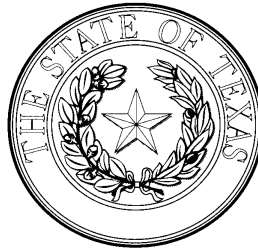


Opinion issued June 4, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-19-01003-CV

IN THE INTEREST OF S.V.H., A CHILD

**On Appeal from the 314th District Court
Harris County, Texas
Trial Court Case No. 2018-05569J**

MEMORANDUM OPINION

In this case, the trial court terminated the parental rights of A.W.U., *a/k/a* A.W.H. (Mother) to her minor son, S.V.H. (Sammy).¹ The trial court terminated Mother's parental rights under Family Code section 161.001(b)(1)(M) and (O) and

¹ In this opinion we refer to S.V.H. and his sisters by pseudonyms to protect their privacy and for ease of reading.

found that termination of Mother's rights was in Sammy's best interests. In one issue on appeal, Mother contends that the Department of Family and Protective Services (DFPS or the Department) failed to present factually sufficient evidence to support the trial court's best interest finding.

We affirm.

Background

Sammy was born in January 2012 and was seven years old at the time of the final hearing in this case. Sammy's paternity is unknown.² Mother also has two daughters: S.C.H. (Sarah), who was born in 2016, and J.S. (Julie), who was born in 2017. Mother voluntarily relinquished her parental rights to Sarah in 2017.

On November 26, 2018, DFPS filed an original petition seeking temporary managing conservatorship over Sammy and seeking termination of Mother's parental rights to Sammy. DFPS initially sought termination of Mother's parental rights based on five statutory predicate grounds for termination: subsections 161.001(b)(1)(D), (E), (K), (N), and (O). DFPS supported its petition with an affidavit from caseworker Kenneth Brown. In his affidavit, Brown averred that

² In its final decree of termination, the trial court found that the "Unknown Father" of Sammy did not respond to citation by filing an admission of paternity or counterclaim for paternity, that he had not registered with the paternity registry, and that, after exercising due diligence, DFPS had been unable to determine his identity and location. The trial court terminated any parent-child relationship between the Unknown Father and Sammy. No father filed a notice of appeal of this decree.

Mother had an extensive history of drug abuse, including abusing PCP, prescription drugs, methamphetamines, cocaine, and alcohol. He averred that Mother had voluntarily relinquished her parental rights to Sarah after Sarah had been exposed to methamphetamine during Mother's pregnancy with her. Brown also averred that Julie had been placed in foster care in 2017 after Mother had tested positive for "methamphetamine, cocaine, amphetamines, hydrocodone and Codeine." Mother "admitted she fled with the infant to hinder investigation."

Specifically with respect to Sammy, Brown averred that Mother "has been abusing prescription medications along with alcohol and other drugs recently," including "consecutively testing positive for drugs every month since beginning services" the previous year and testing positive for cocaine on November 9, 2018. He also averred that DFPS received reports that Mother was leaving Sammy with his grandfather without approval and was "being evasive and hiding [Sammy] from [DFPS] and family members, thus hindering the most recent CPS investigation." Brown briefly testified concerning the information in his affidavit at the adversary hearing on December 6, 2018.

DFPS created a Family Service Plan for Mother that the trial court adopted and entered as an order of the court. The Family Service Plan, which the trial court later admitted into evidence at the final hearing, stated the following under "Reason for Child Protective Services Involvement":

On October 18, 2018 [DFPS] received a referral alleging [Mother] who has an extensive history of drug use including PCP and cocaine has been abusing prescription medications along with alcohol and other drugs recently. The report explained mother has been leaving [Sammy] in care of grandfather without grandfather's approval. [Mother] recently tested positive for cocaine on November 9, 2018 in Hair Follicle. [Mother] currently has open [CP] case [regarding Julie]. Mother is being evasive and hiding child from [DFPS] and family members, thus hindering the most recent CPS investigation. [DFPS] has been unsuccessful in interviewing mother despite multiple attempts to contact by welfare checks and phone calls to mother and close family members. [Mother] is still consecutively testing positive for drugs every month since beginning services through [CPS] one year ago. [Mother] is not complying with current [CPS] service plan [regarding Julie].

The service plan stated that Sammy had generally been living with his maternal grandparents since 2015, but his grandparents were not being considered as a possible permanent placement for Sammy because they "gave [him] to [Mother] who had an open CPS case" relating to Julie. DFPS stated several concerns in the service plan, including concerns that Mother had tested positive for drugs in previous cases with the Department, that Mother "has a history of substance abuse and CPS history," that she "has not changed behaviors that exposed the children to risk of harm," and that she "was uncooperative during investigations and taking drug tests." The service plan required Mother to submit to random drug testing, through both urinalysis and hair follicle testing, and warned that "[a] no show will be taken as a positive drug test." The service plan also required Mother to stay in contact with her caseworker, Scarlet Vargas, to maintain stable employment for at least six months

and provide proof of employment, to maintain stable housing for at least six months, to participate in a psychiatric evaluation and follow any recommendations from that evaluation, to participate in a substance abuse assessment, and to participate in family therapy.

In a separate cause number, the trial court terminated Mother's parental rights with respect to Julie in February 2019 based on Family Code section 161.001(b)(1)(E), (O), and (P). Both Mother and Julie's father appealed the trial court's order terminating their parental rights with respect to Julie and, on August 20, 2019, this Court issued an opinion affirming the trial court's decree of termination.³ *See In re J.S.*, 584 S.W.3d 622 (Tex. App.—Houston [1st Dist.] 2019, no pet.). On February 4, 2019, DFPS amended its petition to seek termination of Mother's parental rights to Sammy based on another statutory predicate ground: subsection 161.001(b)(1)(M), which allows a trial court to terminate the parent-child relationship if the parent has had her parental rights with respect to another child terminated on the basis that her conduct violated subsections 161.001(b)(1)(D) or (E). *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(M).

³ Mother's court-appointed counsel filed an *Anders* brief on her behalf, representing that no arguable grounds for appeal existed. We conducted an independent review of the record—including a review of the legal and factual sufficiency of the evidence to support the trial court's predicate finding under subsection 161.001(b)(1)(E)—and agreed that no reversible error existed and that Mother's appeal from the order terminating her parental rights to Julie was frivolous. *See In re J.S.*, 584 S.W.3d 622, 638–39 (Tex. App.—Houston [1st Dist.] 2019, no pet.).

The trial court held a special status hearing on May 30, 2019, to determine whether to continue to allow visitation between Mother and Sammy during the pendency of the case. Vargas read into the record notes from Bobby Miller, Sammy's therapist. Miller's notes stated:

It has become clear that after every visit with [Mother], [Sammy] displays inappropriate behaviors in the foster home, which appears to continue for several days after the visits. The behaviors appear to happen after every visit. It is apparent that the visits have an upsetting effect on [Sammy]. The concerns are the visits are not of benefit for [Sammy], causing disruptive behaviors and thoughts. The visits appear to give [Sammy] a sense of confusion. [Sammy] indicates that he wants to be adopted; however, visitations appear to indicate that he will be returning to reside with his biological mother. It is my opinion that the visitations shall be discontinued due to the apparently harming effects of the visit.

Mother testified at the hearing and disagreed with Miller's recommendation. She testified that Sammy was confused because he had been removed from her and his grandparents, where he had been comfortable. She also testified that she and Sammy were bonded, that they played together a lot, that they "feel each other's emotions," and that he had been raised in a happy home.

Sheila Feldman, Sammy's Court Appointed Special Advocate (CASA), testified that she had observed the visitations and had made home visits. Feldman testified:

[Sammy] mostly plays by himself. There isn't a lot of interaction between Mom and [Sammy]. Mom and the grandfather separately talk about [Sammy] returning to one or the other's home. Mom has even talked about taking him to the beach in Galveston. It gets [Sammy] very

optimistic and excited, and then he goes home and it's—he has an unrealistic view of the future. And the foster mother has indicated that it does have an impact on his behavior, both at home and also in school with how he's been interacting with teachers and other students.

Feldman agreed that Mother and Sammy love each other, and she “wouldn't say they are not bonded.” The trial court discontinued visitation between Mother and Sammy.

At the final hearing in November 2019, Vargas testified that Sammy first came to DFPS's attention several years before trial and that he had been removed from Mother's care and placed with his maternal grandfather. DFPS received a referral of neglectful supervision of Sammy in November 2018 that led to the filing of the petition to terminate Mother's parental rights to Sammy. Sammy's grandfather returned him to Mother “while she had an open case with CPS for her daughter [Julie]” and while Mother “was testing positive for her drug test.” Vargas testified Mother's parental rights with respect to Julie had been terminated, and Julie had been adopted.

With respect to her service plan, Mother completed the psychiatric assessment and the substance abuse assessment. Mother had not participated in counseling, which had been recommended in her psychiatric assessment. Vargas also had no proof that Mother had completed the required parenting classes. Mother began inpatient substance abuse treatment in either September or October 2019 at a facility called Santa Maria, and she was still participating in that treatment at the time of trial. Vargas testified that Mother completed some visitation with Sammy, but the

trial court suspended those visits based on the recommendation of Sammy's therapist. The last time Mother visited Sammy was in April 2019.

Before going to Santa Maria, Mother had been living with her brother, but Vargas testified that DFPS did not approve this placement. Vargas testified that, upon being released from Santa Maria, Mother would need to find housing—with her name on a lease—and a new job.

Vargas testified that the most recent drug test results that she had for Mother, from October 2019 when she was in Santa Maria, were all negative. She also testified that she had been involved with both Sammy's and Julie's case for two years and that Mother had been using drugs for "all the two years that [she had] been the caseworker." She testified that Mother used cocaine, methamphetamine, and amphetamines, and she agreed that "that kind of drug use would endanger a child being placed with her." She also agreed that Mother had not "done enough to mitigate those years of drug use to show us she could safely take care of" Sammy.

The trial court admitted Mother's drug testing results dating back to April 2015. Mother tested positive for the presence of cocaine, amphetamines, and methamphetamine in May 2015, July 2015, February 2016, April 2018, July 2018, and August 2018; methamphetamine in December 2015; amphetamines and methamphetamine in January 2016; amphetamines, methamphetamine, cocaine, hydrocodone, and codeine in November 2017; cocaine in September 2018 and

November 2018; and alcohol in October 2018. These results also reflected that, on several occasions, Mother did not test positive for any substances in the urinalysis screening. Mother failed to show for court-ordered drug testing on April 6, 2018. On December 26, 2018, a hair follicle test reflected that Mother tested positive for the presence of cocaine, cocaine metabolites, and alcohol. On January 22, 2019, and May 16, 2019, Mother was ordered to submit to hair follicle testing, but this test could not be completed because Mother did not have “enough hair on her entire body.” Her urinalysis testing on January 22 did not reflect the presence of any drugs, but she tested positive for alcohol use on May 16.

The trial court also admitted certified copies of judgments reflecting that Mother had been convicted of misdemeanor Driving While Intoxicated (DWI) in March 2017, misdemeanor assault in August 2015, and misdemeanor DWI in June 2014.

Vargas testified that Sammy had been in a foster home placement since January 2019 and that he was doing well and “[m]uch better” than when he had been in Mother’s care. Sammy does not have any special needs, but he was taking medication for ADHD, depression, and “to minimize his anger outbursts.” Sammy was currently in individual therapy and was also seeing a psychiatrist, and Vargas testified that his current placement was meeting all of his physical and emotional

needs. Sammy's current foster mother—who had adopted Julie—wished to adopt him.

Sammy's attorney ad litem asked Vargas if she could tell the court the difference in Sammy from when he first came into DFPS's care and the time of trial, and she testified:

[Sammy], he's a very smart child. He is—he was educationally delayed. He's in second grade and still cannot read a four-word sentence. Foster parent has [hired] a private tutor to tutor [Sammy] to teach him how to read and so he can be at his grade level. Also, Foster Mom keeps him really active. During the summer, he took swimming lessons. He went to big brother/sister's club during the summer, which he loved. They are very active. This year was his first time ever going trick-or-treating and ever having a costume of his own. Foster Mom keeps him really busy. She's very loving. He loves Foster Mom. And I asked [Sammy]—because he's verbal and very smart—I asked him if he wants to stay at that placement with his sister, and he said, yes, he wanted to stay there.

Vargas testified that Sammy's foster mother had been working with him on how to stay still and complete his homework assignments and on his outbursts of anger. Vargas stated that “Foster Mom has come up with a plan that every time he feels angry or upset or if he wants to lash out at Foster Mom or anybody, just to sit down and hug each other until he feels better.” She testified, “[H]e's come through a lot this past couple of months.”

Feldman testified that Child Advocates recommended termination of Mother's parental rights to Sammy so his foster mother could adopt him. Sammy's

attorney ad litem asked Feldman why termination was in Sammy's best interest, and she testified:

Mom has had a consistent history of not following through on a plan of service. She has tested positive numerous times for drugs or been no-shows. In fact, that was the primary reason why her parental visitation rights were taken away. Her attendance at these sessions was erratic. She has really not been able to maintain a job for more than a week or so. She has not had any stable housing. She has never had her name on the lease or contributed to the rent of any housing. It's inconceivable for me to believe that [Sammy] could lead a healthy, fruitful life unless he remains where he is.

Feldman stated that he believed Sammy would be harmed by removing him from his foster mother and Julie. She testified:

[Sammy] has been moved around numerous times already. It's clearly had an impact on his behavior and his outlook. He can't even bring himself to talk to the therapist about his issues. He's suffered anger management issues. He needs stability. The foster mother is more than capable and [has] demonstrated loving and caring. And to separate him from [Julie], with whom he's very much bonded, I think would be very harmful for him. [His foster mother has] gone above and beyond to take care of his emotional health, his academic needs, and for that to go away I think would set him back tremendously.

Mother testified on her own behalf. She stated that she was actively working the services in her service plan and that she was currently in inpatient substance abuse treatment at Santa Maria, where she had been since around the end of September 2019. She stated that she had a month left of treatment at Santa Maria. Mother testified that she is regularly tested for drugs at Santa Maria and that all of her drug test results have been negative. She stated that she has been completing

everything that Santa Maria requires of her, including individual counseling, drug classes, and group therapy. Mother testified that, upon her release from Santa Maria, she planned to see if she could “possibly go into another facility with my child and complete housing.” She intended to find a job once she was released from treatment, and she testified that she has been employed during the pendency of the case. Mother testified that she had been employed at Sally’s Beauty Supply for a year, and she agreed with her counsel that she went to Santa Maria shortly after that job ended. Mother requested that the trial court not terminate her parental rights and instead restore her visitation rights and give her more time to complete her services. She agreed that she “very much” wanted to be reunited with Sammy.

The trial court signed an order terminating Mother’s parental rights to Sammy. Specifically, the trial court found by clear and convincing evidence that two statutory predicate grounds for termination existed: Family Code section 161.001(b)(1)(M) and (O). The trial court also found that termination of the parent-child relationship was in Sammy’s best interests. The trial court appointed DFPS as Sammy’s sole managing conservator.

Best Interest of the Child

In her sole issue on appeal, Mother contends that DFPS failed to present factually sufficient evidence to support the trial court’s finding that termination of her parental rights was in Sammy’s best interest. She does not challenge the

sufficiency of the evidence supporting either of the statutory predicate grounds for termination, nor does she challenge the legal sufficiency of the evidence supporting the best interest finding.

A. *Standard of Review*

A trial court may order termination of the parent-child relationship if DFPS proves, by clear and convincing evidence, one of the statutorily enumerated predicate findings for termination and that termination of parental rights is in the best interest of the children. TEX. FAM. CODE ANN. § 161.001(b); *see In re E.N.C.*, 384 S.W.3d 796, 802 (Tex. 2012) (stating that federal due process clause and Texas Family Code both mandate “heightened” standard of review of clear and convincing evidence in parental-rights termination cases). DFPS must prove both elements—a statutorily prescribed predicate finding and that termination is in the children’s best interest—by clear and convincing evidence. *In re E.N.C.*, 384 S.W.3d at 803. 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; *In re E.N.C.*, 384 S.W.3d at 802.

When a parent challenges the factual sufficiency of the evidence supporting the trial court’s findings, we review all of the evidence, including disputed or conflicting evidence. *In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009). We should

inquire whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the allegations. *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006) (per curiam) (quoting *In re C.H.*, 89 S.W.3d 17, 25 (Tex. 2002)); see *In re A.C.*, 560 S.W.3d 624, 631 (Tex. 2018) (“In a factual-sufficiency review, the appellate court must consider whether disputed evidence is such that a reasonable factfinder could not have resolved it in favor of the finding.”). “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.” *In re J.O.A.*, 283 S.W.3d at 345 (quoting *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002)). In applying this standard, our review “must not be so rigorous that the only factfindings that could withstand review are those established beyond a reasonable doubt.” *In re H.R.M.*, 209 S.W.3d at 108 (quoting *In re C.H.*, 89 S.W.3d at 26); see also *In re A.B.*, 437 S.W.3d 498, 503 (Tex. 2014) (stating that we must still provide due deference to decisions of factfinder, who had full opportunity to observe witness testimony and was sole arbiter of assessing witness credibility and demeanor).

B. Analysis

In this case, the trial court found that Mother violated two statutory predicate findings under section 161.001(b)(1): subsection (M) and subsection (O). Subsection (M) allows a court to terminate a parent’s parental rights if it finds, by clear and

convincing evidence, that the parent has had her “parent-child relationship terminated with respect to another child based on a finding that the parent’s conduct was in violation of Paragraph (D) or (E) [of section 161.001(b)(1)] or substantially equivalent provisions of the law of another state.” TEX. FAM. CODE ANN. § 161.001(b)(1)(M); *see id.* § 161.001(b)(1)(D) (providing that court may order termination of parent-child relationship if court finds that parent “knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child”), *id.* § 161.001(b)(1)(E) (providing that court may order termination of parent-child relationship if court finds that parent “engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child”). Subsection (O) allows a court to terminate the parent-child relationship if the parent has “failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of [DFPS] for not less than nine months as a result of the child’s removal from the parent under Chapter 262 for the abuse or neglect of the child.” *Id.* § 161.001(b)(O).

Mother does not challenge the sufficiency of the evidence to support the trial court’s findings that she violated both Family Code section 161.001(b)(1)(M) and (O). Instead, she challenges only the factual sufficiency of the evidence to support

the trial court's finding that termination of her parental rights was in Sammy's best interest.

“[T]he prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest.” TEX. FAM. CODE ANN. § 263.307(a). There is a strong, but rebuttable, presumption that the best interest of a child is served by keeping the child with a parent. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam); see TEX. FAM. CODE ANN. § 153.131(b); *Jordan v. Dossey*, 325 S.W.3d 700, 729 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) (noting that parent-child relationship has constitutional underpinnings, but courts must not sacrifice child's emotional and physical interests “merely to preserve that right”).

Whether termination of parental rights is in a child's best interest is “child centered,” and the inquiry focuses on “the child's well-being, safety, and development.” *In re A.C.*, 560 S.W.3d 624, 631 (Tex. 2018). The Texas Supreme Court has set out several non-exclusive factors that we should consider when determining whether the termination of a parent's rights is in the child's best interest, including (1) the child's desires; (2) the child's current and future physical and emotional needs; (3) the current and future physical danger to the child; (4) the parental abilities of the person seeking custody; (5) whether programs are available to assist the person seeking custody in promoting the best interests of the child; (6) the plans for the child by the person seeking custody; (7) the stability of the

home; (8) the acts or omissions of the parent that may indicate the parent-child relationship is not proper; and (9) any excuse for acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976); *In re A.C.*, 394 S.W.3d 633, 641–42 (Tex. App.—Houston [1st Dist.] 2012, no pet.). These factors are not exhaustive, and it is not necessary that DFPS prove all of these factors “as a condition precedent to parental termination.” *In re C.H.*, 89 S.W.3d at 27. The absence of evidence concerning some of the factors does not preclude a factfinder from forming a firm belief or conviction that termination is in the children’s best interest. *In re A.C.*, 394 S.W.3d at 642.

Proof concerning the statutory predicate findings under section 161.001(b)(1) does not relieve DFPS of its burden of proving that termination is in the children’s best interest, but “the same evidence may be probative of both issues.” *In re C.H.*, 89 S.W.3d at 28; *Jordan*, 325 S.W.3d at 729. The best-interest analysis may consider circumstantial evidence, subjective factors, and the totality of the evidence as well as the direct evidence. *In re B.R.*, 456 S.W.3d 612, 616 (Tex. App.—San Antonio 2015, no pet.). “A trier of fact may measure a parent’s future conduct by his past conduct and determine whether termination of parental rights is in the child’s best interest.” *Id.*; see *In re C.H.*, 89 S.W.3d at 28 (stating that past performance as parent “could certainly have a bearing on [parent’s] fitness to provide for” child, and courts should consider prior history of child neglect in best-interest analysis).

Here, Sammy was nearly eight years old at the time of the final hearing. He was living in a foster placement with his younger half-sister, Julie, who had recently been adopted by the foster mother after Mother’s parental rights to Julie were terminated, and order that was upheld on appeal by this Court. *See In re J.S.*, 584 S.W.3d at 538–40. Although Sammy did not testify at the hearing, Vargas, the DFPS caseworker testified that his foster mother wished to adopt him and that Sammy told Vargas that he wanted to stay in that placement with Julie. *See Holley*, 544 S.W.2d at 372 (listing “desires of the child” as factor to be considered in making best-interest determination).

DFPS presented evidence that Mother has an extensive history of substance abuse, dating back at least to 2015. Over the four years leading up to the final hearing in this case, which occurred in November 2019, Mother repeatedly tested positive for amphetamines, methamphetamine, cocaine, and alcohol abuse.⁴ Her positive test results continued during two pregnancies—her pregnancies with Sarah and Julie—and during the pendency of both the termination case involving Julie and the termination case involving Sammy. Feldman, Sammy’s court-appointed special advocate, testified that Mother had repeatedly tested positive for drugs and that she had, on multiple occasions, failed to show up for random drug tests requested by

⁴ DFPS presented evidence of Mother’s criminal history, which includes, in addition to a conviction for misdemeanor assault, two convictions for misdemeanor DWI.

DFPS. Mother’s family service plan includes a warning that “[a] no show will be taken as a positive drug test.” *See In re J.M.T.*, 519 S.W.3d 258, 269 (Tex. App.—Houston [1st Dist.] 2017, pet. denied) (stating that trial court may infer, from parent’s refusal to submit to court-ordered random drug screening, that parent refused because result would be positive); *In re W.E.C.*, 110 S.W.3d 231, 239 (Tex. App.—Fort Worth 2003, no pet.) (same).

Mother testified that, as required by her service plan, she had entered inpatient substance abuse treatment at Santa Maria at the end of September 2019, that she had approximately one month left of that treatment program, that she was routinely tested for the presence of drugs while at Santa Maria, that all of her drug tests while there had been negative, and that she was participating in required activities at Santa Maria, which included individual counseling, drug classes, and group therapy.

As this Court has held, a parent’s drug use “reflects poor judgment and may be a factor to consider in determining a child’s best interest.” *In re J.M.T.*, 519 S.W.3d at 269; *In re A.C.*, 394 S.W.3d at 642 (stating that mother’s drug use during pregnancy and after undergoing treatment program “suggests the mother was not willing and able to provide the child with a safe environment—a primary consideration in determining the child’s best interest”). Furthermore, evidence of illegal drug use supports an inference that the parent is at risk for continuing drug use. *In re J.M.T.*, 519 S.W.3d at 269; *see In re E.D.*, 419 S.W.3d 615, 620 (Tex.

App.—San Antonio 2013, pet. denied) (stating that factfinder may measure parent’s future conduct by parent’s past conduct). “The fact finder can give ‘great weight’ to the ‘significant factor’ of drug-related conduct.” *In re E.R.W.*, 528 S.W.3d 251, 266 (Tex. App.—Houston [14th Dist.] 2017, no pet.). Mother’s substance abuse history is extensive and recent, with a positive drug screening occurring during the pendency of this termination case—as well as positive screenings that occurred during Julie’s termination case and during Mother’s pregnancies with Sarah and Julie—and multiple failures to report for DFPS’s requested random screenings. This evidence weighs heavily in favor of the trial court’s finding that termination of Mother’s parental rights was in Sammy’s best interests. *See In re J.M.T.*, 519 S.W.3d at 269 (stating that parent’s history of illegal drug use, and inference that parent is at risk for continuing drug use, is relevant to stability of parent’s home, child’s physical and emotional needs now and in future, and current and future physical danger to child); *see also Holley*, 544 S.W.2d at 372.

Mother’s participation in inpatient substance abuse treatment at Santa Maria is positive, as is the fact that her most recent drug screening—conducted in October 2019, while she resided at Santa Maria—was negative for the presence of drugs. Evidence of a recent turn-around with respect to substance abuse does not, however, necessarily make a trial court’s best interest finding factually insufficient. *See In re J.H.G.*, No. 01-16-01006-CV, 2017 WL 2378141, at *9 (Tex. App.—Houston [1st

Dist.] June 1, 2017, pet. denied) (mem. op.) (stating that factfinder “is not required to ignore a history of narcotics use merely because it abates as trial approaches”). “[E]vidence of a recent turnaround should be determinative only if it is reasonable to conclude that rehabilitation, once begun, will surely continue.” *In re M.G.D.*, 108 S.W.3d 508, 514 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). Mother’s negative drug screening occurred while she was in the controlled environment of a substance abuse rehabilitation facility. At the time of the final hearing, Mother had not yet completed the program at Santa Maria. The trial court, in making its ruling, stated on the record that it believed Mother was “trying,” but that it was concerned that Mother waited “months into the case to begin” her services, including substance abuse treatment, which Mother started in September 2019, ten months after the case was filed in November 2018. Based on the evidence presented in the record, the trial court reasonably could have concluded that Mother remained at risk of relapse and that her drug use remained a potential source of danger to Sammy. *See In re J.M.*, No. 01-17-00986-CV, 2018 WL 3117887, at *6 (Tex. App.—Houston [1st Dist.] June 26, 2018, no pet.) (mem. op.) (“While Mother may have shown some improvement regarding her drug usage, the trial court, based on Mother’s history of repeated relapses, could reasonably have concluded that she remained at risk of relapses and was still a danger to the children.”).

DFPS presented evidence that Sammy began living with his maternal grandfather in 2015 and that that placement continued for three years, through Mother's pregnancies with Sarah and Julie. In 2018, however, while the termination case concerning Julie was pending, Sammy's grandfather allowed him to return to Mother's care, an action that initiated this termination proceeding. After the underlying proceeding began, Sammy was placed with the same foster mother who had custody of Julie—a placement that became permanent after Mother's parental rights to Julie were terminated and the foster mother adopted Julie. The foster mother also wished to adopt Sammy. Both Vargas and Feldman testified concerning how Sammy was doing in his current placement, including the improvements he had made at school, the activities his foster mother had enrolled him in, and the foster mother's efforts at helping him with his ADHD and anger outbursts. Both Vargas and Feldman testified that the foster mother was very loving, that the foster mother and Sammy love each other, that the placement was stable, that all of Sammy's physical and emotional needs were being met, and that keeping Sammy together with Julie would be beneficial to him. *See Holley*, 544 S.W.2d at 372 (considering emotional and physical needs of child now and in future, parental abilities of persons seeking custody, plans for child by individuals seeking custody, and stability of proposed placement); *In re D.K.J.J.*, No. 01-18-01081-CV, 2019 WL 2455623, at *19 (Tex. App.—Houston [1st Dist.] June 13, 2019, pet. denied) (mem. op.) (“The

stability of the home has been found ‘to be of paramount importance in a child’s emotional and physical well-being.’”) (quoting *In re A.H.L.*, No. 01-16-00784-CV, 2017 WL 1149222, at *5 (Tex. App.—Houston [1st Dist.] Mar. 28, 2017, pet. denied) (mem. op.)).

Although there is no doubt that Mother loves Sammy and wants to be reunited with him, there is also no evidence in the record that she is capable of providing him with a safe and stable home environment that meets his physical and emotional needs. At the time of the final hearing, Mother was a resident at Santa Maria, an inpatient substance abuse facility. Previously, she had been living with her brother, but Vargas testified that DFPS did not consider this to be an appropriate placement for Sammy. *See In re J.M.T.*, 519 S.W.3d at 270 (considering fact that, at time of trial, parent did not have adequate housing to care for child and noting that parent who lacks stability “is unable to provide for a child’s emotional and physical needs”). Mother stated that, after being released from Santa Maria, she intended to “possibly go into another facility with my child and complete housing.” Mother provided no testimony concerning her plans for Sammy, how she intended to handle his educational and emotional needs, or what programs she intended to utilize to assist her in caring for Sammy.

Mother intended to find a job upon her release from Santa Maria, and she stated that she had been employed during the pendency of the case, but Feldman

testified that Mother had been unable to obtain consistent employment during the case. *See id.* (considering parent’s failure to provide proof of employment and stating that parent who lacks income “is unable to provide for a child’s emotional and physical needs”). Vargas testified that while Mother completed some of her required services, she never attended individual counseling, which had been recommended during her psychiatric evaluation, and Vargas had no proof that Mother had completed parenting classes. *See id.* at 269–70 (considering fact that parent failed to complete all tasks and services required by family service plan as evidence supporting best-interest finding).

When considering the entire record in this case, we conclude that the trial court could have reasonably formed a firm belief or conviction that termination of Mother’s parental rights was in Sammy’s best interest. *See In re H.R.M.*, 209 S.W.3d at 108. We therefore hold that factually sufficient evidence supports the trial court’s finding that termination of Mother’s parental rights was in Sammy’s best interest.

We overrule Mother’s sole issue on appeal.

Conclusion

We affirm the judgment of the trial court.

Evelyn V. Keyes
Justice

Panel consists of Justices Keyes, Lloyd, and Hightower.