Affirmed and Memorandum Opinion filed September 28, 2017.

In The

Fourteenth Court of Appeals

NO. 14-17-00261-CV

IN THE INTEREST OF C.D.G., K.B.G., AND K.M.G., CHILDREN

On Appeal from the 313th District Court
Harris County, Texas
Trial Court Cause No. 2016-00144J

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

Appellant, L.G. (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 children, C.D.G. (Chantal), K.B.G. (Kirk), and K.M.G. (Katie).[1] In five issues Mother challenges the sufficiency of the evidence to support the trial court's findings terminating her parental rights and appointing the Department as managing conservator. We affirm.

[1] We use pseudonyms to refer to appellant, her children, and family members in this case. *See* Tex. Fam. Code Ann. § 109.002(d) (West 2014); Tex. R. App. P. 9.8.

BACKGROUND

A. Pretrial Removal Affidavit

On June 4, 2015, the Department received a referral alleging physical neglect of Chantal, then age 7, and Kirk, then age 2. The referral alleged that Kirk was observed outside by himself at all times of the day while Mother was inside. Kirk would attempt to eat food off the ground outside and was observed with a dirty diaper. Chantal and Kirk were also observed to be dirty and smell bad. The referral indicated a pest inspection was conducted in Mother's apartment which determined the residence was infested with roaches due to the unsanitary condition of the apartment. Mother's residence was noted as a health hazard. The referral stated Mother smoked marijuana in front of Chantal and Kirk. Additionally, it was reported that Mother has a lot of traffic in and out of her home and young adults frequent her home. Mother was cited for a lease violation due to loud music and was overheard saying she did not hear loud music because she was in the house drunk or passed out.

The Department conducted an investigation following the referral. Mother stated she lived alone with her three children, Chantal, Kirk, and Katie, then age 1. During the investigation, Mother stated she had previous involvement with the Department. Mother denied problems with drugs or alcohol. Mother denied current use of marijuana, but admitted to using it in the past. Mother was willing to take a drug test.

Mother stated Father 1 (Hank), Chantal's father, and Father 2 (Chris), Kirk's and Katie's father, were in jail. Hank was in jail for sexual assault of a child and failure to register as a sex offender. Mother stated she would not let Chantal around Hank when he was released from jail.

Mother stated she does not work and she receives public housing and public assistance. Mother's mother (Grandmother) helps pay her bills. Mother stated Chantal is never at home and lives with Mother's grandmother who lives closer to Chantal's school. On weekends and school breaks, Chantal comes to live at Mother's. Mother's neighbors help watch her children. Grandmother and Mother's neighbors also help make sure the children have what they need. Mother stated she does not leave the children outside alone.

Regarding the roaches in her apartment, Mother stated she has used bug spray, but is unable to get rid of them. Mother stated when maintenance inspected her home, it was a mess from a party the night before for her aunt. Mother cleaned the home after maintenance came by and there were more roaches. Mother stated she did not hear any music, but was not drunk or passed out.

On June 8, the Department investigator noted the home was clean, but did observe roaches. Mother said the apartment complex sprayed, but it made things worse. The apartment lease manager told the investigator that a neighbor reported the children were always outside unsupervised. Additionally, the neighbor reported that one of the younger children was outside with a dirty diaper and the neighbor had to spray the child down, but Mother was unaware of that. The neighbor also reported Mother's home smells of marijuana.

On August 3, the Department investigator observed the home to be cluttered with toys and belongings, but not hazardous. No roaches or insects were observed. Mother again stated she had not used marijuana or other drugs and was willing to take a drug test. Katie was observed in only a diaper playing on hot pavement. Mother stated Katie did not like to wear shoes. Katie did not have bruises or marks indicative of abuse and appeared of appropriate height and weight for a child her age.

Mother's urinalysis results were positive for marijuana on August 4. Mother stated the positive test was the result of second hand smoke. Mother stated she had not smoked marijuana in three months. The Department investigator initiated a parental-child safety plan with Mother. The children were placed with a neighbor pursuant to the plan. Subsequently, three of Mother's hair follicle results were positive for drugs.

On December 22, a team meeting was held to achieve a permanency plan for the children. The current caregiver's health had resulted in an inability to care for the children much longer. Additionally, the Department discussed its concerns with Mother that while she had completed some of her services, her drug screenings had been positive.

On January 11, 2016, the Department filed a petition for termination of parental rights. The Department sought termination of Mother's parental rights under section 161.001(b)(1)(D), (E), (N), (O), and (P). The Department also sought termination of Hank's and Chris's parental rights.[2]

B. Trial

1. Documentary Evidence

Prior to receiving any testimony, the Department's exhibits 1 through 23 were offered and admitted without objection. The documentary evidence included Mother's drug test results, a family evaluation by the Children's Crisis Care Center, and Mother's Family Service Plan. The drug test results evidenced:

- Positive urinalysis: August 4, 2015 (marijuana metabolites) and August 11, 2015 (marijuana metabolites);
- Positive hair follicle: August 11, 2015 (marijuana metabolites), October 7, 2015 (cocaine and marijuana metabolite), December

[2] The termination of Hank's and Chris's parental rights is not before us on appeal.

11, 2015 (cocaine), March 15, 2016 (marijuana and marijuana metabolite), June 28, 2016 (benzoylecgonine, cocaine, marijuana, and marijuana metabolite), September 9, 2016 (cocaine), and January 5, 2017 (benzoylecgonine, cocaine, and marijuana);

- Negative urinalysis: October 7, 2015, December 11, 2015, January 21, 2016, February 25, 2016, March 15, 2016, March 29, 2016, April 25, 2016, May 24, 2016, June 22, 2016, June 28, 2016, July 25, 2016, September 9, 2016, and January 5, 2017; and
- Negative hair follicle: January 21, 2016, February 25, 2016, April 25, 2016, May 24, 2016, June 22, 2016, and July 25, 2016.

The family evaluation by the Children's Crisis Care Center showed a prior allegation of neglectful supervision was made to the Department in August 2014. The allegation was that Chantal was unsupervised while playing outside. Ultimately, the case was closed.

The evaluation further showed Mother acknowledged her substance abuse contributed to the children's removal. However, Mother denied the effect of her substance abuse on her ability to parent, her children's daily living, and her ability to provide a safe environment for her children. The evaluation showed Mother began using marijuana at seventeen years old, she smokes three blunts daily, and she spends approximately $15.00 a day on marijuana. During the evaluation, Mother denied using cocaine, but reported using "club drugs," ecstasy, and "popping pills" while at the club. Additionally, Mother reported she was no longer using drugs.

The evaluation also showed that Mother's family is unable to take custody of the children because of criminal history, prior Department involvement, or both.

2. Testimony

At trial, the Department caseworker testified the children originally came into the Department's care because they were left alone, unsupervised, and in dirty

clothing. The Department caseworker stated that Mother's cleanliness issues were resolved. Additionally, Mother had been employed for a year as of March 1, had successfully completed her individual therapy and parenting classes, and had recently gone through a psychiatric evaluation and was compliant with her medications in December and January. Further, Mother visited the children every two weeks and occasionally provided for them.

However, Mother failed to complete her service plan, including the substance abuse counseling, 12-step program, and NA/AA meetings. In January 2017, the Department requested the trial court extend the case to give Mother additional time to complete her service plan. Mother had not completed her service plan at the time of trial in March 2017. The Department caseworker testified Mother tested positive for cocaine twice in January. Additionally, Mother's substance abuse counselor ordered an unsuccessful discharge because Mother denied using drugs when the counselor discussed her positive drug tests. Mother had been discharged in February and not sent to another substance abuse counselor.

Until June 2016, the Department's goal was reunification. In June, the goal changed to unrelated adoption with a concurrent goal of reunification. However, at the time of trial the Department felt termination was in the best interest of the children because Mother could not control her substance abuse issue. The Department caseworker testified Mother tested positive for drugs at least eight times since the Department became involved with Mother. She felt Mother's drug use endangered the children.

The children are presently in two separate foster homes. The Department had conducted home studies with various relatives regarding possible placements. None of the home studies were successful. Chantal needs special attention which the current placement is able to provide. Further, the Department has identified a

potential adoptive placement for Chantal with whom Chantal has a relationship. Kirk and Katie are being well cared for in their current placement, where they have been over a year, with caregivers who want to adopt them.

The child advocate also testified that it was in the best interest of the children for termination due to Mother's drug use and romantic relationships. The child advocate stated this decision was difficult to make because Mother loves the children. However, Mother had been unable to complete her services. Further, she had concerns about Mother's drug use and that a recent boyfriend of Mother's had gone to jail for sexual abuse of a child.

The child advocate testified that the children need a stable environment all of the time. She stated Kirk and Katie are in a placement where they are so loved and they are different children physically and emotionally. Kirk and Katie are comfortable in the placement. The child advocate testified that during visits with Mother, Kirk and Katie are not cooperative and "what they've learned goes out the door."

The child advocate testified that while Chantal's current placement is not adoptive, Chantal's prior foster home is adoptive. She thought Chantal would do well in that home. She testified that although Chantal was originally in trouble at school, she is doing great in school now.

Mother's first child, Chantal, was born when Mother was 15. Mother was 25 at the time of trial. Mother believes she has matured since that time and is ready to parent. At trial, Mother testified that she began using drugs at seventeen, but does not currently use drugs. Mother did not know why the drugs kept showing in her system and believed the tests were wrong. Mother testified if she could change things, she would not do drugs and be a better mother to her children. Mother wanted additional time to complete the drug services so her children could be returned.

Mother stated Hank was not involved in raising Chantal and she was unaware of his criminal history. Mother was aware of Chris's criminal history, including four arrests in a six month period. Mother agreed that it was not safe for the children to be in a continuing relationship with a man who was habitually arrested. However, Mother continued her relationship with Chris during that period of time.

Mother testified she has held the same job and lived in the same house during the entire case. Mother also testified she has a lot of family support. Mother testified if the children were returned they would live with her in public housing.

Following the arguments of counsel, the trial court found that clear and convincing evidence established it was in the best interest of the children that Mother's and Fathers' parental rights were terminated. Mother's parental rights were terminated under Family Code sections 161.001(b)(1)(D), (E), and (O). On March 21, 2017, the trial court signed a final decree for termination memorializing its findings. Additionally, the Department was appointed as the children's sole managing conservator.

ANALYSIS

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 Supp. 2016); *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 parental 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. *In re J.O.A.*, 283 S.W.3d at 344; *In re J.F.C.*, 96 S.W.3d at 266. We assume that the fact finder resolved disputed facts in favor of its finding if a reasonable fact finder could do so, and we disregard all evidence that 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

In her first three issues, Mother challenges the legal and factual sufficiency of the evidence supporting the trial court's judgment terminating her parental rights under sections 161.001(b)(1)(D), (E), and (O) of the Texas Family Code. Only one predicate finding under section 161.001(b)(1) is necessary to support a judgment of termination when there is also a finding that termination is in the child's best interest. *See In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). We first evaluate whether termination was proper under section 161.001(b)(1)(E).

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).

Mother contends the Department failed to prove termination was permissible under subsection E. She states her testimony at trial was that she did not use drugs. Additionally, Mother has completed her individual therapy and parenting classes, held a job for a year, and visits the children every two weeks. The Department responds that while Mother testified she was not using drugs, her drug test results continued to be positive. Further, the Department contends Mother failed to complete her substance abuse treatment and has not addressed a primary reason for Department intervention. Accordingly, the Department contends the evidence supports a finding of endangerment under subsection E.

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.) (mem. op.); *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.).

The record contains evidence that Mother tested positive for drugs after the removal and during the pendency of the termination suit. Further, prior to trial, Mother participated in an evaluation at the Children's Crisis Care Center. The evaluation details Mother's prior Department history and drug use history, including Mother's reported use of marijuana through June 2015 and club drugs through December 2015. While Mother testified at trial that she no longer used drugs, the fact finder is the sole arbiter of credibility.

The record also contains evidence that Mother did not complete her substance abuse treatment. Additionally, the Children's Crisis Care Center evaluation contains clinical impressions, including concerns about Mother's ability to understand the impact of unhealthy relationships and criminal behaviors on the children or how these behaviors create an environment of chaos and endanger the children.

Based on the record before us, we conclude a reasonable fact finder could have formed a firm belief or conviction that Mother engaged in conduct that endangered the physical or emotional well-being of the children. *See*, *e.g.*, *In re A.R.M*, 2014 WL 1390285, at *7–9; *In re C.A.B.*, 289 S.W.3d at 886–87. Considered

in the light most favorable to the trial court's finding, the evidence is 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 legally and factually sufficient to support the section 161.001(b)(1)(E) finding. We overrule Mother's second issue.

Having concluded that the evidence is legally and factually sufficient to support the trial court's finding of endangerment under section 161.001(b)(1)(E) of the Texas Family Code, we need not discuss Mother's first and third issues challenging the court's findings under section 161.001(b)(1)(D) and (O). *See In re A.V.*, 113 S.W.3d at 362.

C. Best Interest of the Children

In her fourth issue, Mother asserts that the evidence is legally and factually insufficient to support the trial court's best-interest finding. 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). There is a strong presumption that the best interest of a child is served by keeping the child with his or her natural parent. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006); *In re D.R.A.*, 374 S.W.3d at 533. Prompt and 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) (West Supp. 2016).

Courts may consider the following nonexclusive factors in reviewing the sufficiency of the evidence to support the best interest finding, including: the desires of the child; the present and future physical and emotional needs of the child; the present and future emotional and physical danger to the child; 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 which 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, 372 (Tex. 1976); *see also* Tex. Fam. Code Ann. § 263.307(b) (West Supp. 2016) (listing factors to consider in evaluating parents' willingness and ability to provide the child with a safe environment). This list is not exhaustive, and evidence is not required on all of the factors to support a finding terminating parental rights. *Id.*; *In re D.R.A.*, 374 S.W.3d at 533.

1. Present and Future Physical and Emotional Danger to the Children

The Texas Supreme Court has recognized that a parent's use of narcotics and its effect on her ability to parent may qualify as an endangering course of conduct. *In re J.O.A.*, 283 S.W.3d at 345; *see also Edwards v. Tex. Dep't of Protective Servs.*, 946 S.W.2d 130, 138 (Tex. App.—El Paso 1997, no writ) (stating a parent's drug use is a condition that can endanger a child's physical or emotional well-being and indicate instability in home environment). A parent's drug use also supports a finding that termination of parental rights is in the best interest of the children. *See In re M.R.*, 243 S.W.3d 807, 821 (Tex. App.—Fort Worth 2007, no pet.); *see also In re M.S.L.*, No. 14–14–00382–CV, 2014 WL 5148157, at *6 (Tex. App.—Houston [14th Dist.] Oct. 14, 2014, no. pet.) (mem. op.). 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 J.N.H.*, No. 02–11–00075–CV, 2011 WL 5607614, at *8 (Tex. App.—Fort Worth Nov. 17, 2011, no pet.) (mem. op.) (considering a parent's criminal and drug histories in affirming a trial court's decision that termination was in the best interest of the child).

Mother's positive drug tests are evidence that she continued to use drugs in the face of a court order conditioning her reunification with her children on her ability to remain drug-free. 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 and that termination is in the best interest of the children. *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).

2. Non-Compliance with Services

In determining the best interest of the children 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 children. *See In re E.C.R.*, 402 S.W.3d at 249 ("Many of the reasons supporting termination under subsection O also support the trial court's best interest finding."); *see also In re E.A.F.*, 424 S.W.3d 742, 752 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (considering the failure to participate in services required for reunification in reviewing the best-interest determination).

Mother's family service plan was admitted into evidence. The service plan required Mother to complete the following tasks and services related to substance abuse: participate in random drug testing, show progress by testing negative for drugs, and participate in and complete a substance abuse assessment and follow all recommendations.

The evidence established that Mother tested positive for drugs on eight occasions after the referral in June 2015. Mother tested positive for benzoylecgonine, cocaine, and marijuana as recently as January 2017. Further, the Department caseworker testified that Mother failed to complete her substance abuse counseling and a 12-step program, along with the NA/AA meetings. Additionally,

the case was originally set for trial in January 2017. The Department requested an extension to allow Mother additional time to complete her service plan. However, Mother had not completed her service plan at the time of trial in March 2017. Mother agreed the failure to complete her service plan was likely due to her failure to start completing services until September 2016, almost a year and a half after the removal.

The evidence of Mother's failure to make use of the substance abuse services offered by the Department supports the trial court's best-interest finding. The willingness and ability of the children's family to seek out and complete counseling services and effect positive changes should be considered in evaluating the children's best interest. *See* Tex. Fam. Code Ann. § 263.307(b)(10), (11). Although the Mother was provided an opportunity to address her drug use through her family service plan, she failed to do so. The trial court could infer that Mother's failure to address her involvement with illegal drugs would lead to continued drug use. *See In re J.D.*, 436 S.W.3d 105, 118 (Tex. App.–Houston [14th Dist.] 2014, no pet.) (stating a fact finder may infer that past conduct endangering the well-being of a child may recur in the future if the child is returned to the parent).

3. Children's Desires, Needs, and Proposed Placement

When a child is too young to express her desires, the factfinder may consider that the child has bonded with the foster family, is well cared for by them, and has spent minimal time with a parent. *In re J.D.*, 436 S.W.3d at 118.

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 K.C.*, 219 S.W.3d at 931. Therefore, evidence about the present

and future placement of the child is relevant to the best-interest determination. *See C.H.*, 89 S.W.3d at 28.

At the time of trial, Kirk and Katie were in an adoptive placement, and an adoptive placement had been identified for Chantal. The child advocate testified that all three children were currently doing well in their placements. Additionally, the Department caseworker testified that the proposed adoptive placements can meet the children's physical and emotional needs. The Department had worked to find a relative placement for all three children, but had been unable to identify an approved relative placement.

Mother contends termination is not in the children's best interest because Chantal is not currently in an adoptive placement. The Department responds that an adoptive placement has been identified for Chantal and the Department was working on moving her into that placement. While plans for adoption are relevant, evidence about definitive plans are not dispositive in a parental termination case filed by the State. *In re C.H.*, 89 S.W.3d at 28.

4. Summary

In sum, the record contains sufficient evidence to support the best-interest finding based on Mother's failure to complete her court-ordered services and continued drug use, even while these proceedings were pending. It was within the trial court's discretion to determine the weight and credibility of the Mother's testimony. *In re K.A.S.*, 131 S.W.3d 215, 229–30 (Tex. App.—Fort Worth 2004, pet. denied). The factfinder resolved all credibility issues and we may not disturb that determination. *See In re H.R.M.*, 209 S.W.3d at 108; *In re L.M.I.*, 119 S.W.3d 707, 712 (Tex. 2003).

Viewing all the evidence in the light most favorable to the judgment, we

conclude that a factfinder could have formed a firm belief or conviction that termination of Mother's parental rights is in the children's best interest. *See J.F.C.*, 96 S.W.3d at 265–66. In light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the best-interest finding is not so significant that a fact finder could not reasonably have formed a firm belief or conviction that termination of the Mother's parental rights is in the children's best interest. *See In re H.R.M.*, 209 S.W.3d at 108. After considering the relevant factors under the appropriate standards of review, we hold the evidence is legally and factually sufficient to support the trial court's finding that termination of the parent-child relationship is in the children's best interest. We therefore overrule Mother's fourth issue.

D. Conservatorship

In her fifth issue, Mother contends the trial court erred in naming the Department as managing conservator of the children. We review a trial court's appointment of a non-parent as sole managing conservator for abuse of discretion and reverse only if we determine the appointment is arbitrary or unreasonable. *In re J.A.J.*, 243 S.W.3d 611, 616 (Tex. 2007).

Mother contends a parent shall be named a child's managing conservator unless the court finds that such appointment is not in the best interest of the child because it would "significantly impair the child's physical health or emotional development." Tex. Fam. Code Ann. § 153.131(a) (West 2014). However, when the parents' rights are terminated, as here, section 161.207 controls the appointment of a managing conservator. *In Interest M.M.M.*, No. 01-16-00998-CV, 2017 WL 2645435, at *17 (Tex. App.—Houston [1st Dist.] June 16, 2017, no pet.) (mem. op.); *see also In re A.W.B.*, No. 14-11-00926-CV, 2012 WL 1048640, at *7 (Tex. App.—Houston [14th Dist.] Mar. 27, 2012, no pet.) (mem. op.). Section 161.207 states, "[i]f

the court terminates the parent-child relationship with respect to both parents or to the only living parent, the court shall appoint a suitable, competent adult, the Department of Family and Protective Services, or a licensed child-placing agency as managing conservator of the child." Tex. Fam. Code § 161.207(a) (West Supp. 2016). Having terminated both parents' rights, the trial court was required to appoint the Department, or another permissible adult or agency as the children's managing conservator. *See L.G.R.*, 498 S.W.3d 195, 207 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). The appointment may be considered a "consequence of the termination." *Id.; In re A.W.B.*, 2012 WL 1048640, at *7.

We have concluded the evidence supporting Mother's termination was legally and factually sufficient. Accordingly, section 161.207 controls. We conclude the trial court did not abuse its discretion in appointing the Department as sole managing conservator of the children. *See In re L.G.R.*, 498 S.W.3d at 207. We overrule Mother's fifth issue.

CONCLUSION

The trial court's judgment is affirmed.

/s/ John Donovan
Justice

Panel consists of Justices Jamison, Busby, and Donovan.