



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00077-CV

IN THE INTEREST OF C.M.A., a Child

From the 73rd Judicial District Court, Bexar County, Texas
Trial Court No. 2014-PA-02641
Honorable Peter A. Sakai, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Marialyn Barnard, Justice
Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: August 10, 2016

AFFIRMED

This is an appeal from a trial court's order terminating appellant mother's ("Mother") rights to her child, C.M.A.¹ On appeal, Mother contends the evidence is legally and factually insufficient to support the trial court's finding that termination is in the child's best interest. We affirm the trial court's judgment.

BACKGROUND

When C.M.A. was born, she and her mother tested positive for illegal drugs, specifically methamphetamines. Mother admitted using illegal drugs during her pregnancy, but claimed she stopped when she found out she was pregnant. The hospital contacted the Texas Department of

¹ In its order, the trial court also terminated the parental rights of C.M.A.'s alleged father ("Father"). Father did not appeal from the order of termination. Accordingly, he is not a party to this appeal.

Family and Protective Services (“the Department”). Soon after C.M.A.’s birth, the Department filed its original petition, seeking termination of Mother’s (and Father’s) parental rights in the event reunification was impossible. In addition, the Department sought and received an emergency order of protection, pursuant to which the Department was named temporary sole managing conservator of C.M.A. C.M.A. remained in the hospital for approximately one month after her birth, undergoing treatment for drug addiction. When C.M.A. was released from the hospital, she was placed with foster parents.

The Department prepared service plans for Mother and Father with a stated goal of reunification. The trial court held the statutorily-required status and permanency hearings. Ultimately, the Department moved to terminate Mother’s and Father’s parental rights. After a final hearing, at which Mother appeared with counsel, the trial court determined: (1) Mother previously had her parental rights terminated with respect to another child based because she (a) knowingly placed the child or allowed the child to remain in conditions that endangered the child’s physical or emotional well-being, or (b) engaged in conduct or knowingly placed the child with someone who engaged in conduct that endangered the child’s physical or emotional well-being; and (2) Mother was the cause of C.M.A. being born addicted to a controlled substance that was not prescribed. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(M), (R) (West Supp. 2015); *see also id.* § 161.001(b)(1)(D), (E).² The trial court further found termination of Mother’s parental rights would be in C.M.A.’s best interest. *See id.* § 161.001(b)(2). Accordingly, the trial court rendered an order terminating Mother’s parental rights. Thereafter, Mother perfected this appeal.

² The trial court found Father had: (1) failed to timely file an admission of paternity or other document establishing paternity before the final hearing; (2) constructively abandoned C.M.A.; and (3) failed to comply with the provisions of a court order that established the actions necessary to obtain the return of C.M.A. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(N), (O); *id.* § 161.002(b)(1), (3). The trial court also determined termination of Father’s parental rights would be in C.M.A.’s best interest. *See id.* § 161.001(b)(2).

ANALYSIS

On appeal, Mother does not challenge the evidence with regard to the trial court's findings under section 161.001(b)(1) of the Texas Family Code ("the Code"). *See id.* § 161.001(b)(1)(M), (R). Rather, Mother contends the evidence is legally and factually insufficient to support the trial court's finding that termination was in C.M.A.'s best interest. *See id.* § 161.001(b)(2).

Standard of Review

Under the Code, a parent's right to his or her child may be terminated upon proof by clear and convincing evidence that: (1) the parent committed an act prohibited by section 161.001(b)(1) of the Code; and (2) termination is in the best interest of the child. *Id.* § 161.001(b)(1), (2); *In re J.O.A.*, 283 S.W.3d 336, 344 (Tex. 2009); *In re B.R.*, 456 S.W.3d 612, 615 (Tex. App.—San Antonio 2015, no pet.). "Clear and convincing evidence" is statutorily defined as "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 2008); *see J.O.A.*, 283 S.W.3d at 344; *B.R.*, 456 S.W.3d at 615. Because termination of a parent's rights to his or her child results in permanent and unalterable changes for both parent and child, due process is implicated, and therefore courts use the heightened clear and convincing standard of review. *In re E.A.G.*, 373 S.W.3d 129, 140 (Tex. App.—San Antonio 2012, pet. denied). Thus, when a trial court's best interest finding is under appellate review, the appellate court must determine whether the evidence is such that a fact finder could reasonably form a firm belief or conviction that termination was in the child's best interest. *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005) (citing *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002)).

More specifically, with regard to legal sufficiency challenges in these cases, the appellate court views the evidence in the light most favorable to the trial court's finding and judgment, and resolves any disputed facts in favor of the trial court's findings if a reasonable fact finder could

have so resolved them. *Id.* An appellate court must disregard all evidence that a reasonable fact finder could have disbelieved and consider undisputed evidence even if such evidence is contrary to the trial court's findings. *Id.* In other words, an appellate court considers evidence favorable to termination if a reasonable fact finder could and disregards contrary evidence unless a reasonable fact finder could not. *Id.*

In a factual sufficiency review, the appellate court also gives due deference to the trier of fact's findings, avoiding substituting its judgment for that of the fact finder. *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). "If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction [in the truth of its finding], then the evidence is factually insufficient." *Id.* (quoting *J.F.C.*, 96 S.W.3d at 266).

Appellate courts must remain mindful that when conducting a sufficiency review, they may not weigh a witness's credibility — as it depends on appearance and demeanor, and these are within the trier of fact's domain. *J.P.B.*, 180 S.W.3d at 573. Even if evidence regarding appearance and demeanor are found in the appellate record, the appellate court must nevertheless defer to the fact finder's reasonable resolutions. *Id.*

Applicable Law

In *Holley v. Adams*, the Texas Supreme Court set forth factors a court may take into account when making a best interest determination. 544 S.W.2d 367, 371–72 (Tex. 1976). These considerations, i.e., "the *Holley* factors," are not the only factors a court may consider. *See In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). Nor does a court have to find evidence of each and every factor before terminating the parent-child relationship. *See id.* As the court stated in *C.H.*, "The absence of evidence about some of these considerations would not preclude a factfinder from reasonably forming a strong conviction or belief that termination is in the child's best interest,

particularly if the evidence were undisputed that the parental relationship endangered the safety of the child.” *Id.* And, as this court has recognized, in conducting our review of a trial court’s best interest determination, we focus not on the best interest of parent, but on the best interest of the child. *In re D.M.*, 452 S.W.3d 462, 470 (Tex. App.—San Antonio 2014, no pet.). As to the factors themselves, the supreme court stated them as follows: (1) the desires of the child; (2) the emotional and physical needs of the child now and in the future; (3) the emotional and physical danger to the child now and in the future; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist these individuals to promote the best interest of the child; (6) the plans for the child by these individuals or by the agency seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions of the parent. *Holley*, 544 S.W.2d at 371–72.

We also note that although proof of acts or omissions under section 161.001(b)(1) of the Texas Family Code does not relieve the Department from proving the best interest prong, the same evidence may be probative of both issues. *C.H.*, 89 S.W.3d at 28 (citing *Holley*, 544 S.W.2d at 370; *Wiley v. Spratlan*, 543 S.W.2d 349, 351 (Tex. 1976)); *B.R.*, 456 S.W.3d at 615. In conducting a best interest analysis, courts may consider circumstantial evidence, subjective factors, and the totality of the evidence, in addition to direct evidence. *B.R.*, 456 S.W.3d at 616 (citing *In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio 2013, pet. denied)). Additionally, a fact finder may judge a parent’s future conduct by his or her past conduct in determining whether termination of the parent-child relationship is in the best interest of the child. *Id.*

This court recognizes there is a strong presumption that maintaining the parent-child relationship is in a child’s best interest. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam). There is however, a competing presumption which provides that permanently placing a child in a

safe environment in a timely manner is also in a child's best interest. *B.R.*, 456 S.W.3d at 615; *see* TEX. FAM. CODE ANN. § 263.307(a) (West Supp. 2015). In determining whether a parent is willing and able to provide the child with a safe environment, courts should consider that factors set out in section 263.307(b) of the Code, which include: (1) the child's age and physical and mental vulnerabilities; (2) the frequency and nature of out-of-home placements; (3) the magnitude, frequency, and circumstances of the harm to the child; (4) whether the child has been the victim of repeated harm after the initial report and intervention by the Department or other agency; (5) whether the child is fearful of living in, or returning to, the child's home; (6) the results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home; (7) whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home; (8) whether there is a history of substance abuse by the child's family or others who have access to the child's home; (9) whether the perpetrator of the harm to the child is identified; (10) the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision; (11) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time; (12) whether the child's family demonstrates adequate parenting skills; and (13) whether an adequate social support system consisting of an extended family and friends is available to the child. TEX. FAM. CODE ANN. § 263.307(b); *see In re G.C.D.*, No. 04-14-00769-CV, 2015 WL 1938435, at *4 (Tex. App.—San Antonio Apr. 29, 2015, no pet.) (mem. op.) (citing *In re A.S.*, No. 04-14-00505-CV, 2014 WL 5839256, at *2 (Tex. App.—San Antonio Nov. 12, 2014, pet. denied) (mem. op.)); *B.R.*, 456 S.W.3d at 615.

The Evidence

In reviewing the evidence in this case, we have considered the *Holley* factors and the statutory factors in section 263.307(b) of the Code. See TEX. FAM. CODE ANN. § 263.307(b); *Holley*, 544 S.W.2d at 371–72. We have also considered the acts or omissions as found by the trial court under section 161.001(b)(1) of the Code, as well as the circumstantial evidence, subjective factors, and the totality of the evidence. See *In re R.S.D.*, 446 S.W.3d 816, 820 (Tex. App.—San Antonio 2014, no pet.).

1. Desires of the Child

At the time of trial, C.M.A. was still under the age of two. Thus, she is unable to express her desires regarding conservatorship. See TEX. FAM. CODE ANN. § 263.307(b)(1) (child’s age and physical and mental vulnerabilities); *Holley*, 544 S.W.2d at 371–72. However, with regard to C.M.A.’s desires, the trial court was entitled to consider testimony regarding her current placement and the time spent with Mother. See *In re U.P.*, 105 S.W.3d 222, 230 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). As stated by the Fourteenth Court of Appeals, “When children are too young to express their desires, the fact finder may consider that the children have bonded with the foster family, are well-cared for by them, and have spent minimal time with a parent.” *In re J.D.*, 436 S.W.3d 105, 108 (Tex. App.—Houston [14th Dist.] 2014, no pet.). The record reflects C.M.A. has been with her foster family since she was approximately a month old. C.M.A.’s foster parents have provided her with the therapies and medical treatment necessitated by her methamphetamine addiction. The baby has bonded with her foster parents and the two other children in the home — a two-year-old and a seven-month-old previously adopted by the foster parents. The foster parents also desire to adopt C.M.A. According to the Department case worker, Courtney Turner, under the care of her foster parents, C.M.A. had improved “tremendously.”

Mother testified she was at the hospital every day after C.M.A.'s birth until the Department placed the child with her foster family. As part of her service plan, Mother was given supervised visitation, seeing the baby once or twice a week for an hour or two each time. The visits were generally supervised by Mother's individual counselor, Dr. Mary Ponce. At one point, Mother was permitted unsupervised visitation, but that ultimately reverted back to supervised visitation. Mother had been permitted visitation supervised by the child's paternal grandmother ("M.A."). However, the Department was forced to discontinue supervision by M.A. after it learned Father — who refused to acknowledge paternity or submit himself to Department supervision — was present during at least one of these visitations. Mother's visitation was also reduced to one hour per week. Mother exercised her visitation as permitted, missing perhaps one or two visits, and the missed visits appeared to be due to some sort of confusion over appointment confirmations and scheduling. *See U.P.*, 105 S.W.3d at 230.

The evidence shows C.M.A. is thriving in her current placement, well-cared for, and bonded to her foster family. At the time of trial, C.M.A. had been with her foster family for more than a year. Mother spent as much time with the child as permitted by the Department, exercising her rights to visitation as permitted. However, her continued contact with Father resulted in changes in the terms of her visitation. *See id.*

2. *Emotional & Physical Needs/Emotional & Physical Danger*

As noted above, C.M.A. is an infant, and as with any infant, she will require constant emotional and physical support for many years. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72; *In re J.G.M.*, No. 04-15-00423-CV, 2015 WL 6163204, at *3 (Tex. App.—San Antonio Oct. 21, 2015, no pet.) (mem op.). C.M.A.'s age renders her vulnerable if left in the custody of a parent who is unable or unwilling to protect her and attend to her needs. *See*

TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72; *J.G.M.*, 2015 WL 6163204, at *3.

Currently, and in the coming years, C.M.A. will have emotional and physical needs beyond that of a normal child. The evidence shows C.M.A. is developmentally challenged and “medically fragile” due to the circumstances of her birth. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72. Because she was born addicted to methamphetamine, C.M.A. suffers from respiratory issues that require home treatment and medical supervision. Her development, particularly her ability to speak and walk, have been delayed and require physical and language therapy. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72. Thus, C.M.A. will require special attention and care, including home therapies and careful oversight by physicians. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72.

With regard to potential emotional and physical danger to C.M.A. if she were to be placed with Mother, we note Mother has not challenged the trial court’s findings that she: (1) previously had her parental rights terminated with respect to another child because she placed the child or allowed the child to remain in dangerous conditions, or engaged in conduct or knowingly placed the child with someone who engaged in conduct that endangered the child; and (2) was the cause of her daughter being born addicted to an unprescribed, controlled substance. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(M), (R); *see also id.* § 161.001(b)(1)(D), (E). Although this does not relieve the Department from proving termination is in C.M.A.’s best interest, the termination grounds are probative on the issue of the child’s best interest. *See C.H.*, 89 S.W.3d at 28; *B.R.*, 456 S.W.3d at 615.

Mother admitted her rights to at least one of her six other children had been previously terminated, and she was involved with the Department with all six children.³ Father's rights to that same child were likewise terminated. The prior termination was based on Mother's decision to place the child or allow the child to remain in dangerous conditions or to engage in conduct dangerous to the child. In addition, another child is with its father, with Mother apparently having no rights or access to that child, and the other four were given up by Mother, albeit after Department intervention. And, as noted above, although an act or omission from the past does not automatically prove termination is currently in a child's best interest, the trier of fact is entitled to measure a parent's future conduct by his or her past conduct in making a best-interest determination. *In re J.F.B.*, No. 04-15-00234-CV, 2015 WL 5837852, at *2 (Tex. App.—San Antonio Oct. 7, 2015, pet. denied) (mem. op.); *B.R.*, 456 S.W.3d at 616. Thus, Mother's prior history with the Department was a consideration for the court in making its determination as to the best interest of the child.

Mother also admitted C.M.A. was born addicted to methamphetamine due to Mother's drug use during pregnancy. *See* TEX. FAM. CODE ANN. § 263.307(b)(8) (history of substance abuse by child's family); *id.* § 263.307(b)(12) (whether child's family demonstrates adequate parenting skills); *Holley*, 544 S.W.2d at 371–72; *see also In re M.R.*, 243 S.W.3d 807, 821 (Tex. App.—Fort Worth, 2007, no pet.) (holding that parent's drug use supports finding that termination is in best interest of child). Mother testified she used cocaine and methamphetamine, and was using methamphetamine while she was pregnant with C.M.A. *See* TEX. FAM. CODE ANN. § 263.307(b)(8); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72; *see also M.R.*, 243 S.W.3d at 821. Mother explained she did not realize she was pregnant and stopped using drugs as soon as

³ There was some evidence, including evidence from Mother, that her rights to two children had been previously terminated.

she found out. *See* TEX. FAM. CODE ANN. § 263.307(b)(11) (willingness and ability of child’s family to effect positive environmental and personal changes within reasonable time period). However, during the course of her involvement with the Department in this matter, she twice tested positive for illicit drugs during random drug tests. *See* TEX. FAM. CODE ANN. § 263.307(b)(8); *id.* § 263.307(b)(11); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72; *see also M.R.*, 243 S.W.3d at 821. There is no dispute she has been clean since March 2015 — after her second positive test. *See* TEX. FAM. CODE ANN. § 263.307(b)(11). There is evidence, however, that Mother downplayed her substance abuse issues and that this minimization continued through trial. The evidence shows Mother’s drug use dates back to 2009.

Dr. Ann Marie Hernandez, the clinical psychologist who performed Mother’s psychological evaluation, testified Mother minimized her drug use even though testing indicated “extensive and . . . problematic drug use behaviors.” *See* TEX. FAM. CODE ANN. § 263.307(b)(6) (results of psychiatric, psychological, or developmental evaluations of child, child’s parents, family members, or others with access to child’s home); *Holley*, 544 S.W.2d at 371–72. Mother exhibited “defensive posturing” with regard to her drug use, attempting to portray herself in a better light. *See* TEX. FAM. CODE ANN. § 263.307(b)(6) (results of psychiatric, psychological, or developmental evaluations of child, child’s parents, family members, or others with access to child’s home); *Holley*, 544 S.W.2d at 371–72. Mother also denied drug use by Father during the evaluation, though the record includes evidence to the contrary.

Mother’s drug counselor, Patrick Vargas, testified Mother completed the substance abuse treatment program. *See* TEX. FAM. CODE ANN. § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. He believed Mother could be successful in her drug abuse recovery given her understanding that she would need to lead a life of recovery. However, at trial, after completing drug counseling and attending multiple Narcotics Anonymous meetings, Mother initially denied she was a drug addict.

See TEX. FAM. CODE ANN. 263.307(b)(8); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. Mr. Vargas, when advised of this testimony, stated this belief would place Mother at risk for relapse. Mr. Vargas was also unaware that Mother had tested positive for drugs more than once during her recovery. *See M.R.*, 243 S.W.3d at 821. When Mother was recalled to the stand after her original statement and testimony by Mr. Vargas, she retreated from her original testimony, stating she believed that labelling herself as an addict was improper, but admitting she will always have to work on her sobriety.

By far, the most concerning evidence with regard to emotional and physical danger to C.M.A. is rooted in Mother’s continued involvement with Father despite Department and court instructions to the contrary. *See* TEX. FAM. CODE ANN. § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. It is uncontested that Father knew of C.M.A.’s birth, visiting Mother in the hospital thereafter. However, Father refused to acknowledge paternity or submit himself to supervision by the Department. As a result, Father was to have no contact with C.M.A. Father was provided substituted service through his mother, who obviously had contact with him given that she received his disability checks. Father was represented by appointed counsel. Although M.A. and Mother both denied knowledge of Father’s whereabouts, the evidence established both women saw Father during the time this matter was pending, and it is clear Father knew about the ongoing proceedings, but declined to participate.

Mother has been involved with Father for approximately twelve years. They have another child together, but their rights to that child were terminated as described above. The evidence shows a history of drug use and domestic violence — on both sides — during the course of their relationship. *See* TEX. FAM. CODE ANN. § 263.307(b)(7) (whether there is history of abusive or assaultive conduct by child’s family); *id.* § 263.307(b)(8); *Holley*, 544 S.W.2d at 371–72. Mother denied the existence of domestic violence, but there are numerous police reports to the contrary

from 2013 to 2014. *See* TEX. FAM. CODE ANN. § 263.307(b)(7); *Holley*, 544 S.W.2d at 371–72. In one instance, Mother called police while she was pregnant, telling them Father pushed her and threw a beer bottle at her. *See* TEX. FAM. CODE ANN. § 263.307(b)(7); *Holley*, 544 S.W.2d at 371–72. Moreover, there was evidence in the form of Facebook posts by Mother implying Father struck her — one was a picture of Mother with a purported black eye. *See* TEX. FAM. CODE ANN. § 263.307(b)(7); *Holley*, 544 S.W.2d at 371–72. In Texas, domestic violence is evidence of physical and emotional endangerment. *See In re J.I.T.P.*, 99 S.W.3d 841, 845 (Tex. App.—Houston [14th Dist.] 2003, no pet.). In addition, Father has a criminal history, including some sort of sexual assault. When asked about this offense, Mother downplayed Father’s responsibility, stating “it is not as bad as people are making it out to be.” Father also has a history of mental illness.

Mother’s service plan specifically required that she “understand the cycle of abuse and healthy relationships . . . mitigate concerns for future abuse for herself and her child . . . refrain from unhealthy relationships.” Mother admitted she was told by Department case workers that Father was not permitted to have contact with C.M.A. She further acknowledge that she was told that if she had contact with Father, she was to notify the Department. Despite the foregoing, Mother continued to have contact with Father, and permitted him to have contact with C.M.A. on at least one occasion. *See* TEX. FAM. CODE ANN. § 263.307(b)(10) (willingness and ability of child’s family cooperate with and facilitate Department supervision); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. However, Mother consistently denied having seen Father, stating under oath during a December 2015 hearing that she had not seen Father since she gave birth to C.M.A. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. Mother testified Father came to the hospital to see the baby, but after that they “[j]ust stopped

talking.” At trial, Mother at first claimed she had not allowed Father to have contact with C.M.A. “during this case.” It was established neither claim was true.

The evidence shows — directly or circumstantially — that Mother had contact with Father on at least four occasions discovered by the Department. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. However, Mother denied it until the evidence was such that she had no choice but to admit the truth. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. In one instance, case worker Turner made an unannounced visit to Mother’s residence — something Mother was told might occur. Ms. Turner testified Mother was surprised by the visit and did not seem “too happy” about it. In the residence, which actually belonged to M.A., Ms. Turner saw beer cans (some opened, some not), tools scattered about, and a pair of men’s pants. At this time, Mother was purportedly living in the house alone. When asked about the items, Mother stated they belonged to her brother and that she had taken the beer from him. Ms. Turner subsequently asked the brother about Mother’s claims. Although not permitted to testify as to what the brother told her, Ms. Turner stated that after her conversation with the brother, she did not believe the explanation provided by Mother. The implication was that Father had been in the home with Mother — a home that belonged to his mother, M.A. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. Ms. Turner testified she received information from Father’s sister-in-law that Father was living with Mother. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. A neighbor told Ms. Turner he had seen Father outside the house in his pajamas. This event took place sometime before late October 2015. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72.

Then, in October 2015, Mother was at the Department awaiting visitation with C.M.A. At that time, M.A. was supervising visitation. Ms. Turner inquired about the location of M.A. Mother advised that she had gone to Mother's house to retrieve certain baby items, including a car seat. Around this same time, Ms. Turner received a call from one of Mother's neighbors who stated Father was outside Mother's home. Suspecting that Father might return with M.A. in violation of the safety plan and no contact order, Ms. Turner asked two co-workers to watch as Mother left the building with C.M.A. One of the co-workers, Shenonda Davis, testified she saw Mother leave the building with C.M.A. and walk over to a vehicle driven by M.A. Mother placed the baby in the backseat and then climbed in back with the baby. M.A. then drove to a gas station across the street, and Ms. Davis saw a Hispanic male climb into the front seat.

Ms. Davis said they followed the vehicle to a cemetery. Mother stayed in the vehicle while M.A. and the male passenger — who Ms. Davis ultimately identified as Father — got out. After he exited the vehicle, Father took C.M.A. out, carrying her as he and M.A. walked some distance to visit a gravesite. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. Mother stayed in the vehicle, speaking to an unknown person in a gold car. Eventually, Father and M.A. returned to the vehicle with C.M.A. and they drove to a pawn shop that also operated as a check-cashing establishment. Ms. Davis and her co-worker followed. At this point, Ms. Davis called Ms. Turner.

When they got to the pawn shop, Mother went inside with C.M.A. M.A. and Father remained in parking lot. Thus, at this point, Mother was unsupervised in violation of the safety plan. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. Ms. Turner drove over to the pawn shop and confronted M.A. and Father — Ms. Turner was not sure the man was Father, so she asked for his name. Father gave the name “Ruben

Martinez,” but Ms. Turner subsequently discovered it was Father after viewing a mug shot. During trial, Mother ultimately admitted the man at the pawn shop was Father.

When Mother came out of the pawn shop with C.M.A., she saw Ms. Turner and went right back inside. Ms. Turner, M.A., and Father moved to the front of the store and Mother eventually came out. Mother told Ms. Turner the man’s name was Ruben Martinez, but claimed she did not know him. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. When asked why she went into the pawn shop, Mother said it was to change the baby’s diaper. However, Ms. Turner testified Mother did not have the diaper bag with her and C.M.A.’s diaper was “dirty.” It was eventually discovered that the group was at the pawn shop to cash Father’s disability check — checks that were received by M.A. on his behalf. Ms. Turner removed C.M.A., taking her back to the Department to allow her foster mother to pick her up. It was after this incident that the Department denied M.A. the right to supervise visitation between Mother and C.M.A.

On another occasion, C.M.A.’s foster mother saw Mother leaving the Department after a visitation with C.M.A. She saw Mother walk across the street to a gas station where she “met up with [Father] near some trash cans.” *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. The foster mother knew the man was Father because she saw his picture on Mother’s Facebook page. Moreover, foster mother had hired a private investigator to ensure Mother was not violating the prohibition that Father have no contact with the child. The foster mother said she hired the investigator out of concern for C.M.A. given what she knew of Father’s history through court hearings and Mother’s Facebook posts. The foster mother advised the Department that she had seen Mother and Father together. Admittedly, the foster parents ultimately filed an intervention in this case, seeking to adopt C.M.A.

The private investigator hired by foster mother testified he saw Father and Mother together on yet another occasion. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. In December 2015, the investigator was conducting a stake out at a Department office after being told by the foster mother that Mother and C.M.A. would be there. After visitation, Mother walked into a fast-food restaurant where Father was sitting in a booth. The two conversed for ten or fifteen minutes. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. When asked whether this appeared to be a “chance meeting,” the investigator opined that it did not. Ultimately, the couple left together and walked down the street. The investigator discontinued his surveillance and reported the meeting to the foster mother.

There was a fourth meeting between Mother and Father discovered by the Department. Mother’s most recent case worker, Lynette Nicholas, testified that after a visitation in January 2016, she saw Mother walk out and call someone on her cell phone. Thereafter, Mother walked to a gas station where she met Father behind some dumpsters. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. Ms. Nicholas pulled her car over to where the couple was and asked Mother who she was with. Mother stated she did not know the man, he was simply asking for bus route information. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. When Ms. Nicholas advised Mother that she had taken pictures of the couple and knew the man was Father, Mother told her it did not matter who the man was because the Department was going to terminate her rights anyway. Thereafter, Mother and Father got on a bus together and left. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. Ms. Nicholas testified she knew the man was Father because when she took over for Ms. Turner, her supervisor showed her a picture of him.

At trial, Mother ultimately admitted lying about her continued contact with Father. She admitted Father was the man at the pawn shop and she lied to Ms. Turner. She also admitted lying at the December 2015 hearing when she stated she had not seen Father since the baby was born. She attempted to explain the contact at the pawn shop, in essence blaming M.A. for allowing Father in the car. With regard to Father's contact with C.M.A., Mother stated she "didn't see [Father] as harmful at that time to [C.M.A.]." She said the baby was in no danger.

The foregoing evidence shows conduct by Mother suggesting an inability to put her child's needs above her own — particularly her relationship with Father. Mother has a longstanding relationship with Father, one that includes drug use, domestic violence, and criminal activity. Yet, despite court and Department warnings, Mother permitted Father to have close contact with C.M.A. on at least one occasion known to the Department. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. Mother also continued her contact with Father and failed to advise the Department of such contact. Dr. Hernandez, who performed Mother's psychological evaluation, testified about her concerns over Mother's relationship with Father. She stated it would be a "major concern" if Mother continued to engage in a relationship with Father and tried to hide it. Mother's drug counselor and therapist, Mr. Vargas, testified that a negative relationship could act as a "trigger" with regard to Mother's drug use. He further testified that honesty about relationships is important and without it, a relapse could occur. Mr. Vargas also testified that Mother had the ability to understand instructions from the Department, and therefore, if she violated such instructions it was not because of an inability to understand them.

Mother's prior and continuing choices portend future instability, thereby endangering C.M.A. *See B.R.*, 456 S.W.3d at 616. The trial court was entitled to infer from her not so distant past conduct, that similar conduct would recur, i.e., that she would continue to see Father and if

C.M.A. was returned to her, she would permit Father to have contact with her. *See B.R.*, 456 S.W.3d at 616. Continued contact with Father places Mother in danger of a drug relapse, creating instability for C.M.A. should she be reunited with Mother.

3. Parenting Abilities/Available Programs

The evidence set out above is also relevant to Mother's inability to properly parent. Mother chose to see Father and permit C.M.A. to have contact with him despite Department and court instructions to the contrary. All at a time when regaining custody should have been her highest priority. *See* TEX. FAM. CODE ANN. § 263.307(b)(11); *id.* § 263.307(b)(12); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72.

The Department created a service plan for Mother and the trial court adopted the plan as a requirement for reunification. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. Mother was required to complete, among other things, drug counseling, domestic violence services, parenting classes, individual counseling, a psychological evaluation, obtain or continue stable employment, obtain stable housing, and submit to random drug tests. Mother completed the tasks set out in her service plan. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. However, completion of such tasks does not always result in reunification. *See In re A.F.*, 04-16-0008-CV, 2016 WL 3626235, at *7 (Tex. App.—San Antonio July 6, 2016, no pet. h.) (mem. op.) (citing *In re M.G.D.*, 108 S.W.3d 508, 514 (Tex. App.—Houston [14th Dist.] 2003, pet. denied); *J.F.B.*, 2015 WL 5837852, at *6). As this court has recognized, evidence of a recent improvement in a parent's ability to properly care for a child is only determinative in a best interest evaluation if it is reasonable to conclude the improvements will continue. *Id.*

Moreover, a parent is not simply expected to complete the service plan, but as Ms. Turner testified, a parent is expected to attain service plan goals by “demonstrat[ing] an understanding of

services.” *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. The parent must show she has the ability to protect the child, develop healthy relationships, and make good decisions. According to Ms. Turner, Mother failed to achieve the goal of recognizing unhealthy relationships in her life, demonstrated by her continued contact with Father, contact she attempted to conceal. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. The goal relating to proper relationships was particularly important in this case given Mother’s past history with Father, a history that included at least one prior termination based on endangerment, drug use, and domestic violence. A past — parts of which — Mother continually denied or minimized.

Moreover, Mother was not always cooperative with the Department, seeming to resent its involvement. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. During her initial psychological consult with Dr. Hernandez, Mother stated she felt as if C.M.A.’s removal, and perhaps the past removals of her other children, were due to “over aggressiveness or eagerness” by the Department. At trial, Mother authenticated posts she entered on her Facebook page. In September 2015, she posted: “Can’t wait to get some people out of my life. I get back from my NA meeting and find them at my door. Can’t I ever get a break?” She noted it was a Department case worker she was referring to in the post. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. Thereafter she posted a picture of C.M.A. during a visit, writing “[CMA] giving ugly looks to everyone that watched my visit. It is like she knew they got me upset.” *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. Mother admitted these comments suggested she felt as if the Department was harassing her.

Mother also showed her frustration with the Department when Ms. Turner made her first unannounced home visit. At that visit, which was based on the schedule Mother had provided the

Department as to when she would be home, no one answered the door, although Ms. Turner stated it appeared as if someone was home. Mother was supposed to be home, but there was no answer in response to telephone calls and knocks on the door. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. When asked, Mother claimed her schedule had changed, but she had not provided that information to the Department. We note that at this visit, although she was unable to access the house, Ms. Turner observed four small dogs, an abundance of pet droppings, an old mattress, trash, and two large “dump cans” in the yard. These problems were ultimately resolved after Ms. Turner spoke to Mother about them. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. When Ms. Turner executed her second unannounced visit, she found locks and chains on the fence surrounding the property, precluding her from accessing the home. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72.

4. *Plans for Child by Those Seeking Custody/Stability of Home or Proposed Placement*

Mother’s lack of stability is set forth in our discussion above. Mother has a long history of substance abuse, having been clean for less than a year before the final hearing. *See* TEX. FAM. CODE ANN. § 263.307(b)(8); *Holley*, 544 S.W.2d at 371–72. Her drug counselor explained that it was important for Mother to avoid people or situations that might trigger a relapse. An obvious trigger for Mother is her continued contact with Father given their issues with domestic violence and drug use. Despite this knowledge and instructions from the court and the Department with regard to this relationship, Mother chose to continue to see Father. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. The evidence reflects four occasions in which the Department was able to prove such contact, and in one of those, Mother permitted Father to have contact with C.M.A., a direct violation of the safety plan and court order. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72.

When asked how many times Mother had seen Father during the course of this case, Mother stated she could not say. This, as well as the case worker's discovery of men's items in Mother's home, suggests contact beyond that discovered by the Department. Mother seems to lack the ability to discard this unhealthy relationship, creating instability in her life which would affect C.M.A. should she be returned to Mother. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72.

In addition, it seems Mother's only support system brings her closer to Father. *See* TEX. FAM. CODE ANN. § 263.307(b)(13) (whether adequate support social system consisting of extended family and friends is available); *Holley*, 544 S.W.2d at 371–72. Mother lives in a house owned by M.A. — Father's mother. M.A. moved into the home with Mother. Although some testimony suggests the Department recommended this, there is other testimony that suggests the Department merely recommended that Mother have someone move in to help her stabilize her life — Mother chose M.A. *See* TEX. FAM. CODE ANN. § 263.307(b)(13); *Holley*, 544 S.W.2d at 371–72. M.A. receives Father's disability checks on his behalf, and in the pawn shop incident, Mother and C.M.A. were with M.A. and Father for the purpose of cashing such a check. It is doubtful that Mother could avoid Father while living in a home owned by his mother, a home in which M.A. also resides. *See* TEX. FAM. CODE ANN. § 263.307(b)(13); *Holley*, 544 S.W.2d at 371–72. In fact, Mother admitted she could not keep Father from the home, suggesting she would simply have to leave with C.M.A. if Father showed up.

As to other possible support from family or friends, Mother mentioned to case workers her stepfather. He has provided her with transportation. However, Ms. Turner discovered the stepfather had a history of sexual abuse with Mother and her siblings. Ms. Turner had to explain to Mother this was not a proper support system. *See* TEX. FAM. CODE ANN. § 263.307(b)(13); *Holley*, 544 S.W.2d at 371–72. The only other family member mentioned by Mother was a sister

who resides out of State. Mother clearly relies on M.A. for support, keeping her tied to Father. *See* TEX. FAM. CODE ANN. § 263.307(b)(13); *Holley*, 544 S.W.2d at 371–72.

The record reflects the foster family seeking to adopt C.M.A. provides her with stability. *See Holley*, 544 S.W.2d at 371–72. The foster parents have cared for C.M.A. during her difficult withdrawal from drug addiction, providing her with all necessary medical and therapeutic care. C.M.A. has bonded with her foster parents and their two adopted children. *Id.* The foster parents intervened in this action, demonstrating their intent to adopt C.M.A. and provide her with a loving, secure home. *Id.* There was no evidence indicating problems or instability in the foster home.

5. *Acts or Omissions Indicating Parent-Child Relationship Not Proper/Excuses*

The evidence of acts or omissions by Mother that indicate she had an improper relationship with C.M.A. are those set forth above in our discussion of Mother's acts that physically and emotionally endangered C.M.A., particularly Mother's continued relationship with Father. *See Holley*, 544 S.W.2d at 371–72. Additional acts or omissions are detailed in our discussion of her lack of parenting abilities and use of services.

Mother attempted to excuse her behavior with Father by blaming M.A., minimizing her ability to control contact with Father. *See Holley*, 544 S.W.2d at 371–72. She excused her decision to lie to the court and case workers about her contact with Father by claiming she was afraid of losing C.M.A. *See Holley*, 544 S.W.2d at 371–72. Mother failed to recognize her responsibility to control the situation by leaving, making a telephone call to the Department, etc., suggesting she is unable to provide protection and stability for C.M.A.

Application of the Law to the Evidence

Although Mother completed all of the tasks on her service plan, she continued to see Father and permitted him to have contact with C.M.A., a violation of the trial court's order and contrary to the Department's recommendation. Thus, Mother failed to attain the goal set forth by the

Department regarding unhealthy relationships. The evidence shows the relationship between Mother and Father was rife with drug use and domestic violence, a situation harmful not only to the parties but to any children that might be involved. As the law states, the trial court is entitled to believe that past portends future, and given Mother's refusal to give up her relationship with Father, it suggests continued dysfunction and instability. *See B.R.*, 456 S.W.3d at 616; *M.R.*, 243 S.W.3d at 821 (holding evidence of parent's unstable lifestyle can support fact finder's conclusion that termination is in child's best interest).

In sum, we hold the relevant *Holley* factors weigh in favor of a finding that termination was in C.M.A.'s best interest. Accordingly, recognizing that in conducting a best interest analysis, the trial court was permitted to (1) consider circumstantial evidence, subjective factors, and the totality of the evidence, in addition to the direct evidence presented, and (2) judge Mother's future conduct by her past conduct, we hold the trial court was within its discretion in finding termination of Mother's parental rights would be in C.M.A.'s best interest. *See B.R.*, 456 S.W.3d at 616. In other words, we hold the evidence is such that the trial court could have reasonably formed a firm belief or conviction that termination was in the child's best interest. *See J.P.B.*, 180 S.W.3d at 573.

CONCLUSION

Based on the foregoing, we hold the evidence is legally and factually sufficient to have permitted the trial court, in its discretion, to find termination was in C.M.A.'s best interest. Accordingly, we hold the trial court did not err in termination Mother's parental rights, overrule Mother's sufficiency complaints, and affirm the trial court's termination order.

Marialyn Barnard, Justice