

Affirmed and Memorandum Opinion filed September 8, 2016.



In The

Fourteenth Court of Appeals

NO. 14-16-00253-CV

IN THE INTEREST OF A.J.C., A CHILD

**On Appeal from the 314th District Court
Harris County, Texas
Trial Court Cause No. 2015-01333J**

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

Appellant C.D.Y. (“Mother”) appeals the trial court’s final decree terminating her parental rights and appointing the Department of Family and Protective Services (“the Department”) as sole managing conservator of her child A.J.C. (“Anne”).¹ On appeal Mother challenges the legal and factual sufficiency of the evidence to support (1) the predicate grounds under which her parental rights

¹ We use pseudonyms to refer to appellant and her child in this case. *See* Tex. Fam. Code Ann. § 109.002(d) (West, Westlaw through 2015 R.S.); Tex. R. App. P. 9.8.

were terminated, and (2) the finding that termination was in Anne’s best interest. We affirm.²

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Pretrial Removal Affidavit

In January 2014, the Department received a referral alleging neglectful supervision and physical abuse of Anne. According to the referral, Mother got into an altercation with the grandfather J.K. (“Grandfather”), which resulted in Anne getting a “busted lip.” During the subsequent investigation, Mother, father D.J.C. (“Father”), Grandfather, and step-grandmother S.W. (“Step-Grandmother”) all submitted to drug testing.

Grandfather submitted to a urine drug test, which produced negative results. Mother tested positive for marijuana, amphetamines, and methamphetamines following a hair follicle test. Father tested positive for methamphetamines and amphetamines, and Step-Grandmother tested positive for marijuana and methamphetamines.

The family agreed to participate in family-based safety services while Anne was in a parental-child safety placement, and, in March 2014, the case was transferred. At that time, Mother was supposed to admit herself into a rehabilitation center but did not because “she did not have a ride to get there.” Mother signed over power of attorney for Anne to the child’s maternal grandmother (“Grandmother”).

In November 2014, the Department received a second referral alleging neglectful supervision and physical neglect of Anne by Mother, Father,

² The trial court also adjudicated D.J.C. the father of Anne and terminated his parental rights during the same proceeding; however, he has not appealed the termination.

Grandfather, and Step-Grandmother. According to the referral, Anne was living with these four adults, all of whom were using methamphetamine on a daily basis. The referral further alleged that neither parent was working and that there was no food in the home, although food was delivered to the house by a friend. Lastly, it was alleged that the house was dirty and had cockroaches but that Anne appeared healthy.

Catalina Najera, a Department investigator, attempted to visit the residence in question but no one appeared to be at home. Three days later, Najera called the Houston Police Department for a welfare check on the family. At that time, the responding officer noted that although the home was not clean, it was “not hazardous.” The officer further stated there was no evidence of drug use and that Anne appeared healthy.

Najera received permission to enter the home. Mother denied any drug use since the previous case was opened in January 2014. Mother further stated there was plenty of food in the house and that Anne ate twice a day at home. Mother agreed to take a drug test by the next day. Mother stated that instead of completing her last round of family-based safety services, she gave power of attorney over Anne to Grandmother. Grandmother still retained power of attorney; however, Grandmother was in the hospital with cancer and unable to care for Anne.

Najera also spoke with Father, who stated that he did not live at the residence and denied any drug use. Father also agreed to take a drug test. Najera spoke with Anne, who reported that she felt safe at home and that the adults “get along good.” Anne stated that there is food in the home and that her mom cooks. Anne denied any knowledge of drugs but described alcohol as something bad that her grandfather and step-grandmother drink. According to Anne, however, they “act normal” when drinking. Anne further denied that anyone touched her private

parts.

Grandfather denied drug use and submitted to an oral drug test, which was negative. Step-Grandmother also denied drug use and agreed to a drug test the following day.

Mother, Father, and Step-Grandmother submitted to drug screening in December 2014, at Occupational Health Care. Mother's urinalysis test was positive for marijuana. Father's urinalysis test was negative, and Step-Grandmother's test was positive for methamphetamines and marijuana.

Later that month, Najera returned to the home and spoke with all four adults again. Mother admitted to smoking marijuana but claimed she did not use drugs while caring for Anne. Father denied any knowledge of Mother's drug use. Step-Grandmother was "shocked" by the drug test results because she was not using any drugs; but she agreed to move out of the home and have no contact with Anne. Grandfather was approved by the Department to serve as an in-home monitor for Anne and her parents. He signed a safety plan agreement which stated that he would supervise all contact between Anne and her parents.

In early January 2015, Najera spoke with Mother about Grandfather taking an additional drug test because his first one was only an oral swab test. Mother became agitated and yelled at Najera to leave Grandfather out of this matter. The following day Mother called Najera and asked her to come to the home immediately to talk to her and Father. Najera, however, was unavailable to visit that day. On January 22, 2015, and January 27, 2015, Najera attempted to call Mother but got no response.

The Department received a third referral in February 2015, initiating the instant case. The referral again alleged neglectful supervision and physical abuse

of Anne by Mother, Father, Grandfather, and Step-Grandmother. Specifically, the referral alleged the adults were using marijuana, methamphetamines, and synthetic marijuana in Anne's presence. According to the referral, the drugs caused the adults to pass out, leaving Anne unsupervised. Mother was reported as having sunken eyes and holes in her face from picking at her skin, a result of methamphetamine use. The referral further alleged that the adults had parties almost every night but that Anne knew not to touch the drugs in the house. It was also reported that methamphetamine was sold out of the home. The referral again stated that there was no food in the house. The referral stated that Anne would eat at school and that she has clean clothes and is always showered "because she is independent." According to the referral, Mother and other adults have engaged in physical fights in front of Anne. Conditions in the home reportedly had declined since Grandmother was admitted into the hospital four months before.

Sharon Striple, also a Department investigator, attempted to visit the family at the residence, but they were not home. Several days later, Najera attempted to visit the residence, but no one answered the door. That same day, Najera saw Anne at the Shelton Early Childhood Center. Anne showed no signs of abuse and stated that she was fine. Over the next two weeks, Najera attempted to reach Mother on the telephone but received no answer or response.

Shortly thereafter, the Department filed its original petition for termination of the parents' rights to Anne, later amending the petition. The Department alleged termination was warranted with regard to Mother because she:

- knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the children, pursuant to §161.001(b)(1)(D), Texas Family Code;
- engaged in conduct or knowingly placed the child with persons

who engaged in conduct which endangers the physical or emotional well-being of the children, pursuant to §161.001(b)(1)(E), Texas Family Code;

- constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services or an authorized agency for not less than six months and: (1) the Department or authorized agency has made reasonable efforts to return the children to the mother; (2) the mother has not regularly visited or maintained significant contact with the children; and (3) the mother has demonstrated an inability to provide the children with a safe environment, pursuant to §161.001(b)(1)(N), Texas Family Code; and
- failed to comply with the provisions of a court order that specifically established the actions necessary for the mother to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the children, pursuant to §161.001(b)(1)(O), Texas Family Code.

B. Trial

1. Documentary evidence

At trial, before any witness testimony, the Department introduced the following into evidence: Anne's birth certificate; a certificate containing jurisdiction to demonstrate that Anne had not been the subject of a suit affecting the parent-child relationship in which a judgment was entered on or after January 1, 1974; the citations for service on each parent; an interlocutory order adjudicating D.J.C. the father of Anne; a status hearing order; the family service plans from the status hearing; drug tests results for both parents; and previous convictions for both parents.

The evidence showed Mother was charged in 2010 with the offenses of theft and possession of marijuana. The criminal trial court deferred adjudication of guilt and placed Mother on community supervision probation. In October 2012, after Mother violated the conditions of her probation, the criminal court signed a judgment adjudicating Mother guilty of the theft offense and sentenced her to sixteen days in jail. Following this conviction, the criminal court granted the State's motion to dismiss the marijuana charge.

The evidence further showed Mother tested positive for illegal drug use in February 2014, December 2014, April 2015, May 2015, and August 2015.

2. Testimony

At trial, the Department's caseworker, Marilyn Scott, testified that Anne was brought into the Department's custody initially because all of the adults in her home were under the influence of methamphetamines, amphetamines, and marijuana. Additionally, the home was in "deplorable conditions," and there was no food. Scott testified that both Mother and Father tested positive for drug use multiple times following the removal of Anne from the home. Scott stated that Father was currently incarcerated following a conviction for theft. Although both parents were offered family service plans, only Mother engaged in the services. According to Scott, however, Mother failed to complete her service plan because she did not complete her individual counseling for substance abuse, she was not employed or receiving financial aid, and she had not established stable living arrangements.

Scott further testified that the Department investigated several relatives in an effort to find suitable placement for Anne. Initially, a family was willing to take Anne into their home, but the family was ruled out following a positive drug test for marijuana. The Department subsequently approved a great-grandmother for

placement, but she passed away. Following her death, the Department completed an addendum on Anne's aunt E.K. ("Aunt"), who had been living with the great-grandmother. The addendum was not approved, however, because Aunt did not wish to adopt Anne and "had intentions of giving the child back to the mother." According to statements in the addendum, Aunt did not foresee long-term placement because she was already 70 years old and Anne was only six years old. In addition to financial reasons, Aunt was not interested in adoption because she felt Mother did not have too many severe problems and was making progress. Scott testified that the Aunt later told other parties to this case that she would not return Anne to Mother. Based on Aunt's original statements, however, the Department asked that Anne not be placed with Aunt.

Scott testified that the Department was seeking termination of both parents' parental rights based on their history of drug use and criminal activity as well as failure to complete their service plans. According to Scott, Mother was pregnant at the time of trial and had not tested positive for drug use during the pregnancy; however, she had tested positive "for many years" before the pregnancy. Additionally, Father had not maintained a stable residence and had continued to engage in criminal activities.

Scott further testified that Anne was living in a foster home at the time of trial, but it was not a long-term placement. Scott explained, however, that the Department was considering placing Anne with another relative. A cousin of Anne's father recently had come forward and offered to provide Anne with a safe and stable environment, which included a young daughter close in age to Anne. Scott testified that the Department was seeking termination of the parents' parental rights with a potential goal of placing Anne with this relative.

Scott also testified that Mother last tested positive for drug use in August, at low levels. The following month, Mother submitted to a hair follicle test and the results were negative. At the time of trial, Mother had not tested positive for drug use in approximately six months. Scott believed Mother had made significant progress by not testing positive for drug use since September.

Next, child advocate Quana Smith testified at trial. Smith stated that she believed Anne should be placed with Aunt. It was Smith's position, however, that Mother and Father retain possessory conservatorship of Anne, with Aunt maintaining supervision of Anne at all times. Having spoken with Aunt, Smith confirmed that Aunt did not want to adopt Anne. According to Smith, Aunt stated that if Anne were placed with her, she would not return Anne to Mother without going through the court first. Smith further stated that Aunt would be willing to take permanent managing conservatorship and raise Anne until the child reached eighteen years of age, if necessary.

Next, Mother testified on her own behalf. Mother conceded that she had substance-abuse problems when this case was initiated. Mother testified, however, that she had been sober since June 16, 2015, and was working on step two of a twelve-step program. Mother stated that she did not wish to relinquish her rights to Anne but wished for Aunt to be granted permanent managing conservatorship. Mother acknowledged that she understood the Department's concerns based on the "longstanding history" of drug use and criminal activity on her part as well as Father's part.

Finally, Aunt testified. Aunt stated that she was seeking conservatorship of Anne. According to Aunt, she had never said she would give Anne back to Mother without permission. Aunt further testified that she loved Anne and would care for her until Anne turned eighteen, if necessary. Aunt stated she has a good

relationship with Anne and would be able to address all of her needs. Aunt testified that Anne wished to come live with her. Aunt further stated that although she believed Mother had made “great strides,” she still had a long way to go before she would be able to care for Anne.

During Aunt’s testimony, the trial court questioned her about her unwillingness to adopt. Aunt expressed her belief that reunification with Mother was the long-term goal and that adoption would interfere with that plan. The trial court pointed out, however, that Aunt’s desire to serve as the possessory conservator of Anne without adoption was not in Anne’s best interest because it would deny her the benefits that come with having adoptive parents.

Following arguments by counsel, the court determined Mother’s parental rights should be terminated pursuant to the predicate findings under Family Code sections 161.001(b)(1)(E) and (O) and appointed the Department as sole managing conservator. The court approved Anne’s placement in a foster home but noted that the court would not rule out future placement with the cousin or Aunt. On March 15, 2016, the trial court signed a final decree for termination which stated termination of the parental rights was in Anne’s best interest.

II. ANALYSIS

In her first two issues Mother argues the evidence is legally and factually insufficient to support the termination finding under sections 161.001(b)(1)(E) and (O) of the Texas Family Code. Parental rights can be terminated upon proof by clear and convincing evidence that (1) the parent has committed an act prohibited by section 161.001(b)(1) of the Family Code; and (2) termination is in the best interest of the child. Tex. Fam. Code Ann. § 161.001(b)(1), (2) (West, Westlaw through 2015 R.S.); *In re J.O.A.*, 283 S.W.3d 336, 344 (Tex. 2009).

A. Standard of Review

Involuntary termination of parental rights is a serious matter implicating fundamental constitutional rights. *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985); *In re D.R.A.*, 374 S.W.3d 528, 531 (Tex. App.—Houston [14th Dist.] 2012, no pet.). Although parental rights are of constitutional magnitude, they are not absolute. *In re C.H.*, 89 S.W.3d 17, 26 (Tex. 2002) (“Just as it is imperative for courts to recognize the constitutional underpinnings of the parent-child relationship, it is also essential that emotional and physical interests of the child not be sacrificed merely to preserve that right.”).

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 (West 2014); *In re J.F.C.*, 96 S.W.3d at 264. This heightened burden of proof results in a heightened standard of review. *In re C.M.C.*, 273 S.W.3d 862, 873 (Tex. App.—Houston [14th Dist.] 2008, no pet.).

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 at 344; *In re J.F.C.*, 96 S.W.3d at 266; *In re 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. *In re J.O.A.*, 283 S.W.3d at 344; *In re J.F.C.*, 96 S.W.3d at 266.

In reviewing the factual sufficiency of the evidence, we consider and weigh all of the evidence, including disputed or conflicting evidence. *In re J.O.A.*, 283 S.W.3d at 345. “If, in light of the entire record, the disputed evidence that a reasonable 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.” *Id.* 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). The fact finder is the sole arbiter when assessing the credibility and demeanor of witnesses. *Id.* at 109.

B. Predicate Termination Grounds

Under subsection (E), the relevant inquiry is whether evidence exists that the endangerment of the child’s physical and emotional well-being was the direct 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.); *see also In re S.M.L.*, 171 S.W.3d 472, 477 (Tex. App.—Houston [14th Dist.] 2005, no pet.). In this context, “endanger” means “to expose to loss or injury; to jeopardize.” *In re T.N.*, 180 S.W.3d 376, 383 (Tex. App.—Amarillo 2005, no pet.) (quoting *In re M.C.*, 917 S.W.2d 268, 269 (Tex. 1996) (per curiam)). A child is endangered when the environment creates a potential for danger that the parent is aware of but disregards. *In re S.M.L.*, 171 S.W.3d at 477.

Termination under subsection 161.001(b)(1)(E) must be based on more than a single act or omission—the evidence must demonstrate a voluntary, deliberate, and conscious course of conduct by the parent. *In re C.A.B.*, 289 S.W.3d 874, 883 (Tex. App.—Houston [14th Dist.] 2009, no pet.). “Although ‘endanger’ means more than a threat of metaphysical injury or the possible ill effects of a less-than-

ideal environment, it is not necessary that the conduct be directed at the child or that the child actually suffers injury.” *In re T.N.*, 180 S.W.3d at 383; *see also In re J.O.A.*, 283 S.W.3d at 336 (holding that endangering conduct is not limited to actions directed toward the child). Danger to the child’s well-being may be inferred from parental misconduct alone, and courts may look at parental conduct both before and after the child’s birth. *Id.* (“[T]he endangering conduct may include the parent’s actions before the child’s birth, while the parent had custody of older children, including evidence of drug usage.”). The conduct need not occur in the child’s presence, and it may occur “both before and after the child has been removed by the Department.” *Walker v. Tex. Dep’t of Family & Protective Servs.*, 312 S.W.3d 608, 617 (Tex. App.—Houston [1st Dist.] 2009, pet. denied).

The Department contends Mother’s continued drug use both before and after Anne’s removal, as well as Mother’s history of domestic violence and criminal activity, all support a finding of endangerment under subsection E. Mother, on the other hand, asserts the evidence is legally and factually insufficient because she has stopped engaging in conduct that endangered Anne, namely she has stopped using drugs. Mother further contends her ongoing participation in her twelve-step program demonstrates her “strong effort to change her negative behavior.”

As a general rule, subjecting a child to a life of uncertainty and instability endangers the child’s physical and emotional well-being. *See In re J.O.A.*, 283 S.W.3d at 345. Although incarceration alone will not support termination, evidence of criminal conduct, convictions, and imprisonment may support a finding of endangerment under subsection E. *See In re A.R.M.*, No. 14-13-01039-CV, 2014 WL 1390285, at *8 (Tex. App.—Houston [14th Dist.] Apr. 8, 2014, no pet.); *In re C.A.B.*, 289 S.W.3d at 886. Likewise, illegal drug use may support termination under subsection 161.001(b)(1)(E) because “it exposes the child to the possibility

that the parent may be impaired or imprisoned.” *Walker*, 312 S.W.3d at 617. This court has also held that a parent’s decision to engage in illegal drug use during the pendency of a termination suit, when the parent is at risk of losing a child, may support a finding that the parent engaged in conduct that endangered the child’s physical or emotional well-being. *In re A.H.A.*, No. 14-12-00022-CV, 2012 WL 1474414, at *7 (Tex. App.—Houston [14th Dist.] Apr. 26, 2012, no pet.) (mem. op.).

Contrary to appellant’s arguments, the record contains ample evidence of Mother’s history of endangering Anne. Mother was convicted of theft and sentenced to serve time in jail when Anne was an infant. Anne was removed from the home amid repeated allegations of a dirty house, no food, domestic violence, and little to no supervision. Moreover, there is clear evidence that Mother engaged in illegal drug use for many years before Anne’s removal and continued to engage in illegal drug use after the termination suit was initiated.

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(b)(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(b)(1)(E). Accordingly, we conclude the evidence is factually sufficient to support the 161.001(b)(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 finding on subsection O. *See In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). We overrule Mother’s first issue.

C. Best Interest of the Child

In her third issue Mother challenges the legal and factual sufficiency of the evidence to support the trial court's finding that termination of her parental rights is in Anne's best interest. A strong presumption exists that the best interest of the child is served by keeping the child with the child's natural parent, and the burden is on the Department to rebut that presumption. *In re U.P.*, 105 S.W.3d 222, 230 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). Proof of acts or omissions under section 161.001(b)(1) is probative of the issue of the child's best interest. The factors the trier of fact may use to determine the best interest of the child include: (1) the desires of the child; (2) the present and future physical and emotional needs of the child; (3) the present and future emotional and physical danger to the child; (4) the parental abilities of the persons seeking custody; (5) the programs available to assist those persons seeking custody in promoting the best interest of the child; (6) the plans for the child by the individuals or agency seeking custody; (7) the stability of the home or proposed placement; (8) acts or omissions of the parent that may indicate the existing parent-child relationship is not appropriate; and (9) any excuse for the parents' acts or omissions. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976); *In re U.P.*, 105 S.W.3d at 230; *see also* Tex. Fam. Code Ann. § 263.307(b) (West 2014) (listing factors to consider in evaluating parents' willingness and ability to provide the child with a safe environment). A finding in support of "best interest" does not require proof of any unique set of factors, nor does it limit proof to any specific factors. *See Holley*, 544 S.W.2d at 371–72.

We begin with the presumption that Anne's best interest is served by keeping her with her natural parent. *See In re D.R.A.*, 374 S.W.3d 528, 533 (Tex.

App.—Houston [14th Dist.] 2012, no pet.). We also presume that prompt and permanent placement of the child in a safe environment is in the child’s best interest. *See* Tex. Fam. Code Ann. § 263.307(a) (West 2014).

1. Needs of and Danger to the Child

We note that evidence supporting termination under the grounds listed in section 161.001(b)(1) also can be considered in support of a finding that termination is in the child’s best interest. *See In re C.H.*, 89 S.W.3d at 27 (holding the same evidence may be probative of both section 161.001(b)(1) grounds and best interest).

A parent’s drug use supports a finding that termination is in the best interest of the child. *See In re M.R.*, 243 S.W.3d 807, 821 (Tex. App.—Fort Worth 2007, no pet.). The factfinder can give “great weight” to the “significant factor” of drug-related conduct. *In re K.C.*, 219 S.W.3d 924, 927 (Tex. App.—Dallas 2007, no pet.); *see also In re B.G.*, No. 14–14–00729–CV, 2015 WL 393044, at *7 (Tex. App.—Houston [14th Dist.] Jan. 29, 2015, no pet.) (mem. op.) (considering a parent’s criminal and drug histories in affirming the decision that termination was in the best interest of a child). Mother’s longstanding history of illegal drug use evinces a course of conduct that a factfinder reasonably could conclude endangers Anne’s well-being. The record reflects Mother used drugs for many years, including after the instant case was initiated. By Mother’s own admission, she did not become sober until June 2015. The record further shows that Mother has a criminal history. Accordingly, this factor weighs in favor of the trial court’s finding.

2. Stability of the Home and Mother’s Compliance with Court-Ordered Service Plan

In determining the best interest of the child in proceedings for termination of

parental rights, the trial court may properly consider that the parent did not comply with the court-ordered service plan for reunification with the child. *See In re E.C.R.*, 402 S.W.3d 239, 249 (Tex. 2013). The caseworker, Scott, testified that Mother failed to complete her family plan of service successfully. Specifically, Scott testified Mother failed to complete her individual counseling for substance abuse, she was not employed or receiving financial aid, and she had not established stable living arrangements. Mother argues she substantially complied with the service plan, noting that she is continuing her court-required services including individual therapy. This court has held subsection O does not provide an exemption for “substantial compliance.” *In re M.C.G.*, 329 S.W.3d 674, 676 (Tex. App.—Houston [14th Dist.] 2010, pet. denied). Moreover, as Scott testified, Mother had plenty of time in which to complete her services yet failed to do so. With the exception of not testing positive for illegal drugs since August 2015, Mother has done little to comply with her service plan. We conclude this factor weighs in favor of the trial court’s finding.

3. Child’s Desires and Proposed Placement

Aunt testified that Anne expressed a desire to live with her. Counsel for Anne stated on the record that Anne had been communicating with Aunt on the telephone and was anticipating living with her.

The stability of the proposed home environment is an important consideration in determining whether termination of parental rights is in the child’s best interest. *See In re D.M.*, 452 S.W.3d 462, 472 (Tex. App.—San Antonio 2014, no pet.). A child’s need for permanence through the establishment of a “stable, permanent home” has been recognized as the paramount consideration in the best-interest determination. *See In re K.C.*, 219 S.W.3d 924, 931 (Tex. App.—Dallas 2007, no pet.). Therefore, evidence about the present and future placement of the

child is relevant to the best-interest determination. *See In re C.H.*, 89 S.W.3d at 28.

The Department spent considerable time and effort trying to place Anne with a family member. While there is some evidence that Anne wished to live with Aunt, the record is clear that Aunt was of an advanced age and steadfast in her refusal to adopt Anne. Additionally, the record reflects concerns that Aunt would return Anne to Mother without judicial oversight. Moreover, as the trial court pointed out, Aunt's desire to serve as Anne's possessory conservator without adopting the child was not in Anne's best interest because it would deny her the benefits that come with having adoptive parents.

Finally, the Department's inability to place Anne in a permanent, adoptive home by the time of trial is not dispositive of whether termination of Mother's parental rights was in Anne's best interest. Indeed, "the lack of evidence about definitive plans for permanent placement and adoption cannot be the dispositive factor; otherwise, determinations regarding best interest would regularly be subject to reversal on the sole ground that an adoptive family has yet to be located." *In re C.H.*, 89 S.W.3d at 28. The record reflects that although Anne remained in a non-adoptive foster home at the time of trial, the Department's long-term goal is placement with the cousin. This factor weighs in favor of the trial court's finding.

4. Parenting Abilities and Family Support

The factfinder may consider a parent's parenting skills in a best-interest analysis. *See In re C.A.J.*, 122 S.W.3d 888, 893 (Tex. App.—Fort Worth 2003, no pet.). The record is clear that Mother failed to demonstrate an ability to parent Anne. The Department initially removed Anne from her home after repeated allegations of Mother's drug use, domestic violence, and a failure to provide Anne with food. Before the Department filed this case, Mother was offered an opportunity to participate in family-based services but opted to sign over power of

attorney over Anne to Grandmother instead. At the time of trial, although unwilling to relinquish her rights to Anne, Mother once again sought to have a relative care for Anne.

Although a reasonable fact-finder could look at Mother's recent progress with testing negative for illegal drug use and perhaps reach a conclusion that this progress justified the risk of keeping Mother as a parent, we cannot say the trial court acted unreasonably in finding that Anne's best interest lay elsewhere. *In re M.G.D.*, 108 S.W.3d 508, 514 (Tex. App.–Houston [14th Dist.] 2003, pet. denied). It is not our role to reweigh the evidence on appeal.

Applying the applicable *Holley* factors to the evidence, we conclude that legally and factually sufficient evidence supports the trial court's finding that termination of Mother's rights is in Anne's best interest. *See In re S.B.*, 207 S.W.3d 877, 887–88 (Tex. App.–Fort Worth 2006, no pet.) (considering the parent's drug use, inability to provide a stable home, and failure to comply with a family-service plan in holding the evidence supported the best-interest finding). Based on the evidence presented, the trial court reasonably could have formed a firm belief or conviction that terminating Mother's rights was in Anne's best interest so that the child could promptly achieve permanency through adoption. *See In re T.G.R.–M.*, 404 S.W.3d 7, 17 (Tex. App.–Houston [1st Dist.] 2013, no pet.); *In re M.G.D.*, 108 S.W.3d at 513–14. Accordingly, we overrule Mother's third issue.

We affirm the judgment of the trial court.

/s/ Kem Thompson Frost
 Chief Justice

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