



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00459-CV

IN THE INTEREST OF M.L.C., a Child

From the 57th Judicial District Court, Bexar County, Texas
Trial Court No. 2016PA02184
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 the trial court's order terminating appellant mother's ("Mother") parental rights to her child, M.L.C. On appeal, Mother does not challenge the grounds upon which her rights were terminated. Rather, she contends only that the evidence is legally and factually insufficient to support the trial court's finding that termination was in her son's best interest. We affirm the trial court's order of termination.

BACKGROUND

The Texas Department of Family and Protective Services ("the Department") became involved with the family based on allegations of drug abuse and neglectful supervision. In September 2016, the Department removed M.L.C. from Mother and placed him in an emergency placement home. In January 2017, he was placed with a foster family. The Department

subsequently filed a petition to terminate Mother and Father's parental rights.¹ In December 2016, the Department created a service plan for Mother. Pursuant to the service plan, Mother was required to, among other things: (1) engage in individual counseling; (2) complete a drug assessment and abide by recommendations made as a result of the assessment; (3) obtain a psycho-social assessment and abide by recommendations made as a result of the assessment; (4) attend classes on domestic violence and parenting, and provide proof of completion; (5) maintain stable employment and housing, and provide proof of same to the Department; (6) submit to random drug tests, including urinalysis and hair follicle screenings; and (7) participate in supervised parent-child visitation three times a month. The trial court ordered Mother to comply with each requirement set out in the plan. During the course of this matter, the trial court held the statutorily required status and permanency hearings, and ultimately, the matter moved to a final hearing, during which the Department sought to terminate Mother's parental rights.

At the hearing, the trial court heard testimony from Bianca Guerrero, the last Department caseworker involved in the case, and Mother. At the conclusion of the hearing, the trial court terminated Mother's rights, finding she: (1) knowingly placed or allowed M.L.C. to remain in conditions or surroundings that endangered his physical or emotional well-being; (2) engaged in conduct or knowingly placed M.L.C. with people who engaged in conduct that endangered his physical or emotional well-being; (3) had her parental rights terminated with respect to another child because she knowingly placed or allowed that child to remain in conditions or surroundings that endangered his physical or emotional well-being, or engaged in conduct or knowingly placed that child with people who engaged in conduct that endangered his physical or emotional well-being; (4) constructively abandoned M.L.C.; (5) failed to comply with the provisions of a court

¹ Father's parental rights were also terminated. However, Father did not file a notice of appeal challenging the termination. Accordingly, he is not a party to this appeal.

order that specifically established the actions necessary for her to obtain the return of M.L.C.; and (6) used a controlled substance in a manner that endangered the health and safety of M.L.C., and failed to complete a court-ordered drug treatment program. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (M), (N), (O), (P) (West Supp. 2016). The trial court further found termination of Mother's parental rights would be in M.L.C.'s best interest. *See id.* § 161.001(b)(2). Accordingly, the trial court rendered an order terminating Mother's parental rights. Thereafter, she perfected this appeal.

ANALYSIS

On appeal, Mother 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)(D), (E), (M), (N), (O), (P). Rather, she merely challenges the legal and factual sufficiency of the evidence in support of the trial court's finding that termination was in the best interest of her son. *See id.* § 161.001(b)(2).

Standard of Review

A trial court may terminate a parent's right to a child only if it 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 the child. *Id.* § 161.001(b). "Clear and convincing evidence" is defined 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. Courts require this heightened standard of review because termination of a parent's rights to a 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). 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). In sum, an appellate court must determine whether the evidence is such that the trier of fact could reasonably form a firm belief or conviction that termination was in the child's best interest. *In re J.F.C.*, 96 S.W.3d 256, 263 (Tex. 2002).

In conducting a sufficiency review, we may not weigh a witness's credibility because it depends on appearance and demeanor, and these are within the domain of the trier of fact. *J.P.B.*, 180 S.W.3d at 573. Even when such issues are found in the appellate record, we must defer to the fact finder's reasonable resolutions. *Id.*

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 recognize 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, promptly and permanently placing 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 also consider the factors set forth in section 263.307(b) of the Code. *Id.*

Additionally, evidence that proves one or more statutory grounds for termination may be probative to prove termination is in the child's best interest. *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2012) (holding same evidence may be probative of both section 161.001(1) grounds and best interest, but such evidence does not relieve State of burden to prove best interest). 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. *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

At the final hearing, the trial court heard testimony from two witnesses: Bianca Guerrero, one of the Department caseworkers involved in the case, and Mother. Through these witnesses, the Department sought to establish, in addition to the grounds for termination, that termination would be in the best interest of M.L.C.

In analyzing the evidence within the *Holley* framework, we recognize that evidence of each *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 at 27. In other words, the absence of evidence as to some of the *Holley* factors does not preclude a fact finder 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. *In re D.M.*, 452 S.W.3d 462, 468–69 (Tex. App.—San Antonio 2014, no pet.).

1. *Desires of the Child*

At the time of the final hearing, M.L.C. was not yet two years old. *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. Courts, including this one, have held that when a child cannot express his desires, a fact finder may consider that he has bonded with the foster family, is well cared for by them, and has spent minimal time with the parent. *In the Interest of A.F.C.*, No. 04-17-00080-CV, 2017 WL 3159447, at *3 (Tex. App.—San Antonio July 26, 2016, no pet.) (mem. op.); *In re J.D.*, 436 S.W.3d 105, 118 (Tex. App.—Houston [14th Dist.] 2014, no pet.); *In re J.M.*, 156 S.W.3d 696,

706 (Tex. App.—Dallas 2005, no pet.); *In re U.P.*, 105 S.W.3d 222, 230 (Tex. App.—Houston [14th Dist.] 2003, pet. denied).

According to the service plan, which was created in December 2016, Mother was to “participate in parent-child visitation three times a month supervised by the Department.” Thus, after the service plan was in place and before the final hearing — from January 2017 through June 2017 — Mother was entitled to visit her son eighteen times. Mother testified she visited M.L.C. “like ten times” since the case started, which was September of 2016. Mother admitted she had not seen M.L.C. at all since May, but claimed she failed to visit since May because the caseworker refused to respond to her texts and telephone calls. This was disputed by Ms. Guerrero.

The evidence shows that as of the time of the final hearing, M.L.C. had been with his foster family for approximately six months and has bonded with them. *See A.F.C.*, 2017 WL 3159447, at *3; *J.D.*, 436 S.W.3d at 118. Caseworker Guerrero testified she had observed M.L.C. in his foster home, stating he is “very comfortable . . . very calm . . . very attached to them.” *See A.F.C.*, 2017 WL 3159447, at *3; *J.D.*, 436 S.W.3d at 118. Ms. Guerrero stated he reacts to his foster mother with a smile and looks to her for comfort. *See A.F.C.*, 2017 WL 3159447, at *3; *J.D.*, 436 S.W.3d at 118. She stated they have “very well bonded in the last few months.” *See A.F.C.*, 2017 WL 3159447, at *3; *J.D.*, 436 S.W.3d at 118. According to Ms. Guerrero, the foster parents desire to adopt M.L.C. If they do, they intend to allow M.L.C. to maintain contact with his siblings, who are in other adoptive homes.

2. Emotional & Physical Needs/Emotional & Physical Danger/Parenting Abilities

As to M.L.C.’s emotional and physical needs, there was no specific testimony. However, at the time of the final hearing, M.L.C. was not yet two years old. Accordingly, he has the emotional and physical needs of any young child. At this age, he is unable to care or provide for

himself, depending on the adults in his life for all his needs. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 371–72.

With regard to the emotional and physical danger to the child — now and in the future, as well as Mother’s parenting abilities, the evidence shows that at the time of the final hearing, Mother was in jail for charges relating to possession of a controlled substance and theft. *See* TEX. FAM. CODE ANN. § 263.307(b)(8) (history of substance abuse by child’s family or others who have access to child’s home); *id.* § 263.307(b)(12) (whether child’s family demonstrates adequate parenting skills); *Holley*, 544 S.W.2d at 371–72. The evidence also suggests there is a pending motion to revoke Mother’s existing probation. *See* TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. She was arrested just three days before the final hearing. *See* TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. When asked about her current incarceration, Mother did not deny it, but she invoked her Fifth Amendment right against self-incrimination when asked about the specific charges and the circumstances of her arrest. *See* U.S. CONST. amend V. She also asserted her Fifth Amendment privilege when asked whether she had been in possession of a controlled substance — or what that substance was. *See id.* Mother also invoked her rights under the Fifth Amendment, refusing to answer questions relating to her probation status, although as noted above, the record suggests a motion to revoke her probation was pending. *See id.* She also declined to speak of any prior criminal charges. *See id.* However, the record suggests Mother was arrested on a prior shoplifting charge and at the time of that arrest, M.L.C. was with her. *See id.*

A party in a civil action may invoke her Fifth Amendment right against self-incrimination if she reasonably fears the answer sought might incriminate her. *In re A.B.*, 372 S.W.3d 273, 275 (Tex. App.—Fort Worth, 2012, no pet.). This rule has been applied in parental termination actions. *In the Interest of S.A.P.*, 459 S.W.3d 134, 146 (Tex. App.—El Paso 2015, no pet.) (citing *In re*

C.J.F., 134 S.W.3d 343, 352–53 (Tex. App.—Amarillo 2003, pet. denied)); *see, e.g., A.B.*, 372 S.W.3d at 275; *Murray v. Tex. Dep’t of Family & Protective Servs.*, 294 S.W.3d 360, 367 (Tex. App.—Austin 2009, no pet.); *In re C.R.*, 263 S.W.3d 368, 370 (Tex. App.—Dallas 2008, no pet.). When such an invocation is made, certain inferences may be drawn. *S.A.P.*, 459 S.W.3d at 146. As the court stated in *C.J.F.*, a fact finder may draw an adverse inference against a parent who pleads the Fifth Amendment. 134 S.W.3d at 352; *see C.R.*, 263 S.W.3d at 370 (Tex. App.—Dallas 2008, no pet.) (holding that trial court could infer mother continued to use illegal drugs after child was removed after mother invoked her rights under Fifth Amendment when asked about friend who purchased drugs for mother not long before final hearing). When a party refuses to answer after invoking her Fifth Amendment privilege, the trier of fact in a civil action may draw any inference that is reasonable under the circumstances. *C.J.F.*, 134 S.W.3d at 352; *see C.R.*, 263 S.W.3d at 370. Thus, in this case, the trial court could have drawn adverse inferences regarding Mother’s prior criminal history and drug possession based on her refusal to answer the questions relating to those issues. *See C.J.F.*, 134 S.W.3d at 352; *see also C.R.*, 263 S.W.3d at 370.

A parent’s criminal activities and history are also relevant to a best interest analysis — specifically to the emotional and physical danger to the child. *In re K.L.P.*, No. 04-17-00253-CV, 2017 WL 4014613, at *5 (Tex. App.—San Antonio Sept. 13, 2017, no pet.) (mem. op.); *In re R.T.*, No. 09-15-00425-CV, 2016 WL 821844, at *8 (Tex. App.—Beaumont, Mar. 3, 2016, no pet.) (mem. op.) (citing *In re D.M.*, 58 S.W.3d 801, 814 (Tex. App.—Fort Worth 2001, no pet.)). At the time of the final hearing, Mother was incarcerated and facing criminal charges, which is relevant in that it tends to establish a course of conduct endangering the emotional and physical well-being of the child. *K.L.P.*, 2017 WL 4014613, at *5 (citing *In re M.C.*, 482 S.W.3d 675, 685 (Tex. App.—Texarkana 2016, pet. denied)). Moreover, the evidence at the final hearing showed Mother had a history of criminal conduct. Criminal conduct, prior convictions, and incarceration

affects a parent's life and her ability to parent, thereby subjecting her child to potential emotional and physical danger. *Id.* (citing *In re B.C.S.*, 479 S.W.3d 918, 926 (Tex. App.—El Paso 2015, no pet.)). This is yet another consideration for the fact finder in making a best interest determination.

Although Mother invoked her right under the Fifth Amendment numerous times, she admitted that in 2015, when she was in North Carolina with M.L.C.'s father, they were stopped by police officers. A companion was found to be in possession of cocaine and a crack pipe. M.L.C. was with them. TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. She further admitted that one of her children, a girl, tested positive for cocaine at birth. TEX. FAM. CODE ANN. § 263.307(b)(8); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. The evidence also showed that Mother failed to submit to a hair follicle drug test when requested by Ms. Guerrero. TEX. FAM. CODE ANN. § 263.307(b)(8); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. Ms. Guerrero testified that approximately a month before the final hearing, she advised Mother that she had to submit to a hair follicle test. Ms. Guerrero contacted Mother by texts to two different numbers. However, Mother never responded and never appeared for the test. *See* TEX. FAM. CODE ANN. § 263.307(b)(8); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. Submission to random drug testing was also a requirement of Mother's service plan. *See* TEX. FAM. CODE ANN. § 263.307(b)(10) (willingness and ability of child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate agency close supervision); *id.* § 263.307(b)(11) (willingness and ability of child's family to effect positive environmental and personal changes within reasonable time); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. Ms. Guerrero testified Mother had drug issues, including use of heroin and cocaine. *See* TEX. FAM. CODE ANN. § 263.307(b)(8); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72.

Mother also admitted her rights to her other children were previously terminated. The Department introduced a certified copy of the termination order, which shows Mother's rights to

her other children were terminated. A fact finder may consider a parent's history with her other children in considering the danger or potential danger to a child. *In re E.C.R.*, 402 S.W.3d 239, 248 (Tex. 2013); *In re E.A.F.*, 424 S.W.3d 742, 751 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). In conducting its best interest analysis in *E.C.R.*, the supreme court considered that prior to the current termination proceeding, a mother's four older children had been removed from her custody. *E.C.R.*, 402 S.W.3d at 248. The court specifically noted that the mother's rights to her oldest child had been terminated. *Id.* Accordingly, in this case, the prior termination of Mother's parental rights to her other children was evidence the trial court could consider in determining whether termination was in M.L.C.'s best interest.

As previously noted, the Department prepared a service plan for Mother, and the trial court ordered Mother to comply with the requirements of that plan. However, the testimony shows Mother failed to complete the requirements 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. When asked what services Mother completed, Ms. Guerrero stated, “None.” *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. More specifically, despite her issues with controlled substances, Mother failed to complete the mandated drug assessment. *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. Mother testified that she was unable to complete the assessment because the Department “never sent the paperwork.” *See Holley*, 544 S.W.2d at 371–72 (excuse for acts or omissions of parent). She further testified this was the reason she failed to complete several of the other required services — individual counseling, psycho-social assessment, domestic violence classes, and parenting classes — the Department never sent or provided the necessary paperwork and failed to respond to her attempts to contact the Department caseworkers and supervisor. *See id.* However, her testimony was contradicted by Ms. Guerrero,

who testified she sent several referrals with regard to Mother's drug assessment — even one specifically requested by Mother — and advised Mother they had been sent. *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. Ms. Guerrero also testified that Mother was referred to individual counseling, but Mother never provided proof of completion. *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. According to Ms. Guerrero's testimony, Mother's completion of the drug assessment, counseling, and drug testing were the Department's top priorities, especially the drug assessment given Mother's history with heroin and cocaine. However, Mother never followed through. *See* TEX. FAM. CODE ANN. § 263.307(b)(8); *id.* § 263.307(b)(10); *id.* § 263.307(b)(11); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. Ms. Guerrero also testified Mother was “kicked out of” a parenting class. *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. When asked, Ms. Guerrero directed Mother to another parenting class at the facility requested by Mother — Alpha House, but Mother never provided a certificate of completion. *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.

In addition, Ms. Guerrero testified Mother never provided proof of stable employment or housing, which were also mandates under the 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. Ms. Guerrero asked Mother to provide proof of both. “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 re 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 G.M.G.*, 444 S.W.3d at 59–60 (same); *Doyle v. Tex. Dep't of Protective & Regulatory Servs.*, 16 S.W.3d 390, 398 (Tex. App.—El Paso 2000, pet. denied)

(holding that parent's failure to provide stable home and provide for child's needs contributes to finding that termination of parental rights is in child's best interest).

A parent's performance under a service plan is also relevant to several of the *Holley* factors, including the emotional and physical danger to the child now and in the future, parental abilities, and stability. *Holley*, 544 S.W.2d at 371–72. It is also relevant to many of the factors set out in section 263.307(b): (1) the willingness of the parent to seek out, accept, and complete counseling services, (2) the willingness and ability of the parent to effective positive changes within a reasonable time, and (3) whether the parent demonstrates adequate parenting skills. TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *id.* § 263.307(b)(12). Given the connection between a service plan and the *Holley* and statutory factors, a parent's actions with regard to the service plan is relevant to a child's best interest. *In re A.C.B.*, 198 S.W.3d 294, 298 (Tex. App.—Amarillo 2006, no pet.). Thus, Mother's failure to complete the requirements of her service plan was a factor to be considered in determining whether termination of her parental rights was in M.L.C.'s best interest. *See id.*

As noted at the outset, the foregoing evidence is also relevant to Mother's parenting abilities — or lack thereof. *See* TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. As set out above, Mother has history of criminal activity, including activities relating to controlled substances. *See* TEX. FAM. CODE ANN. § 263.307(b)(8); *id.* § 263.307(b)(12); *Holley*, 544 S.W.2d at 371–72. Mother was incarcerated at the time of the final hearing. She failed to complete any of the service plan requirements. *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. Mother also failed to provide proof of stable housing or employment. *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. Moreover, as to her other children, Mother previously had her parental rights terminated. On this basis, the trial court could

have determined Mother lacks the abilities needed to parent M.L.C. *See Holley*, 544 S.W.2d at 371–72.

3. *Available Programs to Assist Individual to Promote Best Interest*

As discussed above, the Department created a service plan for Mother, requiring her to complete services relating to drug use, parenting, psychological and psychiatric issues, and to secure and maintain stable housing and employment. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72. Ms. Guerrero testified the most important aspect of the service plan concerned services relating to Mother’s drug issues. Yet, according to Ms. Guerrero, Mother failed to complete any of the services set out in the plan. *See* TEX. FAM. CODE ANN. § 263.307(b)(10); *id.* § 263.307(b)(11); *Holley*, 544 S.W.2d at 371–72.

Mother claimed her failure to complete services was the fault of the Department, testifying the Department never made the necessary referrals. However, her testimony was contradicted by Ms. Guerrero who testified referrals were completed. A witness’s credibility depends on appearance and demeanor, and is within the domain of the trier of fact. *J.P.B.*, 180 S.W.3d at 573. Thus, the trial court could have accepted Ms. Guerrero’s testimony that referrals were made and discounted Mother’s claims that they were not. *See id.* Thus, there is evidence in the record showing that despite the availability of services and programs provided by the Department, Mother chose not to engage. *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.

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

Mother’s plan for M.L.C.’s placement was to have him reside with her sister or a church pastor. *See Holley*, 544 S.W.2d at 371–72. Mother testified she advised the Department that her sister or the pastor would be willing to take M.L.C., but the Department refused to complete a home study on either individual. Mother insisted the Department failed to consider her sister as a

placement option for M.L.C., testifying her sister was willing and able to take the child. According to Mother, her sister tried on two occasions to contact Mother's caseworker with regard to placement. *See id.*

However, the Department produced evidence through Ms. Guerrero showing the Department reached out to Mother's sister as Mother suggested. According to Ms. Guerrero, she called and first left a voicemail. When she ultimately spoke to Mother's sister, the sister stated she would be willing to take in the child. *See id.* Ms. Guerrero told her she needed information in order to undertake a home study, specifically the names of all the people living in the home, as well as their birth dates and social security numbers. *See id.* Although the sister told Ms. Guerrero she would provide the information, she never did — she never even provided her own date of birth or social security number. Ms. Guerrero called the sister again, leaving a voicemail, but the sister never returned the call or otherwise contacted the Department. *See id.* Ms. Guerrero also testified she contacted the pastor as suggested by Mother, but when she told the pastor what she was calling about, the pastor "hung up" on her. *See id.* Mother admitted she knew the pastor was no longer willing to take M.L.C. *See id.* She also admitted she was unaware the Department had asked her sister for information and that her sister failed to respond. Nevertheless, Mother testified placing her son with her sister would be in his best interest. *See id.*

As mentioned above, the evidence shows the M.L.C.'s needs are currently being met by his foster-to-adopt family. *See id.* As previously discussed, at the time of the final hearing, M.L.C. had been with his foster-to-adopt family for approximately six months and is bonded with them. *See id.* Ms. Guerrero visited the foster home and found M.L.C. "very attached" to his foster-to-adopt family. *See id.* The foster parents desire to adopt M.L.C. if they are approved, and if they do, they intend to allow M.L.C. to maintain contact with his siblings, who are in other adoptive homes. *See id.*

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

With regard to the final *Holley* factors, the trial court heard evidence of the following acts and omissions by Mother, establishing the existing parent-child relationship is improper: (1) past and current criminal activity, coupled with her current incarceration; (2) failure to complete her service plan, especially as it relates to drug use and the provision of stable housing and employment; and (3) prior terminations. *See Holley*, 544 S.W.2d at 371–72. As to evidence of any excuse for her conduct and failure to take steps to address her issues, Mother claimed that her failure to complete the service plan was based on the Department’s failure to make the necessary referrals. *Id.* However, Mother’s testimony was contradicted by Ms. Guerrero, and the trial court was entitled to find Ms. Guerrero’s testimony credible. *See J.P.B.*, 180 S.W.3d at 573.

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 of Mother’s parental rights was in M.L.C.’s best interest. *See J.P.B.*, 180 S.W.3d at 573; *H.R.M.*, 209 S.W.3d at 108. The evidence shows Mother has issues relating to criminal activity and drug use, and she is currently incarcerated. Mother has not addressed her drug issues, failing to complete the mandated drug assessment or submit to drug screening. She also failed to complete any other requirement of her service plan. Mother’s refusal to address her issues — as well as her failure to secure and maintain housing and employment — subjects her son to a life of emotional and physical instability if he remains with her. Moreover, Mother has not challenged the trial court’s findings under section 161.001(b)(1): (a) she knowingly placed or allowed M.L.C. to remain in conditions that endangered his physical or emotional well-being; (b) engaged in conduct or knowingly placed M.L.C. with people who engaged in conduct that endangered his physical or emotional well-being; (c) had her parental rights terminated with

respect to another child because she knowingly placed or allowed that child to remain in conditions or surroundings that endangered his physical or emotional well-being, or engaged in conduct or knowingly placed that child with people who engaged in conduct that endangered his physical or emotional well-being; (d) constructively abandoned M.L.C.; (e) failed to comply with the provisions of her court-ordered service plan; and (f) used a controlled substance in a manner that endangered the health or safety of M.L.C., and failed to complete a court-ordered drug treatment program. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (M), (N), (O), (P). The grounds for termination are probative on the issue of best interest. *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.

Accordingly, after considering all the evidence in the light most favorable to the best interest finding, we conclude it was reasonable for the trial court to have formed a firm belief or conviction that termination of Mother’s parental rights was in the M.L.C.’s best interest. *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 best interest of her child. *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.

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 that termination of Mother’s parental rights was in the best interest of M.L.C. Accordingly, we overrule Mother’s sufficiency complaint and affirm the trial court’s order of termination.

Marialyn Barnard, Justice