

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-16-00485-CV**

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**IN THE INTEREST OF J.O. AND I.O.**

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**On Appeal from the 279th District Court**  
**Jefferson County, Texas**  
**Trial Cause No. C-226,242**

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**MEMORANDUM OPINION**

This is a parental rights termination case. Following a bench trial, the trial court terminated the parent-child relationships between J.O. and I.O.<sup>1</sup> and their mother, and between J.O. and I.O. and their respective fathers.<sup>2</sup> By clear and convincing evidence, the trial court found that statutory grounds existed to terminate

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<sup>1</sup> We identify minors by their initials to protect their identities. *See* Tex. R. App. P. 9.8.

<sup>2</sup> We note that J.O. and I.O. have different biological fathers, and that both fathers were parties to the suit.

the relationships between the children and their parents, and it found that terminating the parental relationship between J.O. and I.O. and their parents would be in J.O.'s and I.O.'s best interests. *See* Tex. Fam. Code Ann. § 161.001(b)(1)(D), (E), (O), (P), (b)(2) (West Supp. 2016). J.O.'s and I.O.'s respective fathers did not appeal from the order terminating their parental rights, but Mother timely appealed from the order terminating her rights. In five issues, Mother challenges the legal and factual sufficiency of the evidence supporting the four statutory grounds on which the court terminated her rights, and she challenges the legal and factual sufficiency of the evidence supporting the trial court's best-interest findings. We overrule Mother's appellate issues and affirm the judgment.

#### Standard of Review

In a legal sufficiency review of an order terminating a parent's rights, the evidence from the trial is reviewed "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). In reviewing a factual sufficiency challenge to an order terminating a parent's rights, the appeals court gives "due consideration to evidence that the factfinder could reasonably have found to be clear and convincing." *Id.* In a factual sufficiency review, the factual sufficiency standard requires the appellate court to be highly

deferential to the factfinder's role in evaluating and weighing the evidence. *Id.* Additionally, the findings made by the factfinder will be deemed to be supported by sufficient evidence unless the evidence that cannot be credited in favor of the findings is so significant that the factfinder could not have reasonably formed a firm belief or conviction that the challenged findings are true. *See id.*

### Endangerment

For convenience, we discuss issue two before discussing the other issues in Mother's brief since resolving that issue against Mother would dispose of four of Mother's five appellate issues. *See* Tex. R. App. P. 47.1 (requiring the appellate court to issue a written opinion that is as brief as practicable but that addresses all issues necessary to a final disposition of the case being appealed). In issue two, Mother challenges the trial court's finding that she engaged in conduct or knowingly placed J.O. and I.O. with persons who engaged in conduct that endangered their physical or emotional well-being. *See* Tex. Fam. Code Ann. § 161.001(b)(1)(E). Under section 161.001(b)(1)(E), the term "[e]ndanger" means "to expose to loss or injury; to jeopardize." *In re M.C.*, 917 S.W.2d 268, 269 (Tex. 1996) (per curiam) (quoting *Tex. Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987)). "Although 'endanger' means more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment, it is not necessary that

the conduct be directed at the child or that the child actually suffers injury.” *Id.* (citing *Boyd*, 727 S.W.2d at 533).

Mother’s challenge to the trial court’s endangerment finding requires that we determine whether the evidence before the trial court<sup>3</sup> demonstrates that the endangerment to J.O. and to I.O. was the direct result of Mother’s conduct, which includes Mother’s acts, omissions, or Mother’s failure to act. *See In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.). In this case, there was substantial evidence showing that Mother used illegal drugs, mainly cocaine. To support an endangerment finding, the testimony must establish more than a parent’s single act or omission, as section 161.001(b)(1)(E) of the Family Code requires proof showing that the parent engaged in a voluntary, deliberate, and conscious course of conduct that endangered the child’s well-being. *Id.* Evidence showing that a parent uses illegal drugs, including evidence that the parent engaged in such conduct even though the parent knew her parental rights were in jeopardy, together with evidence showing the effect of using drugs on the parent’s ability to parent, may justify a factfinder’s conclusion that the parent endangered the child. *See In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009); *In re M.E.-M.N.*, 342 S.W.3d 254, 263 (Tex. App.—Fort Worth 2011, pet denied).

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<sup>3</sup> The record shows the factual disputes were resolved in a bench trial.

The evidence in the trial pertinent to the Department's claims against Mother shows that J.O. and I.O. were removed in an emergency removal in March 2016 after the Department of Family and Protective Services was notified that the children were in an apartment without adult supervision. In the investigation that followed, the Department learned that Mother was homeless, that Mother was living in Houston, and that Mother voluntarily placed J.O. and I.O. with her mother, who was their grandmother. The Department also learned that Mother was using cocaine and other drugs. Testimony in the trial indicates that Mother continued to use cocaine and other illegal drugs in the nine-month period in which J.O. and I.O. were in the Department's custody. When Mother testified during the trial, Mother admitted that she had been using cocaine and other drugs since 2011, and that she began using drugs shortly after J.O. was born. Mother explained that she placed J.O. and I.O. with her mother because she was using cocaine. Additionally, Mother admitted that she had never passed a drug test. Mother also testified in the trial that she last used cocaine and other drugs two weeks before the trial. There was no testimony in the trial showing that Mother had successfully completed a drug abuse treatment program.

Because the consistent use of illegal drugs exposes a child to the possibility that the parent may be impaired or imprisoned, evidence of the prolonged and

continued use of illegal drugs is evidence that supports a trial court's finding of endangerment under section 161.001(b)(1)(E). *Walker v. Tex. Dep't of Family & Protective Servs.*, 312 S.W.3d 608, 617-18 (Tex. App.—Houston [1st Dist.] 2009, pet. denied); *see also In re J.O.A.*, 283 S.W.3d at 345. Additionally, continued illegal drug use in face of a parent's loss of her parental rights is conduct showing a voluntary, deliberate, and conscious course of conduct, which by its nature, endangers a child's well-being. *See Cervantes-Peterson v. Tex. Dep't of Family & Protective Servs.*, 221 S.W.3d 244, 253-54 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (upholding termination based on parent's continued use of drugs).

While Mother testified in the trial that she was drug-free and could control her drug use, as the factfinder, the trial court was not required to believe that Mother had acquired control over her desire to use illegal drugs. *See In re J.F.C.*, 96 S.W.3d at 266. Evidence of ongoing use of illegal substances allows the factfinder in a termination case to form a firm belief that a parent's drug use was voluntary, deliberate, and the result of the parent's conscious choice. *See In re J.T.G.*, 121 S.W.3d at 125. Given the relatively short duration of the period Mother claimed she was drug-free, and the evidence showing that Mother's use of illegal substances had gone on for years, the trial court could reasonably conclude that Mother would continue to use illegal drugs. *See In re J.O.A.*, 283 S.W.3d at 346.

Mother argues that the evidence is factually insufficient to support the trial court's endangerment finding. In our opinion, the evidence about Mother's prolonged use of illegal drugs allowed the trial court to reasonably form a firm belief that Mother's conduct endangered J.O.'s and I.O.'s physical and emotional well-being. *See id.* We conclude the evidence admitted during the trial was legally and factually sufficient to allow the trial court to form a firm belief or conviction that Mother's drug use had endangered and would continue to endanger the physical and emotional well-being of her children. We overrule issue two.

#### Best Interest

In issue five, Mother argues that the evidence admitted in the trial is legally and factually insufficient to support the trial court's best-interest findings. Tex. Fam. Code Ann. § 161.001(b)(2). With respect to a child's best interest, there is a "strong presumption that the best interest of a child is served by keeping the child with a parent." *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006); *see* Tex. Fam. Code Ann. § 153.131 (West 2014). Additionally, courts presume that a prompt and permanent placement of a child in a safe environment is in the child's best interest. Tex. Fam. Code Ann. § 263.307(a) (West Supp. 2016). In reviewing a trial court's best-interest

finding, we consider the nine non-exhaustive factors identified in *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976).<sup>4</sup>

When the trial occurred, J.O. was five and I.O. was three. The evidence admitted in the trial shows that Mother had been using cocaine as of the date of the trial for at least four years, and shows that she had been using other illegal substances for more than five years. The evidence also showed that Mother continued to use illegal drugs after the Department took custody of J.O. and I.O., and that she had used cocaine less than two weeks before the trial. The evidence relevant to Mother's drug use allowed the trial court to infer that Mother did not have the ability to control her desire to use illegal drugs. Although there was evidence showing the Department had encouraged Mother to get assistance for her drug problems, the evidence did not

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<sup>4</sup> In *Holley*, the Texas Supreme Court applied the following factors in reviewing a best-interest finding:

- the child's desires;
- the child's emotional and physical needs, now and in the future;
- the emotional and physical danger to the child, now and in the future;
- the parenting abilities of the parties seeking custody;
- the programs available to assist the parties seeking custody;
- the plans for the child by the parties seeking custody;
- the stability of the home or the proposed placement;
- the parent's acts or omissions which may indicate that the existing parent-child relationship is improper;
- any excuse for the parent's acts or omissions.

*Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976).



show she had completed the program. The evidence also showed that the Department had encouraged Mother to take parenting classes, but the evidence did not show that Mother had completed any parenting classes.

The evidence in the trial includes testimony from the caseworker, formerly employed by the Department, who had been assigned to handle the Department's case involving the children during the majority of the time the children were in the Department's care. The caseworker's testimony is relevant to J.O.'s and I.O.'s physical and emotional needs. The caseworker testified that the children were placed with their maternal aunt after the Department took custody of them, and that they both loved being there. Although the children did have several specific educational needs, the caseworker indicated that the children were making gains toward their educational goals after they were placed with their aunt. The caseworker testified that although Mother had visited the children, the children did not seem to know her and Mother did not spend much time with them. According to the caseworker, at some meetings Mother appeared under the influence of drugs, and the caseworker indicated that at times, Mother could not control her emotions or her behavior. The caseworker testified that the children's aunt was the person who she felt could best meet the needs the children had regarding education and housing. The caseworker also stated that she thought the children's aunt would best meet their emotional

needs. The caseworker's testimony indicates that the Department's goal was for J.O. and I.O. to be adopted by their maternal aunt.

From the evidence, the trial court could reasonably infer that Mother's inability to discontinue her drug use posed a significant ongoing problem and that terminating Mother's parental rights would serve J.O.'s and I.O.'s best interests. *See In re M.R.*, 243 S.W.3d 807, 821 (Tex. App.—Fort Worth 2007, no pet.) (explaining that a parent's history of drug use is relevant to the trial court's best-interest finding); *Dupree v. Tex. Dep't of Protective & Regulatory Servs.*, 907 S.W.2d 81, 86 (Tex. App.—Dallas 1995, no writ) (allowing a factfinder to give significant weight to a parent's drug-related conduct in making a best-interest finding).

We conclude that legally and factually sufficient evidence supports the trial court's best-interest finding. We overrule issues two and five. We need not resolve issues one, three, and four, as resolving those issues is not required to affirm the trial court's judgment. Tex. R. App. P. 47.1.

AFFIRMED.

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HOLLIS HORTON  
Justice

Submitted on April 17, 2017  
Opinion Delivered June 1, 2017

Before McKeithen, C.J., Horton and Johnson, JJ.