Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-21-00155-CV

IN THE INTEREST OF M.K.V., a Child

From the County Court at Law, Val Verde County, Texas
Trial Court No. 2020-0007-CCL
Honorable Sergio J. Gonzalez, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Rebeca C. Martinez, Chief Justice
Patricia O. Alvarez, Justice
Liza A. Rodriguez, Justice (concurring in the judgment without opinion)

Delivered and Filed: October 20, 2021

AFFIRMED

Appellant Mom appeals the trial court's order terminating her parental rights to M.K.V.[i] Mom asserts that (1) the trial court abused its discretion by denying her request for an extension prior to trial, (2) there is insufficient evidence to support the trial court's findings under subsections (D) and (E) of Texas Family Code section 161.001(b)(1), and (3) the evidence is legally and factually insufficient to support a finding that terminating Mom's parental rights was in M.K.V.'s best interest. For the reasons given below, we affirm the trial court's order.

[i] To protect the minors' identities, we refer to Mom, Dad, and the child 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 child as they relate to the trial court's statutory grounds (i.e., D, E) and best-interest-of-the-child findings. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (b)(2).

BACKGROUND

M.K.V. was born on January 25, 2020. During Mom's pregnancy with M.K.V. and after, Child Protective Services had a case with her based on a neglectful supervision report involving her two sons. During her pregnancy, Mom tested positive for cocaine, which led to M.K.V.'s removal from her care. Mom suggested two friends, K.A. and D.M., as caregivers for M.K.V. K.A. and D.M. became M.K.V.'s foster parents.

The Department petitioned for temporary managing conservatorship of M.K.V. The trial court granted the Department's petition and placed Mom and M.K.V.'s alleged father (Dad) on a service plan. During the plan period, Dad failed to establish paternity. Mom was ordered to submit to random drug testing, which she did in part. However, Mom missed seventeen tests and failed to submit two tests within twenty-four hours from the time the Department requested the testing as was required. Over the course of the case, Mom failed to comply with the requirements imposed by the Department of Family Services and by the trial court, and she failed to regularly visit with M.K.V. M.K.V. bonded with K.A. and D.M. By the time of trial on the termination of Mom's parental rights, K.A. and D.M. were prepared to adopt M.K.V.

Before trial, Mom moved to extend the dismissal date in her case. The trial court heard Mom's motion directly before trial and denied the requested extension. A two-day bench trial followed, after which the trial court terminated Mom's parental rights to M.K.V., citing grounds (D), (E), (N), (O), (P), and (M), and the best interest of the child. Mom appeals.

DENIAL OF EXTENSION PRIOR TO TRIAL

In Mom's first issue, she argues that the trial court should have granted her motion for more time prior to trial. The Department argues that Mom did not establish extraordinary circumstances in support of her request and that the trial court did not abuse its discretion by denying the motion.

A. Law

In a parental rights termination case, trial must commence, or the trial court must grant an extension, prior to "the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator," or it loses jurisdiction, and the case is automatically dismissed. TEX. FAM. CODE ANN. § 263.401(a); *In re G.X.H.*, 627 S.W.3d 288, 292 (Tex. 2021). "The statute's clear preference is to complete the process within the one-year period." *In re A.J.M.*, 375 S.W.3d 599, 605 (Tex. App.—Fort Worth 2012, pet. denied) (en banc) (op. on reh'g). To grant an extension, the trial court must find "that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child." TEX. FAM. CODE ANN. § 263.401(b); *In re M.S.*, 602 S.W.3d 676, 679 (Tex. App.—Texarkana 2020, no pet.). As indicated by the statutory language, "[i]n determining whether extraordinary circumstances justify a continuance, the focus is on 'the needs of the child.'" *In re J.S.S.*, 594 S.W.3d 493, 501 (Tex. App.—Waco 2019, pet. denied) (citing *In re A.J.M.*, 375 S.W.3d at 604). "Actions that are 'considered to be the parent's fault' will generally not constitute an extraordinary circumstance." *In re O.R.F.*, 417 S.W.3d 24, 42 (Tex. App.—Texarkana 2013, pet. denied) (quoting *In re G.P.*, No. 10-13-00062-CV, 2013 WL 2639243, at *1 (Tex. App.—Waco June 6, 2013, no pet.) (not designated for publication)). Examples of circumstances that did not warrant extension in other parental rights cases have included a mother being incarcerated,[ii] a mother entering rehab,[iii] and a

[ii] *In re M.S.*, 602 S.W.3d 676, 679 (Tex. App.—Texarkana 2020, no pet.).
[iii] *In re J.S.S.*, 594 S.W.3d 493, 501 (Tex. App.—Waco 2019, pet. denied).

mother beginning compliance with the service plan too late to complete requirements prior to trial.[iv]

B. Standard of Review

The trial court's ruling on an extension in a parental rights termination case is subject to review for an abuse of discretion. *In re M.S.*, 602 S.W.3d at 679; *In re O.R.F.*, 417 S.W.3d at 42.

C. Analysis

Mom began M.K.V.'s CPS case in Del Rio, Texas but moved to Odessa, Texas five days after M.K.V. was removed from her care. The relocation made it particularly difficult for Mom to comply with the visitation requirement in her family plan. Mom testified that she moved to Odessa for "another job opportunity" because Del Rio was "very slow." However, Mom's caseworker testified that Mom went to Odessa to be with her "paramour at the time," A.U., who was also the father of her previous two children.[v] Mom quit a restaurant job in Del Rio in order to move to Odessa where she worked part-time in an auto body shop.[vi]

Four months later, Mom moved away from A.U. to be with Dad in Tennessee. Dad was a commercial truck driver, and Mom rode with him for a period of time. She testified that she preferred Tennessee to Texas because she felt she had better opportunities there, but she did not obtain employment while there. Furthermore, this arrangement made it extremely difficult for Mom to comply with her family plan. For example, she could not recall where she might have stopped to complete urinalysis tests while truck-driving with Dad, whether in Alabama, Wisconsin, or Texas. She testified that the results were to be sent to her caseworker, but her caseworker

[iv] *In re O.R.F.*, 417 S.W.3d 24, 42 (Tex. App.—Texarkana 2013, pet. denied).
[v] Mom's parental rights to these children were terminated in the same year that her CPS case for M.K.V. was pending.
[vi] Mom did not provide proof of these positions to her caseworker, though she was required to do so.

testified that Mom completed only two of nineteen requested urinalysis tests and that they were completed in an untimely manner.

In November, Mom and Dad moved to Georgia to live with his family, where they ultimately requested to transfer their CPS case. Since the beginning of the case, Mom visited M.K.V. one time in person for an hour and two times by videocall for five minutes each.

Regarding the services that Mom failed to complete, Mom did not follow up with her caseworker, including when she was provided the option to seek out resources that could be eligible for credit in Texas. When asked at trial about the drug treatment that Mom now argues was not offered to her, she testified that it simply was not required at all. She described participating in drug screening in Del Rio where the service provider told her she did not need to attend classes or do anything beyond testing because she "was good to go." Later, during cross-examination, Mom seemed to express that she could not finish outpatient drug treatment classes that she started in Odessa because she was not offered services in Georgia. Mom's caseworker testified that Mom never provided proof of her drug screening as required, that she tested positive for cocaine after a follicle drug test in Odessa, and that she did not provide proof of any drug treatment.

Based on the record, there is no indication that M.K.V. would have been better served by an extension, and we cannot conclude that the trial court abused its discretion in denying Mom's request for more time. We overrule Mom's first issue.

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 under subsections (D) and (E) of Texas Family Code section 161.001(b)(1). But the Department asserts that statutory grounds for termination only need to be reviewed under subsection (M) because Mom has previously had her parental rights terminated

under subsections (D) and (E). The evidentiary standards[1] the Department must meet and the statutory grounds[2] the trial court must find to terminate a parent's rights to a child are well known, as are the legal[3] and factual[4] sufficiency standards of review. We apply them here.

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 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).

The Department correctly argues that a previous termination based on subsection (D) or (E) may be grounds for future termination of parental rights. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(M); *In re N.G.*, 577 S.W.3d 230, 234 (Tex. 2019) (per curiam). But although the Department argues that we need only review statutory ground (M) on appeal, we disagree. *See In re N.G.*, 577 S.W.3d at 234; *In re Z.M.M.*, 577 S.W.3d at 543. To the extent that the trial court's findings under subsections (D) or (E) from this case could be relied on in the future, it would constitute a violation of due process to leave those challenged findings unreviewed. *See In re N.G.*, 577 S.W.3d at 236–37 ("allowing a challenged section 161.001(b)(1)(D) or (E) finding to stand unreviewed…creates the risk that a parent will be automatically denied the right to parent other children even if the evidence supporting the section 161.001(b)(1)(D) or (E) finding were insufficient"). Even recognizing that a parent may have a previous reviewed finding under subsections (D) and (E) against them, any challenged but unreviewed findings under subsections (D) and (E) could create a future risk of a due process violation. *See id*. For that reason, we review the trial court's findings under subsections (D) and (E).

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

1. 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 "parental conduct both before and after the child's birth." *In re D.H.*, No. 09-16-00163-CV, 2016 WL 4485735, at *2 (Tex. App.—Beaumont Aug. 25, 2016, no pet.) (not designated for publication) (citing *Jordan v. Dossey*, 325 S.W.3d 700, 721 (Tex. App. —Houston [1st Dist.] 2010, pet. denied)); *accord Avery v. State*, 963 S.W.2d 550, 553 (Tex. App.—Houston [1st Dist.] 1997, no writ).

"[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. <u>Parental Conduct During Pregnancy</u>

As we stated above, during Mom's pregnancy with M.K.V., she had an ongoing case with CPS for which she was required to submit to drug tests. Mom did not fully comply with the testing

requirements, but the two follicle tests she submitted to during her pregnancy showed positive results for cocaine. She also tested positive for cocaine during her pregnancy at her doctor's office. Mom claimed that these positive tests were due to exposure to the drug from selling it rather than using it. There were concerns at the hospital that M.K.V. might suffer withdrawal at birth, but the case investigator saw no such evidence in his follow-up.

3. Sufficient Evidence under Subsection (D)

Given the testimony, the trial court could have concluded that Mom used cocaine during her pregnancy, thereby endangering the physical well-being of M.K.V. *See Jordan*, 325 S.W.3d at 721 (actual injury not required). Mom's claim that she gained exposure to the drug through selling it constitutes no solution to the problem. Mom exposed M.K.V. to cocaine and tested positive for cocaine on August 27, 2019, at her doctor's office. Mom knew that the drug had entered her body where M.K.V. was developing, and she continued to avoid complying with CPS. Then she tested positive again for cocaine in January 2020. 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 M.K.V. was removed, Mom knowingly exposed her to dangerous conditions before her birth. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D); *Avery*, 963 S.W.2d at 553.

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)(E); *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 at 477).

A parent's drug use and domestic violence are factors which may be considered on the question of endangerment. *Avery*, 963 S.W.2d at 553 (drug use during pregnancy); *In re J.I.T.P.*, 99 S.W.3d 841, 845 (Tex. App.—Houston [14th Dist.] 2003, no pet.) (domestic violence). In general, a parent's placing a child in a potentially unsafe environment is 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 Conduct

The Department's caseworker testified that Mom had a case with CPS regarding her two sons while she was pregnant with M.K.V. During that time, Mom was required to participate in domestic violence classes and submit to drug tests. She did not comply. But the test results that the Department was able to obtain showed that Mom tested positive three times for cocaine during her pregnancy with M.K.V. Furthermore, Mom's current family plan shows an admitted history of domestic violence.

3. Sufficient Evidence under Subsection (E)

Given the testimony, the trial court could have concluded that Mom was continuing to use drugs—which was an endangering course of conduct. *See Avery*, 963 S.W.2d at 553. Mom's failure to complete domestic violence classes was also 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."). 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 M.K.V.'s physical well-being. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E); *Avery*, 963 S.W.2d at 553; *In re J.I.T.P.*, 99 S.W.3d at 845.

We overrule Mom's second issue.

BEST INTEREST OF THE CHILD

In her third 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 factors[5] and the *Holley* factors[6] for the best interest of a child are well known. *See* TEX. FAM. CODE ANN. § 161.001(b)(2); *Holley v. Adams*, 544 S.W.2d 367, 371 (Tex. 1976). Applying the applicable standards of review and statutory and common law best interest factors, we examine the evidence pertaining to the best interest of the child. The same evidence we considered in the statutory grounds review may also be probative in the best interest of the child review. *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002); *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

During Mom's pregnancy with M.K.V., she tested positive several times for cocaine. *See* TEX. FAM. CODE ANN. § 263.307(b)(8); *Holley*, 544 S.W.2d at 372 (factor (H)). When CPS removed M.K.V. from Mom's care, Mom recommended friends rather than family to care for M.K.V. *See* TEX. FAM. CODE ANN. § 263.307(b)(13); *Holley*, 544 S.W.2d at 372 (factor (B)). She would not disclose the reason at trial, but testified that her family members could not take M.K.V. *See id*.

After M.K.V. was removed, Mom was put on a service plan. She was given credit for her previous psychological evaluation, but she did not complete most of her other requirements such

as her domestic violence classes or visitation with M.K.V. *See* TEX. FAM. CODE ANN. § 263.307(b)(10), (11); *Holley*, 544 S.W.2d at 372 (factors (D), (G), H)). At the beginning of the case, K.A. and D.M. tried facilitating visits between M.K.V. and Mom, but Mom stopped attending visits with them. *See* TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 372 (factors (B), (D), (G), H)). Mom did attend individual counseling during her case, but her counselor did not recommend that M.K.V. be reunited with Mom, and the counselor was not sure if more therapy would help. *See* TEX. FAM. CODE ANN. § 263.307(b)(6), (12); *Holley*, 544 S.W.2d at 372 (factors (B), (D), (G)). Mom was ordered to complete drug screening and submit to random drug testing, but she failed to provide proof of the screening, and she failed to complete seventeen requested drug tests. *See* TEX. FAM. CODE ANN. § 263.307(b)(10), (11); *Holley*, 544 S.W.2d at 372 (factors (G), (H)).

In her previous CPS case, Mom lost custody of her children due to neglectful supervision after she left them unattended to go out drinking. *See* TEX. FAM. CODE ANN. § 263.307(b)(8), (12); *Holley*, 544 S.W.2d at 372 (factors (G), (H)). In the present case, Mom is pregnant again since M.K.V.'s removal, and she has tested positive for cocaine again. *See* TEX. FAM. CODE ANN. § 263.307(b)(8), (12); *Holley*, 544 S.W.2d at 372 (factors (G), (H)). Her CPS caseworker has expressed the concern that this pattern will continue, that Mom will continue to use drugs and be unable to supervise children in her care. *See id*.

B. Evidence on Child's Placement Family

Since M.K.V. was removed, she has been living with K.A. and D.M. Mom's caseworker testified that M.K.V.'s foster home is stable and that M.K.V. has bonded with her foster parents. *See* TEX. FAM. CODE ANN. § 263.307(b)(1), (12); *Holley*, 544 S.W.2d at 372 (factors (B), (G)). Her foster family takes care of her day-to-day needs and ensures that she attends doctor visits. *See id*. M.K.V. recognizes K.A. and D.M. as her parental figures, and they intend to adopt her. *See*

TEX. FAM. CODE ANN. § 263.307(b)(1), (12); *Holley*, 544 S.W.2d at 372 (factors (B), (D), (F), (G)).

C. Ad Litem's Recommendations

M.K.V.'s representative recommended that Mom's parental rights be terminated because she left Del Rio at a crucial point and did not remain to be with her child. The representative argued that Mom must have understood the importance of participating in her CPS case to preserve her parental rights based on her past involvement with CPS.

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 child's best interests for Mom's parental rights to be terminated. *See In re J.L.*, 163 S.W.3d 79, 85 (Tex. 2005); *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006) (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 interest of the child 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 third issue.

CONCLUSION

Because the record does not reflect that M.K.V.'s interest would have been better served by granting Mom's request for more time, we do not conclude that the trial court abused its discretion by denying Mom's request. Additionally, 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 interest of the child. 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]
> . . . .
> (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;
(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).