Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00253-CV

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

From the 285th Judicial District Court, Bexar County, Texas
Trial Court No. 2016PA00835
Honorable Richard Garcia, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Marialyn Barnard, Justice
Rebeca C. Martinez, Justice

Delivered and Filed: September 13, 2017

AFFIRMED

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

BACKGROUND

The Texas Department of Family and Protective Services ("the Department") initially became involved in the underlying matter after it received a referral alleging two children, K.L.P. and J.R.P., were being exposed to domestic violence and drug use. The referral further alleged the mother of the children threatened to commit suicide in front of the children. At the time, K.L.P.

was four-years-old and J.R.P. was ten-months-old. Both children were living with their mother and J.R.P.'s father. K.L.P.'s father — Father — was incarcerated.

The Department ultimately removed the children from the home and placed them with their maternal grandmother. Thereafter, it petitioned to become the temporary managing conservator of both children, seeking to terminate each of the parents' parental rights. The Department prepared service plans for all three of the parents. After failing to comply with several of the provisions of the service plans, both the mother and J.R.P's father executed voluntary relinquishments of their parental rights.

A final termination hearing was subsequently held before the trial court. Neither the mother nor J.R.P.'s father were present; however, each of them were represented by counsel. K.L.P.' father — Father, who was incarcerated at the time — participated telephonically. He was also represented by counsel. The trial court heard testimony from two Department caseworkers, who were involved in the case, Father, and the children's maternal grandmother. After the hearing, the trial court ordered that all three of the parents' parental rights be terminated. Specifically, the trial court found Father: (1) engaged in conduct or knowingly placed K.L.P. with persons engaged in conduct endangering K.L.P.'s physical or emotional well-being.; (2) constructively abandoned K.L.P.; and (3) failed to comply with the provisions of a court order that specifically established the actions necessary for him to obtain the return of K.L.P. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E), (N), (O) (West Supp. 2015). The trial court further found termination of Father's parental rights would be in K.L.P.'s best interest. *See id*. § 161.001(b)(2). Accordingly, the trial court rendered an order terminating Father's parental rights. Thereafter, Father perfected this appeal.[1]

[1] The trial court terminated the mother's parental rights to all of her children, including K.L.P., and she did not file a notice of appeal. As a result, she is not party to this appeal.

ANALYSIS

On appeal, Father does not challenge the evidence with regard to the trial court's findings under section 161.001(b)(1) of the Texas Family Code ("the Code"). *See id.* § 161.001(b)(1)(E), (N), (O). Rather, Father argues the evidence is legally and factually insufficient to support the trial court's finding that termination was in the best interest of his child. *See id.* § 161.001(b)(2).

Standard of Review

A parent's right to his child may be terminated by a court only if the court finds by clear and convincing evidence that the parent committed an act prohibited by section 161.001(b)(1) of the Code and termination is in the best interest of his child. TEX. FAM. CODE. ANN. § 161.001(b); *In re J.O.A.*, 283 S.W.3d 336, 344 (Tex. 2009); *In re B.R.*, 456 S.W.3d 612, 615 (Tex. App.—San Antonio 2015, no pet.). The Code defines "clear and convincing evidence" as "proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." TEX. FAM. CODE ANN. § 101.007 (West 2014); *see J.O.A.*, 283 S.W.3d at 344; *In re E.A.G.*, 373 S.W.3d 129, 140 (Tex. App—San Antonio 2012, pet. denied); *B.R.*, 456 S.W.3d at 615. This heightened standard of review is required by courts because termination of a parent's rights to his child results in permanent and severe changes for both the parent and child, implicating due process concerns. *In re A.B.*, 437 S.W.3d 498, 502 (Tex. 2015); *In re D.M.*, 452 S.W.3d 462, 468–69 (Tex. App.—San Antonio 2014, no pet.); *E.A.G.*, 373 S.W.3d at 140. We must therefore determine whether the evidence is such that a fact finder could reasonably form a firm belief or conviction that termination was in the child's best interest. *A.B.*, 437 S.W.3d at 502; *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005).

In reviewing a legal sufficiency challenge, we must view the evidence in the light most favorable to the trial court's findings and judgment, and resolve any disputed facts in favor of the trial court's findings so long as a reasonable fact finder could have done so. *J.P.B.*, 180 S.W.3d

at 573. We also disregard all evidence a reasonable fact finder could have disbelieved and consider undisputed evidence even if such evidence is contrary to the trial court's findings. *Id.* Stated differently, we consider evidence favorable to termination if a reasonable fact finder could, and we disregard contrary evidence unless a reasonable fact finder could not. *Id.* We do not weigh witness credibility issues "that depend on appearance and demeanor" because such issues are within the domain of the fact finder. *Id.* Even if credibility issues are found in the appellate record, we must defer to the fact finder's reasonable determinations. *Id.*

In reviewing the evidence for factual sufficiency, we give due deference to the fact finder's findings and avoid substituting the fact finder's judgment for our own. *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). "If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction [in the truth of its finding], then the evidence is factually insufficient." *Id.* (quoting *J.F.C.*, 96 S.W.3d at 266). And just as in a legal sufficiency review, we may not weigh witness credibility issues, which are made by the fact finder, in our review for factual sufficiency. *H.R.M.*, 209 S.W.3d at 109.

Best Interests — Substantive Law

In a best interest analysis, we consider the following nonexclusive factors set forth by the Texas Supreme Court in *Holley v. Adams*:

1. the desires of the child;
2. the emotional and physical needs of the child now and in the future;
3. the emotional and physical danger to the child now and in the future;
4. the parental abilities of the individuals seeking custody;
5. the programs available to assist these individuals to promote the best interest of the child;
6. the plans for the child by the individuals or by the agency seeking custody;
7. the stability of the home or proposed placement;
8. the acts or omissions of the parent which may indicate that the existing parent–child relationship is not a proper one; and
9. any excuse for the acts or omissions of the parent.

544 S.W.2d 367, 371–72 (Tex. 1976). These factors — also referred to as "the *Holley* factors" — are not the only factors a court may consider. *See In re E.N.C.*, 384 S.W.3d 796, 807–08 (Tex. 2012); *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). Moreover, evidence of each and every *Holley* factor is not required before a court may find that termination is in a child's best interest. *C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). As pointed out by the Texas Supreme Court, the absence of evidence as to some of the *Holley* factors does not preclude a trier of fact from reasonably forming a strong conviction or belief that termination is in a child's best interest. *Id.* Moreover, in conducting our review of a trial court's best interest determination, we focus on whether termination is in the best interest of the child — not the best interest of the parent. *D.M.*, 452 S.W.3d at 470.

And although there is a strong presumption that maintaining the parent–child relationship is in a child's best interest, we also presume that promptly and permanently placing a child in a safe place in a timely manner is in a child's best interest. TEX. FAM. CODE ANN. § 263.307(a); *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam). Therefore, in addition to the *Holley* factors, we consider the factors set forth in section 263.307(b) of the Code to help determine whether a parent is willing and able to provide the child with a safe environment. TEX. FAM. CODE ANN. § 263.307(b); *R.R.*, 209 S.W.3d at 116; *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.). These factors include:

1. the child's age and physical and mental vulnerabilities;
2. the frequency and nature of out-of-home placements;
3. the magnitude, frequency, and circumstances of the harm to the child;
4. whether the child has been the victim of repeated harm after the initial report and intervention by the Department or other agency;
5. whether the child is fearful of living in or returning to the child's home;
6. the results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home;
7. whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home;
8. whether there is a history of substance abuse by the child's family or others who have access to the child's home;

9. whether the perpetrator of the harm to the child is identified;
10. the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision;
11. the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time;
12. whether the child's family demonstrates adequate parenting skills; 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); *R.R.*, 209 S.W.3d at 116; *A.S.*, 2014 WL 5839256, at *2.

Additionally, the evidence used to prove acts or omissions under section 161.001(b)(1) of the Code may be probative to prove the best interest of the child. *C.H.*, 89 S.W.3d at 28 (citing *Holley*, 544 S.W.2d at 370; *Wiley v. Spratlan*, 543 S.W.2d 349, 351 (Tex. 1976)). In conducting a best interest analysis, a court may consider in addition to direct evidence, circumstantial evidence, subjective factors, and the totality of the evidence. *A.S.*, 2014 WL 5839256, at *2 (citing *In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio 2013, pet. denied)). Finally, a fact finder may judge a parent's future conduct by her past conduct in determining whether termination of the parent–child relationship is in the best interest of the child. *Id.*

The Evidence

As indicated above, Father contends the evidence is legally and factually insufficient to support the trial court's finding that termination was in his child's best interest. In support of his argument, Father does not identify any specific *Holley* factor that lacks sufficient evidence; rather, Father's primary argument is that the Department produced no evidence as to a majority of the *Holley* factors. According to Father, the crux of the Department's case against him revolves around his incarceration, and the trial court ignored the fact that he started a number of classes while incarcerated in an attempt to comply with his service plan. Father further points out the trial court ignored his testimony that once he was released from prison, he had a future plan for K.L.P.

Thus, according to Father, the evidence was insufficient to support the trial court's finding that termination was in his child's best interest. We disagree.

Here, the record reflects the Department produced the following evidence as to each of the *Holley* factors, supporting the trial court's finding that termination was in K.L.P.'s best interest.

1. *Desires of the Children*

K.L.P. is a young child, who was five-years-old at the time of trial. *See* TEX. FAM. CODE ANN. § 263.307(b)(1) (child's age and physical and mental vulnerabilities); *Holley*, 544 S.W.2d at 371–72. Although K.L.P. did not testify as to her desires, the trial court was entitled to consider testimony regarding K.L.P.'s current placement, which indicated K.L.P. had bonded with and is well-cared for by her maternal grandmother. *See In re J.D.*, 436 S.W.3d 105, 108 (Tex. App.—Houston [14th Dist.] 2014, no pet.); *In re U.P.*, 105 S.W.3d 222, 230 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). At trial, K.L.P's grandmother testified K.L.P. is bonded to her, and she described K.L.P. as a "very outgoing" and "very smart" child. K.L.P.'s grandmother further testified that K.L.P. was doing "wonderful." She stated K.L.P. no longer screams or hides if someone knocks on the door. *See* TEX. FAM. CODE ANN. § 263.307(b)(5) (whether child is fearful of living in or returning to home); *Holley*, 544 S.W.2d at 371–72. According to the grandmother, K.L.P. used to scream and hide when someone knocked on the door "due to the different people coming to the house and the things she'd seen and witnessed" when she was with Father — during the time he was not incarcerated — and her mother. *See* TEX. FAM. CODE ANN. § 263.307(b)(5); *Holley*, 544 S.W.2d at 371–72.

In addition to considering the testimony regarding K.L.P.'s current placement, the trial court was also entitled to consider testimony concerning K.L.P's time spent with Father. *See J.D.*, 436 S.W.3d at 108; *U.P.*, 105 S.W.3d at 230. Here, there is no evidence that K.L.P. is currently bonded with Father. Rather, the evidence shows Father has been absent from a large part of

K.L.P's life due to ongoing incarcerations. *See* TEX. FAM. CODE ANN. § 263.307(b)(3) (magnitude, frequency, and circumstances of harm to child); *Holley*, 544 S.W.2d at 371–72. The record reflects Father was with K.L.P. until she was almost three-years-old, at which point, he was incarcerated and thus, removed from K.L.P.'s life. The record also shows that although Father was subsequently released on probation for a short time period, he was again incarcerated and removed from K.L.P's life because he violated the terms of his probation. In fact, at the time of the termination hearing, Father was still incarcerated. Moreover, one of the Department caseworkers testified that due to Father's absence from K.L.P.'s life, K.L.P. does not ask for Father. Based on Father's pattern of criminal conduct, it is highly likely he will face incarceration again and therefore, be absent from K.L.P.'s life. *See In re S.M.L.*, 171 S.W.3d 472, 478–79 (Tex. App.—Houston [14th Dist.] 2005, no pet.) (indicating parent who was incarcerated at time of hearing and had part of criminal conduct will likely face incarceration again); *see also* TEX. FAM. CODE ANN. § 263.307(b)(3); *Holley*, 544 S.W.2d at 371–72. Because parents who are incarcerated are absent from a child's daily life and unable to provide support, it is highly unlikely Father will be able to bond with K.L.P. *See S.M.L.*, 171 S.W.3d at 478–79 (pointing out incarcerated parents impact child's living environment because absent from daily life and therefore, unable to support child); *see also* TEX. FAM. CODE ANN. § 263.307(b)(3); *Holley*, 544 S.W.2d at 371–72. Accordingly, the evidence with regard to K.L.P's desires is such that the trial court could have reasonably formed a firm belief that termination was in K.L.P.'s best interest. *See A.B.*, 437 S.W.3d at 502; *J.P.B.*, 180 S.W.3d at 573.

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

The record shows Father was unable to meet K.L.P's physical and emotional needs because he exposed K.L.P. to domestic violence and had a history of criminal activity, including charges for possession of a controlled substance and assault-bodily injury. *See* TEX. FAM. CODE ANN.

§ 263.307(b)(3); TEX. FAM. CODE ANN. § 263.307(b)(7) (history of abusive or assaultive conduct by child's family); TEX. FAM. CODE ANN. § 263.307(b)(8) (history of substance abuse by child's family); *Holley*, 544 S.W.2d at 371–72. Father testified he was currently incarcerated because he violated his probation when he assaulted K.L.P's mother. *See* TEX. FAM. CODE ANN. § 263.307(b)(7). Although a parent's incarceration standing alone will not support an order of termination, it is an appropriate factor the trial court may consider when determining whether a parent engages in conduct that endangers a child's physical or emotional well-being. *See In re M.C.*, 482 S.W.3d 675, 685 (Tex. App.—Texarkana 2016, pet. denied) ("[W]hile we recognize that imprisonment, standing alone, is not conduct which endangers the physical or emotional well-being of the child, intentional criminal activity which expose[s] the parent to incarceration is relevant evidence tending to establish a course of conduct endangering the emotional and physical well-being of the child.") (internal quotation marks omitted); *In re B.C.S.*, 479 S.W.3d 918, 926 (Tex. App.—El Paso 2015, no pet.) ("Evidence of criminal conduct, convictions, and imprisonment and its effect on a parent's life and ability to parent may establish an endangering course of conduct."). Texas courts have repeatedly recognized that a parent's tendency towards violence, especially against family members, is relevant to the trial court's best interest determination. *See D.N. v. Texas Dep't of Family & Protective Servs.*, No. 03–15–00658–CV, 2016 WL 1407808, at *2 (Tex. App.—Austin Apr. 8, 2016, no pet.) (mem. op.) ("[D]omestic violence may constitute endangerment, even if the violence is not directed at the child."); *In re A.A.*, No. 06–14–00060–CV, 2014 WL 5421027, at *3 (Tex. App.—Texarkana Oct. 23, 2014, no pet.) (mem. op.) ("Domestic violence, want of self-control, and the propensity for violence may be considered as evidence of endangerment.").

There is also evidence indicating Father was involved in an altercation with J.R.P.'s father. *See* TEX. FAM. CODE ANN. § 263.307(b)(7); *Holley*, 544 S.W.2d at 371–72. According to K.L.P.'s

maternal grandmother, "there was an altercation between — at my house between [Father and J.R.P.'s father] and I had to call the police officers out. And then, shots were fired from the direction that [Father] was in and he drove off quickly and the officer followed him." Accordingly, Father's propensity for violence, particularly an assault against not only K.L.P.'s mother, but also J.R.P.'s father, is evidence demonstrating Father's lack of concern for K.L.P.'s overall well-being. *See In re V.V.*, 349 S.W.3d 548, 554 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) (stating intentional criminal activity that exposes a parent to incarceration is conduct that endangers child's physical and emotional well-being); *see also* TEX. FAM. CODE ANN. § 263.307(b)(7); *Holley*, 544 S.W.2d at 371–72.

In addition to Father's current incarceration, the record includes evidence that Father had a history of criminal activity, including arrests for assault-bodily injury, evading arrest, and possession of a controlled substance. Moreover, the record reflects Father has been incarcerated multiples times, some of which occurred before K.L.P. was born and at least two of which occurred after K.L.P. was born. Again, a parent's inability to maintain a lifestyle free from arrests and incarcerations are relevant to the best-interest determination. *In re D.M.*, 58 S.W.3d 801, 814 (Tex. App.—Fort Worth 2001, no pet.). Such conduct subjects a child to a life of uncertainty and instability, ultimately endangering the child's physical and emotional well-being. *See In re S.M.L.*, 171 S.W.3d at 478–79 (pointing out when parents repeatedly commit crimes subjecting them to possibility of incarceration, child's well-being is negatively impacted); *In re R.W.*, 129 S.W.3d 732, 739 (Tex. App.—Fort Worth 2004, pet. denied) ("conduct that subjects a child to a life of uncertainty and instability endangers the physical and emotional well-being of a child"). And although Father testified he had been "there the whole time for [K.L.P.] . . . until [K.L.P.] was three," he also acknowledged the fact that he was in and out of prison after K.L.P. turned three —

once for possession of a controlled substance and again for violating the terms of his probation when he assaulted K.L.P.'s mother.

Along with Father's acts of violence, there is some evidence that Father had a history of drug and alcohol abuse. S*ee* TEX. FAM. CODE ANN. § 263.307(b)(8); *Holley*, 544 S.W.2d at 371–72. Both of the Department caseworkers as well as K.L.P.'s maternal grandmother testified they had a concern regarding Father's substance abuse issues. Father also admitted he had a history with drugs. Thus, based on the evidence of substance abuse in addition to Father's criminal history and incarceration, the trial court could have reasonably formed a belief or conviction that Father was unable to provide a safe environment for K.L.P., could not meet K.L.P.'s present and future physical and emotional needs, and that he presented an emotional and physical danger to K.L.P. *See In re C.A.J.*, 122 S.W.3d 888, 893 (Tex. App.—Fort Worth 2003, no pet.) (noting that parent's continued drug use poses emotional and physical danger to child now and in future); *In re S.N.*, 272 S.W.3d 45, 52 (Tex. App.—Waco 2008, no pet.) (parent's illegal drug use is relevant to determining present and future risk to child's physical and emotional well-being.).

3. Parenting Abilities

The trial court also heard evidence that indicated Father displayed questionable parenting abilities. Father's repeated arrests and incarcerations indicate his parental skills "are seriously suspect." *See In re A.M.*, No. 02-16-00208-CV, 2016 WL 7046858, at *4 (Tex. App.—Fort Worth Dec. 2, 2016, no pet.). With regard to his parenting abilities, K.L.P.'s grandmother testified she was concerned Father failed to understand the impact of his choices. *See* TEX. FAM. CODE ANN. § 263.307(b)(11) (willingness and ability of child's family to effect positive environmental and personal change); TEX. FAM. CODE ANN. § 263.307(b)(12) (whether child's family demonstrates adequate parenting skills); *Holley*, 544 S.W.2d at 371–72. She stated that after Father was released on probation, she "took him to the side and I talked to him and explained to him these babies are

the most important things in my life and I will not allow anyone to harm them or cause them emotional stress." However, despite her "sit-down" with him, "it didn't help." And although the trial court also heard testimony from Father, who stated he understood he needed to provide a stable life for K.L.P., it was reasonable for the trial court to believe Father did not have the necessary parenting abilities to care for K.L.P. *See A.B.*, 437 S.W.3d at 502; *J.P.B.*, 180 S.W.3d at 573. The record reflects that Father's choice of conduct has subjected K.L.P. to a life of uncertainty and instability, and the trial court was free to judge Father's future conduct by his past conduct and conclude Father would continue to subject K.L.P. to a life of uncertainty and instability. *See A.S.*, 2014 WL 5839256, at *2. Accordingly, we conclude with regard to Father's parenting abilities, the evidence was such that the trial court could have reasonably determined termination was in K.L.P.'s best interest. *See A.B.*, 437 S.W.3d at 502; *J.P.B.*, 180 S.W.3d at 573.

4. Available Programs to Assist Individual to Promote Best Interest

The Department created a service plan for Father, requiring him to keep in contact with the Department, complete drug and alcohol treatment, take domestic violence and parenting classes, as well as participate in therapy and random drug testing. According to both of the Department caseworkers, Father completed an anger management class while incarcerated, but failed to complete domestic violence classes, drug treatment, or submit to any drug testing. *See* TEX. FAM. CODE ANN. § 263.307(b)(10) (willingness and ability to child's family to seek out and accept and complete counseling services); *Holley*, 544 S.W.2d at 371–72. One of the Department caseworkers also testified the most important parts of Father's service plan was for him to complete domestic violence classes and drug assessment courses.

With regard to Father's service plan, the trial court also heard testimony from Father, who stated he was taking a number of classes in an attempt to comply with his service plan. TEX. FAM. CODE ANN. § 263.307(b)(10); *Holley*, 544 S.W.2d at 371–72. Father testified he was currently

taking an attitude and behavior class as well as a parenting class. He described the course "kind of like the anger management … pretty much how to control yourself and your anger . . . ." Father also stated he was half way through the course. With regard to his completed anger management course, Father testified it included discussions regarding domestic violence. Father also indicated he took a cognitive intervention course, which included topics on domestic violence, substance abuse, and behavior. Father testified he mailed certificates of completion for his anger management course and cognitive intervention courses to the Department caseworkers, both of which confirmed they received the information from Father. There is also evidence Father maintained communication with both Department caseworkers. Father mailed letters to each of his caseworkers regarding the services he was taking in an effort to comply with his service plan. The record contains evidence Father was also in the process of completing his G.E.D. as well as attending Bible Study classes.

Although it is undisputed Father completed an anger management course as well as displayed an effort to take other courses while incarcerated, the record reflects Father failed to submit to any alcohol and drug assessment or treatment and did not submit himself to drug testing. The burden of complying with a court order service plan is on a parent, even if the parent is incarcerated. *In re D.N.*, 405 S.W.3d 863, 877 (Tex. App.–Amarillo 2013, no pet.). And, the trial court also heard testimony that these requirements were considered by the Department to be the most important part of Father's service plan. Accordingly, there was evidence supporting the trial court's determination that Father failed to comply with his service plan by failing to take these courses, and thus, termination was in K.L.P.'s best interest. *See A.B.*, 437 S.W.3d at 502; *J.P.B.*, 180 S.W.3d at 573.

5. *Plans for Children by Those Seeking Custody/Stability of Home or Proposed Placement*

Although Father argues in his brief that he has a plan for K.L.P., the evidence shows Father has no definite plan for caring for K.L.P. that would establish permanency. *See* TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. At the time of the hearing, Father was eligible for parole in seven months. Father testified that upon his release, he planned to live at a halfway house. Father admitted that he would not be in a position to take care of K.L.P. when he was released, and he wanted K.L.P. to remain with her grandmother until he had a job and apartment. Thus, the record reflects that Father's plan for K.L.P. consisted of K.L.P. remaining with her grandmother until he found employment and saved enough money for an apartment. In addition to this evidence that Father planned for K.L.P. to remain with her grandmother while he looked for employment, the trial court also heard evidence from a Department caseworker, who testified she was un ware of any plans Father had with respect to caring for K.L.P. The Department caseworker further testified Father had not informed her as to whether he had a job waiting for him when he was released or whether he had a way to support himself. The trial court also heard testimony from K.L.P.'s grandmother, who testified Father had no support system waiting for him when he was released from prison. *See* TEX. FAM. CODE ANN. § 263.307(b)(13) (whether adequate social system available); *Holley*, 544 S.W.2d at 371–72.

The evidence further shows K.L.P.'s needs are being met by her maternal grandmother, who plans to adopt her and her sibling, J.R.P. K.L.P.'s grandmother testified she did not want K.L.P. to return to Father's care after he was released due to his past domestic violence and drug use issues. K.L.P.'s grandmother testified she would like to adopt K.L.P. once Father's parental rights were terminated. She also added that she would be willing to let K.L.P. visit Father, however, at no point would she allow K.L.P. to "leave with him." Keeping in mind that the goal of establishing a stable and permanent home for a child is a compelling government interest, we

conclude the trial court could have reasonably determined Father had no plan for K.L.P. that guarantees her permanency and that K.L.P.'s current placement with her grandmother ensured her stability. *See In re M.A.N.M.*, 75 S.W.3d 73, 77 (Tex. App.—San Antonio 2002, no pet.). Thus, we conclude the evidence as to these factors supports the trial court's determination that termination of Father's parental rights was in K.L.P.'s best interest.

6. Act or Omissions Suggesting Parent-Child Relationship is Not Proper/Excuses

With regard to the final *Holley* factors, the trial court heard evidence concerning Father's acts or omissions that support the trial court's determination that termination was in K.L.P.'s best interest. As detailed above, the trial court heard evidence of the following acts and omissions by Father, establishing that the existing parent-child relationship was improper: (1) Father's past criminal conduct, which included domestic violence towards K.L.P.'s mother; (2) Father's repeated incarcerations, indicating he would continue to engage in improper behavior that negatively affected K.L.P.; (3) and Father's plan for K.L.P. that did not involve permanency. As to evidence of Father's excuses for his past conduct, there was no evidence explaining Father's excuse for engaging in past criminal behavior. The record only reflects that Father testified he understood he needed to provide a better home for K.L.P. After viewing this evidence in the light most favorable to the trial court's determination and remaining mindful that the absence of evidence as to one *Holley* factor does not preclude the trial court from reasonably determining termination is in a child's best interest, we conclude the evidence supports the trial court's determination that termination was in K.L.P.'s best interest. *See In re C.H.*, 89 S.W.3d at 27.

Summation

After reviewing the evidence above and considering the *Holley* factors and the statutory factors in section 263.307(b) of the Code, we conclude the evidence was such that the trial court could have reasonably determined termination was in K.L.P.'s best interest. *See A.B.*, 437 S.W.3d

at 502; *J.P.B.*, 180 S.W.3d at 573. Here, the evidence shows that K.L.P. could achieve permanency promptly through adoption by her maternal grandmother. The evidence also shows Father did not have a plan for K.L.P. that involved permanency; rather, Father indicated he wanted K.L.P. to remain with her grandmother until he could find employment and housing once he was released from prison. Although there is evidence Father completed some of the services provided to him by the Department, there is also evidence Father failed to make the necessary changes for K.L.P.'s well-being. The evidence shows Father has subjected K.L.P. to a life of uncertainty and instability as he was in and out of her life due to incarcerations. Moreover, the fact that Father engaged in criminal activity and was incarcerated prior to K.L.P.'s birth and then exhibited no change thereafter was evidence in which the trial court could have based its decision to terminate Father's parental rights. *See A.S.*, 2014 WL 5839256, at *2 (stating fact finder may judge parent's future conduct by past conduct).

In addition to this evidence, we also remain mindful that Father has not challenged the trial court's findings that he: (1) engaged in conduct or knowingly placed K.L.P. with persons engaged in conduct endangering K.L.P.'s physical or emotional well-being.; (2) constructively abandoned K.L.P.; and (3) failed to comply with the provisions of a court order that specifically established the actions necessary for him to obtain the return of K.L.P. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O), (P). These termination grounds are probative on the issue of best interest and shows Father's propensity for endangering K.L.P.'s well-being. *See C.H.*, 89 S.W.3d at 28; *B.R.*, 456 S.W.3d at 615; *see also* TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. And although Father argues there is no evidence as to each of the *Holley* factors, the absence of evidence as to one or more of the *Holley* factors does not preclude a trier of fact from reasonably forming a strong conviction or belief that termination is in a child's best interest. *See In re C.H.*, 89 S.W.3d at 27.

We therefore hold that after reviewing the evidence in the light most favorable to the trial court's finding, the trial court could have reasonably formed a firm belief or conviction that termination was in the best interest of K.L.P. *See J.P.B.*, 180 S.W.3d at 573. Thus, the evidence is legally and factually sufficient. *See id*.

CONCLUSION

Based on the foregoing, we hold the evidence is legally and factually sufficient to have permitted the trial court, in its discretion, to find termination was in the best interest of K.L.P. Accordingly, we overrule Father's sufficiency complaint, hold the trial court did not err in terminating Father's parental rights, and affirm the trial court's order.

Marialyn Barnard, Justice