



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

**NO. 02-17-00355-CV**

IN THE INTEREST OF D.G., K.G,  
AND A.G., CHILDREN

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FROM THE 233RD DISTRICT COURT OF TARRANT COUNTY  
TRIAL COURT NO. 233-607159-16

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

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Appellant B.G. (Mother) appeals the trial court's order terminating the parent-child relationship between her and D.G. (Dylan), K.G. (Katie), and A.G. (Andrew).<sup>2</sup> In two issues, Mother contends the evidence is factually insufficient

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

<sup>2</sup>We use aliases for the children and their relatives throughout this opinion. See Tex. R. App. P. 9.8(b)(2).

to support the trial court's findings that (1) she 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 and (2) termination of her parental rights is in the children's best interest. See Tex. Fam. Code Ann. § 161.001(b)(1)(O), (b)(2) (West Supp. 2017). We affirm.

## **I. BACKGROUND**

On November 1, 2016, Mother took her then two-year-old son, Andrew, to JPS Hospital for his regular vaccinations. He was observed limping during the visit, so the doctor ordered an x-ray of his left leg. The x-ray revealed Andrew's left femur was fractured. Due to the fractured femur, the doctor instructed Mother to take Andrew to the Cook Children's Medical Center emergency department within twenty-four hours.

Although it happens that Andrew was taken to Cook Children's early in the morning of November 2, it was not Mother who took him there. Instead, after Andrew's appointment at JPS on November 1, Mother dropped him off at her aunt's house so Mother could go out for her birthday. Andrew was unable to walk on his leg, was crying, and would not let anyone touch his leg. Mother's aunt attempted to contact Mother about Andrew's leg all night to no avail, which led her to contact Andrew's grandmother, P.M. (Grandmother). Grandmother attempted to wait for Mother to come get Andrew and take him to Cook Children's, but eventually Grandmother decided she could not wait for Mother

any longer, so Grandmother picked Andrew up around 5:00 a.m. and brought him to Cook Children's.

Andrew underwent additional x-rays at Cook Children's, which confirmed that his left femur was fractured and further revealed that he had a buckle fracture to his right femur and a healing rib fracture. Grandmother informed the medical personnel that she had not been present when Andrew injured his leg, nor did she have any specific explanation as to how the injury occurred. Mother eventually arrived at the hospital, though she appeared to be under the influence of illegal substances. Mother was informed that Andrew not only had a left femur fracture but also had a right femur fracture and a possible rib fracture. Mother then offered an explanation of how Andrew's left leg injury occurred.

Mother stated that she had been attempting to place Dylan, Katie, and Andrew in the bath on the night of October 31. Mother said she had turned her back to the children to begin running the bath water when Andrew began crying. Mother stated that she asked the children what had happened, and Katie said that Dylan had pulled on Andrew's left leg. She did not provide any explanation for Andrew's right femur or rib fractures. In relaying her explanation of Andrew's left leg injury, Mother seemed upset with Dylan and expressed multiple times that she would "deal with" Dylan and that he would "get it" for causing the injury. Hospital personnel concluded that Andrew's injuries were not consistent with Mother's explanation but rather were consistent with physical abuse. Ultimately, Andrew's case was referred to CPS while Andrew remained at Cook Children's.

Ashley Hoskins, a CPS Investigator with the Texas Department of Family and Protective Services (the Department), was assigned to investigate Andrew's case. Hoskins went to Cook Children's to investigate, and her investigation revealed there were multiple stories and explanations as to how Andrew sustained his injuries. Hoskins learned that Andrew's injuries were considered serious and that his father and Mother were both aggressive and had a temper. Further, Mother had a prior history with CPS, and that history caused Hoskins to be concerned that there was a pattern of conduct that had led to abuse toward and neglect of Andrew. Hoskins determined that the injuries Andrew had sustained were not caused by Dylan but were instead consistent with physical abuse. Based on these determinations, the Department took emergency possession of Andrew. See Tex. Fam. Code Ann. § 262.104 (West Supp. 2017). The next day, the Department filed a petition in which it asked the trial court to terminate Mother's parental rights as to all three children if reunification with Mother could not be achieved.<sup>3</sup>

The Department filed a family service plan for Mother, which the trial court subsequently adopted as an order of the court. A few months later the trial court held a permanency hearing, after which it found that Mother had not demonstrated adequate and appropriate compliance with her service plan and

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<sup>3</sup>The petition also requested the trial court to terminate the parental rights of the children's adjudicated father, A.G. A.G. has not appealed from the trial court's termination order.

had continued to test positive for illegal drugs. The Department and Mother then reached a mediated settlement agreement. See Tex. Fam. Code Ann. § 153.0071(c) (West Supp. 2017). In pertinent part, the terms of the agreement were that Mother stipulated to the termination grounds delineated in family code subsections 161.001(b)(1)(D) and (E) as to all three children and that if Mother's drug screen on August 31, 2017, was positive, the Department would proceed to trial and could rely on Mother's stipulation. Mother's August 31, 2017 drug screen was positive for marijuana.

The case proceeded to final trial on October 12, 2017. After the evidence was presented, the trial court granted the petition to terminate Mother's parental rights to all three children. The trial court's order states that the trial court found by clear and convincing evidence that the grounds of termination set forth in subsections 161.001(b)(1)(D), (E), and (O) of the family code were met and that termination of Mother's parental rights was in the children's best interest. See Tex. Fam. Code Ann. § 161.001(b)(1)(D), (E), (O), (b)(2). This appeal followed.

## **II. APPLICABLE LAW AND STANDARD OF REVIEW**

A trial court may terminate parental rights if it finds by clear and convincing evidence both that one of the statutory grounds set forth in subsection (b)(1) is met and that termination is in the best interest of the child. *Id.* § 161.001(b)(1), (b)(2).

In this appeal, Mother only challenges the factual sufficiency of the evidence supporting the trial court's termination order. 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’s actions satisfy at least one ground listed in subsection 161.001(b)(1) and the termination of the parent-child relationship is in the best interest of the child. Tex. Fam. Code Ann. § 161.001(b)(1), (b)(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.

### **III. STATUTORY GROUNDS FOR TERMINATION**

In her first issue, Mother argues the evidence is factually insufficient to support the trial court’s finding that the termination ground set forth in subsection (O) was met. *See id.* § 161.001(b)(1)(O). She does not, however, challenge the sufficiency of the evidence supporting the trial court’s findings that the additional, independent grounds set forth in subsections (D) and (E) were also met. Along with a best interest finding, a finding of only one ground alleged under subsection 161.001(b)(1) is sufficient to support a judgment of termination. *See In re A.V.*,

113 S.W.3d 355, 362 (Tex. 2003); *In re K.H.*, No. 02-15-00164-CV, 2015 WL 6081791, at \*3 (Tex. App.—Fort Worth Oct. 15, 2015, no pet.) (mem. op.). We therefore do not reach the merits of Mother’s first issue. See Tex. R. App. P. 47.1; *A.V.*, 113 S.W.3d at 362; *K.H.*, 2015 WL 6081791, at \*3; see also *In re K.L.M.*, No. 05-16-01098-CV, 2017 WL 836850, at \*7 (Tex. App.—Dallas Mar. 3, 2017, no pet.) (mem. op.) (declining to address father’s challenge to the sufficiency of the evidence to support termination based on section 161.001(b)(1)(P) where the trial court found four additional statutory grounds for termination and father only challenged the sufficiency as to section 161.001(b)(1)(P)).

#### **IV. BEST INTEREST**

In her second issue, Mother contends the evidence is factually insufficient to support the trial court’s best interest finding. 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).

Nonexclusive factors that the trier of fact in a termination case may use in determining the best interest of the child include (1) the desires of the child; (2) the emotional and physical needs of the child now and in the future; (3) the emotional and physical danger to the child now and in the future; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist these individuals to promote the best interest of the child; (6) the plans for the

child by these individuals or by the agency seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 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”); *In re E.N.C.*, 384 S.W.3d 796, 807 (Tex. 2012). These factors are not exhaustive. *C.H.*, 89 S.W.3d at 27.

#### **A. PRESENT AND FUTURE EMOTIONAL AND PHYSICAL DANGER**

Hoskins testified that her investigation had revealed that Andrew’s injuries were serious. Indeed, Andrew’s injuries were so severe that he had to be placed in a half-body cast that went from just under his armpits all the way down to his ankle on one side and his knee on the other. And while his injuries had improved as of the time of trial, he nevertheless continued to walk with a very obvious limp. The evidence shows that when asked to explain how Andrew sustained his broken left femur, Mother blamed four-year-old Dylan. But Hoskins testified that her investigation revealed that Dylan could not have caused Andrew’s injuries. Rather, Hoskins learned Andrew’s injuries were caused by physical abuse. Hoskins further testified that in a prior CPS case in 2014, it was determined that Mother had physically abused Andrew. Hoskins stated that the concern of a pattern of physical abuse was one of the reasons why the Department took emergency possession of the children and placed them in foster care.



After they were placed in foster care, Dylan and Katie made outcries indicating physical abuse. Cori Harris, a play therapist, testified that Dylan told her Mother hurt him, and he showed Harris how he would put his arm in front of his face to protect himself from being hurt by Mother. Dylan also told Harris that he would be stuck outside in a hole in the ground with Katie and that they would try to escape. Katie told her foster mother that this was a dirt hole that had a cover on top. Lori Fanguie, another therapist, testified that Dylan “would make outcries about a hole and being put in a hole, about not feeling safe at home, about mean people, being hurt, lots of hurts.” Fanguie stated that Katie had made similar outcries and that she had also made an outcry about “mommy hurting [Andrew’s] legs.” Fanguie testified that Katie had used a doll to show her how Mother had hurt Andrew’s legs: Katie grabbed both of the doll’s legs, pulled them in opposing directions, and said, “This is when [Andrew] cries.”

Dylan and Andrew’s foster mother also testified at trial. She stated that Dylan had made outcries to her about physical abuse. She stated that Dylan had referred to different ways Mother would make him bleed, including making him go into a wall, causing his lip to bleed. He also told her that Mother would hit Andrew with a broom and that Mother hurt Andrew’s leg, causing him to have to go to the doctor and hospital. Dylan also indicated that Mother had choked him and his other two siblings. Dylan also stated to his foster mother that he had been put in a hole by Mother and his grandmother and that he had tried to

escape. The foster mother also stated that Andrew had told her that Mother had hurt his left leg, his right leg, and his chest.

Katie had been placed in a different foster home, and her foster mother also testified at trial. Katie's foster mother stated that Katie had said that Mother had punched her in the face, had hit her with her feet, had hit her with a brush, and had hit her with a broom. Katie further said that Mother had hit Andrew with a broom, had broken Andrew's legs, and had hurt Dylan at one of the visits. The foster mother also testified that Katie's most recent outcry was that Mother had a knife that cut Andrew's arms and that Andrew was screaming and bleeding everywhere.

Mother ultimately stipulated not only that she had knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endangered their physical or emotional wellbeing, but also that she had engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangered their physical or emotional well-being. Additionally, LaToya Phelps, a CPS employee, testified that she had developed a service plan for Mother in connection with this case with the goal being reunification of Mother and the children. Based on her interactions and observations of Mother during the service plan, Phelps testified that she did not believe Mother could provide a safe or appropriate home for the children, and Phelps further stated that she had no reason to believe Mother could provide the children with a home that was free of physical abuse.

Further, the evidence showed Mother had an extensive history of illegal drug use. Dylan's medical records from the day he was born showed that Mother had tested positive for marijuana during her pregnancy.<sup>4</sup> There were also records showing that Mother had again tested positive for marijuana during her pregnancy with Katie, that a sample of Mother's urine collected after Katie's birth in September 2013 was positive for marijuana, and that a meconium sample from Katie after her birth was also positive for marijuana. So, too, with Andrew approximately a year later: his medical records revealed that Mother had used marijuana during her pregnancy, and a meconium sample from Andrew after his birth in September 2014 was positive for marijuana.

Hoskins testified that Mother had told her that on the night CPS removed the children, she had used illegal drugs, stating that "she used anything she could get her hands on." Mother also told Hoskins that she was around people who used illegal drugs all the time. The evidence also showed that while this termination proceeding was pending in the trial court, Mother tested positive for methamphetamines on November 3, 2016, as well as for amphetamines on both March 17 and May 8, 2017. Additionally, the evidence showed that while this case was pending in the trial court, Mother was subject to random drug screens, and she continually tested positive for marijuana through August 2017.

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<sup>4</sup>Dylan was born in May 2012.

From all of this evidence, the trial court could have reasonably concluded that Mother posed a present and future physical danger to the children and that, consequently, termination of her parental rights was in the children's best interest. See *Holley*, 544 S.W.2d at 371–72; *In re S.N.*, 272 S.W.3d 45, 53 (Tex. App.—Waco 2008, no pet.) (op. on reh'g) (noting that evidence of a parent's continuing drug and alcohol abuse supports a finding that the parent poses a present and future risk of physical or emotional danger to the child).

## **B. STABILITY OF MOTHER'S HOME**

Evidence of a parent's drug use, inability to provide a stable home, and failure to comply with a family service plan supports a finding that termination is in the best interest of the child. *In re M.R.*, 243 S.W.3d 807, 821 (Tex. App.—Fort Worth 2007, no pet.).

### **1. Mother's Drug Use**

We detailed Mother's drug history above, and that same evidence is relevant here. See *id.*

### **2. Mother's Inability to Provide a Stable Home**

Andrew's medical records from Cook Children's reveal that when a social worker asked Mother to confirm her home address, Mother stated that she had been thrown out of her residence because of Dylan and that they were living in a hotel. When the social worker asked mother the name and address of the hotel, however, Mother deflected, stating that she and her children stay with various family members and friends and that she planned to get an apartment when her

check came in. Hoskins testified that she had not been able to determine where Mother lived and that Mother had told her that she lived “anywhere, in different places.” In addition, Phelps testified that Mother had moved around a lot—she had lived in two of her own apartments; had lived with a cousin; had gotten another place of her own but was kicked out; and had moved in with someone else in her family. According to Phelps, Mother had four different jobs since the case started.

Mother also testified at trial. She said that she had been residing with her aunt since April 2017 and that she anticipated having her own one-bedroom home a few days after trial. She further stated that if the children were returned to her, she would not be able to afford a larger apartment than the one-bedroom apartment she anticipated moving into.

### **3. Mother’s Failure to Comply with Her Family Service Plan**

Phelps testified that one of the key issues Mother needed to take care of in order to be reunited with her children was her drug use. Mother’s service plan therefore included a requirement that she submit to random drug screening and complete an outpatient drug treatment program. But Phelps testified that Mother had missed two of her required drug screenings and that she did not complete her outpatient drug treatment program.

All of this evidence supports the trial court’s finding that termination was in the best interest of the children. *See id.*

### **C. STABILITY OF THE CHILDREN'S PLACEMENT**

Dylan and Andrew had been placed in the same foster home, and Katie had been placed in another. Phelps stated that all three children were being well cared for by their foster parents. She also testified that Dylan and Andrew's foster parents were interested in adopting all three children. She stated that Dylan and Andrew's foster mother was a stay-at-home mom who provided hands-on parenting of Dylan and Andrew during the day and that she was able to care for Andrew's needs while he was in his cast. Dylan and Andrew's foster father was a doctor, and Phelps stated that there was no question Dylan and Andrew's foster parents could meet the children's needs. Phelps also stated that Dylan and Andrew's foster mother was able to get to Dylan at his school when any issues arose. Phelps stated that Dylan and Andrew's foster parents were very patient people who were very loyal to the children. Phelps testified that the Department was asking the trial court to terminate Mother's (and adjudicated father, A.G.'s) parental rights so that Dylan, Katie, and Andrew could be free to be adopted, and she further stated that it was the Department's opinion that termination and adoption was in the children's best interest.

This evidence supports the trial court's best-interest finding. See *id.* at 820–21.

### **D. THE CHILDREN'S DESIRES**

Phelps testified that Mother's service plan included visitations with the children. Phelps stated that the visitations were ultimately stopped because all

three children had extreme reactions to the visits both before and after the visits.

According to Phelps,

[the children] were biting, kicking, screaming, and yelling, I don't want to go [to the visits]. At one point, [Dylan] pulled foster mom's hair while she was driving. He got -- he unleashed himself from his car seat and was just attacking her while she was driving after his visit with [Mother].

Phelps further testified that there had not been any bonding between the children and Mother during their visits. She stated that the children did not appear happy to see Mother, that they were "just content," and that they showed no emotion during their visits with Mother. Phelps testified that after the visits were stopped, Dylan and Katie's behavior improved—Dylan no longer ran away and was able to sleep better, and Katie was able to sleep more often, and her aggressiveness lessened.

Dylan and Andrew's foster mother testified that whenever Dylan learned he was going for a visitation with Mother, he would become anxious, tell her to stop the car, and would become very somber and unemotional. After the visits, he would have aggressive behavior, getting out of his car seat and trying to hit his foster mother and pull her hair. Dylan would tell his foster mother that he did not want to go to his visits and that it was not safe to go to the visits, and he would also tell her not to take him to his visits with Mother. The foster mother also testified that after Andrew had his only visit with Mother, he had no emotion the rest of the day and began having episodes at night where he would wake up in the night. Foster mother stated Andrew had none of those behaviors prior to his

visit with Mother, and she further stated that since the visits had stopped, Andrew had stopped waking up at night.

Katie's foster mother testified that Katie referred to Mother by her first name. The foster mother stated that Katie would have an extreme reaction to her visits with Mother and that on the way home, Katie would arch her back, scream, kick, and yell, saying that she did not want to go to the visit or see Mother. After her visits, Katie would have tantrums, become extremely hyperactive, throw toys, hit, and kick. She would also have trouble sleeping. The foster mother testified that at night, Katie would have hallucinations that she was being attacked and would pull her hair and scratch herself. Katie's foster mother further stated that these episodes had been significantly reduced after the visits with Mother stopped.

From this evidence, the trial court could have reasonably inferred that all three children did not want to be reunited with Mother, were bonded with their foster parents, and would thrive by being reunited together and adopted by Dylan and Andrew's foster parents, and those reasonable inferences support the trial court's finding that termination of Mother's parental rights was in the children's best interest. See *Holley*, 544 S.W.2d at 371–72; *E.F. v. Tex. Dep't of Family & Protective Servs.*, No. 03-11-00325-CV, 2011 WL 6938496, at \*3 (Tex. App.—Austin Dec. 30, 2011, no pet.) (mem. op.) (“When assessing the desires of children too young to testify articulately, courts can consider their bond with their parents and prospective adoptive parents.”).



Based upon our review of the entire record, we conclude that the trial court could have reasonably formed a firm conviction or belief that termination of Mother's parental rights was in Dylan, Katie, and Andrew's best interest. Therefore, we hold that the evidence is factually sufficient to support the trial court's best-interest finding. We overrule Mother's second issue.

## **V. CONCLUSION**

Having overruled Mother's second issue, and having not reached the merits of Mother's first issue, we affirm the trial court's order terminating Mother's parental rights to Dylan, Katie, and Andrew.

*/s/ Lee Gabriel*

LEE GABRIEL  
JUSTICE

PANEL: GABRIEL, KERR, and PITTMAN, JJ.

DELIVERED: March 22, 2018