



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

NO. 02-17-00193-CV

IN THE INTEREST OF G.H., A
CHILD

FROM THE 323RD DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 323-102615-15

MEMORANDUM OPINION¹

Appellant L.H. (Father) appeals the trial court's judgment terminating his parental rights to his son, G.H. (Gordon).² In three issues, Father contends that the evidence is legally and factually insufficient to sustain the trial court's findings supporting termination. We disagree and affirm the trial court's judgment.

¹See Tex. R. App. P. 47.4.

²We use aliases to refer to various individuals associated with this appeal. See Tex. Fam. Code Ann. § 109.002(d) (West 2014); Tex. R. App. P. 9.8(b)(2).

I. BACKGROUND

Father and L.F. (Mother) are Gordon's biological parents. Mother gave birth to Gordon in January 2011. Father became responsible for raising him because, according to Father, Mother was involved in drugs and had legal problems. Father eventually began a relationship with A.C. (Alexa), and they began caring for Gordon and for Alexa's biological children: S.C. (Sally), J.C. (Jackie), S.C. (Steven), and S.C. (Sarah).³ Father worked outside the home, and Alexa stayed home with the children.

Father and Alexa each have a history of involvement with Child Protective Services (CPS). In 2009 and again in 2010, CPS found that Alexa had been neglectful in supervising children. In December 2012, one of Gordon's hairs tested positive for methamphetamine. In 2013, CPS reached a "reason to believe" finding concerning Father's neglectful supervision of children, including Gordon, and CPS temporarily removed Gordon from Father's home. Father participated in services offered by CPS. In 2014, after Gordon had been returned to Father's care, CPS made another "reason to believe" finding of neglectful supervision of several children by Father and Alexa. Father and Alexa engaged in further services offered by CPS.

In March 2015, when Gordon was just over four years old and while Father and Alexa were still raising him, he became sick. A hospital admitted Gordon

³Father is Sarah's biological father. He is not the biological father of Sally, Jackie, or Steven.

because of his electrolyte imbalance and his severe malnutrition from lack of eating and drinking. Donna Wright, a pediatric nurse, met with Gordon. His condition, including his levels of potassium and sodium, was severe enough to concern medical personnel about the potential for cardiac arrhythmia or cardiac arrest. He was below the fifth percentile on a growth chart. He required constant monitoring and the receipt of fluids and blood transfusions. Alexa stated at the hospital that Gordon had been eating oatmeal and Pop-Tarts and had been drinking Pedialyte and water. Alexa also said that in the prior week, Gordon's abdomen had been distended when he had eaten, that he had recently vomited, and that his penis was swollen.

Wright noticed that Gordon was emaciated, pale, and lethargic and that he had cuts and different-colored bruises across his body and what appeared to be dried blood on his head. The amount of bruising led Wright to believe that the injuries were not accidental; she became concerned that Gordon had been both abused and neglected. To Wright, some of the bruises appeared to be about the size of an adult thumbprint. Wright concluded that Gordon "would have to have not eaten for a . . . long period of time to have the level of malnourishment that he had, including . . . osteopenia."⁴ Wright also determined that Gordon's penis, which was reddish, was either injured or infected. Specialists determined that

⁴Osteopenia is a "[d]ecreased calcification or density of bone." Stedman's Medical Dictionary 1391 (28th ed. 2006).

Gordon did not have an underlying health problem causing his malnutrition or his bruising. During his ten-day hospital stay, he gained weight.

Following Gordon's hospital stay, the Department of Family and Protective Services (the Department) placed him with Alexa's mother and Alexa's stepfather. While there, Gordon gained more weight. According to Michelle Mullins, an employee of the Department's Family Based Safety Services program, Gordon was also "always clean" during that time. While Gordon was not in Alexa and Father's possession, they took parenting classes and participated in counseling.

In July 2015, the Department began the process of transitioning Gordon back to Alexa and Father's care. Mullins was concerned that Father and Alexa excessively disciplined Gordon because she observed punishments in which he had to hold his hands in the air for long periods of time. On one of those occasions, Alexa told Gordon to raise his hands and then fell asleep. When Mullins noticed that Gordon had been holding up his hands for a long time, Father told Mullins that it was Alexa's responsibility to tell Gordon to put his hands down because she had imposed that punishment.

In August 2015, while Gordon was living with Alexa's mother and Alexa's stepfather, Wright again saw him. By that time, he had gained weight and was in the 50th percentile on a growth chart. Wright concluded that the issues related to Gordon's malnutrition had been resolved.

That same month, Dr. Nichelle Wiggins, a clinical psychologist, met with Father. She noticed that Father had poor hygiene, including long and dirty nails. She also saw scarring on Father's arms from where he had self-mutilated when battling depression. Dr. Wiggins learned that Father had spent time in foster care as a child and had been physically and emotionally abused there.

Father told Dr. Wiggins that Gordon had an eating disorder that had caused him to lose weight. Father also told Dr. Wiggins that he had a tendency to become involved in relationships with women who cheated on him or deceived him, including Alexa. Father admitted to Dr. Wiggins that he had disciplined children by spanking them and by popping their mouths with his fingers. He also conceded that he had a history of using drugs and alcohol and said that he had once almost died from alcohol poisoning.

Dr. Wiggins concluded that Father is

the type of person that tends to bottle things up. He represses things, he hold[s] things in to the point to where he can develop tension [and] anxiety and that's when he's most likely to express himself inappropriately. He tends to want to avoid conflict usually. He's that type of person, but once he's pushed and things have built up in him[,] that's when you will tend to see the acting out.

When Dr. Wiggins asked Father what one thing he would change about himself, Father said "nothing." Father admitted to Dr. Wiggins that he has a problem controlling anger, that his anger has caused problems with work, and that his anger sometimes frightens him.

Dr. Wiggins also met with Alexa and noticed that Alexa was depressed, had poor hygiene, and appeared to be overwhelmed in her responsibility to care for the children. Alexa told Dr. Wiggins that she had previously used methamphetamine, cocaine, and marijuana. Dr. Wiggins learned that Alexa had a history of engaging in violent relationships, that she had a repeated history of suicide attempts or suicidal thoughts, and that she had “identity issues” and a “pattern of being unstable.” Regarding Alexa’s potential to change her history of these problems along with similar challenges, Dr. Wiggins concluded,

You’re going to see a person who will have the same problems time and time again most likely. They’re chronic. She may learn something along the way each time but despite all of that you find that she’s in the same situation again but just with a different child. If you look at her pattern, somebody else has been raising her other children. She has difficulties being able to respond to the treatments that are offered to her.

In November 2015, after Gordon had been returned to Father and Alexa’s care, Mullins learned that Gordon (and other children in the home) spent eleven to twelve hours a day in daycare. She also learned that when Alexa picked the children up from daycare, she fed them only peanut butter sandwiches, and when the children got home at about 6 p.m., they went to bed immediately. In other words, Mullins perceived that the children were not being parented—they were either in daycare or in bed at home.

When Mullins visited the home in November 2015, she noticed that there was food on the floor, that there were dirty dishes all over the kitchen, and that the home smelled like feces and urine. She also noticed that a child had dried

food around her mouth and saw dirt and grime on that child's feet. She saw that Gordon was wearing clothes that were too small for him. Mullins told Father and Alexa that the conditions of the home were unacceptable and informed them that she would return to check on the home's cleanliness.

Mullins returned two weeks later, and the conditions were worse: walls had dried human feces smeared on them; a bed had urine and feces on it; floors were covered with trash and food; and a highchair where children ate had pill bottles, empty soda cans, and spoiled food. Mullins visited the children in daycare and noticed that they were dirty and were dressed in clothes that smelled like urine.⁵ Gordon had a cut on his lip and red marks on his cheeks that looked like injuries.

Based on these circumstances, in December 2015, the Department removed the children from Father and Alexa's care and filed a petition seeking termination of Mother's and Father's parental rights to Gordon if reunification could not be achieved. The Department supported its petition with an affidavit that, among other information, included facts concerning Gordon's malnourishment and poor physical condition; Father's failure to provide him with a safe, healthy home; and Father's failure to complete services intended to benefit him. The trial court signed an order that made the Department Gordon's

⁵According to Mullins, the daycare sent Gordon home on several occasions because of his foul odor.

temporary sole managing conservator. The Department arranged for supervised visitation for one hour per week between Father and Gordon.

From Gordon's visit to the hospital in March 2015 until his removal from Father's care in December 2015, Father engaged in services offered by the Department. According to Mullins, however, Father would "make progress for a little bit and then . . . would kind of fall back into old habits." Mullins noticed that after the conditions of cleanliness of the home and of the children improved, those conditions eventually "got much worse" toward the end of 2015. She also observed that children in the home were underweight. During Mullins's time working on Gordon's case, other children in the home became sick to the point of requiring multiple visits to the hospital for vomiting and diarrhea.

Tiffany Kitch, a conservatorship worker with the Department, began working on the case involving Father's and Alexa's children upon their removal in December 2015. She too noticed that the children were underweight. She arranged for Father and Alexa to participate in several services, such as individual counseling, a psychological assessment, and a nutrition class.

At the beginning of 2016, Father and Alexa visited with the children on a weekly basis. During the visits, Gordon tended to play by himself, and Steven, who had also been placed in foster care, appeared to act hesitantly.

Laura Greuner, a therapist, began seeing Gordon and Steven in March 2016, when they were living together in a foster home. They told Greuner that they had suffered abuse in Father and Alexa's home. Gordon claimed that

Father had put his penis in Gordon's mouth; he explained that Father had made him "drink [Father's] milk." The boys also told Greuner that they had been burned on a stove, had been held under water,⁶ and had been forced to eat their feces.⁷ Greuner sensed that the boys were consistently scared of returning to Father and Alexa's home.

Greuner believed that at least some of the boys' outcries were untrue. For example, Greuner believed that the boys' claim that Father made them eat diapers along with feces did not "seem possible." She also doubted the boys' claim that Father and Alexa wrapped them in blankets and put them in an outside trash bin until a trash collector found them. When Gordon made the outcry about Father's sexual abuse, he also told Greuner that his foster father had wanted him to tell Greuner that information. Sally, who had lived with Gordon in Father and Alexa's home but who lived in a different foster home after removal, agreed with Gordon's claim that Father had put his penis in Gordon's mouth. Sally also told Greuner that Alexa had walked around naked and that she hated that Alexa had "come[] in and [had sat] on [Father's] lap in front of them."

When Steven and Gordon would meet with Greuner on the same days but at different times, she would ask them about the claims of abuse that their foster

⁶One foster parent of two other children who had been removed from Alexa and Father's home testified that when those children arrived at the foster home, they feared being placed in water.

⁷Gordon also told Maria Hargrave, a court-appointed special advocate, that Father had hit his head with a hammer.

father had heard from them and had conveyed to her, and the boys would then often tell her the same facts about that abuse. Greuner did not conclude, however, that someone had planted stories of abuse in the boys' minds. She later testified,

I don't think that someone was sitting down with them and saying, okay, now, here's a story, let's go tell Ms. Greuner the story. I think they had told stories and then they were told, okay, well, you need to tell Ms. [Greuner] about that or you need to tell the therapist about that. That was my understanding of the way that happened. . . .

. . . .

. . . When I think of coached, I think like getting a child to sit down, let's go over the story, I'm making up a story and then getting a child to memorize and report a story. I don't think that that's what has been going on here.

Despite doubting some of the boys' claims of abuse, Greuner concluded that they had been sexually abused in Father and Alexa's home. In explaining this conclusion, she later testified,

There's just a lot of sexual talk that's coming from . . . children that young and the concern of course that [Sally] in a . . . separate home says the same sort of things that the boys are saying in their home. . . . So I think they both said sexual things and [Sally] said a few sexual things to me about her parents. Not sexual abuse but very poor boundaries . . . with sexual things. I just think there is enough there. [Although] we don't know exactly what happened, . . . I believe there have been some things that have happened.

Theresa Fugate, a sexual assault nurse examiner, met with the boys and with Sally in February 2017. Gordon told Fugate that Father had "raped" him; he explained that "it [hurt] bad and [Father] did it a lot." Gordon also told Fugate that Father had put part of a hammer into Gordon's anus. Steven told Fugate that

Father had “touched [him] on [his] butt and [his] pee pee” and that Father had “put his pee pee in [Steven’s] butt.” Steven also told Fugate that Father had “put his mouth on [Gordon’s] pee pee.” Sally told Fugate that Alexa and Father did not take good care of children in their home, including not feeding them and not taking them to school. Fugate later testified that she did not have any reason to believe that the children had been coached to make outcries of abuse. CPS reached a “reason to believe” finding concerning the sexual abuse allegations by Gordon and Steven.

In April 2016, based on the outcries of abuse, the children’s attorney ad litem filed a motion asking the trial court to stop the visits between Gordon and Father. The ad litem alleged that Father had engaged in conduct that constituted an immediate threat to Gordon’s physical and emotional well-being. The trial court granted the motion and discontinued the visits. Gordon and Steven told Greuner that the court’s decision to stop the visits relieved them because they “didn’t want to see [Father and Alexa] anymore.”

Father became defensive and angry about the ending of the visits. According to Kitch, Father “stated that he grew up in the system and if [the Department] thought he was such a bad person . . . he didn’t want to continue visits because he didn’t want to be in and out of [the children’s] lives.” After the trial court ended the visits, according to Kitch, Father and Alexa rarely asked about the boys’ well-being. Neither Father nor Alexa ever asked for the visits

with Gordon to resume, and neither of them had any contact with Gordon or Steven after April 2016.

Father and Alexa engaged in services offered by the Department,⁸ but according to Kitch, neither of them ever addressed the Department's concerns that had resulted in the children's removal. Kitch visited Father and Alexa's apartment after the children's removal and noticed, as Mullins had, that the apartment was cluttered and dirty.

Father told Kitch that he believed the children had been coached to make sexual abuse allegations against him. Kitch, however, did not believe that Father's theory of coaching was plausible given that children who made similar outcries had been placed into different foster homes. Kitch acknowledged that the children had monthly interaction with each other even though placed in different foster homes, but she still doubted that the children could be coached to "remember such details at such a young age." Kitch also once observed Gordon play with toy dinosaurs in a way that mimicked sexual intercourse. To Kitch, Gordon referred to Alexa and Father as "the bad guys" and said that they had done "bad things to him." Gordon told Kitch, for example, that Alexa and Father had once put him in a refrigerator because he had told them that he was hungry.

⁸Kitch testified that Father maintained contact with her, kept his employment, visited the children until the visits stopped, completed a drug and alcohol prevention program, took a psychological evaluation, and completed a nutrition class.

Leading up to trial, the Department filed documents that established a shift between its initial goal of family reunification to its eventual goal of termination and adoption by another family. The Department informed the court through evaluations and permanency reports that although Father had completed services, he had not proved that he could provide a safe and proper home for children in his care, had not “addressed his role in the removal of the children or the sexual and physical abuse allegations,” and had not made progress in parenting skills.

The trial court set a bench trial for April 2017. Before the trial, Mother signed an affidavit in which she voluntarily relinquished her parental rights to Gordon. Thus, at trial, the trial court considered whether to terminate Father’s parental rights to Gordon, who was six years old. On the advice of their counsel, neither Father nor Alexa testified.

Kitch testified that if the trial court granted the Department’s request for termination, the Department planned to allow Gordon’s foster parents to adopt him. She explained that Gordon and his foster parents were bonded. Hargrave, Gordon’s court-appointed special advocate, testified that Gordon was comfortable in his foster home and recommended that Gordon remain in that safe environment. Gordon’s attorney ad litem recommended termination of Father’s parental rights. Gordon’s foster mother asked the trial court to terminate Father’s parental rights to Gordon so that she and her husband could adopt him.

She testified that she planned to facilitate continued contact between Gordon and his siblings who lived in other homes.

After hearing the parties' evidence and arguments, the trial court signed a judgment terminating Father's parental rights to Gordon.⁹ The court found that termination was in Gordon's best interest and that Father had (1) knowingly placed or knowingly allowed Gordon to remain in conditions or surroundings that endangered his physical or emotional well-being, and (2) engaged in conduct or knowingly placed Gordon with persons who engaged in conduct that endangered his physical or emotional well-being. Father brought this appeal.

II. EVIDENTIARY SUFFICIENCY

Father contends that the evidence is legally and factually insufficient to sustain the trial court's findings supporting termination. 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

⁹The trial court also terminated Father's and Alexa's parental rights to Sarah. Father and Alexa appealed that judgment of termination, and we affirmed the judgment. See *In re S.H.*, No. 02-17-00188-CV, 2017 WL 4542859, at *5 (Tex. App.—Fort Worth Oct. 12, 2017, no pet. h.) (mem. op.). Upon the Department's recommendation and pursuant to a rule 11 agreement, the trial court awarded primary custody of Steven, Jackie, and Sally to their biological father, E.C. See Tex. R. Civ. P. 11.

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 (1982)). We strictly scrutinize termination proceedings 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.

Clear and convincing evidence must support termination. See Tex. Fam. Code Ann. § 161.001(b) (West Supp. 2016); *E.N.C.*, 384 S.W.3d at 802. 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 758–59, 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 party seeking termination must establish by clear and convincing evidence that the parent’s actions satisfy one ground listed in 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). 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 Department proved the challenged ground for termination. *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005). 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 of the challenged grounds for termination. Tex. Fam. Code Ann. § 161.001(b); *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002).

A. ENDANGERMENT UNDER SECTION 161.001(b)(1)(E)

In his second issue, Father argues that the evidence is legally and factually insufficient to support the trial court’s finding under section 161.001(b)(1)(E) of the family code—Father engaged in conduct or knowingly placed Gordon with persons who engaged in conduct that endangered Gordon’s physical or emotional well-being.¹⁰ See Tex. Fam. Code Ann. § 161.001(b)(1)(E). “Endanger” means to jeopardize or to expose to loss or injury. *A.B.*, 412 S.W.3d

¹⁰Because we hold below that the evidence is sufficient to support termination under section 161.001(b)(1)(E), we will not analyze whether the evidence is also sufficient under section 161.001(b)(1)(D), which Father contests in his first issue. See Tex. R. App. P. 47.1; *In re A.B.*, 412 S.W.3d 588, 601 & n.11 (Tex. App.—Fort Worth 2013) (en banc op. on reh’g), *aff’d*, 437 S.W.3d 498 (Tex. 2014).

at 599. Endangerment “requires more than a mere threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment.” *Id.*

The relevant inquiry under subsection (E) is whether evidence existed that the endangerment of Gordon’s physical or emotional well-being was the direct result of Father’s conduct, including acts, omissions, or failures to act. *Id.* Termination under subsection (E) must be based on more than a single act or omission; the statute requires that Father engage in a voluntary, deliberate, and conscious course of conduct. *Id.* It is not necessary, however, that Father’s conduct was directed at Gordon or that Gordon suffered injury, and the specific danger to Gordon’s well-being may be inferred from Father’s misconduct standing alone. *Id.* Also, a parent’s conduct that subjects a child to a life of uncertainty and instability endangers the child’s physical and emotional well-being. *Id.* Neglect can be just as dangerous to a child’s emotional and physical health as intentional abuse. *Id.*

From the evidence summarized above, the trial court could have rationally found that Father endangered Gordon’s physical or emotional well-being by failing to provide him with proper nutrition, leading to life-threatening conditions and a lengthy hospital stay. See *In re J.A.S.*, No. 07-12-00150-CV, 2012 WL 4372952, at *6 (Tex. App.—Amarillo Sept. 25, 2012, no pet.) (mem. op.) (explaining that a parent’s inability to provide a basic necessity such as food endangers a child); *In re S.G.S.*, 130 S.W.3d 223, 238 (Tex. App.—Beaumont 2004, no pet.) (holding that evidence was legally and factually sufficient to show

endangerment when a child became critically ill from lack of nourishment). In that regard, the trial court could have considered evidence concerning Gordon's condition along with other evidence from witnesses who saw children in the home and described them as underweight. Although Father argues that termination should not be based on his "lack of sufficient income," the record establishes that Father maintained a full-time job, and Father does not direct us to evidence linking the children's nutritional problems to a lack of income.

Also, the trial court could have rationally found that Father endangered Gordon's physical or emotional well-being by providing an unsanitary home and by failing to ensure that Gordon was personally clean. See *In re J.R.*, 501 S.W.3d 738, 743–44 (Tex. App.—Waco 2016, no pet.) ("Allowing a child to live in unsanitary conditions can support a finding that a parent has endangered the child's mental and physical well-being."); *In re K.M.B.*, 91 S.W.3d 18, 24–25 (Tex. App.—Fort Worth 2002, no pet.) (holding that unsanitary conditions of a parent's home supported an endangerment finding). In considering the effect of the unsanitary conditions, the trial court could have given weight to evidence that children within the home required multiple visits to an emergency clinic for vomiting and diarrhea and that Gordon had to be sent home from daycare because of his poor odor.

Further, the trial court could have reasonably found that Father endangered Gordon's physical or emotional well-being by physically and sexually abusing him. See *In re R.W.*, 129 S.W.3d 732, 742 (Tex. App.—Fort Worth

2004, pet. denied) (explaining that it is “beyond question” that sexual abuse endangers a child’s physical or emotional well-being); *In re J.I.T.P.*, 99 S.W.3d 841, 845 (Tex. App.—Houston [14th Dist.] 2003, no pet.) (“A parent’s abusive or violent conduct can produce a home environment that endangers a child’s well-being.”). Although the record contains evidence that may have raised doubts concerning some of Gordon’s claims of abuse, the trial court had discretion to find other claims credible and to agree with Greuner’s and CPS’s ultimate conclusions that the abuse had occurred. See *In re G.P.*, No. 01-16-00346-CV, 2016 WL 6216192, at *16 (Tex. App.—Houston [1st Dist.] Oct. 25, 2016, no pet.) (mem. op.) (“[A]lthough C.C. denied ‘molest[ing]’ G.P., the . . . fact finder . . . was not required to accept his testimony and could have resolved any disputed evidence against him.”); *In re I.A.M.*, No. 04-16-00095-CV, 2016 WL 4208126, at *6 (Tex. App.—San Antonio Aug. 10, 2016, no pet.) (mem. op.) (“Although Father disputes the abuse allegations, we note that the trial court was not required to accept Father’s [denial] and therefore . . . could have resolved any disputed evidence against Father.”).

In sum, applying the legal standards discussed above to the facts we have summarized and to the remaining evidence in the record, we conclude that the evidence is legally and factually sufficient to show that Father engaged in conduct that endangered Gordon’s physical and emotional well-being. See Tex. Fam. Code Ann. § 161.001(b)(1)(E); *A.B.*, 437 S.W.3d at 500; *J.P.B.*, 180 S.W.3d at 573. We overrule Father’s second issue.

B. BEST INTEREST UNDER SECTION 161.001(b)(2)

In his third issue, Father asserts that the evidence is legally and factually insufficient to support the trial court's finding that termination of his parental rights is in Gordon's best interest. See Tex. Fam. Code Ann. § 161.001(b)(2). 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 (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 the desires of the child, the emotional and physical needs of the child now and in the future, the emotional and physical danger to the child now and in the future, the parental abilities of the individuals seeking custody, the programs available to assist these individuals to promote the best interest of the child, the plans for the child by these individuals or by the agency seeking custody, the stability of the home or proposed placement, the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one, and 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. *C.H.*, 89 S.W.3d at 27.

The considerations supporting the trial court’s endangerment finding—Father’s inability to provide Gordon with proper nutrition, leading to his hospitalization; Father’s failure to provide Gordon with a sanitary home even after instructed to do so by the Department; and Father’s physical and sexual abuse of children, as supported by multiple outcries—support the trial court’s finding that termination of Father’s parental rights to Gordon was in Gordon’s best interest. See *E.C.R.*, 402 S.W.3d at 249. Also, the trial court could have rationally based its best interest finding on, among other facts, Gordon’s desire to not return to Father’s care (as implied from his statements to Greuner that he was glad that visits with Father stopped and that he did not want to see Father), Father’s lengthy history with CPS that continued after he had engaged in services aimed at resolving parenting problems, evidence establishing that Father had insufficiently provided for Gordon’s needs but that Gordon’s foster parents were meeting his needs, evidence establishing a lack of any relationship between Father and Gordon for more than a year before the trial, evidence that Gordon had a positive relationship with his foster parents and that they wanted to provide a permanently stable home by adopting him, and the recommendation of termination from Gordon’s attorney ad litem. See *Holley*, 544 S.W.2d at 371–72; see also *In re A.C.*, No. 02-16-00325-CV, 2017 WL 817153, at *6 (Tex. App.—Fort Worth Mar. 2, 2017, no pet.) (mem. op.) (relying on a bond between a child

and her foster family and on an attorney ad litem's recommendation as supporting a best interest finding).

Considering all of the evidence discussed above and the remaining evidence presented at trial, we conclude that the evidence is legally and factually sufficient to show that termination of Father's parental rights was in Gordon's best interest. See Tex. Fam. Code Ann. § 161.001(b)(2); *A.B.*, 437 S.W.3d at 500; *J.P.B.*, 180 S.W.3d at 573. We overrule Father's third issue.

III. CONCLUSION

Having overruled Father's second and third issues, which are dispositive, we affirm the trial court's judgment terminating his parental rights to Gordon.

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: GABRIEL, KERR, and PITTMAN, JJ.

DELIVERED: October 19, 2017