



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00156-CV

IN THE INTEREST OF J.A.J., L.F.S., and R.M.G., Children

From the 288th Judicial District Court, Bexar County, Texas
Trial Court No. 2019-PA-00746
Honorable John D. Gabriel Jr., Judge Presidingⁱ

Opinion by: Patricia O. Alvarez, Justice

Sitting: Patricia O. Alvarez, Justice
Luz Elena Chapa, Justice
Irene Rios, Justice

Delivered and Filed: July 29, 2020

AFFIRMED

Appellant Mom appeals the trial court's order terminating her parental rights to her children J.A.J., L.F.S., and R.M.G.ⁱⁱ Mom asserts the evidence is neither legally nor factually sufficient for the trial court to have found by clear and convincing evidence that her course of conduct met any of the alleged statutory grounds for termination or that terminating her parental rights is in the best interest of each child. For the reasons given below, we affirm the trial court's order.

ⁱ The Honorable Cynthia Marie Chapa is the presiding judge of the 288th Judicial District Court. The Honorable John D. Gabriel Jr. signed the termination order.

ⁱⁱ To protect the minors' identities, we refer to Mom, Dad, and the children using aliases. *See* TEX. R. APP. P. 9.8. Mom is the only appellant. We focus our recitation of the facts on those pertaining to Mom and the children as they relate to the trial court's statutory grounds (i.e., D, E, O) and best-interest-of-the-child findings. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O), (b)(2).

BACKGROUND

In April 2019, the Department received a referral indicating that there was domestic violence, drug use, and chronic unsafe living conditions in the home; the school-aged children were not attending school; and the children were missing medical appointments. The Department petitioned for temporary managing conservatorship of the children. The trial court granted the Department's petition and placed Mom and R.M.G.'s father (Dad)ⁱⁱⁱ on a service plan. During the plan period, Dad tested positive for drug use. Mom was ordered to submit to random drug testing, which she did in part, but she missed fourteen tests.

After a one-day bench trial, citing grounds (D), (E), and (O), and the best interests of the children, the trial court terminated Mom's parental rights to the children. Mom appeals.

EVIDENCE REQUIRED, STANDARDS OF REVIEW

The evidentiary standards¹ the Department must meet and the statutory grounds² the trial court must find to terminate a parent's rights to a child are well known, as are the legal³ and factual⁴ sufficiency standards of review. We apply them here.

STATUTORY GROUNDS FOR TERMINATING MOM'S PARENTAL RIGHTS

Mom asserts that the evidence was legally and factually insufficient to support the trial court's statutory grounds findings. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O).

A. Statutory Ground Finding Required

A single statutory ground finding, when accompanied by a best interest of the child finding, is sufficient to support a parental rights termination order. *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003); *In re R.S.-T.*, 522 S.W.3d 92, 111 (Tex. App.—San Antonio 2017, no pet.). But “due process requires an appellate court to review and detail its analysis as to termination of parental

ⁱⁱⁱ One of the presumed fathers is deceased; the other denied paternity and did not appeal.

rights under section 161.001(b)(1)(D) or (E) of the Family Code when challenged on appeal.” *In re Z.M.M.*, 577 S.W.3d 541, 543 (Tex. 2019).

B. Section 161.001(b)(1)(D)

I. Subsection (D)’s Provisions

Under subsection (D), a parent’s rights may be terminated if, before the child was removed, *see In re R.S.-T.*, 522 S.W.3d at 108 (relevant period), the parent “knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child,” TEX. FAM. CODE ANN. § 161.001(b)(1)(D). In the context of the statute, “‘endanger’ means to expose to loss or injury; to jeopardize.” *Tex. Dep’t of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987). Endangerment includes allowing a child to live in unsafe or insect-infested conditions. *See In re D.M.*, 452 S.W.3d 462, 470 (Tex. App.—San Antonio 2014, no pet.).

“[E]ndangerment can be exhibited by both actions and failures to act.” *Lumpkin v. Dep’t of Family & Protective Servs.*, 260 S.W.3d 524, 528 (Tex. App.—Houston [1st Dist.] 2008, no pet.). “[A] parent need not know for certain that the child is in an endangering environment; awareness of such a potential is sufficient.” *In re R.S.-T.*, 522 S.W.3d at 109 (alteration in original) (quoting *In re S.M.L.*, 171 S.W.3d 472, 477 (Tex. App.—Houston [14th Dist.] 2005, no pet.)). “[A] single act or omission” may support terminating a parent’s rights under subsection (D). *Id.* (citing *In re R.D.*, 955 S.W.2d 364, 367 (Tex. App.—San Antonio 1997, pet. denied)). “Further, a fact-finder may infer from past conduct endangering the well-being of a child that similar conduct will recur if the child is returned to the parent.” *In re D.J.H.*, 381 S.W.3d 606, 613 (Tex. App.—San Antonio 2012, no pet.).

2. *Evidence of Conditions or Surroundings*

a. Dangerous Home Conditions

The case worker testified about the trailer in which Mom, Dad, and the children lived. It had holes in the ceiling and the roof was incomplete. Mom and Dad just covered the holes in the roof with a tarp and nailed wood on top to hold it down. There were holes in the door frames where pests could enter the home. The trailer had one main electrical line, but it had extension cords throughout to power lights in the living room, bedrooms, and other areas. The case worker was concerned that the home conditions put the children at risk, especially the three-year-old child.

b. Educational, Medical Neglect

The initial referral indicated that J.A.J. was not going to school and all the children had untreated bedbug bites on their arms and legs. The Department verified that J.A.J. had not been attending school, and Mom admitted that when the children “came into care [they had] insect bites all over them that were infected.”

3. *Sufficient Evidence under Subsection (D)*

Given the testimony, the trial court could have concluded that the electrical extension cords exposed the children to fire, electrical shock, and trip hazards. *See Boyd*, 727 S.W.2d at 533 (exposing to injury). The children’s untreated, infected insect bites were evidence of medical neglect, which likewise endangered the children’s physical well-being. *See In re D.M.*, 452 S.W.3d at 470 (unsafe, insect-infested conditions). We conclude the evidence of Mom’s course of conduct was legally and factually sufficient for the trial court to have found by clear and convincing evidence that, before the children were removed, Mom knowingly allowed the children to live in conditions and surroundings which endangered their physical and emotional well-being. *See TEX. FAM. CODE ANN. § 161.001(b)(1)(D); Lumpkin*, 260 S.W.3d at 528.

C. Section 161.001(b)(1)(E)

1. Subsection (E)'s Provisions

Under subsection E, a parent's rights may be terminated if the parent "engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child." TEX. FAM. CODE ANN. § 161.001(b); *In re R.S.-T.*, 522 S.W.3d at 109.

For a parent to endanger a child, "it is not necessary that the [parent's] conduct be directed at the child or that the child actually suffers injury." *Boyd*, 727 S.W.2d at 533. "[R]ather, a child is endangered when the environment or the parent's course of conduct creates a potential for danger which the parent is aware of but disregards." *In re R.S.-T.*, 522 S.W.3d at 110 (quoting *In re S.M.L.*, 171 S.W.3d 472, 477 (Tex. App.—Houston [14th Dist.] 2005, no pet.)).

A parent's drug use, domestic violence, and failure to correct dangerous living conditions are factors which may be considered on the question of endangerment. *In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009) (drug use); *In re J.I.T.P.*, 99 S.W.3d 841, 845 (Tex. App.—Houston [14th Dist.] 2003, no pet.) (domestic violence); *In re D.M.*, 452 S.W.3d at 470 (living conditions).

A parent's placing a child in a potentially unsafe environment is also evidence of endangerment. *See In re R.S.-T.*, 522 S.W.3d at 110 ("[A] child is endangered when the environment . . . creates a potential for danger which the parent is aware of but disregards.").

2. Evidence of Mom's, Dad's Conduct

The Department's case worker testified that Mom and Dad continued to live together after the children were removed. During the service plan period, Dad tested positive for drugs, and Mom missed fourteen of her scheduled drug tests. Further, in 2013, Dad was convicted for assault causing bodily injury on a family member, and the initial referral in this case included domestic violence in the home, but neither Mom nor Dad completed the domestic violence classes each was

ordered to complete. Moreover, despite repeated reminders, Mom and Dad failed to correct the previously addressed safety risks in the home. *Cf. In re D.M.*, 452 S.W.3d at 470 (living conditions).

3. *Sufficient Evidence under Subsection (E)*

Given the testimony, the trial court could have concluded that Mom and Dad were continuing to use drugs—which was an endangering course of conduct. *See In re J.O.A.*, 283 S.W.3d at 345 (agreeing that a parent’s drug use, including its effect on the “ability to parent may qualify as an endangering course of conduct”). Dad’s previous conviction for a family violence assault and Mom’s and Dad’s failures to complete their domestic violence classes was evidence of endangerment. *See In re J.I.T.P.*, 99 S.W.3d at 845 (“Domestic violence, want of self control, and propensity for violence may be considered as evidence of endangerment.”). The ongoing, uncorrected safety risks in the home were additional evidence of endangerment. *See In re D.M.*, 452 S.W.3d at 470 (living conditions). We conclude the evidence was legally and factually sufficient for the trial court to have found by clear and convincing evidence that Mom knowingly engaged in conduct that endangered the children’s physical and emotional well-being. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E); *In re J.O.A.*, 283 S.W.3d at 345; *In re D.M.*, 452 S.W.3d at 470; *In re J.I.T.P.*, 99 S.W.3d at 845.

We overrule Mom’s first issue.

BEST INTERESTS OF THE CHILDREN

In her second issue, Mom argues the evidence was legally and factually insufficient to support the trial court’s finding that terminating her parental rights was in the children’s best interests. *See* TEX. FAM. CODE ANN. § 161.001(b)(2).

The Family Code statutory factors⁵ and the *Holley* factors⁶ for the best interest of a child are well known. *See* TEX. FAM. CODE ANN. § 161.001(b)(2). Applying the applicable standards

of review and statutory and common law best interest factors, we examine the evidence pertaining to the best interests of the children. The same evidence we considered in the statutory grounds review may also be probative in the best interests of the children review. *See In re C.H.*, 89 S.W.3d at 28; *Walker v. Tex. Dep't of Family & Protective Servs.*, 312 S.W.3d 608, 618 (Tex. App.—Houston [1st Dist.] 2009, pet. denied).

A. Evidence of Mom's Course of Conduct

While they were in Mom's care, the children lived with Dad—a man who had been convicted of assault causing bodily injury of a family member—in unsafe, insect-infested conditions. *See* TEX. FAM. CODE ANN. § 263.307(b)(1), (3), (7), (8), (12); *Holley v. Adams*, 544 S.W.2d 367, 372 (Tex. 1976) (factors (B), (C), (D), (H)). Mom admitted all three children had untreated, infected insect bites. *See* TEX. FAM. CODE ANN. § 263.307(b)(1), (3), (12); *Holley*, 544 S.W.2d at 372 (factors (B), (C), (D), (H)). The Department confirmed that J.A.J. had not been attending school and L.S.F. had been having behavioral issues at school. *See* TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 372 (factors (B), (C), (D), (H)). J.A.J. and L.F.S. were “extremely behind” in school and very unhappy; they had little hope for their futures. *See* TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 372 (factors (B), (C), (D), (H)). Although more than two years old, R.M.G. was not talking. *See* TEX. FAM. CODE ANN. § 263.307(b)(1), (12); *Holley*, 544 S.W.2d at 372 (factors (B), (C), (D), (H)).

After the children were removed, Mom was put on a service plan. She completed her psychological evaluation, but she did not complete any of her other services such as her domestic violence or parenting classes. *See* TEX. FAM. CODE ANN. § 263.307(b)(10), (11); *Holley*, 544 S.W.2d at 372 (factors (D), (G), (H)). Mom was ordered to complete a drug class and submit to random drug testing, but she failed to complete the course or present herself for fourteen tests. *See* TEX. FAM. CODE ANN. § 263.307(b)(10), (11); *Holley*, 544 S.W.2d at 372 (factors (G), (H)).

B. Evidence on Children's Placement Families

Since their removals, J.A.J. and L.F.S. have been living with their maternal great-uncle and aunt, and they are happy and hopeful. *See* TEX. FAM. CODE ANN. § 263.307(b)(1), (12), (13); *Holley*, 544 S.W.2d at 372 (factors (B), (C), (D), (G)). They have no unexcused absences from school, and each is on the A and B honor roll. J.A.J. now hopes to go to college. L.F.S. is now taking responsibility for his actions and his behavior has improved greatly. *See* TEX. FAM. CODE ANN. § 263.307(b)(1), (12), (13); *Holley*, 544 S.W.2d at 372 (factors (B), (D), (F), (G)).

R.M.G. has been living with his paternal grandmother. Before removal, he did not speak, but now he speaks in full sentences, he is very active, and he enjoys playing with his siblings. *See* TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 372 (factors (B), (D), (G)).

All three children are thriving. They are each bonded to their placement families, the placement families are bonded to them, and their placement families want to adopt their respective children. *See* TEX. FAM. CODE ANN. § 263.307(b)(12), (13); *Holley*, 544 S.W.2d at 372 (factors (B), (D), (F), (G)). The placement families are meeting the present needs of the children, and they will be able to meet their future needs as well. *See* TEX. FAM. CODE ANN. § 263.307(b)(1); *Holley*, 544 S.W.2d at 372 (factors (B), (C), (D), (F), (G)).

C. CASA's, Ad Litem's Recommendations

The CASA volunteer and the children's ad litem noted how well the children are doing with their placement families. Both stated it was in the children's best interests for Mom's parental rights to be terminated and for the children to remain with their placement families to be adopted.

D. Legally, Factually Sufficient Evidence

Having reviewed the evidence, we conclude the trial court could have "reasonably form[ed] a firm belief or conviction" that it was in the children's best interests for Mom's parental rights to be terminated. *See In re J.L.*, 163 S.W.3d at 85; *In re H.R.M.*, 209 S.W.3d at 108 (citing *In re*

C.H., 89 S.W.3d at 25). The evidence was legally and factually sufficient to support the trial court's best-interests-of-the-children findings. See TEX. FAM. CODE ANN. § 161.001(b)(2); *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002).

We overrule Mom's second issue.

CONSERVATORSHIP ORDER

In her third issue, Mom argues that the trial court abused its discretion in not appointing her as a possessory conservator because the evidence supporting the statutory grounds and best-interests-of-the-children findings was legally and factually insufficient.

Because the evidence was legally and factually sufficient to support the trial court's findings on statutory grounds (D) and (E) and best-interests-of-the-children, Mom's conservatorship argument necessarily fails.

We overrule Mom's third issue.

CONCLUSION

Because the evidence was legally and factually sufficient to support the trial court's findings by clear and convincing evidence (1) of at least one predicate ground for termination and (2) that termination of Mom's parental rights is in the best interests of the children, we affirm the trial court's order.

Patricia O. Alvarez, Justice

¹ Clear and Convincing Evidence. If the Department moves to terminate a parent's rights to a child, the Department must prove by clear and convincing evidence that the parent's acts or omissions met one or more of the grounds for involuntary termination listed in section 161.001(b)(1) of the Family Code and that terminating the parent's rights is in the best interest of the child. TEX. FAM. CODE ANN. § 161.001(b); *In re J.F.C.*, 96 S.W.3d 256, 261 (Tex. 2002). The same evidence used to prove the parent's acts or omissions under section 161.001(b)(1) may be used in determining the best interest of the child under section 161.001(b)(2). *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002); *In re D.M.*, 452 S.W.3d 462, 471 (Tex. App.—San Antonio 2014, no pet.); see also TEX. FAM. CODE ANN. § 161.001(b). The trial court may consider a parent's past deliberate conduct to infer future conduct in a similar situation. *In re D.M.*, 452 S.W.3d at 472.

² Statutory Grounds for Termination. The Family Code authorizes a court to terminate the parent-child relationship if, inter alia, it finds by clear and convincing evidence that the parent's acts or omissions met certain criteria. See TEX. FAM. CODE ANN. § 161.001(b). Here, the trial court found Mom's course of conduct met the following criteria or grounds:

- (D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
- (E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child; [and]
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- (O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child.

Id. § 161.001(b)(1).

³ **Legal Sufficiency.** When a clear and convincing evidence standard applies, a legal sufficiency review requires a court to “look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true.” *In re J.L.*, 163 S.W.3d 79, 85 (Tex. 2005) (quoting *In re J.F.C.*, 96 S.W.3d at 266). If the court “determines that [a] reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true,” the evidence is legally sufficient. *See id.*

⁴ **Factual Sufficiency.** Under a clear and convincing standard, evidence is factually sufficient if “a factfinder could reasonably form a firm belief or conviction about the truth of the State’s allegations.” *In re C.H.*, 89 S.W.3d at 25; *accord In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). We must consider “whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding.” *In re J.F.C.*, 96 S.W.3d at 266; *accord In re H.R.M.*, 209 S.W.3d at 108.

⁵ **Statutory Factors for Best Interest of the Child.** The Texas legislature codified certain factors courts are to use in determining the best interest of a child:

- (1) the child’s age and physical and mental vulnerabilities;
- (2) the frequency and nature of out-of-home placements;
- (3) the magnitude, frequency, and circumstances of the harm to the child;
- (4) whether the child has been the victim of repeated harm after the initial report and intervention by the department;
- (5) whether the child is fearful of living in or returning to the child’s home;
- (6) the results of psychiatric, psychological, or developmental evaluations of the child, the child’s parents, other family members, or others who have access to the child’s home;
- (7) whether there is a history of abusive or assaultive conduct by the child’s family or others who have access to the child’s home;
- (8) whether there is a history of substance abuse by the child’s family or others who have access to the child’s home;
- (9) whether the perpetrator of the harm to the child is identified;
- (10) the willingness and ability of the child’s family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency’s close supervision;
- (11) the willingness and ability of the child’s family to effect positive environmental and personal changes within a reasonable period of time;
- (12) whether the child’s family demonstrates adequate parenting skills; . . . and
- (13) whether an adequate social support system consisting of an extended family and friends is available to the child.

TEX. FAM. CODE ANN. § 263.307(b); *see In re A.C.*, 560 S.W.3d 624, 631 (Tex. 2018) (recognizing statutory factors).

⁶ **Holley Factors.** The Supreme Court of Texas identified several nonexclusive factors to determine the best interest of a child:

- (A) the desires of the child;
- (B) the emotional and physical needs of the child now and in the future;
- (C) the emotional and physical danger to the child now and in the future;
- (D) the parental abilities of the individuals seeking custody;
- (E) the programs available to assist these individuals to promote the best interest of the child;
- (F) the plans for the child by these individuals or by the agency seeking custody;
- (G) the stability of the home or proposed placement;

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- (H) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and
 - (I) any excuse for the acts or omissions of the parent.

Holley v. Adams, 544 S.W.2d 367, 371–72 (Tex. 1976) (footnotes omitted); *accord In re E.N.C.*, 384 S.W.3d 796, 807 (Tex. 2012) (reciting the *Holley* factors).