



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-21-00025-CV

**IN THE INTEREST OF R.W. III and Z.E.W., Children**

From the 57th Judicial District Court, Bexar County, Texas  
Trial Court No. 2019-PA-01957  
Honorable Richard Garcia, Judge Presiding

Opinion by: Rebeca C. Martinez, Chief Justice

Sitting: Rebeca C. Martinez, Chief Justice  
Beth Watkins, Justice  
Liza A. Rodriguez, Justice

Delivered and Filed: June 16, 2021

**AFFIRMED**

This is an accelerated appeal from an order terminating the parental rights of appellant, S.C. (“Mother”), to her children, R.W. III and Z.E.W.<sup>1</sup> In her sole issue, Mother challenges the sufficiency of the evidence to support the trial court’s finding that termination of her parental rights is in the children’s best interest. *See* TEX. FAM. CODE ANN. § 161.001(b)(2). We affirm.

**BACKGROUND**

On September 24, 2019, the Texas Department of Family and Protective Services (the “Department”) filed a petition to terminate Mother’s parental rights. The trial court held a bench trial on September 14 and October 23, 2020. At the time of trial, R.W. III was seven, and Z.E.W.

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<sup>1</sup> To protect the identities of the minor children in this appeal, we refer to the parties and the children by their initials. *See* TEX. FAM. CODE ANN. § 109.002(d); TEX. R. APP. P. 9.8(b)(2).

was five. After trial, the trial court signed an order terminating Mother's parental rights to her children. The trial court found three statutory grounds for termination<sup>2</sup> and that termination was in the children's best interest. The trial court also terminated parental rights as to three alleged fathers and one presumed father of the children. Only Mother appeals.

#### STANDARD OF REVIEW

A parent-child relationship may be terminated, pursuant to section 161.001 of the Texas Family Code, only if the trial court finds by clear and convincing evidence one of the predicate grounds enumerated in subsection (b)(1) and that termination is in a child's best interest. *See id.* § 161.001(b)(1), (2). Clear and convincing evidence requires "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.

We review the legal and factual sufficiency of the evidence under the standards of review established by the Texas Supreme Court in *In re J.F.C.*, 96 S.W.3d 256, 266–67 (Tex. 2002). In reviewing the legal sufficiency of the evidence, we must "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." *Id.* at 266. "[A] reviewing court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so." *Id.* In reviewing the factual sufficiency of the evidence, we "must give due consideration to evidence that the factfinder could reasonably have found to be clear and convincing." *Id.* "If, in

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<sup>2</sup> The trial court found Mother:

knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endanger the physical or emotional well-being of the children[,] . . . engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangers the physical or emotional well-being of the children[, and] . . . failed to comply with the provisions of a court order that specifically established the actions necessary for [Mother] to obtain the return of the children[.]

*See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O).

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 factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient.” *Id.*

### **BEST INTEREST**

In her sole issue, Mother challenges the sufficiency of the evidence to support the trial court’s finding that termination of her parental rights is in the children’s best interest. There is a strong presumption that keeping a child with a parent is in a child’s best interest. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam). However, it is equally presumed that “the prompt and permanent placement of the child in a safe environment is . . . in the child’s best interest.” TEX. FAM. CODE ANN. § 263.307(a). In determining whether a child’s parent is willing and able to provide the child with a safe environment, we consider the factors set forth in Texas Family Code section 263.307(b). *See id.* § 263.307(b).

Our best-interest analysis is guided by consideration of the non-exhaustive *Holley* factors. *See Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). These factors include: (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 the individuals seeking custody to promote the child’s best interest; (6) the plans for the child by the individuals or agency seeking custody; (7) the stability of the home or proposed placement; (8) the parent’s acts or omissions which may indicate that the existing parent-child relationship is improper; and (9) any excuse for the parent’s acts or omissions. *See id.*; *accord In re E.C.R.*, 402 S.W.3d 239, 249 n.9 (Tex. 2013). The Department is not required to prove each factor, and the absence of evidence regarding some of the factors does not preclude the factfinder from reasonably forming a strong conviction that termination is in a child’s best interest, particularly if the evidence is undisputed that the parent-child relationship

endangered the safety of the child. *See In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). Our concern is whether the evidence, as a whole, is sufficient for the trial court to have formed a strong conviction or belief that termination of the parent-child relationship is in the best interest of the child. *Id.*

At trial, the Department's caseworker testified that the case began due to domestic violence and drug use by an alleged father, R.W., Jr. ("Father").<sup>3</sup> Mother testified that she began a relationship with Father in 2003 and continued with this relationship "off and on" until May 2019. According to Mother, during that time, Father physically abused Mother and mentally and emotionally abused the children. Over the years, Father threatened Mother "with knives and guns," and his threats resulted in Mother losing custody of six children before the instant case began. Mother testified that, three years before trial, Father cut her with a knife, and Mother secluded herself, R.W. III, and Z.E.W. in a closet until Father calmed down.

By the time the instant case began, Father's parental rights to R.W. III had been terminated. Nevertheless, Mother allowed Father back into R.W. III's life, and she reunited with Father after he had cut her. In 2019, according to Mother, Father pulled her through the doorway of their home. Father yelled and hit Mother to the floor while R.W. III and Z.E.W. were present. After this incident, Mother moved to a women's shelter with the children. Mother testified that Father threatened to kill her "so many times" and that Father used marijuana, methamphetamine, heroin, cocaine, and pain killers, which he paid for from Mother's employment earnings. Additionally, the Department's caseworker testified that Father threatened to blow up the Department's office.

Evidence of Mother's violent relationship with Father, even if the violence was not directed at the children, supports the trial court's best-interest finding under the third *Holley* factor—emotional

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<sup>3</sup> Mother testified that R.W., Jr. was the father of R.W. III and possibly the father of Z.E.W. The presumed father of Z.E.W. and the other alleged fathers of Z.E.W. were not involved in Z.E.W.'s life and did not contest termination of their parental rights.

and physical danger to the children now and in the future. *See Holley*, 544 S.W.2d at 371–72; *see also* TEX. FAM. CODE ANN. § 263.307(b)(12)(E) (providing that a court may consider whether a parent has adequate parenting skills to protect a child from repeated exposure to violence although violence may not be directed at the child); *In re S.A.*, No. 04-17-00571-CV, 2018 WL 521626, at \*4 (Tex. App.—San Antonio Jan. 24, 2018, no pet.) (mem. op.) (“Simply exposing a child to the other parent’s violence is a relevant consideration in determining a child’s best interest.”). Mother’s relationship with Father, even after his repeated violence and threats in the presence of Mother’s children, could reasonably support an inference that Mother would continue to expose R.W. III and Z.E.W. to Father’s violence, even though Mother testified that she was separated from Father at the time of trial. *See In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio 2013, pet. denied) (“A trier of fact may measure a parent’s future conduct by his past conduct . . .”).

Moreover, Father’s violence emotionally harmed the children. According to the caseworker, R.W. III was afraid of his Father, and Z.E.W. described events with Father as “scary.” At the time of trial, the children were receiving therapy while in foster care. *See Holley*, 544 S.W.2d at 371–72 (listing the emotional and physical needs of the child now and in the future as a best-interest factor).

The caseworker testified that Mother tested positive for marijuana before R.W. III and Z.E.W. were removed from her custody. At trial, Mother admitted to posting online, social-media messages soliciting marijuana. Mother failed to submit to a drug assessment or to any of the drug tests requested by the Department, in violation of the trial court’s orders. Illicit drug use is relevant to multiple *Holley* factors, including the children’s emotional and physical needs now and in the future, the emotional and physical danger to the children now and in the future, Mother’s parental abilities, the stability of Mother’s home, and the acts or omissions which may indicate an improper parent-child relationship. *See id.*; *In re A.M.L.*, No. 04-19-00422-CV, 2019 WL 6719028, at \*4 (Tex. App.—San

Antonio Dec. 11, 2019, pet. denied) (mem. op.) (explaining that a trial court could infer a parent's drug abuse from the parent's failure to submit to drug testing and that drug use implicates multiple *Holley* factors). "Additionally, a parent's illegal drug use exposes [a] child to the possibility that the parent may be impaired or imprisoned." *In re A.M.L.*, 2019 WL 6719028, at \*4 (citing *In re E.R.W.*, 528 S.W.3d 251, 264 (Tex. App.—Houston [14th Dist.] 2017, no pet.)).

The caseworker testified, and Mother acknowledged, that she did not complete her court-ordered individual counseling. "A fact finder may infer from a parent's failure to take the initiative to complete the services required to regain possession of h[er] child that [s]he does not have the ability to motivate h[er]self to seek out available resources needed now or in the future." *In re J.M.T.*, 519 S.W.3d 258, 270 (Tex. App.—Houston [1st Dist.] 2017, pet. denied); *see also* TEX. FAM. CODE ANN. § 263.307(b)(10), (11) (providing courts may consider willingness and ability of the child's family to seek out, accept, and complete counseling services and willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time); *Holley*, 544 S.W.2d at 371–72 (listing parental abilities of an individual seeking custody and programs available to assist the individual as a best-interest factor).

At the time of trial, Mother was living in a hotel and was unemployed. She had missed 21 of 53 visits with her children during the case and was late for 24 of the visits she attended. At the time of trial, R.W. III and Z.E.W. were living with a former babysitter, who intended to adopt them. The caseworker testified that the children had a strong bond with their caretaker and that she was able to meet their medical and emotional needs. *See Holley*, 544 S.W.2d at 372 (listing the stability of the home as a best-interest factor); *In re G.V.*, No. 14–02–00604–CV, 2003 WL 21230176, at \*5 (Tex. App.—Houston [14th Dist.] May 29, 2003, pet. denied) (mem. op.) (noting the stability that a proposed placement promises "weigh[s] heavily in the court's finding that termination is in the best interest" of a child).

After viewing all of the evidence in the light most favorable to the best-interest finding, we conclude that the trial court could have formed a firm belief or conviction that termination of Mother's parental rights was in the children's best interest. *See In re J.F.C.*, 96 S.W.3d at 266. We further conclude that any disputed evidence, viewed in light of the entire record, could have been reconciled in favor of the trial court's best-interest finding or was not so significant that the trial court could not reasonably have formed a firm belief or conviction that termination was in the children's best interest. *See id.* Therefore, we hold the evidence is legally and factually sufficient to support the trial court's best-interest finding. *See* TEX. FAM. CODE ANN. § 161.001(b)(2); *see also In re A.B.*, 437 S.W.3d 498, 505 (Tex. 2014) (recognizing an appellate court need not detail the evidence if affirming a termination judgment).

#### **CONCLUSION**

We affirm the trial court's order.

Rebeca C. Martinez, Chief Justice