



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-17-00124-CV

**IN THE INTEREST OF R.P. JR., G.P., M.P., and R.M.A.P., Minor Children**

From the 131st Judicial District Court, Bexar County, Texas  
Trial Court No. 2015PA01825  
Honorable Richard Garcia, Judge Presiding<sup>1</sup>

Opinion by: Patricia O. Alvarez, Justice

Sitting: Marialyn Barnard, Justice  
Patricia O. Alvarez, Justice  
Irene Rios, Justice

Delivered and Filed: June 28, 2017

**AFFIRMED**

This is an accelerated appeal of the trial court's order terminating Appellant Mom's and Appellant Dad's parental rights to their children, R.P. Jr., G.P., M.P, and R.M.A.P.<sup>2</sup> Neither Mom nor Dad contest that the evidence was sufficient to support the trial court's terminations based on statutory grounds. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O) (West Supp. 2016). On appeal, Mom and Dad individually assert the evidence is neither legally nor factually sufficient for the trial court to have found by clear and convincing evidence that terminating each of their parental rights was in the children's best interests. *See* TEX. FAM. CODE ANN. § 161.001(b)(2). Because we conclude the evidence is legally and factually sufficient to support the trial court's

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<sup>1</sup> The Honorable Barbara Nellermoe, presided over the hearing and pronounced the order; the Final Order of Termination was signed by the Honorable Richard Garcia, Associate Judge.

<sup>2</sup> To protect the minor's identities, we refer to the appellants and children by aliases. *See* TEX. R. APP. P. 9.8.

findings in both cases, we affirm the trial court's order terminating Mom's and Dad's parental rights to R.P. Jr., G.P., M.P., and R.M.A.P.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

On August 12, 2015, the Texas Department of Family and Protective Services received a referral following Mom's suicide attempt. A follow-up investigation revealed domestic violence between Mom and Dad, an unstable living environment for the children, a failure to supervise the children, and a lack of viable relative options for placement.

On August 28, 2015, the Department filed its Original Petition for Protection of Children, for Conservatorship, and for Termination in Suit Affecting the Parent-Child Relationship. Following an emergency order, the children were placed in the temporary managing conservatorship of the Department; Mom and Dad were granted temporary possessory conservatorship.

The Department created individual family service plans for Mom and Dad; the plans set forth the services and classes required before the children could return home to either Mom or Dad. After several status and permanency hearings, on November 14, 2016, the trial court called the matter for trial. Following a hearing, the trial court terminated Mom's and Dad's parental rights pursuant to Texas Family Code Sections 161.001(b)(1) (D), (E), (O). *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O).<sup>3</sup> The trial court further found termination of both Mom's and

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<sup>3</sup> 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; and
- (O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than

Dad's parental rights was in the children's best interests. *See id.* § 161.001(b)(2). This appeal ensued.

### 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. 2003). “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

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nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child.

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[s] of the child[ren].” *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. Valencia Wright*

Valencia Wright, the Department's caseworker, testified the Department removed the children following a suicide attempt by Mom in August of 2015; she overdosed on R.P. Jr's psychotropic medication. After Mom's admission to the hospital, Mom requested the Department care for her children; she "needed time to get herself together." At the time of the hearing, R.P. Jr. was nine-years-old, G.P. was seven-years-old, M.P. was four-years-old, and R.M.A.P. was three-years-old.

Wright testified that Mom's service plan included domestic violence classes, parenting classes, and individual and family therapy. Mom initiated counseling, but was discharged following excessive absences. The service plan also required Mom to maintain stable housing and employment and to submit for random drug testing. At the time of the hearing, Mom did not have stable employment or housing.

Wright averred that, although Mom completed both parenting and domestic abuse classes, she failed to demonstrate anything she learned from the class. Concerns remained regarding ongoing domestic violence. The main recommendation contained in Mom's psychological assessment was for her not to engage in a relationship with Dad. Wright discussed the recommendation with Mom on several occasions to no avail. Specifically, Wright relayed that in August of 2016, Mom "punched out [Dad]'s windows in his truck. [Dad], apparently, went to where [Mom] was staying and . . . busted out a mirror in the home." In addition to the physical abuse, Wright documented emotional abuse including text messages back and forth between the parents, threatening each other and each other's families. The last text messages documented by Wright, in October of 2016, occurred shortly before the termination hearing.

Wright testified that Dad was likewise provided a safety plan upon the children entering the Department's custody. He failed to complete many of the services, including individual counseling and domestic violence classes. In fact, Wright relayed that Dad had to restart the family violence class three times because of missed classes. Dad did complete a parenting class and appeared to have a lease on an apartment.

Wright outlined the Department's concerns regarding medical neglect of the children. Despite several attempts to explain how excessive sugars can cause harm to the children's teeth, both parents continued to bring snacks and inappropriate foods to the visits. For example, G.P.'s teeth were completely rotted and required surgery to place caps on all of his teeth. Yet, neither Mom's nor Dad's behavior changed throughout the pendency of the case.

Both parents regularly attended visitations and were bonded with their children. Originally, the visitations were joint, with both parents. However, after Mom's outcry that Dad hit her when he was drunk, the Department separated the visits. Wright testified the parents' ongoing behavior continued to endanger both the physical and emotional well-being of the children. Wright opined she did not think either Mom or Dad could safely care for the children. The parents failed to project appropriate behaviors, continued to engage in domestic violence, remained untruthful with the caseworkers, and continued in a toxic, on-again, off-again relationship.

Wright testified the children were doing very well in placement. R.P. Jr. struggles with reading, spelling, and math and is currently taking medication for Attention Deficit Hyperactivity Disorder. As the case has progressed, R.P. Jr. has relayed specific details about his mother's suicide attempt, the fighting between his parents immediately preceding the incident, and his attempt to stop the suicide. He is currently in therapy and is beginning to address these issues. Although only nine-years-old, R.P. Jr. appears to step into the parent role for his siblings. During

visits, R.P. Jr. takes the children to the bathroom and generally cares for the children's needs. G.P. is also in therapy—predominantly addressing the domestic violence witnessed in the home. Although M.P. and R.M.A.P. both require speech therapy, neither child exhibits special needs.

The children were thriving in their foster home and the Department was hopeful all four children would be adopted together. Wright explained that she had been unable to locate a relative for placement. Finally, Wright testified that ongoing cases with the Department, or failure to complete the necessary paperwork, excluded placement with the maternal grandmother, the maternal brother, the paternal sister, or the paternal grandmother.

2. *Jerry Allen*

Jerry Allen, the Department's investigator, testified that he received the initial report on August 12, 2015. After several visits, on August 24, 2015, Allen found the family living at a hotel. Although the original referral only included Mom's suicide attempt, other concerns materialized. Allen expressed concerns regarding domestic violence, the lack of a stable living environment, neglectful supervision, and drug use by Dad. Both of the older children discussed their mother's suicide attempt with Allen, and provided further details regarding the domestic abuse. Allen also testified regarding the children being outside late at night and roaming in-and-out of traffic.

An emergency meeting was scheduled for the following day. When the maternal grandmother refused to take a drug screen and was uncooperative with the Department, she was excluded from placement. Allen testified that Mom was cooperative, acknowledging that she needed help, and requesting the Department take care of her children. The children were removed and placed in foster care.

3. *Mom*

Mom testified that she was the mother of all four children and that she and the children's father were back together. Mom explained that she started taking the classes and was under the

impression that she did not have any additional classes. She knew that she had to participate in individual counseling. Because the therapist dismissed Mom for missing too many appointments, she understood that she “was on a waiting list.” Mom acknowledged spoiling the children, but reasoned her actions were because she only saw them once a week.

Mom testified that she was currently working with a staffing agency. Before her current placement, she worked at Toyota for approximately four months, and had worked at Whataburger for a short period of time when she lived with her mother in Dallas.

Mom acknowledged telling the police officer that she was afraid of Dad and that she attempted to file for a protective order. She testified the District Attorney’s office told her that she did not have sufficient evidence to qualify for the order. Mom further explained that she was back with Dad “[b]ecause I have been hearing from people, saying that I’m supposed to be with him so I can get my kids back.” When pushed, Mom said both her caseworker and counselor told her that she needed to be with Dad because the Department wanted the children returned to both parents. Mom testified that, after the October 2016 hearing, Dad told her that he had texted the caseworker about them living together and the caseworker had responded that “it was fine.” On cross-examination, Mom admitted the domestic violence and that she knew “better than to think that [she] should get back with [Dad],” but that she “made that choice to be with him.” She explained that she was only doing so “[b]ecause I just want my kids back.”

#### 4. *Missy Moran*

Missy Moran, the visitation supervisor, testified both parents were “pretty consistent” with their visitation. Mom is very compliant; she clearly loves the children and shows them love and affection. Mom did exhibit inappropriate behavior; specifically, during one visitation, Mom had noticeable “passion marks” on her neck and she made it very clear the marks were not made by



Dad. Moran reported that Dad is also very loving and affectionate with the children. Both parents, however, tend to overindulge with candy and non-nutritional foods.

The visits were originally individual visits and, about midway, the visits were moved to joint visits and were two-hour long visits. However, following the domestic violence incident in August, the Department stopped all joint visits.

5. *Nikki Spencer*

Nikki Spencer, a CASA supervisor, testified regarding the children's placement. She described the children as sweet and very bonded, without a lot of mental health or behavioral issues. Spencer explained that neither parent had progressed sufficiently to provide a safe and stable home for the children. The parents exhibited excessiveness in food and an overall inability to control the children during a visit. Spencer also described several conversations she had with Mom explaining the difference between co-parenting and being in a relationship with the other parent. Spencer expressed serious concerns about the safety of the children.

[T]hese children have been very vocal to me about the instability of their lives when they were with their parents and how essentially traumatic that was for them to be going in and out of shelters, in and out of hotels, not knowing where they were going to stay from time to time, and in telling me about witnessing the domestic violence and pretending to be asleep when their parents would be fighting.

She further explained that R.P. Jr. was slowly moving from his role of parenting his siblings to becoming "more of a child." He is taking less responsibility for his siblings and feeling less of a need to be protective.

6. *Trial Court's Pronouncement*

The trial court expressed gratitude for each of the attorneys and caseworkers for the help provided to the family.

My sense is—is that mom does not comprehend everything that needed to be done. And dad, although he did do services, I don't know that he can embrace the

counseling, having not completed it, having not completed the domestic violence program, to make a difference in these children's lives.

The trial court terminated each parent on statutory grounds of (D), (E), and (O), *see* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O), and further found that termination of each parent's parental rights was in the children's best interests, *see id.* § 161.001(b)(2).

On appeal, neither parent challenges the trial court's termination based on the statutory grounds. Instead, both challenge the trial court's determination that termination of each parent's parental rights is in the children's best interests.

### **BEST INTEREST FINDINGS**

#### **A. Arguments of the Parties**

Both Mom and Dad contend the evidence before the trial court was insufficient to overcome the presumption that keeping the children with a parent is in the children'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).

*I. Desires of the Children*

None of the children testified during the hearing. The record clearly supports that there is a bond between the children and their parents. The parents are loving and attentive during visitation and the children appear happy to see them. The evidence also supports the children are happy, healthy, and thriving in the foster parents’ residence. The siblings are very close and bonded with each other and the oldest sibling, R.P. Jr., is learning to be less of a parent figure and

more of a child and sibling. G.P. is very emotional and, although he has commented that he “wants to go home,” he has not yet addressed the personal trauma from the domestic violence he witnessed. No evidence indicates any of the other children expressed a desire to return to either their mother’s or their father’s care. *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).

2. *Emotional and Physical Needs of the Child Now and in the Future and the Emotional and Physical Danger to the Child Now and in the Future*

“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.3d 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 testimony supports the children were traumatized by the parents’ disorderly lifestyle prior to the Department’s intervention. The children remained unsupervised, continually moved from one living location to another, and the parents failed to meet their nutritional needs. In the foster home, the children have thrived; they appear more settled, relaxed, and remain bonded and protective of each other.

Nothing in the record establishes that the children have any excessive physical, emotional, or psychological needs. As previously stated, R.P. Jr. takes medication for ADHD and is struggling in school. The two older children are in counseling and the two youngest are in speech therapy. Although several attempts were undertaken, the Department exhausted all of its options for family placement in this case.

Mom and Dad regularly visited the children during the pendency of this case; by all accounts, they are bonded, loving, and affectionate. Each parent made intermittent improvements,

but ultimately resorted to the destructive behaviors exhibited prior to the Department's intervention. *See In re J.O.A.*, 283 S.W.3d 336, 346 (Tex. 2009) (concluding short duration improvements do not necessarily negate long history of irresponsible choices). The evidence also indicates neither Mom nor Dad were able to learn from the classes in which they participated. The parents continued to make unhealthy food choices to the physical detriment of the children and exhibited an inability to control all four of the children during visitations. Additionally, despite the Department's intervention and services, the domestic abuse continued between Mom and Dad. As a result, the Department's original concerns regarding the children's living conditions and surroundings, which endangered the children's physical and emotional well-being, remained unaddressed.

### 3. *Parenting Abilities and Services Available*

The evidence suggests that both Mom and Dad were loving and affectionate toward the children, but both were unable to protect the children. The continuous history of instability and ongoing abusive relationship outweighs any positive intentions. Even in light of the Department and each of the service providers reiterating that the parents should remain separated, Mom apparently still chose to live with Dad. Mom's testimony—that "everybody," including her caseworkers and counselor, told her that she had to be living with Dad for the Department to return her children—was contrary to all other testimony and evidence.

A review of the record supports that neither parent acted in accordance with the Department's service plan. Although some classes were started, neither parent exhibited an ability to display the lessons learned from the classes. Both parents appeared more committed to their "toxic" relationship than to the needs of their children.

Accordingly, based on the evidence presented, the trial court could have formed a firm belief or conviction that both Mom and Dad failed to work with the Department and did not fully comply with the terms of their service plans. *See J.L.*, 163 S.W.3d at 85; *J.F.C.*, 96 S.W.3d at 261.

4. *Stability of the Home or Proposed Placement*

“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. Here, the record reflects the children were constantly moving from place to place, shelter to hotel, and back and forth again. We further note a lack of testimony regarding familial assistance or support available for either parent. In contrast, the children have remained in the same foster home during the pendency of the case and the Department is hoping to place the children for adoption.

5. *Any Excuse for the Acts or Omissions of the Parent*

Both parents were ordered to comply with service plans designed to provide each parent with the necessary assistance to enable the parent to provide the children with a safe, stable, and nurturing environment. Although Mom and Dad initiated participation at different levels and at varying times, neither parent was able to implement the information learned in the services. Additionally, outside of the select few classes the parents elected to attend, both Mom and Dad refused to complete many of the classes or participate in the classes as directed.

**C. Trial Court’s Determination That Termination of Mom’s and Dad’s Parental Rights Was in the Children’s Best Interests**

The trial court found, and neither parent challenges on appeal, that Mom and Dad both:

- knowingly placed or knowingly allowed [the children] to remain in conditions or surroundings which endanger [the children’s] physical or emotional well-being . . .;
- engaged in conduct or knowingly placed [the children] with persons who engaged in conduct which endanger [the children’s] physical or emotional well-being . . .; [and]
- failed to comply with the provisions of a court order[ed service plan]. . . .

*See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), and (O). The trial court's determination regarding Mom and Dad's terminations under section 161.001(b)(1) are properly considered in its findings that termination of each parent is in the best interests of the children and is, in fact, probative in determining the children's best interests. *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.

We remain mindful that the trial court is the sole judge of the weight and credibility of the witnesses. *City of Keller*, 168 S.W.3d at 819. 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 the children's best interests; above all, the court must consider the children's placement in a safe environment. *See* TEX. FAM. CODE ANN. § 263.307(a); *B.R.*, 456 S.W.3d at 615. The Department's emergency removal, fifteen months before the termination hearing, was predicated on Mom's suicide attempt and the concerns regarding physical neglect, domestic violence, and unstable living conditions.

The Department designed the safety plan to promote reunification. Yet, at each step along the way, neither Mom nor Dad chose to take the necessary steps to ensure that either parent could safely parent the children. 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 Mom's and Dad's parental rights to R.P. Jr., G.P., M.P., and R.M.A.P. was in the children's best interests. *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. Therefore, the evidence is legally and factually sufficient to support the trial court's order terminating Mom's and Dad's parental rights. *See J.F.C.*, 96 S.W.3d at 266; *see also H.R.M.*, 209 S.W.3d at 108.



### CONCLUSION

The trial court found Mom and Dad each committed three statutory grounds supporting termination of their parental rights and that termination of each parent's rights was in the children's best interests. Neither parent contests the trial court's determination that Mom and Dad both failed to comply with their individual service plans pursuant to subsections (D), (E), and (O). *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O).

Based on a review of the entire record, we conclude the evidence is legally and factually sufficient to support the trial court's finding, by clear and convincing evidence, that termination of both Mom's and Dad's parental rights to R.P. Jr., G.P., M.P., and R.M.A.P. is in the children's best interests. *See id.* § 161.001(b)(2). Accordingly, we overrule both Mom's and Dad's appellate issues regarding the trial court's best interest findings.

Patricia O. Alvarez, Justice