

Affirmed and Memorandum Opinion filed May 13, 2016.



In The

Fourteenth Court of Appeals

NO. 14-15-00997-CV

**IN THE INTEREST OF J.A.N., A.M.K.S., AND A.R.S.,
CHILDREN**

**On Appeal from the 300th District Court
Brazoria County, Texas
Trial Court Cause No. 79334-F**

M E M O R A N D U M O P I N I O N

The trial court terminated the parental rights of appellants H.N. (Mother) and R.S. (Father) with respect to their children Jason, Anna, and Alicia¹ and appointed appellee Texas Department of Family and Protective Services (Department) the children's managing conservator. Mother and Father each raise four issues challenging the sufficiency of the evidence to support the judgment. We affirm.

¹ We use fictitious names for the children discussed in this opinion. *See* Tex. R. App. P. 9.8(b)(2).

BACKGROUND

Mother has six children by three men. The three children involved in this case are the eldest and two youngest: Jason, born in April 2005; Anna, born in March 2010; and Alicia, born in September 2011. Father is the biological father of Jason and Anna. The parties report he is not the biological father of Alicia,² though he has not been excluded by DNA testing. He says he cared for Alicia as if she were his biological child, and she bears his last name. The other three children are Chris, born in October 2006; Sarah, born in December 2007; and William, born in March 2009. Their father is C.W., who is not a party to this case.

On February 21, 2014, a police officer returned Anna, then almost four years old, to the trailer in Alvin where she lived with Mother, Father, and her siblings. Anna had been found alone at a school park. According to Father, he “could have thrown a rock from the front porch to the school grounds.” Other evidence in the record states the park was a quarter of a mile from the trailer. Father testified he and Mother were home cooking and cleaning when the officer arrived with Anna. Mother testified she was “probably at home” but did not recall the incident.

Jessica Johnson, a Department caseworker, went to the trailer and spoke with Father. Mother was not home when Johnson visited; Mother was reportedly in jail due to traffic violations. Father told Johnson he took Anna and her older siblings to play at a neighbor’s house, and Anna must have left unnoticed from the neighbor’s house. Johnson spoke to the neighbor, who said nobody asked her to watch the children. The neighbor also said the children were always outside unattended, and they had been coming over to use her hose because their water had been turned off.

² The Department was unable to locate the man whom Mother identified as Alicia’s biological father. An attorney ad litem represented him as the unknown father. His parental rights were terminated, and that termination is not challenged on appeal.

The trailer was dirty when Johnson visited. Some of the children's faces, hands, and feet were covered in dirt. Johnson told Father the children should not be left unattended and he needed to bathe them. She told him she would return the next week to interview Mother, and the trailer and children needed to be clean by then.

Johnson visited Mother and Father several times over the next two months. The trailer was consistently dirty, and food was limited. Mother and Father failed to appear at scheduled meetings with the Department. Mother tested positive for drugs once and negative twice. Father did not take a drug test as directed by the Department, apparently because he did not have proper identification. According to his Brazoria County probation officer, Father tested positive for cocaine in late February 2014.

On May 2, 2014, the Department filed a petition for conservatorship and termination of parental rights as to all six children. Based on the parties' agreement, the trial court signed an order for required participation in services on June 12, 2014. Mother was ordered to maintain a safe, stable home, get and keep a job, apply for state-paid daycare for the children, remain drug free and submit to random drug testing, and complete parenting classes. The trial court ordered Father to complete a psychological evaluation and drug and alcohol assessment, maintain a safe, stable home, and get and keep a job. Father was forbidden from being near the children.

Six weeks later, Father was arrested for manufacture and delivery of methamphetamines. He did not complete any ordered services before his arrest.

On August 22, 2014, the Department received another referral alleging neglectful supervision of the children by Mother. Caseworker Darla Harris went to the trailer to investigate. She saw approximately eight puppies in the trailer and

feces on the rug. Five of the children were home, and Jason came home from playing at a neighbor's house when Mother called him. Mother signed a safety plan by which she agreed to clean the trailer and supervise her children at all times.

Two months later, a report was made to the Department alleging Chris, Mother's second child, was cutting himself with a lead pencil. Chris told Harris he was cutting himself because he was mad at Jason for beating him up when Mother left them alone at home. Harris then spoke with Jason, who said Mother leaves him in charge of his siblings when she is gone.

Harris went to the trailer that day. It was dirty. Anna and Alicia were home. Mother told Harris the children could not attend daycare because they all had lice. She admitted leaving Jason, then age nine, and Chris, then age eight, home alone; she thought they were old enough to stay by themselves.

At that point, Harris asked Mother to place the children with family members. C.W.'s three children went to his house. However, because he has a criminal history, he was not permitted to take in the other three children, who are unrelated to him. Instead, Mother's friend T.J. agreed to have Jason, Anna, and Alicia in her home.

About a week later, T.J. told Harris she could not keep the children past November 4, 2014. Two days after T.J.'s call, Mother called Harris to let her know she had just been released from jail for driving with a suspended license. Harris told her the children could not stay with her, and she needed to find a placement for them. Mother said none of her family or friends could take them; each one would fail the criminal background check and/or had Department history. Harris contacted Father's mother, but she would not take the children.

Harris made an unannounced visit to the trailer on November 3, 2014. The trailer was messy, and fleas were present. Mother said the children no longer had lice. T.J. was at the trailer when Harris arrived; she reiterated the children would have to be out of her home by 2:00 pm the next day.

On November 4, 2014, with nowhere to place the children, the Department took possession of Jason, Anna, and Alicia. It petitioned for conservatorship and termination of Mother's and Father's parental rights to those children.³

Trial was held on October 29 and November 5, 2015. The Department presented testimony from Mother, Father,⁴ two caseworkers, two psychologists, and the children's foster mother. Mother and Father both moved for a directed verdict, which the trial court denied. Neither Mother nor Father called witnesses.

The trial court found Mother engaged in the conduct described in subsections D, E, and O of section 161.001(1) of the Family Code, and Father engaged in the conduct described in subsections D, E, N, and O. *See* Tex. Fam. Code Ann. § 161.001(1). The trial court further found termination of both parents' parental rights was in the children's best interest. *Id.* § 161.001(2). The trial court signed a judgment terminating both parents' relationships with Jason, Anna, and Alicia and appointing the Department the children's managing conservator.

Mother and Father challenge the sufficiency of the evidence to support each of the trial court's findings. Neither challenges the appointment of the Department as managing conservator.

³ The first cause (77000-F), which began in May 2014, concerned all six children. The November 2014 petition was filed in a new case (79344-F). In February 2015, the trial court severed the portion of 77000-F involving Jason, Anna, and Alicia and transferred it into 79344-F. All orders entered in 77000-F were effective in 79344-F.

⁴ Father was incarcerated at the time of trial in connection with his July 2014 arrest for manufacture and delivery of methamphetamines. He was brought to trial on a bench warrant.

ANALYSIS

I. Burden of Proof and Standards of Review

Involuntary termination of parental rights is a serious matter implicating fundamental constitutional rights. *See In re G.M.*, 596 S.W.2d 846, 846 (Tex. 1980); *In re S.R.*, 452 S.W.3d 351, 357 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). Although parental rights are of constitutional magnitude, they are not absolute. The child’s emotional and physical interests must not be sacrificed merely to preserve the parent’s rights. *In re C.H.*, 89 S.W.3d 17, 26 (Tex. 2002).

Due to the severity and permanency of the termination of parental rights, the burden of proof is heightened to the clear and convincing evidence standard. *See* Tex. Fam. Code Ann. § 161.001; *In re J.F.C.*, 96 S.W.3d 256, 265–66 (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 Ann. § 101.007; *accord J.F.C.*, 96 S.W.3d at 264. This heightened burden of proof results in a heightened standard of review. *S.R.*, 452 S.W.3d at 358.

Parental rights can be terminated upon proof by clear and convincing evidence that (1) the parent has committed an act described in section 161.001(1) of the Texas Family Code, and (2) termination is in the best interest of the child. Tex. Fam. Code Ann. § 161.001. Only one predicate finding under section 161.001(1) is necessary to support a decree 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).

In reviewing the legal sufficiency of the evidence in a termination case, we must consider all the evidence in the light most favorable to the finding to determine whether a reasonable fact finder could have formed a firm belief or

conviction that its finding was true. *See In re J.O.A.*, 283 S.W.3d 336, 344 (Tex. 2009); *J.F.C.*, 96 S.W.3d at 266; *C.H.*, 89 S.W.3d at 25. We assume the fact finder resolved disputed facts in favor of its finding if a reasonable fact finder could do so, and we disregard all evidence a reasonable fact finder could have disbelieved. *J.O.A.*, 283 S.W.3d at 344; *J.F.C.*, 96 S.W.3d at 266.

In reviewing termination findings for factual sufficiency of the evidence, we consider and weigh all the evidence, including disputed or conflicting evidence. *See J.O.A.*, 283 S.W.3d at 345. “If, in light of the entire record, the disputed evidence that a reasonable fact finder could not have credited in favor of the finding is so significant that a fact finder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient.” *J.F.C.*, 96 S.W.3d at 266. We give due deference to the fact finder’s findings, and we cannot substitute our own judgment for that of the fact finder. *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006) (per curiam). The fact finder 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).

II. Predicate Grounds for Termination

A. Mother: Failure to comply with court order

Termination is warranted if the court finds by clear and convincing evidence that the parent:

[1] failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child [2] who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months [3] as a result of the child’s

removal from the parent under Chapter 262 for the abuse or neglect of the child.

Tex. Fam. Code Ann. § 161.001(1)(O).

1. Mother did not comply with service plan

The Department created two family service plans for Mother throughout the case; the first was before the children were removed, and the second one was after removal. The trial court specifically stated in its December 4, 2014 order that Mother needed to comply with her service plan to obtain the return of her children.

The required tasks included (not an exhaustive list):

- Cooperate with the services being provided or purchased by the Department for reducing the reasonable likelihood of abuse or neglect in the immediate or foreseeable future and permit the child and siblings of the child to receive services as described in the current service plan.
- Maintain a safe and stable home environment and participate in unannounced visits. A safe and stable home environment includes but is not limited to: (1) turn on and maintain all utilities without disruption in the services; (2) keep house and yard free from hazards; (3) have no and allow no drugs or alcohol in the home; (4) apply for an maintain eligibility, without a lapse in eligibility, for food stamps, WIC, and Medicaid.
- Apply for state-paid daycare.
- Remain drug and alcohol free and submit to random drug testing. This can include urinalysis testing or hair follicle testing. Any diluted test result or failure to participate in a drug test will be considered a positive result.
- Complete a drug/alcohol assessment and follow all recommendations.
- Complete parenting classes and provide a certificate of completion to the Department caseworker.
- Submit to a psychological evaluation and follow all recommendations.

- Initiate and actively attend therapy with a Department-approved therapist and follow all recommendations, which may include a psychiatric evaluation and treatment.
- Seek, obtain, and maintain gainful employment.

Mother complied with some provisions of the service plan. Caseworker Harris testified while she was assigned to this case, Mother completed the parenting classes, completed the drug and alcohol assessment, submitted to random drug testing, and tested negative for drugs. Mother began a commission-based job a few days before trial in which she passed out flyers for a plumbing company.

Mother acknowledged she did not satisfy her obligation to maintain a safe and stable home. Many months before trial, she was evicted from the trailer. She stayed in other people's homes temporarily. At the time of trial, she was living in her father's home. They had been estranged until January 2016. Her father was not willing to have the three children live in his home if they were returned to Mother. Mother said her friend T.J.'s uncle had agreed to let her and the children live with him, but caseworker Leslie LaBarre testified the uncle had not so agreed.

Mother suggests termination based on subsection O is improper because she substantially complied with the service plan. However, substantial compliance is not sufficient to avoid a termination finding under subsection O. *See In re M.C.G.*, 329 S.W.3d 674, 676 (Tex. App.—Houston [14th Dist.] 2010, pet. denied).

2. Nine months in Department's managing conservatorship

The children were removed from Mother's care on November 4, 2014. The trial court named the Department their sole managing conservator the next day. The Department remained the children's sole managing conservator throughout this case. Trial began October 29, 2015. Therefore, at the time of trial, the children

had been in the managing conservatorship of the Department for more than nine months.

3. Removed for abuse or neglect

Mother argues there is no evidence the children were removed due to abuse or neglect under chapter 262 of the Family Code. Rather, she says, the children were removed due to a breakdown in her voluntary placement of them with T.J.

Chapter 262 governs the procedures in a suit by a governmental entity to protect the health and safety of a child. *See generally* Tex. Fam. Code Ann. ch. 262. A governmental entity is authorized to remove a child without a court order under one or more of five conditions. *See* Tex. Fam. Code Ann. § 262.104(a). Two of those conditions are relevant in this case:

1. on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;
2. on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

Id. § 262.104(a)(1), (2).

The record contains the November 5, 2014 affidavit of Darla Harris. Harris described the circumstances of the child's removal, including facts relevant to the inquiry under section 262.104(a):

The decision was made to seek emergency temporary managing conservatorship of [the children] based on confirmation that [Mother] was leaving [Jason] and his 8 year old brother in charge of the younger children alone while she was out. The [children's] parental child safety placement stated she would no longer keep the children after November 4, 2014, and [Mother] was unable to provide any additional placements.

...

Reasonable efforts have been made to prevent or eliminate the need for removal of the children, consistent with the circumstances and providing for the safety of the children. There exists an immediate danger to the physical health or safety of the children and continuation in the home would be contrary to the children's welfare. There is no time, consistent with the physical health or safety of the children and the nature of the emergency, for a full adversary hearing under Title 5, Subchapter C of the Texas Family Code and it is in the best interest of the children for the Court to grant emergency temporary managing conservatorship of the children to the Texas Department of Family & Protective Services.

On December 9, 2014, the trial court signed a Temporary Order Following Adversary Hearing. The order states a full adversary hearing was held "pursuant to § 262.201, Texas Family Code." Section 3 of the order includes the trial court's findings that there is "sufficient evidence to satisfy a person of ordinary prudence and caution" that: (1) there was a danger to the physical health or safety of the children which was caused by an act or failure to act of the person entitled to possession, and it is contrary to the welfare of the children to remain in the home; and (2) the urgent need for protection required immediate removal of the children and reasonable efforts, consistent with the circumstances and providing for the children's safety, were made to eliminate or prevent their removal.

At trial, Harris testified the children were removed due to Mother's neglectful supervision:

Q. Ms. Harris, you testified when Ms. Session asked you that the reason for the pick up was because you had no placement; is that correct? That's what you said.

A. Yes.

Q. Is that the reason why we picked up the children?

A. Well, that's not the reason. The reason is the neglectful supervision in the beginning.

Q. Okay.

A. On [October] 21st.

Q. Okay. So when [T.J.] informed the agency that she was no longer capable of maintaining the placement, the agency attempted to find – the eight days that [Mother's lawyer] talked about, during those eight days she asked you why you didn't pick them up right away. So during those eight days, what did the agency do?

A. We tried to locate other placements. We tried to get with mother to find another place for the kids to stay, and mother still continued to do her service at that time.

Q. So you were trying to prevent the removal; is that correct?

A. That's correct.

Harris' statements in her affidavit, the trial court's findings, and Harris' testimony support the trial court's finding that the children were removed under chapter 262 due to abuse or neglect.

4. Conclusion on failure to comply with court order

The evidence is legally and factually sufficient to support the trial court's finding that (1) Mother failed to comply with all the provisions of a court order that specifically established the actions necessary for Mother to obtain the return of the children; (2) the children were in the Department's managing conservatorship for not less than nine months. and (3) the children were removed for abuse or neglect under chapter 262 of the Family Code. Considered in the light most favorable to the trial court's finding, the evidence is legally sufficient to support the trial court's determination that termination of Mother's parental rights was justified under section 161.001(1)(O) of the Family Code. Further, in view of the entire record, we

conclude the disputed evidence is not so significant as to prevent the trial court from forming a firm belief or conviction that termination was warranted under section 161.001(1)(O). Accordingly, we conclude the evidence is factually sufficient to support the 161.001(1)(O) finding.

This single finding is sufficient to support a decree of termination when there is also a finding that termination is in the children's best interest. *In re A.V.*, 113 S.W.3d at 362. In light of our conclusion regarding the trial court's finding under subsection O, we need not make a determination as to its findings under subsections D or E. We overrule Mother's first three issues.

B. Father: Endangerment

Parental rights may be terminated if a parent "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 Ann. § 161.001(1)(E). "To endanger" means to expose a child to loss or injury or to jeopardize a child's emotional or physical health. *See In re M.C.*, 917 S.W.2d 268, 269 (Tex. 1996); *S.R.*, 452 S.W.3d at 360.

The evidence must show the endangerment was the result of the parent's conduct, including acts, omissions, or failures to act. *In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.). 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. *Id.* 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 the parent's misconduct alone. *Tex. Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987); *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).

Courts may consider conduct both before and after the Department removed the child from the home. *See Avery*, 963 S.W.2d 550, 553 (Tex. App.—Houston [1st Dist.] 1997, no writ) (considering persistence of endangering conduct up to time of trial); *In re A.R.M.*, No. 14–13–01039–CV, 2014 WL 1390285, at *7 (Tex. App.—Houston [14th Dist.] Apr. 8, 2014, no pet.) (mem. op.) (considering pattern of criminal behavior and imprisonment through trial).

1. Criminal activity

Evidence of criminal conduct, convictions, or imprisonment is relevant to a review of whether a parent engaged in a course of conduct that endangered the well-being of the child. *A.S. v. Tex. Dep't of Family & Protective Servs.*, 394 S.W.3d 703, 712–13 (Tex. App.—El Paso 2012, no pet.).

Father's criminal history is extensive. He was convicted of possession of marijuana in early 2007. In October 2010, he was arrested for making methamphetamines in a motel room where Mother and five of the children (Alicia had not been born) were present. Father pleaded guilty to child endangerment and served approximately nine months in prison. In 2013, Father was convicted of possession of a controlled substance and theft of property. Most recently, Father was arrested in July 2014 for manufacture and delivery of methamphetamines. He was in prison on that charge at the time of trial. Age 32 at the time of trial, Father

said he has been incarcerated for a total of five to six years—roughly a third of his adult life.

2. Drug use

A parent’s drug use can qualify as a voluntary, deliberate, and conscious course of conduct endangering the child’s well-being. *See S.R.*, 452 S.W.3d at 361; *In re C.A.B.*, 289 S.W.3d 874, 885 (Tex. App.—Houston [14th Dist.] 2009, no pet.). Continued illegal drug use after a child’s removal is conduct that jeopardizes parental rights and may be considered as establishing an endangering course of conduct. *S.R.*, 452 S.W.3d at 361–62; *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).

Father tested positive for cocaine in February 2014. He testified he had been convicted of drug-related offenses five or six times. He also said he had been drug free since his July 2014 incarceration, and his “biggest goal” is to stay off drugs.

3. Failure to supervise children

Anna, not yet four years old, was discovered at a school park alone. Father alleges the park was close to the trailer; other evidence shows it was a quarter of a mile away. On cross-examination by the children’s attorney ad litem, Father testified he did not believe he had endangered Anna when she wandered off:

Q. Do you accept responsibility for the fact that she was – for neglectful supervision and endangering your child by not taking care of her? Not knowing where she was?

A. For endangering? No.

Q. You don’t think she was endangered by going that far off the street from you all’s house?

A. No, ma’am.

- Q. Anybody could have picked her up.
- A. No, ma'am. We was under the impression she was playing with the children next door. Their mother are [sic] supervising the children. They were playing inside her home. When our children came back from the neighbor's house and [Anna] wasn't with them was when I became aware there was a situation.

As mentioned, the neighbor said nobody asked her to watch the children.

Department caseworker Johnson found the three youngest children (William, Anna, and Alicia) playing unsupervised in the parking lot about a month later.

4. Conclusion on endangerment

Father has a lengthy criminal history. By his account, he has been incarcerated for one third of his adult life. Most of his crimes are drug-related. Despite repeated instructions, Father failed to supervise the children. Anna was discovered by herself in a park. Department workers found her playing outside at least twice more, unsupervised.

Considered in the light most favorable to the trial court's finding, the evidence is legally sufficient to support the trial court's determination that termination of Father's parental rights was justified under section 161.001(1)(E) of the Family Code. Further, in view of the entire record, we conclude the disputed evidence is not so significant as to prevent the trial court from forming a firm belief or conviction that termination was warranted under section 161.001(1)(E). Accordingly, we conclude the evidence is factually sufficient to support the 161.001(1)(E) finding.

In light of our conclusion regarding the trial court's finding on subsection E, we need not make a determination as to its findings on subsections D, N, or O. We overrule Father's first three issues.

III. Best interest

In their fourth issues, Mother and Father assert the evidence is legally and factually insufficient to support the trial court's finding that termination of their parental rights is in the children's best interest. We review the entire record in deciding a challenge to the court's best-interest finding. *In re E.C.R.*, 402 S.W.3d 239, 250 (Tex. 2013).

Termination must be in the child's best interest. Tex. Fam. Code Ann. § 161.001(2). There is a strong presumption that the best interest of a child is served by keeping the child with the child's parent. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam). Prompt, permanent placement of the child in a safe environment is presumed to be in the child's best interest. *See* Tex. Fam. Code Ann. § 263.307(a).

Courts may consider the following non-exclusive factors in reviewing the sufficiency of the evidence to support the best-interest finding: the desires of the child; the physical and emotional needs of the child now and in the future; the emotional and physical danger to the child now and in the future; the parental abilities of the persons seeking custody; the programs available to assist those persons seeking custody in promoting the best interest of the child; the plans for the child by the individuals or agency seeking custody; the stability of the home or proposed placement; acts or omissions of the parent that may indicate the existing parent-child relationship is not appropriate; and any excuse for the parent's acts or omissions. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). As noted, this list of factors is not exhaustive, and evidence is not required on all the factors to support a finding that termination is in the child's best interest. *In re D.R.A.*, 374 S.W.3d 528, 533 (Tex. App.—Houston [14th Dist.] 2012, no pet.).

In addition, the Family Code sets out thirteen factors to be considered in evaluating a parent's willingness and ability to provide the child with a safe environment. *See* Tex. Fam. Code Ann. § 263.307(b). Those factors are: (1) the child's age and physical and mental vulnerabilities; (2) the frequency and nature of out-of-home placements; (3) the magnitude, frequency, and circumstances of harm to the child; (4) whether the child has been the victim of repeated harm after the initial report and intervention by the Department; (5) whether the child is fearful of living in or returning to the child's home; (6) the results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home; (7) whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home; (8) whether there is a history of substance abuse by the child's family or others who have access to the child's home; (9) whether the perpetrator of the harm to the child is identified; (10) the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision; (11) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time; (12) whether the child's family demonstrates adequate parenting skills, including providing the child with: (a) minimally adequate health and nutritional care; (b) care, nurturance, and appropriate discipline consistent with the child's physical and psychological development; (c) guidance and supervision consistent with the child's safety; (d) a safe physical home environment; (e) protection from repeated exposure to violence even though the violence may not be directed at the child; and (f) an understanding of the child's needs and capabilities; and (13) whether an adequate social support system consisting of an extended family and friends is available to the child. *Id.*; *R.R.*, 209 S.W.3d at 116.

A. The children and their foster parents

The children have lived with the same foster family since November 4, 2014. The family comprises a mother, father, and two children, ages 13 and 10. The foster mother testified Jason, Anna, and Alicia are doing well and are welcome to stay in their home.

Jason. Jason came to the foster home not liking to follow rules. He was very angry when the foster parents asked him to do anything he did not want to do. Homework was a battle because he did not want to do it. At the time of trial, he knew the routine and did what he needed to do, though not without complaint. Jason has dyslexia. He has an individualized education plan at school and attends tutoring every day.

Anna. When she arrived in the foster home, Anna could barely count to five and did not like to take instruction from her foster parents. At the time of trial, she was “just crazy about school.” She was still not happy about following directions, but she did it.

Alicia. Alicia was very clingy when she moved into her foster home and would not leave her foster mother’s side. Now, her foster mother said, she “is just her own little self,” “running around,” and “doing very well.”

B. Mother

Failure to complete court-ordered services. Evidence supporting termination under one of the grounds listed in section 161.001(1) also can be considered in support of a finding that termination is in the best interest of the children. *S.R.*, 452 S.W.3d at 366. Thus, the evidence that Mother did not complete her court-ordered family service plan—including her failure to maintain a safe and stable home—is relevant to the best-interest analysis.

Department history. The Department investigated Mother five times before this case began. The allegations were ruled out or unable to be determined in all those cases except one, which was the 2010 incident when Father was allegedly manufacturing methamphetamines in a motel room while Mother and the children were present.

Employment. Mother said she applied for many jobs but was not offered any due to her lack of transportation. As noted, she began a commission-based job a few days before trial passing out flyers for a plumbing company. No income was guaranteed.

Home environment. There is evidence Mother had no home for the children. Although she testified she and the children could live with her friend T.J.'s uncle, caseworker LaBarre testified the uncle had not agreed to that arrangement.

Psychological treatment. Mother attended three therapy sessions with psychologist Verlonda Procter. Procter testified that Mother does not need more therapy because she has not shown an interest in wanting to change or wanting to achieve goals. For example, Procter asked Mother to bring in a list of her previous jobs and the dates of employment so Procter could construct a resume for her. Even after being reminded, Mother did not provide the requested information.

C. Father

Endangerment. The evidence that Father endangered the children is relevant to the best-interest analysis. *S.R.*, 452 S.W.3d at 366. The trial court reasonably could have inferred Father's previous actions, particularly his criminal history and substance abuse, will recur if the children are returned to him.

Department history. In June 2009, Father allegedly left Jason, Chris, and Sarah (then ages four, two, and one, respectively) alone and unsupervised. The

Department ruled it had reason to believe the allegations. Father said he left the children alone in the apartment while he went to the vending machine. The apartment was cluttered with boxes and clothes. As discussed, the Department also investigated Father in connection with his alleged drug manufacture in 2010.

Court-ordered services. Father did not complete any court-ordered services before he was arrested and incarcerated in July 2014 for manufacture and delivery of methamphetamines. He was not required to complete those services until he was released from prison, which was scheduled for February 2016. He said he was enrolled in a “course to manhood” in prison, which included instruction on marriage, work ethics, parenting, and “overall manhood.” He testified he facilitates Narcotics Anonymous and Alcoholics Anonymous meetings twice a week in prison.

Employment. Father testified he is on disability due to his seizure disorder and epilepsy. He plans to work if he is able when he is released from prison.

Home environment. Father said he will move into a small travel trailer on his mother’s property when he is released from prison. He testified he will be entitled to a grant of \$5,000 and will receive disability checks. He said he plans to buy a home as soon as possible.

Psychological treatment. Father said he was diagnosed with bipolar disorder in 2004 or 2005. He said he takes medication for the disorder.

Willingness to parent. At trial, Father was unequivocal in his statements that he wanted to be a good parent to his children. He said he understood the importance of sobriety, and he was determined not to abuse drugs. He admitted he was sober in the past but had relapsed. Father has three other children: a seventeen-year-old son in California, and two daughters with his ex-wife. He said he is not

permitted “to have anything to do with” his son and one of his daughters. The other daughter lives with his mother; he said he supports her as much as possible.

D. Conclusion on best interest

Undisputed evidence shows the children have improved in the year they have been in foster care. They are welcome to stay in their foster parents’ home. Father has a history of endangering the children through criminal activity, substance abuse, and failure to supervise them. Both parents have history with the Department. Mother failed to complete some of her court-ordered services and had yet to provide a safe, stable home. According to her therapist, Mother had not shown interest in changing or achieving goals. Father said he wants to be a good parent to his children, but he has spent years in prison and abused drugs.

Considering all the evidence, we conclude the evidence is legally and factually sufficient to support the trial court’s finding that termination of Mother’s and Father’s parental rights is in the children’s best interest. We overrule Mother’s and Father’s fourth issues.

CONCLUSION

We affirm the trial court’s judgment.

/s/ Ken Wise
Justice

Panel consists of Chief Justice Frost and Justices Boyce and Wise.