



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00377-CV

IN THE INTEREST OF T.T. and A.T., Children

From the 150th Judicial District Court, Bexar County, Texas
Trial Court No. 2015-PA-02505
Honorable Charles E. Montemayor, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Marialyn Barnard, Justice
Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: December 27, 2017

AFFIRMED

This is an accelerated appeal from a trial court's order terminating appellant mother's ("Mother") parental rights to her children, T.T. and A.T. In her sole issue on appeal, Mother argues the evidence is legally and factually insufficient to support the trial court's finding that termination was in the children's best interests. We affirm the trial court's order.

BACKGROUND

T.T. and A.T. are twin girls, who were three-months-old when the Department of Family and Protective Services ("the Department") removed them from Mother's care in December 2015. At that time, the Department received a referral from a children's hospital regarding injuries to A.T. The record reflects Mother and her then-boyfriend, who is the biological father of the children, brought A.T. to the hospital because she would not stop crying, and they were unable to

determine what was wrong with her. While at the hospital, the emergency room staff reported that A.T. had a fractured clavicle and nine healing rib fractures. Neither Mother nor the children's father could explain how the injuries occurred. Based on concerns of possible physical abuse, the hospital contacted the Department. Enrico Garza, a primary investigator for the Department, was assigned to the case. Mr. Garza interviewed Mother and the children's father separately at the hospital and reported that neither parent offered any explanation for A.T.'s rib fractures. With regard to A.T.'s fractured clavicle, Mr. Garza reported the father stated he heard a "pop" sound when A.T. raised her arm while he was changing her diaper. Due to the unexplained nature of the injuries and the children's ages, the Department immediately placed the children at the Children's Shelter after they were discharged from the hospital that same evening.

Two weeks later, A.T. was examined by pediatrician James Louis Lukefahr of the Center for Miracles ("the Center"), a facility that examines children who are suspected victims of abuse or neglect. Based on his examination, Dr. Lukefahr confirmed A.T. had sustained a fractured clavicle and nine healing rib fractures. He estimated the rib fractures were probably at least a week or two old by the time they were discovered during the emergency room exam. Moreover, he opined it was highly unlikely the fractures were accidental because a substantial amount of force would have to be applied to each of the nine ribs in order to produce the fractures. He noted that A.T. would have experienced discomfort each time she was picked up, changed, or moved. Dr. Lukefahr further opined that the "pop" sound scenario described by A.T.'s father did not reasonably explain how her clavicle was broken. Dr. Lukefahr explained that a fracture to an infant's clavicle does not inadvertently occur; rather, a substantial amount of direct pressure — most likely applied by the thumb — would have to be applied to A.T.'s clavicle in order to fracture it.

Over the next two months, Mr. Garza met with the children's parents at their apartment in an attempt to determine how A.T.'s injuries occurred. During the course of his investigation, Mr. Garza learned Mother and the children's father had been receiving housing and financial assistance from St. PJs, a local social service agency. He also learned that both parents were unemployed and looking for work. Neither parent had transportation. Mr. Garza had an opportunity to observe two visits between the parents and the children. According to Mr. Garza, Mother was very quiet and did not interact much with the children, and the children's father spent the majority of time asking him questions regarding the criminal portion of the case. By that time, a police detective had been assigned and was conducting a criminal investigation. Throughout the course of the investigation, both parents denied doing anything to A.T. to cause her injuries. Mr. Garza ultimately closed the Department's investigation at the end of January 2016, concluding the parents neglected the children because they were unable to account for A.T.'s injuries or any discomfort she would have had from the injuries, particularly the nine fractured ribs. The children were ultimately placed with a foster family by the end of January 2016.

In addition to assigning Mr. Garza to the case, the Department assigned a caseworker, Normal Lailson, to work with the family. Ms. Lailson drafted service plans for both parents. Pursuant to her service plan, Mother was required to complete a psychosocial and psychological assessment, a drug test, and parenting classes. She was also required to obtain employment, stable housing, and attend individual counseling. Over the next six months – from January 2016 to May 2016 – Mother attended therapy and took one parenting class, but she failed to comply with the other requirements of her service plan despite the Department's efforts to accommodate her schedule. The record reflects that in May 2016, the children's father admitted to injuring A.T. by pressing on her collarbone out of frustration.

As the case continued, the trial court held the statutorily required status and permanency hearings, and because Mother failed to complete her service plan — specifically, she failed to obtain stable housing or show any signs of progress in her parenting skills — the matter moved to a final hearing, during which the Department sought to terminate Mother’s parental rights.¹ At the hearing, the trial court heard testimony from fifteen individuals, including:

- Mr. Garza, the Department investigator initially assigned to the case;
- Melissa Francis, Jessica Burciaga, and Ms. Lailson, the Department caseworkers involved in the case;
- Angela Carrizales, a case manager working with the parents at St. PJs;
- Dr. Lukefahr, who examined A.T. after her emergency hospital visit;
- Barbara Arizpe, the children’s occupational therapist;
- Robin Diamond, the children’s language therapist;
- G.H., a CASA volunteer who worked with the family
- Bernadette Loftus and Anna Roquebert, who were Mother’s therapists;
- Mother;
- Y.C., the children’s maternal grandmother;
- V.M., the children’s aunt; and
- S.G., the children’s foster father.

After considering the evidence, the trial court rendered an order terminating Mother’s parental rights to T.T. and A.T. As for the grounds for termination, the trial court specifically found Mother: (1) knowingly placed or allowed the children to remain in conditions or surroundings that endangered their physical or emotional well-being; (2) engaged in conduct or knowingly placed the children with people who engaged in conduct that endangered their physical or emotional well-being; and (3) failed to comply with the provisions of a court order that specifically established the actions necessary for her to obtain the return of the children *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O) (West Supp. 2017). In addition, the trial court found termination of

¹ The Department also sought to terminate the parental rights of the children’s father. Prior to the final hearing, the children’s father completed and filed an affidavit of relinquishment. His parental rights were ultimately terminated based on the affidavit, and he did not file a notice of appeal challenging the termination. Accordingly, he is not a party to this appeal.

Mother's parental rights would be in the children's best interests. *See id.* § 161.001(b)(2). Thereafter, Mother perfected this appeal.

ANALYSIS

Mother does not challenge the grounds for termination under section 161.001(b)(1). Rather, in her sole issue on appeal, Mother contends the evidence is legally and factually insufficient to support the trial court's finding that termination was in their children's best interests. *See id.*

Standard of Review

To terminate a parent's right to his or her child, a trial court must find by clear and convincing evidence that the parent committed at least one of the statutory acts prohibited by section 161.001(b)(1) of the Texas Family Code ("the Code") and termination is in the child's best interest. *Id.* § 161.001(b). 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." *Id.* § 101.007. This heightened standard of review recognizes that termination of parental rights results in permanent and severe changes for both the parent and child; it guards the due process concerns implicated by termination. *In re A.B.*, 437 S.W.3d 498, 502 (Tex. 2015); *In re O.N.H.*, 401 S.W.3d 681, 683 (Tex. App—San Antonio 2013, no pet.). When reviewing the legal and factual sufficiency of the evidence, we apply the well-established standards of review. *See* TEX. FAM. CODE ANN. §§ 101.007, 161.206(a); *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005) (legal sufficiency); *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006) (factual sufficiency). Moreover, in conducting our sufficiency review, we do not reweigh issues of witness credibility, and instead defer to the fact finder's reasonable credibility determinations. *J.P.B.*, 180 S.W.3d at 573.

Best Interests — Substantive Law

In a best interest analysis, we apply the non-exhaustive *Holley* factors. *See Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). We must also keep in mind that there is a strong presumption that keeping a child with a parent is in the child’s best interest. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006). However, the prompt and permanent placement of a child in a safe environment is also presumed to be in the child’s best interest. TEX. FAM. CODE ANN. § 263.307(a). Thus, to determine whether a child’s parent is willing and able to provide the child with a safe environment, we additionally consider the factors set forth in section 263.307(b) of the Code. *Id.*

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

The Evidence

As indicated above, the trial court heard testimony from fifteen witnesses by which the Department sought to establish that termination would be in the best interests of T.T. and A.T. The evidence produced with regard to the *Holley* factors and section 263.307(b) factors is set forth

below. We hold it supports the trial court's finding that termination was in T.T. and A.T.'s best interests.

1. *Desires of the Child*

T.T. and A.T. were approximately seventeen-months-old at the time of trial and thus, too young to express their desires. *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. When children are too young to express their desires, the factfinder may consider whether the children have bonded with their current caregiver and are well-cared for, and whether the children have spent minimal time with the parent. *In Interest of L.G.R.*, 498 S.W.3d 195, 205 (Tex. App.—Houston [14th Dist.] 2016, no pet.); *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). With regard to this issue, the trial court heard testimony from: (1) Dr. Arizpe, the children's occupational therapist; (2) G.H., the CASA volunteer; (3) Ms. Lailson, the Department caseworker; and (4) S.G., the children's foster father. Each of these witnesses testified the children are being well cared for by the current foster family and have not bonded with Mother.

The record reflects the children have been living with S.G. and his wife for over a year, and since living with the foster family, the children have made significant progress in terms of growth and development. Dr. Arizpe testified she began treating the children when they were six-months-old. At that time, both children showed significant delays in their fine motor, gross motor, and adaptive skills — more specifically, A.T. had a difficult time taking a bottle and transitioning to pureed foods. She was also very aversive to tummy time. Dr. Arizpe testified that since the children's placement with a foster family, they have quickly progressed and such progress would not have happened but for the foster family's commitment to caring for the children. Dr. Arizpe stated both foster parents attended therapy with the children regularly, and during times of distress

or discomfort, the children “always went for foster dad” even when Mother was present. Dr. Arizpe continued by stating, “They went for comforting from the familiar person.” When asked about Mother’s time with the children during therapy, Dr. Arizpe testified Mother did not proactively engage with the children and did “a lot of sit-back-type observation.” *See* TEX. FAM. CODE ANN. § 263.307(b)(11) (willingness and ability of child’s family to effect positive environmental and personal changes); *id.* § 263.307(b)(12) (whether child’s family demonstrates adequate parenting skills); *Holley*, 544 S.W.2d at 371–72. Dr. Arizpe further testified Mother had to be encouraged to engage with the children, and during challenging activities, such as bottle feeding, the children often would cry with Mother and reach for their foster dad. *See* TEX. FAM. CODE ANN. § 263.307(b)(11); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. Dr. Arizpe also noted, however, over the last couple of sessions, the children reached for Mother if she had a toy and are starting to approach Mother on their own.

G.H. testified that since the children have been with the foster family, they have “made great progress” in terms of growth and skills. G.H. stated that at the time of removal, both children were very small and had pervasive developmental delays, missing key milestones. G.H. also remarked on how involved the foster parents were with the children during therapy sessions, adding that their engagement contributed to the girls’ progress. G.H. testified the girls were eating normally and were more interactive. In fact, both girls were trying to walk on their own. Like Dr. Arizpe, G.H. testified the foster family’s involvement and dedication to the children’s therapy contributed to the children’s developmental progress, and she believed the children were receiving the care and nurture necessary to overcome their developmental delays.

Ms. Lailson shared Dr. Arizpe and G.H.’s opinions regarding the foster family’s commitment to the children’s development. Ms. Lailson elaborated by stating, “It’s not only the foster parents, it’s the whole family as a whole. They all participate during therapy . . . They talk

to the girls. They ask questions during therapy, and they ask for homework, and then they also work on that at home with the girls.” With regard to Mother’s time spent with the girls, Dr. Lailson testified Mother did not actively participate in the therapy sessions she attended. *See* TEX. FAM. CODE ANN. § 263.307(b)(11); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72.

The record reflects that although the foster family moved the therapy sessions from their home to a more convenient location for Mother, Mother attended only half of the therapy sessions. According to Dr. Lailson, during these sessions, Mother merely observed therapy activities and engaged with the children only if she was asked to participate. Dr. Lailson further testified she did not witness any connection between the children and Mother. Rather, Mother’s expression was very “flat.”

S.G. also testified that Mother did not proactively interact with the children, and as a result, he was concerned about whether the children would be well-cared for by Mother. As an example, S.G. explained that when he asked Mother if she would like to buckle the children into their car seats, Mother declined. *See* TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. S.G. further added Mother was unable to comfort the children when they were fussy or resistant to therapy activities. *See* TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. On the other hand, the evidence shows S.G. as well as his whole family were engaged in taking care of the children. S.G. testified everyone in his household — his wife, their five-year-old biological child, and two older foster siblings — participated in caring for the twins.

Based on this evidence, the trial court could have reasonably determined that having spent the majority of their lives with the foster family, A.T. and T.T. had bonded with their foster family. *See L.G.R.*, 498 S.W.3d at 205; *J.D.*, 436 S.W.3d at 108. The evidence establishes the foster family was the only family the children knew, and the children were being well-cared for by the family. *See L.G.R.*, 498 S.W.3d at 205; *J.D.*, 436 S.W.3d at 108. Although Mother argues the children

were not fearful of her, the evidence shows that during times of distress, the children reached for their foster father for comfort. Thus, there was sufficient evidence for the trial court to determine the children were not bonded with Mother.

2. Emotional & Physical Needs/Emotional & Physical Danger

During her testimony, Ms. Lailson stated that she was primarily concerned about Mother's inability to provide for the children's needs now or in the future. See TEX. FAM. CODE ANN. § 263.307(b)(11); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. As indicated above, the children are very young and require constant care and supervision. See TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72. As a result, the children depend solely on their caregivers for all of their needs. See TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72. Here, the trial court heard testimony regarding Mother's inability to recognize when her children were in need of medical attention. The record reflects that when the children were removed from Mother, A.T. had a broken clavicle and nine fractured ribs that were in the healing process. 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. Dr. Lukefahr and Dr. Arizpe each testified A.T. would have shown signs of discomfort as a result of her rib fractures, which Dr. Lukefahr estimated to be over a week old. See TEX. FAM. CODE ANN. § 263.307(b)(3); *Holley*, 544 S.W.2d at 371–72. Ms. Lailson testified Mother did not seem to notice any discomfort in A.T. prior to the emergency room visit. Dr. Arizpe testified it would be fair to say Mother had no idea A.T. had a rib injury prior to the emergency room visit, and Mother should have recognized A.T. was uncomfortable, particularly because A.T. would have shown discomfort in almost all of her movements. Moreover, Department Investigator Garza testified he removed the children due to the fact they were completely dependent on their caregivers, and neither Mother nor the children's father were able to provide a reasonable explanation as to how A.T. was injured. Thus, based on

this evidence, the trial court could have reasonably inferred Mother's past inattention to A.T.'s injury would continue and Mother would be unable to provide for either child's needs. *See L.G.R.*, 498 S.W.3d at 205 (holding that trial court could infer that parent's past inattention to child's medical needs would continue in future).

The record also reflects that due to their developmental delays, the children will need ongoing therapy, which requires their significant commitment from their caretakers. Currently, the children receive occupational therapy from Dr. Arizpe and language therapy from Dr. Diamond, and the record reflects the foster family regularly attended these sessions and actively participated. Dr. Arizpe specifically testified the children were "100 percent delayed," meaning the children had not been exposed to using different parts of their bodies by being placed in different positions. Although Dr. Arizpe did not characterize Mother as neglectful, she indicated it was clear the children were not provided with enough interaction to stimulate their growth and mobility. Thus, consistent therapy sessions are necessary to stimulate the children's growth. Dr. Diamond also testified it was extremely important for the children's caregivers to participate in therapy. Dr. Diamond testified the children needed to be talked to and interacted with on a daily basis so that their language would develop. With regard to each of these therapy sessions, both therapists and Ms. Lailson testified Mother was not consistent and attended only half of the appointments. *See* TEX. FAM. CODE ANN. § 263.307(b)(11); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. Ms. Lailson further testified that during those times, Mother did not engage with the children. *See* TEX. FAM. CODE ANN. § 263.307(b)(11); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. Ms. Lailson added that due to Mother's lack of engagement, she was "concerned that the children will not receive everything they need to thrive," emphasizing therapy sessions required consistency in order to work properly. *See* TEX. FAM. CODE ANN. § 263.307(b)(11); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. Dr. Diamond further

testified that if a parent did not participate in therapy, it was highly likely the parent would not implement any of the therapy principles outside of therapy. Dr. Diamond opined she would be very concerned that the children would regress in therapy if they were returned to Mother's care. *See* TEX. FAM. CODE ANN. § 263.307(b)(11); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. Accordingly, the trial court could have reasonably determined that based on the children's developmental delays and Mother's lack of attendance and participation during therapy, Mother was not meeting all of the children's needs. On the other hand, the evidence shows the children's therapy needs were a high priority to the foster parents.

The trial court also heard evidence that Mother did not have suitable housing for the children. "Lack of stability, including a stable home, supports a finding that the parent is unable to provide for a child's emotional and physical needs." *In Interest of A.J.-A.*, No. 14-16-00070-CV, 2016 WL 1660858, at *5 (Tex. App.—Houston [14th Dist.] Apr. 26, 2016, no pet.) (mem. op.); *see In re G.M.G.*, 444 S.W.3d 46, 59–60 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (same). The evidence shows that when the children were removed from Mother's care, Mother was living in an apartment provided by St. PJs, a social service agency that was also providing financial assistance to Mother. The record reflects that because the children's father admitted injuring A.T., St. PJs evicted Mother and the children's father from the apartment. Ms. Lailson testified Mother then moved into her grandmother's house, which was not suitable for the children due to a number of safety hazards and the fact that grandmother was not forthcoming with who lived in her home. The record reflects Mother is currently living with her mother, but again, the Department did not approve that housing situation because it was unclear whether Mother's mother caused the rib injuries to A.T.² Accordingly, the trial court could have reasonably concluded

² Although the children's father admitted he injured A.T.'s clavicle, it was still unclear how A.T.'s rib injuries occurred.

Mother was incapable of adequately providing for the children's needs given that over the course of a year, she has been unable to secure stable housing suitable for the children. *See A.J.-A.*, 2016 WL 1660858, at *5; *G.M.G.*, 444 S.W.3d at 59–60.

With regard to the potential emotional and physical danger to the children, we begin by noting Mother does not challenge the trial court's findings that: (1) she knowingly placed or allowed the children to remain in conditions or surroundings that endangered their physical or emotional well-beings; and (2) engaged in conduct or knowingly placed the children with people who engaged in conduct that endangered their physical or emotional well-beings. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E). Such evidence can be considered in support of a finding that termination is in the children's best interests. *C.H.*, 89 S.W.3d at 27. Here, the trial court heard an abundance of evidence regarding A.T.'s injuries. *See* TEX. FAM. CODE ANN. § 263.307(b)(3); *Holley*, 544 S.W.2d at 371–72. The record reflects the Department became involved with the family because no one could reasonably explain how A.T.'s fractures occurred. Several witnesses testified the explanation provided by the children's father regarding A.T.'s broken clavicle was unreasonable, and at no point during the investigation was an explanation provided for A.T.'s rib fractures. Moreover, the evidence shows Mother suspected the children's father caused A.T.'s injuries. Mother specifically testified that although she told the hospital she did not know what happened to A.T., she believed "he [the children's father] probably did something." Mother admitted she came to this conclusion during the Department's investigation; however, she did not say anything to the Department. Mother explained she told only her mother and grandmother — neither of whom informed the Department.

Mother emphasizes, however, that although she did not report her suspicion to the Department, she stopped interacting with the children's father in May 2016 after he admitted injuring A.T. *See* TEX. FAM. CODE ANN. § 263.307(b)(9) (whether perpetrator of harm to child is

identified); *Holley*, 544 S.W.2d at 371–72. On the other hand, the trial court heard evidence indicating Mother continued to maintain a relationship with him. The record reflects Mother “facetimed” the children’s father during a visit in July 2016 so that the children could see him. When asked about “facetiming” father, Mother testified she believed the children should still have contact with their father even though he injured A.T. The record also reflects Mother called the children’s father to pick up her dog when she brought the dog to a visit with the children. Deferring to the trial court’s reasonable credibility determinations, the trial court could have chosen to believe that Mother was being less than candid about her relationship with the children’s father and that she continued a relationship with him. *See J.P.B.*, 180 S.W.3d at 573. Because Mother maintained contact with the children’s father even after he admitted injuring A.T., the trial court could have reasonably determined that Mother engaged in behavior that placed her children in emotional and physical danger. The trial court could have further inferred that Mother would continue to interact with the children’s father based on her past conduct. *See E.D.*, 419 S.W.3d at 620.

3. *Parenting Skills/Available Programs to Assist Individual to Promote Best Interest*

It is undisputed that Mother completed portions of her service plan, including psychosocial and psychological assessments, negative drug testing, parenting classes, stable employment, and attendance at individual counseling. *See* TEX. FAM. CODE ANN. § 263.307(b)(10) (willingness and ability of child’s family to seek out, accept, and complete services and cooperate with Department); *Holley*, 544 S.W.2d at 371–72. However, with regard to parenting classes, the trial court heard testimony from a number of witnesses highlighting the fact that Mother was unable to implement the skills she learned from the parenting classes. *See* TEX. FAM. CODE ANN. § 263.307(b)(11); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. The record reflects Mother expressed discomfort with feeding the children or holding them to calm them down. There is also evidence Mother

declined to help buckle the children into their car seats when asked by the foster parents. The trial court also heard evidence that Mother did not consistently attend the children's therapy sessions even after the foster family moved the sessions to a more convenient location. Moreover, the record also shows Mother failed to engage with the children during therapy. Rather, both Dr. Arizpe and Ms. Lailson testified Mother had a "flat expression" and did not express interest during therapy sessions. They also testified they were concerned Mother would be unable to handle two babies, who required additional care than normal due to their developmental delays. Dr. Arizpe emphasized one of the main issues with the children was ensuring they would be properly cared for, and she discussed with Mother the importance of being able to take care and ensure the safety of the children. Ms. Lailson noted, however, that based on her observations of Mother with the twins, she did not believe Mother fully comprehended the seriousness of A.T.'s injuries and she did not believe Mother had a basic understanding of what raising twins would be like.

In addition to this evidence, the trial court also heard testimony from Mother's therapist, Dr. Loftus. Dr. Loftus testified she began treating Mother at the end of December 2015, approximately three weeks after the children were removed from Mother's care. Dr. Loftus testified she worked with Mother on improving her self-advocacy skills, increasing her self-confidence, and learning independence. She described Mother as very timid and dependent on the children's father in terms of housing and finances. Dr. Loftus further testified that over the course of working with Mother, she believed Mother was evolving and developing the skills she needed be a mother to the children. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. Dr. Loftus testified Mother recognized she needed to show initiative and to complete the service plan in order to gain custody of her children. Dr. Loftus noted Mother is very young and "just needed a little more help" due to her young age. According to Dr. Loftus, she believed Mother was capable of finding and utilizing the resources

and programs necessary to care for her children. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72.

The trial court also heard testimony from Dr. Roquebert, who provided therapy to Mother after Dr. Loftus left St. PJs. Dr. Roquebert testified they discussed Mother’s parenting skills during their sessions, and she believed Mother followed through with her service plan by attending therapy and her visitation appointments with her children. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. However, on cross-examination, Dr. Roquebert admitted she was basing her opinion of Mother’s parenting skills on what Mother was telling her. She was aware Mother missed some visitation and therapy appointments; however, she did not know Mother had missed over half of the therapy sessions and failed to engage with the children during the sessions. It was her belief Mother expressed a willingness to learn and had made progress in her stability. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. Dr. Roquebert further stated Mother expressed enthusiasm about the opportunity to spend time with her children and was looking into services she would need if the children were returned to her. Dr. Roquebert also highlighted Mother had an adequate support system; she stated that Mother’s grandmother, mother, and sister were close to her and willing to help her with the children. *See* TEX. FAM. CODE ANN. § 263.307(b)(13) (adequate social support system); *Holley*, 544 S.W.2d at 371–72.

With respect to the portion of her service plan that required Mother to obtain stable housing and employment, Mother contends she is currently living with her mother and is employed. However, the evidence shows the Department has not approved Mother’s current housing situation. *See* TEX. FAM. CODE ANN. § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. According to Ms. Lailson, it was unclear who caused A.T.’s rib injuries, and Mother’s mother was one of the caregivers under investigation. *See* TEX. FAM. CODE ANN. § 263.307(b)(3); *Holley*, 544 S.W.2d

at 371–72. When asked about this concern, Mother testified her mother was never alone with the children and she did not suspect her mother caused them harm.

As to Mother’s current employment, the evidence shows Mother was unemployed the majority of the time the Department was involved with the case. *See* TEX. FAM. CODE ANN. § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. For the first six months of the Department’s involvement, Mother did not work, relying solely on the children’s father for financial support. Dr. Lailson testified Mother has worked for the past five months and is providing her check stubs to the Department as proof. When asked about her current job, Mother testified her job was understanding of her situation and provided her with time off to attend therapy.

Although the evidence was somewhat disputed, we hold the trial court could have reasonably concluded that although Mother completed parts of her service plan, Mother did not fulfill the goals required by the plan. Here, the trial court was free to believe the testimony from Ms. Lailson and the children’s therapists regarding Mother’s lack of participation and failure to demonstrate progress with regard to her parenting skills. *See J.P.B.*, 180 S.W.3d at 573. The evidence shows that although Mother attended counseling and parenting classes, she was unable to put into practice the skills she was supposed to have gained from these portions of her service plan. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. The evidence further shows Mother only recently obtained employment — working for only the past five months — and she failed to obtain proper, stable housing. Accordingly, there was sufficient evidence for the trial court to conclude Mother lacked parenting skills and failed to complete her service plan.

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

The stability of the proposed home environment is an important consideration in determining whether termination of parental rights is in the children’s best interests. *See In re*

D.M., 452 S.W.3d 462, 472 (Tex. App.—San Antonio 2014, no pet.). Texas courts recognize as a paramount consideration in the best-interest determination a child’s need for permanence through the establishment of a “stable, permanent home.” *See In re K.C.*, 219 S.W.3d 924, 931 (Tex. App.—Dallas 2007, no pet.). Therefore, evidence about the present and future placement of the children informs the best-interest determination. *See C.H.*, 89 S.W.3d at 28.

Here, Mother testified she was currently living with her mother and although the Department did not approve of the home, she planned to look for an apartment in the future. Mother explained it was currently more cost efficient for her to live with her mother. Mother further testified she plans to enroll the children into daycare while she works in the morning, and then care for the children in the afternoon. When asked whether she was concerned about the children’s safety if left alone at her mother’s house, she anticipated the children would not be at the house without her. As to whether Mother was familiar with the children’s current feeding and sleeping schedule, Mother admitted she did not know and had not asked the foster family about it. She hoped, however, to put one in place.

In contrast to this evidence, the trial court heard testimony that the foster family was currently providing the children with a stable and supportive environment. Each of the children’s therapists, as well as Ms. Lailson, testified the children’s significant progress was attributable to the foster family’s stability and commitment. Moreover, the record reflects the children have lived with the foster family for the majority of their lives. S.G., the children’s foster father, testified his family would be willing to adopt the children should the trial court terminate Mother’s parental rights. S.G. testified his entire family was very involved with caring for the children and helping them develop. The family attended therapy regularly with the children and actively participated in the sessions in order to learn more ways to help the children. Thus, the trial court could have

concluded Mother's did not have a stable plan for the children, and the proposed placement of the children with the foster family supported a finding in favor of termination.

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

Here, although there is evidence Mother was attempting to improve her parenting abilities, there was sufficient evidence for the trial court to conclude Mother failed to act and protect her children. See TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. The record reflects Mother did not recognize that A.T. had fractured nine of her ribs and was in severe pain. Both Dr. Lukefahr and Dr. Arizpe testified that even though a parent may not know that her three-month-old child's ribs are fractured, she should be able to conclude something is wrong because the child would be in severe pain for the first three days after the injury. Moreover, Mother admitted she suspected the children's father had done something to injure A.T. when it was determined that A.T.'s clavicle was broken; nonetheless Mother failed to notify anyone in the Department. Other than lack of experience, Mother did not provide any excuse for failing to act and protect her children. See TEX. FAM. CODE ANN. § 263.307(b)(13); *Holley*, 544 S.W.2d at 371–72.

Summation

Having examined the evidence, we now turn to the pivotal question: whether a reasonable fact finder could form a firm conviction or belief that terminating Mother's parental rights is in the children's best interests. See *J.P.B.*, 180 S.W.3d at 573; *H.R.M.*, 209 S.W.3d at 108. Here, the evidence shows Mother was unable to recognize a severe injury to her infant or to provide for the children's most basic needs. She also failed to comply with portions of her service plan despite reasonable time and opportunity. Although Mother's therapists testified they believed Mother showed signs of progress, the trial court heard testimony from several witnesses that Mother lacked parenting skills and did not have the capability to care for the children. Mother's conduct prior to

the Department's removal of the children constitutes further evidence of Mother's inability to parent and provide for the children's basic needs. Moreover, the record contains evidence that Mother continued to interact with the children's father despite his admission that he fractured A.T.'s clavicle. Finally, the evidence shows the children are being well cared for by their foster family, who is willing to adopt them.

Therefore, we hold the evidence, when considered in light of the relevant *Holley* factors and statutory considerations, was sufficient to permit the trial court to find termination was in the best interests of A.T. and T.T. *See J.P.B.*, 180 S.W.3d at 573; *H.R.M.*, 209 S.W.3d at 108. Given that the trial court was permitted to consider circumstantial evidence, subjective factors, and the totality of the evidence, in addition to the direct evidence presented, we hold the trial court was within its discretion in finding termination of Mother's parental rights would be in the children's best interests. *See J.P.B.*, 180 S.W.3d at 573; *H.R.M.*, 209 S.W.3d at 108; *E.D.*, 419 S.W.3d at 620. In other words, we hold the evidence is such that the trial court could have reasonably formed a firm belief or conviction that termination was in the children's best interests. *See J.P.B.*, 180 S.W.3d at 573; *H.R.M.*, 209 S.W.3d at 108.

CONCLUSION

Having held that the evidence is legally and factually sufficient to have permitted the trial court, in its discretion, to find that termination of Mother's parental rights was in the best interests of A.T. and T.T., we overrule Mother's sufficiency complaint. We therefore affirm the trial court's order of termination.

Marialyn Barnard, Justice