Opinion issued July 28, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-20-00126-CV

IN THE INTEREST OF R.S., JR., A CHILD

On Appeal from the 300th District Court
Brazoria County, Texas
Trial Court Case No. 82456-F

MEMORANDUM OPINION

The trial court terminated the appellant father's parental rights. He appeals contending that the evidence is legally and factually insufficient to show that:

(1) he endangered the physical or emotional wellbeing of his son or knowingly placed his son with people who did so;

(2) he constructively abandoned his son;

(3) he failed to complete his court-ordered family service plan; and

(4) termination is in his son's best interest.

See TEX. FAM. CODE § 161.001(b)(1)(E), (N), (O), (b)(2).

We affirm.[1]

BACKGROUND

This case was tried to the bench in January 2019. The trial court heard testimony from five witnesses:

- Gabriel Ozuna, the father's probation officer;
- Macy Hubbard, the child's foster mother;
- Timothy Hubbard, the child's foster father;
- Chevelle Bosier, the child's caseworker; and
- the appellant, the child's father.

Ozuna testified that the child's father is on deferred adjudication probation for the state jail felony offense of possession of a controlled substance, specifically methamphetamine. The conditions of his probation require him to undergo drug testing, take a substance abuse assessment, and complete a drug education class. The father has not complied with these conditions even though he could be jailed for noncompliance. The father was previously on probation for another offense—

[1] The trial court also terminated the child's mother's parental rights based on her execution of an affidavit of relinquishment of her parental rights and on the trial court's finding that termination was in the child's best interest. *See* FAM. § 161.001(b)(1)(K), (b)(2). She has not appealed.

resisting arrest, search, or transport—and his probation was revoked due to his use of methamphetamine.

Macy Hubbard testified that the child first came into her care in May 2015 when he was six months old. She cared for him for a month and a half, after which he was returned to his parents. The child came into Macy's care again in June 2015, remained with her for two weeks, and then was returned to his parents again. The child came into her care for the third time in August 2015. He has remained in Macy's care ever since.

Macy testified that the child has had medical issues requiring extra care. As an infant, the child was diagnosed with "failure to thrive." When he first came into Macy's care, he weighed just seven and a half pounds. He suffered from several conditions during infancy, including a double hernia, hypospadias (lack of a urethra), pupillary membrane (webbing over the eyes), and gastrointestinal issues causing constant constipation. The child has undergone four surgeries related to his hypospadias, hernias, and pupillary membrane. His surgeries required careful aftercare on Macy's part. The child developed a fistula (a hole resulting from sutures) after the first surgery, which required additional treatment and care. The child did not receive treatment for the double hernia, hypospadias, or pupillary membrane before he came into Macy's care.

The child's pediatrician determined that he had "a delayed swallow." This required a specialized diet and made gaining weight difficult. He now eats solid food—other than meat—under supervision. He is five years old but remains a small child. He currently weighs a little over 27 pounds, which is underweight.

Macy testified that the child is developmentally delayed. Cognitively, he is like a three-and-a-half year old child. He sees several therapists—physical, occupational, and speech—each week at school.

Macy testified that the child's father has attended about five of his son's medical appointments over the years and none within the last two. In her opinion, the child has no bond with his father. The father has not provided any monetary support, clothes, toys, or food to his son.

In contrast, Macy stated that the child is an integral part of her family and that she is willing to care for him indefinitely. Her own three children have a very close relationship with the child. Macy also ensures that the child sees his siblings—who also are in foster care—monthly.

Macy feels threatened by the child's father. He once followed her home from an appointment. The father also posted a picture of Macy's husband on Facebook. The father called her a "bitch" while she was stepping down from the witness stand at trial. She is not comfortable having an ongoing relationship with the father.

Macy's husband, Timothy, testified that his three children love the child and that the child loves them. Timothy loves the child as well and testified that the child is "one of the family." Timothy echoed his wife's concern about the child's father's threatening behavior, testifying that, in addition to posting a photograph of Timothy on Facebook, the father made comments accusing him of stealing and abusing the child.

The Department introduced several photographs during the Hubbards' testimony. These photographs show the Hubbards caring for the child and the child engaging in ordinary family and childhood activities.

Bosier is the child's caseworker. She testified that the father's court-ordered family service plan required him to complete a psychological evaluation, individual therapy, and anger management class. The father completed the psychological evaluation but has not followed its recommendations. He completed the individual therapy after several unsuccessful attempts. He also completed the anger management class. The court-ordered family plan also required the father to provide his address, which he failed to do. As a result, Bosier has not visited the father's home. Bosier testified that the father failed to comply with various other court-ordered requirements, including taking a drug assessment and drug tests.

Bosier testified that the father has mental health issues. He has been diagnosed as suffering from bipolar disorder and borderline schizophrenia. Bosier was

concerned that the father was not taking the medication that a psychiatrist recommended to treat these conditions. In the past, he took medication for these conditions but told Bosier that he stopped "because he didn't like the way it made him feel." He also did not follow up on recommendations for psychiatric treatment.

Bosier testified that the father told her that he used methamphetamine daily between December 2017 and May 2018. He also admitted that he was high on methamphetamine during some visits with his son. Bosier urged him to seek treatment at an inpatient facility, but he did not do so. The father told Bosier that his girlfriend was also a heavy methamphetamine user. Bosier did not know if the father was still using drugs because he did not complete the court-ordered drug assessment.

Bosier testified that she coordinated with the father's probation officer so that the father would not be forced to complete duplicate services. She also identified no-cost or low-cost service providers for him.

The father visited his son four or five times in the year preceding trial. Bosier attributed the infrequency of these visits to the father's decision not to visit the child and the father's incarceration. The father was in jail for around four months the year preceding trial. But the father also stopped communicating with the Department about visits and did not follow up to reschedule visits that he had missed. The child is "very loving and affectionate." But Bosier stated that the child was not affectionate

with his father during the last couple of visits. She stated that the bond between father and son "is not there."

In contrast, Bosier testified that the child has bonded with the Hubbards. The Hubbards meet his physical needs and are "very involved." Bosier testified that the Hubbards provide the child with a safe, stable home. The Hubbards "are very protective of him," and he thrives in their home.

The father threatened Bosier when she was first assigned to this case, and he also threatened previously assigned caseworkers. In addition, he threatened Bosier's supervisor on Facebook. Bosier testified that the Department sometimes assists parents with transportation to and from service providers if needed but that the Department cannot do so in this case due to the father's recurring anger management issues. Similarly, though Bosier previously arranged for a therapist to see the father at his residence, the therapist refused to continue due to the father's angry outbursts.

Bosier stated that the Department is seeking termination of the father's parental rights. She said that the child needs permanency. The Department previously was appointed permanent managing conservator of the child. Its goal is to have him adopted by a non-relative.

During Bosier's testimony, the Department introduced a certified copy of a 2018 decree terminating the father's parental rights with respect to two other sons. Multiple grounds supported that termination, including that he:

6.2.1. knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endanger the physical or emotional well-being of the children, pursuant to § 161.001(b)(1)(D), Texas Family Code;

6.2.2. engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangers the physical or emotional well-being of the children, pursuant to § 161.01(b)(1)(E), Texas Family Code.

This prior decree is final. *See In re D.A.S. & D.S.*, No. 01-19-00073-CV, 2019 WL 921869 (Tex. App.—Houston [1st Dist.] Feb. 26, 2019, no pet.) (mem. op.) (per curiam) (dismissing untimely appeal for lack of jurisdiction).

The father slept through part of trial. When he took the stand, he testified that he did not think he would have done anything differently in terms of the actions he took to try and have his son returned to his care. The father nonetheless insisted that his son would be better off in his care.

The father testified that was not able to complete a drug assessment. He denied current drug use but said he could not recall when he last used methamphetamine, and he refused to say whether he had a drug problem. When asked if the last time he used drugs was more or less than a month ago, the father stated he did not remember. He refused to answer other questions about drug use based on the Fifth Amendment.

The father testified that he has been diagnosed as bipolar and borderline schizophrenic but that he does not currently take any psychiatric medication. He maintained that he cannot afford the medication. He testified that he originally

stopped taking his medicine because it gave him "real bad tremors." The following exchange then ensued:

> Q. Did you talk to a doctor about [taking] something else?
>
> A. I did talk to a doctor. They didn't do nothing. I just quit taking. I learned how to cope with it and deal with it on my own and be able to deal with the anger in other ways, other constructive ways, like play games or go work out or go walk or some point learn how to walk away. If I started to get, I guess, a little argumentative, walk away and go play whatever.

When asked if he thought his failure to complete court-ordered services was in his son's best interest, the father stated that he was not given a chance to complete these services. He faulted the Department for not sending required paperwork and also for repeatedly adding new services. In addition, he testified that he lacked the money and transportation to complete his court-ordered services. It is undisputed that the father was unemployed.

The father currently lives with "a girl" and "two other guys." He has lived with them for a few months or so. But he refused to disclose the identities of these people, citing their right to privacy. He denied that they used methamphetamine and stated they would not hurt the child.

The father testified that he does not attend his son's medical appointments because no one notifies him about them. But he conceded that Texas Children's Hospital had banned him from its premises due to his angry outbursts. He disagreed that he has a problem controlling his anger.

The father asked the court to deny the Department's termination request because it is not in his son's best interest "to stay in someone's care when he's been with them five years and only weighs 27 and-a-half pounds." He said that when he visits his son, the child asks when he will get to come home.

The father testified that it is hard for him to form a bond with his son given how infrequently they get to see each other. He testified that he has not "been able to make the past few visits" due to lack of transportation. When asked if he would agree that being in jail interferes with his ability to see his son, the father responded that he was "not going to agree with anything."

After hearing the evidence, the trial court terminated the father's parental rights with respect to the child on several grounds, including that the father:

- endangered the physical or emotional wellbeing of his son or knowingly placed his son with people who did so;
- had his parental rights terminated with respect to two other sons based on a violation of section 161.001(b)(1)(D) or (E) of the Family Code;
- constructively abandoned his son; and
- failed to complete his court-ordered family service plan.

See FAM. § 161.001(b)(1)(E), (M), (N), (O). The trial court also found that termination is in the child's best interest. *See id.* § 161.001(b)(2).

The father appeals.

DISCUSSION

Legal Standard for Terminating Parental Rights

A parent's rights to the care, custody, and management of his or her child are constitutional in scope. *Santosky v. Kramer*, 455 U.S. 745, 758–59 (1982); *In re M.S.*, 115 S.W.3d 534, 547 (Tex. 2003). But parental rights are not absolute; the Department may seek termination of the rights of those who are not fit to accept the responsibilities of parenthood. *In re A.V.*, 113 S.W.3d 355, 361 (Tex. 2003). The primary focus in a termination suit is protecting the child's best interest. *Id.*

To terminate parental rights under the Family Code, the Department must establish that a parent committed one or more statutorily enumerated predicate acts or omissions and that termination is in the child's best interest. FAM. § 161.001(b)(1), (2). The Department need only establish one of these predicate acts or omissions, along with the best-interest finding. *See id.*; *In re A.V.*, 113 S.W.3d at 362. But the Department must make these showings by clear and convincing evidence. FAM. § 161.001(b). Clear and convincing evidence is "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." *Id.* § 101.007.

Section 161.001(b)(2)'s best-interest finding is a separate inquiry from section 161.001(b)(1)'s predicate acts and omissions. *In re S.R.L.*, 243 S.W.3d 232, 235 (Tex. App.—Houston [14th Dist.] 2007, no pet.). But evidence used to prove

predicate acts or omissions may be probative in deciding a child's best interest. *In re A.A.A.*, 265 S.W.3d 507, 516 (Tex. App.—Houston [1st Dist.] 2008, pet. denied).

Multiple non-exclusive factors bear on a child's best interest. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). These include:

- the child's desires;
- the child's emotional and physical needs now and in the future;
- the emotional and physical danger to the child now and in the future;
- the parental abilities of those seeking custody;
- the programs available to assist them to promote the child's best interest;
- their plans for the child or the plans of the agency seeking custody;
- the stability of the home or proposed placement;
- the acts or omissions of the parent that may indicate the existing parent-child relationship is not proper; and
- any excuse for the parent's acts or omissions.

Id.; *Yonko v. Dep't of Family & Protective Servs.*, 196 S.W.3d 236, 243 (Tex. App.—Houston [1st Dist.] 2006, no pet.). These factors are not exhaustive, no one factor is controlling, and a single factor may be adequate to support termination on a particular record. *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002); *In re J.M.T.*, 519 S.W.3d 258, 268 (Tex. App.—Houston [1st Dist.] 2017, pet. denied).

Legal and Factual Sufficiency Review in Termination Cases

Because of the elevated burden of proof in a termination suit—clear and convincing evidence—we do not apply the traditional formulations of legal and factual sufficiency on appeal. *In re A.C.*, 560 S.W.3d 624, 630 (Tex. 2018).

In conducting a legal-sufficiency review in a termination case, we cannot ignore undisputed evidence contrary to a finding, but we must otherwise assume the factfinder resolved disputed facts in favor of the finding. *Id.* at 630–31; *see In re K.M.L.*, 443 S.W.3d 101, 112–13 (Tex. 2014) (reviewing court credits evidence that supports finding if reasonable factfinder could do so and disregards contrary evidence unless reasonable factfinder could not do so). The evidence is legally insufficient if, viewing all the evidence in the light most favorable to a finding and considering undisputed contrary evidence, a reasonable factfinder could not form a firm belief or conviction that the finding is true. *In re A.C.*, 560 S.W.3d at 631.

In conducting a factual-sufficiency review in a termination case, we must weigh disputed evidence contrary to a finding against all the evidence in favor of the finding. *Id.* We consider whether the disputed evidence is such that a reasonable factfinder could not have resolved it in favor of the finding. *Id.* The evidence is factually insufficient if, in light of the entire record, the disputed evidence a reasonable factfinder could not have credited in favor of a finding is so significant that the factfinder could not have formed a firm belief or conviction that the finding

is true. *Id.* In reviewing for factual sufficiency, however, we must be careful not to usurp the factfinder's role. *In re A.B.*, 437 S.W.3d 498, 503 (Tex. 2014).

Deciding whether, and if so to what degree, to credit the evidence introduced at trial is the factfinder's role, not ours. *In re J.O.A.*, 283 S.W.3d 336, 346 (Tex. 2009). The factfinder is the sole arbiter of witness credibility. *Id.*; *In re J.S.*, 584 S.W.3d 622, 634 (Tex. App.—Houston [1st Dist.] 2019, no pet.). In a bench trial, the trial judge is the factfinder who weighs the evidence, resolves evidentiary conflicts, and evaluates witnesses' demeanor and credibility. *In re R.J.*, 579 S.W.3d 97, 117 (Tex. App.—Houston [1st Dist.] 2019, pet. denied).

Predicate Acts and Omissions

The trial court found that multiple predicate acts and omissions supported the termination of the father's parental rights, one of which being the previous termination of his parental rights with respect to two other children based on violation of section 161.001(b)(1)(D) and (E) of the Family Code, both of which involve child endangerment. This finding—which is supported by the record and unchallenged on appeal—satisfies the predicate-act-and-omission requirement for termination. *See* FAM. § 161.001(b)(1)(M); *In re C.M.J.*, 573 S.W.3d 404, 411–12 (Tex. App.—Houston [1st Dist.] 2019, pet. denied) (prior decree terminating parental rights based on endangerment finding satisfies predicate-acts-and-omissions requirement as a matter of law); *see also In re R.J.*, 579 S.W.3d at 113

(prior decree terminating parental rights based on endangerment finding satisfies predicate-acts-and-omissions requirement even if appeals not exhausted).

The trial court also found that termination was warranted because the father endangered the emotional or physical wellbeing of his son or knowingly placed his son with people who did so. *See* FAM. § 161.001(b)(1)(E). Ordinarily, we must review an endangerment finding like this one even if another predicate act or omission supports the trial court's decree because of the collateral consequences of endangerment findings. *See id.* § 161.001(b)(1)(M); *In re N.G.*, 577 S.W.3d 230, 234–37 (Tex. 2019) (per curiam). But we need not do so here. The trial court's current endangerment finding does not impose any consequences to which the father is not already subject as a result of the 2018 decree terminating his parental rights with respect to his other two sons. That decree likewise contains endangerment findings, which are grounds for termination of the father's parental rights in any future suit. *See* FAM. § 161.001(b)(1)(M). Thus, the current endangerment finding does not impose any additional consequence and does not require review.

But if we are mistaken in our holding that the trial court's current endangerment finding does not impose any additional consequence on the father, our mistake does not impact the outcome of his appeal because the evidence is legally and factually sufficient to support the trial court's current endangerment finding.

The trial court found that the father endangered his son's emotional or physical wellbeing or knowingly placed his son with people who did so. *See* FAM. § 161.001(b)(1)(E). This finding must be based on a conscious course of conduct, rather than a single act or omission. *In re J.S.*, 584 S.W.3d at 634–35. But the conduct need neither occur in the presence of nor be directed at the child. *Id.* In addition, the trial court can consider conduct after the Department removed the child from the home. *Id.* at 635. Endangerment entails more than theoretical threats or a less-than-ideal home life, but actual injury is not necessary. *See id.*

The trial court heard evidence of the father's extensive, ongoing drug use. The father is on probation for possession of methamphetamine, and his methamphetamine use previously led to revocation of probation for another offense. He admitted to his son's current caseworker that he used methamphetamine daily for a period of several months and was high on methamphetamine during visits with his son. Though the father denied continued drug use, he has not taken a drug test despite the requirements of both his probation and family service plan. He has complied neither with court orders requiring him to take a drug assessment nor the caseworker's advice to seek inpatient treatment. This evidence of repeated drug use and refusal to address the problem supports the trial court's endangerment finding because the father's pattern of illegal drug use creates the possibility that he will be impaired or incarcerated and thus incapable of parenting. *See id.* The father's use of

methamphetamine after his son's removal is especially significant because a parent's decision to use drugs when his parental rights are in jeopardy evidences conscious indifference as to whether the parent-child relationship continues or an inability or unwillingness to prioritize the child's wellbeing ahead of drugs. *See id.*

Because serious drug use significantly harms the parenting relationship, it alone may show endangerment under section 161.001(b)(1)(E). *In re A.M.*, 495 S.W.3d 573, 579–80 (Tex. App.—Houston [1st Dist.] 2016, pet. denied). Parental drug use remains endangering conduct even if the child was not in the parent's custody when the drug use occurred. *In re K.P.*, 498 S.W.3d 157, 172 (Tex. App.—Houston [1st Dist.] 2016, pet. denied). Moreover, though no direct evidence of current drug use exists, the trial court was entitled to infer from the father's protracted failure to take a drug test that he continued to use drugs despite the father's contrary explanations for this failure. *In re J.M.T.*, 519 S.W.3d at 269.

Viewing all the evidence in the light most favorable to the trial court's endangerment finding and considering undisputed contrary evidence, we conclude that a reasonable factfinder could have formed a firm belief or conviction that this finding is true. In light of the entire record, we conclude that the disputed evidence that a reasonable factfinder could not have credited in favor of this endangerment finding is not so significant that the factfinder could not have formed a firm belief

or conviction that it is true. We thus hold that the evidence is legally and factually sufficient to support this finding. *See In re A.C.*, 560 S.W.3d at 630–31.

We overrule the father's first three issues.

Child's Best Interest

The father contends that there is not legally or factually sufficient evidence to support the trial court's best-interest finding. We disagree.

Substantial evidence shows that the father has a drug problem. He is on probation for possession of methamphetamine. His methamphetamine use previously resulted in revocation of probation for another offense. He told the child's caseworker that he used methamphetamine daily during a recent six-month period and that he was high on methamphetamine during some visits with his son. The father's drug use supports the trial court's best-interest finding because it suggests instability in the home and poses a danger to his son's emotional and physical wellbeing. *In re R.J.*, 579 S.W.3d at 117.

The father denied ongoing drug use but testified he could not remember when he last used methamphetamine, including whether he had done so within the preceding month. A drug test could have definitively resolved this issue, but the father did not take one despite the requirements of both his probation and court-ordered family service plan. He also asserted the Fifth Amendment rather than answer multiple questions about drug use.

Because credibility determinations are the factfinder's prerogative, the trial court was free to disbelieve the father's denial of continued drug use. The trial court could have reasonably inferred that the father was still using methamphetamine, or some other illegal drug, based on his failure to take court-ordered drug tests. *In re J.M.T.*, 519 S.W.3d at 269; *In re D.J.W.*, 394 S.W.3d 210, 221 (Tex. App.—Houston [1st Dist.] 2012, pet. denied). The trial court likewise could have inferred continued drug use based on the father's repeated invocation of the Fifth Amendment. *In re C.J.F.*, 134 S.W.3d 343, 352–53 (Tex. App.—Amarillo 2003, pet. denied).

The father's criminal history is undisputed. Criminal history is relevant but not dispositive when considering a child's best interest. *In re C.T.E.*, 95 S.W.3d 462, 466 (Tex. App.—Houston [1st Dist.] 2002, pet. denied). Because the father's criminal history is limited, it ordinarily might not indicate that termination of his parental rights is in his son's best interest. *See id.* But the father's probation officer testified that the father was not complying with the terms of his probation, which could result in revocation. Nor is this the first time the father has failed to abide by the terms of his probation. He violated the terms of probation imposed in connection with a prior offense, which led to revocation. The father's repeated refusal to abide by the terms of his probation—knowing that this could lead to incarceration and render him unable to parent—supports the trial court's best-interest finding because it indicates instability in the home and a likelihood that the father may not be

available to meet the child's future emotional and physical needs. *See In re M.R.J.M.*, 280 S.W.3d 494, 504–05 (Tex. App.—Fort Worth 2009, no pet.) (father's prolonged neglect of probation responsibilities endangered child's wellbeing); *In re S.D.*, 980 S.W.2d 758, 763 (Tex. App.—San Antonio 1998, pet. denied) (routine subjection of child to probability of being left alone due to probation violations or other conduct endangered her emotional and physical wellbeing).

Similarly, while a parent's mental health problems are not grounds for terminating parental rights, the impact of a parent's mental health problems on his or her ability to care for a child and on the stability of the home are relevant to a child's best interest. *In re R.J.*, 579 S.W.3d at 118–19. The father acknowledged that he has been diagnosed as bipolar and borderline schizophrenic. He testified that he is not currently taking the psychiatrist-recommended medication for these conditions. He testified that he could not afford medicine, but it was undisputed that he had taken medication previously and discontinued doing so for reasons unrelated to cost. The child's caseworker testified that the father told her he did not like how the medicine made him feel; the father said that the medication gave him tremors. As factfinder, the trial court was entitled to disbelieve the father's version.

In his testimony, the father drew a connection between his anger management issues and his mental health problems. But he testified that he no longer needed medication because he has developed other means of dealing with his anger, and he

denied any ongoing anger management issues. The record contains substantial evidence to the contrary. The Hubbards testified that he threatened Timothy online. The father once followed Macy home from one of the child's medical appointments, and he called her a "bitch" in the courtroom. He has threatened Bosier, Bosier's supervisor, and the child's other caseworkers. Texas Children's Hospital has banned him from its premises due to his behavior. A therapist likewise refused to continue treating him due to his angry outbursts.

On this record, the father's untreated mental health problems support the trial court's best-interest finding because these problems are likely to render him unable to care for his son's needs and endanger the child's wellbeing. *See In re K.P.*, 498 S.W.3d at 172 (untreated bipolar disorder and depression supported endangerment finding); *Liu v. Dep't of Family & Protective Servs.*, 273 S.W.3d 785, 791–94 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (discussing decisions in which unmedicated bipolar disorder and schizophrenia supported termination). The father's refusal to acknowledge the extent of his mental health problems and the need for treatment reinforce his unfitness. *See Adams v. Tex. Dep't of Family & Protective Servs.*, 236 S.W.3d 271, 281 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (mother's failure to take medicine posed danger to children and her failure to fully accept that she was mentally ill showed parental unfitness).

The trial court heard evidence that the child has special needs. He suffered from several serious medical conditions in infancy and required multiple surgeries. In the past, the child needed a specialized diet. He remains small and underweight for his age. The child is cognitively delayed. He receives physical, occupational, and speech therapy. Because the child has needs that require additional attention and care, his father's parental shortcomings take on added significance. *See Toliver v. Tex. Dep't of Family & Protective Servs.*, 217 S.W.3d 85, 100 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (mother's drug use was more significant due to child's fragility and special medical needs). On this record, the trial court could reasonably have found that the child required greater attention and care than a troubled parent like his father could provide. *See In re A.M.*, 495 S.W.3d at 581 (considering child's specialized needs in analyzing best interest).

Indeed, the record shows that the father has not even attended to his son's ordinary needs. The child has been in foster care for almost his entire life. His foster mother testified that the father has not provided his son with monetary support, clothes, toys, or food. The father has not attended the majority of his son's numerous medical appointments. Nor has he visited the child on a regular basis. These circumstances, which indicate an inability or unwillingness to fulfill the child's most basic emotional and physical needs, further support the trial court's finding that termination of the father's rights was in his son's best interest. *See In re M.D.M.*,

579 S.W.3d 744, 767 (Tex. App.—Houston [1st Dist.] 2019, no pet.) (sporadic contact and minimal financial assistance support inference of emotional endangerment); *Cervantes-Peterson v. Tex. Dep't of Family & Protective Servs.*, 221 S.W.3d 244, 255 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (mother's lone financial assistance of Christmas presents supported best-interest finding).

The father explained that he missed recent visits with his son due to lack of transportation. But this explanation does not account for his near-total lack of support since his son entered foster care almost four years ago. In addition, the child's caseworker testified that the father stopped communicating with her to arrange visits and did not try to reschedule missed visits. As the factfinder, the trial court could reasonably have credited the caseworker's testimony over the father's.

Nor does the evidence show that the father has a plan for meeting his son's needs if he retains his parental rights. The father testified that he would not do anything differently. He refused to provide his current address until trial, which prevented the caseworker from visiting his current residence. The father also refused to identify the people with whom he resides, which prevented the caseworker and court from assessing whether they pose a danger to the child. The father's resistance to providing basic information that bears directly on the stability and safety of his home and daily life supports the trial court's best-interest finding because it gives rise to an inference that the information would be adverse. *See In re A.M.*, 495

S.W.3d at 581–82 (considering father's failure to keep Department apprised of his contact information in affirming best-interest finding); *In re D.M.D.*, 363 S.W.3d 916, 926 (Tex. App.—Houston [14th Dist.] 2012, no pet.) (refusal to cooperate with and provide accurate information to Department supported best-interest finding).

After several years of foster placement, the child's need for a permanent home is a paramount consideration as to his best interest. *See In re K.P.*, 498 S.W.3d at 175. There is no evidence the father can provide a permanent home. Thus, this need cannot be met unless the father's parental rights are terminated. *See id.*

In conclusion, viewing all the evidence in the light most favorable to the trial court's best-interest finding and considering undisputed contrary evidence, we conclude that a reasonable factfinder could have formed a firm belief or conviction that this finding is true. In light of the entire record, we conclude that the disputed evidence that a reasonable factfinder could not have credited in favor of this best-interest finding is not so significant that the factfinder could not have formed a firm belief or conviction that it is true. We thus hold that the evidence is legally and factually sufficient to support this finding. *See In re A.C.*, 560 S.W.3d at 630–31.

We overrule the father's fourth issue.

CONCLUSION

We affirm the trial court's order terminating the father's parental rights.

Gordon Goodman
Justice

Panel consists of Justices Lloyd, Goodman, and Hightower.