

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00226-CV

IN THE INTEREST OF J.K., J.K., K.S., AND M.S.

**On Appeal from the 410th District Court
Montgomery County, Texas
Trial Cause No. 09-04-03855-CV**

MEMORANDUM OPINION

Appellant J.K. appeals the termination of her parental rights to her minor children J.K.¹, K.S., and M.S. In three issues, appellant argues that the evidence was legally and factually insufficient to support the trial court's finding that termination was in the best interest of the children. Based on a review of the record, we conclude that clear and convincing evidence supports the trial court's decision and affirm the trial court's judgment.

¹ Appellant has the same initials as two of her children. All references to J.K. hereinafter refer to appellant's second oldest child.

LEGAL AND FACTUAL SUFFICIENCY

In appellant's three issues, she claims that the evidence is legally and factually insufficient to show that termination was in the children's best interest. In a legal sufficiency review, we consider all of the evidence in the light most favorable to the termination finding to determine whether a reasonable factfinder could have formed a firm belief or conviction about the truth of the matter on which the Texas Department of Family and Protective Services ("DFPS") bears the burden of proof. *In re J.L.*, 163 S.W.3d 79, 84-85 (Tex. 2005). We assume the factfinder resolved any disputed facts in favor of its finding, if a reasonable factfinder could do so, and disregarded all evidence that a reasonable factfinder could have disbelieved. *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002).

In a factual sufficiency review, we give "due consideration" to any evidence that the factfinder could reasonably have found to be clear and convincing. *Id.* (citing *In re C.H.*, 89 S.W.3d 17, 25 (Tex. 2002)). We consider the disputed evidence and determine whether a reasonable factfinder could have resolved that evidence in favor of the finding. *Id.* The evidence is factually insufficient if the disputed evidence is so significant that a factfinder could not have reasonably formed a firm belief or conviction. *Id.*

The trial court's involuntary termination of parental rights involves the parent's fundamental constitutional rights. *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985). Therefore, it follows that the evidence that supports termination must be clear and

convincing before the court may involuntarily terminate a parent's rights. *Id.*; *see also* Tex. Fam. Code Ann. § 161.001 (West Supp. 2010). The Family Code defines clear and convincing evidence as “the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.” Tex. Fam. Code Ann. § 101.007 (West 2008).

THE CHILDREN'S BEST INTEREST

Before the court may terminate parental rights involuntarily, the factfinder must find by clear and convincing evidence (1) that the parent committed one of the statutory grounds found in section 161.001(1) of the Family Code, and (2) that termination is in the child's best interest. Tex. Fam. Code Ann. § 161.001; *see also* Tex. Dep't of Human Servs. v. Boyd, 727 S.W.2d 531, 533 (Tex. 1987). The Texas Supreme Court has set forth a non-exhaustive list of factors to consider in determining whether termination is in a child's best interest: (1) the desires of the child, (2) the emotional and physical needs of the child now and in the future, (3) the emotional and physical danger to the child now and in the future, (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 for the child by these individuals or by the agency seeking custody, (7) the stability of the home or proposed placement, (8) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one, and (9) any excuse for the acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 372 (Tex. 1976). We

recognize a strong presumption that a child's best interest is served by maintaining the parent-child relationship. *In re L.M.*, 104 S.W.3d 642, 647 (Tex. App.—Houston [1st Dist.] 2003, no pet.). The party seeking termination need not prove that each *Holley* factor favors termination. *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). While this appellant does not contest the evidence supporting the finding of the commission of one or more statutory grounds for involuntary termination, the same evidence of acts or omissions used under section 161.001(1) of the Family Code may be probative in determining the best interest of the child. *In re A.A.A.*, 265 S.W.3d 507, 516 (Tex. App.—Houston [1st Dist.] 2008, pet. denied).

THE EVIDENCE

Appellant is the biological mother of J.K., K.S. and M.S.² At the time of trial, J.K. was twelve, K.S. was six and M.S. was five years old. O.R. is the biological father of J.K. and J.K.'s older sibling. A.S. is the biological father of K.S. and M.S. The trial court terminated the parental rights of O.R. and A.S. to their respective children. Neither A.S. nor O.R. appealed the trial court's termination order.

² The trial court named the Texas Department of Family and Protective Services as Permanent Managing Conservator and appellant as possessory conservator of appellant's oldest child. Appellant does not appeal this aspect of the trial court's judgment, as such, we do not address circumstances specific to that child.

Appellant's First Texas CPS Case

Appellant has a substantial history with Child Protective Services (“CPS”).³ Laura Casey, a family-based safety services worker for CPS, testified regarding her work with appellant and her children. Casey opened appellant’s first Texas CPS case in July 2007. Casey testified that even though appellant was expecting Casey’s first visit, the home was unsanitary when she arrived. At trial, Casey explained the home’s condition in detail.

There were roaches everywhere. You could hardly see the ceilings because the roaches were clustered. I couldn’t find the door knobs because they were covered in roaches. There was food all over the kitchen floor, dirty dishes, food all over the counters. The children’s bedrooms had mattresses with no sheets with various-colored stains on them. Both the little children were dressed only in diapers, and they were dirty.

....

It was the worst home I’ve ever seen in nearly five years.

....

The children had red bites on them, and I didn’t see any other bugs in the home but roaches. So I assume that they were roach bites.

Casey instructed appellant and A.S. that the children could not stay in the home and they must move immediately. Casey was unsure if appellant understood the deplorable condition of the home. On A.S.’s suggestion, the family moved in with A.S.’s uncle in July 2007. The family then moved into an apartment in October 2007. Casey inspected

³ Child Protective Services is a division of the Texas Department of Family and Protective Services.

the apartment in October and November 2007 and determined it was acceptable. In December 2007, Casey inspected the home again and it was dirty, but nothing extraordinary. Casey instructed appellant to clean the home and returned the next day to find the home was clean with no roaches. CPS closed the case in December 2007.

Appellant's Second Texas CPS Case

Two months after CPS closed the initial case, CPS received another referral suggesting the children were subject to physical neglect and neglectful supervision, which prompted CPS to investigate. Rosa Molly testified as the CPS investigator that responded to this referral. Molly visited appellant's home in February 2008. She found the home to be in an unsanitary and unhealthy condition. She testified there were cigarette butts, razors, coins, batteries, molded food, dirty clothes, and trash on the floor. She found roaches throughout the home, as well as other bug infestations. She explained that K.S. and M.S. did not appear clean or properly clothed. She testified the home had a very potent, sewer-type, garbage odor that required her to frequently step outside for fresh air. J.K. and his older sibling told Molly that the home had not been cleaned in weeks.

Molly testified that when she arrived the children were in the care of A.S. She testified that A.S. told her that he was out of his medication. She testified that some of A.S.'s comments caused her concern for the children's safety. She explained:

[A.S.] kept saying, I'm having bad thoughts. I'm think[ing] about doing something. I asked him, what are these bad thoughts? Are you thinking of doing anything to the children?

Not the children, but I'm going to do something. I'm going to do something. I didn't know if that meant to myself or my co-worker or if he was going to do something to himself. Doing something to himself would traumatize the children.

She described A.S.'s behavior as erratic. She testified his eye movements were back and forth, he paced, and kept turning around in circles. Molly testified that she was concerned for her own personal safety and called law enforcement to assist her.

Molly testified that when appellant arrived, appellant was very agitated and proceeded to yell profanities at A.S. in front of the children. Law enforcement had to help calm her down. Appellant told Molly that A.S. had some diagnoses, but was off his medications. A.S. agreed to go with law enforcement to the hospital for an assessment. When Molly spoke to appellant about leaving the children in the care of A.S., appellant explained that she had two jobs and because she could not afford a babysitter, it was A.S.'s responsibility to watch the kids. Molly testified that appellant was fully aware of the conditions in which the children were living. Molly testified that appellant was also fully aware that A.S. suffered from mental-health issues and was not appropriately caring for the children. Molly testified that she did not believe that appellant fully understood the magnitude of the conditions of her home or A.S.'s lack of supervision.

Molly testified she was uncomfortable leaving the children in the home. With appellant's consent, the children entered voluntary placement. Molly testified that five days later appellant called her and requested that Molly do another walk-through of the

apartment. Molly testified that with the help of others, appellant had cleaned up the apartment.

Casey testified that she revisited appellant's home in March 2008. Since appellant's home was clean again and the roach population seemed to be declining due to spraying, CPS released the children into appellant's care.

Removal of the Children

CPS continued to monitor the home and set up protective daycare to enable appellant to work. Casey testified that when she became involved in the case the second time, A.S. was no longer living with or caring for the children. However, in May 2008, Casey sought removal of the children from appellant because she believed there was a risk that appellant was physically abusing the children. Specifically, Casey testified that the director of the children's daycare informed her that she observed appellant slap M.S. on the mouth. Additionally, when Casey decided to visit appellant's home, Casey heard appellant yelling profanities at all four children as she approached appellant's apartment from the parking lot. Casey also noted that roaches remained present in every room of the home. Casey testified that appellant did not interact with her children; she just yelled at them and was very hostile with them. The children acted as if this was normal behavior for their mother. Casey testified that appellant neglected the children. On May 1, 2008, CPS removed the children from appellant's home.

Appellant's First Service Plan

Nicole Hennessey, a CPS caseworker, was responsible for the children once CPS became their legal custodian. In May 2008, Hennessey gave appellant a service plan wherein appellant was to receive individual therapy to address and resolve her anger-management issues. Hennessey testified that appellant maintained her home free from all hazards from May 2008 to September 2008. During this time, appellant also completed a psychological evaluation and began individual therapy and parenting classes. Hennessey described appellant's visits with the children during this time as "chaotic." Hennessey testified she was concerned with appellant's inability to care for the children. She explained, "Just observing a one to two hour visit, [appellant's] frustration level went from zero to 90 within 20 to 30 minutes." She testified she did not think it was possible for appellant "to control and contain all of them" on a regular basis. Hennessey testified she saw very little improvement in appellant's visits with the children through April 2009.

Hennessey testified that from September 2008 to April 2009, appellant maintained employment, but not with the same employer. During this time, appellant failed to maintain regular contact with Hennessey. Appellant did not keep Hennessey informed of her employment or housing status. By the end of the statutory period, CPS still had concerns with returning the children to appellant. CPS agreed to file a new petition to give appellant more time to receive counseling and parental training, and to give CPS more time to better assess the children's special needs. Hennessey agreed that appellant

substantially complied with the first service plan.

Appellant's Second Service Plan

In May 2009, Hennessey created another service plan for appellant, which requested that appellant receive intensive therapy consisting of at least eight sessions per month. Hennessey testified that she made this request because the children's behavioral problems had escalated and it was clear that appellant would be unable to meet their needs and provide a safe home without therapy. Hennessey testified that appellant was unable to follow through consistently with the intensive individual counseling. Pursuant to the service plan, appellant was to call Hennessey with weekly updates on her progress. Hennessey testified that from May 2009 to September 2009, appellant once again failed to maintain contact with Hennessey. Appellant also failed to show consistent employment and failed to undergo a psychiatric evaluation as requested in the plan.

Hennessey testified that appellant has had several homes and each ended up in deplorable condition. Because of this history, Hennessey testified she would recommend termination even if appellant obtained housing. Appellant never acknowledged that the children were neglected in her care or the severity of their living conditions. Hennessey testified that appellant failed to demonstrate an ability to provide a safe home for herself or her children.

Hennessey agreed that the children's behaviors had worsened since being in CPS's care. She also agreed that at the time CPS removed the children it would have been

difficult for anyone to parent all four children considering their special needs. Hennessey agreed that over time, even as the children's behavior problems worsened, appellant's level of frustration during visitations decreased and her anger subsided. Hennessey agreed that appellant tried her best. Even though appellant's control over her anger had improved, Hennessey testified she could not identify any signs that appellant could parent the children on a consistent basis. Despite this, Hennessey agreed that appellant substantially complied with the second family service plan. Hennessey testified that while appellant did make some progress, she had not progressed enough to alleviate CPS's concerns with returning the children. Hennessey testified it is in the children's best interest for the court to terminate appellant's parental rights.

CPS's Placement of the Children

Hennessey described the children's placement after they were removed from appellant. From May to December of 2008, CPS placed K.S. and M.S. together in a foster home. In December 2008, CPS sent K.S. and M.S. to their paternal aunt's home in New York. However, CPS returned the children to their original foster home in Texas thirty days later when CPS discovered that the paternal aunt had potential problems of her own with CPS in New York. K.S. and M.S. remained in this foster home for another six to eight months, when CPS separated them into different foster homes. Hennessey testified that CPS initially placed J.K. in a foster home with his older sibling for six to eight months. Because the two constantly fought and their aggression towards each other worsened, CPS

ultimately placed them in separate residential treatment centers, where J.K. remained at the time of trial.

Appellant's Visits with the Children

Sharon Snyder, a CPS employee, transported appellant's children to visits with their mother. With the exception of the three to four months before trial, Snyder monitored almost all of the children's visits with appellant. Snyder testified that appellant attended most of the visits, but missed some without calling ahead to inform anyone that she was going to miss. Appellant was regularly late to visits. Snyder described appellant's visits with her children during the first year as a "nightmare." She explained that the children "were very physical, chaotic . . . [and] would wreck the room." Several times Snyder feared for other's physical safety due to the demeanor of appellant's oldest child. During the visits, appellant was not affectionate toward her children and did not hold M.S. or K.S. Appellant did not appear interested in the children's lives. She recalled that during one of the visits, M.S. tried to stab appellant with a nine-inch serrated butcher knife. Snyder testified that while appellant's parenting skills improved during the six months prior to trial, the improvement was not enough to allay her concerns.

Guardian Ad Litem's Testimony

In May 2008, the trial court appointed Timothy and Shana Arthur as guardian ad litem of appellant's children. Timothy Arthur testified as a CASA representative and as guardian ad litem for appellant's children. Arthur recommended to the trial court that

terminating appellant's parental rights to K.S. and M.S. was in their best interest.

Arthur testified that his investigation led him to believe that while the children were in appellant's care, appellant endangered K.S. and M.S.'s emotional and physical well-being. Contributing to Arthur's belief regarding the children's endangerment was his understanding of their home conditions and A.S.'s involvement in their care. He testified that the children knew A.S. was schizophrenic and knew that he took medication for this condition. Arthur spoke with the older children's teachers who told him that the children "actually stunk and their hygiene was terrible." He spoke to appellant's employer who expressed concern over appellant's judgment in people. Arthur started questioning whether CPS would be able to return the children in August 2008 after appellant gave her oldest son a note during one of the visits informing him that he would be going home, even though she knew of his instability and that the decision regarding the children's return had not yet been made. He also questioned whether CPS should return the children when appellant failed to show up for a visitation to celebrate K.S.'s birthday. He recalled that appellant said she had broken down, but Arthur knew appellant did not have a vehicle. He offered to pick her up, but she stated she did not know where she was. Prior to this time, Arthur believed reunification possible. At the mediation in February 2009, appellant agreed to get a house and a vehicle by May, which Arthur testified she failed to do.

Arthur described appellant's initial visits with her children as chaotic. He testified

that appellant was regularly frustrated during the visits and not affectionate with the children. Arthur testified that overall K.S. and M.S. had greatly improved since the removal. As a result of the children's improvement, appellant's visits with them improved during the six months prior to trial. However, despite this improvement, Arthur testified that he had seen no signs that appellant would be able to provide for the children's needs in the future.

Arthur did not recommend termination for appellant's oldest son, but he did recommend that the trial court terminate appellant's parental right to J.K. Arthur recommended termination for J.K., even though J.K.'s therapist indicated termination would emotionally traumatize J.K.

Arthur testified that appellant neglected J.K.'s physical and academic needs. In his opinion, appellant did not do everything she could have to maintain regular contact with J.K. Arthur agreed that his January 2010 report, submitted to the court less than two months before trial, recommended not to terminate appellant's rights to J.K. He explained that he changed his opinion after going through his notes and gaining a better understanding of what termination would mean for J.K. Arthur testified that he would be concerned for K.S., M.S., and J.K.'s physical and emotional well-being if CPS returned them to appellant, as that would not be in their best interest.

Appellant's Utilization of CPS Services

Victor Love, a licensed therapist, counseled appellant from August to October 2008.

Initially appellant consistently attended his sessions, but then she became very inconsistent, prompting Love to terminate services. When Love first met appellant, after her children had been removed, his goal was to address appellant's anger problems, parenting ability, home conditions, and her relationship with A.S.

Love testified that appellant would not discuss her children during sessions unless he prompted the discussion. Even then, appellant would only mention that the children did not listen to her or respect her. Love described appellant's relationship with her children as "robotic" and "very distant" and "emotionally disconnected." Love testified that he believed returning the children to appellant would be emotionally, and potentially physically, harmful to the children. Based on his sessions with appellant, Love believed appellant neglected the children. Even if appellant obtained employment and a home, Love would be uncomfortable with returning the children to her because when appellant had these things before, she still exposed the children to neglect and physical danger.

Love testified that systemic neglect could emotionally harm a child, potentially causing poor self-worth, poor self-image, anger, and anxiety. Such neglect can result in long-term emotional trauma. Love testified that appellant was unable to acknowledge that she had any role in the abuse or neglect of her children. Love could not recommend to the court that the children be returned to appellant because he did not believe she was stable or responsible.

William Heron counseled appellant from August 2009 to October 2009. He

testified that he understood the issues preventing appellant from caring for her children included her lack of employment, lack of a vehicle, and inability to obtain housing. He testified that he believed appellant worked hard and was a good person. While he was treating appellant, she obtained employment and a vehicle, but was unable to obtain stable housing. Appellant's inability to obtain housing indicated to Heron that she would be unable to make proper decisions to provide for her children. Heron testified that appellant struggled to meet her own needs. Heron discharged appellant from treatment because he believed she would not benefit further from counseling with him due to her lack of progress as well as her failure to maintain contact with him. Heron testified that appellant showed a genuine interest and love for her children. Heron testified that if appellant could demonstrate that she had obtained housing and could maintain a home properly, it was his opinion that CPS should return the children.

Diane Featherstone testified regarding her work with appellant through Access Builds Children (ABC). Featherstone testified that appellant started working with ABC in July or August 2009. Featherstone explained ABC's "goal is to focus on the strengths of the parent; to overcome the challenges that were present when the children were removed; to learn nurturing, . . . parenting skills and applying those; and just meeting the needs of the children." Featherstone testified that appellant's strengths included her willingness to make changes, her work ethic, and her efforts at communication. Featherstone explained that appellant's main weakness was that she did not know how to put everything in place.

She further testified that during earlier visits with appellant, it was necessary for her to redirect appellant from focusing on herself to focusing on the children. Featherstone testified that appellant had between six to eight visits with her children at the ABC facility. Overall, Featherstone believed that appellant's parenting skills had improved.

Featherstone testified that appellant was occasionally late to the visits, which made the children anxious. Appellant's visitations at ABC ceased, though Featherstone was open and willing to work around appellant's work schedule. Featherstone testified that appellant never called her or tried to follow up with her for further coaching. J.K. reacted to the visits with appellant positively, indicating he enjoyed them. Featherstone testified that during the visits, appellant spoke to her children with a calm voice and she played games and interacted with them.

The Children's Therapy

Mary Beth George counseled appellant's child, K.S., from September 2009 through trial. K.S. has bipolar disorder and attention deficit hyperactivity disorder (ADHD). George testified that K.S. missed her mother, but K.S. told George she did not want to live in her old home because of the roaches. She also expressed love for her foster mother. K.S. was comfortable and well taken care of in her foster home. George explained that K.S. is an obedient child, but emotionally desires more attention. She was taking medication for her ADHD. In George's opinion, K.S.'s behavior had improved since CPS removed her from appellant's home.

Jerry Smith, a licensed professional counselor, testified as M.S.'s therapist. M.S. is appellant's youngest child. Smith testified she started counseling M.S. in 2009, and continued to counsel him every other week for 45 to 50 minutes. She testified that during therapy M.S. made statements about "being hungry" and about "physical abuse" in his biological home. She recalled that M.S. mentioned, "being beaten" on several occasions and it made him very angry and scared. M.S. told her that his father had beaten him with a stick. M.S. also spoke of physical abuse in relation to his mother. Smith testified that M.S. told her he was afraid of both his mother and his father. M.S. was diagnosed with reactive attachment disorder and hyperactivity. He has unstable moods and is physically and verbally aggressive. She described his condition as being relatively severe and requiring medication. At the time of trial, M.S. was hospitalized for extreme physical aggression, acting out, hyperactivity, and mood swings. Smith testified that these conditions are indicative of a history of physical abuse or neglect. Smith testified that M.S. would need intensive care, medical evaluation, therapy, and medication in the future. She testified it is extremely important that M.S. have a stable home life, as he does not do well with change. She testified that the ideal family for M.S. would be "parents who are highly trained[,] [v]ery patient [,] very loving, [and] caring, but still can maintain structure and discipline without any form of physical punishment." She also explained it is possible that the trauma, abuse, or neglect of a child was so severe that it can preclude the biological parent from being considered as a caretaker in the future. She testified this is a

potential concern for M.S. She further testified that appellant needs intensive individual therapy and that appellant's demonstrated inability to follow through with this counseling was a concern. She testified that M.S. would be unable to function in an unstable, chaotic environment and his aggression and emotional instability would increase. Finally, Smith testified M.S. had bonded with his foster parents, whom she considered to be excellent parents.

Subsequent to M.S.'s visits with his mother and siblings, M.S. demonstrated a negative change in behavior and became more physically aggressive. Smith testified that it was in M.S.'s best interest for the court to terminate appellant's parental rights. While M.S. is not currently adoptable because of his severe emotional and behavioral problems, Smith remained hopeful that he might improve.

Michael Stokes, a psychotherapist, testified as J.K.'s counselor at the residential treatment center (RTC) where J.K. resides. Stokes testified that he counseled J.K. for a little more than a year, with meetings every week to two weeks. Stokes testified that J.K. needs structure and supervision, but he believed he could teach appellant to recognize these needs.

When Stokes first started counseling J.K., J.K. acted like a six-year-old child. Stokes testified that J.K. has no diagnosis that would warrant such behavior, leading him to conclude the behavior was a coping mechanism. J.K. has ADHD and takes medication for this condition. J.K. reacts well to authority. Stokes did not recommend that CPS

place J.K. in a home environment, but Stokes testified that he is confident that J.K. will be ready at some point in the future to go to a family-centered environment.

Stokes testified that J.K. wants to go home to appellant. Stokes testified that he had spoken with appellant on the phone a total of two or three times concerning J.K. Through his phone conversations with appellant, Stokes perceived appellant's concern and care for J.K. However, Stokes testified that he was concerned that appellant did not call more frequently.

Stokes testified it would be difficult for J.K. if he believed he would never see his mother again. Stokes also testified that J.K. is part of a population of children that, as a group, has less than a five percent chance of adoption now or in the future. Stokes testified that "[J.K.]'s mom should be in his life as much as possible for as long as possible."

Stokes also testified that any change in J.K.'s environment would be a major setback. He testified that the residents in his facility generally do not have success when they leave unless they are much older. In discussing the ideal outcome for J.K., Stokes agreed that the ideal outcome for his care would be a team effort that would involve appellant and the RTC. Specifically, Stokes testified that J.K. "having hope that his mom is in his life and will stay in his life advances current treatment more than [his mom] not being in his life[.]" If J.K. knew that he would not be able to see appellant, Stokes testified that it would make J.K.'s situation worse and that it would take the RTC longer to get J.K.

focused. He testified that he believes that it is in J.K.'s best interests that appellant's rights not be terminated.

Appellant's Witnesses

Shawna Rather testified on behalf of appellant. She is a teacher at Willis High School. She met appellant in August 2009. In January 2010, appellant moved in with Shawna and her husband and their minor child. Rather testified that appellant helps clean their house. Rather testified that while she knew CPS had removed appellant's children, she assumed the removal was a mistake. She testified that she has let appellant babysit her child that has special needs. She testified that appellant is very good with her child, refusing to raise her voice even when the child is acting out. She testified it is her belief that the trial court should return appellant's children to her.

Rather testified that she has never met appellant's children and has no knowledge of their mental health issues, but she has agreed to provide respite care to appellant. Rather explained that she is uniquely qualified to help appellant since she had children with special needs in her classroom and is sitting for her special education certification this summer.

Maria Hagedorn also testified on behalf of appellant. Hagedorn testified that she met appellant as a coworker at Sam's Club. Appellant had transportation issues, so Hagedorn offered her assistance. She described appellant as a dependable hard worker. Hagedorn helped appellant bring her children to school for a couple of months. She

testified appellant interacted with her children like a mother. She did not notice that appellant's children were dressed inappropriately or had a bad odor. She testified that she thought appellant was too patient with her children. Appellant taught Hagedorn's daughter to swim and was extremely patient in doing so. Hagedorn testified that she believed appellant to be a "[v]ery good mother."

Appellant's Testimony

Appellant testified it is in K.S.'s and M.S.'s best interest to be returned to her at her new home. She testified that M.S. has not thrived in CPS's care. She testified she would do whatever it takes to provide for M.S. She testified she has K.S.'s best interest at heart and could provide her with a safe and stable environment. Appellant testified that she did not believe it was in J.K.'s best interest to come home, but she wants to join in family therapy with him at the RTC.

Appellant started her own company in December 2009 called J&K Repairs. In January 2010, appellant started J.B.S. Construction with Brian Rather. She testified that J.B.S. had a remodel job in January 2010, but due to an automobile accident, they were unable to complete the job. She received a concussion, whiplash, and an injury to her shoulder in the accident. She testified that the accident left her unable to work. She receives unemployment, but plans to move forward with her business. She testified that J.B.S. is currently gathering laborers and it is her intention to fill supervisory and administrative roles in the business.

Appellant testified that she received \$5,000 in settlement from her injuries, but expects additional recovery. Appellant testified that while the children were in foster care she moved out of the apartment and lived in various other places to save money while trying to locate an appropriate, affordable place to live with her children. She finally found a home to rent the day before trial began. She used a portion of her settlement proceeds to pay her rent six months in advance. However, the home was not habitable and needed repair. Appellant testified she was making the necessary repairs, and expected to be finished within two or three days. She testified that she had reliable transportation and received food stamps.

Appellant testified that up until A.S. was required to leave the home, she understood that he had Tourette's Syndrome. She blamed A.S.'s odd behaviors on his Tourette's diagnosis. She testified that she did not learn that A.S. was schizophrenic until February 2008. Appellant recalled that in 2006, A.S. had entered a psychiatric hospital because his problems were getting worse. Appellant testified that in hindsight, she should have left A.S. at that time. Appellant admitted that it was important for her to find out A.S.'s diagnosis from the psychiatric hospital, but that neither A.S. nor the hospital would tell her. Appellant testified she was shocked when she heard that M.S. had told his therapist that A.S. hit him because A.S. was "very, very possessive and protective of his babies[.]"

Appellant testified that A.S. was the children's primary caretaker when CPS dismissed her first case in December 2007. Appellant testified her home in February 2008

was “not as clean as it could have been.” She testified, “in hindsight, [she] should have taken a day off or so to make sure [that A.S.] was on top of everything.” She agreed it was not a safe place for the children to live. She was not concerned with leaving the children with A.S., as he did nothing to alarm her that he would endanger her children. She admitted that A.S. should not have been caring for the children in the condition he was in when CPS arrived, as A.S.’s behaviors were a danger to the children. Appellant testified that when she arrived, CPS had told her that A.S. had locked the children out of the house for several hours and that M.S. was wearing a pair of large boxer shorts backwards. She also learned that A.S. had not been taking his medication. In response, she admitted that she started yelling at A.S. Appellant also started throwing A.S.’s belongings out of the home until a CPS worker told her to calm down. Appellant recalled speaking to someone the night before CPS arrived about K.S. and M.S. being left outside, alone, and only wearing diapers in the winter. She testified this concerned her and agreed it posed a danger to the children. Appellant also admitted to receiving lease violations for having unauthorized adults in her home, as well as violations for having an unclean apartment. She admitted they had been in danger of eviction due to these violations when the children were removed. Appellant testified that she recognized that living in these types of conditions had emotionally harmed her children.

Appellant testified that she was getting nothing out of her counseling sessions with Victor Love. She testified that Love just wanted to talk about her relationship with A.S.,

which she no longer considered relevant. She testified that Hurricane Ike caused the disruption in her therapy sessions with Love. After Love, CPS assigned appellant to work with therapist Sherry Williams. Appellant testified she made every effort to attend counseling with Williams, but Williams failed to appear for many of her sessions. Due to problems with Williams's dependability, appellant testified she started receiving therapy from Bill Heron. Appellant testified she benefited from her sessions with Heron. She testified that Heron's testimony that he could not get in touch with her and that she would not call him back was not true. Appellant acknowledged that she needs continued counseling. She testified that through her various counseling sessions she has addressed her anger issues and that she is able to work through her anger when she is with her children.

Appellant testified that she received parent coaching from Diane Featherstone. She learned a few helpful things from Featherstone. She testified that she stopped seeing Featherstone because she had a very rigid schedule with her new job. She was critical of Featherstone and testified that Featherstone could have done more to help work around her schedule.

Appellant recalled the home they were living in when Casey first visited her in 2007, and appellant agreed that the living conditions were unsafe for her children. Appellant testified that at that time she was not working outside of the home. She specifically recalled the roaches being a serious problem, as well as clutter and trash. She

agreed with CPS that the children could not stay in the home. She explained that the conditions of the home deteriorated because she had a heat stroke and transient ischemic attacks and was unable to even care for herself.

As for the condition of her home in 2008, appellant denied that dirty clothes were mixed with clean, and she explained that the home's odor, as identified by others, was due to a broken toilet that she had reported multiple times to her landlord and even attempted to fix herself. She testified that by this time the children had undergone too many changes and were acting out and refusing to do their chores. She explained that her family was financially struggling, which required her to work seven days a week between two jobs, working approximately ten to eleven hours each day. Because she did not have transportation, depending on her shift, she left her house at 4:45 a.m. and returned around 11:00 p.m. She testified that when possible, she would wake the children up and get them ready for school.

Appellant also tried to negate Laura Casey's testimony that appellant had hit M.S. in the face at the daycare. She explained that the daycare's director spoke to her about an incident involving J.K., where J.K. had called the director a profane name. Appellant claimed that while the director explained the incident to her, the director said the profane word in front of appellant's other children. Appellant explained that she "clamped [her] hand immediately over [M.S.]'s mouth . . . [and] told him no bad word[s]." Appellant testified that she reprimanded the director in front of her staff for repeating the profane

word in front of her children and let the director know that she planned to report the incident. Appellant testified that she believes the director called CPS after this confrontation.

Appellant also tried to explain the circumstances behind her behavior when Casey found her yelling profanities at the children. She explained she was trying to get the older two children to do their chores, and found them instead sitting in her room playing video games. She did not feel well, nor did the younger two children. She was attempting to cook dinner, but could not do so because the children were acting out. She testified, “[She] had enough. That was it.” She testified that everything was going crazy and she was yelling at them when CPS came to the house and removed the children.

Appellant admitted that her oldest child had been complaining of a toothache for a couple of weeks after breaking one of his teeth. On April 21, 2008, appellant brought him to a clinic where he was diagnosed with cellulitis and an abscessed tooth that required dental treatment. CPS removed the children from her home May 1, 2008. In between the time appellant’s child was diagnosed with cellulitis and an abscessed tooth and the time CPS removed the children, appellant admitted she did not take her child to the dentist, even though at the end of April 2008 she had received \$1,200 in income tax returns. Appellant explained that she did not know her child’s condition was life threatening. While she had made him a dentist appointment, she saw no need to do so immediately since he had not finished the antibiotics prescribed by the clinic.

Appellant recalled that CPS transferred her oldest child to a new RTC in January 2010. Appellant admitted that she has not visited this child since the child was moved, and has not spoken to this child since January 2010. Appellant claimed that she was not allowed to visit or speak with this child. Appellant also admitted that she has never visited J.K., but testified she was not allowed to visit him either. Appellant testified that she spoke with J.K. on the phone almost once a week over the past fourteen months.

The factfinder heard detailed testimony from multiple witnesses that appellant was unable to obtain and maintain a suitable, clean home appropriate for the children. The factfinder also heard evidence that appellant was verbally abusive to the children. Appellant's counselors testified that appellant struggled to meet her own needs, was inconsistent in utilizing their services, and demonstrated an obvious disconnect from her children.

The record contains evidence that the children are improving in their current placement where their physical, mental, and medical needs are being met. The factfinder heard testimony from all three of the children's therapists detailing the trauma the children endured and the resulting mental and emotional damage. There is evidence that as a result of this trauma, the children will need specialized mental health care treatment in the future, which their current placement is equipped to handle.

The CPS caseworker testified it was in J.K.'s, K.S.'s, and M.S.'s best interest to terminate appellant's parental rights. The children's guardian ad litem testified he also

believed it was in J.K.'s, K.S.'s, and M.S.'s best interest to terminate appellant's parental rights. K.S.'s and M.S.'s counselors testified it was in the children's best interest to terminate appellant's rights.

J.K.'s counselor was the only witness who testified he did not believe termination was in J.K.'s best interest; however, the counselor made this determination with very limited interaction with appellant, testifying to only speaking with her over the phone, two to three times. Additionally, the counselor testified that the ideal outcome for J.K. would be a team effort between the RTC and appellant. He testified that he could counsel appellant and teach her how to recognize J.K.'s special needs. However, there is evidence in the record that appellant historically has been unable to consistently attend counseling sessions. The factfinder could have believed that appellant would not utilize the RTC's services and agreed with CPS and J.K.'s guardian ad litem in determining that termination was in J.K.'s best interest.

Appellant testified that she has started her own business and while it currently could not support her, she had plans for the business in the future. She testified that she had a stable residence that would soon be suitable for the children. She testified that she wanted the court to return K.S. and M.S. to her, but understood that J.K. needed to remain in the RTC. The record contains evidence that appellant loves her children and tried to be a good parent.

Applying the appropriate standards of review and considering the *Holley* factors, we hold the evidence is legally and factually sufficient for a reasonable factfinder to have formed a firm belief or conviction that it is in the best interest of the children for appellant's parental rights to J.K., K.S., and MS to be terminated. Accordingly, we overrule appellant's three issues and affirm the trial court's judgment.

AFFIRMED.

CHARLES KREGER
Justice

Submitted on March 30, 2011
Opinion Delivered May 19, 2011

Before McKeithen, C.J., Gaultney and Kreger, JJ.