Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00042-CV

IN THE INTEREST OF I.G., a Minor Child

From the 45th Judicial District Court, Bexar County, Texas
Trial Court No. 2016PA00172
Honorable Charles E. Montemayor, Judge Presiding[1]

Opinion by: Patricia O. Alvarez, Justice

Sitting: Karen Angelini, Justice
Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: July 5, 2017

AFFIRMED

This is an accelerated appeal of the trial court's order terminating Appellant C.S.'s parental rights to his child, I.G.[2] C.S. contends the evidence does not support the trial court's termination based on Texas Family Code subsections 161.001(1)(b)(D), (E), (N) and (P). TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (N), (P) (West Supp. 2016). C.S. also contends the evidence is neither legally nor factually sufficient for the trial court to have found, by clear and convincing evidence, that terminating his parental rights is in I.G.'s best interest. *See* TEX. FAM. CODE ANN. § 161.001(b)(2). Because we conclude the evidence is legally and factually sufficient to support

[1] The Honorable Stephani Walsh is the presiding judge of the 45th Judicial District Court. The order terminating Appellant C.S.'s parental rights was signed by the Honorable Charles E. Montemayor, Associate Judge.
[2] To protect the minor's identity, we refer to the father and child by aliases. *See* TEX. R. APP. P. 9.8.

the trial court's findings on both issues, we affirm the trial court's order terminating C.S.'s parental rights.

FACTUAL AND PROCEDURAL BACKGROUND

I.G. was born on January 13, 2016. Based primarily on his mother's incarceration, I.G. was placed with fictive kin in Houston, Texas.

On January 26, 2016, the Texas Department of Family and Protective Services filed its Original Petition for Protection of a Child, for Conservatorship, and for Termination in Suit Affecting the Parent-Child Relationship.

After several status hearings, on November 3, 2016, the matter was called for trial. Following a hearing, the trial court terminated I.G.'s mother's parental rights on several grounds; she subsequently filed a voluntarily relinquishment of her parental rights. The trial court also terminated C.S.'s parental rights pursuant to Texas Family Code Sections 161.001(b)(1) (D), (E), (N), and (P). *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (N), (P).[3] The trial court further found termination of C.S.'s parental rights was in I.G.'s best interest. This appeal ensued.

[3] The pertinent sections of Texas Family Code Section 161.001(b) are set forth below:

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and:
  (i) the department has made reasonable efforts to return the child to the parent;
  (ii) the parent has not regularly visited or maintained significant contact with the child; and
  (iii) the parent has demonstrated an inability to provide the child with a safe environment;

(P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:
  (i) failed to complete a court-ordered substance abuse treatment program; or
  (ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;

SUFFICIENCY OF THE EVIDENCE

A. Standards of Review

"Involuntary termination of parental rights involves fundamental constitutional rights and divests the parent and child of all legal rights, privileges, duties, and powers normally existing between them, except for the child's right to inherit from the parent." *In re L.J.N.*, 329 S.W.3d 667, 671 (Tex. App.—Corpus Christi 2010, no pet.) (citing *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985)). As a result, appellate courts must strictly scrutinize involuntary termination proceedings in favor of the parent. *Id*. (citing *In re D.S.P.*, 210 S.W.3d 776, 778 (Tex. App.—Corpus Christi 2006, no pet.)).

An order terminating parental rights must be supported by clear and convincing evidence that (1) the parent has committed one of the grounds for involuntary termination as listed in section 161.001(b)(1) of the Family Code, and (2) terminating the parent's rights is in the best interest of the child. *See* TEX. FAM. CODE ANN. § 161.001; *In re J.F.C.*, 96 S.W.3d 256, 261 (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; *J.F.C.*, 96 S.W.3d at 264.

"There is a strong presumption that the best interest of the child is served by keeping the child with its natural parent, and the burden is on [the Department] to rebut that presumption." *In re D.R.A.*, 374 S.W.3d 528, 533 (Tex. App.—Houston [14th Dist.] 2012, no pet.). "The same evidence of acts or omissions used to establish grounds for termination under section 161.001[(b)](1) may be probative in determining the best interest of the child." *Id*.

1. Legal Sufficiency

When a clear and convincing evidence standard applies, a legal sufficiency review requires a court to "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." *In re J.L.*, 163 S.W.3d 79, 85 (Tex. 2005) (quoting *J.F.C.*, 96 S.W.3d at 266). If the court "determines that [a] reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true, then that court must conclude that the evidence is legally [sufficient]." *See id*. (quoting *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." *J.F.C.*, 96 S.W.3d at 266. "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*.

2. Factual Sufficiency

Under a clear and convincing standard, evidence is factually sufficient if "a factfinder could reasonably form a firm belief or conviction about the truth of the State's allegations." *In re C.H.*, 89 S.W.3d 17, 25 (Tex. 2002); *accord In re K.R.M.*, 147 S.W.3d 628, 630 (Tex. App.—San Antonio 2004, no pet.). We must consider "whether 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; *accord C.H.*, 89 S.W.3d at 25. "If, in light of the entire record, [unless] 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, . . . the evidence is factually [sufficient]." *J.F.C.*, 96 S.W.3d at 266.

B. Testimony Before the Trial Court

1. Chabrea Taylor

Chabrea Taylor, the Department's caseworker, testified I.G. was born on January 13, 2016. At the time of his birth, I.G.'s mother was incarcerated and admitted pre-natal drug use. The Department removed I.G. and he was placed with fictive kin in Houston, Texas. After her release, I.G.'s mother was unable to provide stable housing and failed to comply with the Department's

service plan. I.G. has remained in the same placement since his release from the hospital. The Department recommended termination of the mother's parental rights, and during the hearing, the mother represented that she would voluntarily relinquish her rights.

Although I.G.'s father was not incarcerated at the time of his birth, Taylor testified that she had a difficult time making contact with him. She attempted to work with C.S., toward completion of his service plan, for approximately four months prior to his current incarceration. During that time, C.S. was on bond for theft and possession of a firearm. Once the DNA tests confirmed that C.S. was I.G.'s father, C.S. complied with the Department's request that he complete a drug assessment. C.S.'s drug test on March 30, 2016 was positive for methamphetamines, amphetamines, and cocaine; his second test in May of 2016 was positive for methamphetamines. C.S.'s drug assessment recommended inpatient treatment. However, before C.S. could be placed for such treatment, he was arrested on June 27, 2016, and has remained incarcerated since that time.

Taylor further testified there was a four-month timeframe in which C.S. could participate in the Department's services, but he chose not to. Although offered by the Department, C.S. failed to complete the service plan's requirements for therapy, psychological evaluation, and to provide proof of stable housing and employment. During cross-examination, Taylor acknowledged that C.S. completed his parenting class, an anger management class, and attended Narcotics Anonymous meetings while incarcerated.

Taylor further testified that termination of C.S.'s parental rights was in I.G.'s best interest. C.S. was incarcerated and could not currently provide for I.G.'s well-being. C.S. had not provided any proof, that upon his release, he would be able to provide stable housing or financially support I.G. Finally, Taylor opined that I.G. was in a stable placement, with loving foster parents who hoped to adopt I.G.

2. C.S.

C.S. was incarcerated in the Texas Department of Criminal Justice State Jail Facility–Dominguez Unit at the time of the hearing and testified via telephone. C.S. testified that he was released from custody in February of 2016 and then rearrested in June of 2016. He was originally notified of I.G.'s birth at the beginning of February, prior to his release from Bexar County Jail. After DNA testing confirmed that I.G. was his child, C.S. contacted the Department and he participated in the drug assessment. C.S. explained that his attorney instructed him that he would have to finalize the pending charges before he could begin the inpatient treatment. During his incarceration, C.S. asserted that he participated in a number of classes: two parenting classes, Narcotics Anonymous, Christians Against Substance Abuse, Daily Choices, and Inter-peace.

C.S. explained that he originally did not believe I.G. was his child. When contacted by the Department, however, he complied with the requested DNA test. He does not feel like he has been given a chance to play a part in I.G.'s life. C.S. testified that I.G. was his first child, that he had taken classes and learned that "this has had an impact on my son's life, but through these classes I've learned the tools of how to fix that." He explained that he "just want[ed] to be a part of [his] son's life." He testified he was granted an FI-2 parole and was scheduled to be released on January 3, 2017. C.S. averred he had a job waiting for him at Toyota and was willing to pay child support upon his release.

On cross-examination, the Department inquired further about the drug tests. C.S. acknowledged that when he tested positive for methamphetamines, amphetamines, and cocaine, he was using drugs while on bond for his current criminal case. C.S. also acknowledged that his current theft and possession cases were not his first criminal offenses.

TERMINATION BASED ON STATUTORY VIOLATIONS

A. Arguments of the Parties

On appeal, C.S. contends there is no evidence that he knowingly placed or knowingly allowed I.G. to remain in conditions or surroundings which endangered I.G. Further, there was no evidence at trial that he, at any time, engaged in conduct or knowingly placed the child with anyone who engaged in conduct that endangered I.G.

The State counters the evidence is undisputed that C.S. was incarcerated for most of I.G.'s life on charges that were not his first criminal charges and that he tested positive for illegal drugs during the pendency of the case. His incarceration and drug use establishes a "voluntary, deliberate, and conscious course of conduct" which endangered I.G.

B. Statutory Violations under the Texas Family Code

We begin our analysis with the trial court's finding that C.S. engaged in conduct or knowingly placed I.G. with persons who engaged in conduct which endangered I.G.'s physical or emotional well-being. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E).

C. Analysis

Section 161.001(b) (1)(E) authorizes termination if the parent has engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child. TEX. FAM. CODE ANN. § 161.001(b)(1)(E). Conduct that subjects a child to a life of uncertainty and instability endangers the child's physical and emotional well-being. *Jordan v. Dossey*, 325 S.W.3d 700, 723 (Tex. App.—Houston [1st Dist.] 2010, pet. denied); *In re R.W.*, 129 S.W.3d 732, 739 (Tex. App.—Fort Worth 2004, pet. denied). We are asked to determine whether there is evidence that a parent's acts, omissions, or failures to act endangered the child's physical or emotional well-being. *See Jordan*, 325 S.W.3d at 723; *In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.). Our analysis may not rest

on a single act or omission; it must be "a voluntary, deliberate, and conscious course of conduct." *Jordan*, 325 S.W.3d at 723. Additionally, we consider C.S.'s actions before and after I.G.'s birth. *Id*.

"'[E]ndanger' means to expose a child to loss or injury or to jeopardize a child's emotional or physical health." *Id.* Endanger also incorporates "more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment," but it is not necessary that the conduct be directed at the child or that the child actually suffers injury. *Id*.; *see also In re E.N.C.*, 384 S.W.3d 796, 803 (Tex. 2012). The commission of criminal conduct by a parent may support termination under Section 161.001(b)(1)(E) because it exposes the child to the possibility that the parent may be imprisoned. *See In re M.C.*, 482 S.W.3d 675, 685 (Tex. App.—Texarkana 2016, pet. denied); *In re A.W.T.*, 61 S.W.3d 87, 89 (Tex. App.—Amarillo 2001, no pet.) (intentional criminal activity which exposes the parent to incarceration is relevant evidence tending to establish a course of conduct endangering the emotional and physical well-being of the child); *Tex. Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533–34 (Tex. 1987) (concluding criminal violations and incarceration can be evidence of endangerment if shown to be part of a course of conduct that is endangering to the child).

Courts have further held that a parent's lack of contact with the child and absence from the child's life are evidence of endangering the child's emotional well-being. *See In re U.P.*, 105 S.W.3d 222, 236 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). Similarly, a parents' use of narcotics, and the effect the narcotic poses to the child and parent, may qualify as an endangering course of conduct. *In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009); *see also R.W.*, 129 S.W.3d at 739 ("[C]onduct that subjects a child to a life of uncertainty and instability endangers the physical and emotional well-being of a child."); *Edwards v. Tex. Dep't of Protective Servs.*, 946 S.W.2d

130, 138 (Tex. App.—El Paso 1997, no writ) (stating a parent's drug use is a condition that can endanger a child's physical or emotional well-being and indicate instability in home environment).

Here, the evidence supported that C.S. was incarcerated at the time of I.G.'s birth. He was on bond, pending felony charges, between February 2016 and July 2016. During that time, C.S. knew about I.G., and confirmed that he was I.G.'s father. Yet, he continued to use illegal drugs and failed to take any steps to secure a safe environment for his child. C.S. has been absent from I.G.'s life to the extent that I.G. does not know that C.S. is his father. When the opportunity arose for C.S. to travel to Houston and meet I.G., C.S. cancelled the trip. With the exception of one letter, written in August of 2016, the record does not contain any contact between C.S. and I.G.

Although incarceration alone is insufficient to support a finding under section 161.001(b)(1)(E), the entire record and C.S.'s actions, before and during I.G.'s lifetime, show an overall course of conduct. The incident for which C.S. was incarcerated at the time of the hearing occurred several months before I.G.'s birth. C.S.'s drug use, however, continued. Irrespective of whether criminal charges were filed regarding C.S.'s use of methamphetamines, amphetamines, and cocaine, his drug use was in flagrant disregard of both his criminal bond and the Department's service plan. Therefore, we conclude the evidence is legally and factually sufficient to establish a firm conviction or belief in the trial court's mind that C.S. engaged in conduct that endangered I.G.'s physical or emotional well-being under section 161.001(b)(1)(E). *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E).

We remain mindful that only one statutory ground is necessary to support a judgment in a parental-rights termination case. *See In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003); *In re E.W.*, 494 S.W.3d 287, 291–92 (Tex. App.—Texarkana 2015, no pet.). Based on a review of the entire record, we conclude the evidence—legally and factually—supports the trial court's determination that C.S. engaged in conduct that endangered I.G.'s physical and emotional well-being pursuant

to subsection E. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E). We need not address C.S.'s sufficiency challenges to subsections (D), (N), and (P). *See id*. § 161.001(b)(1)(D), (N), (P); *A.V.*, 113 S.W.3d at 362.

BEST INTEREST FINDING

A. Arguments of the Parties

C.S. contends the evidence before the trial court was insufficient to overcome the presumption that keeping a child with a parent is in the child's best interest.

The State counters that C.S.'s continued illegal drug use, his failure to cooperate with the Department, and that C.S. never met I.G. all support the trial court's finding that termination of C.S.'s parental rights was in I.G.'s best interest.

B. The *Holley* Factors

The trial court is the sole judge of the weight and credibility of the evidence, including the testimony of the Department's witnesses. *See In re H.R.M.*, 209 S.W.3d 105, 108–09 (Tex. 2006) (per curiam) (requiring appellate deference to the factfinder's findings); *City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005). Some factors used to ascertain the best interest of the child were set forth in *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976); *accord E.N.C.*, 384 S.W.3d at 807 (reciting the Holley factors). The *Holley* Court warned that "[t]his listing is by no means exhaustive, but does indicate a number of considerations which either have been or would appear to be pertinent." *Holley*, 544 S.W.2d at 372; *accord E.N.C.*, 384 S.W.3d at 807 (describing the Holley factors as nonexclusive). "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." *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). In fact, evidence of only one factor may be sufficient for a factfinder to reasonably form a firm

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. *See 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) (West Supp. 2016); *In re B.R.*, 456 S.W.3d 612, 615 (Tex. App.—San Antonio 2015, no pet.). There is also 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 the following:

(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.

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 616.

When determining the best interest of a child, a court "may consider circumstantial evidence, subjective factors, and the totality of the evidence as well as the direct evidence." *B.R.*, 456 S.W.3d at 616 (citing *In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio 2013, pet. denied)). 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, the grounds on which the trial court granted termination, pursuant to 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." *In re O.N.H.*, 401 S.W.3d 681, 684 (Tex. App.—San Antonio 2013, no pet.) (citation omitted).

1. Testimony Regarding the Holley Factors

I.G. was only nine-months old at the time of the termination hearing. The evidence supports that I.G. was happy and healthy and doing well in his foster parents' residence and they hoped to adopt I.G. Additionally, the Department's caseworker testified I.G. was doing well, was well fed, and was thriving in his current placement. *See* TEX. FAM. CODE ANN. § 263.307(b)(13); *Holley*, 544 S.W.2d at 371–72; *see also C.H.*, 89 S.W.3d at 28 (holding placement plans and adoption evidence are relevant to best interest determination).

"The need for permanence is the paramount consideration for the child's present and future physical and emotional needs." *Dupree v. Tex. Dep't of Protective and Regulatory Servs.*, 907 S.W.2d 81, 87 (Tex. App.—Dallas 1995, no writ). This court considers a parent's conduct before and after the Department's removal of the child. *See In re S.M.L.D.*, 150 S.W.3d 754, 757–58 (Tex. App.—Amarillo 2004, no pet.). The evidence indicates C.S. knew of I.G.'s birth in February and his parentage was confirmed in May. Yet, C.S. took little action to ensure that I.G.'s emotional and physical needs were being cared for. He tested positive for methamphetamines, amphetamines, and cocaine during the pendency of this case. More importantly, as the trial court noted, he tested positive while on bond, a fact that was both "alarming" and "frightening" to the court. *See O.N.H.*, 401 S.W.3d at 684 (concluding trial court permitted to consider parent's past conduct in best interest determination); *see also* TEX. FAM. CODE ANN. § 263.307(b)(8), (11) (providing that, in determining best interest, courts may consider history of substance abuse by child's family or others who have access to the child's home); *Holley*, 544 S.W.2d at 371–72. A parent's drug use supports a finding that termination of parental rights is in the best interest of the child, *see In re L.G.R.*, 498 S.W.3d 195, 204 (Tex. App.—Houston [14th Dist.] 2016, pet. denied), and the factfinder can afford great weight to the significant factor of drug-related conduct, *Id.*; *see also In re M.L.G.J.*, No. 14–14–00800–CV, 2015 WL 1402652, at *4 (Tex. App.—Houston [14th Dist.] Mar. 24, 2015, no pet.) (mem. op.) (considering a parent's drug history in affirming a trial court's decision that termination was in the best interest of the child).

The Department offered several classes to C.S. prior to his incarceration in July of 2016. C.S. simply chose not to utilize the services and counseling offered by the Department. He was scheduled for inpatient drug treatment, but chose not to participate based on the charges for which he was currently incarcerated. Based on this evidence, the trial court could have formed a firm belief or conviction that C.S. failed to work with the Department and did not fully comply with

the terms of his service plan that were attainable. *See J.L.*, 163 S.W.3d at 85; *J.F.C.*, 96 S.W.3d at 261.

"The goal of establishing a stable, permanent home for a child is a compelling interest of the government." *See Dupree*, 907 S.W.2d at 87. The record reflects that C.S. planned to live with his mother upon his release from the state jail facility, but provided no proof to the trial court or the Department that such placement was either viable or a safe environment for a small child. I.G.'s foster family, on the other hand, has provided a safe, loving environment since I.G. was released from the hospital; they wanted I.G. to stay with them permanently and hoped to move forward with the adoption process. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *Holley*, 544 S.W.2d at 371–72.

2. Trial Court's Conclusion

The trial court found that C.S. violated several statutory requirements. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (N), and (P). The trial court's determination regarding C.S.'s termination under section 161.001(b)(1) is properly considered in its findings that termination is in the best interest of the child and is, in fact, probative in determining the child's best interest. *See C.H.*, 89 S.W.3d at 28 (holding the same evidence may be probative of both section 161.001(b)(1) grounds and best interest); *O.N.H.*, 401 S.W.3d at 684.

On appeal, C.S. focuses much attention on the fact that he has not had an opportunity to be a part of I.G.'s life. We remain mindful that the trial court is the sole judge of the weight and credibility of the witnesses. Here, the trial court heard from numerous witnesses and also reviewed several reports filed with the court during the pendency of the case. In making its determination, the trial court is called upon to determine I.G.'s best interest; above all, the court must consider the child's placement in a safe environment. *See* TEX. FAM. CODE ANN. § 263.307(a); *B.R.*, 456 S.W.3d at 615.

The trial court specifically pointed to C.S.'s choice to use drugs, to "flaunt" his drug use, while on bond pending felony drug charges. The trial court explained,

> [W]hat worries me is dad seems very convincing and sincere today, but what worries me is the long-term commitment in the life of [I.G.] And I've looked at the history of his care and there's nothing but chaos here in the parent[s'] lives, complete chaos, and that's unfortunate. And I don't know that [I.G.] needs to be exposed to that.

Reviewing the evidence under the two sufficiency standards, and giving due consideration to evidence that the trial court could have reasonably found to be clear and convincing, we conclude the trial court could have formed a firm belief or conviction that terminating C.S.'s parental rights to I.G. was in I.G.'s best interest. *See J.L.*, 163 S.W.3d at 85; *J.F.C.*, 96 S.W.3d at 266; *see also H.R.M.*, 209 S.W.3d at 108.

CONCLUSION

In this case, there is no evidence that C.S. ever had a relationship with I.G. C.S. was incarcerated as a result of his illegal drug usage. When not incarcerated, the evidence shows that he did not financially or emotionally support I.G. During that time, he was both physically and emotionally absent from I.G.'s life. Although C.S. participated in several classes during his incarceration, and he expresses an interest in being a part of I.G.'s life, he has failed to take any action that would indicate any resolve to maintain a relationship with I.G., much less actually parent him. The evidence shows that C.S.'s past and current abandonment actions will likely continue in the future.

In contrast, the evidence shows that I.G. is enjoying a stable home environment where his emotional and physical needs are being met. He has loving foster parents who understand his emotional and physical needs and would like to adopt him. Even I.G.'s mother believes this is the best place for I.G. and she testified that it would be in his best interest to remain with his current placement.

The trial court found C.S. committed four statutory grounds supporting termination of his parental rights and that termination of his parental rights was in I.G.'s best interest. Having concluded that the evidence legally and factually supports the trial court's determination that C.S. engaged in conduct that endangered I.G.'s physical and emotional well-being pursuant to subsection (E), *see* TEX. FAM. CODE ANN. § 161.001(b)(1)(E), we overrule C.S.'s appellate issues pertaining to the statutory basis for the termination of his parental rights.

We further conclude the evidence was legally and factually sufficient to support the trial court's finding by clear and convincing evidence that termination of C.S.'s parental rights to I.G. was in the child's best interest. *See id*. § 161.001(b)(2). Accordingly, we overrule C.S.'s appellate issue regarding the trial court's best interest finding.

Having overruled all of C.S.'s issues on appeal, we affirm the trial court's order terminating C.S.'s parental rights.

Patricia O. Alvarez, Justice