Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-22-00249-CV

IN THE INTEREST OF S.J.S. and J.P., Children

From the 73rd Judicial District Court, Bexar County, Texas
Trial Court No. 2021-PA-00577
Honorable Kimberly Burley, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Luz Elena D. Chapa, Justice
Liza A. Rodriguez, Justice
Lori I. Valenzuela, Justice

Delivered and Filed: October 26, 2022

AFFIRMED

Appellants J.S. and W.P. appeal the trial court's order terminating their parental rights to their children, S.J.S. and J.P.[1] J.S. contends the trial court's order is void as to S.J.S. because the trial court lacked jurisdiction over S.J.S., and both parents contend the evidence is legally insufficient to support the trial court's best-interest findings. J.S. also challenges the trial court's appointment of the Department as permanent managing conservator. We affirm the trial court's order of termination.

[1] To protect the identity of the minor children, we refer to the parents and the children by their initials. *See* TEX. FAM. CODE § 109.002(d); TEX. R. APP. P. 9.8.

BACKGROUND

The Texas Department of Family and Protective Services filed an original petition seeking temporary managing conservatorship of S.J.S. and J.P and termination of J.S. and W.P.'s parental rights. In its petition, the Department sought an emergency removal order for the children after J.P. tested positive for drugs at birth. W.P. admitted she had recently taken one of her daughter's ADHD medications and used methamphetamine during her pregnancy. The Department further alleged it was concerned about the safety of the children because J.S. assaulted a nurse when he and W.P. tried to take the children from the hospital.

The district clerk docketed the case as cause number 2021-PA-00577 in the 73rd Judicial District Court of Bexar County, Texas. The trial court ultimately signed an emergency removal order for the children, named the Department temporary managing conservator, and granted the parents temporary possessory conservatorship. On the day before trial, the Department filed a Motion to Consolidate in the 73rd Judicial District Court, seeking to consolidate cause numbers 2019-EM-503823 in the 37th Judicial District Court and 2021-PA-00577 in the 73rd Judicial District Court. At trial, the Department explained it had discovered a prior order involving S.J.S. had been filed in a different court and docketed as cause number 2019-EM-503823. The Department argued it needed to consolidate the cases for the trial court to have proper jurisdiction over S.J.S. Before granting the motion, the trial court asked whether anyone objected to it, and all parties, including J.S.'s attorney, stated they had no objection.

The trial court then heard testimony from the Department caseworker and both parents. After trial, the trial court found by clear and convincing evidence both parents failed to comply with the provisions of a court order which had established the actions necessary for them to obtain their children's return, and termination of their parental rights was in their children's best interest. Both parents now appeal.

JURISDICTION

We begin with J.S.'s argument challenging the trial court's jurisdiction. J.S. argues the trial court lacked subject matter jurisdiction over matters involving S.J.S. because the Department never transferred the prior case involving S.J.S. from the 37th Judicial District to the 73rd Judicial District. According to J.S., the Department's motion to consolidate the cases did not request a transfer, and the trial court improperly consolidated the cases in the final termination order. As a result, the termination order is void as to S.J.S.

Standard of Review

"Subject matter jurisdiction is essential to a court's power to decide a case." *City of Houston v. Rhule*, 417 S.W.3d 440, 442 (Tex. 2013). A judgment is void if it is rendered by a court without subject matter jurisdiction. *In re United Servs. Auto Ass'n*, 307 S.W.3d 299, 309–10 (Tex. 2010) (orig. proceeding). Whether a court has subject matter jurisdiction is a question of law we review de novo. *Hearts Bluff Game Ranch, Inc. v. State*, 381 S.W.3d 468, 476 (Tex. 2012).

Applicable Law

"[A] court acquires continuing, exclusive jurisdiction over [] matters . . . in connection with a child on the rendition of a final order." TEX. FAM. CODE § 155.001(a). Once acquired, a trial court with continuing, exclusive jurisdiction retains jurisdiction over the parties and matters. *Id*. § 155.002. No other trial court has jurisdiction over the suit regarding the child unless jurisdiction has been transferred pursuant to the exclusive transfer provisions outlined in chapter 155 of the Texas Family Code or an emergency exists as set out in chapter 262 of the Code. *See id*. § 155.001(c); *see also id.* §§ 155.201–.207 (transfer provisions), § 262.002 (jurisdiction for emergency proceedings); *In re S.H.*, No. 13-18-00240-CV, 2018 WL 4624720, at *2–3 (Tex. App.—Corpus Christi-Edinburg Sept. 27, 2018, no pet.) (mem. op.).

Chapter 262 of the Code authorizes the Department, under certain circumstances, to take emergency possession of a child without prior notice and a hearing. *See* TEX. FAM. CODE §§ 262.001 & 262.104; *see also S.H.*, 2018 WL 4624720, at *3. However, nothing in chapter 262 authorizes a trial court to enter a final order if another court has continuing, exclusive jurisdiction over the child under chapter 155. *S.H.*, 2018 WL 4624720, at *3 (citing TEX. FAM. CODE § 262.201). "To acquire jurisdiction to enter a final order, the chapter 155 court or the chapter 262 court must transfer the original SAPCR into the chapter 262 court." *Id.* (citing TEX. FAM. CODE §§ 155.201–.207; *id*. § 262.203).

Application

Here, it is undisputed the 37th Judicial District Court had acquired "continuing, exclusive jurisdiction" over matters relating to S.J.S. The record shows when the Department became aware the 37th Judicial District Court had acquired continuing, exclusive jurisdiction over S.J.S., it sought to confer jurisdiction upon the 73rd Judicial District Court by filing a motion to consolidate before trial. On the day of trial, the trial court held a pretrial hearing regarding the Department's motion, and after not hearing any objection from the parties, including J.S.'s attorney, the trial court granted the consolidation motion.

J.S. contends, however, this procedure was improper because the Department's consolidation motion did not specifically request a transfer. We recently rejected a similar argument in *In re J.V.O.*, No. 04-20-00346-CV, 2021 WL 3742678, at *3 (Tex. App.—San Antonio Aug. 25, 2021, no pet.) (mem. op.). There, we held a trial court's order granting a party's request to consolidate effectively transferred a SAPCR to a divorce proceeding even though the party did not file a motion to transfer. *Id*. We explained "[c]onsolidation applies when two or more cases are pending before a single court," and "[t]ransfer involves moving a case from one court to another." *Id*. We further explained when a motion and an order to consolidate make clear

separate proceedings are pending before different courts, the request to consolidate implies a request to transfer because a transfer is "a necessary condition precedent to consolidation." *Id.* Here, as in *J.V.O*, the Department's motion to consolidate and the trial court's order on the motion make clear, by their dual captions, the two proceedings involving S.J.S. were pending before the 37th and 73rd Judicial District Courts. *See id.* Accordingly, the Department's request to consolidate necessarily implied a request to transfer, and the trial court effectively transferred the matter concerning S.J.S. pending in the 37th Judicial District Court to the 73rd Judicial District Court by signing the consolidation order. *See id*.

J.S. further contends even if the consolidation order constituted an effective transfer order, the action "was not done timely" because the trial court did not sign a transfer order before signing the final termination order; instead, the trial court consolidated the two cases in the same order it terminated their parental rights. The Family Code does not prohibit the trial court from signing one order to transfer and consolidate cases and dispose of a case on merits. The Code only requires a trial court to sign a transfer order. TEX. FAM. CODE § 155.204(i); *see S.H.*, 2018 WL 4624720, at *3 ("For [a] chapter 262 court to transfer [a] case to its court, a transfer order must be signed."). Here, the trial court ruled on the Department's consolidation motion as a pretrial matter before proceeding with the trial on the merits, and the trial court memorialized its ruling on the motion and terminated J.S.'s parental rights in a signed order. Any defect in the transfer procedure does not render the order void. *In re C.S.*, 977 S.W.2d 729, 731 (Tex. App.—Fort Worth 1998, pet. denied). Accordingly, we conclude the trial court effectively transferred the case involving S.J.S. in the 37th Judicial District Court to the 73rd Judicial District Court, and the trial court's termination order as to S.J.S. is not void. We therefore overrule J.S.'s jurisdictional challenge.

SUFFICIENCY OF THE EVIDENCE

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 termination is in a child's best interest. TEX. FAM. CODE § 161.001(b). Clear and convincing evidence requires proof that will produce in the factfinder's mind "a firm belief or conviction as to the truth of the allegations sought to be established." *Id*. § 101.007. To determine if this heightened burden of proof is met, we employ a heightened standard of review by judging whether 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 17, 25 (Tex. 2002). This heightened standard "guards the constitutional interests implicated by termination, while retaining the deference an appellate court must have for the factfinder's role." *In re O.N.H.*, 401 S.W.3d 681, 683 (Tex. App.—San Antonio 2013, no pet.). Under it, the factfinder is the sole judge of the weight and credibility of the evidence, including the testimony of the witnesses. *In re J.O.A.*, 283 S.W.3d 336, 346 (Tex. 2009). We do not reweigh witness credibility issues, and we "defer to the [factfinder's] determinations, at least so long as those determinations are not themselves unreasonable.'" *In re J.P.B*., 180 S.W.3d 570, 573 (Tex. 2005) (quoting *Sw. Bell Tel. Co. v. Garza*, 164 S.W.3d 607, 625 (Tex. 2004)).

"When reviewing the sufficiency of the evidence, we apply the well-established [legal and factual sufficiency] standards." *In re J.M.G.*, 608 S.W.3d 51, 53 (Tex. App.—San Antonio 2020, pet. denied) (alteration in original) (quoting *In re B.T.K.*, No. 04-19-00587-CV, 2020 WL 908022, at *2 (Tex. App.—San Antonio Feb. 26, 2020, no pet.) (mem. op.)). In our legal sufficiency review, 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." *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002). We must assume the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so, and we do not disregard undisputed evidence even if it does not support the trial court's finding. *Id*. In our factual sufficiency review, we consider the entire record and determine whether, in light of the entire record, any disputed evidence "is so significant that a factfinder could not reasonably have formed a firm belief or conviction" on the challenged finding. *Id*.

Applicable Law

In Texas, there is a strong presumption a child's best interest is served by keeping the child with a parent. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam). However, a trial court must also presume a child's prompt and permanent placement in a safe environment is in the child's best interest. TEX. FAM. CODE § 263.307(a). To determine whether a child's parent can provide the child with a safe environment, a trial court should consider the factors set out in section 263.307 of the Family Code.[2] Courts also apply the non-exhaustive *Holley* factors. *See Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). Those factors include: (1) the desires of the child; (2) the present and future emotional and physical needs of the child; (3) the present and future physical danger to the child; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist these individuals to promote the best interest of the child; (6) the plans

[2] These factors include: the child's age and physical and mental vulnerabilities; the frequency and nature of out-of-home placements; the magnitude, frequency, and circumstances of the harm to the child; whether the child has been the victim of repeated harm after intervention by the department; whether the child is fearful of returning to the child's home; 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; whether there is a history of abusive conduct by the child's family or others who have access to the child's home; whether there is a history of substance abuse by the child's family or others who have access to the child's home; 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; the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time; whether the child's family demonstrates adequate parenting skills; and whether an adequate social support system consisting of an extended family and friends is available to the child. *See* TEX. FAM. CODE § 263.307.

held by the individuals seeking custody; (7) the stability of the home of the parent and the individuals seeking custody; (8) the acts or omissions of the parent may indicate the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions of the parent. *Id.* Not every factor must be proven for a court to find termination is in the child's best interest. *C.H.*, 89 S.W.3d at 27. And "[e]vidence of a single factor may be sufficient for a factfinder to form a reasonable belief or conviction that termination is in the child's best interest." *In re J.B.-F.*, No. 04-18-00181-CV, 2018 WL 3551208, at *3 (Tex. App.—San Antonio July 25, 2018, pet. denied) (mem. op.).

W.P.

Turning to W.P.'s best interest challenge, the evidence shows the children were removed from W.P.'s care because J.P. tested positive for illegal substances when he was born, and W.P. admitted she used drugs while she was pregnant. The Department caseworker explained W.P. and J.P.'s positive test results at the hospital were the primary reason the Department became involved with the family. The Department caseworker also testified she reviewed the documentation regarding the test results and discussed the results with W.P. during a family group conference. The trial court also heard testimony from W.P., who admitted she and J.P. tested positive for illegal substances when J.P. was born, and she had taken one of her daughter's ADHD medications and used methamphetamines during her pregnancy. W.P. further testified she stopped using methamphetamines when she found out she was pregnant but added she did not find out she was pregnant until the end of her second trimester.

The Department also presented evidence W.P. failed to complete any of the drug tests scheduled by the Department caseworker. The caseworker testified as part of W.P.'s service plan, the trial court ordered W.P. to complete a hair follicle test, but W.P. did not take any of the sixteen tests scheduled for her. The caseworker further testified she communicated with W.P. through

text and e-mail about the scheduled drug tests and the importance of confirming she was drug-free. Although W.P. initially responded to the messages, she never appeared for a test and ultimately stopped responding. During her direct examination, W.P. confirmed she did not comply with this portion of the service plan because she was unable to miss work and she did not trust the results of court-ordered drug tests. She further testified she could confirm she was drug-free because she had to take drug tests for her employment. However, the trial court also heard evidence W.P. had been arrested for theft and possession of a controlled substance during the pendency of the case.

In addition to drug testing, W.P.'s service plan required W.P. to maintain employment and housing, take parenting and domestic violence classes, and undergo counseling and a psychological evaluation. The Department caseworker testified she could not confirm whether W.P. had stable employment or housing because W.P. would not talk to her. She further testified W.P. completed her psychological evaluation but failed to meet with her to review the results. She also testified she could not confirm whether W.P. was engaging in her domestic violence course or counseling services. She explained W.P. failed to communicate with her during the pendency of the case, and despite trying to reach out and visit W.P., her attempts were unsuccessful.

Regarding the requirements of her service plan, W.P. testified she was currently taking parenting classes, and she stated she had attended her first class the day of trial. She explained she had already taken the parenting and domestic violence classes two years prior, but she did not mind retaking them and completing the remaining registration paperwork for the classes after trial. W.P. further testified she was working at United Health Group, and she had provided her employment contract and paycheck to the Department caseworker. She also stated she had a second job. Finally, she testified she had a residence but was moving soon; however, she was willing to make herself available for a Department visit.

As to evidence concerning the children's stability and permanency, the Department produced evidence it was moving the children to a foster-to-adopt placement. The Department caseworker explained although the children were doing great in their current placement, the current placement was unable to adopt the children due to medical issues arising with the caretaker. However, other foster-to-adopt homes existed for the children, and she believed the Department could find a permanent solution for the children.

When viewing this evidence under the appropriate standards of review, we conclude it is legally and factually sufficient to support the trial court's best-interest finding. W.P.'s drug use, her failure to submit to drug testing during the pendency of this case, and her recent possession of a controlled substance charge are relevant to multiple *Holley* factors, including the emotional and physical needs of the children now and in the future, the emotional and physical danger to the children now and in the future, W.P.'s parental abilities, the stability of W.P.'s home, and the acts or omissions which may indicate the existing parent-child relationship is not a proper one. *See Holley*, 544 S.W.2d at 371-72. W.P.'s illegal drug use exposes the children to the possibility she may be impaired or imprisoned, and it is relevant to whether she can provide her children with consistency and stability. *See In re T.N.J.J.*, No. 04-19-00228-CV, 2019 WL 6333470, at *5 (Tex. App.—San Antonio Nov. 27, 2019, no pet.) (mem. op.).

A factfinder could have formed a firm belief W.P.'s failure to communicate with the Department and satisfy the requirements of her service plan are indicative of her unwillingness and inability to take the steps necessary to provide her children with a safe and stable environment. *See id*. at *7 (explaining parent's failure to cooperate with Department and consistently communicate with Department evidenced parent's unwillingness to effect positive changes). And we are bound by the trial court's predicate finding as it relates to best interest because W.P. did not challenge it. *See In re K.W.G.*, No. 01-17-00057-CV, 2017 WL 2438647, at *3 (Tex. App.—

Houston [1st Dist.] June 6, 2017, pet. denied) (mem. op.); *see also C.H.*, 89 S.W.3d at 28 (reasoning same evidence proving statutory grounds may also be probative in determining child's best interest). Moreover, the trial court could have reasonably inferred W.P.'s interest to engage in services after trial was too late. *See In re S.R.*, 452 S.W.3d 351, 368 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (reasoning factfinder could conclude parent's changes shortly before trial too late to have an impact on best-interest determination).

Accordingly, when viewing all the evidence in the light most favorable to the best-interest finding, we conclude the trial court could have reasonably formed a firm belief or conviction termination of W.P.'s parental rights was in the children's best interest. *See J.F.C.*, 96 S.W.3d at 266. We further conclude 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 the trial court could not have reasonably formed a firm belief or conviction termination was in the children's best interest. *See id*. We therefore hold the evidence is legally and factually sufficient to support the trial court's best-interest finding, and we overrule W.P.'s sufficiency challenge.

J.S.

As to J.S., the trial court heard testimony from the Department caseworker, who testified J.S. assaulted a nurse when he and W.P. attempted to remove the children from the hospital. The Department also produced evidence J.S. was not in compliance with his court-ordered services. According to the Department caseworker, the Department created a family service plan, which required J.S. to maintain employment and housing, take parenting and domestic violence classes, submit to drug-testing, and undergo counseling and a psychological evaluation. When asked whether J.S. performed any of his required services, the caseworker testified he had not. She explained she had discussed the importance of completing services with J.S., but J.S. adamantly refused to engage in services because he did not believe the Department should have taken his

children away from him. As of the date of trial, however, J.S. still had not begun any services, and the caseworker testified J.S.'s ongoing refusal to engage in services was troubling.

The trial court also heard evidence detailing the Department's concerns with J.S.'s drug use. The Department caseworker testified J.S. refused to submit to drug testing during the case despite knowing the importance of verifying he was drug-free. The Department caseworker testified when she asked J.S. about his drug use, he told her "it wasn't illegal to use drugs and he didn't do anything wrong for his children to be removed." The Department caseworker also testified J.S. had an arrest history for possession of a controlled substance, and due to this history and J.P.'s positive drug test, the Department requested J.S. to submit to drug tests to confirm he was drug-free.

When asked whether J.S. could provide a permanent and stable home, the caseworker testified she did not believe he could because he did not have permanent housing and had been living with his mother during a portion of the case. She further testified she had tried to place the children with family, but the children's paternal grandmother was unwilling to care for them because she had started a new job and J.S. was living with her. As a result, she believed termination of J.S.'s parental rights was in the children's best interest because J.S. could not provide stability for the children and had not addressed any of the Department's concerns about his drug use and domestic violence.

Finally, the trial court heard testimony from J.S., who testified he had serious concerns with the Department's affidavit attached to its original petition. J.S. explained in the affidavit, the Department alleged he had an assault conviction in 2015, but his assault charge did not result in a conviction because the case had been dismissed. J.S. also testified the Department's allegation regarding J.P. testing positive for methamphetamine was inaccurate because J.P. "came up

negative on the urinalysis." J.S. further disputed the Department's allegation he assaulted a nurse and claimed he had been the one who was assaulted at the hospital.

J.S. further testified when J.P. was born, he was not in a relationship with W.P., and he was unaware W.P. used drugs during her pregnancy with J.P. J.S. stated when he was around W.P., he never saw any drug paraphernalia, and he "had no knowledge of anything regarding drugs at all." When asked why he had not complied with taking court-ordered drug tests, he testified he felt he did not have either a legal or moral obligation to take one. He further testified he understood the requirements outlined in his family service plan and admitted he did not follow through with several of its requirements. He explained he was "trying to comply a little bit" a few months before trial, but when the Department caseworker told him he needed to complete all the requirements of his service plan, he was "not willing to do that, because I don't feel like I should need to." He further explained he did not believe he should have to follow a court order to show he was a great parent. Finally, with respect to his employment and housing, he testified he was a notary and worked as a welder and landscaper, and he was currently living with a friend.

When viewing this evidence under the appropriate standards of review, we conclude the evidence is legally and factually sufficient to support the trial court's best-interest finding. Like W.P., J.S. did not challenge the predicate ground supporting the termination of his parental rights, and we are bound by the finding as it relates to our best interest analysis. *See C.H.*, 89 S.W.3d at 28; *K.W.G.*, 2017 WL 2438647, at *3. Here, the trial court found by clear and convincing evidence J.S. failed to comply with the provisions of a court order which had established the actions necessary for him to obtain the children's return. The evidence supporting this finding as it relates to our best interest analysis shows J.S. admitted he refused to comply with his court-ordered service plan even though the Department repeatedly stressed the importance of compliance.

Moreover, we have consistently recognized failure to comply with a family service plan supports a best-interest finding. *See, e.g., In re A.F.*, No. 04-20-00216-CV, 2020 WL 6928390, at *4 (Tex. App.—San Antonio Nov. 25, 2020, no pet.) (mem. op.); *In re J.G.C.*, No. 04-19-00572-CV, 2020 WL 354775, at *3 (Tex. App.—San Antonio Jan. 22, 2020, no pet.) (mem. op.); *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.). In this case, the trial court could have reasonably determined J.S.'s blatant refusal to complete any of his services shows his uncooperativeness and unwillingness to effect personal and environmental changes to obtain his children's return. *See In re M.R.J.M.*, 280 S.W.3d 494, 510-11 (Tex. App.—Fort Worth 2009, no pet.) (reasoning father's failure to effect personal and environmental changes until only short time before trial supports best-interest finding); *In re J.I.T.P.*, 99 S.W.3d 841, 847 (Tex. App.—Houston [14th Dist.] 2003, no pet.) (considering parent's uncooperativeness and failure to complete counseling services in determining best interest of child). The trial court could have also reasonably found J.S.'s adamant refusal to submit to drug testing because he believed drugs were not illegal and he had no legal or moral obligation to comply with court-ordered drug testing troubling and indicative of his continual drug use. *See In re E.R.W.*, 528 S.W.3d 251, 265 (Tex. App.—Houston [14th Dist.] 2017, no pet.) ("[A] fact finder reasonably can infer that a parent's failure to submit to court-ordered drug tests indicates the parent is avoiding testing because they were using illegal drugs.").

In addition, the trial court heard evidence J.S. did not have permanent housing, and the Department was in the process of finding a permanent placement for the children in a foster-to-adopt placement. And although J.S. disputes the Department's allegations detailed in its petition, the trial court heard testimony from the Department caseworker indicating J.P. tested positive for illegal substances at birth, J.S. had a history of arrests for possession of a controlled substance, and J.S. assaulted a nurse at the hospital when J.P. was born. The trial court could have reasonably

believed the Department caseworker's testimony, and our standard of review prohibits us from reweighing witness credibility issues. *See J.P.B.*, 180 S.W.3d at 573. Accordingly, when viewing all the evidence in the light most favorable to the best-interest finding, we conclude the trial court could have reasonably formed a firm belief or conviction termination of J.S.'s parental rights was in the children's best interest. *See J.F.C.*, 96 S.W.3d at 266. We further conclude 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 the trial court could not have reasonably formed a firm belief or conviction termination was in the children's best interest. *See id*. We therefore hold the evidence is legally and factually sufficient to support the trial court's best-interest finding, and we overrule J.S.'s sufficiency challenge.

CONSERVATORSHIP

Finally, J.S. challenges the trial court's appointment of the Department as permanent managing conservator over the children. According to J.S., he should have retained custody of S.J.S. because the trial court lacked jurisdiction over S.J.S. and therefore, could not appoint the Department as his permanent managing conservator. J.S. further contends because he should have retained custody of S.J.S., the trial court could not appoint the Department as permanent managing conservator over J.S. because the Department did not show clear and compelling reasons to divide conservatorship of the children. J.S.'s argument is premised solely on his assertion the trial court lacked jurisdiction over S.J.S. Having determined the trial court had jurisdiction over S.J.S, we need not address this final issue.

CONCLUSION

The trial court's order of termination is affirmed.

Luz Elena D. Chapa, Justice