Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00817-CV

IN THE INTEREST OF A.R.R., a Child

From the 150th Judicial District Court, Bexar County, Texas
Trial Court No. 2014PA00345
Honorable Charles E. Montemayor, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Marialyn Barnard, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: June 28, 2017

AFFIRMED

This is an accelerated appeal from a trial court's order terminating appellant father's ("Father") parental rights to his child, A.R.R. On appeal, Father argues the evidence is legally and factually insufficient to support the trial court's finding that termination of his parental rights was in his child's best interest. We affirm the trial court's order.

BACKGROUND

The Texas Department of Family and Protective Services ("the Department") became involved in the underlying matter after A.R.R.'s mother drove into a concrete barrier, severely injuring herself and her seven-year-old daughter, J.S., who was riding in the front passenger seat. The police determined that A.R.R.'s mother was driving while intoxicated with a blood alcohol content three times the legal limit. As a result of the accident, J.S. suffered deep lacerations to her

abdomen, and her arm was almost completely severed; she currently has minimal use of her arm. At the hospital, the mother discovered she was two months pregnant with A.R.R. At that time, the mother had two children — one of which was J.S. Both of these children are not Father's children and are not the subject of this appeal.

Before A.R.R. was born, the Department created a service plan to assist A.R.R.'s mother with her parenting abilities. However, after she repeatedly failed to comply with the service plan and continued to use alcohol, the trial court initiated termination proceedings against the mother with regard to her two children. When A.R.R. was born, the Department amended its pleadings, adding A.R.R. to the termination proceedings. At the first hearing, the trial court rendered an order designating the Department as temporary managing conservator of all the children, including A.R.R., and designated Father as possessory conservator of A.R.R. A.R.R.'s half-siblings were voluntarily placed with relatives, and A.R.R. was placed in foster care. At four months old, A.R.R. was placed with a foster family, where he currently remains.

In the months that followed, the required statutory hearings were conducted, and Father's instability and lack of support system were noted.[1] In its last report, the Department recommended Father's parental rights should be terminated, citing Father's inability to hold consistent employment, establish a safe environment, and maintain a support system for A.R.R. At the final hearing, Father failed to appear due to work obligations, and the trial court heard testimony from the Department caseworker. The trial court ultimately found Father constructively abandoned A.R.R. and failed to comply with the provisions of a court order that set out actions necessary for him to reunite with A.R.R., thereby violating sections 161.001(b)(1)(N) and (O) of the Texas

[1] During this time, the trial court terminated the mother's parental rights to all of her children, including A.R.R. She did not file a notice of appeal, challenging the trial court's order of termination, and as a result, she is not a party to this appeal.

Family Code ("the Code"). *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(N), (O) (West Supp. 2016). In addition, the trial court found termination of Father's parental rights was in the best interest of A.R.R. *See id.* § 161.001(b)(2). The trial court then rendered an order terminating Father's parental rights. Thereafter, Father perfected this appeal.

ANALYSIS

On appeal, Father 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)(N), (O). Rather, Father contends the evidence is legally and factually insufficient to support the trial court's finding that termination was in A.R.R.'s best interest. *See id*. § 161.001(b)(2).

Standard of Review

Under the Code, the termination of parental rights requires the application of a two pronged test under which there must be clear and convincing evidence (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 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 2014); *see J.O.A.*, 283 S.W.3d at 344; *B.R.*, 456 S.W.3d at 615. Because termination of parental rights implicates due process as it results in permanent and unalterable changes for both parent and child, courts use this heightened standard of review. *In re E.A.G.*, 373 S.W.3d 129, 140 (Tex. App.—San Antonio 2012, pet. denied). Thus, we 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)).

In considering a legal sufficiency challenge in termination cases, we view the evidence in the light most favorable to the trial court's findings and judgment, and resolve any disputed facts in favor of that court's findings if a reasonable fact finder could have so resolved them. *Id.* We also 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, we consider evidence favorable to termination if a reasonable fact finder could, and we disregard contrary evidence unless a reasonable fact finder could not. *Id.*

With regard to a factual sufficiency review, we give due deference to the trier of fact's findings, avoiding substituting our judgment for 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).

In our review, we remain mindful that we may not weigh a witness's credibility because it depends on appearance and demeanor, and these are within the domain of the trier of fact. *J.P.B.*, 180 S.W.3d at 573. Even when such issues are found in the appellate record, we must defer to the fact finder's reasonable resolutions. *Id.* As emphasized by the Texas Supreme Court, we must remain mindful of the role of the fact-finder. *In re C.H.*, 89 S.W.3d 17, 26 (Tex. 2002). The Texas Supreme Court has stated "while parental rights are of constitutional magnitude, they are not absolute. Just as it is imperative for courts to recognize the constitutional underpinnings of the parent-child relationship, it is also essential that emotional and physical interests of the child not be sacrificed merely to preserve that right." *Id.*

Applicable Law

In making a best interest determination, we may take into account the factors set forth by the Texas Supreme Court in *Holley v. Adams*: (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 that may indicate the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions of the parent. 544 S.W.2d 367, 371–72 (Tex. 1976). These considerations, i.e., "the *Holley* factors," are neither all-encompassing nor does a court have to find evidence of each factor before terminating the parent-child relationship. *See C.H.*, 89 S.W.3d at 27. "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 analysis, we focus not on the best interest of the 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.).

In addition to the *Holley* factors, we also consider the factors set out in section 263.307(b) of the Code to determine whether a parent is willing and able to provide the child with a safe environment. Although there is a strong presumption that maintaining the parent-child relationship is in a child's best interest, permanently placing a child in a safe environment in a timely manner is also in a child's best interest. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam); *B.R.*, 456 S.W.3d at 615; *see* TEX. FAM. CODE ANN. § 263.307(a) (West 2014). These factors 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 including providing the child and other children under the family's care with: (A) minimally adequate health and nutritional care; (B) care, nurturance, and appropriate discipline consistent with the child's physical and psychological development; (C) guidance and supervision consistent with the child's safety; (D) a safe physical home environment; (E) protection from repeated exposure to violence even though the violence may not be directed at the child; and (F) an understanding of the child's needs and capabilities; 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.

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, in addition to direct evidence, a court may consider circumstantial evidence, subjective factors, and the totality of the 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, in determining whether termination of the parent-child relationship is in the best interest of the child, a fact finder may judge a parent's future conduct by his or her past conduct. *Id.*

The Evidence

In reviewing the evidence, we have considered the *Holley* factors as well as those as 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. We have also considered the acts or omissions found by the trial court under section 161.001(b)(1) of the Code, as well as the circumstantial evidence, any subjective factors, and the totality of the evidence. *See R.S.D.*, 446 S.W.3d at 820. And although the trial court took judicial notice of the record, we note a court may not take judicial notice of the truth of the allegations in its records. *See In re J.E.H.*, 384 S.W.3d 864, 869 (Tex. App.—San Antonio 2012, no pet.). In other words, a trial court may only take judicial notice of its "own records in matters that are generally known, easily proven, and not reasonably disputed." *Id.* Thus, the allegations contained in the reports or family service plan cannot support the final order of termination. *See id*.

1. Desires of the Child

A.R.R. was approximately two-and-a-half-years-old at the time of trial and is unable to express his desires regarding conservatorship. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72. However, in evaluating A.R.R.'s desires, the trial court was entitled to consider testimony regarding A.R.R.'s current placement, which indicated A.R.R. had bonded with and is well-cared for by his current foster family. *See In re J.D.*, 436 S.W.3d 105, 108 (Tex. App.—Houston [14th Dist.] 2014, no pet.); *In re U.P.*, 105 S.W.3d 222, 230 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). The Department caseworker testified A.R.R. has been living with his foster parents since he was four months old. According to the Department caseworker, A.R.R. is "extremely bonded" with the foster parents, calling them "mom" and "dad" and responding to their actions when they comfort him. *See J.D.*, 436 S.W.3d at 108; *U.P.*, 105 S.W.3d at 230.

In addition to considering the testimony regarding A.R.R.'s current placement, the trial court was also entitled to consider testimony concerning A.R.R.'s time spent with Father. *See J.D.*, 436 S.W.3d at 108; *U.P.*, 105 S.W.3d at 230. According to the Department caseworker, although Father attended most of his supervised visits with A.R.R., A.R.R. "is a completely different person," becoming nonverbal and reserved during these visits. *See J.D.*, 436 S.W.3d at 108; *U.P.*, 105 S.W.3d at 230. As noted by our sister court in *In re J.H.G.*, "[a] strong emotional bond between parent and child is necessary because it forms the basis of other relationships in the child's life." *See In re J.H.G.*, 313 S.W.3d 894, 898 (Tex. App.—Dallas 2010, no pet.). In this case, A.R.R. expressed no desire to interact with Father, becoming "a completely different person."

2. Emotional and Physical Needs of A.R.R. Now and In the Future

Being a young child, A.R.R.'s age renders him vulnerable if left in the custody of a parent who is unable or unwilling to attend to both his physical and emotional needs. *See* TEX. FAM.

CODE ANN. § 263.307(b)(1) (child's age and physical vulnerabilities); *Holley*, 544 S.W.2d at 371–72. He will therefore require constant emotional and physical support, relying on caretakers for all of his needs. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72. This need for emotional and physical support will continue for many years. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72. As indicated above, A.R.R.'s current foster family has demonstrated the ability to provide for A.R.R.'s needs. According to the Department caseworker, "[t]hey're making sure that his daily needs are being met and they love him."

On the other hand, the evidence shows Father failed to demonstrate the ability to provide for A.R.R.'s emotional and physical needs now and in the future. "Lack of stability, including a stable home, supports a finding that the parent is unable to provide for a child's emotional and physical needs." *In Interest of A.J.-A.*, No. 14-16-00070-CV, 2016 WL 1660858, at *5 (Tex. App.—Houston [14th Dist.] Apr. 26, 2016, no pet.) (mem. op.); *see In re G.M.G.*, 444 S.W.3d 46, 59–60 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (same); *Doyle v. Tex. Dep't of Protective & Regulatory Servs*., 16 S.W.3d 390, 398 (Tex. App.—El Paso 2000, pet. denied) (holding that a parent's failure to provide stable home and provide for child's needs contributes to finding that termination of parental rights is in child's best interest). During the hearing, the Department caseworker expressed her concern regarding Father's inability to provide safe and stable housing for A.R.R. The Department caseworker testified that Father lived in different places throughout the course of the investigation. According to the Department caseworker, at one point when Father was living with a roommate, she made an unannounced visit and "found that there were scales, several baggies, multiple bullets and several people living in the home that were not known to the Department." She testified that when she asked Father about the individuals, Father stated "he didn't know the other people were residing in the home."

Although the evidence shows Father no longer lives with those individuals, the evidence also shows Father was not forthcoming with his current living arrangement. According to the Department caseworker, Father's last known residence was a duplex she visited nearly a year ago. The Department caseworker testified that since that time, she has made several unannounced visits to the duplex only to find Father was never there. The Department caseworker also testified that when she asked Father about scheduling visits, Father refused to set up a time. The Department caseworker further testified she is not confident about his living arrangement, stating, "At this point in time it doesn't look like he even lives there. The same mail is in the mailbox. And also when I knock on the door it sounds hollow inside, like there's no furniture in there." Moreover, at no point during the Department's investigation did Father provide a lease or rental agreement evidencing he lived at the duplex.

In addition to failing to demonstrate an ability to provide for A.R.R.'s most basic needs of stability and permanency, we note that Father has not challenged the trial court's finding that he constructively abandoned A.R.R. *See* TEX. FAM. CODE ANN. § 161.00(b)(1)(N). Although this finding does not relieve the Department from proving termination is in A.R.R.'s best interest, the evidence supporting Father's constructive abandonment is probative on the issue of the A.R.R.'s best interest. *See C.H.*, 89 S.W.3d at 28; *B.R.*, 456 S.W.3d at 615. Accordingly, based on the foregoing, we conclude the evidence shows Father was incapable of adequately providing for A.R.R.'s emotional and physical needs as he was unable to demonstrate understanding the importance of providing a stable home environment for A.R.R. *See G.M.G.*, 444 S.W.3d 59–60; *Doyle*, 16 S.W.3d at 398; *see also* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72.

3. Parenting Abilities

The trial court also heard evidence that Father failed to surround himself with an adequate support system of family and friends, demonstrating a lack of parenting skills. *See* TEX. FAM. CODE ANN. § 263.307(a)(12) (whether family demonstrates adequate parenting skills); TEX. FAM. CODE ANN. § 263.307(a)(13) (whether adequate support social system consisting of extended family and friends is available); *Holley*, 544 S.W.2d at 371–72. The Department caseworker testified that when she asked Father about his family and their willingness to help him, Father stated all of his family members lived in Mexico and did not "want anything to do with [Child Protective Services]." *See J.H.G.*, 313 S.W.3d at 898 (pointing out Mother did not have adequate support system as her family lived in Mexico and she did not have close friends); *see also* TEX. FAM. CODE ANN. § 263.307(a)(10) (willingness and ability of child's family to cooperate with Department).

With regard to friends, the evidence shows Father did not understand the importance of a support system and failed to familiarize himself with other people. *See* TEX. FAM. CODE ANN. § 263.307(a)(13); *Holley*, 544 S.W.2d at 371–72. For example, when the Department caseworker made an unannounced home visit to one of Father's previous residences, she found several people residing in the home as well as "scales, several baggies, [and] multiple bullets" in a bedroom. According to the Department caseworker, one of the individuals was on probation and the other individuals refused to identify themselves. The Department caseworker further testified she was also not allowed to go inside one of the bedrooms. The Department caseworker testified that although she did not see any actual drugs, the situation was concerning, particularly because Father did not know who the people were or why they were present in the home. The Department caseworker also testified that although she continued to try to encourage Father to find an adequate

support system, Father stated he did not need to provide one. Accordingly, the refusal of Father's family to cooperate with the Department coupled with Father's lack of other reliable adults to provide nurture and care for A.R.R. indicates Father does not have the requisite support and care system needed to ensure A.R.R.'s basic needs are met. *See* TEX. FAM. CODE ANN. § 263.307(b)(12), (13); *Holley*, 544 S.W.2d at 371–72.

Moreover, the evidence showed Father continued to engage in a relationship with A.R.R.'s mother even after she failed to comply with the Department's family service plan and continued to drink alcohol. 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); *Holley*, 544 S.W.2d at 371–72. The Department caseworker testified that "throughout the majority of the case, prior to the final orders, he and mom were planning to stay together. He had no intentions of leaving her, until right when we were set for the original trial setting is when he stated that he would end that relationship. I don't know how honest that is." The evidence shows A.R.R.'s mother is currently incarcerated, has a history of alcohol abuse, and it is unclear what Father's intentions are when A.R.R.'s mother is released from incarceration.

Accordingly, Father's failure to maintain a stable home environment and surround himself with an adequate support system is indicative of his inability to properly parent. *See* TEX. FAM. CODE ANN. § 263.307(a)(12), (13); *Holley*, 544 S.W.2d at 371–72. The evidence shows that Father was unable to recognize the potential danger of living with individuals who were reasonably believed to be possessing drug paraphernalia. *See* TEX. FAM. CODE ANN. § 263.307(b)(8) (whether there is a history of substance abuse by the child's family or others who have access to the child's home). The evidence also shows Father failed to understand the serious nature of continuing a relationship with A.R.R.'s mother, who placed A.R.R. in a dangerous situation before he was born

and continued to struggle with alcohol issues, which ultimately led to the termination of her parental rights. *See* TEX. FAM. CODE ANN. § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72.

4. Emotional and Physical Danger to A.R.R. Now and In the Future

Although there is nothing in the record indicating Father physically harmed A.R.R., we remain mindful of the Department caseworker's testimony regarding the unidentified individuals and drug paraphernalia found inside one of the places Father was temporarily living. *See* TEX. FAM. CODE ANN. § 263.307(b)(8); *Holle*y, 544 S.W.2d at 371–72. The fact that Father was unaware of who was living at the residence is concerning because it potentially exposes A.R.R. to physical or emotional danger of unknown individuals, one of which was on probation. Moreover, the evidence that Father was living in a place where A.R.R. could potentially access drug paraphernalia is equally concerning. Again, we note Father's ongoing relationship with A.R.R.'s mother, an individual who chose to drive drunk, ultimately causing a severe automobile accident that injured her daughter. *See* TEX. FAM. CODE ANN. § 263.307(b)(11); *Holle*y, 544 S.W.2d at 371–72.

5. Programs Available

With regard to the programs provided by the Department, there is evidence Father participated in several of the programs ordered by the court. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *Holley*, 544 S.W.2d at 371–72. Specifically, Father completed a drug assessment and counseling services, both of which he was successfully discharged. Father also attended each of his supervised visits with A.R.R., and during each visit, he played and paid attention to A.R.R. despite A.R.R.'s nonresponsive behavior.

6. Plans for Child by Those Seeking Custody/ Stability of Home for Proposed Placement

As noted above, Father's plans for A.R.R. are unclear given his inability to provide a safe and stable home environment. The residences provided by Father were both determined to be potentially dangerous and unverifiable. *See* TEX. FAM. CODE ANN. § 263.307(b)(11), (12); *Holle*y, 544 S.W.2d at 371–72. Additionally, there is evidence that Father may reunite with A.R.R.'s mother once she is released from incarceration. And again, the Department caseworker's testimony revealed that over the preceding eighteen months leading up to and including the time of trial, Father had not demonstrated the ability to surround himself with a support system to help care for him care for A.R.R. when he worked, was ill, or in need of parenting assistance.

On the other hand, A.R.R. is currently residing with a foster family, who has expressed interest in adopting A.R.R. The Department caseworker testified A.R.R.'s foster parents care deeply for A.R.R. and take him to all of his medical and dental appointments. The foster parents have also followed all the recommendations provided by early childhood intervention services for A.R.R., thus, ensuring his daily needs are met. Moreover, the record reflects the foster family made an effort to ensure A.R.R. maintains a relationship with his other half-siblings by scheduling visitations with them. According to the record, A.R.R.'s half-siblings have been adopted by their grandmother. The record also reflects that in addition to providing for A.R.R.'s basic needs, the foster family has been cooperative with the Department throughout this proceeding.

7. Acts or Omissions Indication Parent-Child Relationship is Not Proper/Excuses

The evidence of acts or omissions by Father that demonstrate his inability to provide safe and stable housing and an adequate support system is detailed at length in our discussions above. We additionally note the evidence of Father's inability to fully comprehend the serious nature of the Department's requests to provide A.R.R. with an adequate support system. Because Father

was absent from the final hearing, there is no evidence regarding any excuses for his behavior throughout the investigation. At most, the Department caseworker testified that Father believed he did not need to provide one.

Summation

Based on the evidence detailed above, we conclude the trial court could have reasonably formed a firm belief or conviction that terminating Father's parental rights was in A.R.R.'s best interest so that A.R.R. could achieve permanency promptly through adoption by his foster family. *See In re T.G.R.-M.*, 404 S.W.3d 7, 17 (Tex. App.—Houston [1st Dist.] 2013, no pet.); *In re M.G.D.*, 108 S.W.3d 508, 513–14 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). Although there is evidence Father completed some of the services provided to him by the Department and evidence that Father attended supervised visits with A.R.R., there is also evidence Father failed to establish a stable environment for A.R.R. "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." *A.J.-A.*, 2016 WL 1660858, at *5 (quoting *In re K.C.*, 219 S.W.3d 924, 931 (Tex. App.—Dallas 2007, no pet.)). The evidence also shows Father failed to consistently make child support payments, maintain adequate housing that is safe and free from hazards, and develop a positive support system for A.R.R. Moreover, there are concerning questions surrounding Father's ongoing relationship with A.R.R.'s Mother after her continued use of alcohol, again demonstrating his inability to provide for A.R.R.'s best interests. As pointed out by the trial judge, A.R.R. "needs permanency" and A.R.R. "has a wonderful opportunity for that with these foster parents who are here today who did make time in their schedules and chose to be here and show their support and willingness to take this child."

Therefore, based on the foregoing, we hold the relevant *Holley* factors, as well as those set out in section 263.307(b) of the Code, weigh in favor of a finding that termination was in the best

interest of A.R.R. *See* TEX. FAM. CODE ANN. § 263.307(b); *Holley*, 544 S.W.2d at 371–72. 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 Father's future conduct by his past conduct, we hold the trial court was within its discretion in finding termination of Father's parental rights would be in the best interest of A.R.R. *See B.R.*, 456 S.W.3d at 616. In other words, the evidence is such that the trial court could have reasonably formed a firm belief or conviction that termination was in the best interest of A.R.R. *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 the best interest of A.R.R. Accordingly, we overrule Father's sufficiency complaints, hold the trial court did not err in terminating Father's parental rights, and affirm the trial court's order.

Marialyn Barnard, Justice