In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-21-00278-CV

IN THE INTEREST OF H.G., A CHILD

On Appeal from the County Court at Law No. 1
Randall County, Texas
Trial Court No. 78,653-L1, Honorable James W. Anderson, Presiding

April 25, 2022

MEMORANDUM OPINION

Before PIRTLE and PARKER and DOSS, JJ.

The father of H.G. ("Father") appeals the termination of his parental rights.[1] In four issues, Father challenges the trial court's denial of his motion for continuance and the legal and factual sufficiency of the evidence supporting the trial court's decree of termination. We affirm the trial court's judgment.

[1] To protect the privacy of the parties involved, we will refer to the appellant as "Father," to the child's mother as "Mother," and to the child by her initials. *See* TEX. FAM. CODE ANN. § 109.002(d); TEX. R. APP. P. 9.8(b). Mother's parental rights were also terminated in this proceeding. Mother does not appeal.

Background

Shortly after her birth in September of 2020, H.G. was removed from Mother's care by the Department of Family and Protective Services based on Mother's admission to methamphetamine use during her pregnancy. Father submitted to paternity testing and was adjudicated to be H.G.'s father on December 8, 2020. The Department developed a service plan for Father, and the trial court ordered compliance with the plan's requirements. Among other things, the plan required Father to submit to drug testing, successfully complete the PADRE (Parenting Awareness and Drug Risk Education) program, and successfully complete an inpatient drug treatment program.

On September 9, 2021, Father filed a motion for extension in which he argued that good cause existed for a six-month extension of the case "because Child Protective Services is required to provide the services that have been ordered at reasonable times for [Father] but has failed to accommodate [Father's] work schedule." Prior to the termination hearing on September 13, 2021, the court heard arguments on Father's motion for extension and then denied the motion.

The case proceeded to trial before the associate judge. The trial court denied the Department's request for termination and entered an order naming the Department permanent managing conservator and Father a possessory conservator. The Department requested a de novo hearing. The de novo hearing was held on October 13, 2021. The referring court terminated Father's parental rights to H.G. on the grounds of 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)(E) and (O).[2] The referring court also found that termination was in the best interest of H.G. *See* § 161.001(b)(2). Father timely filed this appeal.

Denial of Motion for Extension

In his first issue, Father argues that the trial court abused its discretion in denying his motion for a six-month extension of the dismissal deadline.

A trial court may grant a 180-day extension of the dismissal deadline in a suit filed by the Department to terminate a parent-child relationship on a showing that "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). We review a trial court's decision to grant or deny such an extension under an abuse of discretion standard. *In re A.J.M.*, 375 S.W.3d 599, 604 (Tex. App.—Fort Worth 2012, pet. denied) (op. on reh'g) (en banc). The focus on granting this extension "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." *Id.*

Here, Father's request for an extension was premised on his argument that the services he needed to complete were only offered during his working hours. He contends

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

that he could not maintain stable employment, which was a requirement of his service plan, while also completing the other requirements of the plan.

At the hearing on his motion for an extension, Father testified that he had two remaining services to complete under his service plan: the PADRE program and drug treatment. He stated that neither of those services was offered outside of weekdays between 8:00 a.m. and 5:00 p.m., which is when he is at work. According to Father, the individual to whom the Department referred him for services told him that evening classes were not available.[3] Father acknowledged that he had not explored the possibility of completing services online.

Father further testified that he waited to begin services until the paternity test results were known, and that he was not informed of those results until January of 2021. He admitted that he was ordered to complete services in a court order dated March 18, 2021. He said that he was "slow to start after that, but since then, I did try to start, and try to get done what I could." Father admitted that he had used methamphetamine for fifteen years. Even though Father had been involved in another Department investigation in connection with another child, Father had not sought out drug treatment in the past.[4] However, he testified that he had previously stopped using drugs for a number of months, although he later relapsed. Father testified that at his current job, which he began in May of 2021, he had not requested time off to complete drug treatment or the PADRE program.

[3] The trial court's order required Father to complete an "inpatient residential treatment program at Cenikor or at another similar substance abuse treatment facility," but the record reflects that Father was under the impression that he could complete outpatient treatment instead. In any event, Father did not complete either course of treatment.

[4] Father testified that the Department's investigation, which occurred around March of 2020, related to his methamphetamine use.

He stated that there was no one available to take his place at work. Father acknowledged that, prior to May, he was not in a situation where he could not have requested time off from work. He said that if the trial court granted an extension, he "definitely would try to finish all the services."

The trial court also heard testimony from the Department's caseworker. She testified that Father's incomplete services, i.e., the PADRE program and drug treatment, addressed "the paramount issues" in this case.

"[W]hen a parent, through [his] own choices, fails to comply with a service plan and then requests an extension of the statutory dismissal date in order to complete the plan, the trial court does not abuse its discretion by denying the extension." *In re A.S.*, No. 12-16-00104-CV, 2016 Tex. App. LEXIS 10697, at *3-4 (Tex. App.—Tyler Sept. 30, 2016, no pet.) (mem. op.). Here, Father's inability to complete his services was not an extraordinary circumstance, but was instead the result of his choice to delay working on his services right away and his failure to seek accommodation for his work schedule. Father's testimony indicated that he had an opportunity to work his services earlier but that he was, in his own words, "slow to start." Additionally, while Father claimed that his work schedule prevented him from participating in services, he admittedly failed to ask his employer for any time off. "Actions that are considered to be the parent's fault will generally not constitute extraordinary circumstances." *In the Interest of J.S.S.*, 594 S.W.3d 493, 501 (Tex. App.—Waco 2019, pet. denied) (mem. op.); *see also Shaw v. Tex. Dep't of Family & Protective Servs.*, No. 03-05-00682-CV, 2006 Tex. App. LEXIS 7668, at *25 (Tex. App.—Austin Aug. 31, 2006, pet. denied) (mem. op.) (failure to begin complying with family service plan until several weeks before trial does not constitute

extraordinary circumstance when requirements necessary to obtain return of child were known well in advance of that time). Moreover, Father's arguments for an extension are focused on his needs; Father failed to demonstrate how it would be in H.G.'s best interest for the extension to be granted. *See In re S.R.*, No. 07-19-00164-CV, 2019 Tex. App. LEXIS 8701, at *13 (Tex. App.—Amarillo Sept. 26, 2019, no pet.) (mem. op.).

Therefore, we cannot conclude that the trial court abused its discretion by determining Father had not met his burden to show there were extraordinary circumstances justifying an extension of the statutory dismissal deadline. We overrule Father's first issue.

Sufficiency of the Evidence Supporting Termination

Father's remaining three issues challenge the legal and factual sufficiency of the evidence supporting the trial court's decree of termination.

The evidence at trial showed that Mother and Father regularly used methamphetamine together, including during Mother's pregnancy. They broke up while Mother was pregnant with H.G. Father testified that he has used methamphetamine for approximately fifteen years. He stated that, while this case was pending, he went to inpatient drug treatment for about a week. He left early because he thought it "was not very beneficial." He believed that "sitting and, you know, and talking to other addicts didn't seem very helpful," so he left without completing the treatment program. Father testified that, even though he has three children,[5] he had not sought drug treatment earlier. When

[5] In addition to H.G., Father has a nineteen-year-old daughter and a five-year-old son. Father testified that he has supervised visitation with his son.

asked why he had not made an effort to get clean, he answered that it was due to his "selfishness," and stated, "I didn't understand that it was harming my other children."

The evidence showed that Father had completed other requirements of his service plan, including his therapy sessions, his rational behavior therapy (RBT), and his psychosocial evaluation. At the time of the final hearing, he testified that he was living a drug-free lifestyle and was in the process of moving out of his parents' home into an apartment that had space for both himself and H.G. Father testified that he attends AA/NA meetings about once a week.

The Department caseworker testified that Father had four no-shows for drug screens, most recently in May of 2021. In July of 2021, Father's drug screen urinalysis was negative, but his hair strand test was positive for methamphetamine. The caseworker considered Father to be at risk for relapse even if he was sober at the time of trial. She testified that she did not believe Father can provide H.G. an environment that is safe and free of drugs or provide for H.G.'s emotional and physical well-being now and in the future. She further testified that Father had four visits with H.G. since the case started.

Standard of Review

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 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. 1994)). 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 under section 161.001 of the Family Code, the petitioner 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; *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 child as determined by the trier of fact. *Texas 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.

In reviewing for legal sufficiency, we look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that the finding was true. *In re J.O.A.*, 283 S.W.3d 336, 344-45 (Tex. 2009). In reviewing for factual sufficiency, we give due consideration to evidence the court could reasonably have found to be clear and convincing. *In re C.H.*, 89 S.W.3d at 27. 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. *In re J.F.C.*, 96 S.W.3d at 266.

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 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, if those determinations are not themselves unreasonable. *Id.*

Failure to Comply Finding

We will first address Father's third issue, in which he challenges the court's finding of termination grounds under subsection (O), the failure to comply with the provisions of a court order that specifically established the actions necessary to obtain the return of the child. *See* § 161.001(b)(1)(O). Father maintains that the evidence was neither legally nor factually sufficient to support the judgment of termination on this ground.

Subsection (O) provides that the trial court may order termination of the parent-child relationship if the court finds by clear and convincing evidence "that the parent has failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department . . . ." *Id.* Father admits that he did not complete the drug treatment program or the PADRE program, both of which were required under the trial court's order. However, Father contends that he "made a good faith effort to comply" with the court's order and that his failure to comply with the remaining services was not due to any fault of his.

Father's arguments invoke the statutory defense to termination found in section 161.001(d):

> A court may not order termination under Subsection (b)(1)(O) based on the failure by the parent to comply with a specific provision of a court order if a parent proves by a preponderance of evidence that: (1) the parent was unable to comply with specific provisions of the court order; and (2) the

> parent made a good faith effort to comply with the order and the failure to comply with the order is not attributable to any fault of the parent.

§ 161.001(d). The Department argues that Father failed to preserve the affirmative defense available under section 161.001(d) because he did not plead it, and affirmative defenses are waived if not set forth in a pleading. Even if we assume without deciding that Father did not waive the section 161.001(d) defense for failure to specifically plead it, we conclude that he failed to meet his burden of proof to establish it.

Father admitted that he attended inpatient drug treatment but voluntarily left the program. Thus, Father had the opportunity to complete the treatment program. His failure to finish it was the result of his decision to quit, which was based on his belief that it was not "beneficial." Additionally, although Father suggested that his failure to complete the PADRE program was due to the Department's failure to provide him with necessary contact information, Father's earlier testimony indicated that he had contacted a PADRE provider. Finally, while he claims that his need to remain employed and need to complete services put him in a no-win situation, Father failed to explain why he could not have worked his services in the months before he started his job in May.

Deferring to the trial court's role as factfinder and judge of the credibility of the witnesses, we cannot say that the trial court erred in concluding that Father did not prove that his failure to comply with the service plan as ordered by the trial court was not attributable to any fault of his own. We conclude the evidence is legally and factually sufficient to support the trial court's finding that Father did not meet his burden of proof pursuant to section 161.001(d) and therefore termination was proper under section 161.001(b)(1)(O). We overrule Father's third issue.

Endangerment Finding

In his second issue, Father asserts that the evidence was not legally or factually sufficient to support a judgment of termination under section 161.001(b)(1)(E). As set forth above, only one predicate ground finding, combined with a best-interest finding, is necessary for termination of parental rights. *See In re A.V.*, 113 S.W.3d at 362. However, we address Father's second issue because the parent is entitled to appellate review of (D) and (E) findings when raised on appeal, even in cases where another finding is sufficient to uphold termination. *In re N.G.*, 577 S.W.3d 230, 235 (Tex. 2019) (per curiam).

Subsection (E) permits a trial court to terminate parental rights if it finds that the parent has "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." § 161.001(b)(1)(E). To endanger means to expose to loss or injury, or to jeopardize. *In re M.C.*, 917 S.W.2d 268, 269 (Tex. 1996) (per curiam) (citing *Boyd*, 727 S.W.2d at 533). It is 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 actually suffer injury. *Id.* Under subsection (E), the cause of the danger to the child may be proven by the parent's conduct, 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 v. Tex. Dep't of Protective & Regulatory Servs.*, 16 S.W.3d 390, 395 (Tex. App.—El Paso 2000, pet. denied). 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.).

To determine whether termination is warranted, courts may look to parental conduct both before and after the child's birth. *In re D.M.*, 58 S.W.3d 801, 812 (Tex. App.—Fort Worth 2001, no pet.). The law does not require that a child be the victim of abusive conduct before the Department can involuntarily terminate a parent's rights to the child. *Dallas Cnty. Child Protective Servs. v. Bowling*, 833 S.W.2d 730, 733 (Tex. App.—Dallas 1992, no pet.). As a general rule, conduct that subjects a child to a life of uncertainty and instability endangers the physical and emotional well-being of the child. *In re R.W.*, 129 S.W.3d 732, 739 (Tex. App.—Fort Worth 2004, pet. denied).

On appeal, Father argues that, even though he admitted to a long history of drug use, there is no evidence showing that his drug use endangered or had any effect on H.G. He notes that H.G. was removed from Mother's care at birth and was therefore "not exposed" to Father's drug use. Father further contends that there is no evidence that he was still using methamphetamine at the time of trial. He submits that "a finding of endangerment based on drug use alone is not automatic."

The record shows that Father had a fifteen-year history of methamphetamine use. He used methamphetamine with Mother while she was pregnant with H.G., and he continued to use methamphetamine even after the Department became involved, admitting that he had a positive drug test in May or June of 2021. Father's urinalysis in July of 2021 was negative, but his hair strand test was "still pretty high." Additionally, Father's four "no-shows" for drug tests were presumed positive by the Department. *See*

In re W.E.C., 110 S.W.3d 231, 239 (Tex. App.—Fort Worth 2003, no pet.) (factfinder may reasonably infer from parent's failure to attend scheduled drug screenings that parent was avoiding testing because parent was using drugs).

We have acknowledged that "mere drug use," standing alone, does not conclusively support termination of parental rights. *In re A.A.*, 635 S.W.3d 430, 441 n.5 (Tex. App.—Amarillo 2021, pet. filed). However, a parent's drug use cannot be viewed in a vacuum. *In re L.C.L.*, 629 S.W.3d 909, 911 (Tex. 2021) (Lehrmann, J., concurring) (analogizing appellant's argument that "mere drug use" could not support endangering-conduct finding to argument that "mere imprisonment" could not support endangering-conduct finding). In this case, we conclude that the evidence presented regarding Father's conduct is legally and factually sufficient to support the trial court's finding that he engaged in conduct that endangered H.G.'s physical or emotional well-being.

We begin by reiterating that Father's drug use was not merely historical; he was using methamphetamine with Mother during her pregnancy with H.G. and continued to use it during the pendency of the case. A parent's drug use "reflects poor judgment." *In re J.M.T.*, 519 S.W.3d 258, 269 (Tex. App.—Houston [1st Dist.] 2017, pet. denied). More explicitly, "[n]arcotics can impair or incapacitate the user's ability to parent," and "[m]ethamphetamine addiction can work havoc not only on the addict but on the addict's family . . . ." *In re M.M.*, No. 02-21-00185-CV, 2021 Tex. App. LEXIS 9177, at *14 (Tex. App.—Fort Worth Nov. 10, 2021, no pet.) (mem. op.). Father did not meet H.G. until she was approximately ten months old because he was unable to exercise visitation with her until he provided a negative urinalysis. By the time of trial, Father had seen H.G. on only four occasions. Father engaged in a voluntary, deliberate course of conduct that

rendered him unable to even visit H.G. regularly, much less assume the role of providing her with the nurture and care that a parent should give a vulnerable infant. From this, the trial court was entitled to find that Father subordinated his parenting responsibilities to his drug habit. The trial court could thus reasonably infer that Father's drug use had an adverse effect on his ability to bond with and parent H.G., thus jeopardizing her emotional well-being. *See in re J. F.-G.*, 627 S.W.3d 304, 316 (Tex. 2021) (in affirming endangerment finding under subsection (E), court considered evidence that father was not a presence or source of support in child's life).

Numerous appellate courts have recognized that a parent's decision to use illegal drugs during the pendency of a termination suit, when the parent knows he is at risk of losing his child, may support a finding of endangerment under subsection (E). *See D.H. v. Tex. Dep't of Fam. & Protective Servs.*, No. 03-21-00255-CV, 2021 Tex. App. LEXIS 8869, at *12 (Tex. App.—Austin Nov. 3, 2021, no pet.); *In re C.V.L.*, 591 S.W.3d 734, 751 (Tex. App.—Dallas 2019, pet. denied); *In re J.S.*, 584 S.W.3d 622, 636 (Tex. App.—Houston [1st Dist.] 2019, no pet.); *see also In re M.G.D.*, 108 S.W.3d 508, 513, 514 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (noting that "evidence of a recent turnaround should be determinative only if it is reasonable to conclude that rehabilitation, once begun, will surely continue" and that narcotics abuse issues "sometimes reappear"). Thus, "a parent's use of narcotics and its effect on his or her ability to parent may qualify as an endangering course of conduct." *In re J.O.A.*, 283 S.W.3d at 345. This is because illegal drug use exposes children to the possibility that their parents could be impaired or imprisoned, which would endanger the children's physical and emotional well-being. *In re M.C.*, 482 S.W.3d 675, 685 (Tex. App.—Texarkana 2016, pet. denied). Continued

drug use may also subject a child to prolonged or exacerbated instability. *In re M.T.*, Nos. 05-20-00450-CV, 05-20-00451-CV, 2020 Tex. App. LEXIS 7956, at *16 (Tex. App.—Dallas Oct. 5, 2020, no pet.) (mem. op.).

Here, Father's continued drug use came hand-in-hand with his failure to complete the drug treatment program and the PADRE program required by his service plan. These two requirements were intended to address Father's drug use and the impact of substance abuse within families, which the caseworker identified as the "paramount issues" in this case. Thus, Father failed to complete the services that directly related to drug abuse, which was the reason that Father's visitation with H.G. was suspended and, moreover, the reason H.G. was placed in the Department's care at birth.

The trial court could have considered Father's failure to complete the requirements of his service plan as part of its endangering conduct analysis under subsection (E). *See In re X.S.*, No. 07-17-00422-CV, 2018 Tex. App. LEXIS 2735, at *14-15 (Tex. App.—Amarillo Apr. 18, 2018, no pet.) (mem. op.). Father testified that his drug use "was harming [his] other children," from which the trial court could infer that Father acknowledged his drug use affected his children. Yet Father's failure to complete the court-ordered services intended to address his chronic abuse of methamphetamine indicates that Father lacks a proper understanding of, or is indifferent to, how his drug use is detrimental to his ability to properly parent H.G. Further, it underscores the likelihood that drug use may continue to be an issue in Father's future. The CASA volunteer testified that she had not seen much progress from Father in working his services. The caseworker testified that she did not believe that Father could provide H.G. an environment that was safe and free of drugs. She further testified that she did not

believe that Father could provide for H.G.'s physical and emotional well-being. Thus, the trial court could have rationally inferred that Father could not provide a safe and stable environment, free from exposure to methamphetamine and its ill effects, for H.G. *See In re G.S.*, No. 12-21-00227-CV, 2022 Tex. App. LEXIS 1896, at *13-14 (Tex. App.—Tyler Mar. 23, 2022, no pet. h.) (parents' drug use supports inference that they are at risk for continuing drug use, which is relevant to stability of home as well as child's emotional and physical needs). This would subject H.G. to a life of uncertainty and instability and support a finding regarding the predicate grounds set forth in section 161.001(b)(1)(E) of the Family Code. *See In re Z.J.*, No. 02-19-00118-CV, 2019 Tex. App. LEXIS 10125, at *30-31 (Tex. App.—Fort Worth Nov. 21, 2019, pet. denied) (mem. op.) (reasonable factfinder could infer from father's past drug use and failure to work service plan that drug use may recur); *see also In re S.P.*, 509 S.W.3d 552, 558 (Tex. App.—El Paso 2016, no pet.) (factfinder can infer from parent's failure to take initiative to utilize available programs that parent did not have ability to motivate himself in the future).

Viewing all the evidence in the light most favorable to the trial court's judgment, we conclude that the trial court had sufficient evidence before it to conclude that Father's conduct endangered H.G.'s physical and emotional well-being. *See, e.g., Vasquez v. Tex. Dep't of Protective & Regulatory Servs.*, 190 S.W.3d 189, 195-96 (Tex. App.—Houston [1st Dist.] 2005, pet. denied) (terminating parental rights despite there being no direct evidence that parent's continued drug use actually injured child). Accordingly, we overrule Father's second issue.

Best-Interest Finding

In his final issue, Father contends that the evidence was not factually sufficient to support a finding of best interest of the child under section 161.001(b)(2). To terminate parental rights, a trial court must find by clear and convincing evidence one of the statutory predicate grounds and that termination is in the child's best interest. § 161.001(b). Under Texas law, there is a strong presumption that the best interest of a child is served by keeping the child with a parent. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam). However, a court must also presume "the prompt and permanent placement of the child in a safe environment is . . . in the child's best interest." § 263.307(a). The best-interest analysis is child-centered and focuses on the child's well-being, safety, and development. *In re A.C.*, 560 S.W.3d 624, 631 (Tex. 2018).

To assess the trial court's best-interest finding, we consider the non-exhaustive list of factors set forth in *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976). Those 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 individual seeking custody; (5) the programs available to assist the individual to promote the best interest of the child; (6) the plans for the child by the individual 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 a proper one; and (9) any excuse for the acts or omissions of the parent. *Id*. The absence of evidence of one or more of these factors does not preclude a factfinder from reasonably forming a strong conviction or belief that termination is in the child's best interest. *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). We

also consider the statutory factors in section 263.307 of the Family Code, including the child's age and vulnerabilities. *See In re F.M.E.A.F.*, 572 S.W.3d 716, 726 (Tex. App.—Houston [14th Dist.] 2019, pet. denied).

Father argues that the dearth of testimony addressing the *Holley* factors indicates that the referring court gave undue weight to his "admitted long history of methamphetamine use," and that this past should not be the basis of the best-interest finding. However, Father's methamphetamine use was not in the distant past; it was recent, and it continued during the case. Moreover, Father offered flimsy explanations for his failure to get treatment. A parent's history, admissions, and conduct relating to drug abuse are relevant to the best-interest determination. *In re D.M.*, 58 S.W.3d at 814. While the evidence submitted to prove the statutory predicate grounds for termination outlined above is probative, it does not relieve the Department of its burden to prove that termination is in the best interest of H.G. *In re C.H.*, 89 S.W.3d at 28.

At the time of the hearing, H.G. was just one year old and thus too young to express her desires. When a child is too young to express her desires, the factfinder may consider whether the child has bonded with her foster family, is well-cared-for by them, and has spent minimal time with a parent. *In re J.D.*, 436 S.W.3d 105, 118 (Tex. App.—Houston [14th Dist.] 2014, no pet.). The evidence showed that H.G. had spent minimal time, only four visits, with Father. A Department employee who supervised Father's visits with H.G. testified that because Father had only had four visits with her, "it's kind of hard to tell" if they had a bond. The Department presented no evidence regarding any bond H.G. may have with her current placement or the care she currently receives.

As for H.G.'s physical and emotional needs and the physical and emotional danger to H.G., the trial court could have reasonably found that Father's minimal visitation of H.G. constituted evidence that Father is incapable or unwilling to meet H.G.'s needs now and in the future. *See In re R.J.*, 568 S.W.3d 734, 752-53 (Tex. App.—Houston [1st Dist.] 2019, no pet.) (minimal visitation relevant to multiple *Holley* factors, including child's current and future physical and emotional needs and parent's ability to care for child). Additionally, the trial court could have found that Father's drug use and his failure to submit to drug testing and participate in drug treatment were relevant to *Holley* factors such as Father's ability to meet H.G.'s physical and emotional needs, the physical and emotional danger to H.G. now and in the future, Father's parental abilities, the stability of Father's home, and the acts or omissions which may indicate the existing parent-child relationship is not a proper one. *See In re Z.J.B.*, No. 14-18-00759-CV, 2019 Tex. App. LEXIS 522, at *17-18 (Tex. App.—Houston [14th Dist.] Jan. 29, 2019, pet. denied) (mem. op.) (father's positive drug screen and failure to complete other drug screenings during pendency of case weighed in favor of court's best-interest finding); *In re L.C.L.*, No. 14-09-00062-CV, 2019 Tex. App. LEXIS 6018, at *22-23 (Tex. App.—Houston [14th Dist.] July 16, 2019, no pet.) (mem. op.) (parent's illegal drug use relevant in gauging parent's ability to provide child with safe environment and showing acts or omissions indicating parent-child relationship is not a proper one).

Father presented evidence that he had completed the requirements of his service plan other than PADRE and drug treatment, had steady employment throughout the case, and planned to move out of his parents' house into his own apartment. However, he presented no plans for developing his relationship with H.G. or providing for her future

needs, except to state that the apartment he planned to move into had space for H.G. In contrast, the Department caseworker testified that maternal relatives who had adopted some of H.G.'s half-siblings had expressed an interest in adopting H.G., and the Department was looking at placing H.G. with them. The caseworker opined that it was in H.G.'s best interest that Father's parental rights be terminated. She explained, "She would be – if rights are terminated, she'll have permanency with an adoptive family, and live a life that is not involved [with] drugs. She would be safe and free of drugs." The caseworker did not believe that Father could provide such an environment or that he could provide for H.G.'s emotional and physical well-being now or in the future. Both the guardian ad litem for H.G. and the court-appointed special advocate (CASA) also testified that it would be in H.G.'s best interest if Father's parental rights were terminated, but neither witness elaborated on those opinions.

We conclude that multiple *Holley* factors support the trial court's best-interest finding. Considering all the evidence in the record, we hold that the evidence is factually sufficient to establish a firm conviction in the mind of the trial court that termination of Father's parental rights is in the best interest of H.G. We overrule Father's fourth issue challenging the best-interest determination.

Conclusion

Having overruled Father's four issues, we affirm the judgment of the trial court terminating his parental rights to H.G.

Judy C. Parker
Justice