility determinations, and (iii) determine whether the factfinder could reasonably form a firm belief or conviction that the grounds for termination were proven. *In re N.T.*, 474 S.W.3d at 475; *In re J.F.C.*, 96 S.W.3d 256, 265–66 (Tex. 2002). "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 at 630–31.

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.* at 630–31. We "consider all the evidence, not just that which favors the verdict," and we assume the fact-finder resolved disputed facts in favor of its finding if a reasonable fact-finder could do so. *In re N.T.*, 474 S.W.3d at 475. We

disregard all evidence that a reasonable fact-finder could have disbelieved or found to have been incredible. *Id.*

When reviewing the factual sufficiency of the evidence supporting a termination finding, an appellate court asks whether, in light of the entire record, the evidence is such that a fact-finder could reasonably form a firm conviction about the truth of the State's allegations against the parent. *In re N.T.*, 474 S.W.3d at 475; *In re J.D.B.*, 435 S.W.3d 452, 463 (Tex. App.—Dallas 2014, no pet.). Further, the appellate court must consider whether the disputed evidence is such that a reasonable fact-finder could not have reconciled that disputed evidence in favor of its finding. *Id.* If the disputed evidence is so significant that a fact-finder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient. *Id.* "And in making this determination, 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 at 503 (quoting *In re C.H.*, 89 S.W.3d at 26). In conducting a sufficiency review, we may not weigh a witness's credibility because it depends on appearance and demeanor, and these are within the domain of the trier of fact. *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005). Even when such issues are found in the appellate record, we must defer to the fact finder's reasonable resolutions. *Id.*

"Texas Family Code section 161.001(b) allows for involuntary termination of parental rights if clear and convincing evidence supports that a parent engaged in

one or more of the twenty-one enumerated grounds for termination and that termination is in the best interest of the child." *In re N.G.*, 577 S.W.3d at 232. Here, the trial court terminated Mother's rights under two grounds—sections 161.001(b)(1)(D) and (E)—in addition to finding that termination was in E.L.C.'s best interest.

Under section 161.001(b)(1)(D), parental rights may be terminated if clear and convincing evidence supports a finding 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 a finding 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).

Subsections (D) and (E) both require proof of endangerment. "Endanger" means to expose to loss or injury or to jeopardize a child's emotional or physical health, but it is not necessary that the conduct be directed at the child or that the child actually suffer an injury. *In re J.D.B.*, 435 S.W.3d at 463. The primary distinction between the two subsections is the source of the physical or emotional endangerment to the child. *Id.* Subsection (D) addresses the child's surroundings and environment while subsection (E) addresses parental misconduct. *Id.* Parental conduct, however,

is also relevant to the child's environment under subsection (D). *Id.* That is, "[c]onduct 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)." *Id.* at 464 (quoting *Castaneda v. Tex. Dep't of Protective & Regulatory Servs.*, 148 S.W.3d 509, 522 (Tex. App.—El Paso 2004, pet. denied)). "Inappropriate, abusive, or unlawful conduct by persons who live in the child's home is part of the 'conditions or surroundings' of the child's home under subsection (D)." *Id.* (citing *In re M.R.J.M.*, 280 S.W.3d 494, 502 (Tex. App.—Fort Worth 2009, no pet.) ("A child is endangered when the environment creates a potential for danger that the parent is aware of but disregards.")); s*ee also In re W.S.*, 899 S.W.2d 772, 776 (Tex. App.—Fort Worth 1995, no writ) ("environment" refers not only to the acceptability of the living conditions but also to a parent's conduct in the home).

Ground (E) "refers only to the parent's conduct, as evidenced not only by the parent's acts, but also by the parent's omissions or failures to act." *In re S.K.*, 198 S.W.3d 899, 902 (Tex. App.—Dallas 2006, pet. denied). "Termination under section 161.001(b)(1)(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 K.S.*, No. 05-15-01294-CV, 2016 WL 1613126, at *14 (Tex. App.—Dallas Apr. 21, 2016, pet. denied) (mem. op.) (internal quotations omitted). In determining whether a parent engaged in a course of "endangering" conduct, a trial court may

consider conduct that occurred before and after the child's birth, in the child's presence and outside the child's presence, and before and after removal by the Department. *In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009).

While endangerment often involves physical endangerment, the statute does not require that the conduct be directed at the child or that the child actually suffers injury. *Tex. Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987). Specific danger to the child's well-being may be inferred from the parent's misconduct alone. *Id.* 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 R.W.*, 129 S.W.3d 732, 739 (Tex. App.—Fort Worth 2004, pet. denied). The specific danger to the child's well-being may be inferred from parental misconduct standing alone. *Cervantes-Peterson v. Tex. Dep't of Family & Protective Servs.*, 221 S.W.3d 244, 253 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (en banc). Because the evidence concerning these two statutory grounds for termination is interrelated, we consolidate our examination of it. *In re C.V.L.*, 591 S.W.3d at 750.

Evidence of a parent's drug use, or evidence that another parent allowed a child to be around a parent or other persons using drugs, can support the conclusion that the child's surroundings endanger her physical or emotional well-being under subsection (D) and can qualify as a voluntary, deliberate, and conscious course of conduct endangering the child's well-being under subsection (E). *See In re S.R.*, 452 S.W.3d 351, 361–62 (Tex. App.—Houston [14th Dist.] 2014, pet. denied); *see also*

In re J.T.G., 121 S.W.3d 117, 125–26 (Tex. App.—Fort Worth 2003, no pet.). Continued illegal drug use after a child's removal is conduct that jeopardizes parental rights and may be considered as establishing an endangering course of conduct under subsection (E). *Cervantes-Peterson*, 221 S.W.3d at 253–54. "And where the record contains evidence that a parent engages in drug use during the pendency of a termination suit, when he knows he is at risk of losing his children," such evidence has been found legally sufficient to support a finding of endangerment under subsection (E). *See In re D.D.M.*, No. 01-18-01033-CV, 2019 WL 2939259, at *4 (Tex. App.—Houston [1st Dist.] July 9, 2019, no pet.) (mem. op.).

The aggravated sexual assault of a child in the home is conduct we may infer will endanger the physical and emotional well-being of other children in the home who may discover the abuse or may be abused themselves. *In re R.W.*, 129 S.W.3d 732, 742 (Tex. App.—Fort Worth 2004, pet. denied). Domestic violence, want of self-control and propensity for violence may be considered as evidence of endangerment. *In re C.E.K.*, 214 S.W.3d 492, 497 (Tex. App.—Dallas 2006, no pet.).

If a parent abuses or neglects the other parent or children, that conduct can be used to support a finding of endangerment. *Id.* A child is endangered when the environment creates a potential for danger which the parent is aware of but disregards. *Jordan v. Dossey*, 325 S.W.3d 700, 721 (Tex. App.—Houston [1st Dist.] 2010, pet. denied). Without question, sexual abuse constitutes conduct that

endangers the children's physical and emotional well-being. *In re A.B.*, 125 S.W.3d 769, 775 (Tex. App.—Texarkana 2003, pet. denied). Unsanitary conditions can qualify as surroundings that endanger a child. *In re A.T.*, 406 S.W.3d 365, 371 (Tex. App.—Dallas 2013, pet. denied).

Here, the record shows Mother smoked marijuana every day. After the removal, Mother took a drug test and told Butcher the test was "going to be positive for marijuana and probably cocaine." At trial, Mother admitted she "Drove [her] children under the influence of marijuana."

Mother sustained broken bones fifteen times over five years from fighting with W.C., but Mother nevertheless claimed the children "were either not there or in their rooms" when this domestic violence occurred. Mother admitted the children were present when she and W.C. pulled guns on each other during a fight in February 2017.

In January 2018, Mother's mother found Father in E.L.C.'s bed, and a fight ensued, but Mother testified "it was completely innocent." When E.L.C. told Mother that Father had given her a pill and "rubbed" her, Mother took E.L.C. to the doctor and the emergency room. However, when it appeared the police and CPS might become involved, Mother abandoned her attempt to seek treatment for E.L.C. and fled because she "didn't want to lose her children." Mother took the children to her sister's house and would not tell police where the children were. When Mother came to the house and saw police, Mother yelled across the yard for E.L.C. not to talk or

tell CPS anything. Apparently obeying Mother, E.L.C. refused to cooperate with the SANE exam and kept saying "she told me not to tell" during a forensic interview.

Torrez testified he was "immediately hit with a strong odor of urine" upon entering Mother's house. The house was "extremely dirty" with "several piles of dirty clothes on the floor," no sheets on any of the beds, and food left in pans in the sink. In E.L.C.'s room, Torrez saw a towel on the bed, and Mother said E.L.C. "usually uses a towel to cover herself." Torrez also entered C.R.C.'s bedroom, which "was in the exact same condition." Despite E.L.C.'s outcry, Father was still at the house. Over the months that followed, from January until June 2019, Mother spoke to Father "over a hundred times."

We conclude the evidence was legally and factually sufficient to show both that Mother placed E.L.C. in surroundings that endangered her physical or emotional well-being under subsection (D) and qualified as a voluntary, deliberate, and conscious course of conduct endangering E.L.C.'s well-being under subsection (E). *See In re A.C.*, 560 S.W.3d at 630–31 (legal sufficiency); *In re N.T.*, 474 S.W.3d at 475 (factual sufficiency); *In re S.R.*, 452 S.W.3d at 361–62 (drug use); *In re R.W.*, 129 S.W.3d at 742 (sexual abuse in the home); *In re C.E.K.*, 214 S.W.3d at 497 (domestic abuse); *In re A.T.*, 406 S.W.3d at 371(unsanitary conditions). We overrule Mother's first and second issues.

Father contributed to the unsanitary conditions in the home. *See In re A.T.*, 406 S.W.3d at 371. The record supports a finding that Father used drugs, was in jail

for his sexual assault of E.L.C. in the home, and did not work any services in this case, despite the fact that there was a service plan imposed by the court and made into a court order that set out services for him to do. Although Father was in jail during "a period in this case," he bonded out of jail in "May or June of 2019" but made no effort to perform any services. All of these factors support a finding of endangerment. *See In re C.J.F.*, 134 S.W.3d 343, 353 (Tex. App.—Amarillo 2003, no pet.) (incarceration is a factor properly considered on the issue of endangering); *Robinson v. Tex. Dep't of Protective & Regulatory Servs.*, 89 S.W.3d 679, 686–87 (Tex. App.—Houston [1st Dist.] 2002, no pet.) (service plan violation also a factor). Father never requested the opportunity to visit G.E.C. and, in fact, never visited G.E.C. Moreover, the record supports a conclusion that Father sexually assaulted E.L.C. in the home where the family lived. The aggravated sexual assault of a child in the home is conduct we may infer will endanger the physical and emotional well-being of other children in the home who may discover the abuse or may be abused themselves. *In re R.W.*, 129 S.W.3d at 742. Under these circumstances, we conclude the evidence is legally and factually sufficient to show Father placed G.E.C. in surroundings that endangered his physical or emotional well-being under subsection (D) and qualified as a voluntary, deliberate, and conscious course of conduct endangering G.E.C.'s well-being under subsection (E). *See In re A.C.*, 560 S.W.3d

at 630–31; *In re N.T.*, 474 S.W.3d at 475. We overrule Father's first, second, third, fourth, fifth, sixth, seventh, and eighth issues.[2]

Because we conclude that the evidence is both legally and factually sufficient to support the trial court's finding under sections 161.001(b)(1)(D) and (E), and because a finding as to any one of the acts or omissions enumerated in section 161.001(b)(1) is sufficient to support termination, we need not address Father's challenge to the jury's findings under section 161.001(b)(1)(O).[3] *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003) (only one predicate finding under section 161.001(b)(1) necessary to support judgment of termination when there is also finding that termination is in child's best interest); s*ee Walker v. Tex. Dep't of Family & Protective Servs.*, 312 S.W.3d 608, 618 (Tex. App.—Houston [1st 113sw3dDist.] 2009, pet. denied). Similarly, because Father's tenth and eleventh issues address the specificity of the trial court's order and reasonable efforts to reunify under section 161.001(b)(1)(O), we do not address these issues. *See In re A.V.*, 113 S.W.3d at 362.

Finally, we address Father's ninth issue in which he argues the trial court violated his due process rights by holding numerous hearings and the trial in his

---

[2] We note that, in his seventh and eighth issues, Father purports to contest the sufficiency of the evidence to support the jury's finding that termination of his parental rights to G.E.C. is in G.E.C.'s best interest. However, nowhere in his brief does Father devote even a single sentence to developing this argument. The failure to adequately brief an issue, either by failing to specifically argue and analyze one's position or provide authorities and record citations, waives any error on appeal. *In re B.A.B.*, 124 S.W.3d 417, 420 (Tex. App.—Dallas 2004, no pet.).

[3] Father argues his first through eighth issues together under the heading "GROUNDS 1-8. 161.001(b)(1)(D), (b)(1)(E)," and Father does not address section 161.001(b)(1)(O) in his argument. For this additional reason, we do not further address section 161.001(b)(1)(O) here.

absence without adequate notice to him. We conclude Father failed to preserve his constitutional claim. We have reviewed the record, and Father did not raise any constitutional ground or cite any constitutional authority at trial or in any pretrial or post-judgment motion. Constitutional claims must be raised below or they are not preserved for appellate review. *In re L.M.I.*, 119 S.W.3d 707, 711 (Tex. 2003); *Tex. Dep't of Protective & Regulatory Servs. v. Sherry*, 46 S.W.3d 857, 861 (Tex. 2001). Under the rules of appellate procedure, a party must present to the trial court a timely request, motion, or objection, state the specific grounds therefor, and obtain a ruling. TEX. R. APP. P. 33.1.

In a termination case, "adhering to our preservation rules isn't a mere technical nicety; the interests at stake are too important to relax rules that serve a critical purpose." *In re L.M.I.*, 119 S.W.3d at 708. And "allowing appellate review of unpreserved error would undermine the Legislature's intent that cases terminating parental rights be expeditiously resolved, thus '[promoting] the child's interest in a final decision and thus placement in a safe and stable home.'" *Id.* at 711 (quoting *In re B.L.D. & B.R.D.*, 113 S.W.3d 340, 353 (Tex. 2003) (quoting *In re J.F.C.*, 96 S.W.3d 256, 304 (Tex.2002))). Accordingly, we conclude the constitutional arguments Father raises here were not preserved below. *Id.*; *In re Baby Boy R.*, 191 S.W.3d 916, 921–22 (Tex. App.—Dallas 2006, pet. denied). We overrule Father's ninth issue.

We affirm the trial court's judgment.

/John G. Browning/
JOHN G. BROWNING
JUSTICE

200373F.P05

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN THE INTEREST OF E.L.C., C.R.C., AND G.E.C., CHILDREN	On Appeal from the 382nd Judicial District Court, Rockwall County, Texas
No. 05-20-00373-CV	Trial Court Cause No. 1-18-0465. Opinion delivered by Justice Browning. Justices Molberg and Carlyle participating.

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

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered September 11, 2020