



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00095-CV

IN THE INTEREST OF I.A.M. and R.A.M., Children

From the 224th Judicial District Court, Bexar County, Texas
Trial Court No. 2014-PA-02978
Honorable Dick Alcala, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Marialyn Barnard, Justice
Rebeca C. Martinez, Justice
Jason Pulliam, Justice

Delivered and Filed: August 10, 2016

AFFIRMED

This is an appeal from a trial court's order terminating appellant father's ("Father") parental rights to his two children, I.A.M. and R.A.M. In his sole issue on appeal, Father asserts the evidence is legally and factually insufficient to support the trial court's finding that termination of his parental rights was in his children's best interests. We conclude the evidence is both legally and factually sufficient and affirm the trial court's order.

BACKGROUND

After receiving reports alleging physical abuse and drug use, the Texas Department of Family and Protective Services ("the Department") became involved with Father and his two children, I.A.M. and R.A.M., who at the time were fifteen and eleven, respectively. During its initial investigation, the Department was unable to confirm the allegations of physical abuse and

drug use. Two months later, however, the Department received a second report alleging Father abandoned I.A.M. at a city park. The Department subsequently located I.A.M. at his aunt's and uncle's house and spoke to Father regarding the incident. Father admitted he had been angry with I.A.M. and left him at the city park to teach him a lesson.

The Department then petitioned to remove both I.A.M. and R.A.M. from Father based on allegations of physical abuse, drug use, and abandonment. Thereafter, the trial court appointed the Department as temporary sole managing conservator of the children, and both children were temporarily placed with their aunt and uncle. The trial court subsequently held the required status and permanency hearings, each of which Father attended; ultimately, the case proceeded to a bench trial. At trial, Father was present and represented by court-appointed counsel. The trial court heard testimony from Father, I.A.M., and several other witnesses, including: the Department investigator; the Department case worker; the children's counselor; the children's psychologists; the children's therapist; the children's aunt and uncle; the children's adult brother; and Father's girlfriend.

After hearing the evidence, the trial court found Father engaged in one or more of the acts or omissions necessary to support termination of his parental rights pursuant to the Texas Family Code ("the Code"). Specifically, the trial court found Father: (1) voluntarily left the children alone or in the possession of another without the intent to return; (2) knowingly placed the children in conditions that would endanger them; (3) engaged in conduct that endangered the children; (4) refused to submit to a court order; (5) constructively abandoned the children; and (6) failed to comply with the provisions of a court order that set out the actions necessary for him to reunite with his children. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(A), (D), (E), (I), (N), and (O) (West Supp. 2015). The trial court further found termination of Father's parental rights would be in the

children's best interests. *See id.* § 161.001(b)(2). Accordingly, the trial court rendered an order terminating Father's parental rights. Thereafter, Father perfected this appeal.

ANALYSIS

Father does not challenge the evidence with regard to the trial court's findings concerning the statutory grounds for involuntary termination of his parental rights. *See id.* § 161.001(b)(1)(A), (D), (E), (I), (N), and (O). Instead, Father argues the evidence is legally and factually insufficient to support the trial court's finding that termination was in I.A.M.'s and R.A.M.'s best interests. *See id.* § 161.001(b)(2).

Standard of Review

A parent's rights to the care and custody of his or her child are constitutional in nature; however, these rights are not absolute. *In re E.A.G.*, 373 S.W.3d 129, 140 (Tex. App.—San Antonio 2012, pet. denied) (citing *Santosky v. Kramer*, 455 U.S. 745, 758–59 (Tex. 2003)). In an involuntary parental termination proceeding, the State can seek to permanently divest a parent of all their legal rights and duties to his or her child. TEX. FAM. CODE ANN. § 161.206(b); *E.A.G.*, 373 S.W.3d at 140; *In re L.G.N.*, 329 S.W.3d 667, 671 (Tex. App.—Corpus Christi 2010, no pet.). Because the involuntary termination of parental rights raises due process concerns as it results in permanent and unalterable changes for both parent and child, we strictly construe involuntary termination proceedings and involuntary termination statutes in favor of the parent. *E.A.G.*, 373 S.W.3d at 140; *L.G.N.*, 329 S.W.3d at 671.

The Code requires an order terminating parental rights to be supported by clear and convincing evidence that (1) the parent committed one of the acts prohibited by section 161.001(b)(1) of the Code, and (2) termination of the parent's rights is in the best interest of the child. TEX. FAM. CODE ANN. § 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.). The Code defines "clear

and convincing evidence” 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. This heightened standard is used because, as mentioned above, the termination of parental rights raises due process concerns. *E.A.G.*, 373 S.W.3d at 140; *L.G.N.*, 329 S.W.3d at 671. “This standard guards the constitutional interests implicated by termination, while retaining the deference an appellate court must have for the factfinder’s role.” *In re O.N.H.*, 401 S.W.3d 681, 683 (Tex. App—San Antonio 2013, no pet.).

When a parent challenges the legal sufficiency of the evidence, we view the evidence in the light most favorable to the trial court’s finding and judgment to determine whether a reasonable factfinder could have formed a firm belief or conviction that the finding is true. *In re J.L.*, 163 S.W.3d 79, 85 (Tex. 2005) (citing *In re J.F.C.*, 96 S.W.3d 256, 261 (Tex. 2002)). In adhering to this standard, we resolve any disputed facts in favor of the court’s findings so long as a reasonable factfinder could have done so, but we will consider undisputed evidence even if such evidence is contrary to the trial court’s findings. *Id.* However, we will disregard all evidence that a reasonable fact finder could have disbelieved. *Id.* If, after conducting this legal sufficiency review, we determine no reasonable factfinder could have formed a firm belief or conviction that the matter to be proven is true, only then will we conclude the evidence is legally insufficient. *J.F.C.*, 96 S.W.3d at 266.

When a parent challenges the factual sufficiency of the evidence, we give due deference to the factfinder’s fact findings and avoid substituting our judgment for that of the factfinder. *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). We must consider “whether [the] disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding.” *J.F.C.*, 96 S.W.3d at 266. The evidence is factually insufficient “[i]f, 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 that finding. *Id.*

With these standards in mind, we must remain mindful that we do not reweigh issues of witness credibility “that depend on appearance and demeanor.” *J.P.B.*, 180 S.W.3d at 573. Even when the issue of witness credibility is reflected in the appellate record, we must defer to the factfinder’s reasonable resolutions. *Id.*

Applicable Law

The best interest determination is a wide ranging inquiry, and as a result, the Texas Supreme Court has set forth the following factors as relevant in making the determination: (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 v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). These factors, also known as “the *Holley* factors,” are neither exhaustive nor does each factor have to be proven to find that termination is in a child’s best interest. *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). “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.* In fact, evidence of only one factor may be sufficient for a factfinder to form a reasonable belief or conviction that termination is in a child’s

best interest—especially when undisputed evidence shows that the parental relationship endangered the child’s safety. *Id.*

In addition to consideration of the *Holley* factors, courts remain mindful that “the prompt and permanent placement of the child in a safe environment is presumed to be in the child’s best interest.” TEX. FAM. CODE ANN. § 263.307(a); *B.R.*, 456 S.W.3d at 615. There is a strong presumption that keeping a child with a parent is in the child’s best interest. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam). In determining whether a parent is willing and able to provide the child with a safe environment, courts should consider the following statutory 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.

When determining the best interest of a child, a trial court may consider circumstantial evidence, subjective factors, and the totality of the evidence as well as direct evidence. *B.R.*, 456 S.W.3d 612, 616 (Tex. App.—San Antonio 2015, no pet.) (citing *In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio 2013, pet. denied)). A factfinder may also measure a parent's future conduct by his or her past conduct to aid in determining whether termination of the parent-child relationship is in the best interest of the child. *Id.* Finally, “[e]vidence that a parent has committed the acts or omissions prescribed by section 161.001 of the Code may also be probative in determining the child's best interest; but the mere fact that an act or omission occurred in the past does not *ipso facto* prove that termination is currently in the child's best interest.” *O.N.H.*, 401 S.W.3d at 684.

The Evidence

As indicated above, the trial court heard testimony from the numerous witnesses before making its best interest determination. In evaluating this evidence, we have considered the *Holley* factors as well as the statutory factors set out in section 263.307(b) of the Code. *See* TEX. FAM. CODE ANN. § 263.307(b); *Holley*, 544 S.W.2d at 371–72.

1. *Desires of the Child*

At the time of trial, I.A.M. was sixteen-years-old and able to communicate his desires to the trial court. *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. I.A.M. testified he was currently living with his aunt and uncle, whom he had been staying with since Father left him alone at a city park. I.A.M. testified that when he was fifteen-years-old, Father left him at a city park after a heated argument.

See TEX. FAM. CODE ANN. § 263.307(b)(4) (whether child victim of repeated harm after initial report); *Holley*, 544 S.W.2d at 371–72. According to I.A.M., after the argument, Father told him to “grab my stuff [and] he just kind of like forced me to go to the car,” and drove him to the city park, where he dropped him off and said “good luck.” I.A.M. testified he felt sad, embarrassed, and “really alone.” *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72. I.A.M. testified that in addition to the city park incident, Father physically abused him and R.A.M. on several occasions, which made him feel “really bad” and like he had no “self-worth.” *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72. When asked about his current living situation with his aunt and uncle, I.A.M. testified his aunt and uncle treated him “much, much better” than Father, and he wanted to stay with them. *See* TEX. FAM. CODE ANN. § 263.307(b)(5) (whether child is fearful of returning home); *Holley*, 544 S.W.2d at 371–72.

With regard to R.A.M., the record reflects R.A.M. has been diagnosed with Tourette’s syndrome, and he did not testify at trial. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72. Although Father argues the trial court did not consider the desires of R.A.M., we will assume R.A.M. is unable to express his desires due to his condition. *See In re K.D.R., Jr.*, No. 11-13-00023-CV, 2013 WL 3833217, at *3 (Tex. App.—Eastland July 18, 2013, no pet.) (mem. op.) (considering foster mother’s opinion regarding children’s desires because children had Tourette’s syndrome and record did not reflect children’s conversations with trial court). The trial court heard testimony from I.A.M., the children’s aunt, and the children’s counselor regarding R.A.M.’s well-being. I.A.M. testified R.A.M. was doing well with his aunt and uncle, who treated him much better than Father. *See id.*; *see also* TEX. FAM. CODE ANN. § 263.307(b)(13) (whether support system of extended family available to child). According to I.A.M., R.A.M. seems happier than he did when they lived with Father and had less tics. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72. Specifically, I.A.M. testified R.A.M.’s tics

happen only occasionally “as opposed to every two seconds.” The children’s aunt also confirmed R.A.M.’s tics were less frequent and R.A.M. seemed very happy with her and her husband. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72. She testified R.A.M. never asked for Father and has bonded with her and her husband. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72. She testified she believed both I.A.M. and R.A.M. should remain with her and her husband. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72.

Given I.A.M.’s testimony regarding his desires as well as testimony from I.A.M., the children’s aunt, and R.A.M.’s counselor regarding R.A.M.’s desires, we find this factor — desires of the children — heavily weighs in favor of termination.

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

As mentioned above, R.A.M. has Tourette’s syndrome. As a result, he needs ongoing treatment with neurologists and therapists. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72. According to R.A.M.’s psychologist, Dr. Michelle Moran, R.A.M. also has enuresis and post-traumatic stress disorder. *See* TEX. FAM. CODE ANN. § 263.307(b)(6) (results of evaluations of child); *Holley*, 544 S.W.2d at 371–72. Dr. Moran testified that R.A.M. described “harsh spankings” that Father would give him when he had an involuntary tic or wet the bed. *See* TEX. FAM. CODE ANN. § 263.307(b)(3) (magnitude, frequency and circumstance of harm to child); *Holley*, 544 S.W.2d at 371–72. Dr. Moran also testified that R.A.M. was extremely nervous and stressed each time he described Father’s spankings. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72. Dr. Moran added she believed before reunification could happen, both R.A.M. and Father needed family therapy due to the stress R.A.M. exhibited when describing his living situation with Father. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72.

In addition to Dr. Moran's testimony regarding R.A.M.'s needs, the trial court heard testimony from R.A.M.'s aunt, who testified when R.A.M. came to stay with her, he was "dirty, his hair was long, he was full of urine, he wasn't pottied [sic], starving, always hungry." The aunt testified R.A.M. hoarded food and constantly had urine accidents at school. At times — particularly after speaking to Father — R.A.M. would crawl on the floor and act like a baby. She also testified that because R.A.M. would not open up to her about his living situation with Father, she took him to a psychiatrist. Since going to therapy and living with her, R.A.M. does not wet himself anymore, keeps himself clean, and sleeps at night. *See* TEX. FAM. CODE ANN. § 263.307(b)(13); *Holley*, 544 S.W.2d at 371–72. She also testified his Tourette's syndrome symptoms were "not as bad as it was when I got him." *See* TEX. FAM. CODE ANN. § 263.307(b)(13); *Holley*, 544 S.W.2d at 371–72. She added that she understood R.A.M. needed continued treatment and was willing to adopt both R.A.M. and I.A.M. and make a long term commitment to them. *See* TEX. FAM. CODE ANN. § 263.307(b)(13); *Holley*, 544 S.W.2d at 371–72.

I.A.M. also provided testimony regarding R.A.M.'s needs — particularly Father's inability to provide R.A.M. with the care he needed. I.A.M. testified that although Father took R.A.M. to his doctor appointments, he would abruptly leave, stating he did not want to deal with R.A.M. *See* TEX. FAM. CODE ANN. § 263.307(b)(12) (whether child's family demonstrates adequate parenting skills); *Holley*, 544 S.W.2d at 371–72. This behavior was confirmed by the Department case worker, who testified Father treated R.A.M.'s Tourette's syndrome without medication. *See* TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72.

The record also reflects Father emotionally and physically abused the children, placing them in emotional and physical danger. *See* TEX. FAM. CODE ANN. § 263.307(b)(3), (4), (7); *Holley*, 544 S.W.2d at 371–72. I.A.M. testified Father treated R.A.M. "horribly" and described

an incident when R.A.M. was eleven-years-old and repeatedly jumping in and out of the shower. *See* TEX. FAM. CODE ANN. § 263.307(b)(3), (4), (7); *Holley*, 544 S.W.2d at 371–72. I.A.M. stated that Father became so “sick of it” that he “went in there with a belt and started hitting him multiple times” and mimicked him. I.A.M. testified R.A.M. had “like blood clots on his back” and “his back was red and he was bruised and it was bad.” I.A.M. also described another incident during Christmas when Father stripped R.A.M. naked and started beating him and then made R.A.M. stand outside. *See* TEX. FAM. CODE ANN. § 263.307(b)(3), (4), (7); *Holley*, 544 S.W.2d at 371–72. On another occasion, Father picked R.A.M. up by his head and threw him against the wall. *See* TEX. FAM. CODE ANN. § 263.307(b)(3), (4), (7); *Holley*, 544 S.W.2d at 371–72. In addition to describing Father’s physical abuse of R.A.M., I.A.M. described an incident when Father “grabbed my head and he pushed me against the — the concrete. And he was just rubbing and saying stuff.” *See* TEX. FAM. CODE ANN. § 263.307(b)(3), (4), (7); *Holley*, 544 S.W.2d at 371–72. These episodes of abuse were also described by the Department case worker, who testified she met with each of the children and listened to their outcries. *See* TEX. FAM. CODE ANN. § 263.307(b)(3), (4), (7); *Holley*, 544 S.W.2d at 371–72. Specifically, she testified R.A.M. told her Father would hit him with an open hand or closed fist all over his body. She also testified I.A.M. told her how Father constantly hit him and bullied him and, on one occasion, left him at a city park after a heated argument. *See* TEX. FAM. CODE ANN. § 263.307(b)(3), (4), (7); *Holley*, 544 S.W.2d at 371–72.

In response to these allegations of physical abuse, Father testified he did not physically abuse the children. Father pointed out that neither of his children had scars or photographic proof of any abuse. Father admitted, however, that he has spanked R.A.M. for wetting himself and confirmed he did make R.A.M. stand outside naked to teach him a lesson when R.A.M. was eleven-years-old. With regard to the city park incident, Father testified he had prearranged for I.A.M.’s adult brother, Bryan M., to pick up I.A.M. and he was not negligent in leaving I.A.M. at the city

park. Bryan M. disputed this fact, stating Father never contacted him before leaving I.A.M. at the park. Father also admitted he called the children names, but added “we say those kind of words” and “speak like — like men.” He testified he believed such treatment built character.

The record also reflects Father had a history of violence toward other individuals, including his adult son and current girlfriend. *See* TEX. FAM. CODE ANN. § 263.307(b)(7); *Holley*, 544 S.W.2d at 371–72. Father’s adult son, Bryan M., testified Father also left him at a city park after he acted in a rebellious manner as a teenager. Bryan M. testified Father “threw all my stuff in some black trash bags, gave me a jar of coins and dropped me off at [a city park] and that was pretty much the end of it.” Bryan M. also confirmed Father emotionally and physically abused him and described two incidents that stood out the most to him: one time when he was eight or nine and Father made him play basketball in a skirt, and another time when he was six or seven and Father pulled his pants down and hit him with a belt to the point his aunt “burst into the room” to stop him. *See* TEX. FAM. CODE ANN. § 263.307(b)(7); *Holley*, 544 S.W.2d at 371–72.

The record also reflects episodes of domestic violence between Father and the children’s deceased mother, as well as with his current girlfriend. *See* TEX. FAM. CODE ANN. § 263.307(b)(7); *Holley*, 544 S.W.2d at 371–72. The children’s aunt, the sister of the children’s mother, testified she had concerns about domestic violence between Father and her sister because her sister always had bruises. *See* TEX. FAM. CODE ANN. § 263.307(b)(7); *Holley*, 544 S.W.2d at 371–72. I.A.M. testified he saw Father hit his girlfriend, and “she had a big bruise on her mouth...a bruise on her eye, her lip was cut, and the inside of her mouth was cut.” *See* TEX. FAM. CODE ANN. § 263.307(b)(7); *Holley*, 544 S.W.2d at 371–72. Father’s girlfriend, however, testified she assaulted Father and Father did not hit her or the children.

The evidence set out above establishes that in light of the children’s physical and emotional needs — particularly R.A.M.’s medical condition — Father has problems providing the children

with a safe environment. The trial court heard a significant amount of testimony establishing Father was physically violent toward a number of individuals, including his children, significant others, and family members. This pattern of violence coupled with evidence of Father's inability to tend to R.A.M.'s medical condition indicates Father would be unable to tend to the emotional and physical needs of the children or provide them with a safe environment. Although Father disputes the abuse allegations, we note that the trial court was not required to accept Father's testimony and therefore, could have resolved any disputed evidence against Father. *See J.L.*, 163 S.W.3d at 85; *J.F.C.*, 96 S.W.3d 256 at 261. Thus, based upon the testimony presented at trial, the trial court could have found that Father was emotionally and physically abusive, repeatedly placing his children in an environment where they were endangered. As a result, this factor weighs in favor of termination.

3. *Parenting Abilities/Available Programs*

Regarding Father's parenting abilities, the record establishes that in addition to the episodes of violence toward his children and significant others, the trial court also heard other evidence of Father's inability to manage his anger. *See* TEX. FAM. CODE ANN. § 263.307(b)(10) (willingness of child's family to seek out help and cooperate with Department); *Holley*, 544 S.W.2d at 371–72. The children's aunt and uncle, as well as Bryan M., described Father as a "hot tempered" man, who "made rash decisions" and did not "really think about the consequences afterwards." The trial court also heard testimony from the Department investigator and case worker, who each testified Father had anger management issues. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *Holley*, 544 S.W.2d at 371–72. The Department investigator testified that when she spoke to Father over the telephone, Father was combative and upset. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *Holley*, 544 S.W.2d at 371–72. The Department case worker also confirmed Father's hostile nature, stating Father was very difficult to work with. *See* TEX. FAM. CODE ANN.

§ 263.307(b)(10); *Holley*, 544 S.W.2d at 371–72. She testified that on several occasions, Father sent her harassing text messages and called her names. She added he would periodically yell at her during telephone conversations. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *Holley*, 544 S.W.2d at 371–72. She testified that due to Father’s inability to control his anger and the Department’s interest in protecting the children, the Department requested that Father’s visitations with his children be suspended. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *Holley*, 544 S.W.2d at 371–72. She went on to testify that when Father’s visitations were reinstated, there was one visit she believed Father was on drugs. She testified Father became so hostile that he was “clenching his jaw, he looked very sweaty, he was agitated, [had] rapid speech and things like that” to the point the Department case worker called police.

The record also establishes Father used drugs in front of his children. *See* TEX. FAM. CODE ANN. § 263.307(b)(8) (history of substance abuse); *Holley*, 544 S.W.2d at 371–72. According to I.A.M., Father was paranoid and abusive when he was on drugs. I.A.M. testified that on one occasion, Father was high on “shrooms” and believed people were looking inside his house. Father told I.A.M. to check to see if anyone was outside and then picked I.A.M. up by the head and threw him against the wall. A chair fell on R.A.M. in the process. I.A.M. also testified he saw Father use drugs on a number of occasions, and one time “he actually showed me how to do it.” Father, however, denied I.A.M.’s allegation as well as any current drug use. Father did, however, admit that he had used drugs in the past.

In addition to Father’s past drug use, the trial court heard evidence that the children did not have enough to eat. According to the children’s aunt, R.A.M. would bring extra food home from school to her house because he did not want her to run out of food. The children’s aunt testified R.A.M. was concerned they would run out of food. According to Dr. Moran, R.A.M. also described instances when there was not a lot of food at home and that he and his brother were

sometimes hungry. Dr. Moran also testified that when she asked R.A.M. to describe his home environment, he described being at home without a lot of structure.

With regard to Father's use of programs available to assist him with reunification, the trial court heard testimony that established Father resisted utilizing several of the services. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *Holley*, 544 S.W.2d at 371–72. The Department case worker testified she developed a service plan requiring Father to receive a drug assessment and psychological evaluation as well as requiring Father to attend individual counseling, family violence classes, and Tourette syndrome support groups. The Department case worker testified she based the plan on Father's history of family violence and Father's admission of drug use. According to the Department case worker, by the first status hearing, Father had not engaged in any of the services offered because he did not believe he needed them. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *Holley*, 544 S.W.2d at 371–72. The Department case worker testified that only after Father's visitation rights were suspended did Father start following part of his service plan. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *Holley*, 544 S.W.2d at 371–72. Father attended some Compadre y Compadre classes, but stopped going after he became upset. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *Holley*, 544 S.W.2d at 371–72. Father also attended one therapy session but "got angry at the therapist and didn't go back." *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *Holley*, 544 S.W.2d at 371–72. Father did, however, complete all his anger management classes, and thereafter, when his visitation rights resumed, he attended four of six of his visits with R.A.M. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *Holley*, 544 S.W.2d at 371–72. The record establishes Father missed two visits due to back pain and car trouble. At no point did Father visit I.A.M., nor did I.A.M. request to see Father. Accordingly, based on this evidence, the trial court could have formed a firm belief or conviction that Father failed to work with the Department and did not fully comply with his service plan. *See J.L.*, 163 S.W.3d at 85; *J.F.C.*, 96 S.W.3d 256 at

261. As a result, we find these factors — parenting abilities and utilization of available programs — favor termination.

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

The record reflects the children are currently living with their aunt and uncle and are doing well in that environment. *See* TEX. FAM. CODE ANN. § 263.307(b)(13); *Holley*, 544 S.W.2d at 371–72. Both aunt and uncle have provided the children with a stable and loving home. *See* TEX. FAM. CODE ANN. § 263.307(b)(13); *Holley*, 544 S.W.2d at 371–72. The evidence shows the children are getting along with their cousins and when they misbehave, the children’s aunt and uncle do not physically abuse them. The children’s aunt also testified she frequently interacts with the school regarding R.A.M.’s medical issues. She also manages R.A.M.’s schedule to make sure he is keeping up with all of his doctor’s appointments. Additionally, she testified she is highly involved with the school with regard to I.A.M. She stated that although I.A.M. had some behavioral issues during the beginning of his placement at her house, including a trip to alternative school, he is currently doing much better at school. Overall, the record reflects the children’s aunt and uncle love the children and wish for the children to stay with them permanently. Both testified they are willing to make a long term commitment to I.A.M. and R.A.M. *See* TEX. FAM. CODE ANN. § 263.307(b)(13); *Holley*, 544 S.W.2d at 371–72.

As to the stability of Father’s home, Father argues he has maintained a stable home environment for his children and wishes for them to return home. *See* TEX. FAM. CODE ANN. § 263.307(b)(11) (willingness of child’s family to effect positive and personal changes); *Holley*, 544 S.W.2d at 371–72. To support his argument, Father points out that he and the children have lived in the same house since the Department first became involved with their family. However, the record also reflects that at one point Father and the children were living with the Father’s girlfriend’s parents because they were homeless. Father also contends he has maintained a stable

home environment for his children because he strictly disciplined them so they would have strong character. Father's girlfriend confirmed this parenting technique, stating Father would strictly punish his children, but never abuse them. Father's girlfriend also testified Father and the children spoke to each other "like men" in that Father would call the children "a bastard," "a loser," "a dummy," or "the N word." Given these admissions as well as incidents described above, it was reasonable for the trial court to conclude Father's future home would be include an abusive atmosphere where the children would endure emotional and physical abuse as well as witness Father's aggression toward other individuals. *See* TEX. FAM. CODE ANN. § 263.307(b)(3), (4), (7), (11); *Holley*, 544 S.W.2d at 371–72; *see also B.R.*, 456 S.W.3d 612, 615 (stating factfinder may measure future conduct by past conduct).

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

The final *Holley* factors focus on the acts or omissions of the parent that may indicate the existing parent-child relationship is not a proper one, and on any excuse for the acts or omissions of the parent. *See Holley*, 544 S.W.2d at 371–72. Again, the trial court heard testimony that Father was continually engaged in a pattern of violence due to his anger management issues. *See* TEX. FAM. CODE ANN. § 263.307(b)(3), (4), (7), (12); *Holley*, 544 S.W.2d at 371–72. The trial court heard testimony from several witnesses, establishing Father emotionally and physically abused the children as well as other individuals on a number of occasions. *See* TEX. FAM. CODE ANN. § 263.307(b)(3), (4), (7), (12); *Holley*, 544 S.W.2d at 371–72. When asked about different incidents of abuse, Father admitted he spanked and strictly disciplined his children, but added he treated his children this way so they would be tough, like men. *See* TEX. FAM. CODE ANN. § 263.307(b)(3), (4), (7), (12); *Holley*, 544 S.W.2d at 371–72. Based on this evidence, the trial court could have reasonably inferred that Father exercised poor judgment in his parenting choices

by emotionally and physically abusing the children, and despite Father's reasoning, the trial court could have concluded Father's relationship with the children was not a proper one.

Application of the Law to the Evidence

Based on the evidence produced at trial, the trial court — as the sole judge of the weight and credibility of the evidence — could have reasonably concluded that termination of Father's parental rights was in the best interests of the children. *See J.L.*, 163 S.W.3d at 85; *J.F.C.*, 96 S.W.3d 256 at 261. In challenging the sufficiency of the evidence to support the trial court's finding that termination of their parental rights was in the child's best interest, we are mindful that Father does not challenge the sufficiency of the evidence to support the predicate findings, which included findings that Father: (1) voluntarily left the children alone or in the possession of another without the intent to return; (2) knowingly placed the children in conditions that would endanger them; (3) engaged in conduct that endangered the children; (4) refused to submit to a court order; (5) constructively abandoned the children; and (6) failed to comply with the provisions of a court order that set out the actions necessary for him to reunite with the children. *See TEX. FAM. CODE ANN. § 161.001(b)(1)(A), (D), (E), (I), (N), and (O)*. Evidence that a parent has committed the acts or omissions prescribed by section 161.001 of the Code is probative in determining a child's best interest. *See O.N.H.*, 401 S.W.3d at 684.

Moreover, the trial court heard testimony that Father emotionally and physically abused his children, placing them in a dangerous environment. Although we acknowledge there was some conflict in the testimony regarding the frequency and severity of violence in the home, the trial court could have reasonably concluded Father was violent and his behavior would not change given his past conduct and denials. *See B.R.*, 456 S.W.3d 612, 615. Additionally, there was evidence Father acted violently toward other individuals, including his adult son, deceased wife,

and current girlfriend. The evidence established that Father, however, did not believe he mistreated his children but rather showed them how to be men.

In addition to the incidents of emotional and physical abuse, the trial court heard evidence that Father engaged in drug use and refused to cooperate with the Department. Although Father completed his anger management classes, the evidence established Father failed to complete other aspects of his service plan due to his anger issues. Furthermore, the record reflects Father visited only R.A.M., who often acted out after a visit. At no point did Father visit I.A.M.; rather, the record shows I.A.M. did not want to visit with Father or return to his home. Finally, the trial court heard evidence that the children were doing well with their aunt and uncle, and both aunt and uncle expressed an interest in adopting the children and committing to them long term. The trial court also heard evidence that both children wished to remain with their aunt and uncle. Accordingly, after viewing the evidence in the light most favorable to the trial court's finding and giving due deference to the trial court, we hold the evidence is legally and factually sufficient to support the trial court's best interest finding. *See J.L.*, 163 S.W.3d at 85; *J.F.C.*, 96 S.W.3d 256 at 261.

CONCLUSION

Based on the foregoing, we hold the evidence is legally and factually sufficient to support the trial court's finding that the termination of Father's parental rights was in I.A.M.'s and R.A.M.'s best interests. Accordingly, we overrule Father's complaints, hold the trial court did not err in terminating Father's parental rights, and affirm the trial court's termination order.

Marialyn Barnard, Justice