Opinion issued August 31, 2021

In The

Court of Appeals

For The

First District of Texas

NO. 01-21-00123-CV

IN THE INTEREST OF I.M., A CHILD

On Appeal from the 300th District Court
Brazoria County, Texas
Trial Court Case No. 106935-F

MEMORANDUM OPINION

In this appeal, appellants, Cody Mitchell ("Father") and Stephanie Tyson ("Mother") (collectively, "parents"), challenge the trial court's order terminating their parental rights to their minor child, I.M. In eight issues, parents contend that the evidence is legally and factually insufficient to support the trial court's predicate findings that their parental rights should be terminated under section 161.001(b)(1)

of the Texas Family Code or that termination of their parental rights is in I.M.'s best interest. *See* TEX. FAM. CODE §§ 161.001(b)(1)(B)-(F), (N), (O), and 161.001(b)(2).

We affirm.

BACKGROUND

In February 2020, the Department of Family and Protective Services ("DFPS") filed a petition for the protection of I.M., seeking a conservatorship. Mother and Father had been arrested on charges of public intoxication and possession of drug paraphernalia, while leaving I.M. in the care of employees at the Salvation Army Shelter, where they had been living since 2019.

Jennifer Sterrett, DFPS's assigned investigator, produced a sworn affidavit stating that Lisa Salazar, a shelter employee, had contacted the police after Mother returned to the shelter "behaving oddly" and had conflicting results on a breathalyzer test. Salazar had returned to the couple's room later that evening to have Mother blow a third time, when she encountered Father exhibiting similar behaviors. Sterrett's affidavit describes the room as having "an overwhelmingly foul odor," and being in, "overall disarray with food, dirty clothes, dirty diapers, trash, pieces of cigarettes, and vomit on the floor and in [I.M's] car seat." She made the decision not to take any of I.M.'s belongings—which were dirty—and Salazar informed Sterrett that several shelter employees had provided I.M. with clothes. Sterrett observed I.M.

to be "clean, well dressed, happy, healthy, growing on target, and with no visible marks or bruises."

Sterrett met with the parents, who were in police custody, and attempted to contact relatives who could temporarily care for I.M. The child's grandmother and great-grandmother were unwilling to take the child because they were attending a church retreat the next day. After three other individuals, including I.M.'s godmother, proved unreachable, I.M. was placed into foster care on February 21, 2020. Both parents were presented with, and signed, a notice of removal due to a lack of available caregivers, and both stated that they had never seen the other use drugs—although Sterrett observed Father's movements to be "jerky." Freeport Police Department informed Sterrett that the couple had been booked for public intoxication and possession of drug paraphernalia.

On February 21, 2020, DFPS filed a petition seeking termination of the parent-child relationship if reunification were found to be impossible after reasonable attempts had been made to achieve it. The trial court then granted an emergency order for the protection of I.M. and appointed DFPS as temporary sole managing conservator. On March 16, 2020, following an adversarial hearing at which both parents were present and represented by counsel, the trial court issued orders for genetic paternity testing that established Cody Mitchell as the likely father of I.M, appointed DFPS as temporary managing conservator and the parents as possessory

conservators, established the parents' right to limited access and possession of the child, ordered the creation of a family service plan for each parent, and required each parent to notify DFPS within five days of any change in address or telephone number.

The family service plans required that both parents, among other things, be required to regularly attend therapy, parenting classes, and abstain from illegal drug use, which DFPS identified as a particular concern. Father's plan noted that on March 3, 2020, samples given by Father had returned positive when subjected to a test aimed at detecting amphetamines, marijuana, and cocaine. While Mother initially tested negative for synthetic marijuana on February 26, 2020, she later tested positive on March 18, 2020, when tested for amphetamines, methamphetamines, and marijuana. Mother reported struggling with methamphetamines and alcohol and expressed a desire to rehabilitate herself.

On February 3, 2021, DFPS filed its first amended petition for termination alleging that, despite their initial compliance, both parents had failed to comply with the provisions of a court order specifically establishing the actions necessary to obtain the return of I.M. The amended petition alleged that both parents had left I.M. alone without providing for his needs or expressing an intent to return; knowingly placed or allowed him to remain in conditions injurious to his health and wellbeing; engaged in conduct that endangered his health or emotional wellbeing; failed to

support him according to their abilities and constructively abandoned him while he was in the care of DFPS.

At trial, both parents appeared only through their respective attorneys and did not personally participate in the Zoom proceeding. Sterrett, the initial investigator, testified that, while the first several child-parent visits under her supervision were appropriate, she had only remained assigned to the case for roughly two weeks after the child's initial removal.

The caseworker who initially took over the case from Sterrett testified that, after the parents were first detained in 2020, each relocated to a different shelter to receive treatment for his or her addiction, and both participated in services and visitation while in their respective programs. When Mother was discharged after successfully completing her program at Santa Maria shelter, Father left his program at the Star of Hope shelter without completing it. The parents initially obtained housing together at a duplex in August 2020. However, by October, the cell phone number known to belong to Father was no longer in service, and visits to the address the parents had given DFPS proved fruitless. According to I.M.'s paternal grandmother, she had also lost contact with Father as well and was concerned for the parents' safety. Both parents failed to appear at the scheduled October 2020 visitation and had not appeared for or attempted to arrange, a visitation since

September 2020. The same was true for another child, born sometime after the parents' arrest in February 2020.[1]

Tami Goodell, who took over the case in mid-November 2020, testified that she was unable to leave a message on Father's cell phone, and that all the text messages she sent to the number Father had given DFPS were returned "undelivered." She spoke with the Harris County case worker for the couple's newborn child and was told that there was a "for rent" sign in the yard of the duplex. Goodell did not visit the property herself but received a call in December 2020 from Father, who told her that he and Mother were once again homeless and living on the streets in the Heights. Father would not allow Goodell to speak with Mother and informed Goodell that he would have to call her back about the possibility of renewed visitation. He never did so.

Goodell testified that neither parent had completed their court-mandated therapy, and that both would be required to complete a second drug-and-alcohol assessment and continue random screening after they received positive results on their drug tests administered by DFPS. Father, additionally, would need to attend parenting classes, individual therapy, and further supervised visitations. At the point when they spoke on the phone, neither Father nor Mother had attended any of the

[1] This second, newborn child is the subject of a conservatorship proceedings in Harris County.

weekly visits after September 2020 through the date of trial in February 2021. In fact, Father confessed to Goodell when he spoke to her on the phone in December 2020 that he and Mother had "fallen off the wagon," which she took to mean that they had resumed habitual abuse of illegal drugs—in their case, cocaine and marijuana. Goodall stated that because I.M. is currently in a safe environment with foster parents who intend to adopt him if given the opportunity, it was DFPS's recommendation that the trial court terminate Father's and Mother's parental rights.

In February 2021, the trial court found that Father's and Mother's parental rights should be terminated under Family Code sections 161.001(b)(1)(B)-(F), (N), and (O), and further found that such termination was in I.M.'s best interest under Family Code section 161.001(b)(2).

SUFFICIENCY OF THE EVIDENCE

In eight issues, Mother and Father each challenge the legal and factual sufficiency of the evidence to support the termination of their parental rights under Family Code sections 161.001(b)(1)(B)-(F), (N), and (O), and Family Code section 161.001(b)(2).

I. Standard of Review and Applicable Legal Principles

Because the parent-child relationship has been recognized as fundamental, both the United States and Texas Constitutions ensure the protection of parents' due process rights as they relate to the "care, custody, and control of their children." *In*

re J.F.-G., ___ S.W.3d ___, 2021 WL 2021138, *4, n.13 (Tex. May 21, 2021) (quoting *In re N.G.*, 577 S.W.3d 230, 234 (Tex. 2019) (per curiam)). For the State to sever these rights, it must establish by clear and convincing evidence that legal grounds exist to terminate them,[2] and that doing so is in a child's best interest.[3] *Id.* at *4. That is, the State must provide 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." *In re A.C.*, 560 S.W.3d 624, 630 (Tex. 2018). Only one predicate finding under section 161.001(b)(1) of the Family Cose is required when there is also a finding that termination is in a child's best interest. *See* TEX. FAM. CODE § 161.001(b)(2); *In re A.V.* 113 S.W.3d 355, 362 (Tex. 2003).

DFPS's "high evidentiary burden" results in a "heightened standard of review," on appeal; however, it does not "dispel . . . the deference that an appellate court must grant to the factfinder, who heard the witnesses and evaluated their credibility." *In re J.F.-G.*, 2021 WL 2021138 at *5. When measuring legal sufficiency, the evidence must be considered in the light most favorable to the finding to determine whether a factfinder "could reasonably form a firm belief or conviction about the truth of the matter." *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex.

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[2] *See* TEX. FAM. CODE § 161.001(b)(1).

[3] *See* TEX. FAM. CODE § 161.001(b)(2).

2002). Likewise, the reviewing court must "disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible." *Id*. If the court determines that no reasonable factfinder could form a firm belief or conviction that the matter must be proven is true, then that court must conclude that the evidence is legally insufficient. *Id*.

Only when the factual sufficiency of the evidence is challenged does the reviewing court review disputed or conflicting evidence. *In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009); *In re J.F.C.*, 96 S.W.3d at 266. "If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient." *In re J.F.C.*, 96 S.W.3d at 266. We give due deference to the factfinder's findings, and we cannot substitute our own judgment for that of the factfinder. *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006) (per curiam).

II. TEXAS FAMILY CODE §161.001(b)(1)(N)–Constructive Abandonment

In their sixth issues, the parents contend that the evidence is legally and factually insufficient to support the trial court's finding that they constructively abandoned I.M. To establish constructive abandonment, DFPS must show that:

> the child . . . has been in the permanent or temporary managing conservatorship of DFPS for not less than six months, and:

> (i) DFPS has made reasonable efforts to return the child to the parent;
>
> (ii) the parent has not regularly visited or maintained significant contact with the child; and
>
> (iii) the parent has demonstrated an inability to provide the child with a safe environment[.]

TEX. FAM. CODE § 161.001(b)(1)(N); *In re F.E.N.*, 542 S.W.3d 752, 766 (Tex. App.—Houston [14th Dist.] 2018), pet. denied) "The first element focuses on DFPS's conduct; the second and third elements focus on the parent's conduct." *In re A.L.H.*, 468 S.W.3d 738, 744 (Tex. App.—Houston [14th Dist.] 2015, no pet.); *In re C.E.P., III*, No. 01-19-00120-CV, 2019 WL 3559004, at *17 (Tex. App.—Houston [1st Dist.] Aug. 6, 2019, no pet.) (mem. op.).

It is undisputed that DFPS had conservatorship I.M. for the requisite six months. DFPS was appointed the temporary managing conservator of I.M. on March 16, 2020, and such conservatorship continued until after the trial, when the trial court appointed DFPS the permanent managing conservator in its Order of Termination on February 24, 2021.

Regarding the remaining elements of subsection N, the parents challenge only the first element, i.e., they contend that there was legally and factually insufficient

evidence to show that DFPS made "reasonable efforts to return the child" to them.[4] They argue that all of the evidence contained in the record regarding their arrests, convictions, and drug use, is conclusory and therefore not valid. They also argue that, because several of the caseworkers were not able to speak with them, DFPS did not make "reasonable efforts" to return I.M. to them. The parents, however, make no reference to the family service plans implemented by DFPS.

A family service plan is designed to reunify a parent with a child who has been removed by DFPS. *Liu v. Dep't of Family & Protective Servs.*, 273 S.W.3d 785, 795 (Tex. App.—Houston [1st Dist.] 2008, no pet.). Implementation of a family

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[4] The parents do not contend that there is any evidence that they "maintained significant contact with the child." *See* TEX. FAM. CODE § 161.001(1)(N)(ii). Indeed, the record shows that the parents have had no contact with the child at all since September 2020. *See In re J.J.O.*, 131 S.W.3d 618, 628–29 (Tex. App.—Fort Worth 2004, no pet.) (holding that evidence was legally and factually sufficient to support finding that mother had not regularly visited or maintained significant contact with child because mother made only twelve visits during nine-month period); *see also M.C. v. Tex. Dep't of Fam. and Protective Servs.*, 300 S.W.3d 305, 310 (Tex. App.—El Paso 2009, pet. denied) (holding that mother did not regularly visit or maintain significant contact with child when she visited only six to eight times in twelve-month period). Likewise, the parents do not contend that there is any evidence that they demonstrated an ability "to provide the child with a safe environment." *See id.* § 161.001(1)(N)(iii). Indeed, there is evidence that the parents provided no support for the child, had left the address they had provided to DFPS, and were homeless as of December 2020. *See In re G.P.*, 503 S.W.3d 531, 534 (Tex. App.—Waco 2016, pet. denied) (holding evidence legally and factually sufficient to show mother's failure to provide safe environment because mother failed to provide Department with information about living or employment circumstances, failed to make child support payments, failed to seek out and accept counseling services, refused to take drug tests, and failed to maintain contact with child).

service plan by DFPS is considered a reasonable effort to return a child to its parent. *Id.*, *see also In re N.R.T.*, 338 S.W.3d 667, 674 (Tex. App.—Amarillo 2011, no pet.); *see also In re M.R.J.M.*, 280 S.W.3d 494, 505 (Tex. App.—Fort Worth 2009, no pet.) (holding that State made reasonable efforts to return child to parent under section 161.001(1)(N) when it prepared several service plans for parent and made arrangements for him to attend parenting classes near home and to transport him to psychological assessment); *In re K.M.B.*, 91 S.W.3d 18, 25 (Tex. App.—Fort Worth 2002, no pet.) (holding State showed reasonable efforts to return child to parent when it prepared service plans and made efforts to work with parent on service plans).

Here, the record shows that DFPS created and provided both Father and Mother with family service plans. Mother's family service plan required her to (1) maintain a safe and stable home environment that is drug and alcohol free and to contact her caseworker if her address or phone number changed, (2) participate and complete parenting classes, (3) attend all visits with the child, court dates, and conference meetings and maintain contact with the agency, (4) participate in the completion of a drug/alcohol assessment and follow all recommendations, (5) submit to random drug testing, (6) complete a psychological evaluation and follow all recommendations, and (7) complete counseling to address specific issues that led to the removal of the child. Father's family service plan required him to (1) complete

parenting classes, (2) maintain a safe and stable home environment free of criminal activity, domestic violence, and drugs and alcohol and to contact his caseworker within 24 hours if his address or phone number changed, (3) attend all visits with his child, court dates, and conference meetings and maintain contact with the agency, (4) submit to random drug testing, (5) complete a drug/alcohol assessment and follow all recommendations, (6) complete a psychological evaluation, (7) and participate and complete counseling.

Whether DFPS could prove noncompliance with the family service plans is not the issue; reasonable efforts by DFPS are shown by the implementation of the family service plans. *See In re M.S.*, No. 02-21-00007-CV, 2021 WL 2654143, at *15 (Tex. App.—Fort Worth June 28, 2021, no pet.). Nevertheless, we note that there was evidence of the parents' non-compliance with the family service plans. Both parents initially made efforts to follow their family service plans while they were staying at the shelters, but once Mother was discharged from her program and Father voluntarily left his program, they fell out of contact with DFPS and did not see their child after their September 2020 visitation. Similarly, both parents had several items left to be completed on their family service plans when they left the shelters, which they never completed.[5] For a short while after leaving the shelters,

[5] Neither parent completed counseling, submitted to random drug testing, or maintained contact with the child and the agency, among other deficiencies.

the parents provided DFPS with an address at a duplex, but when they ceased contact with DFPS, DFPS determined that they were no longer at that address and that it had a "for rent" sign in the yard. Phone calls and texts to the number Father had provided for both parents went unanswered. Father eventually spoke to a DFPS employee in December 2020 and told her that he and Mother had "fallen off the wagon." He declined to allow Mother to speak to the DFPS employee and told her he would "get back with her" about setting up visitation, which he never did.

Considering the evidence in the light most favorable to the trial court's Order of Termination, we conclude that a reasonable factfinder could have formed a firm belief or conviction that termination of the parents' parental rights was valid under subsection (N) of section 161.001(b)(1). Further, in view of the entire record, we conclude that the disputed evidence is not so significant as to prevent the trial court from forming a firm belief or conviction that termination of the parents' parental rights was valid under subsection (N) of section 161.001(b)(1). *See id*. Accordingly, we hold that the evidence is legally and factually sufficient to support the trial court's finding that termination of parents' parental rights is warranted under subsection (N) of section 161.001(b)(1).

Accordingly, we overrule Mother's and Father's sixth issues.

III. Texas Family Code §161.001(b)(2)—Best Interest of the Child

In their eighth issues, Mother and Father contend that termination of their parental rights is not in their child's best interest. *See* TEX. FAM. CODE § 161.001(b)(2).

It is presumed that the prompt and permanent placement of a child in a safe environment is in their best interest. *See* TEX. FAM. CODE § 263.307(a); *In re D.S.*, 333 S.W.3d 379, 383 (Tex. App.—Amarillo 2011, no pet). There is also a strong presumption that the child's best interest is served by maintaining the parent-child relationship. *In re L.M.*, 104 S.W.3d 642, 647 (Tex. App.—Houston [1st Dist.] 2003, no pet.). Thus, we strictly scrutinize termination proceedings in favor of the parent. *In re N.L.D.*, 412 S.W.3d 810, 822 (Tex. App.—Texarkana 2013, no pet.).

In determining whether the termination of Mother's and Father's parental rights was in the best interest of I.M., we may consider several factors, including: (1) the desires of the children; (2) the current and future physical and emotional needs of the child (3) the current and future emotional and physical danger to the child; (4) the parental abilities of the parties seeking custody; (5) whether programs are available to assist those parties; (6) plans for the child by the parties seeking custody; (7) the stability of the proposed placement; (8) the parents' acts or omissions that may indicate that the parent-child relationship is not proper; and (9)

any excuse for the parents' acts or omissions. *See Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976); *In re L.M.*, 104 S.W.3d at 647. We may also consider the statutory factors set forth in Family Code section 263.307. *See* TEX. FAM. CODE § 263.307; *In re A.C.*, 560 S.W.3d 624, 631 n.29 (Tex. 2018); *In re C.A.G.*, No. 01-11-01094-CV, 2012 WL 2922544, at *6 & n.4 (Tex. App.—Houston [1st Dist.] June 12, 2012, no pet.) (mem. op.).

These factors are not exhaustive, and there is no requirement that DFPS prove all factors as a condition precedent to the termination of parental rights. *See In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002); *see also In re C.L.C.*, 119 S.W.3d 382, 399 (Tex. App.—Tyler 2003, no pet.) ("[T]he best interest of the child does not require proof of any unique set of factors nor limit proof to any specific factors."). The absence of evidence about some of the factors does not preclude a factfinder from reasonably forming a strong conviction or belief that termination is in the child's best interest. *In re C.H.*, 89 S.W.3d at 27; *In re J.G.S.*, 574 S.W.3d 101, 122 (Tex. App.—Houston [1st Dist.] 2019, pet. denied).

The same evidence of acts and omissions used to establish grounds for termination under section 161.001(b)(1) may also be relevant to determining the best interest of the child. *See In re C.H.*, 89 S.W.3d at 28; *In re L.M.*, 104 S.W.3d at 647. The trial court is given wide latitude in determining the best interest of the child. *Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex. 1982); *see also Cuellar v.*

Flores, 238 S.W.2d 991, 992 (Tex. App.—San Antonio 1951, no writ) (holding that trial court "faces the parties and the witnesses, observes their demeanor and personality, and feels the forces, powers, and influences that cot be discerned by merely reading the record").

(1) Desires of the Child

At the time of the trial, I.M. was three years old. No direct evidence indicated whether he wished to remain with Mother and Father. Given his young age, and the fact that he had not seen either parent for five months before trial, it is unlikely that he had an opinion regarding his parents. The evidence also showed that I.M. was having all his needs met in his current placement and that the foster parents wished to adopt him. *See In re J.D.*, 436 S.W.3d 105, 118 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (stating that with children too young to express their desires, factfinder may consider that "children have bonded with the foster family, are well-cared for by them, and have spent minimal time with a parent").

(2) Current and Future Physical and Emotional Needs of the Child

When I.M. was removed from the parents and taken into DFPS's care, he was living at a shelter, where he appeared happy and healthy. However, he was left alone with no one to care for him, other than shelter employees, when his parents were arrested. None of the contacts the parents offered were willing to take the child. Because of

their arrests and their inability to find a caregiver to take I.M., the child was left with no one to protect his physical and emotional needs.

Further, the parents' inability to maintain housing after leaving the shelters would leave I.M. with an unstable home life. *See In re T.G.R.-M.*, 404 S.W.3d 7,17 (Tex. App.—Houston [1st Dist.] 2013, no pet.) ("Stability is important in a child's emotional and physical development.").

Also, evidence of a parent's continued illegal drug use supports a finding that he or she poses a present and future risk of physical or emotional danger to the child. *See In re S.N.*, 272 S.W.3d 45, 53 (Tex. App.—Waco 2008, no pet.). A parent's continued illegal drug use, inability to provide a stable home, and failure to comply with a family service plan support a finding that termination is in the child's best interest. *In re M.R.*, 243 S.W.3d 807, 821 (Tex. App.—Fort Worth 2007, no pet.). The record contains evidence that the parents were dealing with drug addiction and homelessness, both of which support a finding that the parents are unable to meet the child's physical and emotional needs.

In contrast, at the time of trial, I.M. was in a foster home and his physical and emotional needs were being met; the foster parents hoped to adopt him if the parent's rights were terminated.

(3) Current and Future Emotional and Physical Danger to the Child

The record shows that both parents were arrested for public intoxication and possession of drug paraphernalia, causing I.M. to be left without a custodial caregiver, and both parents tested positive for drugs. Mother admitted to using methamphetamine, and Father admitted that, as of December 2020, both he and Mother had "fallen off the wagon," which Goodell testified that she understood to mean that they had resumed illegal drug use. *See In re W.J.B.*, No. 01-15-00802-CV, 2016 WL 1267847, at *9 (Tex. App.—Houston [1st Dist.] Mar. 31, 2016, no pet.) (mem. op.) (stating that "evidence of past misconduct can be used to measure a parent's future conduct"); *In re L.G.R.*, 498 S.W.3d 195, 204 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) (holding that parent's illegal drug use supports finding of present and future physical and emotional danger to child). Such evidence is relevant not only to the child's present and future emotional and physical needs and dangers but also to the stability of the parents' home, as contrasted with the stability of the child's foster home. *See In re J.M.*, No. 01-14-00826-CV, 2015 WL 1020316, at *7 (Tex. App.—Houston [1st Dist.] Mar. 5, 2015, no pet.) (mem. op.). A parent's illegal drug use is a condition indicative of instability in the home environment because it exposes a child to the possibility that the parent may be impaired or imprisoned. *See In re A.M.*, 495 S.W.3d 573, 579 (Tex. App.—Houston [1st Dist.] 2016, pet. denied).

(4) Parental Abilities of the Parties Seeking Custody

There was evidence that I.M. was happy and healthy when he was taken into DFPS custody. But, his parents were both arrested and tested positive for drugs, leaving I.M. with no one to care for him. While enrolled in programs at the shelters after their arrest, both parents were offered parenting classes. Mother completed hers; Father did not. And, both parents showed a lack of parenting abilities when they "fell of the wagon," moved out of their apartment, and ceased all contact with their child, missing visitation with him for five months in a row without calling, save for one call by Father in December 2020, during which he refused to commit to further visitation with I.M.

(5) Programs Available to Assist those Parties

With respect to programs available to assist the parents in promoting the I.M.'s best interest, the trial court may properly consider whether each parent complied with the court-ordered service plan for reunification with I.M. *See In re E.C.R.*, 402 S.W.3d at 249. The parents' initial compliance with certain court-ordered tasks during the termination proceedings weighs in their favor and against the best-interest finding. However, the evidence suggests that the parents were unable to refrain from illegal drug use. Father told Goodell that they "fell off the wagon," which Goodell understood to mean that they had resumed their illegal drug use. Neither parent completed the counseling that was offered in the family services plan, and, at some point after leaving the programs offered at their respective

shelters, the parents did not participate any further in the services provided in the family service plans.

(6) Plans for the Children by the Parties Seeking Custody

There was no evidence in the record regarding plans by the parents if they obtained custody of I.M. The only evidence was that, as of December 2020, the parents were homeless and living somewhere in The Heights. Of note, the parents do not challenge the appointment of DFPS as the child's managing conservator in this appeal.

(7) Stability of the Proposed Placement

I.M. is currently placed with a foster family that has expressed their wish to adopt him. Texas courts recognize a child's need for permanence through the establishment of a "stable, permanent home" as a paramount consideration in the best-interest determination of the child. *See In re K.C.*, 219 S.W.3d 924, 931 (Tex. App.—Dallas 2007, no pet.). The child is currently in a safe, stable, and potentially permanent home, which is in the child's best interest. *See In re A.R.G.*, No. 14-18-00952-CV, 2019 WL 1716262, *10 (Tex. App.—Houston [14th Dist.] Apr. 8, 2019, no pet.) (mem. op.). The evidence also shows that the foster parents intend to adopt I.M. *See In re C.H.*, 89 S.W.3d at 28 ("Evidence about placement plans and adoption are, of course, relevant to best interest.").

(8) Any Excuse for the Parents' Acts or Omissions

There was no evidence of excuses for the parents' acts or omissions other than homelessness and substance abuse. No evidence was presented to show why they discontinued all contact with their child and DFPS in September 2020.

Viewing the evidence in the light most favorable to the trial court's finding, we conclude that the trial court could have formed a firm belief or conviction that termination of Mother's and Father's parental rights is in the I.M.'s best interests. *See In re J.O.A.*, 283 S.W.3d at 344 (Tex. 2009) (citing *In re J.F.C.*, 96 S.W.3d at 266). Further, in view of the entire record, we conclude that the disputed evidence is not so significant as to prevent the trial court from forming a firm belief or conviction that termination of Fathers parental rights is in Alexa's best interests. *See id.* Accordingly, we hold that legally and factually sufficient evidence supports the trial court's best-interest finding.

We overrule Mother's and Father's eighth issues.

CONCLUSION

Because we conclude that the evidence is legally and factually sufficient to support the trial court's finding under section 161.001(b)(1)(N), and that termination

is in the child's best interest, we do not address Mother's and Father's arguments that the evidence is legally and factually insufficient to support the trial court's findings under subsections (B), (C), (D), (E), (F) and (O). *See In re A.V.* 113 S.W.3d 355, 362 (Tex. 2003); *In re P.W.*, 579 S.W.3d 713, 728 (Tex. App.—Houston [14th Dist.] 2019, no pet.).

We affirm the trial court's Order of Termination.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Rivas-Molloy and Farris.