Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00379-CV

INTEREST OF D.A.V.J. and J.R., III, Children

From the 150th Judicial District Court, Bexar County, Texas
Trial Court No. 2018-PA-01753
Honorable Charles E. Montemayor, Judge Presiding

Opinion by: Beth Watkins, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Beth Watkins, Justice

Delivered and Filed: November 27, 2019

AFFIRMED

This is a parental termination case in which appellants, E.V. and J.R., Jr., separately appeal the trial court's order terminating their parental rights. E.V. appeals the trial court's order terminating her parental rights to her two children D.A.V.J. and J.R., III. J.R., Jr. appeals the termination of his parental rights to his son J.R., III. On appeal, both E.V. and J.R., Jr. argue the evidence is legally and factually insufficient to support the trial court's findings under section 161.001(b)(1) and that termination was in the best interests of their children. We affirm the trial court's order.

BACKGROUND

On August 6, 2018, the Texas Department of Family and Protective Services ("the Department") removed the children from E.V. and J.R., Jr.'s care two days after E.V. gave birth

to J.R., III, because the newborn tested positive for methamphetamines at birth. When asked about drug use, E.V. admitted to using methamphetamines while she was pregnant with J.R., III and caring for D.A.V.J. At the time of removal, D.A.V.J. was one year old.[1]

The Department placed both children with the same foster family and filed a petition to terminate both E.V. and J.R., Jr.'s parental rights. The Department created a family service plan, requiring each parent to, inter alia, complete a psychological evaluation and receive treatment for drug use as a condition of reunification. The service plan also required the parents to attend scheduled visitations with the children. However, as a result of continued concerns regarding inconsistent visitations and ongoing drug use, the Department pursued termination of both E.V. and J.R., Jr.'s parental rights.

The trial court held a one-day bench trial at which both E.V. and J.R., Jr. appeared. The trial court heard testimony from a Department caseworker and both parents. At trial, the caseworker testified the Department removed the children after E.V. tested positive for methamphetamines after she delivered J.R., III, who also tested positive for methamphetamines. The caseworker testified that E.V. admitted to using methamphetamines while she was pregnant with J.R., III even though she knew she was pregnant. E.V. further admitted she used methamphetamines while she was the primary caregiver for D.A.V.J. According to the caseworker, the Department attempted to place the children with J.R., Jr., but he said he could not care for the children due to work.

The caseworker testified she prepared a family service plan for the parents and stressed to them the importance of complying with the plan. As indicated above, the service plan required each parent to undergo a psychological evaluation, receive treatment for drug use, and attend

[1] Joseph J. is D.A.V.J.'s alleged father and is not a party to this appeal.

scheduled visitations with the children. The caseworker confirmed both E.V. and J.R., Jr. each completed a psychological evaluation and were seeing a therapist.

With regard to visitations, the caseworker testified both parents inconsistently visited the children. Specifically, E.V. attended 21 of the 35 scheduled visits, and J.R., Jr. attended 19. The caseworker testified J.R., Jr. did not consistently visit the children due to work. J.R., Jr. owned his own roofing business, and as proof of his employment, provided the caseworker with his business card and a deposit slip and Home Depot receipts from a recent roofing job. The caseworker also testified that when the parents visited, they showed a bond with the children and provided food and toys. However, when the parents missed visitations, the children acted out. On cross examination, the caseworker explained she scheduled visitations on Friday afternoons—a time the parents said was most convenient for them—but she was flexible and would allow them to reschedule due to work.

When asked about the parents' drug treatment, the caseworker testified E.V. completed outpatient treatment and was instructed to pursue aftercare treatment with Lifetime Recovery and participate in Narcotics Anonymous. The caseworker testified E.V. did not complete any of these aftercare treatment services. The caseworker further testified that E.V. did not complete all of her urinalysis and hair follicle drug tests. Specifically, she missed one test each in November, December, and March, and two tests in May. E.V. also tested positive for methamphetamines and marijuana in January and February. The caseworker testified that when she asked E.V. about the positive tests, E.V. stated she had relapsed. According to the caseworker, E.V. had a long history of drug use.

Turning to J.R., Jr., the caseworker testified he also completed a drug assessment test with Lifetime Recovery; however, he was unsuccessfully discharged from the program because of poor attendance. As a result, the Department placed J.R., Jr. on a zero-tolerance contract. However, he

did not adhere to it. He also did not complete six of his urinalysis drug tests and three of his hair follicle drug tests. The caseworker testified he completed his first urinalysis and hair follicle tests in May, and he tested positive for methamphetamines. When asked about the positive drug tests, J.R., Jr. admitted to using methamphetamines.

The caseworker also indicated she has been unable to set up a home visit or perform an unannounced visit with the parents because they were always working. In fact, the caseworker stated that during the pendency of this proceeding, she saw E.V. outside a home she happened to be driving by. She stopped to ask E.V. if she lived there, and E.V. stated no and explained that she was on a job. The caseworker added, however, she did not see J.R., Jr. or any building materials. The caseworker further stated she did not have any proof that J.R., Jr. worked besides his business card, the deposit slip, and Home Depot receipts. When asked for proof of income or a copy of a contract with a client, J.R., Jr. did not provide it; she added, however, that she did not know how he operated his business, so his inability to provide those items was not necessarily proof he did not have a job.

With regard to the children, the caseworker testified the children were currently placed together in a foster to adopt home. She testified J.R., III had some respiratory issues and was more vulnerable to getting sick when he was around other children who were sick, perhaps as a result of E.V.'s drug use while she was pregnant. J.R., III was nine months old at the time of trial and had already had RSV and other viruses. He required a nebulizer at times. He also wore a helmet 23 hours per day. When asked about the parents' ability to care for J.R., III, the caseworker expressed concern, stating it would be difficult for them, particularly when J.R., III is sick.

D.A.V.J. was almost two years old at the time of trial. He had some behavioral issues, and the foster family removed him from his first daycare facility and placed him in a daycare with a smaller class size so he could receive more individual attention. The caseworker testified D.A.V.J.

was doing "much better" in his new daycare. D.A.V.J. also received speech therapy twice a week and was making progress. When asked about the bond the children had with the foster parents, the caseworker testified both children have lived with the foster family since removal and look to the foster parents for emotional support. The foster family was meeting the physical and emotional needs of both children. The foster parents are bilingual and were teaching the children—who are Hispanic—to speak both English and Spanish.

After the caseworker testified, the trial court heard testimony from E.V. E.V. testified she completed an outpatient drug treatment program, and after graduation, the program counselor told her she had the option to attend Alcoholics Anonymous meetings. E.V. testified she attended some Alcoholics Anonymous meetings but did not attend any Narcotics Anonymous meetings as requested by the program. E.V. also testified she missed some of her urinalysis and hair follicle drug tests due to transportation issues. E.V. added, however, she could test "clean" if the trial court ordered her to complete a drug test that day. E.V. testified she started using drugs—specifically, cocaine—when she was 19 years old. Since then, she has relapsed "on and off." E.V. stated she was "clean" during her pregnancy with D.A.V.J., however, she used methamphetamines and smoked marijuana "towards the end of [her] pregnancy" with J.R., III. She stated she used drugs alone, and she knew J.R., Jr. used drugs, but he never did it around her or the children. She further testified that the last time she used drugs was in February before she joined the Lifetime Recovery program. When asked about missed visitations, E.V. testified her work schedule sometimes prevented her from visiting the children. E.V. also testified she had a three-bedroom home for the children.

Finally, the trial court heard testimony from J.R., Jr., who testified he was J.R., III's biological father and has cared for D.A.V.J., who was not his biological son, since he was five months old. During direct examination, J.R., Jr. testified he was unable to attend all the scheduled

visitations due to work obligations. He stated that he tried his best to "fit it in," and when he could not make it, he would send E.V. He stated E.V. would take his truck to attend the visitation, and he would stay at a jobsite. He also stated that when he visited the children with E.V., they would take them diapers, clothes, and toys whenever they could. When asked about J.R., III's helmet and nebulizer, J.R., Jr. testified he was capable of putting the helmet on and taking it off, and he understood how to use the nebulizer.

With regard to his roofing business, J.R., Jr. testified he was a roofing subcontractor and has been working on houses in the Dominion which were damaged by a recent hail storm. He explained he did not have contracts with any contractors; instead, a contractor would call him to see if he was available. He explained that he provided the caseworker with some deposit slips and receipts reflecting where he cashed his check or purchased supplies. He added, however, that some contractors still owed him money. He further testified he believed he made sufficient income to care for J.R., III, and he had a safe and stable home. He stated the caseworker tried to visit his home, but due to scheduling conflicts, they were unable to arrange a time.

When asked about his bond with J.R., III, he testified he felt a bond with both children. He testified that although D.A.V.J. was not his biological child, he believed he had a bond with J.R., III and with D.A.V.J., who sometimes called him "dad." J.R., Jr. also testified he was currently attending monthly therapy sessions. He testified the sessions were going well and added he may do some roofing work for the therapist.

J.R., Jr. admitted he was unsuccessfully discharged from the Lifetime Recovery drug treatment program due to absences. He also admitted to skipping six urinalysis and three hair follicle drug tests because he was using methamphetamines. He testified he used methamphetamines as recently as two months before trial, but he never used it with E.V. or in front of the children. He also testified he did not know E.V. used methamphetamines while she

was pregnant with J.R., III. J.R., Jr. testified he believed he could care for his child. He explained that when the Department removed the children from the hospital, the Department did not try to place the children with him. He testified he would have taken the children.

At the conclusion of the trial, the court terminated E.V.'s parental rights pursuant to section 161.001(b)(1)(N), (O), (P), and (R) and terminated J.R., Jr.'s parental rights pursuant to section 161.001(b)(1)(N), (O), and (P). The trial court also found that termination of parental rights was in the best interests of the children. E.V. and J.R., Jr. separately appealed to this court.

ANALYSIS

Standard of Review

To terminate parental rights under section 161.001 of the Texas Family Code ("the Code"), the Department bears the burden to prove by clear and convincing evidence one of the predicate grounds in subsection 161.001(b)(1) and that termination is in the best interest of the child. TEX. FAM. CODE ANN. § 161.001(b); *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). "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." TEX. FAM. CODE ANN. § 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 well-established standards of review. *See* TEX. FAM. CODE §§ 101.007, 161.206(a); *In re J.F.C.*, 96 S.W.3d 256, 263 (Tex. 2002). To determine whether the Department produced clear and convincing evidence, a legal sufficiency review requires us to "'look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true.'" *In re J.L.*, 163 S.W.3d 79, 85 (Tex. 2005)

(quoting *In re J.F.C.*, 96 S.W.3d at 266). If the court "'determines [a] reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true,'" then the evidence is legally sufficient. *Id.* (quoting *In re J.F.C.*, 96 S.W.3d at 266).

A factual sufficiency review requires us to also consider the disputed evidence. *In re J.F.C.*, 96 S.W.3d at 266. We must consider whether disputed evidence is such that a reasonable factfinder could have resolved that disputed evidence in favor of its finding. *Id.* 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 the factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient. *Id.* Under both standards, the factfinder is the sole judge of the weight and credibility of the evidence. *In re E.X.G.*, No. 04-18-00659-CV, 2018 WL 6516057, at *1 (Tex. App.—San Antonio Dec. 12, 2018, pet denied) (mem. op.).

E.V.'s Appeal

Statutory Termination Grounds

On appeal, E.V. challenges the sufficiency of the evidence to support the trial court's predicate findings. When, as here, the trial court terminates a parent's rights on multiple predicate grounds, we may affirm on any one ground. *In re A.V.*, 113 S.W.3d at 362; *In re D.J.H.*, 381 S.W.3d 606, 611–12 (Tex. App.—San Antonio 2012, no pet.). To terminate a parent's parental rights under section 161.001(b)(1)(O), the Department must produce evidence that the parent "failed to comply with provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child." *See* TEX. FAM. CODE § 161.001(b)(1)(O).

E.V. does not dispute that her children were in the Department's custody for at least nine months. Instead, she argues the Department did not produce any evidence it removed J.R., III from her care due to abuse or neglect. For support, she points to *In re K.N.D.*, 403 S.W.3d 277 (Tex. App.—Houston [1st Dist.] 2012, *rev'd on other grounds*, 424 S.W.3d 8 (Tex. 2014)). There, a mother was 37 weeks pregnant when she fell down after being involved in a physical altercation and was taken to the hospital, where she gave birth to her child. *Id.* at 280. The following day, the hospital reported the incident to the Department, which discovered that the mother was a prostitute who lived with her male pimp and another female roommate. *Id.* During an altercation, the pimp had chased the mother, causing her to fall. *Id.* The Department removed the child from the mother's care, and the trial court ultimately terminated the mother's parental rights based on section 161.001(b)(1)(O). *Id.* On appeal, the mother argued there was no evidence that the child was removed due to abuse or neglect. *Id.* at 282. The First Court of Appeals agreed, holding the Department failed to prove by clear and convincing evidence that it removed the child because she had been abused or neglected. *Id.* at 284.

We determine whether the Department removed a child from a parent due to abuse or neglect on a case by case basis. *In re A.A.A.*, 265 S.W.3d 507, 515 (Tex. App.—Houston [1st Dist.] 2008, pet. denied). The use of a controlled substance, such as methamphetamines, in a manner that results in an injury to a child constitutes abuse. TEX. FAM. CODE ANN. § 261.001(1)(I). Unlike the Department in *In re K.N.D.*, the Department in this case produced evidence it removed J.R., III from E.V.'s care because J.R., III had been abused. Here, the evidence shows that E.V. used drugs while she was pregnant with J.R., III even though she knew she was pregnant, and as a result, J.R., III was born with methamphetamines in his system. E.V. testified she used methamphetamines and marijuana during the last two months of her pregnancy. When considering this evidence in the light most favorable to the judgment, we conclude that a factfinder could

reasonably have formed a firm conviction or belief that the Department removed J.R., III from E.V.'s care due to abuse. *See In re J.L.*, 163 S.W.3d at 85; *In re J.F.C.*, 96 S.W.3d at 266.

E.V. also argues the Department did not meet its burden to support the trial court's predicate finding of (O) because she completed "enough tasks" in her service plan. However, "Texas courts have held that substantial compliance is not enough to avoid a termination finding under section 161.001(O)." *In re C.A.*, No. 04-15-00582-CV, 2016 WL 805550, at *5 (Tex. App.—San Antonio Mar. 2, 2016, pet. denied) (mem. op.) (quoting *In re C.M.C.*, 273 S.W.3d 862, 875 (Tex. App.—Houston [14th Dist.] 2008, no pet.)). While it is undisputed that E.V. completed certain tasks—a psychological evaluation and drug assessment test—in her family service plan, it is also undisputed that she failed to complete others—visitations and drug treatment. Viewing all the evidence presented, including any disputed or conflicting evidence, we find that a reasonable factfinder could have resolved the disputed evidence in favor of a finding that E.V. failed to comply with all the terms of the court-ordered service plan. *See In re J.L.*, 163 S.W.3d at 85; *In re J.F.C.*, 96 S.W.3d at 266. Thus, we conclude that legally and factually sufficient evidence supports termination of E.V.'s parental rights under section 161.001(b)(1)(O).

Best Interests

E.V. also challenges the sufficiency of the evidence to support the trial court's finding that termination of her parental rights was in the best interests of her children.

Applicable Law

In determining the best interest of a child, courts apply the non-exhaustive *Holley* factors. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). Those factors include: (1) the desires of the child; (2) the present and future emotional and physical needs of the child; (3) the present and future emotional and physical danger to the child; (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 held by the individuals seeking custody of the child; (7) the stability of the home of the parent and the individuals seeking custody; (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. *Id*. These 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). Courts should also consider the factors outlined in section 263.307 of the Code regarding whether a parent is willing and able to provide a child with a safe environment. *See* TEX. FAM. CODE ANN. § 263.307. This is because promptly placing a child in a safe environment is presumed to be in a child's best interest. *Id.* Finally, "[a] trier of fact may measure a parent's future conduct by his past conduct [in] determin[ing] whether termination of parental rights is in the child's best interest." *In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio 2013, pet. denied).

Application

With these standards and factors in mind, we consider the evidence admitted at trial as it relates to the best interests of the children. Here, the Department produced evidence that it received a referral because both E.V. and J.R., III tested positive for methamphetamines at J.R., III's birth. The Department produced evidence that E.V. admitted to using illegal drugs during her pregnancy with J.R., III and while she cared for D.A.V.J. *See In re I.J.P.*, No. 04-18-00296-CV, 2018 WL 5018764, at *3 (Tex. App.—San Antonio Oct. 17, 2018, no pet.) (mem. op.) (noting mother's drug use during pregnancy supported trial court's best interest determination). As a result, its primary concern in attempting to reunify the children with their mother was to require E.V. to complete a psychological evaluation, receive drug treatment, and attend scheduled visitations. And although E.V. completed the psychological evaluation and outpatient drug treatment program, the

Department produced evidence that E.V. did not attend all of her scheduled visitations with the children. *See In re E.C.R.*, 402 S.W.3d 239, 249 (Tex. 2013) (stating trial court may properly consider failure to comply with court-ordered family service plan in best interest determination). The Department also produced evidence that E.V. did not continue aftercare drug treatment and tested positive for methamphetamines and marijuana during the pendency of the termination proceeding. *See In re R.M.C.*, No. 04-18-00706-CV, 2019 WL 1370367, at *3 (Tex. App.—San Antonio Mar. 27, 2019, pet. denied) (mem. op.) (pointing out parent's drug use during termination proceeding supported best interest finding). With respect to the children's current placement, the Department produced evidence establishing the children are healthy and living in a safe and stable home with foster parents who can provide for their physical and emotional needs and intend to adopt both of them. *See In re D.M.*, 452 S.W.3d 462, 472 (Tex. App.—San Antonio 2014, no pet.) ("The stability of the proposed home environment is an important consideration in determining whether termination is in the child's best interest.").

Based on this evidence, the trial court could have reasonably determined the Department produced clear and convincing evidence that termination of E.V.'s parental rights to both D.A.V. J. and J.R., III was in the best interests of the children. Accordingly, after viewing the evidence in the light most favorable to the trial court's finding, we conclude the evidence is legally sufficient to support the trial court's best interests finding. *See In re J.L.*, 163 S.W.3d at 85. With regard to factual sufficiency, in considering the entire record, including the disputed evidence—primarily E.V.'s testimony that she completed most of her service plan—we further conclude the evidence is factually sufficient to support the trial court's best interests finding. *See In re J.F.C.*, 96 S.W.3d at 266. We therefore hold the evidence is both legally and factually sufficient to support the trial court's order terminating E.V.'s parental rights to D.A.V.J. and J.R., III.

J.R., Jr.'s Appeal

Statutory Termination Grounds

On appeal, J.R., Jr. also challenges the sufficiency of the evidence to support the predicate findings made by the trial court. Because only one predicate finding is necessary to support a judgment of termination of parental rights when there is also a finding that termination was in the child's best interest, we begin by determining whether the Department produced clear and convincing evidence to support the termination of J.R., Jr.'s parental rights under section 161.001(1)(O). *See In re A.V.*, 113 S.W.3d at 362.

J.R., Jr. does not dispute that his son was in the Department's custody for at least nine months or that he failed to comply with his service plan. Instead, he argues the Department failed to produce evidence it removed his son from his care because of abuse or neglect. To support his argument, J.R., Jr. points out he never cared for his son since the Department removed J.R., III from his custody immediately after birth. He argues "it stands to reason that J.R., III was [not] removed [from his custody] for abuse or neglect."

To the extent J.R., Jr. argues the Department did not meet its burden because there is no evidence *he* abused J.R., III, we disagree. If the Legislature intended for removal to be based on abuse by the parent who failed to comply with service plan, it would have expressly specified such a requirement. *In re S.N.*, 287 S.W.3d 183, 188 (Tex. App.—Houston [14th Dist.] 2009, no pet.). We presume the omission of such a requirement was purposeful. *Id.*; *see Quick v. City of Austin*, 7 S.W.3d 109, 123 (Tex. 1998) (presuming omission by Legislature has purpose). We therefore conclude "subsection (O) does not require that the parent who failed to comply with a court order be the same parent whose abuse or neglect of the child warranted the child's removal." *In re A.O.*, No. 04-12-00390-CV, 2012 WL 5507107, at *3 (Tex. App.—San Antonio Nov. 14, 2012, no pet.) (mem. op.); *accord In re S.N.*, 287 S.W.3d at 188.

Here, the Department produced evidence it removed J.R., III two days after his birth because the newborn tested positive for methamphetamines and E.V. admitted to using illegal drugs during her pregnancy. As discussed above, such conduct constitutes abuse, and when considering this evidence in the light most favorable to the judgment, a factfinder could have reasonably determined the Department removed J.R., III because of such abuse. *See* TEX. FAM. CODE § 261.001(1)(I); *In re J.L.*, 163 S.W.3d at 85; *In re J.F.C.*, 96 S.W.3d at 266. We therefore conclude a factfinder could have reasonably concluded the Department produced by clear and convincing evidence that J.R., III was removed from J.R., Jr.'s care for abuse. *See* TEX. FAM. CODE § 261.001(1)(I); *In re J.L.*, 163 S.W.3d at 85; *In re J.F.C.*, 96 S.W.3d at 266. Accordingly, we overrule J.R., Jr.'s sufficiency challenge regarding subsection (O).

Best Interests

J.R., Jr. further argues the evidence is insufficient to support the trial court's finding that termination of his parental rights was in J.R, III's best interest. We disagree. Here, the Department produced evidence that J.R., Jr. failed to comply with his service plan because he did not receive treatment for his drug use, continued to use illegal drugs during the pendency of the proceeding, and missed almost half of his scheduled visitations. *See In re E.C.R.*, 402 S.W.3d at 249 (in determining the best interest of the child in termination proceedings, trial court may properly consider that parent did not comply with court-ordered family service plan for reunification with child); *see also In re L.J.R.*, No. 04-18-00544-CV, 2018 WL 5928487, at *3 (Tex. App.—San Antonio Nov. 14, 2018, no pet.) (mem. op.) (pointing out that parent's missed visitations served as example of acts or omissions supporting termination was in child's best interest). At trial, J.R., Jr. testified he was unsuccessfully discharged from the Lifetime Recovery drug treatment program due to absences. *See In re G.S.M.*, No. 04-17-00539-CV, 2017 WL 6597826, at *4 (Tex. App.—San Antonio Dec. 27, 2017, pet. denied) (mem. op.) (noting parent's failure to complete drug

treatment program and continued use of drugs supports best interest determination). He also admitted to missing multiple drug tests because he was using methamphetamines and that he used methamphetamines as recently as two months before trial. *See id*.

The Department also produced evidence that J.R., Jr. did not have stable employment. *See In re D.M.*, 452 S.W.3d at 472. Here, the caseworker testified that J.R., Jr. did not produce any verification of continued employment except his most recent deposit slip and expense receipts. And although J.R., Jr. testified he could financially support J.R., III, the factfinder could have reasonably disbelieved this testimony and determined otherwise. Our standard of review requires us to defer to the factfinder for such a determination. *See In re E.X.G.*, 2018 WL 6516057, at *1. Finally, the Department produced evidence that J.R., III is currently placed with his brother in an adoptive foster home, and the foster family has been meeting J.R., III's needs. Accordingly, the trial court could have reasonably determined the Department produced clear and convincing evidence that termination of J.R., Jr.'s parental rights to J.R., III was the child's best interest. Viewing the evidence under the applicable standards of review, we conclude the evidence is legally and factually sufficient to support the trial court's best interests finding. *See In re J.F.C.*, 96 S.W.3d at 266; *In re J.L.*, 163 S.W.3d at 85.

CONCLUSION

Based on the foregoing, we affirm the trial court's order of termination.

Beth Watkins, Justice