# In The
# Court of Appeals
# Seventh District of Texas at Amarillo

No. 07-17-00422-CV

IN THE INTEREST OF X.S., A CHILD

On Appeal from the County Court at Law No. 1
Randall County, Texas
Trial Court No. 71,072-L1, Honorable Jack M. Graham, Presiding

April 18, 2018

## MEMORANDUM OPINION

Before CAMPBELL and PIRTLE and PARKER, JJ.

Following a bench trial, the trial court signed a judgment terminating the parent-child relationship between A.S. and her son, X.S.[1] In two issues, A.S. contends that the evidence was not legally or factually sufficient to support termination of her parental rights. In a third issue, she asserts that the court abused its discretion in denying her motion for an extension and continuance. We affirm.

[1] To protect the privacy of the parties involved, we refer to them by their initials. *See* TEX. FAM. CODE ANN. § 109.002(d) (West Supp. 2017); TEX. R. APP. P. 9.8(b).

## FACTUAL AND PROCEDURAL BACKGROUND

The Department of Family and Protective Services became involved with A.S. on October 26, 2016, because of concerns of homelessness and ongoing domestic violence and drug use by X.S.'s parents. The Department's investigator interviewed X.S. at school, spoke to his school counselor, and spoke to A.S. and J.S.[2] According to X.S., he did not have a place to live. His parents recently moved to Amarillo from Elkhart, Kansas. The three of them had been staying at the Executive Inn for a couple of weeks. After his parents got into a fight, J.S. made them leave. A.S. called the police for assistance in getting their belongings. A.S. and X.S. spent the night with an aunt, then stayed with "someone he didn't know." He did not know where he was going to stay next.

A.S confirmed the violence in her relationship with J.S. Although A.S. and J.S. were divorced, they maintained a relationship and A.S. was financially dependent on him. In July of 2016, A.S. had moved to Amarillo to await a hearing on a motion to revoke her deferred adjudication probation. A.S. tested positive for methamphetamine in August and in November of 2016 while X.S. was in her care. In a telephone interview, J.S. admitted that he had a history of drug use and recently used methamphetamine. He also admitted to violence in his relationship with A.S. but maintained that she was the aggressor.

On November 18, 2016, the Department filed a petition seeking conservatorship and termination of parental rights. Following an adversary hearing, the Department was appointed temporary managing conservator and X.S. was placed with his maternal aunt

[2] J.S. is the father of X.S. His parental rights were also terminated. His attorney has filed an *Anders* brief and his appeal was resolved in cause number 07-18-00069-CV.

in Amarillo. His maternal grandmother, J.C., came to Amarillo to help take care of him until her home in Kansas could be approved as a placement.

The Department developed a service plan for A.S. According to the plan, A.S. was required to: abstain from the use of illegal drugs; submit to random drug screens; locate stable housing and employment; take parenting classes; participate in a substance abuse assessment with Outreach, Screening, Assessment, and Referral (OSAR) and follow recommendations; complete a psychological evaluation; attend domestic violence support group meetings; attend individual counseling; participate in rational behavior therapy (RBT); and attend visits with X.S.

In January of 2017, A.S. separated from J.S. She was evicted from her apartment and moved to a women's shelter. In February, A.S. pled guilty to a revocation of deferred adjudication on a felony drug charge. She was incarcerated from February 2 to August 8, 2017.

A.S. completed some services before her incarceration. She did not complete her counseling or attend inpatient or outpatient drug treatment as recommended by her OSAR evaluation. A.S. only completed three out of fourteen required domestic violence classes. She did not complete RBT. A.S. attended one couples counseling session with J.S.

At trial, A.S. denied the drug use that she previously admitted to and also denied domestic violence in the relationship with J.S. She testified that she was "high" at the time of her psychological assessment. After her release from prison, A.S. relocated to Canton, Texas, and lives with J.S., his sister, and his niece. A.S. is working at an Italian

restaurant. She has attended individual counseling and couples counseling since her release from prison.

X.S. is "very happy" in his placement with his maternal grandparents. He is doing well in school and he is playing football. He visits his paternal grandmother and his two half-siblings. X.S. loves his parents but he does not want to live with them. X.S. was aware of the termination trial and experienced "bad dreams" and stress about returning to his parents' care. X.S.'s maternal grandparents plan to adopt him.

The trial court terminated A.S.'s parental rights on the grounds of endangering conditions, endangerment, and failure to comply with a court order that established actions necessary to retain custody of the child. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O) (West Supp. 2017).[3] The trial court also found that termination was in the best interest of X.S. *See* § 161.001(b)(2).

## APPLICABLE LAW

A parent's right to the "companionship, care, custody[,] and management" of his or her child is a constitutional interest "far more precious than any property right." *Santosky v. Kramer*, 455 U.S. 745, 758-59, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *see In re M.S.,* 115 S.W.3d 534, 547 (Tex. 2003). Consequently, we strictly scrutinize termination proceedings and strictly construe the involuntary termination statutes in favor of the parent. *Holick v. Smith,* 685 S.W.2d 18, 20 (Tex. 1985). However, "the rights of natural parents are not absolute" and "[t]he rights of parenthood are accorded only to those fit to

[3] Further references to provisions of the Texas Family Code will be by reference to "section __" or "§ __."

accept the accompanying responsibilities." *In re A.V.,* 113 S.W.3d 355, 361 (Tex. 2003) (citing *In re J.W.T.*, 872 S.W.2d 189, 195 (Tex. 1993)). Recognizing that a parent may forfeit his or her parental rights by his or her acts or omissions, the primary focus of a termination suit is protection of the child's best interests. *See id*.

In a case to terminate parental rights by the Department under section 161.001 of the Family Code, the Department must establish, by clear and convincing evidence, that (1) the parent committed one or more of the enumerated acts or omissions justifying termination, and (2) termination is in the best interest of the child. § 161.001(b). Clear and convincing evidence is "the measure or degree of proof that 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." § 101.007 (West 2014); *In re J.F.C.,* 96 S.W.3d 256, 264 (Tex. 2002). Both elements must be established and termination may not be based solely on the best interest of the children 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 K.C.B.,* 280 S.W.3d 888, 894 (Tex. App.—Amarillo 2009, pet. denied). "Only one predicate finding under section 161.001[(b)](1) is necessary to support a judgment of termination when there is also a finding that termination is in the child's best interest." *In re A.V.,* 113 S.W.3d at 362. We will affirm the termination order if the evidence is both legally and factually sufficient to support any alleged statutory ground the trial court relied upon in terminating the parental rights if the evidence also establishes that termination is in the child's best interest. *In re K.C.B*., 280 S.W.3d at 894-95.

The clear and convincing evidence standard does not mean the evidence must negate all reasonable doubt or that the evidence must be uncontroverted. *In re R.D.S*.,

902 S.W.2d 714, 716 (Tex. App.—Amarillo 1995, no writ.) The reviewing court must recall that the trier of fact has the authority to weigh the evidence, draw reasonable inferences therefrom, and choose between conflicting inferences. *Id.* The factfinder also enjoys the right to resolve credibility issues and conflicts within the evidence and may freely choose to believe all, part, or none of the testimony espoused by any particular witness. *Id*. Where conflicting evidence is present, the factfinder's determination on such matters is generally regarded as conclusive. *In re B.R*., 950 S.W.2d 113, 121 (Tex. App.—El Paso 1997, no writ.).

The appellate court cannot weigh witness credibility issues that depend on demeanor and appearance as the witnesses are not present. *In re J.P.B.,* 180 S.W.3d 570, 573 (Tex. 2005). Even when credibility issues are reflected in the written transcript, the appellate court must defer to the factfinder's determinations, as long as those determinations are not themselves unreasonable. *Id.*

## STANDARDS OF REVIEW

When reviewing the legal sufficiency of the evidence in a termination case, the appellate court should look at all the evidence in the light most favorable to the trial court's finding "to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true." *In re J.F.C.,* 96 S.W.3d at 266. To give appropriate deference to the factfinder's conclusions, we must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so. *Id*. We disregard all evidence that a reasonable factfinder could have disbelieved or found to have been not credible, but we do not disregard undisputed facts. *Id.* Even evidence

that does more than raise surmise or suspicion is not sufficient unless that evidence is capable of producing a firm belief or conviction that the allegation is true. *In re K.M.L.,* 443 S.W.3d 101, 113 (Tex. 2014). If, after conducting a legal sufficiency review, we determine that no reasonable factfinder could have formed a firm belief or conviction that the matter that must be proven was true, then the evidence is legally insufficient and we must reverse. *Id*. (citing *In re J.F.C.,* 96 S.W.3d at 266).

In a factual sufficiency review, we must give due consideration to evidence that the factfinder could reasonably have found to be clear and convincing. *In re J.F.C.,* 96 S.W.3d at 266. We must determine whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the Department's allegations. *Id.* We must also consider whether disputed evidence is such that a reasonable factfinder could not have resolved the disputed evidence in favor of its finding. *Id.* 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, then the evidence is factually insufficient. *Id.*

Under an abuse of discretion standard, an appellate court may reverse the trial court's ruling only if the trial court acted without reference to any guiding rules and principles, such that its ruling is arbitrary and unreasonable. *Downer v. Aquamarine Operators, Inc*., 701 S.W.2d 238, 241-42 (Tex. 1985). Merely because a trial court may decide a matter within its discretion in a different manner than an appellate court would in a similar circumstance does not demonstrate that an abuse of discretion has occurred. *Id*.

## ANALYSIS

Request for extension under § 263.401(b)

We begin our analysis with A.S.'s third issue, in which she contends the court abused its discretion by failing to grant her request for extension under § 263.401(b). The trial court may extend the dismissal deadline if the movant shows "extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child." § 263.401(b) (West Supp. 2017). A trial court's denial of an extension request under section 263.401(b) is reviewed for an abuse of discretion. *In re D.W.*, 249 S.W.3d 625, 647 (Tex. App.—Fort Worth 2008), pet. denied, 260 S.W.3d 462 (Tex. 2008) (per curiam). "The focus is on the needs of the child, whether extraordinary circumstances necessitate the child remaining in the temporary custody of the Department, and whether continuing such is in the best interest of the child." *In re A.J.M.,* 375 S.W.3d 599, 604 (Tex. App.—Fort Worth 2012, pet. denied) (en banc). Actions that are "considered to be the parent's fault" will generally not constitute an extraordinary circumstance. *In re O.R.F.*, 417 S.W.3d 24, 42 (Tex. App.—Texarkana 2013, pet. denied).

A.S. moved to extend the dismissal deadline of the underlying termination suit claiming that her incarceration from February to August of 2017 prevented her from completing the service plan. J.C. was opposed to a continuation and believed it would be detrimental to X.S. because he had been having bad dreams about having to live with his parents as the hearing date approached. The guardian ad litem for X.S. also objected

to the extension. A.S. pled guilty to revocation of her probation and presented no plausible evidence that her incarceration was an "extraordinary circumstance" that merited an extension or that an extension would be in the best interest of X.S. We cannot say that the court abused its discretion by denying A.S.'s extension request. Accordingly, we overrule the third issue.

Sufficiency of the evidence under § 161.001(b)(1)(D), (E), (O)

In her first issue, A.S. challenges the legal and factual sufficiency of the evidence to support the termination of her parental rights under section 161.001(b)(1)(D), (E), and (O). Although only one statutory ground is required to support termination, *see In re A.V.*, 113 S.W.3d at 362, we find there is sufficient evidence of multiple grounds in this case to support termination. We will limit our analysis of the sufficiency of the evidence in support of subsections (D) and (E).

A trial court may order termination of a parent-child relationship if the court finds by clear and convincing evidence that a parent has knowingly placed or knowingly allowed a child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child and/or engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child. *See* § 161.001(b)(1)(D), (E). Both subsections (D) and (E) require proof of endangerment. To "endanger" means to expose the child to loss or injury or to jeopardize the child's emotional or physical health. *Boyd,* 727 S.W.2d at 533. A child is endangered when the environment creates a potential for danger that the parent is aware of but consciously disregards. *J.S. v. Tex. Dep't of Family & Protective Servs.,* 511

S.W.3d 145, 159 (Tex. App.—El Paso 2014, no pet.). Endanger means more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment, but it is not necessary that the conduct be directed at the child or that the child suffer injury. *In re N.K.,* 399 S.W.3d 322, 330-31 (Tex. App.—Amarillo 2013, no pet).

While both subsections (D) and (E) focus on endangerment, they differ regarding the source of the physical or emotional endangerment to the child. *See In re B.S.T.*, 977 S.W.2d 481, 484 (Tex. App.—Houston [14th Dist.] 1998, no pet.). Subsection (D) requires a showing that the environment in which the child is placed endangered the child's physical or emotional health. *Doyle v. Tex. Dep't of Protective & Regulatory Servs.,* 16 S.W.3d 390, 394 (Tex. App.—El Paso 2000, pet. denied). Conduct of a parent or another person in the home can create an environment that endangers the physical and emotional well-being of a child as required for termination under subsection (D). *In re W.S.*, 899 S.W.2d 772, 776 (Tex. App.—Fort Worth 1995, no pet.). Inappropriate, abusive, or unlawful conduct by persons who live in the child's home or with whom the child is compelled to associate on a regular basis in his home is a part of the "conditions or surroundings" of the child's home under subsection (D). *In re M.R.J.M.*, 280 S.W.3d 494, 502 (Tex. App.—Fort Worth 2009, no pet.) (op. on reh'g). The factfinder may infer from past conduct endangering the child's well-being that similar conduct will recur if the child is returned to the parent. *Id*. Thus, subsection (D) addresses the child's surroundings and environment rather than parental misconduct, which is the subject of subsection (E). *Doyle*, 16 S.W.3d at 394.

Under subsection (E), the cause of the danger to the child must be the parent's conduct alone, as evidenced not only by the parent's actions, but also by the parent's omission or failure to act. *In re M.J.M.L.,* 31 S.W.3d 347, 350-51 (Tex. App.—San Antonio 2000, pet. denied); *Doyle*, 16 S.W.3d at 395. To be relevant, the conduct does not have to have been directed at the child, nor must actual harm result to the child from the conduct. *Dupree v. Tex. Dep't of Protective & Regulatory Servs.,* 907 S.W.2d 81, 84 (Tex. App.—Dallas 1995, no writ). Additionally, termination under subsection (E) must be based on more than a single act or omission; a voluntary, deliberate, and conscious course of conduct by the parent is required. *In re E.P.C*., 381 S.W.3d 670, 683 (Tex. App.—Fort Worth 2012, no pet.). The specific danger to the child's well-being need not be established as an independent proposition, but may be inferred from parental misconduct. *In re B.C.S*., 479 S.W.3d 918, 926 (Tex. App.—El Paso 2015, no pet.).

A parent's ongoing drug use is conduct that subjects a child to a life of uncertainty and instability, which endangers the physical and emotional well-being of the child. *See In re K.A.S*., No. 07-12-00234-CV, 2012 Tex. App. LEXIS 8725, at *16-17 (Tex. App.—Amarillo Oct. 18, 2012, no pet.); *In re A.B.*, 125 S.W.3d 769, 777 (Tex. App.—Texarkana 2003, pet. denied) ("Drug use and its effect on a parent's life and ability to parent may establish an endangering course of conduct."). "A parent's continued drug use demonstrates an inability to provide for the child's emotional and physical needs and to provide a stable environment for the child." *In re E.M.*, 494 S.W.3d 209, 222 (Tex. App.—Waco 2015, pet. denied) (citing *In re F.A.R.*, No. 11-04-00014-CV, 2005 Tex. App. LEXIS 234, at *4 (Tex. App.—Eastland Jan. 13, 2005, no pet.) (mem. op.)).

It is undisputed in this case that A.S. pled guilty to possession of a controlled substance, and was given deferred adjudication probation. From 2013 through 2016, A.S. frequently violated the terms of her probation including daily alcohol use and use of methamphetamine. A.S. tested positive twice for methamphetamine after she moved to Amarillo with X.S. in the summer of 2016. Not only did A.S. use drugs while X.S. was in her care, but she continued to use methamphetamine after he was placed with his grandmother. Additionally, A.S. did not avoid contact with J.S. despite their history of domestic violence. She lived with him in Amarillo after the Department became involved, and again after she was released from prison. J.S. admitted to a history of drug use and tested positive for methamphetamine in April of 2017. A parent's violent or abusive conduct can produce an environment that threatens a child's well-being. *S.H.R. v. Dep't of Family & Protective Servs.,* 404 S.W.3d 612, 645 (Tex. App.—Houston [1st Dist.] 2012), *aff'd by, In re S.M.R.,* 434 S.W.3d 576 (Tex. 2014) (Brown, J., dissenting). "Domestic violence, want of self[-]control, and propensity for violence may be considered as evidence of endangerment." *In re J.I.T.P*., 99 S.W.3d 841, 845 (Tex. App.—Houston [14th Dist.] 2003, no pet.). The trial court could have been persuaded that the combination of drug use and domestic violence was conduct that produced an endangering environment.

In addition, the trial court could have considered A.S.'s failure to complete significant requirements of her service plan as part of the endangering conduct analysis under subsection (E). *See In re T.H.,* No. 07-07-00391-CV, 2008 Tex. App. LEXIS 6107, at *21-22 (Tex. App.—Amarillo Aug. 12, 2008, no pet.) (mem. op.); *In re R.F.,* 115 S.W.3d 804, 811 (Tex. App.—Dallas 2003, no pet.). The Department developed a service plan

for A.S. and the trial court ordered her to comply with each of its requirements. The service plan required A.S. to participate in parenting classes and individual counseling to address personal issues surrounding the removal of X.S. A.S. failed to complete individual counseling. Despite her extensive drug history, A.S. never completed a drug treatment program as required by the OSAR assessment. A.S. attended only three of the required fourteen sessions of the domestic violence group meetings, and did not complete RBT. By continuing to live with J.S. after her release from prison, the trial court could have reasonably inferred that A.S. would continue her pattern and practice of providing an unstable and abusive home for X.S. that has the potential to compromise his emotional and physical well-being. The trial court was free to disbelieve A.S.'s emphatic denials regarding her criminal conviction, her drug use, and domestic violence.

Having examined the entire record, we find that the trial court could reasonably form a firm belief or conviction that A.S. knowingly placed or knowingly allowed X.S. to remain in conditions or surroundings which endangered his physical or emotional well-being and engaged in conduct which endangered X.S.'s emotional and physical well-being. The same evidence is factually sufficient to support the trial court's affirmative finding. Issue one is overruled.

Best interest of the child

In issue two, A.S. challenges the legal and factual sufficiency of the evidence supporting the best interest finding made under section 161.001(b)(2). A determination of best interest necessitates a focus on the child, not the parent. *See In re B.C.S.,* 479 S.W.3d at 927. Appellate courts examine the entire record to decide what is in the best

interest of the child. *In re E.C.R.,* 402 S.W.3d 239, 250 (Tex. 2013). There is a strong presumption that it is in the child's best interest to preserve the parent-child relationship. *In re R.R.,* 209 S.W.3d 112, 116 (Tex. 2006).

In assessing whether termination is in a child's best interest, the courts are guided by the non-exclusive list of factors in *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976). These factors 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 that may indicate that the existing parent-child relationship is not proper, and (9) any excuse for the acts or omissions of the parent. *Id.* "[T]he State need not prove all of the factors as a condition precedent to parental termination, 'particularly if the evidence were undisputed that the parental relationship endangered the safety of the child.'" *In re C.T.E*., 95 S.W.3d 462, 466 (Tex. App.—Houston [1st Dist.] 2002, pet. denied) (quoting *In re C.H*., 89 S.W.3d 17, 27 (Tex. 2002)). Evidence that supports one or more statutory grounds for termination may also constitute evidence illustrating that termination is in the child's best interest. *See In re E.C.R*., 402 S.W.3d at 249. The best interest analysis may consider circumstantial evidence, subjective factors, and the totality of the evidence as well as direct evidence. *In re N.R.T.,* 338 S.W.3d 667, 677 (Tex. App.—Amarillo 2011, no pet.). We must also bear in mind that a child's need for permanence through the establishment of a stable, permanent home has been recognized as the paramount

consideration in determining best interest. *See In re K.C.,* 219 S.W.3d 924, 931 (Tex. App.—Dallas 2007, no pet.).

The desires of the child

At the time of trial, X.S. was eight years old and had spent a majority of his life in J.C.'s care due to A.S.'s drug use and instability. A.S. admitted that X.S. lived with J.C. for more than three years beginning in 2012 and she did not see him during that time. While X.S. loves his parents, he does not want to live with them. This evidence supports the trial court's best interest determination.

The emotional and physical needs of and danger to the child

The next two factors are the child's emotional and physical needs now and in the future, and the emotional and physical danger to the child now and in the future. The need for permanence is a paramount consideration for a child's present and future physical and emotional needs. *Edwards v. Tex. Dep't of Protective & Regulatory Servs.,* 946 S.W.2d 130, 138 (Tex. App.—El Paso 1997, no writ). A factfinder may infer that past conduct endangering the well-being of a child may recur in the future if the child is returned to the parent. *In re D.L.N.,* 958 S.W.2d 934, 941 (Tex. App.—Waco 1997, pet. denied), *disapproved on other grounds by, In re J.F.C*., 96 S.W.3d at 267. A trial court is entitled to consider a parent's history of drug use and irresponsible choices. *In re J.O.A*., 283 S.W.3d 336, 346 (Tex. 2009).

Evidence of the parents' history of domestic violence supports the trial court's best interest finding. *See J.I.T.P.,* 99 S.W.3d at 846 (domestic violence supports finding that termination is in child's best interest even when child is not a victim of violence).

Moreover, a parent's continued exposure to the other parent's dangerous conduct is also evidence of endangerment and a relevant consideration in determining a child's best interest. *In re O.N.H.,* 401 S.W.3d 681, 684 (Tex. App.—San Antonio 2013, no pet.) (considering parent's exposure to other parent's drug habits as relevant factor in determining child's best interest).

The evidence establishes that A.S. has an extensive history of drug use and used drugs while the child was in her care. She was convicted of possession of a controlled substance and continued to use drugs while on probation, resulting in her incarceration. A.S. used drugs with J.S.; engaged in domestic violence with J.S.; exposed X.S. to domestic violence and instability; and reunited with J.S. after her release from prison. The trial court could have concluded that A.S. is unable to meet the physical or emotional needs of the child, and is unable to protect the child from physical or emotional danger. A.S.'s failure to attend drug treatment and her willingness to remain in a violent relationship with someone who abused drugs suggests that similar conduct will occur in the future, thereby constituting evidence of emotional and physical danger to the child now and in the future. *In re D.L.N.,* 958 S.W.2d at 941. These two factors weigh heavily in favor of the trial court's best interest determination.

Parenting ability and programs available to assist party seeking custody

The fourth and fifth factors will be discussed together. In reviewing the parenting ability of the parent, a factfinder can consider the parent's past neglect or past inability to meet the physical and emotional needs of the child. *In re G.N.,* 510 S.W.3d 134, 139 (Tex. App.—El Paso 2016, no pet.). A parent's exposure of a child to drug use and

violence may be properly considered in determining whether a parent has demonstrated appropriate parenting abilities. *In re H.D*., No. 01-12-00007-CV, 2013 Tex. App. LEXIS 5699, at *42 (Tex. App.—Houston [1st Dist.] May 9, 2013, no pet.). The factfinder can infer from a parent's failure to take the initiative to avail herself of the programs offered to her by the Department that the parent "did not have the ability to motivate herself to seek out available resources needed now or in the future." *In re J.M.,* No. 01-14-00826-CV, 2015 Tex. App. LEXIS 2130, at *21 (Tex. App.—Houston [1st Dist.] Mar. 5, 2015, no pet.) (mem. op.) (*citing In re W.E.C*., 110 S.W.3d 231, 245 (Tex. App.—Fort Worth 2003, no pet.)).

A.S. was court-ordered to comply with reunification services, yet she failed to complete the services directly related to the reason for the child's removal, such as domestic violence classes or a drug treatment program. Despite remaining in the relationship with J.S., she failed to complete couple's counseling. A.S.'s failure to complete these necessary services could have led the trial court to infer that A.S. did not have the ability to motivate herself to seek out available resources now or in the future. *See id*. The trial court was entitled to find that this evidence weighed in favor of the best interest finding.

Plans for the child and stability of the home or placement

We will consider the sixth and seventh factors together. The sixth factor examines the plans for the child by those individuals or the agency seeking custody. The seventh factor is the stability of the home or proposed placement. Stability and permanence are paramount in the upbringing of children. *In re J.D.,* 436 S.W.3d 105, 120 (Tex. App.—

Houston [14th Dist.] 2014, no pet.). The factfinder may compare the parent's and the Department's plans for the child and determine whether the plans and expectations of each party are realistic or weak and ill-defined. *Id.* at 119-20.

After her release from prison, A.S. continued a relationship with a man that she described as "a frequent drug user." While A.S. secured employment after her incarceration, she has failed to pay any of her court-ordered child support. She remains financially dependent on J.S. and his sister to provide her with a place to live. J.C. testified that X.S. was doing well in school and he is playing football. She and her husband are interested in adopting X.S. if parental rights are terminated. J.C. also facilitates visits with X.S.'s paternal grandparents and his two half-siblings. This evidence supports the trial court finding that termination was in the best interest of the child.

Acts and omissions of the parent

The eighth factor is the parent's acts or omissions that may indicate that the existing parent-child relationship is not a proper one. A.S.'s history and use of methamphetamine coupled with the volatility of the relationship with J.S. is wholly inconsistent with a proper parent-child relationship. In considering this evidence, the trial court could have found that the existing parent-child relationship is not a proper one.

Excuses for the parent's acts or omissions

The ninth factor is any excuse for the acts or omissions of the parent. A.S. blames her incarceration for her inability to complete her service plan. Testimony was presented that A.S. had the opportunity to, but did not, participate in a Substance Abuse Facility

Program (SAFP) in lieu of jail time. This factor supports the trial court's best interest determination.

We conclude that the evidence is both legally and factually sufficient to establish a firm conviction in the mind of the trial court that termination of A.S's parental rights is in the best interest of X.S. Issue two is overruled.

## CONCLUSION

The judgment of the trial court terminating A.S.'s parental rights is affirmed.

Judy C. Parker
Justice