**Opinion issued January 11, 2022**

**In The**

# Court of Appeals

**For The**

# First District of Texas

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**NO. 01-21-00456-CV**

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**IN THE INTEREST OF K.T.S.N., A CHILD**

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**On Appeal from the 315th District Court**
**Harris County, Texas**
**Trial Court Case No. 2019-01064J**

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## MEMORANDUM OPINION

The trial court terminated the parental rights of appellant, P.U.N. a/k/a P.U.P. (Mother), to her child K.T.S.N. The final order of termination was based on findings under Texas Family Code subsections 161.001(b)(1)(E), (M), and (O), and a finding that termination of Mother's parental rights was in the child's best interest. In four issues on appeal, Mother argues that the trial court lost jurisdiction over the case

prior to its rendition of its final order of termination and that the evidence was legally and factually insufficient to support the trial court's findings pursuant to Family Code subsections 161.001(b)(1)(E) and (O) and its finding that termination of Mother's parental rights was in the child's best interest. We conclude that the trial court maintained jurisdiction over the case and that the evidence was sufficient to support the trial court's final order of termination. Accordingly, we affirm.

## Background

K.T.S.N. (Kam) was born in January 2019. While Kam was still in the hospital following his birth, the Texas Department of Family and Protective Services (DFPS) received reports of neglect concerning Kam. The report indicated that Mother had "minimal to no prenatal care" and Kam was born "about a month premature and weighed five pounds." The report further indicated that Mother and Father were homeless and that they "have nothing for [a] two-day-old [except] what the hospital has given that consists of mostly a bag of medicine." The report stated that Mother "has no transportation, food, diapers, car seat or sleeping arrangement for a two day old." Mother and Father explained that their relatives were not able to help them at the time Kam and Mother were discharged from the hospital. Mother explained that they would have a room available the following day, but the person making the report to DFPS believed that the arrangement sounded "fishy."

DFPS investigated, and the assigned caseworker was concerned about the living conditions and mental health of the parents. Mother and Father agreed to have Kam placed with a family friend, Tabatha Bonton, and Kam was discharged from the hospital to Bonton's care. However, the following day, Mother and Father contacted DFPS and indicated that they would no longer cooperate with DFPS or participate in recommended services without a court order.

On March 7, 2019, DFPS filed its original petition seeking temporary managing conservatorship of Kam. The trial court signed an order granting temporary managing conservatorship to DFPS on March 25, 2019. In that same order, the trial court ordered that both Mother and Father comply with each requirement set out in DFPS's service plan during the pendency of the suit, and DFPS filed a copy of its family plan of service.

After multiple requests for continuance by DFPS, Mother, and Father, and after multiple orders from the trial court extending the dismissal deadline for this case because of the COVID-19 pandemic, the case was called to trial on March 24, 2021. Mother moved for a continuance on the grounds that she had recently been assaulted by Father and was unable to participate in the trial. DFPS objected to the continuance on the grounds that there had been numerous delays by both Mother and Father and because DFPS believed it would be difficult to provide appropriate notice to Father in the event the trial had to be reset. The trial court denied the continuance.

DFPS offered its exhibits, including Kam's birth certificate and the family service plans for Mother and Father. DFPS presented evidence of the results from Mother's drug screenings, indicating that her hair follicles had tested positive for cocaine in May 2019, for methamphetamine and cocaine in June 2019, for cocaine in September 2019, and for cocaine and marijuana in February 2020. The records also demonstrated that Mother refused to provide a sample in November 2019.

DFPS presented five previous orders of termination terminating Mother's parental rights to five of her older children. This included evidence that Mother's parental rights to the children J.M.P., B.M.P., and M.A.P., were terminated based on the trial court's findings of endangerment under Family Code subsections 161.001(b)(1)(D) or (E).

DFPS also presented evidence of Father's previous criminal conduct, including several counts of aggravated assault and a June 2020 charge for assaulting Mother. After considering objections and admitting this evidence, the trial court then stated on the record that it would recess and continue the trial in June, in the hope that Mother could be present for trial.

The trial recommenced on June 22, 2021. Mother's attorney again moved for a continuance, arguing that he had lost track of Mother and could not get in touch with her. DFPS likewise confirmed that Mother was aware of the setting. Mother did not appear at trial. The trial court denied the motion for continuance. DFPS presented

the charging instruments for three additional criminal charges against Father for assaulting Mother, and the trial court admitted the evidence.

DFPS caseworker E. Lule testified that she was the original caseworker assigned to Kam's case. She testified regarding the circumstances that led to Kam coming into DFPS's care. She testified that Kam was born prematurely, that Mother did not have any way of meeting his needs because they were homeless and did not have a car seat, diapers, or any other items to care for Kam. She testified that, following an investigation, DFPS became concerned about Mother's mental health, stating that Mother "hadn't been treated for some diagnoses that she had" and that "there was verbal aggression kind of going on between the parents at the time." Lule also testified that Mother had a history of drug abuse and prior terminations that were a concern to DFPS. Lule stated that Mother initially put Kam in the voluntary placement with Bonton, but then Mother and Father later "requested to see a judge because they did not want to voluntarily work services or have any services met."

Lule testified that after Kam was placed with Bonton, and Lule made contact with the parents, she made a service plan for Mother that required Mother, among other things, to complete parenting classes, a psychological evaluation, a psychiatric evaluation, and to follow any resulting recommendations. Mother also needed to complete an initial drug test to establish if she needed drug treatment; she had to refrain from criminal activity and illegal drug use; Mother needed to comply with

random drug testing; and she needed to maintain housing and employment and communication with DFPS. DFPS later added a requirement for domestic violence counseling based on the interactions between Mother and Father.

Lule further testified that while she was assigned to the case, Father made numerous threats against DFPS, Bonton, and Lule. She stated that Mother participated in making the threats against her:

> Mom would be on the phone and [Father] would be right next to her kind of screaming everything that he wanted Mom to say; and so, I could hear [Father] say [the threat] and Mom also repeated it, and that's why I say "they" when I'm talking about them [making threats].

Lule clarified that Mother repeated Father's threats to Lule telling her, "[H]e said he's coming after you," in a way that made it appear Mother was "joining in the threats." She stated that, because of these threats, Mother's visitation with Kam was suspended for a time until she sought psychiatric treatment.

Lule also testified that Mother tested positive for cocaine and methamphetamine during the pendency of the case and that Mother failed to comply with at least one request for drug testing during the ten months Lule was assigned to the case. Lule testified that Mother did not indicate a desire or willingness to maintain her sobriety, and that was concerning given her history of substance abuse.

Lule testified that Kam's current caregiver, Bonton, had cared for him since he left the hospital immediately after his birth. Bonton had met Mother through a homeless outreach program at her church and provided supplies to Mother while

they were living on the streets. The placement began as a "good positive placement" with Bonton trying to facilitate visits on her own at the beginning. However, the visits and communications broke down and the visits had to be moved to DFPS offices. As far as Lule was aware, Bonton was willing and ready to adopt Kam.

DFPS supervisor C. Craver testified that she had been assigned to this case since March of 2020. She testified that Mother had completed some of her required services, including parenting classes and a substance abuse assessment. Craver testified that, following her assessment, it was recommended that Mother complete individual and group counseling for substance abuse and that she participate in inpatient intensive substance abuse and domestic violence treatment through Harris Mental Health Services. Mother did not complete any of the recommended counseling or inpatient treatment, even though her family service plan required that she comply with any recommendations made following her assessments. Craver further testified that Mother's failure to complete her substance abuse treatment or to complete a relapse prevention plan with a therapist was concerning "as it relates to her caring for the child."

Craver also testified that Mother did not complete the domestic violence classes, which concerned DFPS because she "has been involved in domestic violence with [Father] several times." Mother told Craver that Father "has broken [her] ribs, broke her—knocked her teeth out, broke—she had to be hospitalized

because of internal bleedings, and, you know, that she was afraid of him; but yet she keeps going back to him." Craver stated that Mother had been unable to participate in two previous trial settings in the present case because of domestic violence incidents. Father had a pending charge for felony assault related to a June 2020 assault on Mother. Father was arrested for that assault, but Mother "bonded him out" and began living with him again. Father assaulted Mother and Mother's sister in January 2021, resulting in Mother needing to be hospitalized and Father receiving an additional felony assault charge. Mother again returned to living with Father. In March of 2021 there was another assaultive incident in which Father broke Mother's ribs and caused internal bleeding. Shortly after the March 2021 incident, Mother and Father came to the DFPS offices together, and Mother indicated that she was still living with Father and that she was pregnant again. Mother told Carver that they intended to conceive another child because they wanted Kam to have someone to play with.

Craver also testified regarding Mother's history with DFPS. Mother had nine children, but none of them were in her care. Mother's first interaction with DFPS dated back to 2008, when DFPS found there was "Reason to Believe" a report of physical abuse against one of the children who was eventually removed from Mother's care and "went to a relative or was adopted out." In 2011, another child was removed from Mother based on reports of physical abuse. In 2013, two more

children were removed from Mother's care. Craver testified that Mother did not have custody of any of the children she had birthed, either because DFPS had terminated Mother's parental rights or because a relative had taken over care for the children.

Craver testified that Mother's last drug screening was conducted in June 2020. DFPS requested that she submit to random drug testing twice a month, but after June 2020, Mother refused to do so, "so anything after that would have been an automatic positive because she did not test." According to Craver, Mother stated "that she didn't have a drug issue, she stopped using drugs a long time ago." Despite this contention, Mother had tested positive for substance abuse during the pendency of the case and that part of her initial evaluation revealed that Mother had a cocaine abuse problem.

Craver stated that Mother had provided DFPS with a copy of a lease indicating that she had obtained housing. Mother failed, however, to provide any proof of employment. Craver further testified that Mother completed her evaluations, but she did not complete any of the recommendations. That was problematic because those recommendations from the drug and psychological evaluations were vital to Mother progressing and getting treatment.

Craver testified that Kam had been in the same placement with Bonton since he left the hospital. She had visited with Kam and watched him interact with Bonton and her family, and she believed that he had bonded with them. Craver stated that

Bonton was willing to adopt Kam and had support from the adoption agency and from members of Kam's extended biological family. Bonton and her family had provided for all of Kam's needs and would continue to do so.

Craver testified that DFPS was concerned that if Kam was returned to Mother, he would be exposed to abuse either directly as a victim or "him being in the middle of the violent actions of the parents, the dad, and the mom not being able to protect him." She observed that Father had assaulted Mother's sister in addition to assaulting Mother. She was concerned that Kam was young and could not advocate for himself, and if Mother was to be hospitalized again, Kam was not old enough "to protect himself alone against Father." DFPS was also concerned about returning Kam to Mother because she had not demonstrated any ability to parent children, and she had not accepted DFPS's help or any treatment to address the concerns. Mother had attended many, but not all, of her visitations with Kam. Craver believed it was in Kam's best interest to terminate parental rights and allow Bonton to adopt him.

C. Little, Kam's guardian ad litem, testified that she had visited with Kam throughout the case. She believed that Kam's current placement is a good one because he "is very happy and healthy; he's met all his milestones and he's just—when you see the environment he's in, he's thriving." She further testified that he had bonded with the parents in his current placement and the other siblings in that household. Little stated that Bonton could provide for him financially, took good

care of him physically, and met his other needs. She also stated that Bonton had expressed the hope of adopting Kam and that Bonton and her family had support from extended family and the community.

Little testified that she had concerns about Kam returning to Mother and Father. She testified, "From my perspective, . . . the parents—they are very argumentative, combative, that I've seen in person, that I've seen in court. They have been very hostile in nature, very just unable to control or manage their emotions." Other concerns identified by Little included evidence of domestic abuse, the termination of Mother's parental rights to her older children, Mother's history of drug use combined with positive drug tests and refusal to take some drug tests, and her "lack of making visitations." Little testified that "there's always a lot of volatility" with Mother and Father, but that Kam "right now is in a very safe, secure, comfortable, and . . . loving environment." She stated, "[T]o see him go into such a volatile environment [with Mother and Father], that is very concerning to me." Little was concerned that Mother continued to live with her abuser, and she was concerned that Kam might be caught "inadvertently in the middle of an attack." Kam would also be harmed emotionally by being exposed to the "extreme anger" that Father demonstrated.

After the parties presented their closing arguments, the trial court observed that, "[b]ecause this case has encompassed several days, I'll have to review the

evidence and the testimony that's been represented." The trial court did not pronounce its judgment on the record, instead informing the parties that it would render judgment and inform them via e-mail.

On August 3, 2021, the trial court signed its order terminating Mother's parental rights. The trial court found that Mother had engaged in conduct or knowingly placed the child with persons who engaged in endangering conduct, pursuant to subsection 161.001(b)(1)(E); that Mother had her parent-child relationship terminated with respect to another child based on findings of endangerment pursuant to section 161.001(b)(1)(M); and that Mother failed to comply with the provisions of her court-ordered family plan of service under section 161.001(b)(1)(O). The trial court further found that termination of Mother's parental rights was in Kam's best interest. This appeal followed.

**Jurisdiction**

In her first issue, Mother asserts that the order for termination was void because the trial court lost jurisdiction of the case.

In cases where DFPS requests termination of parental rights or conservatorship of a child, the Family Code requires the court to begin trial within one year of appointing DFPS as temporary managing conservator. TEX. FAM. CODE § 263.401(a). The trial court may extend the deadline once for 180 days upon a finding of "extraordinary circumstances." *Id.* § 263.401(b). If the trial court grants

an extension under subsection (b) but fails to commence the trial on the merits before the dismissal date, "the court's jurisdiction over the suit is terminated and the suit is automatically dismissed without a court order." *Id.* § 263.401(c).

However, in its response to the COVID-19 state of emergency, the Supreme Court of Texas permitted courts to modify these deadlines and procedures. *See, e.g.*, *First Emergency Order Regarding the COVID-19 State of Disaster*, 596 S.W.3d 265 (Tex. 2020) (order dated March 13, 2020, stating that courts may "[m]odify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order"); *Third Emergency Order Regarding the COVID-19 State of Disaster*, 596 S.W.3d 266, 267 (Tex. 2020) (order dated March 19, 2020, clarifying that authorization to modify or suspend deadlines and procedures "applies to all proceedings under Subtitle E, Title 5, of the Family Code, and specifically, to the deadlines in Section 263.401").

Here, the trial court signed the order granting temporary managing conservatorship of Kam to DFPS on March 25, 2019, so the initial statutory deadline for commencement of trial or automatic dismissal was March 30, 2020. *See* TEX. FAM. CODE § 263.401(a) (providing for dismissal of case unless court has commenced trial on merits or granted extension "on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator"). Before that deadline, on March

23, 2020, the trial court signed an order retaining the case on its docket and setting a new dismissal date of June 7, 2020, pursuant to the Supreme Court of Texas's First Emergency Order Regarding the COVID-19 State of Disaster. *See First Emergency Order*, 596 S.W.3d at 265 (providing that court may "[m]odify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than 30 days after the Governor's state of disaster has been lifted"); *see also Third Emergency Order*, 596 S.W.3d at 267 (clarifying that authorization to modify or suspend deadlines and procedures applies to deadlines in Family Code section 263.401).

Prior to the new June 7, 2020 dismissal date, DFPS moved to retain the suit on the trial court's docket and set a new dismissal date pursuant to the supreme court's emergency orders, asking that the dismissal date be extended to November 26, 2020. The docket entry sheet reflects that the trial court granted this motion on June 3, 2020, noting that the "case [is] retained on [the] docket."[1] Thus, the dismissal date for this case was extended again. *See* TEX. FAM. CODE § 101.026 (providing

[1] A copy of the order granting this motion is included in the appendix of DFPS's brief but not in the appellate record. Consistent with the entry on the docket sheet, the trial court signed the order on June 3, 2020, finding pursuant to subsection 263.401(b) of the Family Code that "extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the Department and that continuing the Department as temporary managing conservator is in the best interest of the child. It ordered that the case be dismissed on November 26, 2020, and it set the case for trial on August 18, 2020.

that pronouncement of orders in suits affecting parent-child relationship, including parental-rights-termination cases, may be made orally in presence of court reporter or in writing, "including on the court's docket sheet or by a separate written instrument"); *In re G.X.H.*, 627 S.W.3d 288, 297–98 (Tex. 2021) (holding that entry on docket sheet was sufficient to extend dismissal date under section 263.401(b)).

Prior to the new November 2020 dismissal date, both Mother and Father requested continuances from the trial court. On August 19, 2020, Father filed a motion for continuance and requested to extend the dismissal date. He sought additional time because his attorney, appointed on July 23, 2020, "ha[d] not had adequate time to prepare a defense." The trial court granted the continuance and reset the case for trial on September 9, 2020. On September 3, 2020, Mother sought a continuance because "the State of Texas has declared a State of Disaster due to [the] COVID-19 pandemic," which resulted in Mother "not being able to comply with all the services ordered." Mother requested "more time to be able to complete her service."

On November 25, 2020, DFPS moved to retain the case on the docket and set a new dismissal date, again citing the COVD-19 state of emergency. DFPS referenced the Supreme Court of Texas's twenty-ninth emergency order, which it contended "extends the trial court's authority to extend cases for an additional 180 days." It asked the trial court to extend the dismissal date to May 10, 2021.

On November 30, 2020,[2] the trial court signed another order retaining the case on the docket, pursuant to the supreme court's Twenty-ninth Emergency Order. The order set the new dismissal date for May 10, 2021, and it set the case for trial on January 25, 2021. Thus, the dismissal deadline was extended again. *See Twenty-Ninth Emergency Order Regarding COVID-19 State of Disaster*, 629 S.W.3d 863, 863–64 (Tex. 2020) (order dated November 11, 2020, providing, in relevant part, that "for any case whose dismissal date was previously modified under an Emergency Order of this Court related to COVID-19," trial court may "extend the dismissal for an additional period not to exceed 180 days from the date of this Order"). Trial then commenced on March 24, 2021, before this final deadline.

Mother contends that the trial court's orders were insufficient to extend the dismissal deadline, but we disagree. As cited above, the language of the emergency orders themselves permitted the trial court to modify or suspend the deadlines and procedures set out in Family Code section 263.401. *See, e.g.*, *First Emergency Order*, 596 S.W.3d at 265; *Third Emergency Order*, 596 S.W.3d at 267; *Twenty-*

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[2] The date originally identified by the trial court as the new deadline for commencement of trial or automatic dismissal—November 26, 2020—was Thanksgiving Day. Thus, the deadline became November 30, 2020, by operation of the Rules of Civil Procedure. *See* TEX. R. CIV. P. 4 (providing, regarding computation of time prescribed or allowed by rules or statutes that "[t]he last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday").

*ninth Emergency Order*, 629 S.W.3d at 863–64; *see also* TEX. GOV'T CODE § 22.0035 ("Notwithstanding any other statute, the supreme court may modify or suspend procedures for the conduct of any court proceeding affected by a disaster during the pendency of a disaster declared by the governor.").

Our sister courts have likewise recognized that the Supreme Court of Texas's Emergency Orders allowed a trial court to "modify or suspend" the deadlines and procedures in Family Code section 263.401. *See In re M.M.*, No. 02-21-00153-CV, 2021 WL 4898665, at *1 n.3 (Tex. App.—Fort Worth Oct. 21, 2021, no pet. h.) (mem. op.) (recognizing that emergency order allowed additional extension of section 263.401 deadline); *In re E.C.R.*, —S.W.3d—, Nos. 07-21-00099-CV & 07-21-00101-CV, 2021 WL 4238490, at *6 (Tex. App.—Amarillo Sept. 17, 2021, pet. denied); *E.N. v. Tex. Dep't of Family & Protective Servs.*, No. 03-21-00014-CV, 2021 WL 2460625, at *5 (Tex. App.—Austin June 17, 2021, no pet.) (mem. op.) (discussing section 263.401 and supreme court's emergency order relating to COVID-19 state of disaster and stating "[t]his would theoretically have allowed the district court to extend the case indefinitely by granting an extension under each successive order" and noting that, "[o]nce the authorizations stopped, each of the cases where a court had granted an extension would have to be tried before the automatic dismissal date").

Mother cites *In re A.W.*, 623 S.W.3d 519, 522 (Tex. App.—Waco 2021, no pet.) to support her contention that the extensions were ineffective because they did not comply with the procedures set out in Family Code section 263.401. The court in *A.W.* concluded that the trial court's orders granting an extension did not include the findings required by subsection 263.401(b) and thus were insufficient to extend the automatic dismissal deadline. *Id.* at 522. In reaching this conclusion, the court stated that "[t]he requirements of § 263.401(b) are still applicable even if the deadlines are extended as a result of the COVID pandemic," and it reasoned that "[w]hile the Department's motion makes reference to COVID, the trial court's order does not." *Id.* The *A.W.* court held that "[b]ecause the court's order does not meet the requirements of § 263.401(b), the court's jurisdiction ended" and the order of termination was void. *Id.* We observe, however, that the present case is factually distinguishable because the trial court's extensions here were expressly made pursuant to the authorization to modify or extend the deadlines and procedures of section 263.401 provided for in the emergency orders, as discussed above.

Mother also contends that trial did not actually commence on March 24, 2021. We disagree. The case was called to trial on March 24, 2021. Mother moved for a continuance on the basis that she had recently been the victim of an assault by Father and "is not in a position to participate in trial." DFPS objected to the continuance, asserting that it was prepared to go forward with trial and that it was concerned with

being able to provide proper notice to Father in the event the trial was rescheduled. The attorney for DFPS argued that Father had been disruptive and employed numerous delay tactics, including assaulting Mother immediately prior to a trial setting on a previous occasion. The trial court denied the motion for continuance but stated, "We are going to limit testimony today to exhibits and I'm not going to start testimony until . . . [Mother's attorney] can procure his client at the next setting, if he can procure his client for the next setting so that she is allowed to hear testimony against her." DFPS offered its exhibits, including Kam's birth certificate, drug test results, the judgments of conviction for Father's previous convictions, the charging instrument for a pending felony assault charge against Mother, and the final orders of termination that terminated Mother's parental rights to several of her older children. The trial court then stated on the record that it would continue the trial in June in the hope that Mother could be present to participate.

Thus, the trial court called the case to trial, denied a motion for continuance, considered preliminary matters, and, after considering and overruling objections, admitted into evidence the exhibits offered by DFPS. We conclude that the record contains sufficient information to establish that the trial on the merits commenced on March 24, 2021. *See, e.g.*, *In re R.J.*, 579 S.W.3d 97, 110 (Tex. App.—Houston [1st Dist.] 2019, pet. denied) (holding that trial commenced when trial court called case, considered preliminary matters, and took brief testimony from one witness

before recessing); *see In re R.F., Jr.*, No. 04-17-00582-CV, 2018 WL 1308542, at *1 (Tex. App.—San Antonio Mar. 14, 2018, no pet.) (mem. op.) (holding that trial commenced for purposes of section 263.401 when record showed parties had made announcements, trial court denied motion for continuance, and DFPS called witness, who offered brief testimony before trial court recessed); *In re D.S.*, 455 S.W.3d 750, 753 (Tex. App.—Amarillo 2015, no pet.) (suggesting "commencement of trial" means, at minimum, that parties have been asked to make their respective announcements, and trial court has ascertained whether any preliminary matters need to be considered).

We overrule Mother's first issue.

## Sufficiency of Evidence

In her second, third, and fourth issues, Mother challenges the sufficiency of the evidence supporting the trial court's findings that Mother engaged in conduct pursuant to Family Code subsections 161.001(b)(1)(E) and (O) and that termination of her parental rights was in Kam's best interest.

### A. Standard of Review

A trial court may order termination of the parent-child relationship if DFPS proves, by clear and convincing evidence, one of the statutorily enumerated predicate findings for termination and that termination of parental rights is in the best interest of the children. TEX. FAM. CODE § 161.001(b); *see In re E.N.C.*, 384

S.W.3d 796, 802 (Tex. 2012) (stating that federal due process clause and Texas Family Code both mandate "heightened" standard of review of clear and convincing evidence in parental-rights termination cases). DFPS must prove both elements—a statutorily prescribed predicate finding and that termination is in the child's best interest—by clear and convincing evidence. *In re E.N.C.*, 384 S.W.3d at 802. The Family Code defines "clear and convincing evidence" as "the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." TEX. FAM. CODE § 101.007; *In re E.N.C.*, 384 S.W.3d at 802.

To assess the legal sufficiency of the evidence in a termination proceeding, we consider all evidence in the light most favorable to the trial court's finding and decide "whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true." *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002); *see City of Keller v. Wilson*, 168 S.W.3d 802, 817 (Tex. 2005). We assume that any disputed facts were resolved in favor of the finding if a reasonable factfinder could have done so. *J.F.C.*, 96 S.W.3d at 266. Where "no reasonable factfinder could form a firm belief or conviction" that the matter on which DFPS bears the burden of proof is true, we "must conclude that the evidence is legally insufficient." *Id.* In reviewing the evidence's factual sufficiency, we consider the entire record, including disputed evidence. *Id.* The evidence is factually insufficient if, in light of the entire record,

the disputed evidence that a reasonable factfinder could not have resolved in favor of the finding is so significant that the factfinder could not reasonably have formed a firm belief or conviction. *Id.*

## B. Statutory Predicate Acts

As a preliminary matter, we observe that Mother recognizes that her parental rights were terminated pursuant to Family Code subsections 161.001(b)(1)(E), (M), and (O). She challenges the sufficiency of the evidence to support the findings only under subsections 161.001(b)(1)(E) and (O) in her second and third issues. Because she does not challenge the sufficiency of the evidence to support the trial court's finding pursuant to section 161.001(b)(1)(M), and a single ground is sufficient to support termination of parental rights, we conclude that this finding, together with the best-interest finding, was sufficient to support the trial court's order of termination. *See In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003) (holding that only one statutory ground is necessary to support judgment in parental-rights termination case); *In re C.M.J.*, 573 S.W.3d 404, 411–12 (Tex. App.—Houston [1st Dist.] 2019, pet. denied) (holding that prior termination of parental rights on child-endangerment grounds conclusively proved statutory predicate ground for termination under § 161.001(b)(1)(M)).

Ordinarily, we must review an endangerment finding—such as the trial court's finding pursuant to section 161.001(b)(1)(E)—even if another predicate

ground for termination is satisfied because of the collateral consequences of endangerment findings. *See In re N.G.*, 577 S.W.3d 230, 234–37 (Tex. 2019) (per curiam) (explaining that due process and due course of law considerations require appellate court to review sufficiency of evidence supporting (D) or (E) grounds "when the parent has presented the issue to the court" because endangerment findings in prior termination proceedings can be used as basis for termination in subsequent proceedings involving other children). But we need not do so in this case because the trial court's endangerment finding does not impose any collateral consequences that Mother is not already subject to because of prior termination decrees that also included endangerment findings. *See In re R.S.*, No. 01-20-00126-CV, 2020 WL 4289978, at *6 (Tex. App.—Houston [1st Dist.] July 28, 2020, no pet.) (mem. op.) (current child-endangerment finding does not impose any additional consequences on appellant who already has had parental rights to another child terminated on child-endangerment grounds).

We overrule Mother's second and third issues.

## C. Best Interests

In her fourth issue, Mother challenges the legal and factual sufficiency of the trial court's best-interest finding.

The Texas Legislature has set out several factors that courts should consider in determining whether a child's parent is willing and able to provide the child with

a safe environment, including: (1) the child's age and physical and mental vulnerabilities; (2) the frequency and nature of out-of-home placements; (3) the magnitude and frequency of harm to the child; (4) whether the child has been the victim of repeated harm after the initial intervention by DFPS; (5) whether there is a history of abusive or assaultive conduct or substance abuse by the child's family or others who have access to the child's home; (6) the willingness of the child's family to seek out, accept, and complete counseling services; (7) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time; and (8) whether the child's family demonstrates adequate parenting skills, including providing minimally adequate care for the child's health and nutritional needs, care consistent with the child's physical and psychological development, guidance and supervision consistent with the child's safety, a safe physical home environment, and an understanding of the child's needs and capabilities. TEX. FAM. CODE § 263.307(b).

The Supreme Court of Texas has also set out several non-exclusive factors that we should consider when determining whether the termination of a parent's rights is in the child's best interest, including (1) the child's desires; (2) the child's current and future physical and emotional needs; (3) the current and future physical danger to the child; (4) the parental abilities of the person seeking custody; (5) whether programs are available to assist the person seeking custody in promoting

the best interests of the child; (6) the plans for the child by the person seeking custody; (7) the stability of the home; (8) the acts or omissions of the parent that may indicate the parent-child relationship is not proper; and (9) any excuse for acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976); *In re A.C.*, 394 S.W.3d 633, 641–42 (Tex. App.—Houston [1st Dist.] 2012, no pet.). These factors are not exhaustive, and it is not necessary that DFPS prove all these factors "as a condition precedent to parental termination." *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). The absence of evidence concerning some of the factors does not preclude a factfinder from forming a firm belief or conviction that termination is in the children's best interest. *In re A.C.*, 394 S.W.3d at 642.

The best-interest analysis may consider circumstantial evidence, subjective factors, and the totality of the evidence as well as the direct evidence. *In re B.R.*, 456 S.W.3d 612, 616 (Tex. App.—San Antonio 2015, no pet.). "A trier of fact may measure a parent's future conduct by his past conduct and determine whether termination of parental rights is in the child's best interest." *Id.*; *see In re C.H.*, 89 S.W.3d at 28 (stating that past performance as parent "could certainly have a bearing on [parent's] fitness to provide for" child, and courts should consider prior history of child neglect in best-interest analysis).

Here, multiple factors support the trial court's finding that termination of Mother's parental rights to Kam was in the child's best interest. Kam's age, physical

vulnerability, and future needs weigh in favor of termination. At the time of trial, Kam was two years old. "When children are too young to express their desires, the fact finder may consider that the children have bonded with the foster family, are well-cared for by them, and have spent minimal time with a parent." *In re J.D.*, 436 S.W.3d 105, 118 (Tex. App.—Houston [14th Dist.] 2014, no pet.). DFPS presented evidence that Kam was well-cared for by Bonton and bonded with her and her family. Kam had spent his entire life with Bonton, who was willing and able to adopt him. Lule and Craver both testified that due to his young age, he would not be able to protect himself from the dangers of an unstable living situation or domestic violence. Thus, his young age rendered him vulnerable if left in the custody of Mother, who was unable or unwilling to protect him or to attend to his needs in the face of her drug abuse and volatile relationship with Father. *See* TEX. FAM. CODE § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72; *see also In re B.D.A.*, 546 S.W.3d 346, 361 (Tex. App.—Houston [1st Dist.] 2018, pet. denied) (holding that children aged seven, five, and four at time of trial were too young and vulnerable to remain in custody of parent who was unable or unwilling to protect them).

Next, we conclude that danger to Kam in the past and evidence supporting an inference of probable future danger weighs in favor of the trial court's best-interest finding. DFPS presented evidence that Kam was removed due to Mother's homelessness and inability to provide for any of his needs. DFPS also became

concerned about the domestic violence that repeatedly occurred by Father against Mother, Mother's history of drug use, and her positive drug tests and failure to complete her counseling services for domestic violence or substance abuse. The evidence also demonstrated that Mother's history of drug use could endanger Kam in the future. After Kam was removed from her care, Mother continued to have positive drug tests during the time the case was pending. *See In re S.R.*, 452 S.W.3d 351, 361–62 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (parent's continued drug use when custody of her children is in jeopardy supports finding of endangerment). Despite her positive tests and repeated refusals to submit samples for tests, Mother denied having a problem with illegal drugs and failed to follow the recommendations made following her substance-abuse assessment. When the record shows the parent's drug abuse, the parent's unwillingness to admit to having a substance-abuse problem suggests that the parent will continue to engage in the same behaviors that endangered the child. *In re L.M.*, 572 S.W.3d 823, 835 (Tex. App.—Houston [14th Dist.] 2019, no pet.).

The nature of Kam's out-of-home placement, DFPS's plans for him, and Mother's own involvement with Kam likewise weighs in favor of the trial court's finding. DFPS presented evidence that Kam had lived with Bonton for his entire life and that Bonton was willing and able to adopt him. Kam was happy and doing well with Bonton, who was meeting all his needs and could provide the stability and care

he needed. *See In re D.M.*, 452 S.W.3d 462, 471 (Tex. App.—San Antonio 2014, no pet.) (considering, in assessing child's physical and emotional needs, that child was "healthy, happy, and well-adjusted" after approximately eighteen months in care of foster family).

Mother, by contrast, had not demonstrated the ability to parent Kam or provide for his basic needs. She obtained housing and provided a copy of her lease, but she had never provided any proof of employment. Craver also testified that Mother continued to live with Father and was pregnant by him again at the time of trial, even though Father had repeatedly assaulted her and her family members. Thus, there was no evidence that Mother could provide Kam with a stable home, that she had adequate parenting skills, or that she had the ability to provide minimally adequate care. *See In re C.A.J.*, 122 S.W.3d 888, 893–94 (Tex. App.—Fort Worth 2003, no pet.) (stating that courts may consider parent's poor judgment and inability to provide adequate care when determining best interest and that "[w]ithout stability, income, or a home," parent was unable to provide for child's emotional and physical needs).

Furthermore, Mother did not demonstrate a willingness or ability to complete her services or effect positive changes within a reasonable time—she continued to abuse drugs while denying that she had a drug problem, she continued to live with Father despite multiple instances of extreme domestic violence, and she failed to

follow through with recommendations to address her mental health issues. *See In re E.A.F.*, 424 S.W.3d 742, 752 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (stating that, in assessing best interest, courts may appropriately consider whether parent complied with court-ordered family service plan for reunification with child).

Considering all the evidence in the light most favorable to the trial court's best-interest finding, we conclude that a reasonable trier of fact could have formed a firm belief or conviction that its finding was true. *See In re J.F.C.*, 96 S.W.3d at 266. We conclude that the evidence was legally sufficient.

Mother does not point to any contrary or conflicting evidence to support her contention that the evidence was factually insufficient. Craver testified that Mother completed portions of her family service plan and had attended many, but not all, of her visits with Kam, except during the time visitation was suspended because of threats Mother and Father made against the DFPS caseworker and Bonton. Little testified that she never observed any troubling interactions between Mother and Kam, and both Craver and Little testified that they believed Mother cared about Kam. These relatively positive statements about Mother are not so significant as to undermine the trial court's ability to form a firm belief or conviction that termination of Mother's parental rights was in Kam's best interest. *See id.*

Mother argues that there was no evidence of deliberate indifference or malice on her part to support the best interest findings, citing *Clark v. Dearen*. In *Clark*, this

Court found that "the harsh and irrevocable remedy of termination of the parent-child relationship is not justified where the evidence shows merely that a parent's failure to provide a more desirable degree of care and support of the child is due solely to misfortune or the lack of intelligence or training, and not to indifference or malice." 715 S.W.2d 364, 367 (Tex. App.—Houston [1st Dist.] 1987, no writ). Mother further argues that evidence supporting termination must be based on something other than surmise or speculation of harm, and that guesses or speculation are not facts and cannot support the trial court's best-interest finding. *See, e.g.*, *In re E.N.C.*, 384 S.W.3d at 804 (criticizing court of appeals for affirming endangerment finding on "basis of supposition" and stating that fact finder "may draw inferences, but only reasonable and logical ones"). Here, however, the evidence demonstrated more than Mother's failure to provide a more desirable degree of support to Kam because of misfortune or lack of intelligence or training. The evidence affirmatively demonstrated ongoing concerns regarding her inability to provide a stable home and her failure to address her drug abuse, domestic violence, and mental health issues. Her positive drug tests, the evidence regarding her threats against the DFPS caseworker and Kam's caregiver, and her failure to take advantage of services to help her develop the skills necessary to provide a safe and stable home for Kam constitute more than a surmise or speculation regarding harm to Kam.

Viewing all the evidence, including disputed or conflicting evidence, we conclude that the trial court could have formed a firm belief or conviction that termination of Mother's parental rights was in Kam's best interest. *See J.F.C.*, 96 S.W.3d at 266.

We overrule Mother's fourth issue on appeal.

## Conclusion

We affirm the trial court's final order of termination.

Richard Hightower
Justice

Panel consists of Justices Hightower, Countiss, and Guerra.