In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-20-00038-CV

IN THE INTEREST OF J.G., M.D., JR., C.D., AND L.D., CHILDREN

On Appeal from the 271st District Court
Wise County, Texas
Trial Court No. CV17-11-994

Before Bassel, Womack, and Wallach, JJ.
Memorandum Opinion by Justice Womack

MEMORANDUM OPINION

I. INTRODUCTION

This is an ultra-accelerated appeal[1] in which Father[2] appeals the termination of his parental rights. In one issue, Father challenges the sufficiency of the evidence to support the trial court's finding that termination of his parental rights was in the best interest of the children involved in this case—Billy, Bobby, Sharon, and Ronnie.[3] We affirm.

II. BACKGROUND

The Department of Family and Protective Services (Department) received a report on October 25, 2017, that there was concern that Mother[4] and Father were not safely providing for the children. Specifically, the report stated that the family was living in a car, the family was moving from motel to motel, and Mother and Father were using illegal drugs. On November 11, 2017, and as part of the investigation into

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[1]*See* Tex. R. Jud. Admin. 6.2(a) (requiring appellate court to dispose of appeal from judgment terminating parental rights, so far as reasonably possible, within 180 days after notice of appeal is filed).

[2]In order to protect the identity of the minor children in this case, we use aliases or initials in the place of proper names when referring to the children, the parties, and the witnesses. *See* Tex. R. App. P. 9.8 cmt.; Tex. App. (Fort Worth) Loc. R. 7.

[3]At the time of the trial, Billy was almost ten years old, Bobby was eight years old, Sharon was six years old, and Ronnie was two years old.

[4]Mother has not appealed the termination of her parental rights to the children.

the report, multiple Department investigators visited the children's maternal grandmother's house because Mother and the children were ostensibly staying there at the time. Even though he had been ordered to stay away from the children, Father arrived shortly after but refused to speak with the investigators. Because both Mother and Father refused to submit to drug tests that day, because the couple drove away leaving the children in the care of the maternal grandmother, and because the Department did not know whether Mother and Father were willing to cooperate in the investigation, the Department removed the children from their care.

On November 21, 2017, the Department filed this suit seeking the termination of both Mother's and Father's parental rights to the children. After the associate judge in this case presided over a trial on the merits, the associate judge entered judgment terminating Mother's and Father's parental rights. Father filed a motion for new trial, which the associate judge granted. After conducting the new trial, the associate judge signed a written order terminating Father's parental rights. Later, on January 22, 2020, the presiding judge conducted a de novo review of the record from the associate judge's new trial and entered judgment that Father's parental rights were terminated as to all four children.[5]

[5]The reporter's record in this case is from the new trial that the associate judge conducted, and it is the record the presiding judge in this case reviewed during the trial de novo.

A. Hayley Penn's Testimony

Hayley Penn, a Department caseworker, testified at trial that she was the primary caseworker in this case and that even though Father had agreed to complete his court-ordered service plan and initially began to participate, he never completed any of his services. Father's court-ordered service plan required him to: (1) complete a Batterers Intervention and Prevention Program (BIPP) to address domestic violence; (2) submit to random drug testing and remain sober; (3) maintain stable employment; (4) complete a drug and alcohol assessment at MHMR; (5) complete a psychological evaluation; (6) attend Focus Fatherhood[6] and learn how to provide the children with a stable environment; (7) attend individual counseling; (8) complete a psychosocial evaluation; (9) complete a mental health assessment at MHMR; and (10) maintain appropriate and stable housing.

According to Penn, the Department had not received any certificates of completion for Father's services. She further said Father did not initiate or complete a psychological or psychosocial evaluation, and he did not complete Focus Fatherhood; rather, he merely attended one class while signing up and was unsuccessfully discharged five times for excessive absences. Penn stated that despite receiving the service provider's contact information both in his service plan and

[6]Penn testified that Focus Fatherhood "is a parenting class for fathers to help them build skills and knowledge and a support team as a father who is dealing with a [Department] case."

directly from her, Father never attended any individual counseling nor did he initiate or complete BIPP.

Penn testified that Father never participated in a drug and alcohol assessment. By Penn's account, this was particularly troubling given that the removal of the children from the parents' care was partially predicated on allegations of drug use by both parents. And Penn said that without Father's having taken this assessment, the Department was prevented from designating what type of drug counseling or rehabilitation that Father might need.

Penn acknowledged that Father was prevented in part from completing his services because he was incarcerated multiple times during the pendency of this case. But according to Penn, the Department still attempted to work with Father by sending him six parenting packets to complete while he was incarcerated—he did not complete any of them. And Penn said that multiple times during this case Father experienced financial difficulties and often did not have a vehicle. Father also never provided the Department with proof that he had a driver's license despite it being a requirement of his service plan.

According to Penn, Father tested positive for marijuana in January 2018, and he registered an "incomplete" drug test in March 2018 because Father refused to utilize a swab as instructed—a test that Penn said typically takes five minutes to conduct took more than an hour due to Father's lack of cooperation. In April 2018, Father tested positive for methamphetamine. Father did not participate in any other

drug tests during the pendency of this case despite a court order that limited his visitation with the children until he completed a test; specifically, Father refused nine tests that were ordered by a court or requested by the Department. Penn said that when confronted with the positive drug test for marijuana, Father told her that marijuana helps him, that it is legal in all fifty states, and that he did not care what his probation officer had to say about his using the drug.

Penn testified that Father's drug use and refusal to participate in testing was troubling because it indicated that Father was putting the children at risk given that the children were young, some of them have special needs, and they would not receive proper care from Father if he was under the influence of illegal drugs. Penn also said that Father had never demonstrated an ability to provide a safe home for the children. Indeed, when Penn asked Father where he was living during the pendency of this case, Father told her that she did not know "anything about cardboard boxes," insinuating that he was homeless at the time. By Penn's account, even though Father's service plan required him to obtain and maintain stable employment and even though he alleged he had been employed for at least one week during February 2018, Father never provided the Department with proof that he was employed.

With regard to Father's interaction with the children, Penn said that Father only attended a few supervised visitations. Penn recalled how she once drove the children from Rockwall and Ovilla, where they had been placed, to Decatur for visitation, but Father failed to show, so she had to drive the children back to their

specific placements without them having seen him. According to Penn, Father demonstrated anger toward the children during the visits that he did attend, and he would often raise his voice and "curse at them" if they did not do what he said. Penn said that Father's behaviors continued even after multiple Department workers had explained to him how inappropriate his behavior was. She also said that he was "overly aggressive" with the children when he would physically play with them. For example, once Father held one of the children on the floor and encouraged another child to kick the other in the face. The child did kick the other child, stating that she had to because she was supposed to listen to her Father.

According to Penn, Father did not provide any type of monetary support to the children since they have been in care. Penn testified that Father did bring the children used toys once but that the Department found dead cockroaches in them. She also testified that Father brought the children inappropriate drawings, including a drawing of Superman kicking Wonder Woman in the face.

Penn described how in April 2018, Father attended a supervised visitation, but law enforcement had to be called to remove him from the premises. Specifically, Father had spanked one of the children with his open hand on the child's leg and was instructed to leave the visitation. Instead, Father refused to leave and told the children that the Department did not care for them and that he was the only person who did. Penn said that this incident was particularly concerning because it occurred in front of the children, demonstrated an inability of Father to appropriately handle

situations of conflict, and showed a lack of control on Father's part that might result in one of the children being hurt. After this incident, the Department requested that Father attend parenting and anger-management counseling. Because he did not, the Department suspended his visitations. Penn said that at the time of trial, Father had not seen the children for almost a year.

Regarding the children's placement at the time of trial, Penn testified that the children were in foster homes and that the Department had not been able to identify any appropriate relatives with whom to place the children. Penn said that Father provided the name of his mother to the Department, but that his mother was not a proper placement for the children given her "significant" history with the Department. She also had never visited with the children.

Penn explained that Billy, the oldest child, struggled with "violence, hitting others, choking others, stealing, lying, [and] gambling at school." Although Billy had experienced multiple psychiatric episodes at different homes during the pendency of this case, Billy's current foster mother was very understanding and supportive of his need for counseling. By Penn's account, Bobby, the second oldest, did well when not placed in the same home as Billy, but during the times he had been placed with Billy, Bobby "tended to follow and start doing some of the [inappropriate] things that [Billy] was doing." Penn said that Sharon was "doing great." According to Penn, Sharon has learned to swim on her own, and she lives "a normal life now." As it pertained to Ronnie, the youngest of the children, Penn said that he has "progressed a

lot" and was "thriving in his [current] environment." She testified that Ronnie and Sharon were currently in an adoption-motivated foster home and that the Department was working through therapeutic issues pertaining to whether Billy and Bobby should be permanently placed together.

Ultimately, Penn said that because of Father's history of drug use, his "significant" domestic violence history, his history of being arrested for assaultive conduct, his inability to provide a stable living environment, and his failure to complete parenting classes, the Department was asking for the trial court to terminate Father's parental rights to the children. Penn said that there were "just many, many concerns for [the children's] safety" and that termination of his parental rights was in each of the children's best interest.

B. Jessica Graham's Testimony

Jessica Graham testified that she became involved in this case as a Department trainee when the children were removed from the parents' care over concerns of neglect and drug abuse. By Graham's account, part of the allegations against the parents was that Father, Mother, and the four children were living in a car. But sometime after the allegations, Mother and the children began to live in a home with Mother's brother and the children's maternal grandmother.

Graham said that the initial investigation centered on Mother and that Father was not supposed to be present in the home because of past "domestic violence." According to Graham, Father came to the house about an hour after the Department

arrived to investigate even though no one had contacted him yet. Graham averred that Father refused to speak to anyone from the Department that day and that Father "appeared very angry and upset" that the Department was in the house. And despite one of Graham's coworkers insisting that Father and Mother needed to be drug tested, Mother gathered her things and left with Father, who never entered the house. Neither parent submitted to a drug test that day. Because Mother and Father refused to cooperate, Graham and the Department removed the children from their care.

C. Sarah Atkinson's Testimony

Sarah Atkinson, an advocate supervisor for CASA,[7] testified that she was present when Father spanked Billy at the supervised visitation. Atkinson said that she intervened because there "had already been a lot of aggression during the visitation." According to Atkinson, after Father spanked Billy, Father then locked the door between the visitation room and the observation room, and she had to repeatedly knock before Father would let her inside. Atkinson stated that when police arrived, Father blamed her for the incident and announced to the children, "[S]ee, she's trying to make me leave." He also told the police that he was unwilling to leave. By Atkinson's account, Father encouraged the children to physically fight each other

[7]Atkinson testified that she is a supervisor advocate for "CASA Wise and Jack Counties." Court Appointed Special Advocates (CASA) consists of county, state, and federal associations comprised of individuals who advocate for effective public policy for children in the child protection system. CASA OF WISE AND JACK COUNTIES, https://www.casawise.org/ (last visited May 26, 2020).

during visitations, and she said that she was concerned for the children's safety if they were placed with Father. Atkinson testified that through her own observations, she determined that Father was unable to provide the children with a safe and stable living environment.

According to Atkinson, the children were currently placed in homes that are more stable and safer for each of the children, and she said it would be detrimental, most especially for Sharon and Ronnie, to be removed from the homes where they were currently placed. Atkinson testified that she believed it was in the children's best interests for Father's rights to be terminated to all four children.

D. Erin Kulis's Testimony

Erin Kulis, a caseworker for the Department, testified that Father had failed to complete his services in a prior Department case. Notably, Kulis testified that Father was in and out of jail several times during the pendency of the prior case. Kulis said that the concerns she had in the previous case were Father's inability to provide a safe and stable environment for his children and his repeated arrests and incarcerations. According to Kulis, Father was involved with other Department investigations about his parenting in 2012, 2013, 2014, and 2016. Kulis said she has concerns for the children due to Father's criminal history with regard to assaults and domestic violence as well as a previous court order from Tarrant County that restricts Father's contact with the children.

E. Father's Testimony

Father testified about his employment and ability to provide the children a stable living environment. He said it was difficult for him to obtain employment given his criminal history but that he is currently employed at Subway and Taco Bell, although he had only worked there one week. According to Father, he was living "here and there," he was unable to "keep an address right now," and he did not have a "current address, mailing address, [or] physical address." He said that he had last stayed with his brother and mother. And he stated that if the court were to award him custody of the children at the time of trial, he and the children would stay with a friend.

Father said that he had not looked into daycare or other amenities for the children because currently he had "no right." He did say that the cost to place all four children in daycare as he attempted to maintain full-time employment at both of his jobs could cost roughly $5,000 per month. Father testified that if he could not obtain childcare, he would simply stay with the children in lieu of going to work. When asked whether he had any plans for the children if they were returned to his care, he said that he was "trying to figure out how to attend those needs and how those needs will be met through counseling or whatever -- resources."

Father testified that his mother would be a good placement for the children. He said that he was not asking the court to place the children with him at the time but that he would like the opportunity to eventually have the children returned to him.

Father recognized that if his parental rights were not terminated, he would still need to complete his service plan in order for the children to be placed with him. Father said that he loved his children and that it would be in their best interest for him to remain a part of their lives as their father.

Regarding his court-ordered services, Father stated that he attempted to complete his service plan in this case and had attended classes for Focus Fatherhood, BIPP, and anger management, but he had never participated in individual counseling. Father said that he had completed BIPP, but at another time in his testimony, Father stated he had not attended any BIPP classes. According to Father, he was unable to attend most of his other services due to "location, transportation, [and] financial instability." Father testified that he had attended one Alcoholics Anonymous class, but he did not have proof of the attendance. And even though Father could not recall signing his service plan, when presented with the document, he agreed that it bore his signature. He remembered receiving the parenting packets while incarcerated but claimed he did not have the "space" to complete them while there.

As to the spanking incident, Father explained that he was unaware that he was not allowed to spank his children at the supervised visitation and that he did so out of parental instinct. Father stated that his normal mode of disciplining his children was to set them in the corner. He said the reason he did not leave when asked was that he desired to spend the last ten minutes of his visit with the children because he only saw them for an hour at a time during sporadic visitations. He recalled that the police did

not arrest him and merely asked him to leave. Father stated that the reason he did not visit the children more is because he had been incarcerated a majority of the time this case was pending.

According to Father, he had not seen the children for roughly one year, and he had previously been investigated by the Department at least three times. Father admitted that he had been convicted of domestic violence, assault, possession of marijuana, theft, criminal trespass, and interference with an emergency phone call. And he agreed that throughout his life, he had been arrested for assault more than thirty times.

Father said that since he had been released from jail the last time, he has stayed out of trouble, and although he had contact with Mother "[h]ere and there," the two were no longer in a relationship. Even though Father agreed that Mother's rights to the children had been terminated and that Father and Mother had a newborn around one month old[8] at the time of trial, Father said that he was not in a relationship with Mother—in later testimony, Father even questioned whether he was the newborn's biological father.

As to his drug use, Father said that he did not remember testing positive for methamphetamine, that he had never ingested the drug, and that his positive test for methamphetamine was due to having been in an intimate relationship with Mother,

[8]When asked when the child was born, Father replied, "It's birthday is hazy right now considering everything that's going on in my life."

who at the time was using the drug. Father agreed that he had used marijuana in the past, but he said that he no longer used the drug, and the last time he had was a month before trial. Father stated that he had never missed a drug test requested by the Department and that any suggestion to the contrary would be untrue.

F. The Trial Court's Ruling

The trial court ordered that Father's parental rights to all four children be terminated. In its Order of Termination, the trial court specifically found that Father had constructively abandoned the children and that he had failed to comply with a court order that specifically established the actions necessary for Father to obtain the return of the children. The trial court also found that termination of Father's parental rights was in each child's best interest. This appeal followed.

III. DISCUSSION

In his sole issue, Father argues that the evidence is insufficient to support the trial court's finding that termination of his parental rights was in the children's best interests. We disagree.

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 Section 161.001(b)(1) and that termination is in the best interest of the child. Tex. Fam. Code Ann. § 161.001(b); *In re E.N.C.*, 384 S.W.3d 796, 803 (Tex. 2012); *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.).

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. *See 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.

In evaluating the evidence for factual sufficiency in parental termination cases, 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 termination of the parent-child relationship would be in the best interest of the child. Tex. Fam. Code Ann. § 161.001(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.

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 also use in determining the best interest of the child include the following: (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 (I) any excuse for the acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976);

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, and 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.

A. The Children's Desires

In this case, with regard to the children's desires, none of the children testified at trial, none of their maturity levels were shown at trial, and some of the children were too young to express their desires. *See In re D.W.*, 445 S.W.3d 913, 926 (Tex. App.—Dallas 2014, pet. denied) (holding desire-of-child factor as neutral where children did not testify at trial and there was no evidence showing sufficient maturity of children ages nine, eight, six, and five years old being able to express a living preference); *In re A.C.*, 394 S.W.3d 633, 643 (Tex. App.—Houston [1st Dist.] 2012, no pet.) ("The young age of the [three-year-old] child render[s] consideration of the child's desires neutral."). The trial court was entitled to find that this factor weighed neither in favor of nor against termination of Father's parental rights to the children.

B. The Emotional and Physical Needs of the Children

As for the emotional and physical needs of the children now and in the future, their basic needs include food, shelter, and clothing; routine medical and dental care; a safe, stimulating, and nurturing home environment; and friendships and recreational activities appropriate to their age. *In re L.S.*, No. 02-16-00197-CV, 2016 WL 4699199, at *6 (Tex. App.—Fort Worth Sept. 8, 2016, no pet.) (mem. op.). Here, multiple Department workers testified that Father had not demonstrated an ability to provide a safe and stable home for the children. Indeed, Father testified that he did not have a permanent residence; Penn testified that Father implied that he had been living in the streets in a cardboard box; and part of the allegations against the parents that led to this proceeding was that Father, Mother, and the four children were living in a car. The trial court was free to measure Father's potential future conduct in providing for the emotional and physical needs of the children based on Father's past conduct. *Davis v. Travis Cty. Child Welfare Unit*, 564 S.W.2d 415, 421 (Tex. App.—Austin 1978, no writ) ("The district court was in a position to measure the future conduct of Mrs. Duncan and Davis by their recent past conduct as it might be related to the same or similar situation."). The trial court was entitled to find that this factor weighed in favor of termination of Father's parental rights to the children.

C. The Emotional and Physical Danger to the Children

With regard to the emotional and physical danger to the children now and in the future, the record reveals that significant harm could be inflicted on the children

by Father due to his drug use, past criminal history, and aggression toward the children. He tested positive for methamphetamine and marijuana and even told Penn that he did not care if his parole officer knew he smoked marijuana. Father also refused to participate in nine drug tests ordered by the Department or the court. Penn said that Father's drug use and refusal to participate in drug testing was troubling because it indicated that Father was putting the children at risk given their young ages, some of whom have special needs, and it showed Father's inability to provide proper care when he was under the influence of illegal drugs.

Department employees also testified that Father has an extensive history of assault and domestic violence. Father admitted that he had been arrested for assaultive conduct more than thirty times in his life. Moreover, Father has not provided a nurturing environment for the children in the past, and he testified that he currently does not have the ability to provide the children with a stable living environment. And multiple Department employees said that Father was aggressive when he would play with the children, that he encouraged the children to strike each other, and that he would often raise his voice and "curse" at them. *See In re M.R.*, 243 S.W.3d 807, 821 (Tex. App.—Fort Worth 2007, no pet.) ("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."). The trial court was entitled to find that this factor weighed in favor of termination of Father's parental rights to the children.

D. The Parental Abilities of the Individuals Seeking Custody

Regarding the parental abilities of the individuals seeking custody, Penn said that Sharon was "doing great" in her current foster home and that she has learned to swim on her own and that she now lives "a normal life." As it pertained to Ronnie, who shares the same foster home as Sharon, Penn said that he had "progressed a lot" and was currently "thriving in his environment."

Even though Penn explained that Billy had experienced multiple psychiatric episodes at different homes during the pendency of this case, she said that Billy's current foster mother was supportive of his issues. As to Bobby, the second oldest, Penn said that he did well when not placed in the same home as Billy and that at the times he had been placed with Billy, Bobby "tended to follow and start doing some of the things that [Billy] was doing." Because of this, Penn said that the Department was currently working through therapeutic issues pertaining to whether Billy and Bobby should be permanently placed together. Penn did say that Ronnie and Sharon were currently in an adoption-motivated foster home.

As to Father's parenting abilities, there is significant evidence in the record that Father struggles with being a proper parent to the children. In addition to the aggressive treatment of the children when he plays with them, he also raises his voice and curses at the children when they do something he thinks is wrong. The Department also had to call the police to get Father to leave after he had been told not to physically hit the children as punishment; he locked the door between the

Department workers, him, and the children; and he told the children that he was the only person who cared for them.

Further, the record demonstrates that Father never completed any parenting packets or courses as ordered by the court in his services. In addition, he did not provide any monetary support to the children. While Father once brought the children used toys, they had cockroaches in them. And as detailed above, Father has an extensive criminal history of assault, domestic violence, and drug use. The trial court was free to believe that the Department had more permanent, stable plans for the children than Father. *Hann v. Tex. Dep't of Protective & Regulatory Servs.*, 969 S.W.2d 77, 83 (Tex. App.—El Paso 1998, pet. denied) ("The goal of establishing a stable, permanent home for a child is a compelling interest of the government."). The trial court was entitled to find that this factor weighed in favor of termination of Father's parental rights to the children.

E. Programs Available to Assist Those Seeking Custody
F. The Plans by the Individuals or the Agency Seeking Custody
G. The Stability of the Home or Proposed Placement

Regarding programs available to assist Father, the Department offered Father numerous parenting classes, anger-management classes, and batterer's intervention programs during the pendency of this case as well as during multiple prior cases involving Father and the Department. Even though Father testified that he had attended some of these classes, he attended almost none. He also never attended individual counseling, and he never completed a drug assessment, which would have

allowed for the Department to ascertain his level of drug addiction and provide him with the necessary therapy and counseling.

As to his plans for the children, Father testified that he knew he was not ready to have the children placed with him given his inability to maintain consistent employment and his lack of a stable living environment. Indeed, Father said that he was living "[h]ere and there" and that he did not have a permanent residence. When asked at trial about his plans for the children, Father said that he was still "trying to figure out" how best to provide for the children emotionally and physically. He also averred that he had not looked into daycare or other amenities for the children because currently he had "no right" to do so. In short, the trial court was free to conclude that Father did not have stable plans for the children.

In contrast to the lack of plans by Father for the children, the Department has placed all four children in foster homes. Sharon and Ronnie are currently placed together in an adoption-motivated home. The Department has already invested time, and will continue to do so, to find a proper placement for Bobby given how he negatively responds to being placed with Billy, and Billy is currently placed with a foster parent who is understanding and attentive to his unique needs. The trial court was entitled to compare Father's lack of plans to the Department's plan in considering the best interests of the children. *In re J.D.*, 436 S.W.3d 105, 119–20 (Tex. App.—Houston [14th Dist.] 2014, no pet.) ("The fact finder may compare the contrasting plans for a child by the parent and the Department and consider whether the plans

and expectations of each party are realistic or weak and ill-defined."). The trial court was entitled to find that these factors weighed in favor of termination of Father's parental rights to the children.

H. Acts or Omissions of the Parent Indicating the Existing Parent-Child Relationship is Not a Proper One

Father's drug use that continued through the pendency of this case, housing instability, and overly aggressive attitude toward the children indicate that the existing relationship with Father is not a proper one. Father's extensive criminal history and repeated incarcerations—as well as Father's multiple failures to take advantage of the services he was offered—also reveal that the existing relationship between Father and the children is not a proper parent-child relationship. *See In re S.R.*, 452 S.W.3d 351, 367 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (holding father's failure to follow court-ordered services, past drug use, and extensive criminal history including domestic violence supported trial court's finding termination was in child's best interest). The trial court was entitled to find that this factor weighed in favor of termination of Father's parental rights to the children.

I. Any Excuse for the Acts or Omissions of the Parent

As for any excuse for Father's acts or omissions, multiple Department workers testified that Father was unable to care for the children or visit them regularly because he was either incarcerated or banned from seeing the children because of his violent tendencies and drug use. Department workers also testified that despite repeated

attempts to work with Father on completing his services, Father simply did not do so. Father admitted that he did not complete the several parenting packets that he was sent while incarcerated, and his excuse was that he did not have room to complete them. The trial court, as the factfinder, was free to believe that this was not a viable excuse.

Father also said that his inability to maintain steady employment was because of his criminal history but that history would still exist whether the children were placed in Father's care or not. He also said that he was currently not able to provide stable living for himself or the children. And his excuse for having tested positive for methamphetamine was that, although he had never used the drug, he was in an intimate relationship at the time with someone who was using methamphetamine—Mother. The trial court was free to not believe that excuse, and the trial court was entitled to find that this factor weighed in favor of termination of Father's parental rights to the children.

Viewing the evidence in the light most favorable to the trial court's best-interest finding, we conclude that a reasonable trier of fact could have formed a firm belief or conviction that termination of Father's parental rights is in the children's best interest. *See In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002). Further, the disputed evidence that a reasonable factfinder could not have credited in favor of the trial court's best-interest finding is not so significant that a factfinder could not reasonably have formed a firm belief or conviction in the truth of the challenged finding. *See*

H.R.M., 209 S.W.3d at 108. Thus, under the applicable standards of review, we conclude that the evidence is legally and factually sufficient to support the trial court's finding by clear and convincing evidence that termination of the parent-child relationship between Father and the children is in the children's best interest. *See Jordan v. Dossey*, 325 S.W.3d 700, 733 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) (holding evidence legally and factually sufficient to support best-interest finding when most of the best-interest factors weighed in favor of termination). Accordingly, we overrule Father's sole issue.

IV. CONCLUSION

Having overruled Father's sole issue on appeal, we affirm the trial court's judgment.

/s/ Dana Womack

Dana Womack
Justice

Delivered: May 28, 2020