Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-22-00125-CV

IN THE INTEREST OF S.C. and M.E.B., Children

From the 150th Judicial District Court, Bexar County, Texas
Trial Court No. 2019PA01853
Honorable Rosie Alvarado, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Patricia O. Alvarez, Justice
Beth Watkins, Justice
Lori I. Valenzuela, Justice

Delivered and Filed: August 17, 2022

AFFIRMED

In this parental rights termination case, the trial court terminated (1) Mom's rights to her children S.C. and M.E.B. and (2) Dad's rights to his child M.E.B.[1]

In separate briefs, Mom and Dad challenge the legal and factual sufficiency of the evidence for the trial court's findings on the single statutory ground and the best interests of the children.

Having reviewed the evidence under the elevated burden of proof and sufficiency standards, we conclude it was legally and factually sufficient to support the trial court's findings.

We affirm the trial court's order.

BACKGROUND

S.C. and M.E.B., who are siblings, are the children who are the subject of this appeal.

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[1] We use aliases to protect the children's identities. *See* TEX. FAM. CODE ANN. § 109.002(d); TEX. R. APP. P. 9.8.

A. M.E.B.'s History

M.E.B. was born on June 14, 2019. At his two-month well-child checkup in mid-August, which comprised an in-depth examination "from head to toe," the examining nurse practitioner did not find any issues or concerns with M.E.B.'s health. Some days later, Mom brought M.E.B. back to the pediatrician because M.E.B. was spitting up his food and vomiting a green substance, which the nurse practitioner diagnosed as caused by nasal congestion or excess phlegm.

B. M.E.B.'s Hospitalization

On the morning of September 10, 2019, M.E.B. again spit up a green substance, he cried loudly when his stomach was touched, and nothing Mom and Dad did could console him. Mom and Dad were worried, and they took M.E.B. to the emergency room.

C. Initial Examination, Emergency Surgery

At The Children's Hospital of San Antonio, the triage nurse was very concerned about M.E.B.'s distended abdomen and possible bruises on his abdomen. The emergency room physician confirmed the abdominal distention, she "noted some dark marks that appeared to be bruising on his abdomen," and she ordered some laboratory tests and x-ray images. The x-rays revealed that M.E.B. had free air in his abdomen, and he underwent emergency surgery. The pediatric surgeon determined that M.E.B. had two perforations of his jejunum, which he repaired.

D. Other Examinations

M.E.B.'s other examinations also revealed bruising on his abdomen in the same area as the perforations, bruises on his right foot and right thigh, and multiple bone fractures with different ages of healing. Mom and Dad explained that they did not know what had happened to M.E.B. to cause his injuries.

E. Medical Inquiry

The hospital's emergency department contacted the Center for Miracles regarding their concerns about M.E.B.'s injuries. Based on his injuries and the surrounding circumstances, the hospital contacted the Department, and Department personnel and law enforcement officers interviewed Mom and Dad. The parents told the police, Department case workers, and medical staff that they did not know that what happened and could not explain how M.E.B. was injured.

F. Referral to Department

The Department petitioned to remove the three children living in the home: M.E.B., S.C., and another child, and the children were removed. The Department created service plans for both parents, which they worked.

G. Bench Trial

In the seven-day bench trial, the Department presented expert witnesses who testified with reasonable medical certainty that M.E.B.'s injuries were caused by physical abuse. The parents' primary expert witness testified that M.E.B. suffered from a metabolic bone disease that made his bones especially susceptible to fractures.

After the parties rested and closed, the trial court found that the parents engaged in conduct or knowingly placed M.E.B. with a person who endangered the child and that terminating Mom's and Dad's parental rights to M.E.B. (their child) and Mom's parental rights to S.C. (her child) was in the children's best interests.

H. Parents' Appeals

Mom and Dad filed separate notices of appeal. Both parents challenge the legal and factual sufficiency of the evidence supporting the statutory ground and best-interests-of-the-children findings.

Before we address the sufficiency issues, we briefly recite the applicable evidentiary and appellate review standards.

ELEVATED EVIDENTIARY STANDARD

When the Department petitions to terminate a parent's rights to a child, the Department must prove by clear and convincing evidence that (1) 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 (2) 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).

"Evidence that a person has engaged in abusive and violent conduct in the past permits an inference that the person will continue to engage in violent behavior in the future." *In re M.D.M.*, 579 S.W.3d 744, 765 (Tex. App.—Houston [1st Dist.] 2019, no pet.); *accord In re D.M.*, 452 S.W.3d at 471.

STANDARDS OF REVIEW

"[I]n a bench trial, the judge as the trier of fact weighs the evidence, assesses the credibility of witnesses and resolves conflicts and inconsistencies." *In re S.J.R.-Z.*, 537 S.W.3d 677, 691 (Tex. App.—San Antonio 2017, pet. denied) (quoting *In re D.D.D.K.*, No. 07-09-0101-CV, 2009 WL 4348760, at *6 (Tex. App.—Amarillo Dec. 1, 2009, no pet.) (mem. op.)); *see In re J.O.A.*, 283 S.W.3d 336, 346 (Tex. 2009).

As the factfinder, the trial court "may choose to believe one witness and disbelieve another." *City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005); *accord Catholic Diocese of El Paso v. Porter*, 622 S.W.3d 824, 834 (Tex. 2021).

On review, an appellate court must not "substitute its own judgment for that of a reasonable factfinder." *In re Commitment of Stoddard*, 619 S.W.3d 665, 668 (Tex. 2020); *accord In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006) (per curiam); *City of Keller*, 168 S.W.3d at 819. The appellate court must give appropriate deference to the trial court's findings and credibility determinations. *In re H.R.M.*, 209 S.W.3d at 108; *In re M.I.A.*, 594 S.W.3d 595, 604, 607 (Tex. App.—San Antonio 2019, no pet.).

A. 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.*; *see also In re A.B.*, 437 S.W.3d 498, 506 (Tex. 2014).

B. Factual Sufficiency

For a factual sufficiency review under a clear and convincing evidence standard, 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. If, when reviewing all the evidence in a neutral light, "a factfinder could reasonably form a firm belief or conviction about the truth of the State's allegations," the evidence is factually sufficient. *In re C.H.*, 89 S.W.3d at 25; *accord In re A.B.*, 437 S.W.3d at 506.

EVIDENCE OF ENDANGERING A CHILD

The trial court found Mom and Dad engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangered the children. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E).

In their first issues, Mom and Dad each argue that there was no evidence to support the trial court's statutory ground findings. Specifically, they contend that there is no evidence that either of them abused M.E.B. or allowed him to be injured by anyone else. They contend that the marks on M.E.B.'s abdomen were not bruises, his fractures were due to rickets or a genetic disorder, and his bowel perforations could have been caused by a disease or condition other than blunt force trauma.

The Department counters that neither Mom nor Dad could explain how M.E.B. was injured, and its child abuse pediatrician, pediatric radiologist, and board-certified pediatrician, each testified that M.E.B.'s injuries were caused by non-accidental blunt force trauma. Its pediatric surgeon testified that M.E.B.'s abdominal injuries were caused by external blunt force trauma, and its board-certified pediatric emergency medicine physician testified that M.E.B.'s injuries were highly suspicious of non-accidental trauma.

Before we examine the evidence, we recite the single ground on which the trial court terminated Mom's and Dad's respective parental rights.

C. Statutory Ground Finding

A parent's rights to their child may be terminated "if the court finds by clear and convincing evidence . . . that the parent has . . . 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)(1)(E). "Termination under subsection E must be based on more than a single act or omission; the statute requires a voluntary, deliberate, and conscious course of

conduct by the parent." *In re S.R.*, 452 S.W.3d 351, 360 (Tex. App.—Houston [14th Dist.] 2014, pet. denied); *accord In re L.J.G.*, No. 04-19-00347-CV, 2019 WL 6107936, at *2 (Tex. App.—San Antonio Nov. 18, 2019, pet. denied) (mem. op.).

"In determining whether the Department has established that the parent engaged in an endangering course of conduct, we may consider evidence concerning how a parent has treated another child or a spouse." *In re M.D.M.*, 579 S.W.3d at 764; *see In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.) ("[A]busive or violent conduct by a parent . . . may produce an environment that endangers the physical or emotional well-being of a child.").

To affirm the termination of parental rights on subsection 161.001(b)(1)(E), an appellate court "must provide the details of its analysis." *In re N.G.*, 577 S.W.3d 230, 237 (Tex. 2019).

We have reviewed all the evidence, but for brevity, we do not repeat it all here; instead, we recite only that which is most relevant to the statutory ground findings. We begin by reviewing the medical experts' testimony.

D. Testimony from Department's Medical Experts

1. Pediatric Emergency Medicine Physician

Dr. Deborah Callanan is a board-certified pediatric emergency medicine physician. She was the emergency room physician on duty the day M.E.B. was brought to the hospital, and she was the first doctor to examine him.

The triage nurse was very concerned about M.E.B. because he had a very distended abdomen, she saw some possible bruising on his abdomen, and he was very fussy. When the triage nurse brought M.E.B. to Dr. Callanan, she examined him and confirmed that his abdomen was very distended, there was bruising on his abdomen, and he cried when she palpated his abdomen,

Dr. Callanan ordered some laboratory tests and x-ray images. The x-rays showed M.E.B. had free air in his abdomen and many bone fractures.

When Dr. Callanan asked the parents about M.E.B., they told her they brought M.E.B. to the hospital because he had been fussy, he did not want to take his last feeding, he had vomited, and he had stomach pain, but they did not report any type of accident that could explain M.E.B.'s injuries.

Dr. Callanan noted that, in her thirty-four years of practice, she had never seen a spontaneous intestinal perforation, and given the bruising on M.E.B.'s abdomen, the free air in his abdomen, the parents' lack of explanation for his injuries, and the nature of M.E.B.'s bone fractures, she had a "high suspicion" that M.E.B.'s injuries were caused by non-accidental trauma. To address M.E.B.'s free air and abdominal distention, she referred him to the pediatric surgeon for emergency surgery.

2. Pediatric Surgeon

Dr. Michael Megison was the pediatric surgeon who evaluated M.E.B. M.E.B.'s x-rays showed free air in his abdomen, he had abdominal bruising on his left upper quadrant, and early signs of sepsis, including metabolic acidosis in the blood gas. These signs indicated an emergency laparotomy for abdominal exploration.

During M.E.B.'s emergency surgery, Dr. Megison found two perforations of M.E.B.'s jejunum, within about five centimeters of each other. The bowel in the area of the perforations was bruised and "deserosalized where the outer surface of the bowel ha[d] become gangrenous and necrotic from lack of blood supply."

The bowel bruising was in the same area as the external bruising on M.E.B.'s left upper quadrant, the bowel and abdominal bruising were consistent with externally inflicted blunt force trauma, and there was no medical evidence of anything other than blunt force trauma as the cause of M.E.B.'s injuries.

When he was asked about how long M.E.B. could have had this perforated bowel condition, Dr. Megison noted that a bowel perforation with the contents extruded outside is a surgical emergency. He stated that it was highly unlikely that M.E.B. could have survived a bowel injury for two weeks.

Because the parents' denials that M.E.B. had suffered any trauma was inconsistent with the medical evidence, to rule out other causes, M.E.B. was referred for genetic testing.

3. Clinical Geneticist

Dr. Scott Douglas McLean, an employee of The Children's Hospital of San Antonio, is a clinical geneticist. He was "asked to evaluate for any genetic evidence of increased [predisposition] to fractures," such as osteogenesis imperfecta.

He testified that "[t]he genetics test that was done did not support the diagnosis of osteogenesis imperfecta." He also noted that M.E.B. "didn't have any of the features of Ehlers-Danlos syndrome," and he ruled out osteogenesis imperfecta and Ehlers-Danlos syndrome as possible causes of M.E.B.'s fractures.

He concluded by noting that he did not believe there were any other genetic conditions that could have caused M.E.B.'s injuries.

4. Child Abuse Pediatrician

Dr. James Louis Lukefahr is a child abuse pediatrician, and he serves as a medical director for the Center for Miracles, which is The Children's Hospital of San Antonio's facility for examining children for abuse or neglect. In his pediatric practice, he has handled about 6-8,000 cases involving child abuse.

After M.E.B.'s surgery, Dr. Lukefahr personally examined M.E.B. Dr. Lukefahr opined that M.E.B.'s injuries were very severe, life-threatening, and "so numerous that it's really—it's really not possible that they were the result of any kind of accidental force." He stated that M.E.B.

had two abdominal perforations, accompanied by abdominal bruising in the same area, and multiple bone fractures. He also noted that the genetic testing showed M.E.B. does not have osteogenesis imperfecta. His team concluded that the blood tests, x-ray films, and CT-scan images showed that M.E.B.'s fractures were not suffered during his birth.

Dr. Lukefahr acknowledged that M.E.B. had low Vitamin D level, but he testified that M.E.B. "did not have any of the other metabolic abnormalities, nor did he have evidence on x-ray that would support [M.E.B.] having rickets." He testified with reasonable medical certainty that M.E.B.'s abdominal injuries resulted from blunt force trauma, and he concluded that M.E.B.'s bone fractures and other injuries resulted from life-threatening physical abuse.

5. Senior Pediatric Radiologist

Dr. Maria Gisela Mercado-Deane is the senior pediatric radiologist at The Children's Hospital of San Antonio, and she has handled more than 6,000 pediatric skeletal surveys.

In reviewing M.E.B.'s x-rays and CT-scans, she observed that both his wrists had been fractured. His right clavicle, his right 10th rib, and his left 7th rib had healing fractures. His left 8th and 9th ribs showed acute fractures, meaning that the factures were less than seven days old. His right and left legs showed healing fractures—which fractures happened at a different time than the acute left rib fractures.

She testified that the images show M.E.B. has healthy bones, the genetic testing ruled out osteogenesis imperfecta, and there was no x-ray evidence of rickets. Rickets can be present when there is a calcium deficiency, but M.E.B.'s bones show good calcification: his bones are healthy, there is plenty of calcium, and he does not have a calcium deficit. Rickets also requires elevated parathyroid hormone and decreased phosphorous levels.

She recognized that M.E.B. had a low Vitamin D level and some increase in his parathyroid hormone, but she emphasized that his phosphorous and calcium levels were normal, and again, the

x-rays showed no sign of rickets. She concluded that, based on the type and nature of his injuries, and the different ages of the bone fractures, M.E.B.'s injuries were caused by inflicted, non-accidental trauma.

6. Board-Certified Pediatrician

Dr. Jennifer Sabo, a board-certified pediatrician for the Center for Miracles, was asked by the hospital team to assess M.E.B. while he was in the hospital.

As part of her assessment, she examined M.E.B., and she interviewed Mom and Dad. Neither parent reported any event or accident that could have caused M.E.B.'s injuries. Mom and Dad acknowledged that M.E.B. had abdominal bruising, but when asked what caused it, they did not provide any explanation.

M.E.B. did not show any signs of bruising easily, and his blood work was not consistent with rickets: he had low Vitamin D, but his phosphorous and calcium levels were normal, and a copper deficiency is not associated with rickets. Although Mom's counsel had suggested necrotizing enterocolitis as a cause of M.E.B.'s bowel perforations, Dr. Sabo noted that M.E.B.'s clinical picture was not consistent with necrotizing enterocolitis.

In her professional opinion, there was substantial evidence of physical abuse.

E. Testimony from Parents' Medical Expert

To rebut the Department's medical experts' testimony, Mom and Dad called Dr. Ayoub.

1. Board-Certified Diagnostic Radiologist

Dr. David Ayoub is a board-certified diagnostic radiologist. He is not a pediatrician, pediatric radiologist, or child abuse expert, but he has an interest in metabolic bone disease, and he has studied metabolic bone disease in infants, including rickets. The trial court admitted Dr. Ayoub as an expert witness on infantile rickets and metabolic bone disease in infants.

2. Criticisms by Other Medical Professionals

Dr. Ayoub's testimony in other cases has been criticized by child abuse pediatricians and pediatric radiologists. His article on classic metaphyseal lesions in infants was criticized in three published items. And his published paper on metabolic bone disease in infants with unexplained fractures was criticized by the child abuse committee of the Society for Pediatric Radiology, and the European Society of Pediatric Radiology, but he dismissed those criticisms as expected because "what we've shown in our publications [is] that they are wrong."

3. Bowel Perforations

Dr. Ayoub opined that a bowel disease, such as necrotizing enterocolitis, or a genetic condition such as osteogenesis imperfecta or Ehlers-Danlos syndrome, could have caused M.E.B.'s bowel perforations. He acknowledged that he had never had a case where a perforated bowel was associated with rickets.

4. Bone Health, Fractures

Regarding rickets and M.E.B.'s bone health, he noted that M.E.B.'s labs showed he had extremely low Vitamin D, elevated parathyroid hormone, and a copper deficiency. He was surprised that, in his view, M.E.B.'s "biochemical evidence was essentially ignored" by the treating physicians. He concluded that M.E.B. was recovering from rickets, a metabolic bone disease, and rib fractures such as M.E.B.'s were common in infants with rickets.

Regarding M.E.B.'s fractures, Dr. Ayoub disagreed that the imaging showed corner fractures or bucket handle fractures in M.E.B.'s extremities; he attributed those to "manifestations of metabolic bone disease." He agreed that the clavicle and rib fractures occurred on different dates, which he concluded were probably on three different stages or occasions, but he noted that ongoing fractures were consistent with metabolic bone disease. He felt that it was "very, very

unlikely" that blunt force trauma caused M.E.B.'s injuries, but he acknowledged that the clavicle and rib fractures could have been caused by blunt force trauma.

F. Mom's Testimony

Mom testified that during M.E.B.'s delivery, he got stuck in the birth canal, and the doctor "grabbed his shoulders and pulled him out."

She took him to his one-week, one-month, and two-month checkups. M.E.B. was her second child, and she was concerned that M.E.B. was "gassy a little more than usual," and he had some difficulty nursing. Sometime before his two-month appointment, he started spitting up all his food, and he spit up a green substance. She mentioned this to the nurse practitioner, but he was not concerned about it.

The morning that M.E.B. cried when she touched his stomach, and he again spit up a green substance, she and Dad took M.E.B. to the hospital. She was surprised that the medical staff, and then the Department and the police, all asked her what had caused M.E.B.'s bruises and fractures because she did not know he had any.

For the two weeks or so before M.E.B. was hospitalized, she and Dad were the only caregivers for M.E.B., except for one visit with her mother, but she was with her mother during the visit, and her mother did not mishandle M.E.B.

Mom consistently and repeatedly denied that she or Dad had ever mishandled M.E.B. or caused any accidental or intentional injury. She insisted that M.E.B.'s injuries were due to a medical issue or condition.

G. Dad's Testimony

Dad's testimony was consistent with Mom's. He testified that on the morning they took M.E.B. to the hospital, he saw "two little very vague like marks" on M.E.B.'s abdomen and the

green substance that M.E.B. spit up, and he said they needed to take M.E.B. to the hospital. He never saw others mistreat his children, and neither he nor Mom ever mistreated them.

He acknowledged that, about eighteen months earlier, the police had come to his home because of a report of a domestic disturbance. The officers told him they were doing a courtesy welfare check because of the report of "either yelling or fighting or something between—which we don't do." He added that no one was arrested, and no charges came from the incident.

When asked what caused M.E.B.'s condition, he attributed it to a genetic disorder.

Having recited the salient evidence, we turn to our analysis.

H. Analysis

The trial court found Mom and Dad engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangered the children. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E); *In re S.R.*, 452 S.W.3d 351, 360 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). As the factfinder, it was the trial court's role to weigh the evidence, assess the credibility of the witnesses, and resolve the conflicting testimony including that given by the expert witnesses. *See In re J.O.A.*, 283 S.W.3d 336, 346 (Tex. 2009); *In re S.J.R.-Z.*, 537 S.W.3d 677, 691 (Tex. App.—San Antonio 2017, pet. denied).

1. Endangering M.E.B.

The uncontroverted medical evidence shows that M.E.B.'s rib fractures did not occur from a single incident. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E); *In re S.R.*, 452 S.W.3d at 360 (requiring more than a single event to establish a course of conduct under subsection 161.001(b)(1)(E)).

For example, M.E.B.'s right 10th rib fracture was two to three weeks old. Other fractures were more than fourteen days old, but Dr. Mercado testified that the fractures of M.E.B.'s 8th and 9th ribs were less than seven days old. The Department's and the parents' medical expert witnesses

agreed that the fractures occurred at different times, possibly in three stages or occasions, over the period of several weeks.

The date of M.E.B.'s bowel perforations was not established, but the pediatric surgeon testified that it was unlikely that M.E.B. could have survived the bowel perforation injuries for even two weeks.

And for at least two weeks before M.E.B. was hospitalized, Mom and Dad were M.E.B.'s exclusive caregivers: besides a visit to Mom's mother, which Mom supervised, no one else cared for M.E.B. during that period except Mom and Dad.

Accordingly, the trial court could have formed a firm belief or conviction that M.E.B.'s injuries resulted from a course of conduct by either Mom, Dad, or both. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E); *In re S.R.*, 452 S.W.3d at 360.

Further, the trial court could have believed the Department's expert witnesses that M.E.B.'s injuries, including his multiple fractures and perforated bowel, were caused by non-accidental blunt force trauma. *See In re J.O.A.*, 283 S.W.3d at 346; *In re S.J.R.-Z.*, 537 S.W.3d at 691.

Moreover, it could have disbelieved Dr. Ayoub's testimony that M.E.B.'s fractures resulted from normal handling of M.E.B. because he was suffering from a metabolic bone disease such as rickets or a genetic disorder such as osteogenesis imperfecta or Ehlers-Danlos syndrome. *See In re J.O.A.*, 283 S.W.3d at 346; *In re S.J.R.-Z.*, 537 S.W.3d at 691.

Having reviewed the evidence under the elevated burden of proof and the legal and factual sufficiency standards, we conclude that the trial court could have formed a firm belief or conviction that M.E.B.'s injuries were caused by a course of conduct of physical abuse by Mom, Dad, or both, which endangered M.E.B.'s physical and emotional well-being. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E); *In re S.R.*, 452 S.W.3d at 360.

2. Endangering S.C.

There was no evidence that Mom, Dad, or anyone else had physically harmed S.C., but that does not end our analysis. "In determining whether the Department has established that the parent engaged in an endangering course of conduct, we may consider evidence concerning how a parent has treated another child or a spouse." *In re M.D.M.*, 579 S.W.3d 744, 764 (Tex. App.—Houston [1st Dist.] 2019, no pet.); *accord In re R.S.-T.*, 522 S.W.3d 92, 110 (Tex. App.—San Antonio 2017, no pet.).

The evidence supporting a finding that M.E.B. was being seriously physically abused while in his parents' care—even though that domestic violence was not directed at S.C.—was evidence that S.C.'s physical or emotional health was being endangered. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E); *In re M.D.M.*, 579 S.W.3d at 764; *In re R.S.-T.*, 522 S.W.3d at 110; *In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.) ("[A]busive or violent conduct by a parent . . . may produce an environment that endangers the physical or emotional well-being of a child.").

Further, the trial court could have also inferred that the abusive conduct would continue. *See In re M.D.M.*, 579 S.W.3d at 765 ("Evidence that a person has engaged in abusive and violent conduct in the past permits an inference that the person will continue to engage in violent behavior in the future."); *In re D.M.*, 452 S.W.3d 462, 471 (Tex. App.—San Antonio 2014, no pet.) (same).

Therefore, the trial court could have formed a firm belief or conviction that the parents' courses of conduct endangered S.C.'s physical or emotional well-being. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E); *In re S.R.*, 452 S.W.3d at 360.

I. Sufficient Evidence of Statutory Ground

The evidence was legally and factually sufficient to show that one or both parents were physically abusing M.E.B. over a period of weeks to the degree that it endangered both M.E.B.'s

and S.C.'s physical or emotional well-being. Accordingly, we overrule Mom's and Dad's first issues challenging the trial court's findings on the single statutory ground.

Having determined the evidence was sufficient to support the trial court's single statutory ground findings, we turn now to the best interests of the children. *See In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003) (noting that 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 R.S.-T.*, 522 S.W.3d at 111 (same).

BEST INTERESTS OF THE CHILDREN

In their second issues, Mom and Dad argue the evidence was legally and factually insufficient to support the trial court's finding that terminating their respective parental rights was in the children's best interests. *See* TEX. FAM. CODE ANN. § 161.001(b)(2). They insist that there was no evidence of several of the *Holley* factors, but "[t]he absence of evidence about some of these considerations would not preclude a factfinder from reasonably forming a strong conviction or belief that termination is in the child's best interest, particularly if the evidence were undisputed that the parental relationship endangered the safety of the child." *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002); *accord In re S.J.R.-Z.*, 537 S.W.3d at 692.

A. Best Interest of the Child Factors

The Family Code statutory factors[i] and the *Holley* factors[ii] for best interest of the child are well known. Applying each standard of review and the applicable statutory and common law factors for best interests of the children, we review all the evidence.

"Evidence of how a parent has treated another child is relevant to the best-interest analysis." *In re M.A.A.*, No. 01-20-00709-CV, 2021 WL 1134308, at *23 (Tex. App.—Houston [1st Dist.] Mar. 25, 2021, no pet.) (mem. op.); *see In re M.D.M.*, 579 S.W.3d at 764 (considering "evidence concerning how a parent has treated another child" in a statutory ground analysis).

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 interests of the children under section 161.001(b)(2). *In re C.H.*, 89 S.W.3d at 28; *In re D.M.*, 452 S.W.3d at 471; *see also* TEX. FAM. CODE ANN. § 161.001(b).

For brevity, we do not repeat in full the evidence supporting the statutory ground finding recited above, but we consider it and all the other evidence in our best-interest review.

B. Children's Ages and Vulnerabilities

At the time of trial, M.E.B. was about two and one-half years old and S.C. was about three and one-half years old. Neither child can care for themselves; both are completely dependent on others for their physical and emotional health and safety. M.E.B.'s health and safety had been severely compromised; he had suffered life-threatening injuries, including two perforations of his jejunum, a broken clavicle, four broken ribs, two fractured wrists, and fractures in his legs and feet. M.E.B. was diagnosed with some developmental delays, and S.C. was in the same home and at risk of suffering from physical abuse. *See* TEX. FAM. CODE ANN. § 263.307(b)(1), (7), (12); *Holley v. Adams*, 544 S.W.2d 367, 372 (Tex. 1976) (factors (B), (C), (D)).

C. Children's Placement

The children are currently living with a licensed foster-to-adopt placement. The foster parents are licensed for up to three children, but they are caring for only S.C. and M.E.B.

When M.E.B. was taken into care, he had developmental delays, but he has made a lot of progress developmentally. The foster parents are "very engaged in [M.E.B.'s treatment] process, and their follow through has been excellent." S.C. is on target developmentally.

Both children are very well cared for and "doing great in the [foster] home." The children are very loving towards, and very bonded to, their foster parents. S.C. calls her foster parents mom

and dad; M.E.B. calls his foster mother mom, but he does not yet say dad because he is behind in his communication skills.

The foster parents are meeting all the children's needs, and they want to adopt S.C. and M.E.B. *See* TEX. FAM. CODE ANN. § 263.307(b)(1), (12), (13); *Holley*, 544 S.W.2d at 372 (factors (B), (C), (D), (F), (G)).

D. Ad Litem's Recommendation

The ad litem recommended that it was in the children's best interests that Mom's and Dad's rights be terminated so that the children could continue to live with the foster parents and be adopted by them. *See* TEX. FAM. CODE ANN. § 263.307(b)(1), (10), (11), (12); *Holley*, 544 S.W.2d at 372 (factors (B), (C), (D), (F), (G), (H)).

E. Sufficient Evidence

As the factfinder, it was the trial court's role to weigh the evidence, assess the credibility of the witnesses, and resolve the conflicting testimony including that given by the expert witnesses. *See In re J.O.A.*, 283 S.W.3d at 346; *In re S.J.R.-Z.*, 537 S.W.3d at 691.

Given its findings that Mom's and Dad's courses of conduct endangered both M.E.B. and S.C., the trial court could have formed a firm belief or conviction that M.E.B. and S.C. were at risk of future danger to their physical or emotional well-being if they were returned to Mom's and Dad's care. *See In re M.D.M.*, 579 S.W.3d at 765 ("Evidence that a person has engaged in abusive and violent conduct in the past permits an inference that the person will continue to engage in violent behavior in the future."); *In re D.M.*, 452 S.W.3d at 471 (same).

It could also have formed a firm belief or conviction that the children are doing well living with the foster parents, the foster parents are meeting the children's present needs, they will meet the children's future needs, and they want to adopt S.C. and M.E.B. *See In re S.J.R.-Z.*, 537 S.W.3d at 691; *In re D.M.*, 452 S.W.3d at 471.

Having reviewed the evidence under the appropriate standards, we conclude the trial court could have reasonably formed a firm belief or conviction that it was in the children's best interests for Mom's parental rights to S.C. and M.E.B., and Dad's parental rights to M.E.B., to be terminated. *See In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006) (per curiam) (citing *In re C.H.*, 89 S.W.3d at 25). Therefore, the evidence was legally and factually sufficient to support the trial court's best-interests-of-the-children finding. *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 and Dad's second issues.

CONCLUSION

Because the evidence was legally and factually sufficient to support the trial court's statutory ground and best-interests-of-the-children findings, we affirm the trial court's order.

Patricia O. Alvarez, Justice

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

[ii] *Holley* Factors. The Supreme Court of Texas identified the following factors to determine the best interest of a child in its landmark case *Holley v. Adams*:

(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).