

Opinion issued November 10, 2017



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-17-00327-CV

NO. 01-17-00328-CV

NO. 01-17-00329-CV

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**IN THE INTEREST OF K.P.M., A CHILD;  
IN THE INTEREST OF M.K.F. & S.M.F., CHILDREN; AND  
IN THE INTEREST OF S.L.F., A.D.T. & A.A.T., CHILDREN**

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**On Appeal from the 310th District Court  
Harris County, Texas  
Trial Court Case Nos. 2016-16344, 2010-26768, 2015-43569**

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**MEMORANDUM OPINION**

S.M.F. is the mother of six children. In 2016, while pregnant with the youngest child, S.M.F. (“Mother”) tested positive for ingestion of marijuana and exposure to marijuana, methamphetamine, and cocaine. The Department of Family

and Protective Services was named temporary managing conservator of Mother's children, the children were placed in foster homes, and Mother began receiving Department services under court order. When Mother's sixth child was born, he was placed under the Department's managing conservatorship and in a foster home as well. Mother submitted to drug testing before and after the youngest child was born. She tested positive repeatedly. The Department sought termination of Mother's parental rights as to all six children.

The trial court terminated Mother's parental rights under multiple statutory bases and found that termination was in the six children's best interest. Mother challenges the sufficiency of the evidence to support each predicate finding and the best-interest determinations.

We affirm.

### **Background**

In July 2015, the Department received two referrals and began investigating Mother's care of her children. The first alleged that Mother was not providing needed medical care for her five-year-old daughter, S.L.F. ("Selena"). The referral also alleged that Mother would leave Selena at "someone else's house for days at a time" and at school after she should have been picked up. It further alleged that Selena "smells like marijuana smoke all the time." The second referral alleged that Mother was homeless, had a physical altercation with a woman with whom she and

Selena were staying, and, during that altercation, knocked Selena to the ground, causing slight injuries.

The Department determined that Mother and Selena were living in hotels and with acquaintances. Mother stated that she was mentally unstable and needed assistance with Selena. Mother submitted to a drug test, which returned a positive result for methamphetamine, cocaine, and marijuana.

The Department determined that Mother was pregnant at the time of the positive drug-test result. It also determined that Mother had four other children, whom she had placed with two different relatives in recent months. Nine months earlier, she sent twin seven-year-old girls, S.M.F. (“Sadie”) and M.K.F. (“Macie”), to live with their father. The other children had different fathers and remained with Mother. She later sent her two boys, four-year-old A.D.T. (“Andrew”) and one-year-old A.A.T. (“Adam”), to live with their grandmother. The Department requested that the twins’ father and the boys’ grandmother submit to drug testing. He tested positive for cocaine and marijuana. She refused drug testing.

The Department filed petitions to be named temporary managing conservator of all five children: Sadie, Macie, Selena, Andrew, and Adam. Both petitions were supported by an affidavit from a Department caseworker, J. McNulty. She averred that the Department had received two other referrals for Mother in the preceding five years. In 2010, there was a referral that Mother was

negligently supervising Sadie and Macie and was smoking marijuana and drinking cough syrup while pregnant with Selena. That referral had been ruled “unable to determine.” There was another referral in 2012 that Mother was smoking marijuana and using cocaine and other drugs in front of her children, inadequately supervising her children, and reportedly working as a prostitute. That referral had been ruled “unable to complete” because Mother moved.

The Department asserted that Mother’s drug use presented an immediate danger to the children’s physical health and safety. The trial court granted the petitions in August 2015 and named the Department as the temporary managing conservator of all the children.

The Department established a Family Service Plan for Mother. The Plan listed as “concerns” that Mother has tested positive for drugs, “chooses to use drugs instead of adequately providing care for her children,” and “has mental health concerns.” One of the stated Plan goals was for Mother to “demonstrate an ability to stay sober/drug free and in recovery.” The Plan required Mother to successfully complete parenting classes, maintain a stable income, undergo a psychiatric and psychological evaluation, complete a substance abuse assessment, and follow any drug-treatment recommendations, including in-patient treatment. The trial court ordered Mother to comply with the Plan and admonished that failure

to do so could result in termination of her parental rights. Mother signed the Plan with the admonishment.

Mother submitted to three drug tests while pregnant with her sixth child, K.P.M. (“Kyler”). After he was born, she entered into an in-patient drug treatment facility and, one month after her release, was drug tested again. The drug-test results were admitted into evidence at trial. Bruce Jeffries, whose expertise in drug-test interpretation was stipulated to by all parties, explained the test results.

Jeffries testified that Mother was drug tested multiple times using urinalysis tests. Mother’s first urinalysis test was in July 2015, while she was pregnant with Kyler. She tested positive for marijuana ingestion. All subsequent urinalysis tests returned negative results.

Jeffries testified that Mother was drug tested multiple times using hair-follicle tests as well. According to Jeffries, a hair-follicle drug test evaluates the interior and exterior of a person’s hair strand. The interior of the hair is analyzed to determine whether the individual has ingested drugs in the last 90 days. The exterior of the hair is analyzed to determine whether the individual has had environmental exposure to drugs. Mother’s first hair-follicle test was in July 2015. She tested positive for ingestion of marijuana and for exposure to methamphetamine, cocaine, and marijuana. More than 90 days later, while still pregnant with Kyler, she tested positive for ingestion of cocaine. More tests were

conducted after another 90 days had passed. Mother tested positive for cocaine use again. That last positive test result was nine months after Kyler was born and one month after Mother completed in-patient drug treatment.

These hair-follicle drug-test results are summarized below:

<u>Date</u>	<u>Positive Test Results</u>
7-28-15	Ingestion: marijuana Exposure: marijuana, methamphetamine, and cocaine
9-22-15	Ingestion: marijuana Exposure: marijuana and cocaine
1-19-16	Ingestion: cocaine  <i>[Kyler born]</i>
3-14-16	<i>All negative results</i>
5-10-16	Exposure: marijuana
7-12-16	Exposure: marijuana
8-23-16	Exposure: marijuana  <i>[in-patient treatment]</i>
11-29-16	Exposure: marijuana Ingestion: cocaine
2-18-17	<i>All negative results</i>

Jeffries testified that these test results indicated that Mother had used marijuana and cocaine while pregnant with Kyler and had used cocaine at least once more after he was born. Additionally, Mother had been in environments with

heavy exposure to marijuana before Kyler's birth and again for several consecutive months after he was born. Her hair-follicle exposure test results indicated levels of marijuana exposure that he described as "saturation" and "very extraordinary high." According to Jeffries, such levels would not be reached by socializing in open areas where someone is smoking marijuana, such as at an outdoor spectator event. Instead, it required being "in a controlled environment" or a "confined space" where marijuana is being smoked or grown.

The Department caseworker, R. Canfield, explained the Department's permanency goals for the children and why those goals changed during the pendency of the suits. Initially, the permanency goal was family reunification. It remained so for several months because Mother was showing progress and completing many of her Plan requirements, including maintaining steady employment and housing, attending required classes, and completing in-patient drug treatment. The permanency goal changed in November 2016 because Mother again tested positive for cocaine ingestion. This was one month after she completed in-patient drug treatment.

Canfield agreed that there was no other form of assistance that the Department could offer Mother to address her drug addiction that had not already been offered without success. According to Canfield, Mother's continued drug use violated the requirements of the court-ordered Plan and inhibited her ability to

adequately care for her children or provide them a safe living environment. The Department sought termination of Mother's parental rights.

Canfield testified that none of the children were in adoptive homes at the time of trial. The Department was still providing services to the twins' father and had not ruled out allowing the twins to be returned to his care in the future. The Department was conducting a search for potential permanent adoptive homes for the four younger children. According to Canfield, the Department believed that permanent adoptive homes would be located for the four younger children and, if necessary, for the twins as well. None of the children had developmental delays or emotional problems that might hinder placement.

Lisa McCartney, who is a retired Child Protective Services program director with 30 years' experience, testified as an expert. McCartney acknowledged that Mother completed many Plan requirements but testified that her failure to remain drug-free was an overriding consideration: "So it really doesn't matter that she did all those things if she can't maintain sobriety . . . . She obviously did not successfully maintain sobriety or she would not have had a positive test in November [2016]."

McCartney testified that Mother was not addressing her drug addiction or taking appropriate steps to ensure long-term sobriety. Instead, she was continuing to place herself in environments with high levels of drug exposure and continuing



to ingest drugs. Moreover, Mother's continued drug use violated the requirements of her court-ordered Plan. And it endangered her children by diminishing her ability to provide necessary care and stability.

McCartney opined that appropriate, permanent homes could be found for the children and that termination of Mother's parental rights was in the children's best interest because it would remove them from "a life of instability and exposure to drugs" and allow for adoption into a permanent, stable home.

In sum, both Canfield and McCartney testified that Mother's drug use was detrimental to the children because it impaired Mother's ability to meet her children's needs, that Mother's continued drug use violated the trial court's order, and that termination of Mother's parental rights was in her children's best interest.

Mother testified. She described the July 2015 events that led to Selena being removed from her care. She said that law enforcement investigated an altercation she had with the woman who was providing her and Selena a place to stay. She described what she told the police that day when they arrived: "I told them I didn't have nowhere to do with my daughter, and I didn't want to just be out on the street with my daughter." She and Selena were taken to the Department for assistance, which led to the initial positive drug-test result.

She testified about her past drug use and multiple positive drug-test results. She admitted to using drugs in July 2015 but argued that her drug use did not

negatively impact her children because they were not with her at the time. While there was evidence that four of her children were living with other relatives in mid-2015, there also was evidence that Mother was pregnant with Kyler at the time she admitted to using drugs and that Selena was living with her in hotels and other people's homes during that same period of admitted drug use.

Mother testified that her date of sobriety was August 1, 2015, which was three days after her initial positive drug test. She denied ingesting cocaine or marijuana after that date. To the extent her drug tests returned positive results after that date, she testified that it was from "exposure" only and that the levels of exposure consistently dropped over the months that followed. Mother's testimony was contradicted by Jeffries's testimony and by the drug-test results, which indicated that Mother had tested positive for cocaine "ingestion" in January 2016 while pregnant with Kyler and again—more than 90 days later—in November 2016 after she had completed in-patient drug treatment. These positive "ingestion" test results were in addition to the "exposure" test results Mother admitted to receiving.

Under the terms of the trial court's orders that were in place while her case was pending, Mother was denied any visitation with her children while testing positive for drug use or exposure. Because of the multiple positive drug-test results, on the date of trial, Mother had not seen her children for "six or more

months.” This was in addition to the several months that Mother had relinquished care of four children to relatives before the Department’s involvement.

The trial court determined that clear and convincing evidence supported termination of Mother’s parental rights to Sadie, Macie, Selena, Andrew, and Adam under Subsections D (endangering conditions), E (endangering conduct), N (constructive abandonment), O (failure to comply with court order), and P (use of controlled substance in endangering manner after completing substance abuse treatment program) of Section 161.001(b)(1) and that termination was in the best interest of those children under Section 161.001(b)(2).<sup>1</sup> *See* TEX. FAM. CODE § 161.001(b).

The termination proceeding for Kyler was held the following week. Much of the evidence overlapped, with additional evidence being submitted that Kyler was one year old at the time of trial, was healthy and thriving in his non-adoptive foster placement, and had only had two or three visits with Mother because she had been

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<sup>1</sup> There are four fathers of Mother’s children. Sadie and Macie share a father. Andrew and Adam share a father. Selena has a separate father. And Kyler has a separate father. Plans were created for the four fathers of the children.

The parental rights of Sadie and Macie’s father were not terminated; he continued to receive Department services through the trial date. The parental rights of Selena’s alleged father, as well as her “unknown” father, were terminated. The parental rights of Andrew and Adam’s father were terminated as well. Kyler’s father died during the pendency of the suit.

None of the fathers are parties to this appeal; therefore, their cases are discussed only as necessary to resolve Mother’s appeal.

denied visitation during all periods of positive drug-test results. Canfield agreed that Mother was “essentially a stranger” to Kyler.

Kyler’s foster parent testified that she had over 34 years’ experience fostering 75 children, received training to recognize symptoms of drug withdrawal in infants, and witnessed such symptoms in Kyler during the first months he was in the foster parent’s care. Canfield testified that Kyler had not been tested for the presence of drugs in his system at birth; therefore, there were no test results to confirm the presence of drugs in his system.

McCartney testified that Mother had “at least four referrals regarding homelessness, violence, being under the influence while she is with her children, placing them with others, dirty homes, neglectful supervision, and drug use.” She testified that termination was in Kyler’s best interest because Mother was not addressing her drug addiction and had not demonstrated an ability to stay drug-free or to provide a safe, stable home for him.

Canfield testified that the Department was conducting home studies on potential permanent placements for Kyler, including an adult, paternal half-sister. Mother did not testify.

The trial court determined that clear and convincing evidence supported termination of Mother’s parental rights to Kyler under Subsections D (endangering conditions), E (endangering conduct), N (constructive abandonment), O (failure to

comply with court order), and P (use of controlled substance in endangering manner after completing substance abuse treatment program) of Section 161.001(b)(1), as well as Subsection M (previous termination of parental rights as to other children), and that termination was in the best interest of Kyler under Section 161.001(b)(2). *See id.*

Mother appeals the termination of her parental rights to all six children, challenging all predicate findings and the best-interest findings.

### **Sufficiency of Evidence on Predicate Findings**

Mother's parental rights were terminated under multiple Section 161.001 subsections. She challenges the evidence on each predicate.

#### **A. Standard of review**

A parent's rights to the "companionship, care, custody, and management" of his or her children are constitutional interests "far more precious than any property right." *Santosky v. Kramer*, 455 U.S. 745, 758–59, 102 S. Ct. 1388, 1397 (1982); *see In re M.S.*, 115 S.W.3d 534, 547 (Tex. 2003). A termination decree is final, irrevocable, and permanently divests the parent of all legal rights, privileges, duties, and powers with respect to the parent-child relationship except for the child's right to inherit. *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985). We strictly scrutinize termination proceedings and strictly construe the involuntary termination statutes in favor of the parent. *Id.* However, "the rights of natural parents are not

absolute,” and the “rights of parenthood are accorded only to those fit to accept the accompanying responsibilities.” *In re A.V.*, 113 S.W.3d 355, 361 (Tex. 2003). Recognizing that a parent may forfeit her parental rights by her acts or omissions, the primary focus of a termination suit is protection of the child’s best interests. *Id.*

The burden of proof in termination cases is clear and convincing evidence. *In re J.F.C.*, 96 S.W.3d 256, 263 (Tex. 2002); *see* TEX. FAM. CODE § 161.001(b). “‘Clear and convincing evidence’ means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.” TEX. FAM. CODE § 101.007. This is an intermediate standard that falls between “preponderance of the evidence” used in ordinary civil proceedings and “reasonable doubt” used in criminal proceedings. *State v. Addington*, 588 S.W.2d 569, 570 (Tex. 1979) (per curiam).

When the legal sufficiency of the evidence supporting the termination of parental rights is challenged, the reviewing court looks at all the evidence in the light most favorable to the termination finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that the finding was true. *In re J.O.A.*, 283 S.W.3d 336, 344 (Tex. 2009); *In re J.F.C.*, 96 S.W.3d at 266. The court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so. *In re J.O.A.*, 283 S.W.3d at 344; *In re J.F.C.*, 96 S.W.3d at 266. It should disregard all evidence that a reasonable factfinder

could have disbelieved or found to be incredible. *In re J.O.A.*, 283 S.W.3d at 344; *In re J.F.C.*, 96 S.W.3d at 266. If, after conducting a legal sufficiency review of the record evidence, the court determines that no reasonable factfinder could have formed a firm belief or conviction that the matter to be proved was true, the court must conclude that the evidence on that matter is legally insufficient. *In re J.O.A.*, 283 S.W.3d at 344–45; *In re J.F.C.*, 96 S.W.3d at 266.

Only when the factual sufficiency of the evidence is challenged does the reviewing court review disputed or conflicting evidence. *In re J.O.A.*, 283 S.W.3d at 345. The evidence is factually insufficient in a parental rights termination case if, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction. *In re J.O.A.*, 283 S.W.3d at 345; *In re J.F.C.*, 96 S.W.3d at 266. The court of appeals should “explain in its opinion ‘why it has concluded that a reasonable factfinder could not have credited disputed evidence in favor of the finding.’” *In re J.O.A.*, 283 S.W.3d at 345 (quoting *In re J.F.C.*, 96 S.W.3d at 267).

A single predicate finding under Section 161.001(b)(1) of the Family Code is sufficient to support a judgment of termination when there is also a finding that termination is in the child’s best interest. *In re A.V.*, 113 S.W.3d at 362 (affirming termination decree based on one predicate without reaching second predicate found

by factfinder and challenged by appellant). Thus, if multiple predicate grounds are found by the trial court, we will affirm on any one ground because only one is necessary for termination of parental rights. *In re T.G.R.-M.*, 404 S.W.3d 7, 13 (Tex. App.—Houston [1st Dist.] 2013, no pet.).

## **B. Termination under predicate Subsection O**

We begin by considering whether there is legally and factually sufficient evidence to terminate Mother’s parental rights under Subsection O.

An individual’s parental rights may be terminated under Subsection O if (1) the Department has been the child’s temporary managing conservator for at least nine months, (2) the Department took custody of the child as a result of an emergency removal for child abuse or neglect, (3) a court issued an order establishing the actions necessary for the parent to obtain the return of the child, and (4) the parent did not comply with the court order. TEX. FAM. CODE § 161.001(b)(1)(O); *In re S.M.R.*, 434 S.W.3d 576, 582 (Tex. 2014); *cf. In re E.C.R.*, 402 S.W.3d 239, 246–48 (Tex. 2013) (holding that “removed for abuse or neglect” requirement is met if parent has “endangered her child’s physical health or safety” by placing the child at risk for abuse or neglect).

The trial court ordered Mother to comply with her Department Family Service Plan. One of the stated goals of the Plan was for Mother to “demonstrate an ability to stay sober/drug free and in recovery.” To achieve that goal, the Plan



required Mother to complete specific tasks, including successfully complete parenting classes, maintain a stable income, undergo a psychiatric and psychological evaluation, complete a substance-abuse assessment, and follow all post-assessment recommendations, including in-patient treatment and substance-abuse therapy.

There was documentary and expert evidence that Mother failed multiple drug tests between July and November 2016, including while pregnant and after drug treatment. There were positive test results for cocaine ingestion in January 2016 and November 2016. According to Jeffries, these two positive results would not have been for the same incident of cocaine use because the tests were more than 90 days apart. These test results directly contradicted Mother's assertions that she stopped using drugs in August 2015. They also contradicted her testimony that all post-August 2016 positive test results were from "exposure only."

We cannot conclude that the evidence is legally or factually insufficient to support a determination that Mother ingested and was environmentally exposed to drugs after the trial court ordered her to comply with her Plan. *See In re J.O.A.*, 283 S.W.3d at 344–45; *In re J.F.C.*, 96 S.W.3d at 266–67. Instead, there is legally and factually sufficient evidence to support a firm belief or conviction that Mother failed to comply with the court-ordered Plan due to her multiple failed drug tests. *See In re C.M.C.*, No. 14-12-00186-CV, 2012 WL 3871359, at \*5 (Tex. App.—

Houston [14th Dist.] Aug. 30, 2012, pet. denied) (mem. op. on reh'g) (concluding evidence was legally and factually sufficient to terminate based on caseworker's testimony regarding parent's failure to comply with family service plan). Therefore, there is legally and factually sufficient evidence to support termination as to all six children under Subsection O, if in the children's best interest.

Before addressing the best-interest findings, we note that Mother's parental rights were also terminated under multiple other Section 161.001 subsections, including Subsections D (endangering conditions), E (endangering conduct), N (constructive abandonment), P (use of controlled substance in endangering manner after completing substance abuse treatment program) and, for Kyler, M (previous termination of parental rights under Subsections D or E). TEX. FAM. CODE § 161.001(b)(1). While only one basis for termination must be proven, we note that there was ample evidence that Mother used cocaine after completing in-patient drug treatment, which would support termination under Subsection P for all six children as well.<sup>2</sup>

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<sup>2</sup> Section 161.001(b)(1)(P) provides for termination of the parent-child relationship based on a finding by clear and convincing evidence that the parent used a controlled substance in a manner that endangered the health or safety of the child, and either failed to complete a court-ordered substance abuse treatment program or, after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance. TEX. FAM. CODE § 161.001(b)(1)(P).

We overrule Mother’s issue challenging the predicate Subsection O finding as to all six children. We turn now to her issue challenging the best-interest findings.

### **Best Interest of the Children**

In addition to a predicate violation, the Department must establish by clear and convincing evidence that termination is in the best interest of the children. TEX. FAM. CODE § 161.001(b)(2). Mother challenges the trial court’s best-interest findings on evidentiary-sufficiency grounds.

#### **A. Standard of review**

There is a presumption that the best interest of the child will be served by preserving the parent-child relationship. *In re J.F.C.*, 96 S.W.3d at 294; *see* TEX. FAM. CODE § 153.131(b). Because of the presumption that maintaining the parent-child relationship is in the best interest of the child and the due process implications of terminating a parent’s rights without clear and convincing evidence that termination is in the child’s best interest, “the best interest standard does not permit termination merely because a child might be better off living elsewhere. Termination should not be used to merely reallocate children to better and more prosperous parents.” *In re W.C.*, 98 S.W.3d 753, 758 (Tex. App.—Fort Worth 2003, no pet.); *see In re E.N.C.*, 384 S.W.3d 796, 809 (Tex. 2012).

The factfinder may consider a number of factors to determine the best interest of the child, including the desires of the child, the present and future physical and emotional needs of the child, the present and future emotional and physical danger to the child, the parental abilities of the people seeking custody, programs available to assist those people in promoting the best interest of the child, plans for the child by those people or by the agency seeking custody, the stability of the home or proposed placement, the acts or omissions of the parent that may indicate that the existing parent-child relationship is not appropriate, and any excuse for the acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976).

In some cases, undisputed evidence of only one factor may be sufficient to support a finding that termination is in the best interest of the child; in other cases, there could be “more complex facts in which paltry evidence relevant to each consideration mentioned in *Holley* would not suffice” to support termination. *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). Our best-interest analysis is not limited to these *Holley* factors; other factors may be considered. *Id.*; *Holley*, 544 S.W.2d 372.

**B. There is sufficient evidence to support best-interest findings**

Mother discusses each *Holley* factor in her brief but only argues that one factor—the desires of the children—weighs against termination. She cites evidence that the five older children missed her and were disappointed when she was denied

visitation with them due to failed drug tests. Mother concedes that evidence of her continued drug use strongly weighed in favor of termination of her parental rights, but she argues that evidence relevant to many *Holley* factors was too “scant” to support a determination. She contends that, on balance, and due to “the paucity of facts found in this record,” “no rational factfinder could form a firm belief or conviction that terminating [her] parental rights was in her children’s best interest.”

The evidence supports that the older children were “sad” that they were not allowed to visit with Mother during the pendency of the suit because of her repeated failed drug tests. To the extent the evidence suggests that the children’s views supported the first *Holley* factor in Mother’s favor, that evidence must be considered in combination with all other record evidence, including Mother’s demonstrated inability to refrain from drug exposure and drug use. *See Holley*, 544 S.W.2d at 371–72.

Parental drug abuse reflects poor judgment and may be considered in determining a child’s best interest. *In re M.R.*, 243 S.W.3d 807, 820 (Tex. App.—Fort Worth 2007, no pet.); *see* TEX. FAM. CODE § 263.307(b)(8) (stating courts may consider history of substance abuse in evaluating whether parent is willing and able to provide child with safe environment); *see In re J.M.*, No. 01-14-00826-CV, 2015 WL 1020316, at \*7 (Tex. App.—Houston [1st Dist.] Mar. 5, 2015, no

pet.) (mem. op.) (stating that current and past poor judgment demonstrates inability to provide needed care for children).

Mother tested positive for marijuana ingestion while pregnant with Kyler. She later tested positive for cocaine ingestion while still pregnant with Kyler. She tested negative for both substances immediately after Kyler was born but, more than 90 days later, she again tested positive for cocaine ingestion. McCartney testified that Mother had demonstrated an inability to address her drug addiction, to refrain from illegal drug use, or to understand that a home environment with drug use is dangerous for young children.

There is evidence that Mother continued to use drugs after being advised that the trial court would prohibit visitation with the children if Mother returned positive drug-test results. When she again tested positive, visitation was canceled and more than six months had passed since she last visited Kyler.

McCartney testified that a person's inability to refrain from illegal drug use impairs the person's ability to adequately parent children or meet their needs. *See In re J.M.*, 2015 WL 1020316, at \*7 (recognizing that parent's drug use is indicative of instability in home environment). Further, socializing in drug-containing environments, such that hair-follicle testing reveals exposure to high levels of drugs, hinders a person's ability to maintain sobriety to adequately meet

children's needs. She testified that it is detrimental to children's well-being and best interest to be raised in a drug environment.

Canfield and McCartney testified that termination was in all of the children's best interest because Mother failed to demonstrate an ability to refrain from drug use, living with Mother could expose the children to a life of instability and to drug exposure, the foster homes were providing for the children's needs adequately, and the two oldest children still had the possibility of being reunited with their father while the four youngest children were expected to be successfully adopted.

From this evidence, the trial court could have determined that Mother was likely to continue to use drugs and expose her children to drugs in the future. *See In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio 2013, pet. denied) (recognizing that trial court may measure parent's future conduct by parent's past conduct). It further could have determined that Mother's actions indicate that a parent-child relationship is not appropriate and that Mother would not be able to provide for the children's future physical and emotional needs. *See Holley*, 544 S.W.2d at 371–72 (discussing factors).

Mother maintained that she had not used drugs since her initial positive test result in July 2015. She attributed all subsequent positive test results to "exposure" only. But that testimony is incompatible with other evidence concerning her drug-

test results. Mother tested positive for cocaine use ten months apart, including after drug treatment.

We conclude that there is legally and factually sufficient evidence to support a firm belief or conviction that Mother would continue to use cocaine or other drugs and would not be able to provide a drug-free, suitable home for the children. The trial court did not err by concluding that termination of Mother's parental rights was in each of the six children's best interest.

We overrule Mother's issue challenging the best-interest findings.

### **Conservatorship**

Mother also contends that the trial court erred by naming the Department the managing conservator of the children and by failing to name her as possessory conservator. We have concluded that legally and factually sufficient evidence supports terminating Mother's parental rights. This disqualifies her as a conservator of her children. *See In re C.M.C.*, 2012 WL 3871359, at \*8 (holding that "appellant is not entitled to be appointed conservator because we affirm the trial court's termination of appellant's parental rights"). Thus, we overrule Mother's final issue.



## **Conclusion**

Having concluded that the evidence is legally and factually sufficient to affirm the trial court's ruling, we overrule Mother's challenges to the termination order and affirm.

Harvey Brown  
Justice

Panel consists of Justices Keyes, Brown, and Lloyd.