Opinion issued April 26, 2018

In The

Court of Appeals

For The

First District of Texas

NO. 01-17-00980-CV

NO. 01-17-00981-CV

IN THE INTEREST OF M.M.M.

IN THE INTEREST OF J.A.M.

On Appeal from the 314th District Court
Harris County, Texas
Trial Court Case Nos. 2016-05772J & 2016-03351J

MEMORANDUM OPINION

In these two appeals, T.M. ("Mother") and V.M. ("Father") challenge the final judgments rendered by the trial court terminating the parent-child relationship between Mother and Father and their two children, four-year-old J.A.M. and one-

year-old M.M.M.[1] Mother raises two identical issues in each appeal. She challenges the legal and factual sufficiency of the evidence to support the trial court's predicate findings supporting termination and the trial court's findings that termination of the parent-child relationship was in the children's best interest. Father raises one issue in each appeal. He challenges the factual sufficiency of the evidence supporting the best-interest findings.

We affirm in each appeal.

Background

On June 2, 2016, the Department of Family and Protective Resources ("the Department") filed suit, requesting the trial court to issue temporary orders appointing the Department as the temporary sole managing conservator of then-three-year old J.A.M. If family reunification could not be achieved, the Department sought to terminate Mother's and Father's parental rights to J.A.M. The Department offered the affidavit of CPS Investigative Caseworker D. Inyangala to support its petition.[2]

In her affidavit, Inyangala testified that, on March 16, 2016, the Department received a referral, alleging "negligent supervision" of J.A.M. by Mother.

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[1] The case involving M.M.M. bears trial court cause number 2016-05772J and appellate cause number 01–17–00980–CV. The case involving J.A.M. bears trial court cause number 2016–03351J and appellate cause number 01–17–00981–CV.

[2] Inyangala's affidavit was later admitted into evidence at trial.

Inyangala stated, "According to the report, there was substantial ongoing domestic violence between [M]other and [F]ather" in J.A.M.'s presence. Father had been arrested for assaulting Mother on February 17, 2016 and was in jail. Inyangala noted that "[t]he report also alleged that father and mother have a history of drug use (crack/meth)."

Following the report, Inyangala conducted an investigation. Inyangala visited Father at the county jail. Father told Inyangala that Mother had called the police and reported that he had hit her, but he denied assaulting Mother. Father said that Mother has a history of calling the police when they had "little arguments" because she "has anxiety and little things annoy her." Father also told Inyangala that "he has four other children whom he does not have custody of and that those children live with their biological mother, who is not the biological mother of [J.A.M.]."

Inyangala learned from Father that Mother was living with J.A.M. at a homeless shelter. On March 18, 2016, Inyangala interviewed Mother at the shelter. Mother reported to Inyangala that she had "been diagnosed with depression anxiety when she was young, but she has not been taking her medication recently." Mother said that the shelter requested her to take Xanax, however, Mother indicated that she would not take it because "she just found out

that she was pregnant." Mother told Inyangala that "she has intentions of getting back with [Father] because they are married."

Inyangala discovered in mid-April 2016 that Father had been released from jail. In May 2016, Inyangala learned that Mother and J.A.M. were living in a motel. On May 23, 2016, Inyangala visited Mother at the motel. Mother said that Father was paying for the motel, but she did not know where Father lived. Mother said that she had "not done any drug[s]" since before she went to the homeless shelter.

Mother agreed to submit to a drug test. On May 31, 2016, Inyangala received Mother's drug-test results, which were positive for cocaine. Inyangala worked with Mother to find a voluntary placement for J.A.M., including relative placement. Inyangala determined that the relative placements provided by Mother were either not appropriate or not willing to take J.A.M.

In her affidavit, Inyangala also detailed the family's CPS history. Inyangala noted that, in January 2013, the Department had received a referral alleging physical abuse of J.A.M. and his older siblings by Father and by Mother. J.A.M.'s older siblings are Mother's step-children. The report alleged that Mother had "tossed the one year old on to the bed and that [Mother] has mental illness." However, the case "was ruled as 'Unable to Determine' that abuse occurred because the children had no bruises or marks, but there was inconsistency to why

the home had two broken windows and random calls to the police alleging domestic violence." Inyangala noted that the Department had offered services to Mother and Father at that time, but they failed to engage in them.

Inyangala also noted that, in December 2014, the Department received a referral alleging that Father had physically abused one of J.A.M.'s older siblings. "The report indicated that the father hit the child in the mouth for not doing his homework and left a bruise on his face." Inyangala stated that "[t]he case was ruled out because the child had no bruises and was not injured."

Inyangala stated that the Department received another referral in March 2015. The referral alleged that Mother was sexually abusing her son, J.A.M., and her three step-sons. Inyangala testified that "[t]he report indicated that the mother touches the children in their private parts. The case was ruled out because the children had no outcries."

Inyangala's affidavit also detailed Mother's and Father's criminal histories. Inyangala determined that Mother was placed on community supervision for two years for drug possession in November 2015. Inyangala stated that, in addition to being charged with assaulting Mother in February 2016, Father had previously been convicted of evading arrest in 2008 and for assault of a family member in 2007.

Inyangala's affidavit summarized the Department's reasons for requesting appointment as J.A.M.'s temporary managing conservator:

> [Mother] tested positive for cocaine in a hair follicle on 5/31/2016. The mother is currently on probation for possession of a controlled substance. The mother and father have a long history of domestic violence; the father was recently arrested and has pending charges for assaulting the mother. The mother continues to deny that domestic violence exists and is still in a relationship with the father, thus, causing concerns as to her ability to provide a protective environment for her child. Additionally, the mother moves around between various hotels, and is unable to provide a safe and stable environment at this time.

On June 2, 2016, the trial court signed emergency orders, placing J.A.M. in the Department's temporary managing conservatorship. Two weeks later, on June 16, both parents appeared with counsel at an adversary hearing at which the trial court signed temporary orders continuing the appointment of the Department as J.A.M.'s managing conservator. The trial court ordered the parents to comply with the Department's service plan, warning them that failure to comply with the plan could result in the termination of their parental rights. Both parents also submitted to drug testing that day. Mother tested positive for cocaine, and Father tested positive for cocaine and marijuana.

On June 20, 2016, Mother underwent an evaluation at the Children's Crisis Care Center ("4Cs"). Mother told the 4Cs evaluator that "she first smoked marijuana at the age of eleven and smoked one blunt daily until May 2016." Mother denied using cocaine but told the evaluator that she believes the marijuana

she smoked was laced with cocaine. Mother stated "that she does not feel that she has a drug abuse issue." Mother said that she used marijuana to help her relax and that "she is upset that her recreational use of [marijuana] resulted in the loss of her son."

Mother told the evaluator that in 2015, during a period when she and Father were separated, she had to resort to selling drugs to support herself and J.A.M. She was arrested for selling cocaine and jailed from November 20, 2015 until January 7, 2016. She stated that J.A.M. had lived with Father and his family while she was in jail. She reported that, after her release from jail, "she was homeless and was sleeping in her car." Mother was placed on two years' community supervision for the drug offense.

Mother also indicated her entire life had involved domesticate violence. As a young child, she was physically abused by her mother's boyfriend. Her mother lost custody of her when she was six years old, and she went to live with her aunt. She reported that her aunt was "aggressive and mean to her." Mother stated that "she did not retaliate against her aunt until she was sixteen years old." At that point, Mother assaulted her aunt. Mother was arrested and placed in juvenile detention for three years.

Mother "reported that whenever she and [Father] were together and he tried to leave, she would call the police and state that he was abusing her." Mother

"blamed herself for arguing and overacting in their relationship." She told the 4Cs evaluator that she hoped she and Father could reconcile after he was released from jail.

With regard to her mental health, Mother "reported that she was diagnosed with Anxiety Disorder in 2013 at MHMRA and was prescribed Xanax." However, Mother said that she had not taken the medication since 2014.

Among the evaluator's clinical impressions were the following:

> There were considerable concerns regarding this family as [Mother] participated in the assessment. [Mother] has had an ongoing history of trauma since her childhood, has been exposed to family violence throughout her lifespan, and she seemingly has only had brief periods of stability in her life. As she has transitioned into adulthood, [Mother] has lived a very disruptive and chaotic life, and it appears that she is desensitized to the traumatic effect that her current life circumstances has on her young son, her unborn child and herself.
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> [Mother] acknowledged her substance abuse but indicated that she did not feel that she had a substance abuse problem even though she reported daily use of marijuana and tested positive for cocaine. It is recommended that [Mother] participate in a substance abuse assessment and follow all recommendations of the treatment provider regarding the most appropriate treatment program to address her abuse of marijuana and cocaine.
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> [Mother] attempted to deny any history of domestic violence in her relationship with [Father] but reported frequently calling law enforcement to the residence. It was a concern that [Mother] blamed herself for overreacting and instigating arguments with her husband, but was adamant that there was no physical abuse, and her son was not affected by the volatile situations even though she was residing in a motel room with limited space, so he would have had to witness the conflict. [Mother] frequently spoke of desperately wanting to reconcile her relationship with [Father] and it seemed that her desire

> to do so may be interfering with her ability to recognize dangers in the relationship.
>
> It is also a concern that [Mother] reported a mental health diagnosis but is not receiving mental health services. If untreated, mental illness could interfere with her recovery and her ability to be protective of her children. [Mother] should contact MHMRA to participate in a follow-up evaluation to determine her current level of mental health functioning, and treatment options due to her pregnancy.
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> Until [Mother] is better able to understand the dangers associated with her living conditions, substance abuse, violence in the home, and her minimization of the issues there is an increase[d] risk of harm for a child in her care.

The 4Cs evaluator recommended that Mother receive a number of services, including individual and domestic abuse counseling as well as engage in a substance-abuse rehabilitation program.

The evaluator concluded that, in order to achieve reunification with J.A.M., Mother needed to complete the services provided to her. She must also "accept responsibility for the reason her child is currently in the care of [the Department] and make the changes necessary to reduce the risk of abuse and neglect in the future."

On July 18, 2016, the Department filed family services plans for Mother and Father. Both plans required the respective parent to (1) refrain from criminal activity; (2) stay in contact with their caseworker; (3) attend court hearings and family group conferences; (4) attend domestic violence course; (5) maintain a stable home and employment; (6) complete a substance-abuse assessment,

including all treatment recommendations; (7) complete parenting classes; and (8) participate in a psycho-social evaluation and follow its recommendations.

The trial court approved the service plans in its July 8, 2016 status-hearing order. The trial court found that both parents had reviewed and understood the plans.

On August 11, 2016, Father pleaded guilty to the February 2016 felony assault of Mother. He was placed on deferred adjudication community supervision. The conditions of his community supervision required Father to commit no violation of state or federal law.

Mother gave birth to M.M.M. in September 2016. The Department filed another suit, apart from the suit involving J.A.M., requesting emergency orders to take possession of M.M.M. and to be named as M.M.M.'s temporary managing conservator. To support its request, the Department offered the affidavit of its representative, T. Etienne. She pointed out that there was an "open CPS case" for J.A.M. in which parental substance abuse and domestic violence had been alleged. Etienne testified that the substance abuse had been "confirmed by positive drug test[s] in the open case" for both parents and that "[t]he domestic violence has been confirmed by the conviction of the father of the charges."

In November 2016, the trial court signed an order naming the Department as M.M.M.'s temporary managing conservator. The court also approved and ordered

the parents to follow family services plans essentially identical to the service plans adopted in J.A.M.'s case.

In March 2017, Father was arrested on a felony charge of aggravated assault against a family member. The complaint alleged that he had threatened Mother with imminent bodily injury "by using and exhibiting a deadly weapon, namely, a nail gun."

In April 2017, the State filed a motion to adjudicate Father's guilt with respect to the assault offense that Father had committed against Mother in February 2016. Among the grounds for adjudication, the State asserted that Father had violated the terms of his community supervision by committing the March 2017 assault offense against Mother.

At the beginning of May 2017, Father failed to appear for a scheduled drug test. Also in May, Mother engaged in individual counseling as required in her service plan. In progress notes dated May 15, 2017, the therapist stated,

> [Mother] is very argumentative during sessions and appears unable to understand the reason why her children were removed. [Mother] tends to change her story regarding her past. She states she was not abused and then states she was sexually and physically abused as a child. . . . [Mother] states she is divorcing husband of 8 years due to assault.
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> . . . [Mother] engaged in session, however, she is argumentative and does not appear amenable to recommendations or suggestions regarding parenting or relationship skills.

> . . . [Mother] states she is filing for divorce, however, it appears unlikely that she will completely separate from [Father].

In a progress note dated May 22, 2017, the therapist wrote that Mother was unwilling "to identify her role" in the domestic violence, and she was reluctant to accept "her accountability in her current problems." The therapist noted that Mother appeared to have mental health issues, such as anxiety and PTSD, requiring "longer term counseling."

At the end of May 2017, Child Advocates, appointed by the trial court as the children's advocate, filed a report with the court. The report indicated that four-year-old J.A.M. "came into care thin and with 16 decayed teeth," causing J.A.M. pain when he chewed his food.

The report also stated that, at one family visit, Mother "began talking about [Father] being in jail for assault with a deadly weapon in front of [J.A.M.] and had to be asked to stop." Then, during the same visit, Mother "made a phone call and began talking about the same thing until asked to stop."

On June 14, 2017, the criminal court granted the State's motion to revoke Father's community supervision and adjudicate his guilt for the February 2016 assault of Mother. The judgment adjudicating Father's guilt provided that Father had violated the terms of his community supervision by, inter alia, committing a law violation, that is, Father's March 2017 assault of Mother. Father was sentenced to two years in prison for the February 2016 assault.

Also on June 14, the State moved to dismiss the charges against Father with regard to the March 2017 assault on Mother involving the nail gun. In its motion, the State indicated that it was moving to dismiss the 2017 assault charge because Father had been convicted that same day of the 2016 assault charge. The criminal court granted the motion to dismiss.

On August 15, 2017, Mother submitted a hair sample. The results were positive for marijuana.

Child Advocates filed a report for each child with the trial court in late October 2017. The reports recommended that J.A.M. and M.M.M. not be returned to their parents because it would "put [them] at great risk for exposure to on-going domestic violence, instability, and physical and emotional neglect." Among its reasons for its recommendation, Child Advocates identified the ongoing domestic violence, substance abuse, criminal convictions, unstable housing and employment, and the parents' failure to complete required services. The reports noted that both children were thriving in his and her foster placements and that each foster family wished to adopt.

The cases were tried together to the bench on November 14, 2017. At trial, the Department sought to terminate the parent-child relationship between each parent and J.A.M. and M.M.M. Among the documentary evidence offered by the Department was the caseworker affidavits supporting initial removal of the

children, the parents' family service plans, Mother's 4Cs assessment, the May 2017 progress notes from Mother's counselor, the reports filed by Child Advocates, the parents' drug test results, and documents relating to the parents criminal convictions. In conjunction with the documentary evidence, the Department offered the testimony of J.A.M.'s and M.M.M.'s caseworker, M. Hackett, and Child Advocates' representative, J. Daly. Mother and Father also testified at trial.

During her testimony, Mother confirmed that she had known that Father had been convicted of assault of a family member with regard to another woman. She testified that she was aware of that conviction but stated that she had spoken to the woman, who indicated to her that the incident was less serious than had been reported. Mother acknowledged that Father committed the offense of assault against her in February 2016. She also acknowledged that J.A.M. was present at the time but claimed he was asleep. When asked whether Father threatened her with a nail gun in March 2017, during the pendency of the case, Mother answered as follows,

> That was the day that [Father] was coming to get the rest of his stuff from my house and he took my car keys and threatened to smash them. That's why I called the cops. The cops kicked in my door because I was crying, asking for my keys back[,] for him not to smash [the keys,] and the cops put down something different.

On cross-examination, Mother acknowledged that she and Father had used cocaine on a daily basis before she was arrested for drug possession in 2015. She said that they would take J.A.M. to his aunt's house for an hour every day. During that hour, she testified that she and Father would get high on cocaine. After the hour was over, they would pick up J.A.M.

Mother acknowledged that, in January 2016, she was placed on community supervision for two years for possession of cocaine. Mother claimed that the drug charge was "a big eye opener." She stated that she had not used illegal drugs since she was arrested in 2015. Mother testified that all of her drug tests taken as a condition of her community supervision were negative. However, she acknowledged that, when the Department tested her in May and June 2016, she tested positive for cocaine. She also acknowledged that she was five months pregnant with M.M.M. at the time, but she claimed that she had not known she was pregnant then.

Mother testified that she was being released early from "probation" and planned to move with her children to Michigan where she had family support. Mother stated that she had placed a deposit on a house in Michigan where she hoped to live with the children. Mother testified that she stopped visiting Father in jail in June 2017 and that she did not plan to reconcile with him. She claimed that she had decided to choose her children over Father.

At trial, Mother stated that she was presently leasing a house. Mother also testified that she had been working at a fast food restaurant for a couple of months. She said that she had worked other jobs, but she had left each previous job to earn more money. But she also acknowledged that, in the past, she had relied on Father in part for financial support.

Father also testified at trial. He admitted that, "at the beginning of the case," J.A.M. was "being psychologically damaged [be]cause of the arguing that was in the home[.]" However, he claimed "now . . . we're doing good[.]" When asked to explain how he was doing "good," Father said he had "learned a lot of things" through the parenting class he had taken. Father stated that he had attended trade school and planned to start his own business when he was released from prison.

When asked what he could do to provide a safe environment for the children free from domestic violence, Father testified, "Just stay away and participate when permitted, you know financially be there for them."

The children's caseworker, M. Hackett, testified that Mother had completed many of the required services but had not completed all of them. Throughout the case, Mother had failed to provide verification of employment or verification that she was attending AA/NA meetings and had a substance-abuse sponsor. Hackett acknowledged that Mother had given her paperwork that day in court to show that she had complied with a number of service plan requirements for which Mother

had previously failed to supply supporting documentation. Specifically, that day, Mother supplied a letter from her employer, purporting to show employment and paperwork purporting to verify that Mother had been attending AA/NA meetings. In court, Mother also provided paperwork to support her claim that she had housing. However, Hackett did not have an opportunity to verify the information because she had just received it.

Hackett testified that Mother tested positive in May and June 2016 for cocaine and marijuana when she was pregnant with M.M.M. The evidence showed that Mother's hair tested positive for marijuana in August 2017. Hackett agreed that the positive hair test likely indicated only exposure to marijuana, not marijuana use. Hackett agreed that Mother's urine sample in August 2017 was negative for drugs.

When asked why Mother's parental rights should be terminated, even though Mother had completed many of the required services, Hackett responded,

> [Mother] has completed a lot of her services but she still has not shown the agency that she's able to protect and take care of these children. Recently she was evicted from her apartment. She's been from job to job, you know. She just hasn't been stable to care for herself and none the less, herself and two small children.

With regard to Father, Hackett testified that she was aware of his criminal history. She stated that Father tested positive during the pendency of the case for marijuana and cocaine. Hackett testified that Father had completed some of his

services but did not complete them all before he was incarcerated. When asked why Father's parental rights should be terminated, Hackett cited Father's history of domestic violence and illegal drug use.

Hackett testified that the children were in separate foster placements but visited one another. She agreed that placing the siblings together in foster care was a possible future option. Hackett indicated that M.M.M.'s foster parents had not "ruled out" taking J.A.M. into their home. Hackett stated that both foster families were willing to adopt.

J. Daly, the Child Advocates' representative, also testified at trial. Daly stated that she had concerns about Mother's parenting skills. She testified that one of her concerns was Mother's willingness to have adult conversations in front of the children.

Daly also stated that she did not believe Mother attended AA/NA. She indicated that Mother had never provided verification that she had an AA/NA sponsor.

Daly also testified that she was aware that Mother had lost several jobs and had lost her home. Daly indicated that she had checked to determine whether Mother had obtained a home in Michigan, as Mother claimed in her trial testimony. Daly testified that she had determined that the Michigan home was still on the market.

Daly stated that J.A.M. had received a psychological examination after coming into care. The examination showed that J.A.M. "has some receptive language issues and deficits that are attributable to his neglectful early home environment, which is, you know, due to his experience of homelessness, living in motels and just, you know, instability."

With regard to the foster placements, Daly testified that the children "are in loving, stable environments" where they are thriving and happy. Daly stated that J.A.M.'s foster family has taken steps to ensure that he receives the services he needs, including speech therapy. Daly testified that the children "couldn't be doing any better" than they are in their foster placements.

Daly testified that Child Advocates supported termination of the parents' parental rights. She stated that she believed that the dangers that brought the children into the Department's care still existed.

At the end of trial, the trial court rendered judgment terminating the parent-child relationship between each parent and J.A.M. and M.M.M. The court found that termination was in the children's best interest and that Mother and Father had engaged in the predicate acts listed in Family Code subsections 161.001(b)(1)(D), (E), and (O). Under each cause number, the trial court found that clear and convincing evidence showed (1) Mother and Father had knowingly placed or allowed the children to remain in conditions or surroundings that endangered their

physical or emotional well-being (subsection D); (2) Mother and Father had engaged in conduct or knowingly placed the children with persons who engaged in conduct that endangered their physical or emotional well-being (subsection E); (3) Mother and Father had failed to comply with the provisions of a court order that specifically established the actions necessary for her to obtain the return of the children (subsection O); and (4) termination of Mother's and Father's parental rights was in the children's best interest. In conjunction with the termination of parental rights, the trial court appointed the Department as the children's sole managing conservator.

Each parent appeals both judgments.

Legal and Factual Sufficiency of the Evidence

In three issues, Mother contends that the evidence was not legally and factually sufficient to support the trial court's predicate findings or to support the trial court's determination that termination was in the children's best interest. Raising one issue, Father asserts only that the evidence was factually insufficient to support the best-interest findings.

A. Standard of Review

Termination of parental rights requires proof by clear and convincing evidence. *See* TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2017). This heightened standard of review is mandated not only by the Family Code but also

by the Due Process Clause of the United States Constitution. *In re E.N.C.*, 384 S.W.3d 796, 802 (Tex. 2012); *see also Santosky v. Kramer*, 455 U.S. 745, 753–54, 102 S. Ct. 1388, 1394–95 (1982) (recognizing fundamental liberty interest parent has in his or her child and concluding that state must provide parent with fundamentally fair procedures, including clear-and-convincing evidentiary standard, when seeking to terminate parental rights). The Family Code defines clear and convincing evidence as "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 ANN. § 101.007 (West 2014); *see also In re J.F.C.*, 96 S.W.3d 256, 264 (Tex. 2002).

Section 161.001(b) of the Family Code provides the method by which a court may involuntarily terminate the parent-child relationship. *See* TEX. FAM. CODE. ANN. § 161.001(b). Under this section, a court may order the termination of the parent-child relationship if the court finds, by clear and convincing evidence, that (1) one or more of the acts enumerated in section 161.001(b)(1) was committed and (2) termination is in the best interest of the child. *Id.* Although termination may not be based solely on the best interest of the child as determined by the trier of fact, *Tex. Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987), "[o]nly one predicate finding under section 161.001(1) is necessary 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 355, 362 (Tex. 2003). 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 G.A.A.*, No. 01–12–01052–CV, 2013 WL 1790230, at *7 (Tex. App.—Houston [1st Dist.] Apr. 25, 2013, no pet.) (mem. op.). Here, the Department was required to establish, by clear and convincing evidence, that Mother's actions satisfied one of the predicate grounds listed in Family Code section 161.001(b)(1) and that termination was in the children's best interest. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)–(2).

When determining legal sufficiency, we review all the evidence in the light most favorable to the trial court's finding "to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true." *In re J.F.C.*, 96 S.W.3d at 266. To give appropriate deference to the fact finder's conclusions, we must assume that the fact finder resolved disputed facts in favor of its finding if a reasonable fact finder could do so. *Id.* We disregard all evidence that a reasonable fact finder could have disbelieved or found to have been not credible. *Id.* This does not mean that we must disregard all evidence that does not support the finding. *Id.* The disregard of undisputed facts that do not support the finding could skew the analysis of whether there is clear and convincing evidence. *Id.* Therefore, in conducting a legal-sufficiency review in a parental-termination

case, we must consider all of the evidence, not only that which favors the verdict. *See City of Keller v. Wilson*, 168 S.W.3d 802, 817 (Tex. 2005).

In determining a factual-sufficiency point, the higher burden of proof in termination cases also alters the appellate standard of review. *In re C.H.*, 89 S.W.3d 17, 25–26 (Tex. 2002). "[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." *Id.* at 25. In considering whether evidence rises to the level of being clear and convincing, we must consider whether the evidence is sufficient to reasonably form in the mind of the fact finder a firm belief or conviction as to the truth of the allegation sought to be established. *Id.* We consider whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding. *In re J.F.C.*, 96 S.W.3d at 266. "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, then the evidence is factually insufficient." *Id.*

We give due deference to the fact finder's findings, and we cannot substitute our own judgment for that of the fact finder. *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). The fact finder is the sole arbiter when assessing the credibility and demeanor of witnesses. *Id.* at 109.

B. Predicate Findings under Subsection (E)

In her first issue, Mother challenges the legal and factual sufficiency of the evidence to support the trial court's findings regarding the predicate acts listed in Family Code subsection 161.001(b)(1)(E).

1. Applicable Legal Principles

Subsection E permits termination when clear and convincing evidence shows that the parent has engaged in conduct or knowingly placed the child with persons who engaged in conduct that endangers the physical or emotional well-being of the child. TEX. FAM. CODE ANN. § 161.001(b)(1)(E). Within the context of subsection E, endangerment encompasses "more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment." *Boyd*, 727 S.W.2d at 533. Instead, "endanger" means to expose a child to loss or injury or to jeopardize a child's emotional or physical health. *Id.*; *see also In re M.C.*, 917 S.W.2d 268, 269 (Tex. 1996).

Termination under subsection (E) requires "more than a single act or omission; a voluntary, deliberate, and conscious course of conduct by the parent is required." *In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.). However, it is not necessary to establish that a parent intended to endanger a child in order to support termination of the parent-child relationship under subsection (E). *See M.C.*, 917 S.W.2d at 270. The specific danger to the child's

well-being may be inferred from parental misconduct standing alone. *Boyd*, 727 S.W.2d at 533; *In re R.W.*, 129 S.W.3d 732, 738 (Tex. App.—Fort Worth 2004, pet. denied).

"Endangerment can occur through both acts and omissions." *In re W.J.H.*, 111 S.W.3d 707, 715 (Tex. App.—Fort Worth 2003, pet. denied) (citing *Phillips v. Texas Dep't of Protective & Regulatory Servs.*, 25 S.W.3d 348, 354 (Tex. App.—Austin 2000, no pet.)). The statute does not require that conduct be directed at a child or cause actual harm; rather, it is sufficient if the parent's course of conduct endangers the well-being of the child. *See Walker v. Tex. Dep't of Family & Protective Servs.*, 312 S.W.3d 608, 617 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). A parent's past endangering conduct may create an inference that the parent's past conduct may recur and further jeopardize a child's present or future physical or emotional well-being. *See In re D.M.*, 58 S.W.3d 801, 812 (Tex. App.—Fort Worth 2001, no pet.).

2. Analysis

As a general rule, subjecting 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 at 739. Here, the evidence of parental drug use and domestic violence support the endangerment findings. *See In re S.C.F.*, 522 S.W.3d 693, 703 (Tex. App.—Houston [1st Dist.] 2017, pet. denied) (holding evidence of mother's drug use and

history of domestic violence supported finding that placement would put children in emotional danger); *L.B. v. Tex. Dep't of Family & Protective Servs.*, No. 03–09–00429–CV, 2010 WL 1404608, at *5 (Tex. App.—Austin Apr. 9, 2010, no pet.) (mem. op.) (holding that evidence of exposure to domestic violence and drug allowed reasonable fact-finder to form firm belief or conviction that mother engaged in course of conduct that endangered her children).

A parent's use of illegal drugs, and its effect on her ability to parent, may qualify as an endangering course of conduct. *See In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009). "Because it exposes the child to the possibility that the parent may be impaired or imprisoned, illegal drug use may support termination under [subsection E]." *Walker*, 312 S.W.3d at 617–18 (citing *Vasquez v. Tex. Dep't of Protective & Regulatory Servs.*, 190 S.W.3d 189, 195–96 (Tex. App.—Houston [1st Dist.] 2005, pet. denied) (upholding termination of parental rights despite there being no direct evidence of parent's continued drug use actually injuring child)). And a mother's use of narcotics during pregnancy may constitute conduct that endangers the physical and emotional well-being of a child. *Cervantes-Peterson v. Tex. Dep't of Family & Protective Servs.*, 221 S.W.3d 244, 253 (Tex. App.—Houston [1st Dist.] 2006, no pet.)

Here, Mother testified that she and Father would get high every day on cocaine. She stated that they would take J.A.M. to his aunt's house every day for

an hour. During that hour, they would get high on cocaine and then would pick J.A.M. up from the aunt.

The evidence also showed that Mother was arrested for selling cocaine and jailed from November 20, 2015 until January 7, 2016. During this time, J.A.M. lived with Father and his family. Mother told the 4Cs evaluator that, after her release from jail, "she was homeless and was sleeping in her car."

In January 2016, Mother was placed on two years' community supervision for the drug offense. Mother testified at trial that she has not used illegal drugs since 2015 when she was arrested. Mother points out that she testified that all of the drug tests she underwent, as part of the conditions of her community supervision, were negative. Other than her own testimony, Mother offered no additional evidence related to the drug tests she underwent as a condition of her community supervision.

The Department presented evidence showing that Mother had continued to use cocaine despite her claim to the contrary. In tests ordered in relation to J.A.M.'s case, Mother tested positive for cocaine in May and in June 2016. Mother acknowledged that she was five months pregnant with M.M.M. at the time she tested positive for cocaine.

Mother also acknowledged that, in May 2017, she had posted on social media—while these cases were pending—that she was "drunk off [her] ass."

Mother's hair tested positive for marijuana in August 2017, indicating an exposure to marijuana. Not long before trial, Mother told Hackett that, if she was tested for alcohol, it would be positive.

As a counterpoint to the evidence of her drug use, Mother asserts,

> The evidence as to any illegal drug use or exposure is controverted by the acceptance of [the Department] of the Mother's monthly negative random drug testing through mother's criminal probation. [The Department] offered no testimony to show that the tests it presented were superior to the drug tests by a different governmental branch.

However, we are not to "second-guess the trial court's resolution of a factual dispute by relying on evidence that is either disputed, or that the court could easily have rejected as not credible." *In re L.M.I.*, 119 S.W.3d 707, 712 (Tex. 2003). Because the fact finder is the sole arbiter when assessing the credibility and demeanor of witnesses, the trial court was free to disbelieve Mother's testimony regarding her negative drug-test results and instead rely on the Department's evidence showing that Mother used cocaine while caring for J.A.M. and while pregnant with M.M.M. *See In re H.R.M.*, 209 S.W.3d at 109; *see also In re A.J.E.M.–B.*, Nos. 14–14–00424–CV, 14–14–00444–CV, 2014 WL 5795484, at *14 (Tex. App.—Houston [14th Dist.] Nov. 6, 2014, no pet.) (mem. op.) ("We acknowledge the Mother's testimony that she inadvertently used marijuana one time when she tested positive. . . . However, as the factfinder, the trial court was

entitled to disbelieve the Mother's testimony and rely on the drug test results and other evidence.").

Texas courts have also determined that evidence of a child's exposure to domestic violence is supportive of an endangerment finding. *L.B.*, 2010 WL 1404608, at *5; *see, e.g.*, *In re J.J.S.*, 272 S.W.3d 74, 79 (Tex. App.—Waco 2008, pet. denied) (upholding endangerment finding when trial court found that mother "conducted herself in a manner, namely her abusive relationships, which exposed her children to a home where physical violence was present"); *In re M.R.*, 243 S.W.3d 807, 819 (Tex. App.—Fort Worth 2007, no pet.) (considering fact that mother "exposed her children to domestic violence," including incident during which mother was "smacked" in front of child, as evidence of endangerment under Subsection E); *In re J.I.T.P.*, 99 S.W.3d 841, 845 (Tex. App.—Houston [14th Dist.] 2003, no pet.) ("Thus, the trial court could have considered the domestic violence . . . as evidence of endangerment to [the child]."). Domestic violence may constitute endangerment, even if the violence is not directed at the child. *D.N. v. Tex. Dep't of Family & Protective Servs.*, No. 03–15–00658–CV, 2016 WL 1407808, at *2 (Tex. App.—Austin Apr. 8, 2016, no pet.); *see In re C.J.O.*, 325 S.W.3d 261, 265 (Tex. App.—Eastland 2010, pet. denied) ("Domestic violence may be considered evidence of endangerment. If a parent abuses or neglects the other parent or other children, that conduct can be used to support a finding of

endangerment even against a child who was not yet born at the time of the conduct.").

It is undisputed that Father was convicted of assault of a family member in 2007, involving a woman named Veronica. The evidence showed that Father had assaulted Veronica by grabbing her by the throat. Mother testified that she knew about the assault but indicated that Veronica and Father told her that the assault had not been as serious as had been reported.

The evidence also showed that, in February 2016, Father was charged with assaulting Mother by striking her with his foot. Mother testified that J.A.M. was present in the home at the time of the assault, but she stated that he was asleep. Because he had previously been convicted of assault of a family member, the assault of Mother was a felony.

Father was placed on three years' deferred adjudication community supervision for assaulting Mother. However, Father was indicted for assaulting Mother by threatening her with a nail gun in March 2017. Based, in part, on this new charge, the criminal court adjudicated Father's guilt for the February 2016 assault of Mother and sentenced Father to two years in prison. The State dismissed the March 2017 charges, but it did not indicate that it was dismissing the charge because of a lack of evidence. Instead, in its motion, the State expressly indicated

that it sought dismissal of the March 2017 assault charge because Father had been convicted of the February 2016 assault against Mother.

At trial, Mother acknowledged that, when the police responded to her March 2017 call, they had kicked down her door because they heard her crying. She denied that Father had threatened her with a nail gun, instead she testified that he had taken her keys and threatened to "smash them." However, as mentioned, the trial court was free to disbelieve Mother when she denied that Father had threatened her with a nail gun. And, even under Mother's testimony, the altercation between her and Father in March 2017 had an element of violence.

Given the record, we conclude that the evidence of Mother's drug use and the domestic violence in the parents' home, viewed in the light most favorable to the subsection (E) finding, was sufficiently clear and convincing that a reasonable fact finder could have formed a firm belief or conviction that Mother engaged in conduct or knowingly placed the children with persons who engaged in conduct that endangered the physical or emotional well-being of the children. We further conclude that, viewed in light of the entire record, any disputed evidence could have been reconciled in favor of the subsection (E) finding or was not so significant that the fact finder could not reasonably have formed a firm belief or conviction that the elements of subsection E were shown. Accordingly, we hold

that the evidence was legally and factually sufficient to support the subsection (E) finding in each case.

We overrule Mother's first issue to the extent that she challenges the legal and factual sufficiency of the evidence to support the subsection E findings. Because there is sufficient evidence of subsection E endangerment, we need not address Mother's points challenging the sufficiency of the evidence to support the trial court's predicate findings under subsections D and O. *See In re A.V.*, 113 S.W.3d at 362 ("Only one predicate finding under section 161.001(1) is necessary to support a judgment of termination when there is also a finding that termination is in the child's best interest.").

B. Best-Interest Findings

In her third issue, Mother contends that the evidence was legally and factually insufficient to support the trial court's findings that termination of the parent-child relationship between her and J.A.M. and M.M.M. was in the children's best interests. In his sole issue, Father asserts that the evidence was factually insufficient to support the trial court's best-interest findings with respect to termination of his parental rights.

1. *Applicable Legal Principles*

There is a strong presumption that the best interest of the child will be served by preserving the parent-child relationship. *See In re R.R.*, 209 S.W.3d 112,

116 (Tex. 2006). Prompt and permanent placement of the child in a safe environment is also presumed to be in the child's best interest. TEX. FAM. CODE ANN. § 263.307(a) (West Supp. 2017).

In *Holley v. Adams*, the Supreme Court of Texas identified factors that courts may consider when determining the best interest of the child, including: (1) the desires of the child; (2) the emotional and physical needs of the child now and in the future; (3) the emotional and physical danger to the child now and in the future; (4) the parental abilities of the individual seeking custody; (5) the programs available to assist these individuals to promote the best interest of the child; (6) the plans for the child by the individuals or by the agency seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions of the parent that may indicate that the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions of the parent. 544 S.W.2d 367, 371–72 (Tex. 1976). This is not an exhaustive list, and a court need not have evidence on every element listed in order to make a valid finding as to the child's best interest. *In re C.H.*, 89 S.W.3d at 27. While no one factor is controlling, analysis of a single factor may be adequate in a particular factual situation to support a finding that termination is in the best interest of the child. *In re A.P.*, 184 S.W.3d 410, 414 (Tex. App.—Dallas 2006, no pet.).

The Texas Family Code also sets out factors to be considered in evaluating a parent's willingness and ability to provide the child with a safe environment. *See* TEX. FAM. CODE ANN. § 263.307(b); *see also In re R.R.*, 209 S.W.3d at 116 (citing Family Code Section 263.307 and *Holley* as containing factors to consider "when determining whether termination of parental rights is in the best interest of the child"). Among others, the following statutory factors should be considered in evaluating the parent's willingness and ability to provide the child with a safe environment: (1) the child's age and physical and mental vulnerabilities; (2) the frequency and nature of out-of-home placements; (3) the magnitude, frequency, and circumstances of harm to the child; (4) whether there is a history of substance abuse by the child's family or others that have access to the child's home; (5) the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision; (6) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time; (7) whether the child's family demonstrates adequate parenting skills, including providing the child and other children under the family's care with minimally adequate health and nutritional care, guidance and supervision, and a safe physical home environment; and (8) whether an adequate social support system consisting

of an extended family and friends is available to the child. TEX. FAM. CODE ANN. § 263.307(b); *R.R.*, 209 S.W.3d at 116.

The evidence supporting the predicate grounds for termination may also be used to support a finding that the best interest of the child warrants termination of the parent-child relationship. *C.H.*, 89 S.W.3d at 28; *In re H.D.*, No. 01–12–00007–CV, 2013 WL 1928799, at *13 (Tex. App.—Houston [1st Dist.] May 9, 2013, no pet.). Furthermore, in conducting the best-interest analysis, a court may consider not only direct evidence but also may consider circumstantial evidence, subjective factors, and the totality of the evidence. *See H.D.*, 2013 WL 1928799, at *13.

2. Analysis

Multiple *Holly* factors support the trial court's findings that termination of Mother's and Father's parental rights was in the children's best interest. The trial court heard evidence indicating that Mother and Father engaged in substance abuse both before the cases were filed and after they were pending. Evidence of a parent's past pattern of drug use is relevant not only to the stability of the home that the parents can provide, but it is relevant to the emotional and physical needs of the children now and in the future and to the emotional and physical danger in which they could be placed now and in the future. *See Holley*, 544 S.W.2d at 371–72 (factors two, three, and seven); *see also In re A.C.*, 394 S.W.3d 633, 642 (Tex.

App.—Houston [1st Dist.] 2012, no pet.) (finding pattern of illegal drug use suggested mother was not willing and able to provide child with safe environment—a primary consideration in determining child's best interest).

A parent's drug use is a condition indicative of instability in the home environment because it exposes a child to the possibility that the parent may be impaired or imprisoned. *See In re A.M.*, 495 S.W.3d 573, 579 (Tex. App.—Houston [1st Dist.] 2016, pet. denied); *P.W. v. Dep't of Family & Protective Servs.*, 403 S.W.3d 471, 479 (Tex. App.—Houston [1st Dist.] 2013, pet. dism'd w.o.j.). Evidence of drug abuse is also indicative of poor judgment and demonstrates an inability to adequately care for young children. *See In re K.S.*, 420 S.W.3d 852, 855 (Tex. App.—Texarkana 2014, no pet.) (noting parental drug abuse is reflective of poor judgment); *see also Holley*, 544 S.W.2d at 371–72 (factor four: parental abilities of individual seeking custody). A factfinder need not ignore a long history of drug dependence and destructive behavior when the evidence established that past substance abuse was more than just "remote and isolated incidents." *In re R.W.*, 129 S.W.at 741; *see* TEX. FAM. CODE ANN. § 263.307(b)(8) (stating courts may consider whether there is history of substance abuse by child's family or others who have access to child's home).

Here, the evidence showed that Mother's and Father's drug use were not isolated incidents but were an established pattern. At trial, the evidence showed

that, while J.A.M. was in still in their custody, Father and Mother used cocaine on a daily basis. Mother testified that she and Father would spend an hour every day getting high while J.A.M. was with his aunt. After an hour of getting high, they would pick up J.A.M.

The evidence showed that Father tested positive for cocaine and marijuana in June 2016. He failed to appear for a scheduled drug test in May 2017. Although the remainder of his drug tests were negative, the evidence indicated that Father was incarcerated for much of this time.

The evidence showed that Mother had used drugs since childhood. The 4Cs report indicated that Mother began using marijuana when she was 11 years old. Mother told the 4Cs evaluator that "she first smoked marijuana at the age of eleven and smoked one blunt daily until May 2016." Mother indicated that she used cocaine every day with Father until she was arrested for possession of cocaine in November 2015. In the 4Cs report, she stated that she had resorted to selling drugs to support herself and J.A.M. Mother was jailed following her arrest until January 2016. Mother was placed on community supervision for two years for that offense.

Mother tested positive for cocaine in May 2016 and in June 2016. At the time, Mother was five months pregnant with M.M.M., who was born in September 2016. Mother claimed that she had been unaware in June 2016 that she was pregnant with M.M.M. However, Inyangala's removal affidavit indicated that

Mother told her in March 2016 that she was pregnant. Inyangala stated that Mother indicated to her in March 2016 that she refused to take Xanax for her mental health issues because she was pregnant.

After June 2016, Mother's tests were negative for drug use. However, Mother tested positive for exposure to marijuana in August 2017, three months before trial. Mother also admitted to consuming alcohol during the pendency of the cases. At trial, she acknowledged that in May 2017 she posted on social media that she was "drunk off [her] ass." Not long before trial, Mother told Hackett that, if she were tested for alcohol, the test would be positive.

Both Hackett and Daly testified that they did not believe that Mother had adequately completed her services related to substance-abuse treatment. Mother claimed that she had attended AA/NA meetings and had obtained a substance-abuse sponsor. However, both Hackett and Daly testified that Mother had not provided them with information, while the case was pending, to verify that Mother had satisfied these services. In addition, Mother continued to consume alcohol during the time she was under treatment. A factfinder may infer from a parent's failure to take the initiative to complete the services required to regain possession of her children that she does not have the ability to motivate herself to seek out available resources needed now or in the future. *See J.M.*, 2015 WL 1020316, at

*7; *see also Holley*, 544 S.W.2d at 371–72 (listing parental abilities of individual seeking custody as best-interest factor).

The trial court also heard evidence regarding domestic violence, which is supportive of the trial court's best-interest finding under the third *Holley* factor: the emotional and physical danger to the child now and in the future. *See Holley*, 544 S.W.2d at 371–72; *see also* TEX. FAM. CODE ANN. § 263.307(b)(12)(E) (providing that courts may consider whether parent has adequate skills to protect child from repeated exposure to violence although violence may not be directed at the child); *In re J.I.T.P.*, 99 S.W.3d at 846 (stating domestic violence, even when child is not intended victim, supports finding that termination is in child's best interest).

As discussed with respect to the endangerment finding, Father has a history of domestic violence offenses against Mother and another woman, resulting in criminal convictions. The record showed that, not only did he commit an assaultive offense against Mother in February 2016, Father was also charged with threatening Mother with a nail gun in March 2017 during the pendency of these cases. The evidence indicated that, at that time, the parents had already completed domestic-abuse classes. Mother denied the specific allegation about the nail gun, but she admitted that there had been an altercation between her and Father at that time necessitating the police to break down her door when they responded to her call. She testified that Father had taken her keys and had threatened to "smash"

them. *See* TEX. FAM. CODE ANN. § 263.307(b)(7), (12)(D)–(E) (providing that courts may consider whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home and whether adequate parenting skills are demonstrated by providing the child with a safe physical home environment and protection from repeated exposure to violence).

"Evidence that a person has engaged in abusive conduct in the past permits an inference that the person will continue violent behavior in the future." *Jordan v. Dossey*, 325 S.W.3d 700, 724 (Tex. App.—Houston [1st Dist.] 2010, pet. denied). Thus, the trial court was permitted to infer that Father would continue his violent behavior in the future.

Mother testified that she had decided in June 2017 that she would not reconcile with Father. She said that she had decided to choose her children over Father. Mother indicated that she had not yet filed for divorce but planned to do so after the termination suits were concluded. However, the Department presented evidence from which the trial court could have reasonably inferred that Mother would reconcile with Father, exposing the children to continuing domestic violence.

The progress notes from Mother's therapy in May 2017 indicated that Mother "states she is filing for divorce, however, it appears unlikely that she will completely separate from [Father]." The therapist wrote that Mother was

"argumentative and does not appear amenable to recommendations or suggestions regarding parenting or relationship skills." Mother was unwilling "to identify her role" in the domestic violence, and she was reluctant to accept "her accountability in her current problems." *See* TEX. FAM. CODE ANN. § 263.307(b)(11) (stating courts may consider willingness and ability of child's family to effect positive environmental and personal changes within reasonable period of time).

We note that, at the ages of one and four, the children are too young to adequately express their desires. As such, the first *Holley* factor regarding the desires of the child is neutral in these cases. *See Holley*, 544 S.W.2d at 371–72. However, the children's young ages render them "vulnerable if left in the custody of a parent unable or unwilling to protect them or to attend to their needs." *See In re B.D.A.*, No. 01–17–00065–CV, 2018 WL 761313, at *11 (Tex. App.—Houston [1st Dist.] Feb. 8, 2018, no pet. h.); *see also* TEX. FAM. CODE ANN. § 263.307(b)(1) (providing that court may consider child's age and physical and mental vulnerabilities).

The Department presented additional evidence supportive of the best-interest finding under the following factors: the emotional and physical needs of the children now and in the future, the parental abilities of those seeking custody, and the plans for the children by those seeking custody. *See Holley*, 544 S.W.2d at 371–72 (factors two, four, six); *see also* TEX. FAM. CODE ANN. § 263.307(b)(12)

(providing that court may consider whether child's family demonstrates adequate parenting skills). The evidence showed that both children are in adoptive foster placements. Daly testified that the foster families are providing "loving, stable environments" in which the children are thriving and happy. Daly testified that the children "couldn't be doing any better" than they are doing in their foster placements. *See In re Z.C.*, 280 S.W.3d 470, 476 (Tex.App.—Fort Worth 2009, pet. denied) (stating that stability and permanence are important to upbringing of a child and affirming finding that termination was in child's best interest when child was thriving in foster care). Hackett testified that the siblings visit one another, and she indicated that M.M.M.'s foster family may be a placement option for J.A.M. in the future.

Daly testified that J.A.M.'s psychological examination showed that he "has some receptive language issues and deficits that are attributable to his neglectful early home environment, which is, you know, due to his experience of homelessness, living in motels and just, you know, instability." Daly stated that J.A.M.'s foster family has taken steps to ensure that he receives the services he needs, including speech therapy. *See Holley*, 544 S.W.2d at 371–72 (factor five: the programs available to assist these individuals to promote the best interest of the child); *see also* TEX. FAM. CODE ANN. § 263.307(b)(12)(F) (providing court may consider whether family has understanding of child's needs and capabilities).

In his brief, Father supports his factual-sufficiency challenge by pointing out that he completed his parenting classes. At trial, Father indicated that he thought he could be a good parent because he had learned parenting skills from the classes. *See Holley*, 544 S.W.2d at 371–72 (factor four: parenting abilities). However, Father indicated that the domestic discord in the home had "psychologically damaged" J.A.M. When asked what he could do to provide a safe environment for the children free from domestic violence, Father testified, "Just stay away and participate when permitted, you know financially be there for them."

The evidence also showed that, while he completed some of his services before being incarcerated for assaulting Mother, Father did not complete all of his services. A parent's failure to complete a family service plan may be considered in assessing whether termination was in the best interest of the child. *See, e.g., In re E.C.R.*, 402 S.W.3d 239, 249 (Tex. 2013) (recognizing that finding that parent failed to complete court-ordered services can be considered in support of best-interest finding); *In re R.R.C.*, No. 04–17–00306–CV, 2017 WL 4413205, at *3 (Tex. App.—San Antonio Oct. 4, 2017, pet. denied) (mem. op.) ("A failure to complete service plans can be one of a number of the acts or omissions by a parent that are relevant to a best-interest analysis.").

The record showed that, at the time of trial, Father was incarcerated for assaulting Mother. Father testified that he had taken trade classes while in prison

and that he plans to open his own business after he is released. However, Father offered no details either about the trades he has learned or about the business he planned to open once he is no longer incarcerated. Importantly, "[a] parent who lacks stability, income, and a home is unable to provide for a child's emotional and physical needs." *In re J.R.W.*, No. 14–12–00850–CV, 2013 WL 507325, at *9 (Tex. App.—Houston [14th Dist.] Feb. 12, 2013, pet. denied) (mem. op.); *see also Holley*, 544 S.W.2d at 371–72 (factor two: identifying emotional and physical needs of child now and in the future as factor in assessing child's best interest).

With respect to her plans for the children, Mother testified that she planned to move to Michigan where she had family support. She claimed that she had already placed a deposit on a home there. However, Daly testified that she had inquired about the home and had determined that it was still on the market, undermining Mother's claim.

In addition, the record shows that Mother has a history of housing instability. When the Department received the referral about J.A.M., Mother was living in a homeless shelter. From there, Mother moved to a motel, paid for by Father. The evidence showed that, during the pendency of the cases, Mother was evicted from her apartment in August 2017. At the November 2017 trial, Mother testified that she was currently leasing a home, however, she did not provide evidence of the lease to Hackett until the day of trial.

Mother testified that she had several jobs throughout the pendency of the cases. She indicated that, when she changed jobs, it was in order to find a higher paying position. Hackett testified that Mother had failed to provide verification of her employment during the pendency of the cases. And the evidence showed that, in the past, Mother has been financially dependent on Father, who is now incarcerated and has assaulted Mother in the past.

We note that in her brief, Mother writes, "[the Department] presented no evidence that [J.A.M.] was harmed while in the care of his Mother." Contrary to this assertion, the Department presented evidence showing that, when J.A.M. came into the agency's care, J.A.M. was thin and had 16 decayed teeth causing him pain when he chewed. Daly testified that J.A.M.'s psychological evaluation showed that he had language deficits caused by his neglectful home environment and unstable living conditions.

Lastly, Mother asserts in her brief that the Department "failed to prove that there is any on-going danger existing in the Mother's home." We disagree.

A parent's past performance as a parent is relevant to a determination of his or her present abilities to provide for the child. *See In re C.H.*, 89 S.W.3d at 28. "[E]vidence of improved conduct, especially of short-duration, does not conclusively negate the probative value of a long history of . . . irresponsible choices." *In re J.O.A.*, 283 S.W.3d at 346.

Here, Mother's and Father's involvement in drug abuse, domestic violence, and lack of appropriate housing for J.A.M. portend a future inability to provide a safe and stable home for the children. Although evidence of past misconduct or neglect, standing alone, may not be sufficient to show present unfitness, a factfinder may gauge a parent's future conduct by his or her past conduct, supporting a finding that it is in a child's best interest to terminate the parent-child relationship. *See In re A.N.D.*, No. 02–12–00394–CV, 2013 WL 362753, at *2 (Tex. App.—Fort Worth Jan. 31, 2013, no pet.) (mem. op.); *see also In re B.S.W.*, No. 14–04–00496–CV, 2004 WL 2964015, at *9 (Tex. App.—Houston [14th Dist.] Dec. 23, 2004, no pet.) (mem. op.) (declaring that parent's failure to show he or she is stable enough to care for child for any prolonged period entitled trial court "to determine that this pattern would likely continue and that permanency could only be achieved through termination and adoption").

After viewing all of the evidence in the light most favorable to the best-interest findings, we conclude that the evidence was sufficiently clear and convincing that a reasonable factfinder could have formed a firm belief or conviction that termination of the parent-child relationship between Mother and J.A.M. and M.M.M. was in the children's best interest. We also conclude that, viewed in light of the entire record, any disputed evidence could have been reconciled in favor of the trial court's findings that termination of the parent-child

relationship between Mother and J.A.M. and M.M.M. was in the children's best interest or was not so significant that the trial court could not reasonably have formed a firm belief or conviction that termination was in the children's best interest. We further conclude that, viewed in light of the entire record, any disputed evidence could have been reconciled in favor of the trial court's findings that termination of the parent-child relationship between Father and J.A.M. and M.M.M. was in the children's best interest or was not so significant that the trial court could not reasonably have formed a firm belief or conviction that termination was in the children's best interest. Therefore, after considering the relevant factors under the appropriate standards of review, we hold the evidence is legally and factually sufficient to support the trial court's findings that termination of the parent-child relationship between Mother and the children and between Father and the children were in the children's best interest.

We overrule Mother's third issue, and we overrule Father's sole issue.

Conclusion

We affirm judgment of the trial court in each case.

Laura Carter Higley
Justice

Panel consists of Justices Jennings, Keyes, and Higley.