

Opinion issued July 7, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-22-00048-CV

IN THE INTEREST OF B.A.M., A Child

**On Appeal from the 25th District Court
Colorado County, Texas
Trial Court Case No. 25800**

MEMORANDUM OPINION

Appellant, M.M. (“Mother”), appeals the Revised Final Order of Termination, terminating her parental rights to her child, B.A.M. In her sole issue on appeal, Mother argues that the evidence was legally and factually insufficient that she engaged in one or more acts to support termination of her parental rights.

We affirm.

Background

Mother and Father had one child, B.A.M., born on March 27, 2015, who is the subject of this suit. This investigation of Mother¹ began in December 2020 after appellee, the Department of Family and Protective Services (the “Department”), received an allegation of sexual abuse of B.A.M. As relevant here, the Department sought termination of Mother’s and Father’s parental rights pursuant to Texas Family Code section 161.001(b)(1)(D), (E), and (O).² B.A.M. was removed from Mother’s care on December 10, 2020.

The parties proceeded to trial on November 29 and December 15, 2021. The following relevant evidence and testimony was heard:

Machelsea Thomas

Machelsea Thomas, a caseworker from Child Protective Services (“CPS”), testified that she investigated allegations of sexual abuse that occurred while B.A.M. visited her maternal grandmother, J.M. During a December 10, 2020 child forensic interview, B.A.M. communicated that “her tee-tee was touched” and that “her pee burned . . . when she peed.” B.A.M. identified the perpetrator as J.M.’s boyfriend, W.M.S., and she tested positive for gonorrhea. Although Mother reacted with shock

¹ Mother had been subject to previous investigations.

² See TEX. FAM. CODE § 161.001(b)(1)(D), (E), (O). Father was not present at trial and is not a party to this appeal.

about B.A.M.'s positive test, Mother told Thomas she already knew that B.A.M. was touched by W.M.S. When asked if Mother contacted authorities concerning the sexual abuse, Thomas answered "No," and that Mother did not make a referral to CPS.

After the forensic interview, CPS sought emergency removal due to B.A.M.'s outcry of sexual abuse and the fact that "Mother knew of the abuse prior and she did not make a report; and further, Mother's decision to allow [B.A.M.] to be around . . . [J.M.], when [J.M.] had an open CPS conservatorship case in which [Mother] was told that she did not need to have the child around [J.M.], especially also due to [J.M.'s] boyfriend living in the home and being a registered sex offender." Thomas also recalled that Mother had been involved in five or six previous CPS investigations.

Debra Lee

Debra Lee, a CPS caseworker, testified that while she became involved in Mother's case in December 2020, she had already been working on a case against J.M. for failing to provide a safe home and to complete a family plan for J.M.'s other daughter, which ultimately resulted in the termination of J.M.'s parental rights in 2021. Lee testified that in J.M.'s termination proceeding, Mother provided information about J.M.'s drug use and drug paraphernalia in J.M.'s home. Lee further testified that Mother knew that W.M.S. was a registered sex offender who

lived with J.M. and that even though Mother knew that J.M.'s and W.M.S.'s relationship was abusive and that she was not to allow B.A.M. around J.M., Mother still allowed B.A.M. to see J.M.

Lee testified that at the time of removal in December 2020, Mother was living in a motel with R.S. and that she intended to remain in her relationship with R.S. Lee stated that R.S. had a history of drugs and domestic violence, and although the Department requested that he get tested for sexually transmitted diseases, R.S. did not submit any proof of testing.

Lee opined that Mother had not provided B.A.M. with a safe environment because B.A.M. stated that J.M. and R.S. were at Mother's home during a September 2021 unsupervised visit, and Mother instructed B.A.M. to say they were not there. Lee believed Mother did not have the ability to provide a safe and stable home for B.A.M.

Lee further recalled a May 2021 parental visit when she saw R.S. in a pickup truck and Mother taking B.A.M. to speak with him. Because R.S. was not supposed to have contact with B.A.M. due to his refusal to drug test, Lee testified that this event caused Lee to have concerns with trusting Mother.

Kim Wilgus

Kim Wilgus, a licensed professional counselor, testified that, starting in January 2021, she counseled B.A.M. for sexual abuse. During the counseling

sessions, B.A.M. stated that “she was not protected by [Mother] and [J.M].” Wilgus also testified that B.A.M. told her that she wished Mother would give up R.S. for her and that she did not want to be around J.M. because J.M. let W.M.S. hurt her.

B.A.M. told Wilgus that R.S. had been at Mother’s home during the September 2021 unsupervised visit. When asked how she knew, B.A.M. said that R.S.’s clothes were in the closet and his cologne and toothbrush were by the sink. B.A.M. told Wilgus that J.M. was also present at the unsupervised visit and that she did not respect B.A.M.’s privacy. Wilgus stated that B.A.M. had told her that W.M.S. gave her magic medicine to sleep and that R.S. probably gave her some as well. Wilgus clarified, “After her visit on September the 24th in the home is when she told me that, that the magic medicine that [W.M.S.] gave her that [R.S.] gave her, too, and could have done things to her. She did not go into details—.” When asked if B.A.M. had previously told her that R.S. had ever molested her, Wilgus responded that she had not.

Wilgus reviewed B.A.M.’s wishlist, which stated, “I wish my mom would love me all the time and not [R.S.], especially because he used to hit her all the time,” “I wish I didn’t have to be around [J.M.] because she let her boyfriend hurt me,” and “Mommy never took me to the cops to tell on [W.M.S].” Wilgus also recalled an incident in which B.A.M. stated that while she and Mother were visiting one of Mother’s friends, W.M.S. gave her and Mother medicine to sleep, and when she

woke up, she found a wet spot, which she knew was not her pee in the bed. B.A.M. was afraid to return to Mother because “[R.S.] would always be around and that she would be harmed again.”

D.V.F.

D.V.F., J.M.’s sister, testified that she currently has possession of B.A.M. and E.C.M., J.M.’s other daughter. D.V.F. agreed that B.A.M. made an outcry to her regarding W.M.S. and that J.M. and Mother had not protected her. D.V.F. did not believe that Mother had a positive relationship with B.A.M. because she felt that Mother could not protect her. D.V.F. testified that even before B.A.M. tested positive for gonorrhea, Mother said, “[B.A.M.] was making sex noises, like she was having sex with someone, like, moaning and groaning. And she said she didn’t know where she got that from, but she better not find out that anybody was molesting her daughter.”

D.V.F. testified about an incident in which B.A.M. woke up in a wet spot, without clothes, and that Mother did not take B.A.M. to the doctor after that incident. D.V.F. also stated that B.A.M. told her that R.S. appeared at the house during an unsupervised visit, Mother told her to lie about R.S. and J.M.’s appearance, and that D.V.F. believed that Mother was still living with R.S. When asked if she thought that Mother would protect B.A.M. from J.M., D.V.F. disagreed because Mother

allowed J.M. and W.M.S. to have access to B.A.M. D.V.F. agreed with terminating Mother's parental rights because she wanted the best for B.A.M.

Tracie Howell

Tracie Howell, the guardian ad litem for B.A.M., testified that she did not believe that Mother had learned from the service plan on how to protect B.A.M. from physical or sexual abuse. She based her opinion on learning after the fact that J.M. and R.S. had appeared at the September unsupervised visit.

Although Howell agreed that she initially recommended that Mother have unsupervised visitation with B.A.M., Howell changed her mind after finding a man, apparently hiding, in Mother's bathroom on the morning of the unsupervised visit. While Mother explained to her that a man named "Kevin" was in her bathroom, Howell recalled that Mother had previously told her that she was not dating anyone and that she was finished with relationships. Howell believed that Mother was still in an ongoing relationship with R.S. because R.S. may have been the man in Mother's bathroom, and B.A.M. told her that R.S. was present during the September unsupervised visit. Howell opined that Mother would not protect B.A.M., that it would not be in B.A.M.'s best interest to return her to Mother, and that Mother's parental rights should be terminated.

Mother

Mother, who was 23 at the time of trial, testified that she has one child, six-year-old B.A.M. Mother testified that she lived with J.M. for a few weeks, but she and B.A.M. moved out of her house and into a motel with R.S. toward the end of November 2020. In early December 2020, while living in the motel with R.S. and B.A.M, Mother explained that B.A.M had school and needed to take a shower but that the motel's hot water heater had stopped working. Because R.S. was not home and Mother could not leave her cooking unattended, she asked J.M. to take B.A.M. to her house to shower. Mother confirmed that W.M.S. was not around and thought he may have been in jail because Mother had previously reported W.M.S.'s abuse of J.M. to the police. Once R.S. returned home, Mother realized that B.A.M. had been gone for 45 minutes and they left to get B.A.M. When they arrived at J.M.'s house, W.M.S. "was there acting asleep on the couch" and B.A.M. looked "startled" and "scared" when she opened the door. Later that night, B.A.M. went to the restroom and started crying because her "tee-tee" hurt, and B.A.M. then told Mother that W.M.S. had touched her.

The next day on December 2 or 3, 2020, Mother took B.A.M. to a doctor, and B.A.M. tested positive for gonorrhea. Because the doctor said that he had to report the incident to CPS, Mother did not report it to the police or CPS, but admitted it was a mistake not to call CPS.

Mother testified that she believed B.A.M.'s outcry against W.M.S. because B.A.M. kept her distance from him and told him to leave her alone. Mother agreed that she lived with J.M. for a few weeks, but she and B.A.M. would leave when W.M.S. visited. Mother testified that W.M.S. did not live with J.M. and that he was not around when she and B.A.M. were staying with J.M. Although she did not see J.M. and W.M.S. use drugs, Mother did see them argue and fight. Mother agreed that when she left B.A.M. with J.M., she knew J.M. had a drug problem, but she thought J.M. was sober because she was trying to get Mother's sister back. She also testified that J.M. was in a relationship with W.M.S., a registered sex offender, but she believed that he was not around at the time she left B.A.M. with J.M. Mother agreed that she knew from previous investigations earlier in the year that she was not to leave B.A.M. with J.M. or W.M.S., but J.M. told Mother that J.M. could have unsupervised access to children under 18. Mother acknowledged that J.M.'s statement turned out to be untrue. Mother testified that although she knew from a prior CPS investigation that J.M.'s house was unsafe, she still allowed J.M. to take B.A.M. for a shower at her house.

When B.A.M. tested positive for gonorrhea, Mother testified that she and R.S. were in a relationship, but they did not engage in domestic violence. Mother admitted that R.S. tested positive for marijuana and methamphetamine in December 2020. Mother also admitted that she tested positive for gonorrhea in January 2021,

but she disagreed that R.S. could have sexually assaulted B.A.M. and given her gonorrhea because she never left B.A.M. alone with R.S. and she took B.A.M. everywhere. She agreed that because she and B.A.M. tested positive for gonorrhea, she had some concerns about R.S., but she still remained in the relationship with R.S. Mother said her relationship with R.S. lasted for about three years, but she had no communication with R.S. at the time of trial. Although she initially testified that she had not seen him since April 2021, Mother later agreed that he returned for his belongings and drove Mother to a May 2021 visitation.

Mother acknowledged that, earlier in 2021, J.M.'s parental rights were terminated to another daughter for abuse and neglect. Mother stated that she testified about her parents' domestic violence and substance abuse problems at the trial that terminated J.M.'s parental rights to Mother's sister.

Mother testified that no one told her that she could not have B.A.M. at J.M.'s home or that J.M. could not have unsupervised visits with B.A.M. Mother testified that it was not until after a court hearing that she was informed that she could not have B.A.M. around J.M. unsupervised.

In 2016, Mother agreed that she was investigated for domestic violence and drugs and that she had to take domestic violence and parenting classes. Mother also agreed that although she had been diagnosed with ADHD, depression, and anxiety and had been prescribed medications, she stopped taking her medications when she

became pregnant. After B.A.M.'s birth, Mother decided that she no longer needed the medications. Mother agreed that her assessments recommended that she get a mental health referral and a psychiatric evaluation, but she had not taken either because she did not know where to go or who to contact.

Mother admitted that she used marijuana in the past. She explained that she did not complete drug testing in February, March, or April 2021 because she never received the message to go. She admitted that her May 2021 hair-strand sample tested positive for amphetamines, methamphetamines, and marijuana, but she believed that her positive tests were caused by taking NyQuil and socializing with friends who were smoking. She also had a hair-strand sample taken in July 2021 that tested positive for marijuana. When asked if she tested for drugs in August 2021, she initially said "no" but then clarified that she missed the August test because of exposure to COVID. In September, a few months before trial, her hair-strand sample was negative.

After the negative drug test, Mother had a September 2021 unsupervised visit with B.A.M. Mother testified that J.M. visited her home, but that R.S. was not present. Because she knew that J.M. could not have contact with B.A.M., Mother had J.M. leave. Mother acknowledged that B.A.M. said that R.S. was at the unsupervised visit, but Mother testified that R.S. was not around, no men's clothes were there, and R.S. had not been living with her since she moved out of the motel.

Mother testified that she knew R.S. was not allowed around her or B.A.M. and that she chose B.A.M. over R.S. because R.S. did not want to do services. When asked why B.A.M. would lie about R.S.'s appearance at the September unsupervised visit, Mother testified that B.A.M. may have been coached. Mother also recalled that, on the night before the unsupervised visit, Kevin Utley came over to fix her vehicle. When his ride home did not come, Kevin stayed the night.

Mother testified that while staying with a childhood friend's mom, she recalled playing "drunk bingo," getting light-headed, and laying down next to B.A.M., who was already asleep. When she awakened, B.A.M. did not have her bottoms on and the bed was wet around her.

Kevin Utley

Utley, who was Mother's high school friend, testified that he went to Mother's home to fix her vehicle and that he stayed the night because his ride did not arrive. He recalled that he was not trying to hide from whoever came into the house and that Mother did not tell him to hide.

Post-Trial Proceedings

On February 4, 2022, the trial court entered a revised final order, terminating Mother and Father's parental rights pursuant to subsections 161.001(b)(1)(D), (E) (endangering physical or emotional well-being of child) and (O) (failing to comply

with court order), and finding that termination was in B.A.M.'s best interest. Mother filed a timely notice of appeal.

Sufficiency of the Evidence

In her sole issue on appeal, Mother argues that the evidence is legally and factually insufficient to support the trial court's finding that she committed one of the predicate acts under subsections 161.001(b)(1)(D), (E), and (O). Specifically, Mother contends that she "didn't know [J.M.] was on drugs at the time . . . and was unaware of restrictions upon interactions with [J.M.]." Mother further argues that "she didn't know how she had contracted a particular infection . . . and she was 'shocked' to learn that [B.A.M.] had contracted the same infection, upon being informed by [the Department]." Finally, Mother argues that she was "not aware of any sexual abuse directed toward [B.A.M.] by [Mother's] paramour."

A. Standard of Review and Applicable Law

Protection of the best interest of the child is the primary focus of the termination proceeding in the trial court and our appellate review. *See In re A.V.*, 113 S.W.3d 355, 361 (Tex. 2003). A parent's rights to the "companionship, care, custody, and management" of his or her child is a constitutional interest "far more precious than any property right." *Santosky v. Kramer*, 455 U.S. 745, 758–59 (1982); *see In re M.S.*, 115 S.W.3d 534, 547 (Tex. 2003). Accordingly, we strictly

scrutinize termination proceedings and strictly construe the involuntary termination statutes in favor of the parent. *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985).

In a case to terminate parental rights under Texas Family Code section 161.001, the Department must establish, by clear and convincing evidence, that (1) the parent committed one or more of the enumerated acts or omissions justifying termination and (2) termination is in the best interest of the child. TEX. FAM. CODE § 161.001(b). Clear and convincing evidence is “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.” *Id.* § 101.007; *In re J.F.C.*, 96 S.W.3d 256, 264 (Tex. 2002). Only one predicate finding under section 161.001(b)(1) is necessary to support a judgment of termination when there is also a finding that termination is in the child’s best interest. *A.V.*, 113 S.W.3d at 362.

When reviewing the legal sufficiency of the evidence in a case involving termination of parental rights, we determine whether the evidence is such that a factfinder could reasonably form a firm belief or conviction that there existed grounds for termination under section 161.001(b)(1) and that termination was in the best interest of the child. *See* TEX. FAM. CODE § 161.001(b)(1), (2); *J.F.C.*, 96 S.W.3d at 266. In doing so, we examine all the evidence in the light most favorable to the finding, assuming the “factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so.” *J.F.C.*, 96 S.W.3d at 266. We must also

disregard all evidence that the factfinder could have reasonably disbelieved or found to be incredible. *Id.*

When conducting a factual sufficiency review, we consider and weigh all the evidence including disputed or conflicting evidence. *In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009). “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.” *Id.* (quoting *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).

Termination of the parent-child relationship may be ordered under subsection (E) if clear and convincing evidence establishes that 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). Subsection (E) focuses on the parent’s conduct and asks whether the parent engaged in a voluntary, deliberate, and conscious course of conduct that endangered the child. *V.P. v. Texas Dep’t of Fam. & Protective Servs.*, No. 03-19-00531-CV, 2020 WL 544797, at *4 (Tex. App.—Austin Feb. 4, 2020, no pet.) (mem. op.).

As used in subsection (E), “‘endanger’ means 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). In this context, endanger means to expose a child to loss or injury or to jeopardize a child’s emotional or physical well-being. *Id.*; see *In re M.C.*, 917 S.W.2d 268, 269 (Tex. 1996). “Environment” refers to the acceptability of living conditions, as well as a parent’s conduct in the home. *In re S.R.*, 452 S.W.3d 351, 360 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). A child is endangered when the environment creates a potential for danger that the parent is aware of but consciously disregards. *Id.* Under subsection (E), courts may consider conduct both before and after the Department removed the child from the home. See *Avery v. State*, 963 S.W.2d 550, 553 (Tex. App.—Houston [1st Dist.] 1997, no writ) (considering persistence of endangering conduct up to time of trial).

Termination under subsection (E) must be based on more than a single act or omission; the statute requires a voluntary, deliberate, and conscious course of conduct by the parent. *S.R.*, 452 S.W.3d at 360. A court properly may consider actions and inactions occurring both before and after a child’s birth to establish a “course of conduct.” *In re S.M.*, 389 S.W.3d 483, 491–92 (Tex. App.—El Paso 2012, no pet.). While endangerment often involves physical endangerment, the statute does not require that conduct be directed at a child or that the child actually

suffers injury; rather, the specific danger to the child’s well-being may be inferred from parents’ misconduct alone. *Boyd*, 727 S.W.2d at 533; *In re R.W.*, 129 S.W.3d 732, 738–39 (Tex. App.—Fort Worth 2004, pet. denied). A parent’s conduct that subjects a child to a life of uncertainty and instability endangers the child’s physical and emotional well-being. *In re A.B.*, 412 S.W.3d 588, 599 (Tex. App.—Fort Worth 2013), *aff’d*, 437 S.W.3d 498 (Tex. 2014). The Department does not need to establish that a parent intended to endanger a child to support termination based on endangerment. *See M.C.*, 917 S.W.2d at 270. Under subsection (E), the evidence must show that the endangerment was the result of the parent’s conduct, including acts, omissions, or a failure to act. *In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.).

“[Se]xual abuse is conduct that endangers a child’s physical or emotional well-being.” *In re A.B.*, 125 S.W.3d 769, 775 (Tex. App.—Texarkana 2003, pet. denied); *see In the Interest of J.A.*, No. 05-19-01333-CV, 2020 WL 2029248, at *5 (Tex. App.—Dallas Apr. 28, 2020, pet. denied) (mem. op.) (stating, “[S]exual abuse would be conduct that endangers a child’s physical or emotional well-being and that the prospect of it may be taken into account as a general matter in any termination proceeding”); *In the Interest of K.K.D.B.*, No. 14-17-00302-CV, 2017 WL 4440546, at *7 (Tex. App.—Houston [14th Dist.] Oct. 5, 2017, pet. denied) (mem. op.).

“Domestic violence, want of self-control, and propensity for violence may be considered as evidence of endangerment.” *In re J.I.T.P.*, 99 S.W.3d 841, 845 (Tex. App.—Houston [14th Dist.] 2003, no pet.); *accord S.R.*, 452 S.W.3d at 361. Violence does not have to be directed toward the child or result in a final conviction—“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.” *In re V.V.*, 349 S.W.3d 548, 556 (Tex. App.—Houston [1st Dist.] 2010, pet. denied). Conduct of a parent in the home can create an environment that endangers the physical and emotional well-being of a child. *In re W.S.*, 899 S.W.2d 772, 776 (Tex. App.—Fort Worth 1995, no writ). For example, abusive or violent conduct by a parent or other resident of a child’s home may produce an environment that endangers the physical or emotional well-being of a child. *See id.* at 776–77. Evidence that a person has engaged in abusive and violent conduct in the past permits an inference that the person will continue to engage in violent behavior in the future. *Jordan v. Dossey*, 325 S.W.3d 700, 724 (Tex. App.—Houston [1st Dist.] 2010, pet. denied).

A parent’s continuing substance abuse can qualify as a voluntary, deliberate, and conscious course of conduct endangering the child’s well-being. *See J.O.A.*, 283 S.W.3d at 345; *In re L.G.R.*, 498 S.W.3d 195, 204 (Tex. App.—Houston [14th Dist.] 2016, pet. denied); *S.R.*, 452 S.W.3d at 361–62. By using drugs, the parent

exposes the child to the possibility that the parent may be impaired or imprisoned and, therefore, unable to care for the child. *See Walker v. Tex. Dep't of Family & Protective Servs.*, 312 S.W.3d 608, 617–18 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). Continued illegal drug use after a child's removal is conduct that jeopardizes parental rights and establishes an endangering course of conduct. *Cervantes–Peterson v. Tex. Dep't of Family & Protective Servs.*, 221 S.W.3d 244, 253–54 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (en banc).

B. Analysis

In her sole issue, Mother argues that insufficient evidence supports the trial court's findings on predicate acts to terminate her parental rights. The Department responds that substantial evidence exists in the record to support the predicate acts. We agree with the Department.

Allowing J.M. and W.M.S. Access to B.A.M.

The evidence establishes that Mother and B.A.M. lived with J.M. for at least two weeks around November 2020. At the time, J.M. had an open investigation to terminate her parental rights to Mother's sister due to abuse and neglect. Mother also admitted that she knew J.M.'s boyfriend, W.M.S., was a registered sex offender that would visit J.M. Mother also knew that J.M. and W.M.S. had domestic violence and substance abuse problems and that J.M.'s house was not a safe place. Mother

also admitted that she knew from previous investigations that she was not to leave B.A.M. with J.M. or W.M.S.

After Mother, R.S., and B.A.M. moved to a motel, and knowing of the various dangers of J.M.'s house, Mother still chose to allow B.A.M. to shower, unsupervised, at J.M.'s house. The evidence showed that B.A.M. made an outcry of sexual abuse by W.M.S. after B.A.M.'s visit with J.M. Allowing a child to have contact with a registered sex offender is endangering conduct by the parent. *See A.B.*, 125 S.W.3d at 775 (stating, “[S]exual abuse is conduct that endangers a child’s physical or emotional well-being.”); *Green v. Tex. Dep’t of Protective & Regulatory Servs.*, 25 S.W.3d 213, 221 (Tex. App.—El Paso 2000, no pet.) (mother allowed child to spend time with convicted child molester). Although Mother did not think W.M.S. would be at J.M.'s house, she nevertheless had knowledge of the endangering environment that J.M. and W.M.S. presented to B.A.M. *See S.R.*, 452 S.W.3d at 360 (stating that child is endangered when environment creates potential for danger that parent is aware of but consciously disregards).

Even after the Department removed B.A.M., the evidence showed that Mother allowed J.M. access to B.A.M. during the September 2021 unsupervised visit. Considering Mother’s knowledge of J.M.’s drug usage, domestic violence in J.M.’s home, an open investigation to terminate J.M.’s parental rights to Mother’s sister, and access by W.M.S.—a registered sex offender—the trial court could reasonably

find that Mother’s decision to allow J.M. to take B.A.M. to her house endangered B.A.M. *See* TEX. FAM. CODE § 161.001(b)(1)(E); *see Jordan*, 325 S.W.3d at 721 (“It is not necessary that the parent’s conduct be directed towards the child or that the child actually be injured; rather, a child is endangered when the environment creates a potential for danger which the parent is aware of but disregards.”); *In re B.B.*, No. 02-19-00250-CV & 02-19-00251-CV, 2020 WL 1057308, at *7 (Tex. App.—Fort Worth Mar. 5, 2020, no pet.) (mem. op.) (finding that mother’s failure to protect children from sexual abuse supported endangerment finding).

Domestic Violence

Further, the trial court heard evidence that, while living in the motel, B.A.M. witnessed the violent relationship between Mother and R.S. *See J.I.T.P.*, 99 S.W.3d at 845 (stating, “Domestic violence, want of self-control, and propensity for violence may be considered as evidence of endangerment”). Although Mother testified that her relationship with R.S. was not violent, Lee testified that R.S. had a criminal history of drugs and domestic violence and B.A.M. stated that “[R.S.] used to hit her [Mother] all the time.” The trial court also heard that Mother had a previous relationship that involved domestic violence. *See Jordan*, 325 S.W.3d at 724 (stating that evidence that person engaged in abusive and violent conduct in past permits inference that person will engage in violent behavior in future). Considering Mother’s and R.S.’s domestic-violence history, and Mother’s history, the trial court

could have reasonably concluded that Mother subjected B.A.M. to endangering conduct. *See id.* (“Abusive and violent criminal conduct by a parent can produce an environment that endangers the well-being of a child.”); *see also In re E.N.C.*, 384 S.W.3d 796, 803 (Tex. 2012) (stating that endangering conduct need not be directed toward child).

Allowing R.S. Access to B.A.M.

The record also shows that Mother remained in a relationship with R.S. and allowed R.S. to be near B.A.M. even after removal and despite Mother’s knowledge that (1) both Mother and B.A.M. tested positive for gonorrhea, (2) R.S. refused to test for sexually transmitted diseases, and (3) R.S. tested positive for drugs. Mother even admitted at trial that she had some concerns about R.S., and she had previously told D.V.F. that B.A.M. had been “making sex noises, like she was having sex with someone, like, moaning and groaning” and Mother “didn’t know where she got that from, but she better not find out that anybody was molesting her daughter.” Though Mother denied that she had a relationship with R.S. after April 2021, she later admitted that R.S. was at a visit in May 2021, and multiple witnesses testified that they believed that Mother continued her relationship with R.S.

Considering that both B.A.M. and Mother tested positive for gonorrhea, the trial court could have reasonably believed that R.S. assaulted B.A.M. and that, by permitting R.S. access to B.A.M., Mother engaged in conduct or knowingly placed

B.A.M. with persons who engaged in conduct which endangered B.A.M.’s physical or emotional well-being. *See* TEX. FAM. CODE § 161.001(b)(1)(E); *see K.K.D.B.*, 2017 WL 4440546, at *9 (stating that parent endangers her children by accepting endangering conduct of other people).

Mother’s Drug Use

The trial court also heard that Mother admitted to drug use, both before and after B.A.M.’s removal. After the Department removed B.A.M. in 2020, Mother tested positive for various drugs on multiple occasions and did not provide drug tests on other occasions. Mother also admitted that, in 2016, she was investigated for domestic violence and drug use. Although Mother testified that she tested positive for drugs due to using NyQuill and socializing with people who were smoking, the trial court was free to disbelieve her testimony. *See S.R.*, 452 S.W.3d at 365. Considering Mother’s history of drug usage, the trial court could have reasonably believed that this evidence supported its finding that Mother endangered B.A.M. *See J.O.A.*, 283 S.W.3d at 346 (stating that evidence of improved conduct does not conclusively negate probative value of long history of drug use and irresponsible choices); *S.R.*, 452 S.W.3d at 361–62 (continued drug use after child’s removal may be considered as establishing endangering course of conduct); *see also In re C.A.B.*, 289 S.W.3d 874, 885 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (“A factfinder

reasonably could infer that [mother]’s failure to submit to the court-ordered drug screening indicated she was avoiding testing because she was using drugs.”).

Mother’s Untreated Mental Illness

The record also contains evidence related to Mother’s mental health and her failure to participate in services related to treatment. Mental illness alone is not grounds for terminating the parent-child relationship. *Maxwell v. Tex. Dep’t of Family & Protective Servs.*, No. 03–11–00242–CV, 2012 WL 987787, at *9 (Tex. App.—Austin Mar. 23, 2012, no pet.) (mem. op.). Untreated mental illness can expose a child to endangerment, however, and is a factor the court may consider. *See id.* at *10; *In re L.L.F.*, No. 02–11–00485–CV, 2012 WL 2923291, at *15 (Tex. App.—Fort Worth July 19, 2012, no pet.) (mem. op.) (considering parent’s failure to take medication to treat mental health issues as factor in creating environment that endangers child’s emotional or physical well-being).

The trial court heard Mother admit that she had been previously diagnosed with ADHD, depression, and anxiety and had been on medications to treat her mental illnesses. Mother agreed that she did not get a mental health referral, a psychiatric exam, and that she had voluntarily stopped taking prescribed medications during pregnancy. Instead of resuming her medications after pregnancy, Mother determined that she no longer needed the medications. Although mental illness is not a sole reason to terminate the parent-child relationship, the trial court could have

considered the evidence that Mother had mental illnesses, refused a mental health referral and a psychiatric exam, and stopped taking medications, in determining that Mother endangered B.A.M. See TEX. FAM. CODE § 161.001(b)(1)(E); see *In re A.L.H.*, 515 S.W.3d 60, 91 (Tex. App.—Houston [14th Dist.] 2017, pet. ref'd) (parent's persistent and untreated mental illness viewed as evidence of endangerment); *L.L.F.*, 2012 WL 2923291, at *15 (considering parent's failure to take medication for mental illness as factor in creating environment that endangers child's emotional or physical well-being); *J.I.T.P.*, 99 S.W.3d at 845 (considering parent's mental health and noncompliance with medication schedule as factors in endangering child).

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 Mother had engaged in conduct or knowingly placed B.A.M. with persons who engaged in conduct which endangered the physical or emotional well-being of B.A.M. in violation of subsection 161.001(b)(1)(E). Moreover, 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 Mother engaged in conduct or knowingly placed B.A.M. with persons who engaged in conduct which endangered the physical or emotional well-being of B.A.M. in violation of subsection 161.001(b)(1)(E).

Because we conclude that the evidence is legally and factually sufficient to support the trial court's finding under section 161.001(b)(1)(E), we do not address Mother's arguments that the evidence is legally and factually insufficient to support the trial court's findings under subsection (D) and (O). *See In re P.W.*, 579 S.W.3d 713, 728 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (declining to address subsection (D) after finding legally and factually sufficient evidence of subsection (E)).

We overrule Mother's sole issue.

Conclusion

We affirm the trial court's Revised Final Order of Termination.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Goodman and Hightower.