Opinion issued December 7, 2021

In The

Court of Appeals

For The

First District of Texas

NO. 01-21-00334-CV

IN THE INTEREST OF S.F.M., a child

On Appeal from the 314th District Court
Harris County, Texas
Trial Court Case No. 2019-01400J

MEMORANDUM OPINION

This is an appeal of a termination of parental rights. In three issues, Anthony Moore challenges the sufficiency of the evidence to support termination under Subsections (E) (endangering conduct), (L) (death or serious injury to a child), and (O) (failure to comply with court order). He does not challenge the sufficiency of

the evidence supporting the jury's determination that termination of his parental rights is in the best interests of his young daughter, S.F.M.

In two more issues, Moore appeals the trial court's rulings on motions challenging his absence from the trial proceedings at which his parental rights were terminated. He argues that he wanted to participate but was not brought to the courthouse from the county jail to do so, in violation of his due process rights. The State responds that Moore had told jail staff he felt ill and, in the time of COVID, there was no protocol to bring him to the live jury trial if his health was uncertain.

We conclude that there was more than sufficient evidence to support the jury's finding of endangering conduct under Subsection (E) as a predicate for termination of Moore's parental rights. Because there was adequate evidence to support termination under that predicate, the other bases for termination—Subsections (L) and (O)—are mooted and not analyzed.

Regarding the trial court's rulings on the motions related to Moore's absence, we conclude that harm is not established to permit reversal even if the trial court's rulings were erroneous. The facts of this case are extreme. There is overwhelming evidence that Moore is aggressive, threatening, and violent. He has a history of violent behavior in his interactions with family members and in public spaces. Multiple witnesses testified about being threatened by him. He threatened to kill S.F.M.'s godmother, who was caring for S.F.M. He threatened to shoot his

own attorney. He attacked two public officials. On this clear and convincing evidence of endangering conduct, we must conclude that Moore's presence at trial would not have affected the outcome of this proceeding—termination of his parental rights due to endangering conduct—or his presentation of the issues on appeal.

We emphasize that our harm analysis is inextricably tied to the facts of this case, with overwhelming evidence that Moore is such a danger to S.F.M. that his rights would be terminated regardless of his participation in trial.

Background

S.F.M., who we will refer to as Stella, was born in early 2019. At Stella's birth, the Department of Family and Protective Services learned that her parents lived under a bridge, appeared to have mental health issues, and had no ability to provide for their newborn. The Department was designated as Stella's temporary conservator. Stella was placed with her godmother. The trial court authorized supervised visits by her parents at the Department's offices.

The Department soon learned that Moore had demanded that the godmother allow unsupervised visits and had threatened to kill her if she refused. The godmother admitted that she allowed at least one unsupervised visit. Stella was removed from the godmother's home when the Department confirmed that the unsupervised visit happened.

Stella next lived with an adoptive foster parent, where she remained until trial. The foster parent's mother and teenage son also lived in the home. Later, Stella's younger sibling joined the household, having also been removed from their parents' care.

Moore's visits with Stella were scheduled to occur at the Department's offices under the supervision of Department staff and the observation of a guardian ad litem. Multiple witnesses testified that Moore was unable to complete a single visit without being distracted by his anger at the Department and leaving his daughter's side to confront Department staff. The longest he lasted at any visit before becoming enraged and turning his anger toward the staff was 15 minutes.

A caseworker testified that Moore blocked his path when he was trying to retrieve a supervisor, made threatening gestures and comments, and made the caseworker concerned for his own safety and that of the other Department staff. Moore grabbed papers, wadded them up, and threw them at staff. He yelled at staff and punched a thermostat on the wall, breaking the thermostat and bloodying his hand. The police had to be called twice. Other times, Moore was escorted from the offices by security. After two months of failed visits and violent outbursts, the trial court suspended Moore's visits altogether. That ruling is not appealed.

Moore has a long history of aggression and violence. There was evidence of multiple assault convictions that predate Stella's birth. Moore had convictions for

violence against family members, burglary, assaulting a person in a wheelchair, possession of cocaine, assaulting other family members, possession of a firearm as a felon, reckless injury to a child,[1] and more.

The aggression and violence continued while this case was pending. At some point, Moore became enraged at the courthouse and punched the elevator control button until it broke and fell to the ground. In January 2020, he was charged with terroristic threats when he told his attorney at the courthouse that he was going to shoot him. The next month, Moore was charged with assaulting Stella's mother while she was pregnant with their next child. Just one month later, he was charged with assaulting Stella's mother again, by applying pressure to her neck and throat to impede her breathing and blood flow.

Three months later, in June 2020, he was charged with harassing a public servant by spitting on the person. Three months after that, Moore was arrested on a charge of felony assault for kicking a different public servant. It is unclear from the record if these incidents occurred at case-related proceedings or in Moore's daily life.

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[1] Moore pled guilty to the offense of reckless injury to a child in 2005 and was sentenced to two years' confinement for that second-degree felony. The charging instrument described the offense as "driving and operating a motor vehicle and sharply turning the motor vehicle while the complainant [a child under the age of 15] was unrestrained in the rear seat of the motor vehicle and the rear seat door was unsecured causing the complainant to fall from the motor vehicle and strike her head."

It also is unclear which of these offenses led to Moore's long-term incarceration, but, at some point, he was confined to jail, where he remained.

The termination trial was postponed due to COVID limitations on jury trials and other COVID-related logistical obstacles. Eventually, in May 2021, a jury was empaneled and the jury trial began. The parties and trial court expected Moore to be brought over from the jail to participate in the proceeding. But Moore never appeared.

Moore's attorney orally moved for a continuance. The trial court denied the motion, stating on the record that the court staff had been told that Moore chose not to appear after all. Moore's attorney moved for a short recess to confer with his client. That motion was also denied. The trial began without Moore present.

Moore's attorney eventually met with him. On his return, the attorney informed the trial court that Moore had not voluntarily missed the first day of trial. Moore began the process of being moved to the courthouse and, along the way, told the jail staff that he did not feel well. Moore was then taken back to the jail. According to the attorney, Moore wanted to participate in the termination proceeding but was not allowed to once he said he did not feel well. This appeared to be a COVID-related precaution.

After presenting this information, Moore's attorney made a second oral motion for continuance. The trial court noted that motions for continuance had to

be in writing and verified or supported by an affidavit.[2] Moore's second nonconforming motion was denied. Trial continued. On the third day of trial, Moore's attorney presented a third oral motion for continuance. That nonconforming motion was also denied.

The Department put on four witnesses. The first-assigned caseworker, D. Lee, testified about his interactions with Moore. Lee testified that Moore's visits with Stella were scheduled to take place at the Department's office and supervised by Department staff. Moore appeared for four or five visits. At each visit, within 15 minutes of the start of the visit, Moore would become volatile, yell and intimidate Department staff, and have to be escorted out by Department security or police. At the last visit, Moore became so enraged that he grabbed paperwork from Lee's hand, wadded it up and threw it at another Department worker, and then punched the glass case surrounding the wall thermostat, injuring his hand and leaving blood in the area. Moore had to be escorted from the building.

Moore was never able to complete a visit with Stella. At every visit, Moore allowed his frustration to dominate the encounter, and he turned his energy from interacting and bonding with Stella to fighting with Department workers. He refused to allow the guardian ad litem to observe his interactions with Stella. One

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[2] A motion for continuance must be in writing, state specific facts supporting the motion, and be verified or supported by an affidavit. *Welcome v. Tex. Roadhouse, Inc.*, No. 01-12-00317-CV, 2014 WL 7335183, at *2 (Tex. App.—Houston [1st Dist.] Dec. 23, 2014, no pet.) (mem. op.); *see* TEX. R. CIV. P. 251.

time, Moore "got directly in [Lee's] face and wouldn't allow [him] to pass by" or retrieve a supervisor. Lee was asked whether Moore was trying to intimidate him or hurt him. Lee responded that he though Moore intended to do both. Lee stated that he always felt his safety was in danger when Moore was present.

According to Lee, there have been other parents who have been upset with the Department or angry during visits, but this was different: Moore would leave Stella in the visitation room, only minutes after entering the room, to yell at staff in the hallways. Lee testified that Moore's behavior could be heard inside the visitation area. Twice, the Department had to call the police for assistance. Lee described Moore's behavior as irate, loud, obnoxious, aggressive, and very volatile.

Lee testified that Moore also was never able to complete a conversation about his Family Services Plan because his anger and aggression would derail the conversation. He refused to discuss the Plan's requirements. He accused those involved in the case of working against him, of "hitting on" Stella's mother, and of talking down to him.

Stella's godmother told Lee that she feared for her safety and requested special procedures when making Stella available for visits with Moore so that Moore would not see the godmother or find out where she lived. The godmother told Lee that Moore threatened to kill her when she refused a visit that he was

trying to schedule for Stella's mother in violation of the supervised-visits-only court order.

There was evidence that Moore sometimes attended court proceedings during the development of this case and, at other times, did not. Lee testified that Moore once told him that he did not want to go to court because "he had crack cocaine and marijuana." It is unclear if this was a reference to drug possession or a concern about possible drug testing following the court appearance.

Finally, after the visit when Moore punched the thermostat case, the Department requested that the trial court suspend Moore's visits. Moore did not appear at the hearing. The trial court suspended all future visits. Some days later, Moore arrived at the Department's office for another visit (that had been canceled by court order), became irate, and had to be removed from the premises by security.

The Department caseworker assigned to Stella after Lee was T. Gillum. She testified about her attempts to discuss the Family Services Plan with Moore. She told him about the services that were required. He told her that he did not have any questions. Gillum provided Moore with names of service providers and arranged for the Department to pay for Moore's services, including a psychosocial evaluation and therapy, but Moore did not go. Gillum gave him bus vouchers and names of providers that were located along the bus routes. Still, he did not go.

Gillum testified about Moore's criminal history. Various judgments of conviction and other related documents were admitted into evidence. Gillum testified that Moore had six prior convictions for assault, with two more pending at the time of trial. One pending charge was for assaulting Stella's mother when she was pregnant with Stella's younger sister; the other was for assaulting his own mother. Moore also had two additional charges pending related to threatening behaviors. None of the four pending charges were from the same incident.

Gillam said that when she interacted with Moore, he was irritated, irate, and verbally abusive. She recalled one incident when Moore became angry and punched the elevator button until it broke and fell from the wall. She was afraid for her safety.

Finally, Gillam recapped Moore's past incidents of being physically and verbally aggressive with family members and his convictions for assault. She described him, based on her interactions with him, as a "ticking time bomb" ready to go off when "he does not like what is happening at the moment."

The adoptive foster mother testified about her care for Stella over the past 16 months, her affection for the child, and her plans for her future. She discussed the child's routine, doctor's visits, daycare, and living space. She stated that she wishes to adopt Stella and give her a permanent, stable home.

The guardian ad litem, J. Williams, was the Department's last witness in support of its burden to establish a predicate for termination of Moore's parental rights. Williams testified that he had attended Moore's first supervised visit. He described Moore as becoming "irate and agitated" without any obvious basis for his extreme reaction. Moore began "hitting the walls," and security was called. The second visit was the same. Moore became "irate, very loud." On a later date, Williams saw Moore threaten his attorney near the courtroom.

Williams described Moore as having "erratic behavior" and expressed concern that Moore could pose a risk to Stella's safety, particularly given his past criminal record, which included an earlier conviction for injury to a child. According to Williams, Moore had not shown the ability to care for Stella, to provide her a stable home, to control his anger, or to model appropriate parental behaviors.

Williams visited both of Stella's placements. When he visited with the godmother, she expressed that she was frightened of Moore and considered him a threat. When Williams later visited the adoptive foster parent's home, he saw a happy, well-adjusted child. There was an evident bond between Stella and the foster mother. Stella was thriving in her adoptive placement. Williams testified that he would be concerned if Stella were removed from the home. She had lived and

been cared for by the adoptive foster parent since January 2020 and was doing very well.

Moore rested without calling any witnesses.

The godmother and her husband, who had intervened in the suit to seek conservatorship over Stella, called several witnesses. The godmother testified that she would like custody of Stella. She felt that the Department had treated her family unreasonably in removing Stella based on Moore's unsupervised access. She testified that she never saw Moore be violent while Stella was living with her. She admitted that he once said to her, "I am going to kill you," but she downplayed the seriousness of the comment, referring to it as a mere "figure of speech." She agreed that she would not grant Moore access to Stella in the future if she were given custody. Finally, she testified that she would like to adopt Stella or, alternatively, have custody of Stella while Moore retains his parental rights.

The godmother's husband testified. He also expressed his desire to raise Stella. He said that the Department was always critical of how he and his wife were caring for Stella. He felt that she would be safe and happy in their home.

Sufficiency of Evidence to Support Termination

In his third issue, Moore contends there was insufficient evidence to support termination of his parental rights under Subsection (E) for conduct that endangers the child's physical or emotional well-being. TEX. FAM. CODE § 161.001(b)(1)(E).

A. Applicable law and standard of review

A parent's rights to the "companionship, care, custody, and management of his or her children" are constitutional interests "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 final, irrevocable, and permanently divests the parent of all legal rights, privileges, duties, and powers with respect to the parent-child relationship, except for the child's right to inherit. *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985). We strictly scrutinize termination proceedings and strictly construe the involuntary termination statutes in favor of the parent. *Id.* However, the "rights of natural parents are not absolute" and the "rights of parenthood are accorded only to those fit to accept the accompanying responsibilities." *In re A.V.*, 113 S.W.3d 355, 361 (Tex. 2003) (internal quotations omitted). Recognizing that parents may forfeit their parental rights by their acts or omissions, the primary focus of any termination suit is protection of the child's best interest. *See id.*

Due to the severity and permanency of the termination of parental rights, the evidence supporting termination must meet the threshold of clear and convincing evidence. TEX. FAM. CODE § 161.001(b); *In re J.F.C.*, 96 S.W.3d 256, 263 (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. This is an intermediate standard that falls between "preponderance of the evidence" used in ordinary civil proceedings and "reasonable doubt" used in criminal proceedings. *State v. Addington*, 588 S.W.2d 569, 570 (Tex. 1979).

This heightened burden of proof results in a heightened standard of review. *In re S.R.*, 452 S.W.3d 351, 358 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). When the legal sufficiency of the evidence supporting termination is challenged, the reviewing court looks at all the evidence in the light most favorable to the termination finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that the finding was true. *In re J.O.A.*, 283 S.W.3d 336, 344 (Tex. 2009); *In re J.F.C.*, 96 S.W.3d at 266. The court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so. *In re J.O.A.*, 283 S.W.3d at 344; *In re J.F.C.*, 96 S.W.3d at 266. It should disregard all evidence that a reasonable factfinder could have disbelieved or found to be incredible. *In re J.O.A.*, 283 S.W.3d at 344; *In re J.F.C.*, 96 S.W.3d at 266. If, after conducting a legal sufficiency review of the record evidence, the court determines that no reasonable factfinder could have formed a firm belief or conviction that the matter to be proved was true, the court must conclude that the evidence on that matter is legally insufficient. *In re J.O.A.*, 283 S.W.3d at 344–45; *In re J.F.C.*, 96 S.W.3d at 266.

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 at 345. "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). The factfinder is the sole arbiter when assessing the credibility and demeanor of witnesses. *Id.* at 109. We are not to "second-guess the trial court's resolution of a factual dispute by relying on evidence that is either disputed, or that the court could easily have rejected as not credible." *In re L.M.I.*, 119 S.W.3d 707, 712 (Tex. 2003); *see In re J.O.A.*, 283 S.W.3d at 345 (stating that appellate court should explain in its opinion its conclusion that a reasonable factfinder could not have credited disputed evidence in favor of the finding).

A single predicate finding under Section 161.001(b)(1) of the Family Code is sufficient to support a judgment of termination when there is also a finding that termination is in the child's best interest. *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). Thus, if multiple predicate grounds are found by the trial court, we may affirm on any one ground because only one is necessary for termination of parental

rights. *See In re T.G.R.-M.*, 404 S.W.3d 7, 13 (Tex. App.—Houston [1st Dist.] 2013, no pet.). But, when termination is granted under Subsection (D) or (E), those grounds must be reviewed because they can supply the predicate for future terminations under Subsection (M). *See In re N.G.*, 577 S.W.3d 230, 237 (Tex. 2019) (holding that allowing (D) and (E) findings to go unreviewed on appeal when the issue is presented to the court violates the parent's due-process and due-course-of-law rights); *In re T.L.B.*, No. 01-21-00081-CV, 2021 WL 3501545, at *3 n.4 (Tex. App.—Houston [1st Dist.] Aug. 10, 2021, pet. denied) (mem. op.).

B. Sufficient evidence supports termination of parental rights under Subsection (E) (endangering conduct)

Section 161.001(b)(1)(E) of the Family Code provides that parental rights may be terminated if the parent has "engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child." TEX. FAM. CODE § 161.001(b)(1)(E). Within the context of Subsection (E), endangerment encompasses "more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment." *Tex. Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987). To "endanger" means to expose a child to loss or injury or to jeopardize a child's emotional or physical health. *Id.*; *see In re M.C.*, 917 S.W.2d 268, 269 (Tex. 1996).

It is not necessary to establish that a parent intended to endanger a child to support termination under subsection (E). *See In re M.C.*, 917 S.W.2d at 269–70. Nor is it necessary to establish that the parent's conduct was directed at the child or caused actual harm; rather, it is sufficient if the parent's conduct endangers the child's well-being. *See Walker v. Tex. Dep't of Fam. & Protective Servs.*, 312 S.W.3d 608, 617 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). The endangering conduct does not have to occur in the child's presence. *Id.* The conduct may occur before the child's birth and either before or after the child's removal by the Department. *Id.* Offenses that occur before the child's birth can be considered as part of a voluntary, deliberate, and conscious course of conduct that has the effect of endangering the child. *Id.* Mere imprisonment for past offenses will not, standing alone, constitute endangering conduct; however, when all the evidence, including the imprisonment, shows a course of conduct that has the effect of endangering the physical or emotional well-being of the child, a finding under Subsection (E) is supported. *Id.*

A parent's past endangering conduct may create an inference that past conduct may recur and further jeopardize the child's present or future physical or emotional well-being. *See Walker*, 312 S.W.3d at 617; *In re D.M.*, 58 S.W.3d 801, 812 (Tex. App.—Fort Worth 2001, no pet.). "As a general rule, conduct that subjects a child to a life of uncertainty and instability endangers the physical and

emotional well-being of a child." *In re R.W.*, 129 S.W.3d 732, 739 (Tex. App.—Fort Worth 2004, pet. denied).

Moore presents two arguments against the Subsection (E) finding. First, all his convictions pre-date Stella's birth. Second, the pending charges have not resulted in convictions yet, reducing their evidentiary value in analyzing whether Moore presents a danger to his daughter. As to the first argument, case law is clear that violent conduct that pre-dates a child's birth is relevant. *See, e.g.*, *Walker*, 312 S.W.3d at 617. As to the second argument, a criminal conviction is not a prerequisite for parental acts to be relevant to a Subsection (E) endangerment analysis. *See In re V.V.*, 349 S.W.3d 548, 556 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) ("Texas courts routinely consider evidence of parent-on-parent physical abuse in termination cases without specifically requiring evidence that the conduct resulted in a criminal conviction.").

The jury received evidence that, since this termination suit became active, Moore has been violent against Stella's mother—who was pregnant with another child at the time—and his own mother. Incidents of family violence support an endangering-conduct finding. *Walker*, 312 S.W.3d at 617.

The jury also received evidence that, during the pendency of this termination suit, Moore threatened to harm Stella's godmother because she would not grant the

amount of unsupervised access he demanded. And he threatened to harm his own attorney at the courthouse when he became angry at the events unfolding.

Perhaps most pertinent to our analysis, the jury received evidence that Moore became enraged and violent at every single visit he was granted with Stella before the court suspended his visits due to his violent behavior. From the beginning of this suit, Moore's visits with Stella were supervised by the Department. He was there to interact with and bond with Stella. And the Department staff was there to ensure Stella's safety and monitor Moore's behavior. Even in that environment—where Moore knew he was being monitored—Moore was unable to control his anger long enough to get through a single visit.

The evidence indicates that Moore never lasted more than 15 minutes at any of his supervised visits without going into a rage against Department staff. The assigned caseworker, Lee, testified that he attempted to help Moore understand that these visits were meant for bonding between parent and child and that Moore should wait to raise any issues he was having with the litigation or with the Department staff until his visit with Stella ended. Lee testified that Moore was unable to remain focused on his visit with Stella. He could not control his anger to complete the visit. At each visit, his anger derailed his focus and he left Stella to confront Department staff, yell and throw things, and break fixtures off the wall.

Moore has demonstrated an extreme lack of self-control during the pendency of this termination suit. He has walked away from opportunities to spend time with Stella to, instead, confront and threaten those charged with her care and protection. And he has threatened to harm or kill those he believed were acting against him. His outbursts have been severe enough to require police intervention for the protection of Department staff.

Moore's arguments against an endangerment finding ignore all these events. The endangerment finding was not limited to pre-birth convictions. All this behavior that followed Stella's birth was evidence before the jury and relevant to whether Moore's conduct endangers Stella. *Walker*, 312 S.W.3d at 617. The extreme level of anger and violent outbursts in the presence of Department staff, coupled with evidence of two physical assaults against the women in Moore's family, firmly support an endangerment finding. *In re V.V.*, 349 S.W.3d at 556; *Walker*, 312 S.W.3d at 617.

Because there was more than ample evidence supporting the jury's endangering-conduct finding, we overrule Moore's first issue. Our ruling on this issue moots his fourth and fifth issue, challenging alternative predicates to support termination under Subsections (L) (death or serious injury to a child—here, an older child several years before Stella's birth) and (O) (failure to comply with court

order). Moore did not challenge the sufficiency of the evidence supporting the jury's best-interest finding; therefore, we will not review that finding.

Denial of Motions for Continuance, Recess, and New Trial

In his first and second issues, Moore contends the trial court abused its discretion in denying his oral motions for continuance, motion for recess, and motion for new trial, all of which focused on Moore's absence from the trial proceedings. He argues that his absence and the denial of these motions violated his right to due process of law.

A. Standard of review and applicable law

The denial of a motion for continuance or motion for recess is reviewed for an abuse of discretion. *Hernandez v. Heldenfels*, 374 S.W.2d 196, 202 (Tex. 1963); *Lynd v. Wesley*, 705 S.W.2d 759, 764 (Tex. App.—Houston [14th Dist.] 1986, no writ). The denial of a motion for new trial is also reviewed for an abuse of discretion. *In re D.E.H.*, 301 S.W.3d 825, 830 (Tex. App.—Fort Worth 2009, pet. denied). A trial court abuses its discretion when it acts arbitrarily or unreasonably without reference to guiding rules and principles of law. *In re M.T.R.*, 606 S.W.3d 288, 291 (Tex. App.—Houston [1st Dist.] 2020, no pet.).

The United States Constitution provides that no State shall "deprive any person of life, liberty, or property without due process of law." U.S. CONST. amend. XIV, § 1; *see* TEX. CONST. art. 1, § 19. In analyzing a claim of deprivation

of procedural due process, courts apply a two-part test: (1) whether the complaining party has a liberty or property interest entitled to protection; and if so, (2) what process is due. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982); *Univ. of Tex. Med. Sch. v. Than*, 901 S.W.2d 926, 929 (Tex. 1995). "[D]ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971).

Parents have a fundamental liberty interest "in the care, custody, and management of their child." *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Their fundamental liberty interest "does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *Id.* at 753. Additionally, their status as prison inmates does not strip them of their constitutional right of reasonable access to the courts. *In re D.W.*, 498 S.W.3d 100, 112 (Tex. App.—Houston [1st Dist.] 2016, no pet) (mem. op.); *In re T.L.B.*, No. 07–07–0349–CV, 2008 WL 5245905, at *2 (Tex. App.—Amarillo Dec. 17, 2008, no pet.) (mem. op.) (citing *Hudson v. Palmer*, 468 U.S. 517, 523 (1984)). Thus, Moore was entitled to procedural due process in the termination proceeding. *See In re D.W.*, 498 S.W.3d at 112. What process is due in any given situation is

measured by a flexible standard that depends on the practical requirements of the circumstances. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

A claim of the denial of due process is subject to a harm analysis. *In re D.W.*, 498 S.W.3d at 118. To reverse a judgment based on trial court error, the record must show that the error probably caused rendition of an improper judgment or probably prevented the appellant from properly presenting his case to the appellate court. TEX. R. APP. P. 44.1(a).

B. On these facts, any error in the trial court's rulings was harmless

Parents who have been prevented from participating in their parental-termination trials have, at times, demonstrated harm from the error. *See In re D.W.*, 498 S.W.3d at 118–19; *In re T.L.B.*, No. 07-07-00349-CV, 2008 WL 5245905, at *5 (Tex. App.—Amarillo Dec. 17, 2008, no pet.) (mem. op.). We are convinced, however, that the particular facts of this case are such that harm is not established, even assuming the trial court erred.

We do not take due-process claims lightly. But this record is replete with evidence of Moore being in stressful or perceived adversarial situations and failing to maintain control over his emotions, such that, within a matter of minutes, he becomes violent. He has done so at supervised visits in the presence of Department staff who testified about the encounters and the fear they felt for their own safety in his presence.

Moore's visits with Stella were supervised by court order. Department staff were there to observe Moore's behavior. The guardian ad litem was there for the same purpose. Yet, Moore could not control his anger for more than 15 minutes at any supervised visit before becoming hostile to the staff, blocking pathways, smashing fixtures on the wall, and threatening those in his immediate area. Moore could not control his emotions to avoid violent outbursts when he knew he was in public and knew he was being observed. This raises serious concerns about how he would control himself in a more private setting outside the Department's observation.

After multiple violent outbursts during two months of supervised visits, the trial court suspended Moore's visitation rights in May 2019, when Stella was only a couple months old. Moore's hostile and violent behavior continued. There was evidence that Moore threatened his attorney—in this case—at the courthouse. He was charged with making a terroristic threat. There also was evidence that Moore threatened to kill his child's godmother when she would not comply with his demands for unauthorized visits with Stella.

Moore's violence is not limited to his response to losing custody of Stella and the stressors that created. Moore has six prior convictions for assault that predate the termination proceedings. Some of those involved family violence.

Even after this termination suit began, and having all the incentive to control his anger and demonstrate temperance, Moore has been charged twice more with assault. One charge is for assaulting his pregnant wife. The other is for assaulting his own mother. Besides Stella, these are the two women most closely related to Moore.

And there is even more. He has two additional charges leading up to the termination trial for violent acts against public servants—one for spitting on a person and the other for kicking a person.

Attacking public servants and family members, threatening Department staff and the attorney trying to protect his interests, and threatening to kill the godmother he once said he wanted to raise his child are examples of extreme, violent behaviors. Not being able to last more than 15 minutes in a room with one's infant child without going into a rage and destroying property is evidence of endangering conduct. All this, combined, presents legally and factually sufficient evidence to permit a jury to form a firm conviction or belief that the parent presents a danger to the safety and security of a child, particularly a child of such a young age that she is completely dependent on adults for her basic needs and protection. *See In re V.V.*, 349 S.W.3d at 556; *Walker*, 312 S.W.3d at 617.

The evidence is more than just sufficient; it is overwhelming. This evidence is not susceptible to being explained away with testimony of misunderstandings.

This is strong evidence of a pattern of violent, abusive conduct that is incompatible with possession or access to young children. Thus, under the particular facts of this case—given the extreme and frequent displays of violence before and during this suit, and given the complete lack of a relationship or any bonding between Moore and Stella—we have no doubt that Moore's parental rights would have been terminated at the conclusion of the proceeding regardless of his presence in the courtroom or participation in the trial. Evidence of this father's violent past and continued, frequent aggression against any person—even close family members—who crossed him left no room for any conclusion other than that his past conduct was endangering and future access to this child would be equally endangering.

Against this strong evidence supporting termination, Moore argues that his exclusion from the proceeding warrants a new trial. It appears from the record that, on the first day of his termination trial, Moore told jail staff that he did not feel well. The parties discussed on the record that it had taken a long time for the courts to try cases with in-person juries under COVID protocols. Moore's announcement that he was feeling ill on the day he was to appear in-person for a multi-hour proceeding presented some safety and logistical concerns for the trial court, which was also noted on the record.

On another set of facts, we would be called on to weigh the needs of the trial court to manage the trial proceedings efficiently and effectively and to ensure the

safety of those involved against the parent's right to participate in their termination proceeding. But the facts of this case are so stark, with overwhelming evidence that Moore lacks self-control and repeatedly has had violent outbursts and committed criminal offenses inappropriate to conservatorship over a very young child. The evidence supporting termination was so strong, we fail to see how Moore's absence from the courtroom—even if error—affected the outcome of the trial or his presentation of his case on appeal.[3] *See* TEX. R. APP. P. 44.1(a) (setting standard for harm analysis).

Nor has Moore made any argument how harm is shown. His brief points out that the errors he asserts are subject to a harm analysis, but he does not offer any arguments how or why harm is established. Like with the termination predicate and best-interest analysis, he claims error but fails to engage the remainder of the analysis.

Limited to the extreme facts of this case, we conclude that any error in the trial court's ruling on Moore's oral motions for continuance and his motion for recess was harmless. We overrule his first issue. For the same reasons, we

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[3] We note that Moore did not appeal the jury's finding that termination of his parental rights was in Stella's best interest. By all accounts, Moore supported the intervenors—the godmother and her husband—in their efforts to have Stella returned to their home. Thus, the best-interest analysis would have evaluated their home and parenting abilities. They participated in the trial and presented evidence of their parenting abilities and interest in raising Stella. Yet, the jury determined that the Department was better suited to be Stella's conservator. The intervenors did not appeal the judgment.

conclude the trial court did not abuse its discretion in denying the motion for new trial that relied on the same arguments. We overrule his second issue.

Conclusion

We affirm.

Sarah Beth Landau
Justice

Panel consists of Chief Justice Radack and Justices Kelly and Landau.