



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 02-15-00128-CV**

IN THE INTEREST OF M.B. AND  
F.R., CHILDREN

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FROM COUNTY COURT AT LAW NO. 2 OF PARKER COUNTY  
TRIAL COURT NO. CIV-13-0834

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**MEMORANDUM OPINION<sup>1</sup>**

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**I. INTRODUCTION**

This is an ultra-accelerated appeal<sup>2</sup> from an order terminating the parental rights of Appellant A.B. (Mother) to her children M.B. (Mark) and F.R. (Felicia).<sup>3</sup>

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<sup>1</sup>See Tex. R. App. P. 47.4.

<sup>2</sup>See Tex. R. Jud. Admin. 6.2(a) (requiring appellate court to dispose of appeal from a judgment terminating parental rights, so far as reasonably possible, within 180 days after notice of appeal is filed).

<sup>3</sup>Pursuant to Texas Rule of Appellate Procedure 9.8(b)(2), we use pseudonyms for Mother's minor children. See Tex. R. App. P. 9.8(b)(2).

In four issues, Mother argues that the evidence is legally and factually insufficient to support the trial court's findings under Texas Family Code section 161.001(b)(1)(D), (E), and (O) and section 161.001(b)(2).<sup>4</sup> See Act of Mar. 30, 2015, 84th Leg., R.S., S.B. 219, art. 1, § 1.078, sec. 161.001(b) (West) (to be codified as an amendment to Tex. Fam. Code Ann. § 161.001) (hereinafter cited as Tex. Fam. Code Ann. § 161.001(b)). We will affirm.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Overview**

The record demonstrates that Mother, at age twenty-three, has lived a nomadic life. Mother exhibited a history of moving from shelter to shelter and from state to state, as well as a pattern of neglecting her children by leaving them with a caretaker who was mentally unstable and by leaving them unattended in a locked room at the shelter, which resulted in having the children removed by Child Protective Services (CPS). Additionally, Mother chose to use drugs while she was pregnant with Mark and again when she was pregnant with Felicia but chose not to take medication for her diagnosed mental health issues, for which she agreed she should be on medication. Because Mother challenges the legal and factual sufficiency of the evidence to support the trial court's best-interest finding, we set forth a detailed summary of the record below.

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<sup>4</sup>The trial court also terminated the parental rights of the alleged father of Mark and the unknown father of Felicia, but neither father has appealed the termination order.

## **B. CPS Referrals and Removal of the Children**

### **1. Arizona CPS Cases**

In October 2011, a CPS case was opened in Arizona because Mark tested positive for marijuana at birth. Mother admitted that she had used methamphetamine and marijuana while she was pregnant with Mark. The allegation of medical neglect was ruled out because Mother was in rehab.<sup>5</sup>

On December 26, 2011, Arizona CPS received a referral for neglect of Mark by Mother. The referral alleged that Mother had left Mark with a friend and that the friend had called the police because she did not know whether Mother would return and because the friend did not have any supplies to care for an infant. The allegations were substantiated.

In April 2012, Arizona CPS received a referral alleging that Mother and Mark were staying at a shelter and that she had left him unattended. The record does not disclose the disposition of this allegation.

### **2. Texas CPS Cases**

On May 16, 2013, the Texas Department of Family and Protective Services (the Department) received a referral alleging medical neglect of Mark by Mother for taking him from a hospital against medical advice. The Department followed up with the doctor, who said that he had advised Mother to continue with Mark's medications and that he was not going to admit Mark to the hospital. The

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<sup>5</sup>Mother had gone to rehab when she was eight months' pregnant and had stayed there until Mark was two months old.

medical records provided conflicting information, and the allegation was ruled out.

During the investigation, the Department received information that Mother had said that she had thoughts of hurting Mark and four-month-old Felicia when they cried; Mother admitted to making the statement. Additionally, the staff of the shelter where Mother and the children were staying in Granbury had heard the children screaming and crying and had knocked on the door of the room, but Mother did not answer. The staff person walked into the room, found both children screaming, and located Mother—crying with her hands on head—in the bathroom with the lights off. Mother admitted to leaving Felicia in the room alone at times and to leaving Mark in the room unattended when he was sleeping. Due to the risk to the children, a case for Family-Based Safety Services (FBSS) was opened. Mother was offered anger management classes, daycare, Mental Health and Mental Retardation (MHMR) services, parenting classes, and a domestic violence class.

On August 2, 2013, Connie Crawford, an employee with the Department, conducted a home visit with Mother at New Haven Shelter in Mineral Wells.<sup>6</sup> Crawford found Felicia in a locked bedroom alone on the top bunk. Crawford

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<sup>6</sup>Because Mother's thirty days had elapsed at Mission Granbury, the thirty-day shelter where she had been staying in Granbury, she and her children were relocated to a two-year program at New Haven Shelter.

explained to Mother that she was not to leave her children alone for any reason at any time.

On August 14, 2013, the Department received a phone call from the director of the New Haven Shelter stating that he had concerns about Mother's parenting because there were complaints that Mother's room smelled of urine, that she had continued to leave Felicia alone in the bedroom, and that Mother was having anger outbursts toward her children and other tenants. The following day, Crawford made a visit to check on Mother and the children, and Mother admitted that she was having issues with a couple of women at the shelter and had experienced some anger outbursts. Crawford reminded Mother that she could not leave the children unattended for any length of time or for any purpose, and Mother stated that she did not leave her children alone.

On September 4, 2013, the shelter called to inform the Department that Mother had left Mark and Felicia alone in the bedroom with the door locked and that Mother had left the key in the room. The shelter had a key and used it to get the children out of the room. Crawford went to the shelter and met with Mother, who said that she had left the children so that she could eat in the kitchen and watch a thirty-minute television program. Mother signed a safety plan stating that she would not leave Mark and Felicia unattended in the bedroom for any reason. The safety plan stated that failure to comply would result in further action by CPS, up to and including the removal of the children.

Nine days later, on September 13, 2013, the Department received a referral stating that Mother had locked the children in the room again and had left the shelter. The Department removed the children from Mother's care and placed them with family friends. Three days later, the children were taken to a clinic, where Felicia was diagnosed with an ear infection, scabies, and respiratory issues; Mark was diagnosed with swollen tonsils, scabies, and respiratory issues. It was discovered that the children were not on Medicaid insurance and were not receiving WIC benefits or food stamps, contrary to Mother's assertions that they were.

On September 25, 2013, the Department filed a petition for managing conservatorship of the children or, alternatively, termination of the parent-child relationship between Mother and the children because she had been told multiple times in person and in writing that she could not leave the children locked in the room for any reason and she had continued to do so, "putting the children at great risk of harm." The Department had provided Mother with FBSS services from May 2013 until the filing of the petition in September 2013.

The initial placement for the children fell through in October or November 2013, and the Department moved the children to a foster home, where they remained at the time of the termination trial.

### **C. Mother's Absence from Texas**

Mother did not attend the first permanency hearing in March 2014 because she had left Texas the last week of February 2014 to travel to Georgia to visit

family. The Department did not hear from Mother again until May 13, 2014, when Amanda Gray, the conservatorship worker for Mark and Felicia, received a call from the Miami District Attorney's Victims Advocate (MDAVA) stating that Mother had called 911 and had reported that she had been forced into a sex trafficking ring; MDAVA rescued Mother and asked Gray for assistance in bringing Mother back to Texas. Arrangements were made for Mother to fly back to Texas around Memorial Day weekend 2014 and for her to stay at a shelter in Dallas.

Mother returned to Texas for two weeks and then left in June 2014 to live with a friend in Tennessee.<sup>7</sup> Mother did not return to Texas until the middle of February 2015.

#### **D. Mother's Service Plan**

Mother's service plan required her to complete anger management classes; to complete a psychological assessment and to follow the recommendations; to attend individual counseling until successfully discharged; to take advantage of community resources; to attend all scheduled visitations with the children; to maintain stable and legal employment; to maintain safe,

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<sup>7</sup>Gray received records from MHMR in Tennessee showing that Mother had gone to MHMR once a month from October 2014 to January 2015 but that the MHMR doctor could not prescribe medication for her because she was pregnant. When Gray asked Mother who the father of the baby was, she said that she did not know and that the pregnancy was a result of the sex trafficking. The child was born in Tennessee in January 2015, and Mother relinquished her parental rights to the child so that he could be adopted by a friend of hers.

stable, and appropriate housing; to refrain from involvement in criminal activities; to comply with all requests for random drug testing; to actively engage in treatment through MHMR and to follow all recommendations, including taking medication as prescribed; to actively engage in all parenting classes; and to maintain contact with the caseworker throughout the case. Gray testified that Mother had not complied with her court-ordered service plan.<sup>8</sup>

### **1. Drug Use**

Gray said that Mother was given a swab test by the initial caseworker when the case was first opened and that Mother had tested negative for all substances. Gray testified that due to Mother's lengthy absence from the state, Gray had not been able to verify Mother's sobriety during the time that Gray had the case.

### **2. Mother's Mental Health**

With regard to whether Mother was under MHMR services at the time of the termination trial, Gray said that Mother had provided her with a copy of a letter that said she did not qualify financially for services at Pecan Valley and that there was nothing to indicate that she had completed a psychological assessment that would qualify for her service plan. Gray said that the case notes

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<sup>8</sup>Because we dispose of Mother's challenge to the trial court's section 161.001(b)(1) finding on endangerment grounds, rather than on the ground of service-plan compliance, we do not detail Mother's failure to complete each service on her plan but instead set forth only those items that are pertinent to either the endangerment analysis or the best-interest analysis.



indicated that Mother had previously been diagnosed with depression. Gray testified that she had seen signs that Mother was depressed as reflected in her text messages, voice messages, and phone calls in which she stated that the Department was doing this to her. Gray also noted that at the outset of the case, Mother was dealing with anxiety and depression in the shelter because she was not able to handle or care for her children.

### **3. Mother's Parenting Abilities**

Gray testified that Mother had completed a parenting class shortly after the case was opened in late 2013 but that she had not been able to demonstrate appropriate parenting skills at visitations with her children, which was required by the service plan. Gray happened to observe two visits before she was assigned to the case and noted that Mother's behavior was very depressed and lackadaisical and that she did not show much interest in playing with the children; Mother sat in the middle of the floor and let Mark play around her while Felicia slept.

Gray testified that Mother had not visited the children since she had left Texas in February 2014.<sup>9</sup> While Mother was in Tennessee from June 2014 to February 2015, she called Gray and asked if she could visit with the children if she came to Texas, and Gray said that she would check with the ad litem and the

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<sup>9</sup>Mother said that her last visit occurred before she moved to Tennessee in June 2014.

therapist due to some behavior issues that the children had previously exhibited before and after visits. Mother's visits were ultimately denied.

Gray testified that during the times when Mother was out of the state and contacted Gray, about half of the times Mother had asked how her children were doing. Gray said that Mother, however, had not sent cards, letters, or gifts through Gray to give to the children.

#### **4. Mother's Inability to Achieve Stability**

Gray's records indicated that Mother had been employed at Subway in Mineral Wells from early 2014 to when she left for Georgia at the end of February 2014. Mother reported to Gray that she had worked at Starbucks when she had lived in Tennessee, but Mother did not send Gray the paystubs that Gray had requested. Mother left a message for Gray the day before the termination trial saying that she was not able to transfer to Starbucks in Weatherford and that she was not working but that she had been hired at E-Z Mart.

With regard to establishing housing, when Mother was out of the state and checked in with Gray, Gray asked Mother for an address for where she was staying, and Mother responded that she was staying somewhere with a friend but refused to provide an address. The day before the termination trial, Mother told Gray that she was living with a friend but still did not provide Gray with an address.

### **E. Grandmother's Testimony**

Mother's mother (Grandmother) testified that Mother was diagnosed with bipolar disorder and ADD at "a pretty young age" and that Mother had taken medication and had seen a psychiatrist once a month. Grandmother said that Mother had issues with methamphetamine and marijuana during high school and when she lived in Arizona.

Grandmother testified that due to a situation involving Mark's father's treatment of Mother and Mark, Grandmother took Mark, with Mother's permission, from Arizona and brought him back to Texas because Mother and Grandmother were concerned for his safety with his father. Grandmother testified that Mother was ultimately able to leave the situation with Mark's father and move with Felicia to Texas. Because Grandmother was living with a roommate at that time, it was not ideal for Mother and the children to live with Grandmother, so they lived at a women's shelter not far from Grandmother. Grandmother said that Mother got kicked out of the shelter and went to a shelter in Fort Worth and then moved to the shelter in Granbury.

Grandmother said that Mother had told her that the counselors or psychiatrists she had seen had said that she was not bipolar and had given her medication for depression and anxiety. Grandmother said that during the FBSS case, the Department placed the children with her for two weeks because Mother was off her medication and was talking crazy. Because Grandmother was not

able to care for two “little bitty babies at that time,” the Department ultimately returned the children to Mother, who was staying at a shelter in Granbury.

When MDAVA called Grandmother and told her that Mother had been in a sex trafficking ring and asked whether Grandmother would let Mother stay with her if she returned to Texas, Grandmother said no because it was not in the best interest of Grandmother’s younger daughter, who was a junior in high school. Grandmother explained that she had a rough history with Mother and that she felt that her younger daughter had suffered over the years when Mother was in the home with them because Grandmother had directed so much of her attention to Mother and to getting her the help that she needed.

Grandmother believed that Mother had a support structure in order to make her situation work in Texas. Grandmother testified that Mother had been offered services several times and had not taken advantage of them and that Mother had not availed herself of all the services available to her at each shelter. Grandmother said that she thought that Mother was very capable of changing and that Mother wanted to change, but Grandmother said that she had not seen Mother actually making changes.<sup>10</sup>

Grandmother testified that from the time that Mark was fifteen months old to age three, she had not seen Mother demonstrate stability. Grandmother

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<sup>10</sup>Grandmother admitted that she did not see Mother from the time that she was seventeen and left for Arizona until she was twenty-one years old and that she had seen Mother sporadically for about a year before she left Texas.

opined that Mother was not capable of parenting Mark and Felicia at the time of the termination trial because Mother did not have the capability to provide for them due to her job situation and her living situation.

## **F. Mother's Testimony**

### **1. Arizona CPS Cases**

Mother testified that there were only two CPS cases involving her in Arizona. With regard to the referral when Mark was born, she said that although she had gone to rehab for her methamphetamine and marijuana use when she was eight months' pregnant with Mark, the marijuana was still in Mark's system when he was born. Arizona CPS investigated the situation, and the case was closed because Mother had remained in rehab until Mark was two months old.

Mother gave her side of the story regarding the second referral that occurred after she had dropped off two-month-old Mark at her best friend's<sup>11</sup> house. Mother said that she had called her best friend and had asked her to watch Mark because as a single mom, Mother did not have any help, was getting frustrated, and needed time for herself. Mother said that her best friend agreed to watch Mark for twelve hours. Mother said that after she had dropped off Mark, diapers, and formula at her best friend's house in Mesa, Mother went back to her

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<sup>11</sup>Mother said that she was roommates with her best friend when she was pregnant with Mark and that her best friend had used drugs. Mother testified that her best friend was sober, but Mother was not sure why she had let her watch Mark. Mother said that she and her friend were not mentally stable; Mother believed that her best friend was bipolar because one minute she loved Mother and the next minute she was "cussing out" Mother.

home in Phoenix and relaxed, cleaned, watched television, put her phone on silent, and fell asleep. Mother woke up the next morning and saw multiple notifications on her phone from her best friend. Mother said that she had ended up leaving Mark for twenty-four hours and that her best friend had given Mark soda and two-percent milk and had called Arizona CPS. Mother said that Arizona CPS came and evaluated the home where Mother was staying and closed the case because Mark was being cared for. Mother said it was a mistake to leave Mark with her best friend, to have her phone on silent, to fall asleep, and to not return at the time she was supposed to.

## **2. Texas CPS Cases**

Mother testified regarding the allegations from the CPS referrals in Texas. Mother admitted that there was an incident when Mark was screaming and that she had shut the door and had locked it while he screamed on the other side of the door. Mother said that she had done that because she was frustrated.

Mother admitted that when CPS came to see her and Mark in August 2013, she had left Felicia locked in a bedroom on the top bunk because she was sleeping but stated that there were bars on the bunk.

Mother admitted that she had signed a safety plan, stating that she would not leave the children unattended in her room. When asked whether she had violated the safety plan twice after signing it, she said that she had left the premises on one occasion, and that was when CPS removed the children, and

that the other time, she had gone to the bathroom or to the kitchen and did not find it necessary to wake the children and to take them with her.

Mother further explained what had occurred on September 13, 2013, when she had locked her children in the bedroom at 10 p.m. and had left the premises for two hours at the shelter. Mother testified that she had gotten into an argument with a friend who had let her borrow a television and wanted it back. Mother said that she had returned the television but had told the friend how she felt about the situation, the friend argued with Mother, and Mother threw a chair at a mirror and broke it. Mother said that was when she realized that she was angry and that she needed to calm down because she did not want to put her hands on her friend, who was an older lady. Mother said that she did not think at the time about asking someone to watch her children. Mother said that she did not know that she was going to be gone for two hours walking and listening to music. She said that the house mom tried to get in the locked room while Mother was gone, that she had not lost the room key but had taken it with her, and that was why CPS had removed her children.

Mother testified that she had never left the children unattended when they were awake; “[t]hey were always sleeping. They may have woken up.” Mother said that she had locked the children in the room because she was staying in a shelter and did not know the other residents. Mother admitted that if one of her children had choked while they were locked in the room, she would not have known. Mother said that she could see how CPS might be concerned about the

fact that she had not thought about who would watch her children when she had locked them in the room.

### **3. Mother's Absence from Texas**

With regard to her absence from Texas while she was in Tennessee from June 2014 to February 2015, Mother said that she had rented a two-bedroom apartment with her boyfriend and that they had both paid rent. Mother said that she had stayed in Tennessee because she was convinced that her family member who lived there was going to help her get on her feet, but then she discovered that she was pregnant and stayed. Mother explained that because of the way the child was conceived—through sex trafficking—she did not want to keep him. Mother said that a friend had adopted the child. Mother said that she was proud of herself in Tennessee because she had a job and a place to live. Mother agreed that she had left all of that to come back to Texas to obtain possession and conservatorship of her children.

### **4. Service Plan Compliance**

Mother said that she was offered services during the FBSS case before her children were removed but that she had procrastinated on taking the classes. Mother agreed that she had received a service plan when the children were removed and that the service plan was put into place to help her regain possession and conservatorship of her children. Mother said that she had attempted to work the services on the plan, but she agreed that she had not completed the services on her plan at the time of the termination trial.



### **a. Mental Health**

Mother testified that she had completed a psychological exam and was diagnosed with depression and anxiety in Tennessee. Mother testified that she had received treatment through MHMR in Tennessee but that she was not given medication because she was pregnant at that time. Mother said that the denial of visits with her children after she had left Texas had compounded her depression. But Mother said that she had not gone to a private doctor in Texas to obtain medication because she felt like she was doing well, though she admitted that she could use medication.

### **b. Anger Management Classes**

Mother said that when she locked Mark inside the room while he was crying, she was frustrated that she could not handle his crying. Mother said that although the children's crying irritated her when she had sad episodes, she had worked on that by taking anger management classes. Mother said that she would not hurt her children and that was why she had gone for walks—to calm down. Mother said that she had re-enrolled in anger management classes at the time of the termination trial because she believed that she needed that service.

### **c. Parenting Abilities**

Mother said that she had taken parenting classes three times previously<sup>12</sup> and was on her fourth time at the time of the termination trial because she felt like every time that she had gone to class, she had learned something new that was helpful to her and her children. Mother said that she had signed up for more parenting classes because she still did not have her children and therefore must be doing something wrong. Mother said that each time she had locked her children in a room, she knew that was not a good parenting skill and that she had not used the techniques that she had learned in her first parenting class while she still had the children in her care. Mother said that she had learned parenting skills but that she had not been able to demonstrate them because she had not been allowed visitation after she had left Texas.

### **d. Drug Use**

Mother testified that she had relapsed twice since rehab: before she became pregnant with Felicia and while she was pregnant with Felicia. Mother said that she had used methamphetamine multiple times in one day and that she had used marijuana once. Mother later testified that she had used methamphetamine once and marijuana twice since Mark's birth and that when she had used, Mark was with his father, and she was pregnant with Felicia.

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<sup>12</sup>Mother had not given Gray a certificate showing that she had completed any parenting classes but said that she could obtain her parenting class certificates from Addiction Recovery Ministries (A.R.M.).

Mother said that she did not seek treatment; she stopped using drugs on her own and had not used drugs since Felicia was born. Mother said that the Department had requested that she take one drug test and that the results were negative for all substances.

#### **e. Stability in Employment and Housing**

Mother said that she had worked at Starbucks when she had lived in Tennessee but that she was unable to transfer to the Starbucks in Weatherford because she did not have transportation from Mineral Wells.<sup>13</sup> Mother said that she had recently obtained employment with E-Z Mart, that she was going to get paid \$8.25 an hour, that she would be paid weekly, and that she was supposed to start her job at E-Z Mart at 11 a.m. on the day of the termination trial.<sup>14</sup> Mother said that she had called E-Z Mart to let them know that she was in trial and would miss her first day of work.

Mother agreed that she had lived at multiple residences prior to the removal of her children; that since the removal, she had been at multiple residences; and that her pattern of moving frequently did not lend itself to a stable environment for two young children. Mother also agreed that staying in a

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<sup>13</sup>Mother said that her car had been repossessed. Once she started working, Mother planned to make a \$500 down payment for a vehicle.

<sup>14</sup>Mother initially testified that she had already started her job, that she had not been paid, that her first paycheck would be withheld, and that she would be paid the following week. Mother later admitted that she had not worked at E-Z Mart at any time prior to the termination trial.

stable environment would be in the children's best interest, and she said that she was capable of maintaining a stable environment and had done so before. She said, "It's just I got my kids taken away, that's kind of a traumatic experience, you know. It's not easy. I'm not going to be emotionally all put together. It's kind of hard when you have nobody to run to. I mean, I'm helping myself, basically, and I'm doing what I can."

With regard to Mother's living situation at the time of the termination trial, Mother testified that she was living with a friend in Mineral Wells. Mother said that she had a room of her own and had furniture for her children but that she wanted to get her own place. Mother said that she had looked into renting a two-bedroom apartment but that first she needed to work and obtain a paycheck. Mother testified that she would be able to provide safe and stable housing for her children. But Mother admitted that if the children were returned to her at the conclusion of the termination trial, she did not have a home that they could go to.

## **5. Future Plans**

When asked whether she would be able to provide for the children if her parental rights were not terminated, Mother said, "Yes, I'm working on it. I know once I do have a place and I'm working and I have a vehicle, I don't doubt myself as mother at all." Mother said that her boyfriend was still in Tennessee but that she wanted to focus on her relationship with her children. Mother also hoped to take classes online to further her education.

## **G. Testimony and Reports Regarding the Children**

### **1. Gray's Testimony**

Gray testified that Mark and Felicia had been in the same therapeutic foster home since they were removed from the initial placement in October 2013 and that she saw the children once a month. When the children first came into foster care, Mark exhibited severe separation anxiety and struggled to express his anger appropriately and verbally. Gray said that reports stated that Mark was angry and very confused and was very upset on the three occasions when Mother did not show for visits because he knew where he was going.

Gray testified that prior to Mark's third birthday, he had received Early Childhood Intervention (ECI) Services and was receiving therapy to help him with anger management. Gray testified that over time, Mark had made progress on the therapy goals that were set for him, which included reducing his anxiety, reducing his defiant behavior, and being able to appropriately express his emotions. Gray said that Mark was working on redirection and on listening to his foster parents. Gray said that she had observed Mark interacting with his foster parents and that they and their biological children were great with Mark and Felicia.<sup>15</sup> Gray said that the notes revealed that it took some time before Mark trusted his foster parents or a parental figure in general. But Gray said that the foster parents had become Mark's parents, that he "definitely listens more

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<sup>15</sup>Gray said that the foster parents have three biological children who are all older than Mark and Felicia.

frequently and trusts them,” and that some of his emotional growth was due to that trust.

Gray testified that she had seen a bond between the foster mother and Mark because he responded to her corrections and because he went easily to the foster mother. Gray had seen the foster mother comfort Mark and hug and kiss him, and he was receptive to the affection that he received from her and reciprocated. Gray said that she saw some of the same interactions between Mark and the foster father but not as often because he was usually at work when Gray visited. Gray said that Mark views the foster father as his dad. Gray said that Mark had not asked about Mother.

Gray described two-year-old Felicia as “very loving, very much the little mom, very much a princess.” Gray said that Felicia is very sweet and very intelligent and could carry on a conversation with an adult as if she were five years old. Gray’s understanding was that Felicia was a little standoffish with her foster parents at first but that she had ultimately latched onto the foster parents faster than Mark. Gray said that Felicia had crawled into the foster mother’s lap and said, “This is my mommy,” implying that she wanted her own time with the foster mother and declaring that Mark would have to wait his turn. Gray said that Felicia was very bonded with all of the members of the foster family.

Gray said that both children were in play therapy at the time of the termination trial. Gray said that the children’s therapist for their play therapy had said that both children were making progress but that she still had a few areas of

concern. Gray said that both children were attending preschool/daycare four or five days per week, depending on whether they had play therapy or whether CPS or CASA was scheduled to visit.

With regard to health issues, Gray said that most of Mark's issues were emotional rather than medical in nature but that Mark had his tonsils and adenoids removed in February 2015 due to sleep apnea and numerous cases of tonsillitis. Felicia had tubes placed in her ears, but that was her only medical issue.

## **2. Grandmother's Testimony**

Grandmother testified that she had routinely interacted with the children, that she had kept them for a week while the foster family was on vacation, and that she had gone over to the foster family's house for family events. Grandmother testified that the children had thrived in their foster home.

Grandmother said that the children had grown by leaps and bounds and that Felicia was now very mobile and talkative. Grandmother said that Felicia had counted down the minutes until she could go back to her foster family and that Mark also looked forward to his foster parents picking him up from her house. Grandmother described Mark as "very loving" and said that he referred to his foster parents as "Mommy" and "Daddy." Grandmother said that when the foster parents showed up, the children "scream[ed] like little banshees and r[a]n towards them." Grandmother said that this indicated to her that the children were very bonded to their foster parents.

Grandmother testified that the foster parents have provided a good stable home for Mark and Felicia; the children share a room and have plenty of toys. Grandmother said that the children were always clean and that they always brought plenty of clothes when they came to stay with her. Grandmother testified that the foster parents were appropriate in redirecting and disciplining the children. Grandmother said that the foster parents had called to let her know about the children's injuries or health issues, including when Mark jumped off the couch and hurt his leg and when he had surgery to remove his tonsils and adenoids, as well as when Felicia had surgery to place tubes in her ears. Grandmother testified that the foster parents had told her that they intend to adopt the children.

### **3. Progress Report**

The permanency plan and progress report from October 2014 stated that Mark's activity and risk-taking behaviors put him at risk for injuries and that he had jumped off a couch and had broken his left tibia in April 2014. It was noted that Mark was bonded with his foster parents. Felicia was described as generally happy, exhibited a developing vocabulary, was very bonded to her foster mother, was active, and loved to play. She had bowed legs, but her orthopedist had not recommended any corrective efforts. The permanency plan states that both children require a stable, well-structured home environment where behavioral expectations are clear, concise, and consistent.



#### **4. CASA Volunteer's Report**

The CASA volunteer's report from March 24, 2015—a week before the termination trial began on April 1, 2015—noted that Mark was three and a half years old and was thriving in his foster home. Mark played computer games with the older boys in the home and loved interacting with others. The CASA volunteer noted that Mark was “quite articulate” for his age and that he showed off by singing songs, counting, and playing games. Mark attended a preschool program five days a week and knew the days of the week and months of the year. An ECI Specialist/play therapist worked with Mark on his behavioral issues, and the CASA volunteer noted that Mark had shown improvement since being in foster care. Mark continued to have nightmares, but the number was diminishing. Mark had been diagnosed with sleep apnea, had his tonsils and adenoids removed in February 2015 to address this condition, and was doing better after the surgery.

The CASA volunteer's report noted that Felicia was a little over two years old and was a content child who got along with her brother and siblings in the foster home. Felicia was described as “quite verbal” for her age and loved to sing, count, dance, and participate in “girly” activities like having her nails painted and playing “a princess.” Felicia attended the same preschool as Mark and could count to twelve. The CASA volunteer noted that “[t]he love among the entire family is evident.”

## **H. Recommendations**

The Department asked the trial court to terminate Mother's parental rights to Mark and Felicia due to Mother's instability, including her absence from the state from June 2014 through February 2015; her failure to establish a place to live with her children; her decisions to leave her children unattended on numerous occasions; her decision to leave Mark with a person Mother knew was unstable; and Mother's unaddressed mental health issues. The Department's plan was for the children to be adopted by their foster parents.

The ad litem recommended that the trial court terminate Mother's parental rights to Mark and Felicia, stating that termination was in the children's best interest.

The CASA volunteer's report recommended that Mother's parental rights to Mark and Felicia be terminated because it was in the children's best interest.

Mother testified that the trial court should not terminate her parental rights to Mark and Felicia. Mother said that she did not want to sign a voluntary relinquishment because she loves her children, had gotten sober because of them, and had changed her life because of them. Mother said that she had really learned from neglecting her children and her anger and that she was getting better. Mother said that the children were currently in a good situation, that she had heard nothing but good things from the foster family, that she was happy for her children because they deserved to be happy, and that she wanted what was best for them. But she said that she felt that she should get a chance to be a

mother as well. She also said that she would be “happy either way”—if the children were placed with her or with the foster parents.

### **I. Disposition**

After hearing the testimony and reviewing the exhibits, the trial court found by clear and convincing evidence that Mother had knowingly placed or had knowingly allowed the children to remain in conditions or surroundings that had endangered their physical or emotional well-being; that Mother had engaged in conduct or had knowingly placed the children with persons who had engaged in conduct that had endangered the physical or emotional well-being of the children; that Mother had failed to comply with the provisions of a court order that specifically established the actions necessary for her to obtain the return of the children, who had been in the permanent or temporary managing conservatorship of the Department for not less than nine months as a result of the children’s removal from Mother under chapter 262 for abuse or neglect; and that termination of the parent-child relationship between Mother and Mark and Felicia was in their best interest. This appeal followed.

### **III. BURDENS OF PROOF AND STANDARDS OF REVIEW**

In a termination case, the State seeks not just to limit parental rights but to erase them permanently—to divest the parent and child of all legal rights, privileges, duties, and powers normally existing between them, except the child’s right to inherit. Tex. Fam. Code Ann. § 161.206(b) (West 2014); *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985). Consequently, “[w]hen the State seeks to sever

permanently the relationship between a parent and a child, it must first observe fundamentally fair procedures.” *In re E.R.*, 385 S.W.3d 552, 554 (Tex. 2012) (citing *Santosky v. Kramer*, 455 U.S. 745, 747–48, 102 S. Ct. 1388, 1391–92 (1982)). We strictly scrutinize termination proceedings and strictly construe involuntary termination statutes in favor of the parent. *In re E.N.C.*, 384 S.W.3d 796, 802 (Tex. 2012); *E.R.*, 385 S.W.3d at 554–55; *Holick*, 685 S.W.2d at 20–21.

Termination decisions must be supported by clear and convincing evidence. Tex. Fam. Code Ann. §§ 161.001(b), .206(a) (West 2014); *E.N.C.*, 384 S.W.3d at 802. “[C]onjecture is not enough.” *E.N.C.*, 384 S.W.3d at 810. Due process demands this heightened standard because “[a] parental rights termination proceeding encumbers a value ‘far more precious than any property right.’” *E.R.*, 385 S.W.3d at 555 (quoting *Santosky*, 455 U.S. at 757–59, 102 S. Ct. at 1397); *In re J.F.C.*, 96 S.W.3d 256, 263 (Tex. 2002); see also *E.N.C.*, 384 S.W.3d at 802. Evidence is clear and convincing if it “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 2014); *E.N.C.*, 384 S.W.3d at 802.

For a trial court to terminate a parent-child relationship, the Department must establish by clear and convincing evidence that the parent’s actions satisfy one ground listed in both the petition and family code section 161.001(b)(1) and that termination is in the best interest of the child. Tex. Fam. Code Ann. § 161.001(b); *E.N.C.*, 384 S.W.3d at 803; *In re J.L.*, 163 S.W.3d 79, 84 (Tex.

2005). Both elements must be established; termination may not be based solely on the best interest of the child as determined by the trier of fact. *Tex. Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987); *In re C.D.E.*, 391 S.W.3d 287, 295 (Tex. App.—Fort Worth 2012, no pet.).

### **A. Legal Sufficiency**

In evaluating the evidence for legal sufficiency in parental termination cases, we determine whether the evidence is such that a factfinder could reasonably form a firm belief or conviction that the challenged ground for termination was proven. *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005).

We review all the evidence in the light most favorable to the finding and judgment. *Id.* We resolve any disputed facts in favor of the finding if a reasonable factfinder could have done so. *Id.* We disregard all evidence that a reasonable factfinder could have disbelieved. *Id.* We consider undisputed evidence even if it is contrary to the finding. *Id.* That is, we consider evidence favorable to termination if a reasonable factfinder could, and we disregard contrary evidence unless a reasonable factfinder could not. See *id.* “A lack of evidence does not constitute clear and convincing evidence.” *E.N.C.*, 384 S.W.3d at 808.

We cannot weigh witness credibility issues that depend on the appearance and demeanor of the witnesses because that is the factfinder’s province. *J.P.B.*, 180 S.W.3d at 573, 574. And even when credibility issues appear in the

appellate record, we defer to the factfinder's determinations as long as they are not unreasonable. *Id.* at 573.

### **B. Factual Sufficiency**

We are required to perform “an exacting review of the entire record” in determining whether the evidence is factually sufficient to support the termination of a parent-child relationship. *In re A.B.*, 437 S.W.3d 498, 500 (Tex. 2014). In reviewing the evidence for factual sufficiency, we give due deference to the factfinder's findings and do not supplant the judgment with our own. *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). We determine whether, on the entire record, a factfinder could reasonably form a firm conviction or belief that the parent violated (D), (E), or (O) of section 161.001(b)(1) and that the termination of the parent-child relationship would be in the best interest of the child. Tex. Fam. Code Ann. § 161.001(b)(1)(D), (E), (O), (2); *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002). If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction in the truth of its finding, then the evidence is factually insufficient. *H.R.M.*, 209 S.W.3d at 108.

### **IV. SUFFICIENT EVIDENCE TO SUPPORT SECTION 161.001(b)(1) FINDING**

In her first and second issues, Mother argues that the evidence is legally and factually insufficient to support the trial court's endangerment findings under Texas Family Code section 161.001(b)(1)(D) and (E).

## A. Endangerment Grounds

“Endanger” means to expose to loss or injury, to jeopardize. *Boyd*, 727 S.W.2d at 533; *In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.). Under section 161.001(b)(1)(D), it is necessary to examine evidence related to the environment of the children to determine if the environment was the source of endangerment to the children’s physical or emotional well-being. *J.T.G.*, 121 S.W.3d at 125. Conduct of a parent in the home can create an environment that endangers the physical or emotional well-being of a child. *In re W.S.*, 899 S.W.2d 772, 776 (Tex. App.—Fort Worth 1995, no writ). For example, parental and caregiver illegal drug use and drug-related criminal activity support the conclusion that the children’s surroundings endanger their physical or emotional well-being. See *In re S.D.*, 980 S.W.2d 758, 763 (Tex. App.—San Antonio 1998, pet. denied).

Under section 161.001(b)(1)(E), the relevant inquiry is whether evidence exists that the endangerment of the child’s physical well-being was the direct result of the parent’s conduct, including acts, omissions, or failures to act. See *J.T.G.*, 121 S.W.3d at 125; see also Tex. Fam. Code Ann. § 161.001(b)(1)(E). It is not necessary, however, that the parent’s conduct be directed at the child or that the child actually suffers injury. *Boyd*, 727 S.W.2d at 533; *J.T.G.*, 121 S.W.3d at 125. The specific danger to the child’s well-being may be inferred from parental misconduct standing alone. *Boyd*, 727 S.W.2d at 533; *In re R.W.*, 129 S.W.3d 732, 738 (Tex. App.—Fort Worth 2004, pet. denied). To determine

whether termination is necessary, courts may look to parental conduct occurring before and after the child's birth. *In re D.M.*, 58 S.W.3d 801, 812 (Tex. App.—Fort Worth 2001, no pet.). Illegal drug use during pregnancy can support a charge that the mother has engaged in conduct that endangers the physical and emotional welfare of the child. *In re M.L.B.*, 269 S.W.3d 757, 760 (Tex. App.—Beaumont 2008, no pet.). Also as part of the endangering-conduct analysis, a court may consider a parent's failure to complete a service plan. See *In re R.F.*, 115 S.W.3d 804, 811 (Tex. App.—Dallas 2003, no pet.).

As a general rule, conduct that subjects a child to a life of uncertainty and instability endangers the child's physical and emotional well-being. See *S.D.*, 980 S.W.2d at 763. A factfinder may infer from past conduct endangering the well-being of the child that similar conduct will recur if the child is returned to the parent. *In re M.M.*, No. 02-08-00029-CV, 2008 WL 5195353, at \*6 (Tex. App.—Fort Worth Dec. 11, 2008, no pet.) (mem. op.). Further, "evidence of improved conduct, especially of short-duration, does not conclusively negate the probative value of a long history of drug use and irresponsible choices." *In re J.O.A.*, 283 S.W.3d 336, 346 (Tex. 2009).

Because the evidence pertaining to subsections 161.001(b)(1)(D) and (E) is interrelated, we conduct a consolidated review. See *In re T.N.S.*, 230 S.W.3d 434, 439 (Tex. App.—San Antonio 2007, no pet.); *J.T.G.*, 121 S.W.3d at 126.



## B. Analysis

Mother consolidated her arguments regarding the sufficiency of the evidence to support the trial court's endangering-environment finding and endangering-conduct finding. We address each of her arguments in turn.

Mother argues that the Department failed to present any evidence of an endangering environment or endangering conduct because there is no evidence that the children were not in their designated beds on the night of September 13, 2013; that the children were in any way harmed; or that the children even awoke while Mother was gone. But Mother admitted that for up to two hours, she had left her two children, both of whom were under age three, unsupervised and locked in a room where she would have no idea if they choked. Mother also admitted that every time she did this, it was not a good parenting decision. To the extent that Mother argues that leaving her children unattended on a few occasions fails to constitute clear and convincing evidence that she pursued a "course of conduct" that endangered the physical and emotional well-being of Mark and Felicia, we note that the "course of conduct" language that Mother uses is not found in the statutory grounds for termination listed in section 161.001(b)(1)(D) or (E). See Tex. Fam. Code Ann. § 161.001(b)(1)(D), (E). Instead, the "course of conduct" language appears to come from *Boyd*, which dealt with whether a parent's imprisonment could constitute evidence of endangering conduct under former Texas Family Code section 15.02(1)(E). 727

S.W.2d at 534.<sup>16</sup> To the extent that case law requires a “course of conduct,” the factfinder was free to believe—based on numerous reports of Mother’s leaving the children unattended and locked in a room at the shelter—that Mother had left the children unsupervised on more than one occasion. See *In re H.A.G.*, No. 04-14-00396-CV, 2014 WL 6612416, at \*2–4 (Tex. App.—San Antonio [14th Dist.] Nov. 21, 2014, no pet.) (mem. op.) (focusing on evidence of leaving young child unsupervised in endangerment analysis); *In re K.F.*, No. 09-02-00117-CV, 2002 WL 1877194, at \*1–3 (Tex. App.—Beaumont Aug. 15, 2002, no pet.) (not designated for publication) (same).

Mother also argues that her past drug use was not an issue in this case, but in reality, Mother’s sobriety could not be verified due to her almost year-long absence from the state. Moreover, Mother admitted during the case that she had used methamphetamine and marijuana when she was pregnant with Mark and again while pregnant with Felicia and that Mark had tested positive for marijuana at birth. See *In re M.D.V.*, No. 14-04-00463-CV, 2005 WL 2787006, at \*3 (Tex. App.—Houston [14th Dist.] Oct. 27, 2005, no pet.) (substitute mem. op. on reh’g) (under an endangerment analysis under subsection (E), rejecting the suggestion that a baby born with the abnormal condition of marijuana in her system had not

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<sup>16</sup>The “course of conduct” language appears to have originated in *H.W.J. v. State Department of Public Welfare*, 543 S.W.2d 9, 10–11 (Tex. Civ. App.—Texarkana 1976, no writ). *H.W.J.*, like *Boyd*, looked at terminating a parent’s parental rights when the parent’s persistent criminality, which did not directly endanger the child, led to protracted incarceration. 543 S.W.2d at 10–11.

been harmed simply because there was no evidence of further medical effects). As a result of this information, the Department had included random drug testing on Mother's service plan, and Gray testified that Mother did not complete that task on her service plan.

Mother argues that there is no evidence that she had endangered her children's emotional or physical well-being when she was not medicated for her mental illnesses. The record, however, demonstrates that Mother testified that while she was not mentally stable, she left Mark with a friend whom Mother knew had used drugs in the past and whom Mother admitted was also not mentally stable. Additionally, there were reports that Mother had anger outbursts toward her children, and Mother admitted that she had thoughts of hurting her children when they cried. Mother also testified that she had not gone to a private doctor in Texas to obtain medication but that she "could use medication." See *In re L.L.F.*, No. 02-11-00485-CV, 2012 WL 2923291, at \*15 (Tex. App.—Fort Worth July 19, 2012, no pet.) (mem. op.) (considering a parent's failure to take medication to treat mental health issues as a factor in creating an environment that endangers the child's emotional or physical well-being).

Mother also argues that her poverty is not a sufficient ground for terminating her parental rights to Mark and Felicia. Yet, it is not Mother's poverty that is at issue but instead her inability to demonstrate any stability as evidenced by her moving from shelter to shelter; leaving the state for almost twelve of the

fourteen months prior to the termination; and failing to establish a safe, stable, and appropriate home where the children could live.

Mother further argues that there is no evidence that the children's basic needs were not met or that the children were not cared for while in Mother's care. Yet, the record demonstrates that shortly after the removal, the children were taken to a clinic where Felicia was diagnosed with an ear infection, scabies, and respiratory issues, and Mark was diagnosed with swollen tonsils, scabies, and respiratory issues. Moreover, it was discovered that the children were not on Medicaid insurance and were not receiving WIC benefits or food stamps, contrary to Mother's assertions.

Mother concedes that she did not complete the services on her court-ordered service plan. See *R.F.*, 115 S.W.3d at 811 (stating that as part of the endangering-conduct analysis, a court may consider a parent's failure to complete a service plan). And although Mother testified at trial that she was living with a friend and had recently obtained employment, Mother admitted that if the children were returned to her at the conclusion of the termination trial, she did not have a home that they could go to. See *J.O.A.*, 283 S.W.3d at 346 (stating that "evidence of improved conduct, especially of short-duration, does not conclusively negate the probative value of a long history of drug use and irresponsible choices").

Viewing all the evidence in the light most favorable to the trial court's judgment and recognizing that the factfinder is the sole arbiter of the witnesses'

credibility and demeanor, we hold (1) that there is clear and convincing evidence on which a reasonable factfinder could have formed a firm belief or conviction that Mother had knowingly placed or had knowingly allowed Mark and Felicia to remain in conditions or surroundings that had endangered Mark's and Felicia's emotional or physical well-being and (2) that there is clear and convincing evidence on which a reasonable factfinder could have formed a firm belief or conviction that Mother had engaged in conduct or had knowingly placed Mark and Felicia with persons who had engaged in conduct that had endangered their physical or emotional well-being. See Tex. Fam. Code Ann. § 161.001(b)(1)(D), (E); *H.A.G.*, 2014 WL 6612416, at \*2–4 (holding evidence legally sufficient to support termination findings under (D) and (E) based on facts that mother had left child unattended and unsupervised on multiple occasions); *In re S.R.*, 452 S.W.3d 351, 360–65 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (holding evidence legally sufficient to support termination findings under (D) and (E) based on mother's drug use, her failure to complete her services, and her failure to participate in services related to treatment for mental health issues); *In re J.G.K.*, No. 02-10-00188-CV, 2011 WL 2518800, at \*39–41 (Tex. App.—Fort Worth June 23, 2011, no pet.) (mem. op.) (holding evidence legally sufficient to support endangering environment and endangering conduct grounds based on mother's instability in constantly moving to different houses, irresponsible choices in allowing children's Medicaid to lapse and in leaving children with mentally ill person, her inability to control her anger, and her drug use); *Sawyer v. Tex. Dep't*

*of Protective & Regulatory Servs.*, No. 03-02-00286-CV, 2003 WL 549216, at \*9 (Tex. App.—Austin Feb. 27, 2003, no pet.) (mem. op.) (holding evidence legally sufficient to support termination under (D) and (E) because mother had a history of mental illness, housing and financial instability, and drug use).

Giving due deference to the factfinder’s endangering-environment and endangering-conduct findings, without supplanting the factfinder’s judgment with our own, and after reviewing the entire record, we hold that a factfinder could reasonably form a firm conviction or belief that Mother had knowingly placed or had knowingly allowed Mark and Felicia to remain in conditions or surroundings that had endangered their emotional or physical well-being and that Mother had engaged in conduct or had knowingly placed Mark and Felicia with persons who had engaged in conduct that had endangered the children’s physical or emotional well-being. See *H.A.G.*, 2014 WL 6612416, at \*2–4; *S.R.*, 452 S.W.3d at 360–65; *J.G.K.*, 2011 WL 2518800, at \*39–41.

We overrule Mother’s first and second issues. Because, along with a best-interest finding, a finding of only one ground alleged under section 161.001(b)(1) is necessary to support a judgment of termination, we need not address Mother’s third issue challenging the trial court’s finding under subsection (O) of section 161.001(b)(1). See Tex. R. App. P. 47.1; see also *In re E.M.N.*, 221 S.W.3d 815, 821 (Tex. App.—Fort Worth 2007, no pet.); *In re S.B.*, 207 S.W.3d 877, 886 (Tex. App.—Fort Worth 2006, no pet.).

**V. SUFFICIENT EVIDENCE TO SUPPORT SECTION 161.001(b)(2)  
BEST-INTEREST FINDING**

In her fourth issue, Mother argues that the evidence is legally and factually insufficient to support the trial court's best-interest finding.

**A. Presumption and *Holley* Factors**

There is a strong presumption that keeping a child with a parent is in the child's best interest. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006).

We review the entire record to determine the child's best interest. *In re E.C.R.*, 402 S.W.3d 239, 250 (Tex. 2013). The same evidence may be probative of both the subsection (b)(1) ground and best interest. *Id.* at 249; *C.H.*, 89 S.W.3d at 28. Nonexclusive factors that the trier of fact in a termination case may also use in determining the best interest of the child include:

- (A) the desires of the child;
- (B) the emotional and physical needs of the child now and in the future;
- (C) the emotional and physical danger to the child now and in the future;
- (D) the parental abilities of the individuals seeking custody;
- (E) the programs available to assist these individuals to promote the best interest of the child;
- (F) the plans for the child by these individuals or by the agency seeking custody;
- (G) the stability of the home or proposed placement;
- (H) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and

(l) any excuse for the acts or omissions of the parent.

*Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976) (citations omitted); see *E.C.R.*, 402 S.W.3d at 249 (stating that in reviewing a best-interest finding, “we consider, among other evidence, the *Holley* factors”); *E.N.C.*, 384 S.W.3d at 807.

These factors are not exhaustive; some listed factors may be inapplicable to some cases. *C.H.*, 89 S.W.3d at 27. Furthermore, undisputed evidence of just one factor may be sufficient in a particular case to support a finding that termination is in the best interest of the child. *Id.* On the other hand, the presence of scant evidence relevant to each factor will not support such a finding. *Id.* That is, “[a] lack of evidence does not constitute clear and convincing evidence.” *E.N.C.*, 384 S.W.3d at 808.

### **B. Analysis of *Holley* Factors**

With regard to the desires of the children, the record demonstrates that Mark was approximately three and a half years old and that Felicia was a little over two years old; thus, they did not testify at trial. The record demonstrated that initially Mark had become upset when Mother missed visits, but as the case went on, Mark did not ask about her. Although Mother testified that she loves the children, both Gray and Grandmother testified that the children were bonded to their foster parents and that the children identified the foster parents as their parents, referring to their foster parents as “Mommy” and “Daddy.” See *Smith v. Tex. Dep’t of Protective & Regulatory Servs.*, 160 S.W.3d 673, 682 (Tex. App.—Austin 2005, no pet.) (stating that best-interest focus is on the children, not the



needs and desires of the parent). Moreover, the fact that Mother had not visited with the children in almost a year due to her decision to leave the state supports a conclusion that there is little, if any, emotional bond between the children and Mother. *Cf. In re K.K.J.*, No. 02-13-00139-CV, 2013 WL 4506883, at \*7 (Tex. App.—Fort Worth Aug. 22, 2013, no pet.) (mem. op.) (stating that there was little, if any, emotional bond between children and mother who had not visited children in ten months due to her incarceration). The trial court was entitled to find that this factor weighed in favor of termination of Mother’s parental rights to the children.

With regard to the emotional and physical needs of the children now and in the future, the children’s basic needs included food, shelter, and clothing; routine medical and dental care; a safe, stimulating, and nurturing home environment; and friendships and recreational activities appropriate to their ages. The permanency plan states that both children require a stable, well-structured home environment where behavioral expectations are clear, concise, and consistent. Although Mother testified that she would be able to provide safe and stable housing for the children in the future, she admitted that she had not demonstrated the ability to provide a stable environment for the children due to her numerous moves and that she had no place for the children to live if they were returned to her at the conclusion of the termination trial because she had not started her new job. The trial court was entitled to find that this factor weighed in favor of termination of Mother’s parental rights to the children.

With regard to the emotional and physical danger to the children now and in the future, the evidence demonstrated that Mother had used drugs while pregnant with both Mark and Felicia. Additionally, even after Mother had signed a safety plan agreeing to not leave her young children unattended, she had continued to lock them in a room alone, “putting the children at great risk of harm,” as alleged in the affidavit to the petition for custody filed by the Department. Mother admitted that she had no way to know if the children were choking when they were locked in the room by themselves. Mother had also admitted that it was a mistake to leave Mark with her best friend, whom Mother knew was not mentally stable. And Mother had not demonstrated emotional stability when the children were in her care as shown by her frustration with their crying and her outburst of throwing a chair at a mirror when she was upset with a resident in the shelter. The trial court was entitled to find that this factor weighed in favor of termination of Mother’s parental rights to the children.

With regard to Mother’s parental abilities, the record reveals that CPS first became involved with Mother and Mark in Arizona because Mark tested positive for marijuana, and Mother admitted at trial that she had used drugs while pregnant with both Mark and Felicia. Although Mother testified that she did not doubt her ability to parent, she admitted that each time she had locked her children in the room alone, she knew that she was not demonstrating good parenting skills. Mother had also admitted that it was a mistake to leave Mark with her best friend, whom Mother knew was not mentally stable. Moreover, the

record demonstrates that Mother had taken parenting classes three times and was enrolled for a fourth time at the time of trial but that she had not implemented the skills that she had learned during the few visits that she attended before she left the state; she had not shown much interest in playing with the children during the two visits that Gray had observed. The trial court was entitled to find that this factor weighed in favor of termination of Mother's parental rights to the children.

The record revealed that Mother had failed to take advantage of the FBSS services and the court-ordered CPS services that she was offered. Grandmother also testified that Mother did not avail herself of the services offered by the shelters that she lived at while she was in Texas. The trial court was entitled to find that this factor weighed in favor of termination of Mother's parental rights to the children.

With regard to the plans for the children by the individual seeking custody and the stability of the home or proposed placement, Mother's plans for the children included for them to grow up happy and healthy, but she had not established a stable home for them to live in at the time of the termination trial. The foster parents, who had cared for the children for the eighteen months preceding the trial and who wanted to adopt the children, had demonstrated that they could provide a stable home. The trial court was entitled to find that these factors weighed in favor of termination of Mother's parental rights to the children.

With regard to the acts or omissions of Mother that may indicate the existing parent-child relationship is not a proper one, the analysis set forth

above—which details Mother’s drug use while she was pregnant with Mark and Felicia, Mother’s decision to be absent from the state for almost twelve months while the case was pending, her failure to establish a home where her children could live, her decision to leave her children unattended on numerous occasions, her decision to leave Mark with a person Mother knew was mentally unstable, and Mother’s unaddressed mental health issues—reveals that the existing parent-child relationship between Mother and the children is not a proper parent-child relationship. The trial court was entitled to find that this factor weighed in favor of termination of Mother’s parental rights to the children.

As for any excuse for the acts or omissions of the parent, Gray testified that Mother blamed the Department for “doing this to her,” and Mother testified that she had no support in Texas. Mother’s testimony was controverted by Grandmother—who testified that Mother had a support structure that would allow her situation to work—and by the record—which revealed that Mother had lived a transient lifestyle even before the Department removed the children. The trial court was entitled to find that this factor weighed in favor of termination of Mother’s parental rights to the children.

Viewing all the evidence in the light most favorable to the best-interest finding and considering the nonexclusive *Holley* factors, we hold that the trial court could have reasonably formed a firm conviction or belief that termination of the parent-child relationship between Mother and the children was in the children’s best interest, and we therefore hold the evidence legally sufficient to

support the trial court's best-interest finding. See Tex. Fam. Code Ann. § 161.001(b)(2); *Jordan v. Dossey*, 325 S.W.3d 700, 733 (Tex. App.—Houston 2010, pet. denied) (holding evidence legally sufficient to support the trial court's finding that termination of mother's parental rights was in child's best interest when most of the best-interest factors weighed in favor of termination); see also *In re T.R.M.*, No. 14-14-00773-CV, 2015 WL 1062171, at \*11–12 (Tex. App.—Houston [14th Dist.] Mar. 10, 2015, no pet.) (mem. op.) (holding evidence legally sufficient to support trial court's best-interest finding based on mother's lack of a safe, stable home environment; lack of stable employment; noncompliance with services; and drug use).

Similarly, reviewing all the evidence with appropriate deference to the factfinder, we hold that the trial court could have reasonably formed a firm conviction or belief that termination of the parent-child relationship between Mother and the children was in the children's best interest, and we therefore hold that the evidence is factually sufficient to support the trial court's best-interest finding. See Tex. Fam. Code Ann. § 161.001(b)(2); *Jordan*, 325 S.W.3d at 733; *S.B.*, 207 S.W.3d at 887–88 (“A parent's drug use, inability to provide a stable home, and failure to comply with [a] family service plan support a finding that termination is in the best interest of the child.”).

We overrule Mother's fourth issue.

## VI. CONCLUSION

Having overruled Mother's first, second, and fourth issues, which are dispositive of this appeal, see Tex. R. App. P. 47.1, we affirm the trial court's judgment terminating Mother's parental rights to Mark and Felicia.

/s/ Sue Walker  
SUE WALKER  
JUSTICE

PANEL: WALKER, MEIER, and GABRIEL, JJ.

DELIVERED: July 16, 2015