

**Affirmed and Memorandum Opinion filed July 19, 2016.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-16-00156-CV**

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**IN THE INTEREST OF J.P.T., L.P.T., AND D.P., CHILDREN**

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**On Appeal from the 314th District Court  
Harris County, Texas  
Trial Court Cause No. 2014-05201J**

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**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 C.P. (Mother)<sup>1</sup> and B.T. (Father) with respect to their children, Jack, Luke, and David,<sup>2</sup> and appointed appellee Texas Department of Family and Protective Services (the Department) to be the children's managing conservator. Father raises three issues challenging the sufficiency of the evidence to support the judgment. We affirm.

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<sup>1</sup> Mother's appeal was dismissed on June 23, 2016, for want of prosecution.

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

## BACKGROUND

On September 17, 2014, when Mother was in her third trimester of pregnancy with David, the Department received a referral alleging neglectful supervision of Jack (age 4) and Luke (age 23 months) by Mother, Father, and the children's maternal grandmother, N.P. (Grandmother). The referral stated Mother and Father were taking drugs and neglecting the boys. Grandmother was also said to be abusing drugs and unable to care for the boys. The referral alleged Father was a pedophile.

Two days later, Department investigator Jasmine Wilson visited the home where Jack and Luke lived with Mother, Father, Grandmother, and Grandmother's other daughter (Mother's half-sister), nine-year-old Kate.<sup>3</sup> The house was "cluttered with clothes and food everywhere." Grandmother told Wilson they were planning to move soon due to a "severe problem with roaches and flies" in the house. Wilson saw Jack and Luke; neither had marks or bruises. Luke had what looked to be multiple mosquito bites on his lower legs.

Mother said she was taking Zoloft for "severe post-partum depression." She, Father, and Grandmother denied abusing drugs or alcohol. All three submitted to hair and urine drug tests at the Department's request that day.

David was born at 32 weeks' gestation on September 24, 2014. The next day, Wilson received the drug test results. Mother's urine was positive for benzodiazapenes, and her hair was negative. Grandmother's urine was dilute negative, and her hair was positive for cocaine. Wilson went to Grandmother's new home and told her arrangements would need to be made for the care of Jack, Luke, David, and Kate while Mother was in the hospital. While Wilson was at the

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<sup>3</sup> The Department filed a separate lawsuit regarding the parent-child relationship between Grandmother and Kate. The record does not indicate the status or disposition of that suit.

home, a sheriff's vehicle arrived with Father in the backseat. The deputy sheriff said he picked Father up after Father had what was described as a panic attack at the front office of the family's trailer park. The deputy believed Father was withdrawing from a drug, possibly synthetic marijuana, and the withdrawal led to the attack. Wilson's colleague, Department caseworker Ashley Griffin-Jones, spoke to Father in the sheriff's car. He denied knowing about drug use in the home. He said he was having a panic attack and could not breathe, and then he began to cry and said he did not know what was happening. After he calmed down, Father told Griffin-Jones that Grandmother kicked him out of the house just before Wilson and Griffin-Jones arrived that day. Father was then taken to the Harris County Psychiatric Center.

That day, a man named Justin, whose relationship to the family is not apparent from the record, agreed to serve as a parental child safety placement, which meant he would reside temporarily in the home and assist Mother with her children and Kate. A few days later, Justin called Griffin-Jones and reported the police came to the home because Grandmother assaulted Mother. He said Grandmother had been sleeping in a truck outside the house and coming in and out throughout the night. Griffin-Jones called Grandmother regarding the allegations and told her she would need to live somewhere away from the house. Within two weeks, Justin said he could no longer live with the children due to Grandmother's behavior. He also said Mother was very depressed and needed help.

During this time, Father was an inpatient at the Harris County Psychiatric Center. When Griffin-Jones visited him on October 2, 2014, he said he was taking his medication, was in a good state of mind, and was trying to get himself together so he could care for his children in a stable environment. Like Justin, he said Grandmother's behavior is problematic and she manipulates Mother. Father said he

would call to participate in the family team meeting scheduled for the next morning. He was unable to participate in the meeting, but the record does not indicate why. Mother admitted at the meeting that she smoked synthetic marijuana with Father and Grandmother, including while she was pregnant.

On October 8, 2014, Griffin-Jones spoke to Mother, who said Luke was recently diagnosed with severe anemia. Griffin-Jones told Mother she would need to find another friend or relative willing to care for the children. The two people Mother suggested were not eligible because they had extensive criminal history and history with the Department. Father was still an inpatient at the psychiatric facility.

Unable to place the children with a friend or family member, the Department removed the children that day and placed them in foster care. The Department filed its original petition for conservatorship and termination on October 9, 2014.

Within a few weeks, Jack was exhibiting sexualized behavior and making sexual requests of his foster mother. He made several outcry statements over the course of the next several months regarding abuse by both Mother and Father. Jack underwent forensic evaluations concerning possible sexual abuse. The evaluator concluded he probably had been abused.

Trial was held on January 12, 2016. The Department presented testimony from caseworkers LaToya Wolfe and Erika Estey, Court Appointed Special Advocates (CASA) volunteer Vanessa Gamiz, psychologist Whitney Crowson, therapist Joanna Loreda, and the children's foster mother. Father testified but did not call other witnesses or present other evidence. Mother did not appear at trial.

The trial court orally announced its finding that Mother and Father engaged in the conduct described in subsections E and O of section 161.001(1) of the Family Code. *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 the children and appointing the Department to be the children's managing conservator.

On appeal, Father challenges the sufficiency of the evidence to support each of the trial court's findings. He does not challenge the appointment of the Department as managing conservator.

## 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 Ground for Termination: Endangerment

### A. Legal standards

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).

## **B. Application**

### **1. Sexual abuse**

It is “beyond question” that sexual abuse endangers a child’s physical or emotional well-being. *In re R.W.*, 129 S.W.3d 732, 742 (Tex. App.—Fort Worth 2004, pet. denied). Evidence of sexual abuse of one child is sufficient to support a finding of endangerment with respect to other children. *Id.*

On an unspecified date, Department caseworker LaToya Wolfe received two text messages from Father expressing his concern about Mother. Print-outs of the messages were admitted into evidence over Father’s authentication and hearsay objections. The messages said:

**Message 1:** Latoya, this is [Father]. I have terrible news in regards to our case. I would like to meet with you on Monday to discuss this further. I am sorry it has come to this, but recent developments has [sic] me greatly concerned for my boys well being, in regards to their mother and myself, if I am being honest. I have been working tirelessly to provide for my children at this time, but I think you’ve been lied to about the exact nature of [Mother]. I might have some answers to the troubling behavior observed in [Jack] that I have just uncovered. I would prefer to discuss this in person. Thank you for your time.

**Message 2:** I was wrong. I’ve been having troubles here in my recovery. I will see everyone on Monday.

Within a few weeks of moving in to his foster home, Jack began asking his foster mother to play the “sit on” game, by which he wanted her to remove her pants and underwear and sit on his face so he could lick her. When she refused,



Jack became angry and cried, saying she did not love him. The foster mother said Jack asked her to sit on his face an “uncountable” number of times; he asked several times a day, every day. When asked, he said Mother taught him how to play that game.

A forensic interview was conducted on November 10, 2014. Jack did not make a disclosure of sexual abuse during that interview, but he said Mother sat on his tummy and back.

On November 20, 2014, Wolfe visited the foster home. She saw Jack ask the foster mother to sit on his face. Later, Jack told LaWolfe that Mother sat on his face, head, tummy, and back, and “she liked it and he liked it.” After a visit with Mother and Father, the date of which is not indicated in the record, Jack returned to his foster home and said he was no longer allowed to talk about the “sit on” game.

Due to outcry statements and continued exhibition of sexualized behavior, Jack was given a multi-session, extended forensic evaluation beginning in February 2015. The report following that evaluation was admitted into evidence over hearsay objections by Mother and Father.

The evaluator noted Jack referred to Mother and Father by their first names, said he did not like them, and described them as people he used to live with. He said Mother would sit on his face while they were both naked. Jack also made several disclosures regarding Father:

- Father cut his bottom with a knife when Jack was four years old. The police came. Jack said, “Jesus caught [me] and fixed [me] up with glue.”
- Father cut his “private” with a knife, and Jesus glued Jack back together.
- Father put a knife to his neck while Mother sat on him.

- Father tried to cut him with a knife.
- Father told him if he [Jack] was mean, Jack would be cut.
- Father told him he “couldn’t talk too much about” Mother. When the evaluator asked Jack what would happen if he talked too much, Jack did not answer.

The foster parents told the evaluator that Jack was becoming “more desperate” in his requests to play the “sit on” game. They also reported Jack had frequent nightmares and was terrified of knives. He would run and hide if his foster parents used a knife while cooking. The evaluator concluded Jack’s disclosures appeared to be descriptive of events he experienced.

Joanna Loreda became Jack’s therapist in late June 2015. At the time of trial, she had seen him 23 times. She testified about disclosures he made to her concerning sexual abuse. On June 23, 2015, when she asked if he had ever been touched in a way that made him uncomfortable or in a place he should not be touched, Jack said Mother touched his private parts. On September 8, 2015, Loreda asked him to draw a picture of his family. He drew his foster family. She asked him to draw a picture of the family he lived with before his foster family, and he drew a picture of Mother and Father. Loreda asked who in that family had hurt him. Jack replied that Mother and Father hit him and sat on him, and Mother touched his penis and bottom. Based on Jack’s consistent disclosures and her observation of him during therapy sessions, Loreda believed Jack had been sexually abused.

Erika Estey is the conservatorship supervisor for the Department. In November 2015, a year after the sexual abuse allegations surfaced, she attended a child sexual abuse review team meeting with several people, including law enforcement officers. As a result of that meeting, Officer Russell Gonzalez was

instructed to prepare documents to present to the district attorney regarding possible criminal charges for the sexual abuse. On the morning of trial, Estey spoke with Gonzalez, who was waiting to receive police documentation from another jurisdiction. He told her he would present the information to the district attorney within a few days.

At trial, Father denied Jack's allegations. He said he never witnessed any sexual abuse when the children were in his house, and the accusations about his holding a knife to Jack were "absolutely not true." Father believed the children had been coached.

## **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). According to Mother, Father reportedly used synthetic marijuana before his children were removed. He also was believed to be withdrawing from a drug, possibly synthetic marijuana, when he had a panic attack two weeks before the removal.

After removal, it appeared Father was getting his substance abuse under control. He tested negative for drugs in November 2014 and December 2014. Within a few months, though, he was abusing drugs again. He tested positive for amphetamines, methamphetamines and marijuana in April 2015. Four months later, in August 2015, he tested positive for synthetic marijuana. Finally, a month

before trial began, he tested positive for codeine without a valid prescription. Abuse of drugs is “hard to escape,” and the trial court as fact-finder is “not required to ignore a long history of dependency . . . merely because it abates as trial approaches.” *In re M.G.D.*, 108 S.W.3d 508, 513–14 (Tex. App.—Houston [14th Dist.] 2003, pet. denied).

### **3. Conclusion on endangerment**

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. *J.O.A.*, 283 S.W.3d at 344; *J.F.C.*, 96 S.W.3d at 266. 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). The trial court was free to discredit Father’s self-serving testimony. *See H.R.M.*, 209 S.W.3d at 109 (fact finder is sole arbiter when assessing credibility and demeanor of witnesses). Accordingly, we conclude the evidence is factually sufficient to support the section 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 subsection O. *See A.V.*, 113 S.W.3d at 362. We overrule Father’s first two issues.

### **III. Best Interest**

In his third issue, Father asserts the evidence is legally and factually insufficient to support the trial court’s finding that termination of his 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 also presumed to be in the child's best interest. 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 record contains evidence that the children prefer their foster parents to Mother and Father. When asked during the first session of his extended forensic evaluation, Jack said his family comprised "mommy" (he did not know her name), "daddy" (his foster father), and his two brothers, Luke and David. He denied having other parents. During the second session, he acknowledged Mother and

Father, described them as people with whom he used to live, and said he did not like them. The foster mother testified that after the children returned from a visit with Mother and Father, all three boys were “very upset,” “very clingy,” cried, and had nightmares.

By contrast, Wolfe said the children were doing well in their foster home, where they had lived since their removal in October 2014. The foster mother testified she and her husband want to adopt the three children. Both foster parents took an eight-week structured course of psychological education on the dynamics of sexual abuse. Their instructor, Whitney Crowson, thought they had a good grasp on how to help Jack. CASA volunteer Vanessa Gamiz testified the foster parents were meeting the children’s needs and could provide a safe, stable environment for the children.

## **B. 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 the children would be in danger if they were returned to Father, due both to his substance abuse and his alleged role in sexually abusing Jack.

*Court-ordered services.* Father testified he was completing the requirements of his court-ordered family service plan “to the best of [his] ability.” He wanted the trial court to give him more time to complete the services. Wolfe and Gamiz testified Father completed some but not all of the service plan’s requirements. Specifically, he failed to (1) complete his individual and group drug testing, (2) complete his therapy, (3) maintain stable employment, and (4) maintain a stable home for the children to live. Substantial compliance with court-ordered services is not sufficient. *In re M.C.G.*, 329 S.W.3d 674, 675 (Tex. App.—Houston [14th Dist.] 2010, pet. denied). And, though the service plan ordered him not to use

drugs, Father tested positive for drugs on three occasions during the pendency of this case.

*Department history.* Father's history with the Department began a few months before the removal in this case. In April 2014, the Department received a referral alleging neglectful supervision, physical neglect, and physical abuse of Jack and Luke by Mother and Father. The referral stated the police became involved because Father was threatening to harm himself, Jack, and Luke after being served with an eviction notice. According to the report, prescription medications and drug paraphernalia were strewn about the house within the children's reach, and living conditions were "deplorable." The allegations were ruled "unable to determine."

Two months later, a second referral was made, again alleging neglectful supervision and physical neglect of Jack and Luke by their parents. Father and Grandmother reportedly were involved in a family disturbance. Father admitted to smoking synthetic marijuana. The Department ruled the allegations were "unable to determine with risk indicated," because the family moved after the investigation began.

### **C. Conclusion on best interest**

Undisputed evidence shows the children are doing well in the 15 months they have been in foster care, and their foster parents want to adopt them. They are willing and able to help Jack recover from probable sexual abuse by Mother and Father. Father denies the abuse, but several psychologists and therapists concluded Jack was telling the truth and was sexually abused. Considering all the evidence, we conclude the evidence is legally and factually sufficient to support the trial court's finding that termination of Father's parental rights is in the children's best interest. We overrule Father's third issue.



**CONCLUSION**

We affirm the trial court's judgment.

/s/ Ken Wise  
Justice

Panel consists Justices Busby, Donovan, and Wise.