

Affirmed and Memorandum Opinion filed July 17, 2018.



In The

Fourteenth Court of Appeals

NO. 14-18-00050-CV

IN THE INTEREST OF D.E.W. A/K/A D.W., A CHILD

**On Appeal from the 309th District Court
Harris County, Texas
Trial Court Cause No. 2016-54618**

NO. 14-18-00101-CV

IN THE INTEREST OF J.D.W., A CHILD

**On Appeal from the 309th District Court
Harris County, Texas
Trial Court Cause No. 2010-05519**

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

These appeals arise from judgments terminating the parental rights of D.W. (Mother) and appointing the Department of Family and Protective Services sole

managing conservator of J.D.W. (Julia) and D.E.W. (Debby).¹ On appeal, Mother challenges the legal and factual sufficiency of the evidence to support the (1) predicate grounds under which her parental rights were terminated, (2) finding that termination was in the children's best interest, and (3) appointment of the Department as managing conservator. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Procedural History

In August 2016, the Department filed an original petition for conservatorship and termination related to Debby, who was two years old. The Department also filed an original motion to modify conservatorship² and for termination related to Julia, who was seven years old.³ The Department was appointed as temporary managing conservator of Julia and Debby during the pendency of the proceedings, initially placing them with Grandmother. The trial began as to both Julia and Debby in September 2017.

II. Trial Proceedings

A. Evidence about Mother

Mother testified the Department became involved with her family in 2015 because she admitted to using Xanax. Mother indicated the Xanax was prescribed by a doctor for anxiety related to being a single mother. Mother was also using

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

² The modification requested was of a conservatorship finding in an order, dated April 11, 2012, confirming a non-agreed child support review order between Mother and J.O.M., who was later determined not to be the biological father of Julia and nonsuited September 1, 2016.

³ During the pendency of the suit, in February 2017, Mother gave birth to a third child J.J.L. (Julian). Mother's parental rights as to Julian are not at issue in this appeal. Any reference to children herein refers to Julia and Debby.

marijuana due to anxiety during the Department's involvement. She stated she was only smoking marijuana at work from August to December 2015. Mother believed her positive drug test result for cocaine in December 2015 was due to a marijuana joint being laced.

Mother originally stated she never had physical fights with Grandmother. However, later she admitted that she had been in physical fights with Grandmother and Julia would try to break up the fights. Mother testified she realized when she sobered up she had not been doing the right thing. She stated there were times before sobering up when she would not come home. Mother testified that she had 10 months of sobriety in November of 2017.

Mother testified regarding her criminal history. In April 2008, Mother was convicted of driving with an invalid license and was in jail for two days. Three months later, in July 2008, Mother was convicted of giving a false report to a police officer and spent three days in jail. Julia was born in November 2008. In August 2009, Mother was convicted of aggravated assault with a deadly weapon and confined to jail for seven months. During that time, Grandmother kept Julia. In February 2010, Mother was convicted of a traffic offense. In August 2010, Mother was convicted of driving with an invalid license and went to jail for five days. Four months later, Mother was convicted of failing to identify as a fugitive and spent four days in jail. In April 2012, Mother was convicted of another traffic offense. In December 2012, Mother was convicted of possession of a controlled substance and confined in jail for 180 days. Upon release, Mother was convicted of a traffic offense and obstruction of justice. Mother was charged with possession of a controlled substance in May 2013. The charge was dismissed. Mother could not recall what the charge was for because her "record is long." While pregnant with Debby, in February 2014, Mother was convicted of possession of a controlled substance and was in jail

for six days. Mother also was convicted of theft of property and confined to jail for 30 days. After her release, Mother was convicted of a traffic offense. Two months later, Mother was convicted of theft of property and served 30 days in jail. Debby was born in August 2014. In August 2015, Mother was convicted of theft of property and served 180 days in jail. In December 2015, Mother was incarcerated for violating her probation by smoking marijuana. Mother was convicted of a traffic offense in March 2016. In June 2016, Mother was in jail for 30 days for theft. After her release, she tested positive for marijuana. In October 2016, Mother was convicted of theft. At the time of trial, in October 2017, Mother had pending charges for unauthorized use of a motor vehicle.

While the children were placed with Grandmother, Mother removed Debby and Julia and fled with them. The Department discovered that Mother was living in Grandmother's home and deployed a caseworker to remove the girls from placement with Grandmother. When the caseworker arrived, Mother took both children through a bedroom window, put them into a vehicle, and drove off. The vehicle was on loan to her from a friend. Mother testified she took both girls to eat and was only gone two to three hours. However, the caseworker testified Mother was gone with the children about eight hours. As a result of this event, the trial court suspended Mother's visitation.

Mother testified she was hospitalized between October 19 and October 22, 2017, while the trial was ongoing. She indicated she was hospitalized for cough, congestion, and depression. Mother also stated she had a panic attack. Mother called an ambulance due to her symptoms. Mother was placed in the "psych[] ward." Mother testified she should not have been placed in the psych ward because nothing was wrong with her. Mother stated she was released from the hospital after telling the psychiatrist she did not belong there and she simply needed treatment for

congestion, cough, and flu.

Mother stated she took responsibility for her children coming into the Department's care. Mother currently is living in an apartment and has a job. She testified she is able to provide for herself and maintain housing. Mother stated she has learned to ask for help when needed. Mother has a car; however, her license is suspended "[b]ecause I have a DWI that I have to pay off and some tickets." Mother was aware that driving without a license is a crime which could result in jail time. Mother had stopped taking certain medications that had been prescribed to her, including Xanax and Prozac, and intended to consult her doctor about voluntarily discontinuing her medications.

The caseworker stated that Mother consistently had provided contradictory information while working her services.

B. Evidence about Julia and Debby

The children have been in foster care since February 11, 2017. The caseworker testified they are now in a safe and stable environment. The girls' therapist testified the girls' behavior initially was extreme, and included startle reactions, sexually acting out, and not eating.

Julia has extreme anxiety and food issues. Julia would stop mid-meal to weigh herself and not eat the rest of the day if she thought she weighed too much. She also would go into a rage when presented food she did not want to eat. Now, Julia is starting to try more foods and is doing much better. Additionally, Julia has become more outgoing.

Julia separated Mother and Grandmother when they fought. She watched Mother and Grandmother hit Debby multiple times. Julia further reported that Mother and Grandmother "used to torture me." When Julia first entered her current

placement, she instructed Debby and would step in when the foster mother tried to manage a situation. Julia now trusts the foster parents and is becoming more of a child. Julia had been diagnosed with adjustment disorder.

Debby was nonverbal when she came into care and showed signs of trauma. Debby had tantrums, which involved screaming, self-harm, and throwing things. Debby could not be consoled and would not allow anyone to comfort her. The therapist stated these tantrums are becoming less frequent. Debby also has been diagnosed with adjustment disorder.

Mother has not provided support for the children while they have been in the Department's care; however, she was not allowed to provide gifts or clothes to the children due to court order. The caseworker testified that she did not believe Mother would be able to provide a safe and stable environment for the children. The therapist indicated the current caregivers are meeting the girls' physical and emotional needs. Julia and Debby are attached to their current caregivers who hope to adopt them. The therapist opined that it was not in the best interest of Julia or Debby to be reunited with Mother.

C. Trial Court Findings

On January 4, 2018, the trial court signed a decree terminating Mother's parental rights and appointing the Department sole managing conservator of Julia.⁴ On January 8, 2018, the trial court signed a decree terminating Mother's parental rights and appointing the Department sole managing conservator of Debby.⁵ With respect to both Julia and Debby, the trial court found Mother engaged in conduct described in subsections (D), (E), and (O) of section 161.001(b)(1) of the Family

⁴ The trial court also terminated the parental rights of an unknown father.

⁵ The trial court also terminated the parental rights of an unknown father.

Code. The court additionally found termination of Mother’s parental rights was in the best interest of Julia and Debby. These appeals followed.

ANALYSIS

I. Burden of proof and standard of review

Parental rights can be terminated upon clear and convincing evidence that (1) the parent has committed an act described in section 161.001(b)(1) of the Family Code and (2) termination is in the best interest of the children. Tex. Fam. Code § 161.001(b)(1), (2); *In re J.O.A.*, 283 S.W.3d 336, 344 (Tex. 2009).

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. *In re C.H.*, 89 S.W.3d 17, 26 (Tex. 2002). The children’s emotional and physical interests must not be sacrificed merely to preserve the parent’s rights. *Id.*

Due to the severity and permanency of the termination of parental rights, the burden of proof is heightened to clear and convincing evidence. *See Tex. Fam. Code* § 161.001; *In re J.F.C.*, 96 S.W.3d 256, 263 (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 § 101.007; *accord 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 S.R.*, 452 S.W.3d at 358.

In reviewing the legal sufficiency of the evidence in a termination case, we must consider all of 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 the evidence, including disputed or conflicting evidence. *See 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.” *In re 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 termination grounds

The trial court made predicate termination findings as to both Julia and Debby under subsections (D), (E), and (O) of section 161.001(b)(1). 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 children’s best interest. *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). We begin by addressing the trial court’s finding under subsection (E).

A finding of endangerment under subsection (E) requires clear and convincing

evidence that the 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 § 161.001(b)(1)(E). “Conduct” under subsection (E) includes acts, omissions, or failures to act. *In re A.L.H.*, 515 S.W.3d 60, 91 (Tex. App.—Houston [14th Dist.] 2017, pet. denied). 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.* While endangerment often involves physical endangerment, the statute does not require that conduct be directed at the children or that the children actually suffer injury; rather, the specific danger to the children’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, 533–34 (Tex. 1987); *In re S.R.*, 452 S.W.3d at 360. As a general rule, subjecting children to a life of uncertainty and instability endangers the children’s physical and emotional well-being. *See In re C.J.S.*, 383 S.W.3d 682, 689 (Tex. App.—Houston [14th Dist.] 2012, no pet.). In evaluating endangerment under subsection (E), courts may consider conduct both before and after the Department removed the children from the home. *See Avery v. State*, 963 S.W.2d 550, 553 (Tex. App.—Houston [1st Dist.] 1997, no writ) (considering persistence of endangering conduct up to time of trial); *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).

Mother contends that the evidence is insufficient to establish that she endangered Julia and Debby. Mother contends no criminal violations have reoccurred since the pendency of the case and there is no continuing course of criminal conduct. Mother further states that her incarceration during the case was related to a probation violation and did not endanger the children because they were

not in her care. The Department responds that Mother's history of criminal conduct and imprisonment during the children's lives subjected them to instability. The Department further states that the trial court could have concluded that Julia's descriptions of abuse suffered at the hand of Mother were sufficient to establish endangerment.

Evidence of criminal conduct, convictions, and imprisonment may support a finding of endangerment under subsection (E). *See In re A.R.M.*, 2014 WL 1390285, at *8; *In re C.A.B.*, 289 S.W.3d 874, 886 (Tex. App.—Houston [14th Dist.] 2009, no pet.). Imprisonment alone does not constitute an endangering course of conduct but is properly considered with respect to endangerment. *Boyd*, 727 S.W.2d at 533–34. Further, routinely subjecting children to the probability that they will be left alone because the parent is in jail endangers the children's physical and emotional well-being. *In re S.M.*, 389 S.W.3d 483, 492 (Tex. App.—El Paso 2012, no pet.).

The evidence at trial was that Mother had been incarcerated for various periods of time over nine years. Mother testified she was incarcerated for over 22 months during the first seven years of Julia's life. Prior to the Department's involvement, the children would stay with Grandmother while Mother was incarcerated. Contrary to Mother's contention, the evidence shows Mother continued to engage in criminal conduct during the pendency of the case, had pending criminal charges during the time of trial, and was continuing to drive without a valid license, for which she had previously been incarcerated. Further, during the pendency of this matter, Mother took the children through a bedroom window to avoid Department personnel.

The abusive or violent conduct of a parent can produce a home environment that endangers a child's well-being. *In re J.I.T.P.*, 99 S.W.3d 841 (Tex. App.—Houston [14th Dist.] 2003, no pet.). Evidence was offered that Julia reported Mother

abused her and Debby. Additionally, Julia suffered from severe anxiety and nightmares and struggled with food. While Mother denied abusing the children, Mother did admit to physical fights with Grandmother in the presence of the girls. Further, Mother stated at times Julia would try to break up fights between her and Grandmother. It was within the purview of the trial court to determine the credibility of the testimony. *See In re K.A.S.*, 131 S.W.3d 215, 229 (Tex. App.—Fort Worth 2004, pet. denied).

The trial court could have found that Mother's actions, which lead to repeated incarcerations, before and during the case, created uncertainty and instability in the girls' lives. Additionally, the trial court could have found that physical fighting between Mother and Grandmother in the home and the abuse reported by Julia supported a finding of endangerment. *See In re C.A.B.*, 289 S.W.3d at 886–87.

Reviewing all the evidence in the light most favorable to the termination findings under subsection (E), we conclude that a reasonable fact finder could have formed a firm belief or conviction as to the truth of the finding that Mother's conduct endangered Julia and Debby. *In re J.O.A.*, 283 S.W.3d at 344. Having reviewed the entire record, we conclude the disputed evidence is not so significant that the trial court, as fact finder, could not have formed a firm belief or conviction that Mother's conduct endangered Julia and Debby. *In re J.F.C.*, 96 S.W.3d at 266. We conclude the evidence is legally and factually sufficient to support the predicate termination finding under subsection (E).

Having concluded the evidence is legally and factually sufficient to support the trial court's finding under subsection (E), we need not review the sufficiency of the evidence to support the subsection (D) and (O) findings. *See In re A.V.*, 113 S.W.3d at 362. We overrule Mother's first, second, and third issues.

III. Best interest

Termination must be in the child's best interest. Tex. Fam. Code § 161.001(b)(2). There is a strong presumption that the best interest of a child is served by keeping the child with the child's parent. *Id.* § 153.131(b); *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam). Prompt, permanent placement of the child in a safe environment is presumed to be in the child's best interest. *See* Tex. Fam. Code § 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); *see also* Tex. Fam. Code § 263.307(b) (listing factors to consider in evaluating parent's willingness and ability to provide the child with a safe environment). 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.).

Mother contends the evidence does not support the finding that termination of her parental rights was in the best interest of Julia and Debby. The Department responds that the best interest finding is supported by the evidence.

1. The physical and emotional needs of the children now and in the future

Mother contends she has a strong bond with the children and complete separation of Mother from the children is not in their best interest. The Department responds that the evidence does not show a strong bond, which weighs against the best interest determination. The Department further contends that Julia and Debby have significant needs as a result of time spent in Mother's care.

As discussed herein, Mother has been imprisoned at various times since Julia and Debby were born. Further, there is evidence in the record that Julia entered her current placement with severe anxiety and nightmares and Debby's actions reflected a "great deal of trauma." The girls' therapist testified that they would need continued therapy on and off for the remainder of their lives.

Both girls had been diagnosed with adjustment disorder. The therapist opined that reintroducing the girls to Mother would re-traumatize them and cause regressive emotions and behaviors for both girls. The therapist stated the current caregivers were meeting the girls' physical and emotional needs and would be able to address their specific issues that arise now and in the future.

2. The emotional and physical danger to the children now and in the future

The evidence supporting termination under one of the grounds listed in section 161.001(b)(1) can also be considered in support of a finding that termination is in the best interest of the child. *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 ability to provide a child with a safe environment is a primary consideration in determining the child's best interest. *In re A.C.*, 394 S.W.3d 633, 642 (Tex. App.—Houston [1st Dist.] 2012, no pet.); *see also* Tex. Fam. Code §

263.307(b)(7), (12). The fact finder may infer from past conduct endangering the child's well-being that similar conduct will recur if the child is returned to the parent. *See In re M.R.J.M.*, 280 S.W.3d 494, 502 (Tex. App.—Fort Worth 2009, no pet.).

The evidence offered at trial included Julia's reports of abuse suffered at the hands of Mother. Further, there was evidence of Mother's history of committing criminal acts and incarceration from 2008 to the time of trial. While Mother disputed the evidence that she abused her children and indicated she had changed, the fact finder had discretion to determine the weight and credibility of Mother's testimony. *See In re K.A.S.*, 131 S.W.3d at 229–30. We may not disturb the fact finder's resolution of credibility issues. *See In re H.R.M.*, 209 S.W.3d at 108; *In re L.M.I.*, 119 S.W.3d at 712.

3. The parental abilities of the persons seeking custody, the plans for the child by the individuals or agency seeking custody, and the stability of the home or proposed placement

Mother contends she has demonstrated a willingness and ability to provide the children permanency. Mother further contends she has a family support system to help her care for the children.

These factors compare the Department's plans and proposed placement of the children with the plans and home of the parents seeking to avoid termination. *See In re D.R.A.*, 374 S.W.3d at 535. We may consider a parent's past performance in evaluating their fitness to provide for the children and the trial court's determination that termination would be in the children's best interest. *See In re C.H.*, 89 S.W.3d at 28; *see also* Tex. Fam. Code § 263.307(b)(12). Although evidence of past misconduct or neglect alone may not be sufficient to show present unfitness, a fact finder may measure a parent's future conduct by her past conduct and determine that it is in the children's best interest to terminate her parental rights. *See In re A.N.D.*, No. 02-12-00394-CV, 2013 WL 362753, at *2 (Tex. App.—Fort Worth Jan. 31,

2013, no pet.) (mem. op.).

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 J.D.*, 436 S.W.3d 105, 119–20 (Tex. App.—Houston [14th Dist.] 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 a best-interest determination. *Id.* (“Stability and permanence are paramount in the upbringing of children.”). Therefore, evidence about the present and future placement of the child is relevant to the fact finder's best interest determination. *See In re C.H.*, 89 S.W.3d at 28.

Mother testified that she had a home for the children to return to and stable income which enabled her to care for the children. However, the Department caseworker testified that Mother had not shown a stable home or income as required by her service plan. The caseworker testified that Mother made inconsistent reports about her residence during the case. The trial court could have reasonably concluded that Mother's instability, including lack of a stable home and criminal history, supported a conclusion that termination was in the best interest of the children. *See In re S.R.*, 452 S.W.3d at 368.

Further, the evidence presented at trial reflects that Julia's and Debby's current placement is stable and meeting their needs. While both girls have a need for continued therapy to work through issues, the caseworker and therapist testified that they were progressing in the current placement. Additionally, the current caregivers hope to adopt Julia and Debby.

In summary, the record contains sufficient evidence to support the best-interest findings based on Mother's criminal history, the reported abuse of the girls, the stability of Julia's and Debby's current placement, and the placement meeting

Julia’s and Debby’s emotional and physical needs. 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 Julia’s and Debby’s best interest. We overrule Mother’s fourth issue.

IV. Conservatorship

In her fifth issue, Mother contends the trial court erred in naming the Department as managing conservator of Julia and Debby. 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).

A parent shall be named a child’s managing conservator unless, as relevant here, the court finds that such appointment would significantly impair the child’s physical health or emotional development. *See* Tex. Fam. Code § 153.131(a). The trial court made the section 153.131(a) finding;⁶ however, when the parents’ rights are terminated, as here, section 161.207 controls the appointment of a managing conservator. *In re 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.). 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) (emphasis added). Having terminated Mother’s parental rights, the trial court was required to appoint the Department or another permissible adult or agency as Julia’s

⁶ The trial court also found that appointing the Department as Julia’s and Debby’s sole managing conservator was in their best interest.

and Debby’s managing conservator. *See In re 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.*

We have concluded the evidence supporting Mother’s termination was legally and factually sufficient under section 161.001(b). Accordingly, section 161.207 controls. We conclude the trial court did not abuse its discretion in appointing the Department as sole managing conservator of Julia and Debby. *See In re L.G.R.*, 498 S.W.3d at 207. We overrule Mother’s fifth issue.

CONCLUSION

Having overruled Mother’s issues presented on appeal, we affirm the trial court’s judgment.

/s/ Martha Hill Jamison
Justice

Panel consists of Justices Jamison, Wise, and Jewell.