



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

**MEMORANDUM OPINION**

No. 04-21-00247-CV

**IN THE INTEREST OF K.J.S., a Child**

From the 224th Judicial District Court, Bexar County, Texas  
Trial Court No. 2020-PA-00534  
Honorable Charles E. Montemayor, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Patricia O. Alvarez, Justice  
Irene Rios, Justice  
Lori I. Valenzuela, Justice

Delivered and Filed: December 8, 2021

**AFFIRMED AS MODIFIED**

Appellant Mom appeals the trial court's order terminating her parental rights to K.J.S.<sup>i</sup> Mom asserts: (1) 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); (2) there is insufficient evidence to support the trial court's findings under subsection (K); (3) there is insufficient evidence to support the trial court's findings under subsection (P); (4) the evidence is legally and factually insufficient to support a finding that terminating Mom's parental rights was in K.J.S.'s best interest. For the reasons given below, we affirm the trial court's order as modified.<sup>ii</sup>

---

<sup>i</sup> 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 and best-interest-of-the-child findings. *See* TEX. FAM. CODE ANN. § 161.001(b)(1), (b)(2).

<sup>ii</sup> In its oral pronouncement terminating Mom's parental rights, the trial court found Mom's conduct met grounds (N) and (O). *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(N), (O). However, the trial court's written order found Mom's

## BACKGROUND

When K.J.S. was two years old, K.J.S. and Mom were living at Seton Home, a domestic violence shelter for moms and their children. While K.J.S. and Mom were at Seton Home, CPS received a complaint against Mom for inappropriate discipline and physical abuse. CPS facilitated a safety plan at Seton Home that provided for staff at the shelter to monitor Mom with K.J.S. Mom was also provided with parenting education and support.

Five months later, on March 6, 2020, CPS received another report against Mom for physical abuse. When CPS investigated the second allegation, the investigator discovered that Mom had packed her things. She was moving out of state to live with a man she met online. This development concerned CPS because of 1) the allegations against Mom, and 2) the dubious nature of Mom's plan. CPS sought and obtained orders to remove K.J.S. from Mom's custody.

When CPS sought removal of K.J.S., Mom disclosed paternity results for Dad. Through this connection, CPS was able to place K.J.S. with his paternal aunt.

Mom's caseworker initiated a service plan with Mom. It included parenting classes, individual counseling, psychological and drug assessments, and domestic violence counseling. Over the course of the case, Mom completed the psychological assessment as well as one urinalysis test and one hair follicle test. She did not engage in counseling. She also failed to visit regularly with K.J.S., and she failed to establish employment and residency. Mom provided no financial support for K.J.S.

Mom was moving back and forth between Texas and Oregon. She would travel to Oregon to live with her boyfriend, and she would travel back to Texas to stay with her family. Mom was experiencing domestic violence issues with her boyfriend. She was also arguing regularly with

---

conduct met grounds (D), (E), (K), (N), (O), and (P). The written order controls, *see In re L.G.R.*, 498 S.W.3d 195, 206 (Tex. App.—Houston [14th Dist.] 2016, pet. denied), but it is subject to our review and modification.

her father, who then refused to allow her to stay at his home. CPS characterized Mom’s lifestyle as unstable and her case follow-through as inconsistent.

Before trial, Mom spoke with her caseworker about her interest in pursuing services to regain custody of K.J.S. However, Mom’s caseworker reiterated that Mom had been very inconsistent. At trial, the Department recommended termination of Mom’s parental rights. Mom did not attend—the Department believed that she was in Oregon.

The Department and K.J.S.’s representative expressed approval of K.J.S.’s placement with his aunt. K.J.S.’s representative noted that K.J.S.’s aunt was working toward adopting him.

After the trial, the trial court terminated Mom’s parental rights to K.J.S., citing grounds (D), (E), (K), (N), (O), and (P), and the best interest of the child. Mom appeals.

#### **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).<sup>iii</sup> The evidentiary standards<sup>1</sup> the Department must meet and the statutory grounds<sup>2</sup> the trial court must find to terminate a parent’s rights to a child are well known, as are the legal<sup>3</sup> and factual<sup>4</sup> 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

---

<sup>iii</sup> Mom also complains that the trial court did not make a verbal finding of endangerment under subsections (D) and (E). But “to the degree there is any inconsistency between the oral pronouncement and the written termination order, the written order controls.” *In re L.G.R.*, 498 S.W.3d 195, 206 (Tex. App.—Houston [14th Dist.] 2016, pet. denied).

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)**

*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).

“[A]busive or violent conduct by a parent ... can produce an environment that endangers the physical or emotional well-being of a child.” *Interest of L.W.*, 609 S.W.3d 189, 200 (Tex. App.—Texarkana 2020, no pet.) (citing *In re B.E.T.*, No. 06-14-00069-CV, 2015 WL 495303, at \*5 (Tex. App.—Texarkana Feb. 5, 2015, no pet.) (mem. op.)); *accord In re B.R.*, 822 S.W.2d 103, 106 (Tex. App.—Tyler 1991, writ denied). Even “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)). But a fact-finder may also “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. Sufficient Evidence under Subsection (D)*

At trial, the CPS investigator testified that Mom was reported for physical abuse and inappropriate discipline in October 2019, and that she was again reported for physical abuse on March 6, 2020. On March 6, 2020, a staff member at the Seton Home observed Mom slap K.J.S. across the face when he was fussy at night. The CPS investigator testified that the facts in October

2019 were essentially similar. K.J.S. was two years old at the time of both incidents. After the March 6, 2020 incident, Mom told the investigator that she did not actually slap K.J.S. across the face, but rather raised her hand to threaten a slap and then lowered it. Based on the trial record, 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 K.J.S. was removed, Mom knowingly created an environment that endangered the physical and emotional well-being of K.J.S. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D); *Avery v. State*, 963 S.W.2d 550, 553 (Tex. App.—Houston [1st Dist.] 1997, no writ).

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

*I. 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 472, 476 (Tex. App.—Houston [14th Dist.] 2005, no pet.), *disagreed with by Interest of L.C.L.*, 599 S.W.3d 79, 85 (Tex. App.—Houston [14th Dist.] 2020)).

A parent’s domestic violence is a factor which may be considered on the question of endangerment. *In re J.I.T.P.*, 99 S.W.3d 841, 845 (Tex. App.—Houston [14th Dist.] 2003, no pet.) (domestic violence). In general, “conduct that subjects a child to a life of uncertainty and

instability[] endangers the physical and emotional well-being of a child.” *In re S.D.*, 980 S.W.2d 758, 763 (Tex. App.—San Antonio 1998, pet. denied).

2. *Evidence of Mom’s Conduct*

The Department’s caseworker testified that CPS received two physical abuse reports of Mom hitting two-year-old K.J.S, first in October 2019 and next in March 2020. After the second report, the caseworker learned that Mom was planning to move to Oregon to live with a man she met online. This development was concerning for two reasons: 1) Mom could not control her temper around K.J.S. at Seton Home, a facility where she had access to a parent coordinator; and 2) moving K.J.S. out-of-state to live with a man Mom met online “raised a lot of red flags.”

Following K.J.S.’s removal, Mom made no progress toward creating a stable environment for K.J.S. She did not follow her service plan; she did not obtain employment; she did not establish residency; and domestic violence was a reported problem between Mom and her boyfriend.

3. *Sufficient Evidence under Subsection (E)*

Given the testimony, the trial court could have concluded that Mom was engaged in 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 K.J.S.’s physical and emotional 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 first issue.

**NO EVIDENCE SUPPORTING GROUNDS (K), (P)**

For her second and third issues, Mom argues and the State concedes that no evidence supports the trial court's entered findings of (K) or (P) as bases to terminate Mom's parental rights. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(K), (P). We therefore delete these grounds from the trial court's judgment.

**BEST INTEREST OF THE CHILD**

In her fourth 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 child's best interests. *See* TEX. FAM. CODE ANN. § 161.001(b)(2).

The Family Code statutory factors<sup>5</sup> and the *Holley* factors<sup>6</sup> 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**

As noted above, while Mom was living with K.J.S. at a domestic violence shelter, she was twice reported for physically abusing two-year-old K.J.S. *See* TEX. FAM. CODE ANN. § 263.307(b)(1), (3), (4), (7), (9), (12)(B), (12)(C), (12)(D); *Holley*, 544 S.W.2d at 372 (factors (C), (D), (H)). When CPS removed K.J.S. from Mom's care, Mom disclosed the identity of Dad and then left town. *See* TEX. FAM. CODE ANN. § 263.307(b)(10), (11), (12)(B), (12)(F); *Holley*, 544 S.W.2d at 372 (factors (B), (C), (D), (F), (G), (H)).

After K.J.S. was removed, CPS placed Mom on a service plan. Mom completed the psychological evaluation. But despite monthly requests for drug testing, Mom completed only one urinalysis and one hair follicle test, both on the same day. Mom did not complete most of her other requirements such as her domestic violence classes or visitation with K.J.S. *See* TEX. FAM. CODE ANN. § 263.307(b)(10), (11); *Holley*, 544 S.W.2d at 372 (factors (D), (G), (H)). Mom's attendance for virtual visitation with K.J.S. was inconsistent: she would miss an entire month and then attend a couple of visits in the following month. *See* TEX. FAM. CODE ANN. § 263.307(b)(12); *Holley*, 544 S.W.2d at 372 (factors (B), (D), (G), (H)). Overall, Mom showed little or no progress toward completing her service plan or creating a stable environment for K.J.S. *See* TEX. FAM. CODE ANN. § 263.307(b)(10), (11), (12); *Holley*, 544 S.W.2d at 372 (factors (B), (C), (D), (F), (G), (H)).

**B. Evidence on Child's Placement Family**

Since K.J.S. was removed, he has been living with his paternal aunt. K.J.S.'s representative advised the trial court that K.J.S. has bonded with his aunt. *See* TEX. FAM. CODE ANN. § 263.307(b)(1), (12); *Holley*, 544 S.W.2d at 372 (factors (B), (G)). He stated that K.J.S.'s aunt is protective of him and that she "goes far above and beyond everything that he needs." K.J.S.'s aunt is working towards adopting K.J.S. *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**

K.J.S.'s representative recommended that Mom's parental rights be terminated. He opined that K.J.S. is well taken care of by his aunt and that it was in K.J.S.'s best interest to be adopted by his aunt.



#### 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 fourth issue.

#### CONCLUSION

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. But given that no evidence supported termination on grounds (K) and (P), we delete those grounds from the judgment. We affirm the trial court’s order as modified.

Patricia O. Alvarez, Justice

---

<sup>1</sup> 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.

<sup>2</sup> 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).

<sup>3</sup> 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.*

<sup>4</sup> 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.

<sup>5</sup> 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).

<sup>6</sup> 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).