Opinion issued August 24, 2021

In The

Court of Appeals

For The

First District of Texas

NO. 01-20-00294-CV

A.C. AND D.C., Appellants

V.

M.B., Appellee

On Appeal from the 425th Judicial District Court
Williamson County, Texas[1]
Trial Court Case No. 19-2518-F425

---

[1] Pursuant to its docket-equalization authority, the Supreme Court of Texas transferred the appeal from the Court of Appeals for the Third District of Texas to this Court. *See* Misc. Docket No. 20-9048 (Tex. Mar. 31, 2020); *see also* TEX. GOV'T CODE § 73.001 (authorizing transfer of cases). We researched relevant case law and did not locate any conflict between the precedent of the Court of Appeals for the Third District and that of this Court on any relevant issue. *See* TEX. R. APP. P. 41.3.

MEMORANDUM OPINION

A.C. and D.C. ("Appellants"), maternal grandparents, challenge the trial court's order denying their petition to terminate the parental rights of M.B. ("Father").[2] In two issues, Appellants contend the evidence established more than one statutory ground for termination of Father's parental rights under Section 161.001(b)(1) of the Texas Family Code, and therefore the evidence is legally and factually insufficient to support the trial court's order. We affirm.

Background

Appellants are the maternal grandparents of three children: (1) R.B, age twelve; (2) K.B., age eight; and (3) N.B., age six. Pursuant to an agreed order resolving a prior suit by the Texas Department of Family and Protective Services ("DFPS") to terminate Father's parental rights (the "Agreed Order"),[3] Appellants are also the children's joint managing conservators. The Agreed Order, which was entered in October 2017, preserved Father's parental rights but appointed him as a possessory conservator with a right to supervised visits with the children. The Agreed Order did not require Father to pay child support. It provided that "child

---

[2] We use initials only to refer to the parties and the children. *See* TEX. R. APP. P. 9.8(b)(2); *see also* TEX. FAM. CODE § 109.002(d).

[3] The record contains little information about the prior DFPS-initiated termination suit. The Agreed Order indicates that the children's mother was also a respondent but was deceased at the time the suit resolved.

support [was] not being ordered at this time," but left open the possibility of a future child-support obligation if "the needs or abilities of the parties change[d]."

Almost two years later, in August 2019, Appellants asked the trial court to terminate Father's parental rights, alleging that termination was appropriate under two separate subsections of the Texas Family Code: (1) subsection 161.001(b)(1)(C) because Father voluntarily left the children in Appellants' possession without providing adequate support of the children and remained away for a period of at least six months, and (2) subsection 161.001(b)(1)(F) because Father failed to support the children in accordance with his ability during a one-year period ending within six months of the date Appellants' filed their petition.[4] In the alternative, Appellants requested that the Agreed Order be modified to require Father to pay child support "at an amount sufficient to pay for the extraordinary expenses of the children's ongoing therapy" and to limit Father's rights of possession and access to only those times when the children asked to contact him.

Temporary Orders Hearing

In October 2019, the trial court conducted an evidentiary hearing on Appellants' child-support request. Father, who appeared pro se, acknowledged at the hearing that he had made no support payments to Appellants. In their cross-

[4] Although Appellants pleaded additional grounds for termination of Father's parental rights, they pursued only these two grounds at trial.

examination of Father, Appellants focused primarily on his ability to support the children based on his monthly expenses, income, and assets. Regarding expenses, Father testified that from November 2017 to August 2019, he lived in an apartment with his girlfriend and her daughter. There, he was responsible for one half of the $1,600 rent, meaning he was obligated to pay $800 each month. Father's rent obligation reduced to $500 per month when he moved in August 2019. Father's monthly expenses in addition to rent included $200 for gas and groceries and $85 for a phone.

Father acknowledged that he was not physically disabled and thus capable of earning income. He testified that he earned income as an electrician in June, July, and August 2019. When asked how much he earned "on average," Father could not give a firm answer. He explained that his work as an electrician "can fluctuate a lot. It can be slow, it could be busy, I'm not really guaranteed a certain amount." At the time of the hearing, Father had $42 in cash, two personal checking accounts with a zero balance, and a "maxed out" credit card.

Regarding assets, Father acknowledged that he owned a watch that he estimated to be worth $12,000. He testified that he purchased the watch from a jewelry store in "March or April . . . [n]o, June or July of 2017" for "about $5,000." At the time of the hearing, however, the watch was no longer in Father's possession because he had used it as collateral for a bail bond to secure his release from jail.

Father agreed that before he used the watch as collateral, he could have sold it and used the proceeds to support his children. Regarding other assets, Father testified that, at the time of the hearing, he owned a GMC Yukon worth about $1,500. His previous vehicle—a "2004 Silverado"—had been repossessed in May 2019. Before the Silverado was repossessed, beginning in July 2017, Father installed a "Smart Start" feature which cost him $89 per month.

After the hearing, the trial court signed temporary orders requiring Father to pay $449.96 in monthly child support to Appellants. This amount included $340.96 based on the child-support guidelines and an additional $100 toward the children's therapy costs. Father's first child-support payment was due on November 1, 2019, with "like payment[s] being due and payable on the first day of each month thereafter until further order of the [trial] court."

Termination Hearing

The case went to trial on Appellants' request for termination of Father's parental rights in January 2020, with Father again proceeding pro se. Father acknowledged that he had signed the Agreed Order appointing Appellants as the children's joint managing conservators,[5] that he was represented by counsel in the DFPS-initiated termination suit, and that he consulted with counsel before he signed

[5] The Agreed Order was admitted into the evidence at trial.

the Agreed Order. Although the Agreed Order allowed him supervised visits with the children every other weekend, Father had not seen the children since October 2018 and had not spoken with them by telephone since December 2018. He claimed that he stopped visiting the children because his family was unwilling to supervise the visits.

Father also acknowledged that he had not provided any financial support for the children in the time since Appellants were appointed joint managing conservators. Counsel for Appellants again elicited testimony from Father about whether he had the ability to support the children, even though he had not done so, because he owned an expensive watch. Consistent with his testimony at the temporary orders hearing, Father confirmed that he had purchased a watch for $5,800 and estimated its value to be $12,000. But Father testified that he had been wrong about the date he purchased the watch at the temporary orders hearing.[6] He explained that he purchased the watch in "June or July of [sic] maybe August, September of '18," not 2017. Father again explained that although he still owned the watch, it was no longer in his possession since he had used it as collateral to make bail following a September 2019 arrest and it would not be returned to him until he was released from jail.

[6] The transcript of the October 2019 temporary orders hearing was admitted into the evidence at trial. At the time the transcript was admitted, Appellants requested that the trial court take judicial notice of "the file," which the trial court did.

Father further explained that he was currently incarcerated on a charge of possession of methamphetamine. This was not Father's first time in jail. Between 2003 and 2020, Father was arrested at least a dozen times, including in September and November 2019. In connection with the September 2019 arrest, Father told the arresting officers that he sold "an 8 ball of methamphetamines that day." Although Father acknowledged receiving money from the sale of narcotics, he testified it was not possible to determine the amount he made. He explained that the amount he received depended on several factors, including "how much [he] had to spend" and "how much got sold . . . . It's not like a 9:00 to 5:00 to where I know what I'm going to make every week."

The trial court also heard testimony from the children's therapist, L. Rishkofski, and from Appellants. Rishkofski testified that all three children were participating in therapy due to anxiety or sadness related to the death of their mother or to the trauma of witnessing domestic violence between their parents. But all three children were making positive progress. Rishkofski described Appellants as instrumental in this progress. He testified that the children had expressed a desire to be adopted by Appellants, though each child felt differently about continuing a relationship with Father. According to Rishkofski, R.B., the twelve-year-old child, would be "okay with there being very little to no contact" with Father, K.B., the

eight-year-old child, had a "sort of 50/50 feeling," and N.B., the six-year-old child, "would certainly like to see [Father] again sometime in the future."

Appellants' testimony confirmed that Father had not made any support payments in the time they served as the children's joint managing conservators. They also testified about the children's ongoing therapy needs, the children's positive progress, their bond with the children, their desire to adopt the children, and their belief that termination of Father's parental rights was in the children's best interest.

After considering the evidence, the trial court denied Appellants' request to terminate Father's parental rights. The trial court found that although termination of Father's parental rights was in the children's best interests, Appellants had not established either the section 161.001(b)(1)(C) or section 161.001(b)(1)(F) ground for termination by clear and convincing evidence.

Appellants appealed. Father, still pro se, did not file an appellate brief despite notices from the Court informing him of the deadline to do so.

Termination of Parental Rights

Appellants argue the trial court erred in denying their petition to terminate Father's parental rights because they established that Father (1) voluntarily left the children in their possession without providing adequate support of the children and remained away for a period of at least six months, and (2) did not support the children in accordance with his ability for a one-year period ending within six months of the

date they filed their petition. *See* TEX. FAM. CODE §§ 161.001(b)(1)(C) (abandonment), (F) (failure to support).

A. Standard of Review

A parent's right to the "companionship, care, custody, and management" of his or her children is a constitutional interest "far more precious than any property right." *Santosky v. Kramer*, 455 U.S. 745, 758–59 (1982); *see In re M.S.*, 115 S.W.3d 534, 547 (Tex. 2003). "A termination decree is complete, final, irrevocable[,] and divests for all time that natural right as well as all legal rights, privileges, duties[,] and powers with respect to each other except for the child's right to inherit." *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985). Mindful of this interest, the Legislature requires that a petitioner seeking to terminate the parent-child relationship prove, by clear and convincing evidence, that (1) the parent has committed conduct that is grounds for termination, and (2) termination is in the child's best interest. *See* TEX. FAM. CODE § 161.001(b); *In re J.F.C.*, 96 S.W.3d 256, 263–64 (Tex. 2002). "'Clear and convincing evidence' means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." TEX. FAM. CODE § 101.007.

Appellants challenge the legal and factual sufficiency of the evidence supporting the trial court's decision not to terminate Father's parental rights. As the

petitioners, Appellants had the burden to prove one of the grounds for termination by clear and convincing evidence. *See* TEX. FAM. CODE § 161.001(b)(1). Because they challenge the legal sufficiency of an adverse finding on an issue on which they had the burden of proof, Appellants are entitled to reversal based on legal insufficiency if the evidence establishes, as a matter of law, all vital facts in support of the issue. *In re Q.M.*, 2020 WL 827595, at *2 (Tex. App.—Fort Worth Feb. 20, 2020, no pet.) (mem. op.); *Burns v. Burns*, 434 S.W.3d 223, 227 (Tex. App.—Houston [1st Dist.] 2014, no pet.). We consider evidence and inferences supporting the trial court's findings, and we ignore inferences to the contrary. *Havner v. E–Z Mart Stores, Inc.*, 825 S.W.2d 456, 458 (Tex. 1992); *Burns*, 434 S.W.3d at 227.

In our factual-sufficiency review, we must consider the heightened burden of proof necessary to establish a ground for termination. *See In re J.F.C.*, 96 S.W.3d at 264–66. Given the higher burden of proof by clear and convincing evidence, we will set aside the trial court's findings as factually insufficient only if the evidence shows they are so contrary to the overwhelming weight of the evidence as to be clearly wrong. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *Aguilar v. Soliz*, No. 03-20-00121-CV, 2021 WL 2750456, at *3 (Tex. App.—Austin July 2, 2021, no pet. h.) (mem. op.); *Burns*, 434 S.W.3d at 227. That is, "we review the entire record, including both evidence supporting and evidence contradicting the finding, and determine whether the trial court's failure to form a firm conviction or belief that a

parent's rights must be terminated is contrary to the overwhelming weight of the evidence and clearly wrong." *Burns*, 434 S.W.3d at 227; *see In re A.L.D.H.*, 373 S.W.3d 187, 193 (Tex. App.—Amarillo 2012, pet. denied). We defer to the trial court's resolution of contested evidence and its decision concerning the weight and credibility to accord to each witness's testimony. *Aguilar*, 2021 WL 2750456, at *3; *Burns*, 434 S.W.3d at 227.

We examine the record in this case in light of Appellants' high evidentiary burden and our required appellate deference to the trial court's decision that the evidence did not meet it. *Burns*, 434 S.W.3d at 227.

B. Subsection 161.001(b)(1)(C): Abandonment for at least six months

Appellants sought termination of Father's parental rights pursuant to subsection 161.001(b)(1)(C) of the Texas Family Code, which provides that a parent's rights may be terminated if the parent "voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months." TEX. FAM. CODE § 161.001(b)(1)(C). In considering whether the record dictated that Father's parental rights be terminated as a matter of law under subsection (C) or conveyed a definite and firm belief that it be done, we focus on the question of whether Father failed to "provid[e] adequate support of the child[ren]." *See id.*

According to Appellants, the evidence established that Father failed to provide adequate support of the children because it was undisputed that he had not personally provided any financial support for the children since Appellants became the children's joint managing conservators in October 2017, despite having the ability to do so. Appellants assert that Father "admitted to having the ability to provide support as he earned income as an electrician and as a drug dealer; to not being physically disabled; to being able to at least hold a minimum wage job; and that he had valuable property [a Rolex watch] which could have been sold . . . for support of the children but which he used instead at the end of September 2019 to bond himself out of jail." We disagree that this evidence compels the termination of Father's parental rights under subsection (C).

The Texas Supreme Court has held that to avoid termination under subsection (C), a parent need only make arrangements for the adequate support of a child, not personally send support. *Holick*, 685 S.W.2d at 21 (applying subsection (C) of predecessor statute using same language as current subsection (C)). In *Holick*, a mother who was struggling financially accepted the Smith family's offer to care for two children until she could get back on her feet. *Id.* at 19. Over the next six months, the mother never visited the children and called only once. *Id.* She did not send any form of support to the Smiths and was not expected to do so. *Id.* The Smiths successfully petitioned for the termination of the mother's parental rights under

subsection (C), and the mother appealed. *Id.* at 19–20. On appeal, the mother did not contest that she voluntarily placed the children in the Smiths' possession and remained away for six months without making any support payments. *Id.* at 20. She argued instead that the termination of her parental rights was erroneous because she was not required to actually support the children, but only to make arrangements for their adequate support. *Id.* The Texas Supreme Court agreed, holding that subsection (C) should be interpreted to "merely require that the parent make arrangements for adequate support rather than personally support the child." *Id.* at 21. Because the mother had done so by making arrangements for the children to be cared for by the Smiths—who were "able to financially support the children," "excellent role models," and "express[ed] love for the children"—the Court reversed the termination of her parental rights. *See id.* at 19, 21.

Applying *Holick*, other courts of appeals have concluded that a subsection (C) termination of parental rights was not appropriate when the parent made arrangements for someone to better care for the child. For instance, in *In re R.N.G.*, the Eastland Court of Appeals rejected a subsection (C) termination of the mother's parental rights. *See* No. 11-02-00084-CV, 2002 WL 32344622, at *2 (Tex. App.—Eastland Dec. 12, 2002, no pet.) (mem. op.). There, the children's mother and father agreed in their divorce that the children should remain with the father. *Id.* They also agreed that the mother, who was unemployed, would pay no child support. *Id.*

Although that agreement was later modified to require the mother to pay some child support, she never paid "a penny." *Id.* In addition, she exercised her visitation rights only sporadically and, at the time of trial, had not seen the children in more than a year. *Id.* Nevertheless, the appellate court refused to sustain the termination of mother's parental rights under subsection (C) because "the evidence show[ed] that [the mother] left the children with their father, knowing that he would provide adequate support. Under these circumstances, [the mother] made adequate arrangements for the support of her children even though she personally failed to support them." *Id.*

The Texarkana Court of Appeals reached the same conclusion in *In re R.M.*, holding that a father's parental rights were not subject to termination under subsection (C). *See* 180 S.W.3d 874, 878 (Tex. App.—Texarkana 2005, no pet.). There, someone other than the father took the child to live with relatives who could better provide for the child, and the child had lived in the care of those relatives continuously since infancy. *Id.* at 876. When the child was two years old, the father agreed that the relatives would be the child's joint managing conservators. *Id.* at 876, 878. The relatives were the sole providers for the child's care and daily needs. *Id.* at 876. The father never sent any money for the child, and the relatives did not expect him to do so. *Id.* Although the father initially saw the child once or twice a month, he visited her only sporadically in the few years before the trial on the termination

of his parental rights. *Id.* The appellate court observed that even though he did not personally deliver the child to the relatives or initiate the arrangement whereby the relatives would care for the child, the father was aware of and consented to the arrangement at all relevant times. *Id.* at 878. "By agreeing to the joint conservatorship, [the father] allowed [the relatives] to better provide for [the child]." *Id.* The appellate court concluded that, under these circumstances, there was insufficient evidence that the father did not arrange for the adequate support of the child, and thus termination under subsection (C) was not supported. *Id*.

Here, Father consented for Appellants to be the children's joint managing conservators when he signed the Agreed Order. Although Father initially had no obligation to pay child support under the terms of the Agreed Order, the trial court modified that part of the parties' agreement when it ordered Father to begin making child-support payments on November 1, 2019, about two months before trial. It is undisputed that Father paid no child support. Nor did he make any other financial contribution toward the care of his children after Appellants became the joint managing conservators. It is also undisputed that Father had not visited the children since October 2018, and thus had remained away for more than six months. But these undisputed facts do not compel the termination of Father's parental rights under subsection (C). Like the parents in *Holick*, *R.G.N.*, and *R.M.*, Father made arrangements for the adequate support of his children by agreeing to Appellants'

joint managing conservatorship, even though he personally failed to support the children. *See Holick*, 685 S.W.2d at 21; *In re R.M.*, 180 S.W.3d at 877–78; *In re R.N.G.*, 2002 WL 32344622, at *2. And by all accounts in the record, Appellants have done an excellent job providing for the children.

Relevant and controlling authority instructs that this evidence does not establish that Father's parental rights must be terminated as a matter of law under subsection (C). *See Holick*, 685 S.W.2d at 21; *In re R.M.*, 180 S.W.3d at 877–78; *In re R.N.G.*, 2002 WL 32344622, at *2. Nor was the trial court's failure to form a firm conviction or belief that Father's rights must be terminated under subsection (C) contrary to the overwhelming weight of the evidence or clearly wrong. *See Aguilar*, 2021 WL 2750456, at *3; *Burns*, 434 S.W.3d at 227. We therefore hold that the trial court did not err in finding that Appellants failed to demonstrate a ground for termination under subsection (C). *See* TEX. FAM. CODE § 161.001(b)(1)(C).

We overrule Appellants' first issue.

C. Subsection 161.001(b)(1)(F): Failure to support the child within the parent's ability for one year

Appellants also sought termination of Father's parental rights pursuant to subsection 161.001(b)(1)(F) of the Texas Family Code, which provides that a parent's rights may be terminated if the parent "failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition" for termination. TEX. FAM. CODE

§ 161.001(b)(1)(F). Under this provision, "one year" means twelve consecutive months. *In re E.M.E.*, 234 S.W.3d 71, 72 (Tex. App.—El Paso 2007, no pet.). The party seeking to terminate has the burden to establish that the parent had the ability to support the child during each month in the twelve-month period. *In re J.G.S.*, 574 S.W.3d 101, 117 (Tex. App.—Houston [1st Dist.] 2019, pet. denied) (citing *In re T.B.D.*, 223 S.W.3d 515, 518 (Tex. App.—Amarillo 2006, no pet.)). Without evidence of an ability to support a child during the twelve-month period, termination of parental rights cannot be granted under subsection (F). *Id.*

Appellants filed their original petition requesting termination of Father's parental rights in August 2019. The relevant time period under subsection (F) is thus any twelve consecutive months between February 2018 and August 2019. *See In re C.L.*, 322 S.W.3d 889, 892 (Tex. App.—Houston [14th Dist.] 2010, pet. denied); *see also In re J.G.S.*, 574 S.W.3d at 117 (observing subsection (F) "requires that the 12-month period must begin no earlier than 18 months before the date of the filing of the petition to terminate").

It is undisputed that Appellants received no support payments from Father after they became the children's joint managing conservators in October 2017, which covers a period greater than the required twelve consecutive months between February 2018 and August 2019. Father contested whether this undisputed fact amounted to a failure to provide support given that the Agreed Order establishing

Appellants' joint managing conservatorship did not require him to pay any child support. The trial court later modified that part of the Agreed Order and ordered Father to begin paying child support in November 2019, which was after the statutory period. But that fact is not controlling. A parent has a duty to provide support for his child, "even when the parent does not have custody of the child and before the trial court orders the parent to pay support." *In re D.M.D.*, 363 S.W.3d 916, 921–22 (Tex. App.—Houston [14th Dist.] 2012, no pet.); *Fox v. Tex. Dep't of Protective & Regul. Servs.*, No. 03-03-00637-CV, 2004 WL 1898233, at *3 (Tex. App.—Austin Aug. 26, 2004, no pet.) (mem. op.); *see also* TEX. FAM. CODE § 151.001(a)(3) (providing parent of child has "duty to support the child, including providing the child with clothing, food, shelter, medical and dental care, and education").

Appellants' primary argument under subsection (F) is that Father's ownership of a watch—which Father estimated was worth $12,000—established Father had some ability to support the children. This argument rests on Father's testimony at the temporary orders hearing that he purchased the watch in June or July 2017 and maintained it in his possession until he used it as collateral for a bail bond in September 2019, a period that would include more than the required twelve

consecutive months between February 2018 and August 2019.[7] *See* TEX. FAM. CODE § 161.001(b)(1)(F). At the termination hearing, however, Father gave conflicting testimony about the date he purchased the watch. He stated that he was wrong about the purchase date at the temporary orders hearing and had instead purchased the watch "around June or July of [sic] maybe August, September of '18." The credibility of Father's testimony was a matter for the trial court to determine. *See Burns*, 434 S.W.3d at 227. The trial court could have believed that Father purchased the watch in September 2018, and thus concluded that his possession of the watch did not establish that he had at least some ability to support the children for twelve consecutive months ending in August 2019. *See In re J.G.S.*, 574 S.W.3d at 117 (party seeking to terminate must show that parent had ability to support child during each month in twelve-month period). Because the evidence was conflicting, the record does not conclusively establish that Father had an ability to support the children because he was in possession of the watch. *See Burns*, 434 S.W.3d at 227.

Appellants point to other evidence they assert established that Father had at least some ability to support the children for the relevant statutory period.

---

[7] We may consider the testimony from the temporary orders hearing in our sufficiency review because the transcript of the temporary orders hearing was admitted into the evidence at the termination hearing. *See Guytan v. Monteau*, 332 S.W.3d 687, 693 (Tex. App.—Houston [14th Dist.] 2011, no pet.) ("In order for testimony from a prior hearing or trial to be considered in a subsequent proceeding, the transcript of that testimony must be properly authenticated and entered into evidence.").

Specifically, they point to Father's testimony that he paid between $500 and $800 per month in rent from November 2017 until the temporary orders hearing in October 2019. They also point to evidence that Father "owned" a vehicle—a GMC Yukon—valued at $1,500 in October 2019, and before then, had a different vehicle—a "2004 Silverado"—that was repossessed in May 2019 and included a "Smart Start" feature that cost $89 per month. In addition, Appellants assert Father "admitted being an employed electrician, being able bodied, capable of working a minimum wage job, and having no other dependents." They further assert that Father "admitted he had money coming through his hands daily as a result of drug sales."

This evidence also does not establish that the trial court's finding of insufficient evidence to terminate Father's parental rights under subsection (F) was erroneous. There is no firm evidence of any income earned by Father for twelve consecutive months during the statutory period. Appellants did not elicit any testimony from Father about his work as an electrician at the termination hearing. But when asked whether he had income from that work at the temporary orders hearing, Father answered affirmatively only with respect to three months, i.e., June, July, and August 2019. There is no evidence Father earned money as an electrician in any other month. When asked how much he earned on average from his work as an electrician, Father was unable to provide an amount. He explained that "it can fluctuate a lot. It can be low, it could be busy, I'm not really guaranteed a certain

amount." The testimony regarding any income Father earned from narcotics sales was similarly vague. Father acknowledged that he sold "an 8 ball" of methamphetamine on the day he was arrested in September 2019. Beyond that single date, however, there was no testimony establishing a timeline for Father's narcotics sales. When asked how much money he made from narcotics sales, Father responded that it was impossible to answer because "there's a lot of variables to it" and "[i]t's not like a 9:00 to 5:00 . . . where I know what I'm going to make every week."

There was no evidence Father had any other source of income. He testified at the temporary orders hearing that he had only $42 in cash, that he had two personal checking accounts but neither had a balance, and that his credit card was "maxed out." *Cf. In re N.G.G.*, No. 05-16-01084-CV, 2017 WL 655953, at *4–5 (Tex. App.—Dallas Feb. 17, 2017, pet. denied) (mem. op.) (although parent did not have employment or income during statutory period, movant presented documentary evidence of parent's six-figure investment account balances and spending habits during statutory period to establish ability to pay). Regarding vehicles, Father testified that the GMC Yukon he owned at the time of the temporary orders hearing in October 2019 was worth $1,500, but he did not testify what date he acquired that vehicle. Consequently, no ownership timeline within the statutory period was developed. In addition, although Father's testimony at the temporary orders hearing suggested that he had the 2004 Silverado between July 2017 and May 2019, there is

no evidence of that vehicle's value or ownership status beyond its repossession in May 2019.

In sum, the evidence at trial did not conclusively establish Father's ability to support the children for twelve consecutive months between February 2018 and August 2019. The evidence thus does not establish that Father's parental rights must be terminated as a matter of law under subsection (F). *See* TEX. FAM. CODE § 161.001(b)(1)(F); *Burns*, 434 S.W.3d at 227. Nor was the trial court's failure to form a firm conviction or belief that Father's rights must be terminated under subsection (F) contrary to the overwhelming weight of the evidence or clearly wrong. *See* TEX. FAM. CODE § 161.001(b)(1)(F); *Aguilar*, 2021 WL 2750456, at *3; *Burns*, 434 S.W.3d at 227. We therefore hold that the trial court did not err in finding that Appellants failed to demonstrate a ground for termination under subsection (F). *See* TEX. FAM. CODE § 161.001(b)(1)(F).

We overrule Appellants' second issue.

Conclusion

We affirm the order of the trial court.

Amparo Guerra
Justice

Panel consists of Justices Kelly, Guerra, and Farris.