



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00841-CV

IN THE INTEREST OF J.K.L., a Child

From the County Court at Law, Kendall County, Texas
Trial Court No. 15-485 CCL
Honorable Cathy Morris, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: June 21, 2017

AFFIRMED

Kasee K. appeals the trial court's order terminating her parental rights to her son J.K.L. Kasee challenges the sufficiency of the evidence to support the trial court's finding that termination of her parental rights was in J.K.L.'s best interest. We affirm the trial court's order.

BACKGROUND

J.K.L. was born on September 30, 2015, and the Department was appointed temporary managing conservator on October 16, 2015. An order terminating the father's parental rights was signed on September 28, 2016. A trial on whether Kasee's parental rights should be terminated was held on November 29-30, 2016. The following summarizes the testimony of the witnesses.

A. Kimberly Dodd

Kimberly Dodd, a conservatorship worker employed by the Texas Department of Family and Protective Services, testified she was assigned to work with Kasee in November of 2013. At that time, another one of Kasee's children, R.C., who was two months old, was removed from Kasee's care, and a family service plan was developed for Kasee which included supervised visitation and drug testing. Kasee was never able to visit R.C. after the removal because Kasee never had two consecutive, negative drug tests. Kasee also was not otherwise compliant with the plan because she would engage in services for a month and then disappear for several months. While the case was pending, Kasee gave birth to another child, M.C., on March 17, 2014. Kasee was using drugs while pregnant with M.C., and the Department immediately removed M.C. from Kasee's care. Ultimately, Kasee's parental rights to both R.C. and M.C. were terminated on January 26, 2015.

Dodd testified Kasee was not truthful during the period she worked with her. Dodd discovered Kasee had two other children who also were removed from her care because of her drug use. Dodd testified Kasee never demonstrated any willingness to protect her children from harm or to accept the responsibility of being a parent. Kasee never put her children's needs ahead of her own or demonstrated any change in her pattern of behavior. Dodd admitted she had not been in contact with Kasee since October of 2014.

B. Dr. Brent Reyburn

Dr. Brent Reyburn, a neonatologist, examined J.K.L. on October 4-5, 2015. Because J.K.L. did not exhibit withdrawal symptoms at birth, he was not initially screened for narcotics. On October 3, 2015, J.K.L. was admitted to the hospital's intensive care unit due to concerns about respiratory distress and oxygen desaturation. J.K.L. was diagnosed with Neonatal Abstinence Syndrome which is manifested by withdrawal symptoms due to maternal narcotic usage. The

symptoms include tremors, extreme irritability, high-pitched crying, increased muscle tone, and hyperactivity.

During the night of October 4, 2015, J.K.L.'s Neonatal Abstinence Scores averaged 8.3, with high scores of 12 and 14 which Dr. Reyburn described as "incredibly high." Dr. Reyburn explained any score over 8 requires treatment, and J.K.L. met all criteria for placing him on morphine due to his symptoms. After the morphine was administered, J.K.L.'s symptoms drastically improved. J.K.L. was slowly weaned off the morphine over a two-week period.

Dr. Reyburn testified J.K.L. did not suffer from any other symptoms that would mimic something similar to a withdrawal. He also explained an infant generally shows evidence of withdrawal within 48 to 72 hours, but a delay in an infant's withdrawal is not uncommon. When the mother last used a narcotic and the type of narcotic she used can affect the timing of the infant's withdrawal. Dr. Reyburn further testified that an infant may suffer from withdrawal even if the mother tested negative for all drugs.

C. Samuel Cholico

Samuel Cholico, an investigative supervisor employed by the Department, testified the Department received a referral for J.K.L. on October 1, 2015. A nurse at the hospital where J.K.L. was born called in the referral based on Kasee's history with the Department and her extensive drug history. In the past, the Department had received five referrals with regard to Kasee, and three of the referrals were validated. All of the referrals involved drug use. The main concern with J.K.L. was his withdrawal symptoms.

Upon receiving the referral for J.K.L., a safety plan was developed for Kasee. Because Kasee was uncooperative and confrontational, the plan required her visits with J.K.L. in the hospital to be supervised. After Kasee was discharged from the hospital, she visited J.K.L. in the hospital between midnight and 3:00 a.m. A nurse reported Kasee appeared to be under the

influence of something. Although Kasee did not test positive for drugs in the hospital, Cholico testified the Department removed J.K.L. because of his withdrawal symptoms which indicated Kasee had used drugs during her pregnancy. Cholico also testified Kasee's probation officer informed him she tested positive in drug tests administered as a condition of probation in 2013.

D. Shelli Nix

Shelli Nix, another conservatorship worker employed by the Department, testified Kasee's case was transferred to her in August of 2016. Upon receiving the case, Nix reviewed the entire file. A copy of Kasee's family service plan was admitted into evidence. The plan required Kasee to complete individual therapy, a parenting class, and drug and alcohol assessment. Kasee was also required to submit to random drug testing, maintain a safe alcohol-and-drug-free home, maintain contact with her caseworker, obtain and maintain employment, and complete a psychological evaluation. When Nix was assigned the case, Kasee had completed a parenting class, participated in substance abuse assessment, started therapy, and completed a psychological evaluation. The psychological evaluation recommended ongoing drug treatment based on concerns that Kasee minimized her drug history. Kasee had not been discharged from therapy, and her therapist had not recommended family reunification. The plan required Kasee to attend therapy twice a month, but she had attended only about half of the required sessions. Kasee's therapist informed Nix that Kasee routinely called to cancel her appointments. The therapist continued to have concerns that Kasee was not addressing her alcohol issues. With the exception of one drug test in May of 2016 which was dilute, and a positive alcohol test in September of 2016, all of Kasee's drug tests were negative. Kasee had not provided evidence of employment or documentation that she was attending drug treatment.

Nix testified she saw no evidence of Kasee's willingness or ability to protect J.K.L. from harm. Nix stated Kasee had not demonstrated an acceptance of the responsibility of being a parent.

In therapy, Kasee continued to minimize and deny the problems that required J.K.L.'s removal. Nix testified Kasee had not met the plan's tasks or goals. Although the Department had provided Kasee with all the services, referrals, and resources necessary for her to be reunified with J.K.L., Kasee had not fully utilized them. The Department's permanency plan for J.K.L. was adoption by his current foster family in whose care J.K.L. was safe and meeting all of his developmental milestones. J.K.L. was placed with that foster family when he was discharged from the hospital. Nix had not observed any visits between J.K.L. and Kasee because the trial court had suspended all visitation based on concerns about her use of alcohol.

Kasee was married in March of 2016, and Nix testified a family service plan was developed for her husband. Her husband, however, had only completed the psychological evaluation, and his evaluation raised the same concerns about his minimizing Kasee's behavior and possibly enabling her. The Department was concerned about the husband's ability to care for J.K.L. because he had never previously been a parent and he had been arrested for solicitation of prostitution. Kasee and her husband provided diapers, toys, and clothes for J.K.L. Kasee's husband was not allowed in the Department's offices because he told a caseworker visiting their residence that he had a loaded gun, and the caseworker felt threatened.

Nix testified Kasee appeared to be substituting alcohol for drugs. On two court dates, Kasee was admonished by the trial court for showing up with alcohol on her breath. Based on that concern, the trial court's permanency hearing order signed on June 22, 2016, which was admitted into evidence, required Kasee to complete "Sober Living." Nix stated she was not the caseworker in June, so she did not know if Kasee was given a referral to go into "Sober Living." After Nix was assigned the case, Kasee never requested a referral until the Wednesday before trial. Nix testified Kasee never showed her evidence of or discussed her attendance at AA meetings. Kasee had not provided Nix with evidence of employment but had referred to being at work when Nix

requested a drug test. Nix admitted that the initial permanency hearing order signed in March of 2016, was still recommending reunification. The order stated Kasee was in compliance with her plan, but noted concerns with Kasee's progress.

E. Joni Chavez-Martell

Joni Chavez-Martell, Kasee's therapist, testified she started working with Kasee in December of 2015 and continued working with her through the date of trial. During therapy, Kasee minimized her substance abuse problem. Kasee denied she was using drugs while pregnant with J.K.L. Chavez-Martell believed alcohol was a problem for Kasee that needed to be more thoroughly addressed. Chavez-Martell also believed Kasee needed to work on creating healthier relationships, and that issue had not been thoroughly addressed. Kasee described her marriage as a business arrangement. Kasee was forty-one, and her husband was eighty-three. Chavez-Martell believed the marriage was a temporary arrangement to provide Kasee with a stable residence and that the marriage would not last if anyone else entered the picture. Chavez-Martell also believed the marriage was a dependency for Kasee, and she still was not taking care of herself. Kasee led Chavez-Martell to believe she was working; however, Chavez-Martell discovered it was not paid work. Because the goal was for Kasee to support herself, Chavez-Martell believed Kasee was being deceptive. Kasee did not consistently attend therapy, and she did not attend any therapy sessions from May 9, 2016, to August 23, 2016. Chavez-Martell was aware that Kasee attended a two-week outpatient drug rehab program in October of 2016, but she believed Kasee needed a program with a longer duration that required constant attendance and participation. Chavez-Martell testified it was not in J.K.L.'s best interest to be placed with Kasee because of her substance abuse issue, her inability to provide stability for herself, and her inability to take care of herself.

On cross-examination, Chavez-Martell stated Kasee's marriage was an issue because instead of supporting herself, she was allowing someone else to support her. Chavez-Martell

agreed that Kasee obtaining a nursing aide degree in May of 2016 was some progress toward obtaining paid employment. Chavez-Martell testified Kasee still needed to work on her ability to have a stable, healthy environment and to be free from substance abuse.

F. Foster Mother

The foster mother testified J.K.L. was placed with her in October of 2015. At that time, J.K.L. was in inconsolable with lots of interrupted sleep. The foster mother took J.K.L. to his medical appointments and helped him during his withdrawals. Because of his condition at birth, J.K.L. could experience learning and behavioral disabilities in the future. The foster mother took J.K.L. to his visits with Kasee, and she updated Kasee on his progress. The foster mother was concerned about Kasee's alcohol use because she smelled alcohol on her breath a few times during visits and in court, and the visits were at 10:00 a.m. The foster mother testified J.K.L. calls her mama and calls her husband "da-da," and she and her husband planned to adopt J.K.L. if Kasee's rights were terminated.

G. Kasee

Kasee testified she has five children: N.H. who is seventeen, C.B.H. who is fourteen, R.C. who is four, M.C. who is almost three, and J.K.L., who is fourteen months. In February of 2006, Kasee was involved in her first referral to the Department. Kasee was in jail for credit card abuse, and her husband was arrested with C.B.H. in the car. Kasee admitted she and her husband used drugs while N.H. and C.B.H. were in the house. Kasee testified she and her husband decided to give up their rights to N.H. and C.B.H. and sign them over to her husband's brother and his wife. Kasee testified she was involved in a second referral in 2013 relating to R.C. and M.C. Kasee tested positive for methamphetamines during that case. On June 12, 2013, Kasee was convicted of possession of a controlled substance and placed on five years community supervision. Kasee's parental rights to R.C. and M.C. were terminated on January 26, 2015. Kasee testified a motion

to revoke her community supervision based on several violations was scheduled for a hearing on January 4, 2017. Kasee admitted she failed to report to her probation officer but believed the charge had been dismissed.

Kasee testified she stopped using drugs in 2014 and was not using any drugs during her pregnancy with J.K.L.; however, she admitted J.K.L.'s father used drugs. Kasee denied J.K.L. had drugs in his system when he was born. Kasee denied showing up to court intoxicated, but she admitted she took a breathalyzer test on one occasion which showed she was over the legal limit. Kasee testified she attended a two-week outpatient drug rehab program in October of 2016 and had spoken with her caseworker about a referral to a four-month program. Kasee testified she regularly attended AA meetings, and had not consumed alcohol for sixty-four days. Kasee stated she was working at a nursing academy as contract labor. She did not provide the Department with check stubs because she was paid in cash.

Kasee testified she believed the Department targeted her after J.K.L.'s birth because of her past history with the Department. Kasee first met with the Department's caseworker three days after J.K.L. was born. Kasee testified J.K.L. had no signs of anything wrong until the Department became involved. Kasee stated J.K.L. was never inconsolable. After Kasee was discharged from the hospital, she continued to nurse J.K.L. Kasee denied being uncooperative with the Department and stated she was willing to do any service required. Kasee testified she provided the Department with a form listing several names for possible placement, but the Department did not start any home studies on those individuals for months. Kasee's sister had a home study scheduled for the week after trial.

Kiera Comrie was Kasee's first caseworker until Nix was assigned in August of 2016, which was Kasee's original trial date. Kasee testified she had weekly meetings with Comrie, but Nix had never called her or scheduled a meeting. Kasee provided Comrie with proof of her

employment and showed her signatures from her AA meetings. Comrie knew Kasee started nursing aide school and graduated from the program. While Comrie was her caseworker, Kasee believed she was in compliance with her service plan. Kasee was unclear about the June 2016 court order requiring her to attend “Sober Living,” and she was not provided any referral. In an effort to comply with the requirement, Kasee went to two-week outpatient drug program. Kasee also began to see a life coach on a weekly basis in August of 2016. Kasee testified she was able to confide in her life coach better than with Chavez-Martell because Chavez-Martell worked with the Department and twisted her words. Kasee denied telling Chavez-Martell her marriage was a business decision. The Department never provided Kasee with a goal to work toward in her counseling. Kasee started attending AA meetings in December of 2015, and NA meetings in July of 2016. Copies of sign-in sheets documenting her attendance at meetings was admitted into evidence under seal to protect the names of the other meeting participants. When asked if she considered herself an addict, Kasee responded, “At sometimes. No. I don’t right now. No.” She testified she last took illegal drugs in June of 2014. When she was taking illegal drugs, she only used them on the weekends because they gave her more energy. Kasee testified she also did not consider herself to be an alcoholic because she does not need alcohol every day compared to other people at her AA meetings. Kasee had not had any alcohol to drink in sixty-four days, and testified it would not be an issue if the Department did not want her to have any contact with alcohol. Kasee testified she and her husband are supportive of each other.

In addition to her 2013 probation, Kasee admitted she also was arrested on October 24, 2015 (the day after J.K.L. was released from the hospital) on an old warrant for two theft cases. She pled guilty to both offenses and served six days in jail for one offense and ninety days in jail for the second offense. She was released from jail in December of 2015.

H. Jesse Sanchez

Jesse Sanchez, the school director at West Avenue Nurse Aide Academy, met Kasee when she was a student at the school in January or February of 2016. Sanchez testified the nursing aide program is a twenty-day class with a clinical rotation. Kasee successfully completed the program and graduated. Sanchez testified that Kasee became employed by the school in March of 2016 as a floater to fill-in for other office staff or instructors when needed. Sanchez estimated Kasee worked 25 to 35 hours a week and earned \$9.00 to \$11.00 per hour. Sanchez testified there probably was not any potential for Kasee to have full-time employment at the school. Sanchez provided Kasee with a letter dated September 9, 2016, to document her employment which was admitted into evidence. On cross-examination, Sanchez testified if Kasee had a 2013 felony conviction for possession of methamphetamine she would have been excluded from the program. When shown a copy of the judgment evidencing Kasee's prior conviction in 2013, Sanchez testified he was not sure if that conviction was shown on the background check he ran when Kasee applied to the school.

I. Kasee's Sister

Kailla, Kasee's younger sister, testified she presented herself as a potential placement for J. K.L. and was in the middle of a home study. Kailla, who lived in Washington, had three children and no prior involvement with the Department. Kailla was aware of Kasee's prior drug and alcohol use but believed Kasee had made significant changes in the past year and no longer had a drinking problem. Kailla had met Kasee's husband, and believed they had a real marriage and helped each other. Kailla testified Kasee has a great relationship with C.B.H. and believes he will eventually live with her.

After hearing the evidence, the trial court signed an order terminating Kasee's parental rights to J. K.L. Kasee appeals.

STANDARD OF REVIEW

To terminate parental rights pursuant to section 161.001 of the Code, the Department has the burden to prove: (1) one of the predicate grounds in subsection 161.001(b)(1); and (2) that termination is in the best interest of the child. *See* TEX. FAM. CODE ANN. § 161.001 (West Supp. 2016); *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). The applicable burden of proof is the clear and convincing standard. TEX. FAM. CODE ANN. § 161.206(a) (West 2014); *In re J.F.C.*, 96 S.W.3d 256, 263 (Tex. 2002). “‘Clear and convincing evidence’ means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.” TEX. FAM. CODE ANN. § 101.007.

In reviewing the legal sufficiency of the evidence to support the termination of parental rights, the court must “look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true.” *J.F.C.*, 96 S.W.3d at 266. “[A] reviewing court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so.” *Id.* “A corollary to this requirement is that a court should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible.” *Id.*

In conducting a factual sufficiency review of a trial court’s order terminating parental rights, we “must give due consideration to evidence that the factfinder could reasonably have found to be clear and convincing.” *Id.* “In reviewing termination findings for factual sufficiency, a court of appeals must give due deference to a [factfinder’s] factfindings and should not supplant the [factfinder’s] judgment with its own.” *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006) (internal citations omitted). The evidence is only factually insufficient if “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” about the truth of the

State's allegations. *J.F.C.*, 96 S.W.3d at 266. "The trial court is the sole judge of the weight and credibility of the evidence, including the testimony of the Department's witnesses." *In re F.M.*, No. 04-16-00516-CV, 2017 WL 393610, at *4 (Tex. App.—San Antonio Jan. 30, 2017, no pet.) (mem. op.).

STATUTORY TERMINATION GROUNDS

Kasee does not challenge the sufficiency of the evidence to support the predicate statutory grounds for terminating her parental rights. Evidence that proves one or more statutory grounds for termination may constitute evidence illustrating that termination is in the child's best interest. *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002). The trial court found by clear and convincing evidence that Kasee: (1) knowingly placed or knowingly allowed J.K.L. to remain in conditions or surroundings which endangered his physical or emotional well-being pursuant to section 161.001(b)(1)(D) of the Texas Family Code; (2) engaged in conduct or knowingly placed J.K.L. with persons who engaged in conduct which endangered his physical or emotional well-being pursuant to section 161.001(b)(1)(E) of the Texas Family Code; (3) had her parent-child relationship terminated with respect to another child based on a finding that her conduct was in violation of section 161.001(b)(1)(D) or (E) of the Texas Family Code; and (4) failed to comply with the provisions of a court order that specifically established the actions necessary for her to obtain the return of J.K.L.

BEST INTEREST

A. Applicable Law and Best Interest Factors

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). However, when the court considers factors related to the best interest of the child, "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)

(West Supp. 2016). In determining whether a child's parent is willing and able to provide the child with a safe environment, the court should consider: (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; (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. *Id.* § 263.307(b).

Courts also may apply the non-exhaustive *Holley* factors to shape their analysis. *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976). Those factors include: (1) the desires of the child; (2) the present and future emotional and physical needs of the child; (3) the present and future emotional and physical danger to the child; (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 held by the individuals seeking custody of the child; (7) the stability of the home of the parent and the individuals seeking custody; (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. *Id.*

The foregoing factors are not exhaustive, and “[t]he absence of evidence about some of [the factors] would not preclude a factfinder from reasonably forming a strong conviction or belief that termination is in the child’s best interest.” *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). “A best-interest analysis may consider circumstantial evidence, subjective factors, and the totality of the evidence as well as the direct evidence.” *In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio 2013, pet. denied). “A trier of fact may measure a parent’s future conduct by his past conduct and determine whether termination of parental rights is in the child’s best interest.” *Id.*

B. Analysis

1. Desires of the Child

“When a child is too young to express [his] desires, the factfinder may consider whether the child has bonded with the foster family, is well-cared for by them, and has spent minimal time with a parent.” *In re F.M.A.*, No. 04-16-00318-CV, 2016 WL 4379456, at *3 (Tex. App.—San Antonio Aug. 17, 2016, pet. denied) (citing *In re S.R.*, 452 S.W.3d 351, 369 (Tex. App.—Houston [14th Dist.] 2014, pet. denied)). J.K.L. was fourteen months old at the time of trial. Because of his age, J.K.L. is physically and mentally vulnerable. Although too young to express his desires, J.K.L. had been living with his foster family since his release from the hospital and is thriving in their care. He refers to his foster mother and father as “mama” and “da-da.” Based on concerns regarding alcohol abuse after Kasee appeared in court and at visits with J.K.L. with alcohol on her breath, Kasee had not been allowed any visitations with J.K.L. in the five months preceding trial. Accordingly, J.K.L. has spent minimal time with Kasee.

2. Present and Future Emotional and Physical Needs of and Danger to the Child

“A history of drug abuse and an inability to maintain a lifestyle free from arrests and incarcerations is [also] relevant to a trial court’s best-interest determination.” *F.M.A.*, 2016 WL 4379456, at *3 (citing *In re D.M.*, 58 S.W.3d 801, 817 (Tex. App.—Fort Worth 2001, no pet.)). Although Kasee denied taking drugs while pregnant with J.K.L., he suffered from Neonatal Abstinence Syndrome at birth. In her brief, Kasee suggests the syndrome could have been caused by hydrocodone she was taking for hip pain; however, no evidence was presented at trial to prove such a link, and the trial court was entitled to disbelieve it.¹ Kasee had a long history of drug abuse, including a criminal conviction for possession of a controlled substance. Kasee had four other children removed from her care because of her drug abuse. Although Kasee did not test positive for drug use while the underlying case was pending, she appeared in court and at visits with J.K.L. with alcohol on her breath. She failed to attend her counseling sessions from May to August of 2016, and her therapist Chavez-Martell believed alcohol was a problem for Kasee that needed to be more thoroughly addressed. Although Kasee testified at trial that she had not consumed any alcohol in sixty-four days, the trial court could have disbelieved her. Furthermore, the trial court had to weigh her failure to consistently attend counseling in an effort to address her issues against the efforts she made immediately before the trial date. *See In re J.O.A.*, 283 S.W.3d 336, 346 (Tex. 2009) (noting “evidence of improved conduct, especially of short-duration, does not conclusively negate the probative value of a long history of drug use and irresponsible choices”). Based on the foregoing, the trial court could believe Kasee had not been able to and

¹ Kasee made a passing reference to her use of hydrocodone during her testimony as follows:

Q. Why were you taking hydrocodone at the beginning of this case?

A. I was — it was — I didn’t want hydrocodone. I asked for something nonnarcotic. I had a hip replacement in 2009 which I had been prescribed hydrocodone throughout this whole time. I did not even ask for them anymore. I asked the doctor for something nonnarcotic, and she prescribed me tramadol, and also after my C-section and just when I started exercising, my hip hurts a lot.

Kasee never testified she was taking hydrocodone while pregnant with J.K.L.

could not provide for J.K.L.'s emotional and physical needs. In addition, the trial court could have believed Kasee's drug and alcohol use presented a danger to J.K.L.

3. Parenting Abilities

With regard to Kasee's parenting abilities, she had four children previously removed from her care because of her drug abuse, and J.K.L. was born with Neonatal Abstinence Syndrome. Kasee could not demonstrate her ability to care for J.K.L. even during supervised visits because concerns regarding her alcohol use suspended those visits five months before trial. In addition, Nix testified she saw no evidence of Kasee's willingness and ability to protect J.K.L. from harm. J.K.L. was thriving in the care of his foster family and was developmentally on target.

4. Available Programs, Stability, and Plans

Although Kasee has been offered programs to assist her in reunifying with J.K.L., she appeared in court and at visits with alcohol on her breath. Despite the counseling services offered to her, she did not attend any therapy sessions from May to August of 2016, which meant she did not attend any therapy sessions for two months after the trial court suspended her visitation rights in June of 2016 and ordered her to address her alcohol issue. Although Kasee was employed part-time on the date of trial, her employment could be in jeopardy based on her employer being unaware of her prior felony conviction for possession of a controlled substance and the hearing pending on the motion to revoke her community supervision. Kasee was married and living in a stable home; however, Chavez-Martell believed the marriage was a temporary arrangement intended to provide Kasee with a stable residence, and the marriage was unlikely to last if anyone else entered the picture. Chavez-Martell also believed the marriage enabled Kasee by not requiring her to take care of herself. Chavez-Martell testified it was not in J.K.L.'s best interest to be placed with Kasee because of her substance abuse issue, her inability to provide stability for herself, and her inability to take care of herself. Finally, Nix testified Kasee's husband was not allowed in the

Department's offices because of his reference to a loaded gun when a caseworker visited their residence. J.K.L.'s foster family had cared for him since he was released from the hospital, and he was thriving in their care. His foster family wants to adopt him.

Having reviewed all of the evidence, we hold the evidence is sufficient to support the trial court's finding that termination of Kasee's parental rights was in J.K.L.'s best interest.

CONCLUSION

The order of the trial court is affirmed.

Patricia O. Alvarez, Justice