Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00313-CV

IN THE INTEREST OF I.X.H. and E.N.C.

From the 57th Judicial District Court, Bexar County, Texas
Trial Court No. 2019-PA-00696
Honorable Charles E. Montemayor, Associate Judge Presiding

Opinion by: Liza A. Rodriguez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Beth Watkins, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: November 12, 2020

AFFIRMED AS MODIFIED

Appellant Mother appeals the trial court's order terminating her parental rights to her two sons: four-year-old I.X.H. and one-and-a-half-year-old E.N.C.[1] On appeal, she brings three issues: (1) the evidence is legally and factually insufficient to support the trial court's predicate findings pursuant to section 161.001(b)(1)(D) and (N) of the Family Code; (2) the evidence is legally and factually insufficient to support the trial court's finding that termination of her parental rights is in her children's best interest; and (3) the trial court abused its discretion in making its conservatorship finding. Because we hold there is no evidence to support the trial court's finding pursuant to section 161.001(b)(1)(D), we modify the trial court's order of termination to delete

[1] To protect the identity of the minor children, we refer to the parties by fictitious names, initials, or aliases. *See* TEX. FAM. CODE § 109.002(d); TEX. R. APP. P. 9.8(b)(2).

that finding. As modified, we affirm the trial court's order terminating Appellant Mother's parental rights.

BACKGROUND

At trial, Joseph Coker, an investigator with the Texas Department of Family and Protective Services, testified that Appellant Mother has four children, but only the two youngest are the subject of this lawsuit.[2] Coker testified that during his involvement with these children, the Department received two referrals. The first referral was in early 2018. I.X.H. had been found wandering near a highway without any supervision. Coker testified the Department's investigation of the incident led to the family working with family-based services.

The second referral of March 6, 2019, related to conditions in the home. According to Coker, a knife was observed upstairs where the children sleep. When Coker asked Appellant Mother about the knife being in the area where the children were sleeping, she told them that she "tries to clean up, but the kids throw things around and make a mess, and she doesn't immediately pick up after them." Coker testified "there were also concerns that the eldest daughter had suicidal ideations and it was not known if Appellant Mother was taking her to counseling services." With regard to suicidal ideations by her eldest daughter, Appellant Mother told Coker that the family-based worker had set up a counseling appointment for her daughter, and Appellant Mother had attempted to make the appointment. Coker testified there were "also concerns about neglectful supervision" because I.X.H. had "various scratches on him," including a "couple of linear ones on his arm," "a scrape in the middle of his back," and "a couple of marks on his face." When asked about the scratches, Appellant Mother was not aware of how I.X.H. obtained the scratches.

[2] The older two children were originally placed with their father and then placed with their grandmother.

Although I.X.H.'s injuries were typical for a child his age, Coker was concerned that Appellant Mother did not have an explanation for how I.X.H. obtained the injuries.

Coker testified that as a result of this intake, the safety plan was for the children to be supervised at all times by either the children's uncle, Eric H., or a neighbor, believed to be named Guadalupe H. Appellant Mother and her boyfriend, E.N.C.'s father,[3] agreed to the safety plan. Coker testified the safety plan was broken almost immediately when there was an incident involving E.N.C.'s father. Appellant Mother and the two younger children were not at home at the time of the incident. E.N.C.'s father was at home with the two older children and a friend. No approved supervisor was present in violation of the safety plan. Coker testified that a fight then occurred between E.N.C.'s father and his friend, resulting in E.N.C.'s father hitting his friend with a beer bottle and slitting his friend's throat with a knife while the two older children were present in the home. Coker testified that this incident was the basis for the removal of the children.

Marissa Benavides, the caseworker, testified that I.X.H. and E.N.C. came into the Department's care on April 5, 2019. Benavides testified that she discussed the allegations with Appellant Mother, but Appellant Mother "continued to minimize the situation." Appellant Mother told Benavides that her boyfriend had only been "protecting her" because the other man was "threatening to rape" her. Appellant Mother told Benavides that her boyfriend had not done anything wrong because he was defending her.

Upon further questioning, Benavides testified that Appellant Mother admitted arriving at the scene immediately after the incident. According to Benavides, because Appellant Mother was worried about her boyfriend being undocumented, she helped him flee the scene so that he would not be arrested. When Benavides discussed the incident with the boyfriend, he denied that he had

[3] The parental rights of E.N.C.'s father were also terminated. He did not appeal.

attempted to kill the other man, saying it had just been "a small cut." According to Benavides, when she confronted him by stating, "You know, you slit his throat," the boyfriend did not have an answer. He would also not answer Benavides's question about whether the children had been present.

According to Benavides, at the time of trial, I.X.H. and E.N.C. had been in the Department's care for a year. Benavides testified that Appellant's service plan required her to demonstrate stable income, stable housing, appropriate parenting skills, and an appropriate support system. Appellant Mother also needed to undergo a psychological evaluation and engage in drug treatment and individual counseling. According to Benavides, Appellant Mother had completed a parenting class and outpatient drug treatment; however, Benavides testified Appellant Mother refused inpatient treatment, which had been recommended. Benavides testified Appellant Mother completed the psychological evaluation but did not follow through with the follow-up recommendation of counseling. A referral was made for her, but she refused to engage in counseling for a very long time because she did not feel like she needed it. Recently, Appellant Mother told Benavides that she had begun counseling, but not through a counselor to whom she was referred by the Department. Instead, Appellant Mother found her own counselor. Benavides testified Appellant Mother did not give her any information about this counselor until the last court hearing. Benavides tried to contact the counselor but her call was never returned. Thus, Benavides was not able to confirm Appellant Mother's attendance at counseling sessions or receive any therapy notes from her counselor.

With regard to income, Benavides testified Appellant Mother has a stable income because she receives SSI benefits. However, Benavides testified Appellant Mother had not shown that she has safe and stable housing or an appropriate support system. According to Benavides, Appellant Mother refused to give the Department the information of people she has listed as part of her

support system because she does not believe the Department needs their information. Benavides testified that one of the people listed by Appellant Mother, a woman named "Brittany," is not an appropriate person because Appellant Mother has admitted she and Brittany have been in a physical altercation, resulting in Appellant Mother having a bruised and busted lip. Benavides testified she took a picture of Appellant Mother's injured lip on January 14, 2020, and the picture was admitted in evidence. According to Benavides, Appellant Mother at first lied and claimed her brother had injured her, but then admitted it had been her friend Brittany who injured her. Benavides testified that Appellant Mother also listed her Aunt Carol as part of her support system, but the Department had concerns with Aunt Carol because she had been dishonest with Department workers, had minimized the incident with Appellant Mother's boyfriend, and had not demonstrated a protective capacity for the children. Benavides testified that when the incident with Appellant Mother's boyfriend occurred, Aunt Carol did not call the Department to report the incident. When asked why she had not reported the incident, Aunt Carol replied that she did not feel it was her place to report it. According to Benavides, this failure by Aunt Carol to be protective of the children was a big concern for the Department.

Benavides testified that Appellant Mother says she has been living with Aunt Carol since February 2020; however, every time Benavides has gone to Aunt Carol's home, Appellant Mother has not been there. Benavides testified that between February 2020 and the COVID-19 outbreak, she made five unannounced visits, some early in the morning between 8:00 and 9:00 a.m. when Appellant Mother is usually asleep, and some in the afternoon between noon and 5:00 p.m. when Appellant Mother, who does not work, should be at home. Benavides verified that during every unannounced visit, Appellant Mother was not "at any classes or anything like that." One early morning visit in February, Aunt Carol had to call Appellant Mother, who was just waking up. Appellant Mother then walked over from where she was, claiming to have been at a friend's house.

Benavides testified that she believed Appellant was staying at her mother's house, which was a block away from Aunt Carol's house. According to Benavides, Aunt Carol has a Ring doorbell and had let Benavides know previously that Benavides was being recorded every time she went to Aunt Carol's house. On the morning of the unannounced visit, Aunt Carol claimed Appellant Mother had just left the house. Knowing about the Ring doorbell, Benavides asked if Aunt Carol could provide her with proof that Appellant Mother had just left that morning. Aunt Carol declined. Benavides testified that the Monday before trial, May 18, 2020, Appellant Mother had called in for her visit. Appellant Mother was just waking up and was not at Aunt Carol's house, but was instead at her mother's home. Benavides testified that the mother's house was not an appropriate placement, because there were "concerns for drug use in the home by her grandmother" and because her brother also lives in the home and uses illegal drugs.

Benavides testified that it was not in the best interest of I.X.H. and E.N.C. to be placed back with Appellant Mother because she had not demonstrated any of the changes necessary to show she would be protective of her children and not put them into dangerous situations. Benavides testified that Appellant Mother has not demonstrated stability throughout the case or that she could meet the needs of her children. According to Benavides, Appellant Mother had "extensive CPS history for similar things" and refused to give the Department information relating to the people who form her support system. Benavides testified that Appellant Mother merely completing her parenting class does not benefit her children if she does not change the behaviors that brought the family to this place.

Benavides testified the children have been placed in a foster home for over a year. They are bonded with their placement, and the placement is meeting all their needs. Both children have improved developmentally and behaviorally since being placed in the foster home. Benavides testified that when E.N.C. came into the Department's care, he was very small and diagnosed

failure to thrive. The back of his head was flat and he had very weak muscle tone. Benavides testified he is now meeting all his developmental milestones. He is able to crawl and walk, and has put on some weight. His head is no longer flat. With regard to I.X.H., Benavides testified when she first met him, she could not understand him—his speech was delayed. Now his speech has improved, and Benavides can understand him when he talks. Benavides testified the biggest change she has seen is with I.X.H.'s behavior. When he was first placed, he had "very bad behavioral issues." Since that time, he has been engaged in individual play therapy, trauma-based play therapy, and behavioral therapy. He now has better self-control. His tantrums are less severe and less frequent. Benavides testified the long-term plan for the children is adoption by the current foster home.

Shaina S., the children's foster parent, testified I.X.H. and E.N.C. were placed with her in April 2019. She testified that both boys are both doing well and have made tremendous progress in her home. She has been engaged in the taking the children to their therapy sessions. She testified that she works at a military hospital and would like to adopt both boys.

Miguel Salinas, a licensed professional counselor at San Antonio Counseling and Behavioral Center, testified that Appellant Mother had been his client for only four months. He testified that he and Appellant Mother have been "using the rational mode of behaviors, therapy, solution, focus, and narrative therapy to form a basis logic and perception shift." Salinas believed that Appellant Mother had been "doing better, as far as using positive categories of thoughts rather than negative categories of thoughts to reference unpleasant situations." He further testified Appellant Mother had been "able to demonstrate understanding and the use of the concepts in session, which is a pretty good indicator of her being able to change from one habit to form another." When asked if given more time Appellant Mother would be able to change the patterns in her behavior that led to her children being in the Department's care, Salinas admitted that he

did not know the conditions that had been present leading to the removal of the children. Salinas testified that he and Appellant Mother were toward the beginning process of therapy. When asked if it was his testimony Appellant Mother was ready to take on the responsibility of two small children, Salinas admitted that he did not "know the scope of what was there before or the case itself." He testified that all he could say was that Appellant Mother was "very adamant on change." Salinas was asked whether Appellant Mother had disclosed the reasons the children had been removed. Salinas replied, "No. So the style of therapy that we're doing right now, I'm not focusing on traumatic events right now. I'm focusing on the process itself and changing that process." Salinas was then asked if the reasons for the removal of the children included her boyfriend at the time hitting another male in the head with a beer bottle, slashing the male's throat with a knife, and then Appellant Mother helping the boyfriend flee the scene and evade police when her children were present, instead of staying with the children, would Salinas believe that such an incident would require Appellant Mother to engage in counseling. Salinas replied, "Definitely. There's a lot of different psychological factors that can take place with that situation." Salinas was then asked whether something like that incident had been addressed in his counseling sessions with Appellant Mother. Salinas testified, "Not yet. We're not going into the deep end of trauma or traumatic situations. At the moment, we are learning a different process." Salinas testified he and Appellant Mother had not had sufficient time for her to be successfully discharged from counseling.

Aunt Carol testified that Appellant Mother lives with her and her husband. She testified that she had seen a big change in Appellant Mother's "mental state." According to Aunt Carol, before the children were removed, Appellant Mother was "nervous and upset." Now, she is in counseling and stays home. When asked about the incident between Appellant Mother's boyfriend and the friend, Aunt Carol testified that the incident did not occur at her home and she had not been present at the time of the assault. Aunt Carol stated she went to the house later to pick up the

children and "get them out of the situation." According to Aunt Carol, she found out about the incident, because she had been calling Appellant Mother who was not answering. Aunt Carol stated that she kept calling and calling, and then a police officer answered the phone. He asked who she was, and when she replied, he said, "You need to come now and see what the situation is." When she arrived at the scene, the police were present and the children were in a vehicle. The police were speaking to the two older children. Aunt Carol was greeted by one of the officers, who told her what had happened. Aunt Carol testified that she did not report the incident to the Department because she had told Appellant Mother to report it.

Aunt Carol's husband, Thomas H., testified that Appellant Mother had been living with him and his wife since the case began. He testified he had seen "a little bit" of change in Appellant Mother's behavior.

Appellant Mother testified that she had completed her parenting classes, her domestic violence classes, along with drug and alcohol treatment. She was still working on counseling. She testified she had learned in counseling "to choose the right people to hang around with" and to "let go of all [her] other friends" who "will always get into trouble." She claimed to understand how the choices she had made in relationships with men had negatively influenced her children. She testified, "Right now, to be honest with you, I don't care about any man right now. I just want to be with my kids and protect them instead of being with a man."

When asked about the first referral in March 2018, involving I.X.H. running to a highway, Appellant Mother stated that she had left the children with a babysitter who had left the door open. When asked whether in fact "this had happened multiple times, not just once," Appellant Mother testified there had been only one incident. With regard to the incident between her boyfriend and the other man, Appellant Mother testified she was not friends with the man but had been friends with the man's girlfriend. According to Appellant Mother, she, I.X.H., and E.N.C. were not present

at the time of the assault. When they arrived home, her friend who was the girlfriend of the man told her "to leave her kids in the car with her sister." When Appellant Mother went inside, she "saw blood everywhere." Appellant Mother testified, "I don't know where y'all are getting that [my boyfriend] stabbed [the other man]. [The other man] actually did the stabbing too." When asked whether she had felt the need to talk to her older two children who had been present during the assault, Appellant Mother stated that she had asked her girls whether they were okay and then told them to stay in their rooms. Appellant Mother stated that she then called her aunt and uncle. She claimed she never "ran off" with her boyfriend.

With regard to counseling, Appellant Mother was initially referred to counseling in 2019. When asked why she had not started her counseling then, Appellant Mother replied, "Because I didn't want it. I didn't need it." She was then asked why she did not believe she needed counseling. Appellant Mother replied, "Because I put every—I didn't care—like I—I did care about my kids, but I didn't care about the incident. I didn't want to think about the incident."

PREDICATE GROUNDS

Appellant Mother's parental rights were terminated pursuant to the following predicate grounds under section 161.001(b)(1): subsections (D) (dangerous surroundings or conditions), (N) (constructive abandonment), and (O) (failure to comply with a court-ordered plan for return of the child). *See* TEX. FAM. CODE § 161.001(b)(1)(D), (N), (O). In her brief, Appellant Mother challenges only the trial court's findings under subsections (D) and (N); she does not challenge the trial court's finding under subsection (O).[4] If, as here, the trial court terminated the parent-

[4] Appellant Mother frames her first issue in her brief as the following: "Under Texas Family Code § 161.001(b)(1), did the trial court have legally or factually sufficient evidence to justify its predicate grounds finding?" While her brief argues that there is legally and factually insufficient evidence to support the trial court's findings under subsections (D) and (N), nowhere in her brief does she argue that there is insufficient evidence to support the trial court's finding under subsection (O). Therefore, she has waived any argument on appeal regarding the sufficiency of the evidence to support subsection (O). *See* TEX. R. APP. P. 38.1(i) ("The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.").

child relationship on multiple grounds under section 161.001(1), we may affirm on any one ground because, in addition to finding that termination is in the child's best interest, only one predicate violation under section 161.001(1) is necessary to support a termination decree. *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003); *In re D.J.H.*, 381 S.W.3d 606, 611-12 (Tex. App.—San Antonio 2012, no pet.). Thus, because Appellant Mother has not challenged the trial court's finding under subsection (O), the trial court's order may be affirmed on that predicate ground so long as we determine under Appellant Mother's second issue that there is legally and factually sufficient evidence to support the trial court's best-interest finding.

However, even though the trial court's finding under subsection (O) may support its termination order, we must still consider Appellant Mother's argument that there is legally and factually insufficient evidence to support the trial court's subsection (D) finding. Because a termination finding under subsection (D) may serve as the basis for a future termination of parental rights proceeding, the supreme court has explained that due process requires that we address any appellate issue regarding the sufficiency of the evidence of a trial court's finding under (D). *See In re N.G.*, 577 S.W.3d 230, 237 (Tex. 2019).

Subsection (D) allows termination of parental rights if, along with a best-interest finding, the factfinder finds by clear and convincing evidence that 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 § 161.001(b)(1)(D). Subsection (D) "cannot constitute the basis for termination if the parent was unaware of the endangering environment." *In re N.F.*, No. 09-19-00435-CV, 2020 WL 2070286, at *21 (Tex. App.—Beaumont Apr. 30, 2020, pet. denied) (mem. op.); *see also In re C.M.C.*, 554 S.W.3d 164, 171-72 (Tex. App.—Beaumont 2018, no pet.).

Appellant Mother argues there is legally insufficient evidence to support the finding under subsection (D), because "at best, the evidence showed that when the environment became dangerous due to the conduct of other people, [Appellant Mother] intervened to protect her children and had no reason to have anticipated such conditions." In reviewing the evidence, we note that Coker, the investigator, testified there were two initial intakes done, which resulted in a safety plan being implemented. The first referral related to an incident in 2018 where I.X.H. had been found wandering near a highway without any supervision. The investigation of this incident led to the family working with family-based services. In her testimony, Appellant Mother explained that at the time of this incident, she had left the child with a babysitter. No other information was presented at trial.

The second referral involved concerns of the conditions of the home and a knife observed upstairs where the children sleep. There was also a concern that the oldest girl, who is not a child the subject of this case, had suicidal ideations and it was unknown whether mom was taking her to counseling. Finally, there was a concern that Appellant Mother had no explanation for how I.X.H. had obtained various scratches. Coker testified the doctor had reported the scratches to be typical for a child his age to receive on his own, just playing around, but the Department was still concerned because Appellant Mother did not know how the scratches occurred. As a result of these referrals, a safety plan was implemented in which Appellant Mother and her boyfriend's contact with all the children would be supervised at all times by either the uncle, Eric H., or a neighbor, believed to be named Guadalupe H. Soon thereafter, the children were removed because of the incident between the boyfriend and another male at the home. It is undisputed that (1) the older two children were at home at the time of the incident; (2) no appropriate supervisor was present in accordance with the safety plan; and (3) Appellant Mother, I.X.H., and E.N.C. were not present. Although it is undisputed the older children were present in the home at the time of the incident,

there is nothing in the record to indicate the circumstances surrounding the incident and whether the older children witnessed the incident or were in another part of the house. Additionally, the record does not indicate whether Appellant Mother was aware that the supervisors required under the safety plan were not present at the house at the time of the incident. The record is also void of any evidence of previous violence by the boyfriend or of any evidence that mom had knowledge of any violent tendencies by her boyfriend. There is simply nothing in the record to indicate that Appellant Mother knew or should have known that her boyfriend would perpetrate any act of violence on the children or another person.

On this record, there is insufficient evidence to show that Appellant Mother "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 § 161.001(b)(1)(D); *see In re N.F.*, 2020 WL 2070286, at *21 (explaining that subsection (D) cannot be basis for termination if the parent was unaware of the endangering environment). Therefore, we hold the evidence is legally insufficient to support the finding under subsection (D).

CHILDREN'S BEST INTEREST

Under Texas law, there is a strong presumption that the best interest of a child is served by keeping the child with a parent. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006). In determining whether the child's parent is willing and able to provide the child with a safe environment, the factors set out in section 263.307 of the Family Code should be considered. *See* TEX. FAM. CODE § 263.307(b).[5] In addition to these statutory factors, in considering the best interest of the child, a

[5] These factors include (1) the child's age and physical and mental vulnerabilities; (2) the frequency and nature of out-of-home placements; (3) the magnitude, frequency, and circumstances of the harm to the child; (4) whether the child has been the victim of repeated harm after the initial report and intervention by the Department; (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

factfinder may also consider the nonexclusive list of factors set forth by the Texas Supreme Court in *Holley v. Adams*, 544 S.W.2d 367, 372 (Tex. 1976).[6] The *Holley* factors are neither all-encompassing nor does a court need to find evidence of each factor before terminating the parent-child relationship. *See In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). Finally, in determining whether termination of the parent-child relationship is in the best interest of a child, a factfinder may judge a parent's future conduct by her past conduct. *In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio 2013, pet. denied).

Appellant Mother argues that the evidence is legally and factually insufficient to support the trial court's best-interest finding. In reviewing the legal sufficiency of the evidence to support this finding, we 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.O.A.*, 283 S.W.3d 336, 344 (Tex. 2009) (quoting *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002)). In reviewing the factual sufficiency of the evidence, we consider disputed or conflicting evidence. *Id.* at 345. "If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a

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, including providing the child and other children under the family's care with: (A) minimally adequate health and nutritional care; (B) care, nurturance, and appropriate discipline consistent with the child's physical and psychological development; (C) guidance and supervision consistent with the child's safety; (D) a safe physical home environment; (E) protection from repeated exposure to violence even though the violence may not be directed at the child; and (F) an understanding of the child's needs and capabilities; and (13) whether an adequate social support system consisting of an extended family and friends is available to the child. TEX. FAM. CODE § 263.307(b).

[6]These factors include, but are not limited to, the following: (1) the child's desires; (2) the child's present and future emotional and physical needs; (3) any present or 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 child's best interest; (6) the plans for the child by these individuals or by the agency seeking custody; (7) the stability of the home or proposed placement; (8) the parent's acts or omissions that may indicate the existing parent-child relationship is improper; and (9) any excuse for the parent's acts or omissions. *In re E.C.R.*, 402 S.W.3d at 249 n.9 (citing *Holley*, 544 S.W.2d at 371-72).

factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient." *Id.* (quoting *In re J.F.C.*, 96 S.W.3d at 266). Under these standards, the factfinder is the sole judge of the weight and credibility of the evidence. *Id*.

In reviewing the record, we conclude there was evidence from which the trial court could infer that Appellant Mother was not protective of her children. The caseworker, Benavides, testified that after the stabbing incident, Appellant Mother left the scene with her boyfriend because she was afraid he was going to be arrested. According to Benavides, Appellant Mother continued to de-emphasize the incident and failed to see the danger to which her older children had been exposed. At trial, Appellant Mother, while attempting to blame the other male for the violence, admitted that there had been a lot of blood at the scene. There was also evidence that Appellant Mother had not demonstrated a stable home environment for her children. Appellant Mother claimed to living with her aunt and uncle in compliance with her service plan. However, she was never at her aunt and uncle's home when the caseworker visited. The caseworker testified she believed Appellant Mother was living with her mother who lived only a block away, even though Appellant Mother knew her mother's home was not an appropriate placement. The caseworker based this belief on Appellant Mother not being present at the aunt and uncle's home during unannounced visits, the aunt and uncle's refusal to allow the caseworker to verify via Ring doorbell footage that Appellant Mother had just left their home, and Appellant Mother early one morning walking back to the aunt and uncle's home when she was called by the aunt. The caseworker also testified that Appellant Mother had failed to show she had a suitable support system, because she refused to provide details about the individuals who were to be included. The caseworker also testified that she knew one person on Appellant Mother's list of her support system was unsuitable because that person had assaulted Appellant Mother. There was also evidence that until right before trial, Appellant Mother had refused to engage in counseling. The

testimony presented by her counselor showed that she was merely at the beginning of the process and had much to do before she could be successfully discharged from therapy.

With regard to the children, there was evidence that when they came into the care of the Department, two-month-old E.N.C. was diagnosed as "failure to thrive" and was not meeting developmental milestones while almost-two-year-old I.X.H. had behavioral issues and trouble with his speech. Since placement with the foster family, both children have participated in a number of therapies which have resulted in improvement of their condition from the time they were placed in the custody of the Department. E.N.C. is now meeting developmental milestones, is able to crawl, has put on some weight, and no longer has a flat head. I.X.H.'s behavior problems have improved and he has fewer and less severe tantrums. His speech has improved and he is now able to communicate verbally. Before their placement, E.N.C. had no real bond with his brother I.X.H. Since the placement, the siblings have become very bonded to each other. In reviewing the evidence in the light most favorable to the trial court's best-interest finding, we conclude the trial court could have formed a firm belief or conviction that it was in the best interest of children to terminate Appellant Mother's parental rights. *See In re J.O.A.*, 283 S.W.3d at 344.

With regard to factual sufficiency, we note that there was evidence that Appellant Mother had completed many of her services and had begun to engage in counseling. Nevertheless, in considering the entire record, we conclude the disputed evidence that a reasonable factfinder could not have credited in favor of the best-interest finding was not so significant that a factfinder could not have reasonably formed a firm belief or conviction that termination was in the best-interest of the children. *See id*. at 345. Therefore, we hold the evidence is also factually sufficient to support the trial court's best-interests finding.

CONSERVATORSHIP

In her final issue, Appellant Mother argues the trial court abused its discretion in appointing the Department as permanent managing conservator of the children. Because we have determined that the evidence is legally and factually sufficient to support termination of Appellant Mother's parental rights, Appellant Mother no longer has any legal rights with respect to her children and cannot challenge the portion of the termination order that relates to appointment of conservators. *See In re C.J.Y.*, No. 04-20-00009-CV, 2020 WL 3441248, at *7 (Tex. App.—San Antonio June 24, 2020, pet. denied); *In re M.R.D.*, No. 04-19-00524-CV, 2020 WL 806656, at *9 (Tex. App.—San Antonio Feb. 19, 2020, pet. denied); *In re L.T.P.*, No. 04-17-00094-CV, 2017 WL 3430894, at *6 (Tex. App.—San Antonio Aug. 9, 2017, pet. denied).

CONCLUSION

Because there is no evidence to support the trial court's finding under subsection (D), we modify the trial court's order of termination to delete that finding. As modified, we affirm the trial court's order terminating Appellant Mother's parental rights.

Liza A. Rodriguez, Justice