NO. 12-19-00418-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN THE INTEREST OF C.L.S.,	***§***	***APPEAL FROM THE 392ND***
	§	***JUDICIAL DISTRICT COURT***
A CHILD	***§***	***HENDERSON COUNTY, TEXAS***

MEMORANDUM OPINION

S.S. and B.M.S. appeal the trial court's order terminating their parental rights as to C.L.S. In this appeal, S.S. raises three issues and B.M.S. raises two issues, in which they argue that the evidence is neither legally nor factually sufficient to support the termination order. We affirm.

BACKGROUND

S.S. is C.L.S.'s father. B.M.S. is his mother.[1] On June 5, 2018, the Department of Family and Protective Services (the Department) filed an original petition for protection of C.L.S., for conservatorship, and for termination of S.S.'s and B.M.S.'s parental rights. The Department was appointed temporary managing conservator of the child, and both parents were appointed temporary managing conservators with limited rights and duties.

At the conclusion of the trial on the merits, the trial court found that there was clear and convincing evidence that S.S. engaged in one or more of the acts or omissions necessary to support termination of his parental rights under Texas Family Code, Sections 161.001(b)(1)(E) and (O). The trial court also found that termination of the parent-child relationship between S.S. and C.L.S.

[1] S.S. and B.M.S. have another child together, E.G.S., who was born after this case began and who is not a party to this appeal. S.S. also is the father of three older children, each of whom have different mothers. Of these three older children, only the middle child, C.L.S.2, is relevant to this matter. We also later will refer to A.S., who is the mother of the youngest of these three children. None of the older children or their mothers are parties to this appeal.

is in the child's best interest. Based on these findings, the trial court ordered that the parent-child relationship between S.S. and C.L.S. be terminated.

The trial court also found that there was clear and convincing evidence that B.M.S. engaged in one or more of the acts or omissions necessary to support termination of her parental rights under Texas Family Code, Sections 161.001(b)(1)(D), (E), and (O). The trial court further found that termination of the parent-child relationship between BM.S. and C.L.S. is in the child's best interest. Based on these findings, the trial court ordered that the parent-child relationship between B.M.S. and C.L.S. be terminated. This appeal followed.

TERMINATION OF PARENTAL RIGHTS

Involuntary termination of parental rights embodies fundamental constitutional rights. ***Vela v. Marywood***, 17 S.W.3d 750, 759 (Tex. App.–Austin 2000), *pet. denied*, 53 S.W.3d 684 (Tex. 2001) (per curiam); ***In re J.J.***, 911 S.W.2d 437, 439 (Tex. App.—Texarkana 1995, writ denied). Because a termination action "permanently sunders" the bonds between a parent and child, the proceedings must be strictly scrutinized. ***Wiley v. Spratlan***, 543 S.W.2d 349, 352 (Tex. 1976); ***In re Shaw***, 966 S.W.2d 174, 179 (Tex. App.—El Paso 1998, no pet.).

Section 161.001 of the family code permits a court to order termination of parental rights if two elements are established. *See* TEX. FAM. CODE ANN. § 161.001 (West Supp. 2019); ***In re J.M.T.***, 39 S.W.3d 234, 237 (Tex. App.—Waco 1999, no pet.). First, the parent must have engaged in any one of the acts or omissions itemized in the second subsection of the statute. *See* TEX. FAM. CODE ANN. § 161.001(b)(1) (West Supp. 2019); ***Green v. Tex. Dep't of Protective & Regulatory Servs.***, 25 S.W.3d 213, 219 (Tex. App.—El Paso 2000, no pet.); ***In re J.M.T.***, 39 S.W.3d at 237. Second, termination must be in the best interest of the child. *See* TEX. FAM. CODE ANN. § 161.001(b)(2) (West Supp. 2019); ***In re J.M.T.***, 39 S.W.3d at 237. Both elements must be established by clear and convincing evidence, and proof of one element does not alleviate the petitioner's burden of proving the other. *See* TEX. FAM. CODE ANN. § 161.001; ***Wiley***, 543 S.W.2d at 351; ***In re J.M.T.***, 39 S.W.3d at 237.

The clear and convincing standard for termination of parental rights is both constitutionally and statutorily mandated. *See* TEX. FAM. CODE ANN. § 161.001; ***In re J.J.***, 911 S.W.2d at 439. Clear and convincing evidence means "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." TEX. FAM. CODE ANN. § 101.007 (West 2019). The burden of proof is upon the party seeking the deprivation of parental rights. ***In re J.M.T.***, 39 S.W.3d at 240.

STANDARD OF REVIEW

When confronted with both a legal and factual sufficiency challenge, an appellate court first must review the legal sufficiency of the evidence. ***Glover v. Tex. Gen. Indem. Co.***, 619 S.W.2d 400, 401 (Tex. 1981); ***In re M.D.S.***, 1 S.W.3d 190, 197 (Tex. App.—Amarillo 1999, no pet.). In conducting a legal sufficiency review, we must 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 its findings were true. ***In re J.F.C.***, 96 S.W.3d 256, 266 (Tex. 2002). We must assume that the fact finder settled disputed facts in favor of its finding if a reasonable fact finder could do so and disregard all evidence that a reasonable fact finder could have disbelieved or found incredible. ***Id***.

The appropriate standard for reviewing a factual sufficiency challenge to the termination findings is whether the evidence is such that a fact finder reasonably could form a firm belief or conviction about the truth of the petitioner's allegations. ***In re C.H.***, 89 S.W.3d 17, 25 (Tex. 2002). In determining whether the fact finder has met this standard, an appellate court considers all the evidence in the record, both that in support of and contrary to the trial court's findings. ***Id***. at 27–29. Further, an appellate court should consider whether disputed evidence is such that a reasonable fact finder could not have reconciled that disputed evidence in favor of its finding. ***In re J.F.C.***, 96 S.W.3d at 266. The trier of fact is the exclusive judge of the credibility of the witnesses and the weight to be given their testimony. ***Nordstrom v. Nordstrom***, 965 S.W.2d 575, 580 (Tex. App.—Houston [1st Dist.] 1997, pet. denied).

TERMINATION UNDER SECTIONS 161.001(b)(1)(D) AND (E)

In part of her first issue, B.M.S. argues that the evidence is legally and factually insufficient to support the trial court's order terminating her parental rights pursuant to Texas Family Code, Section 161.001(b)(1)(D). In S.S.'s second issue and in part of B.M.S.'s first issue, they contend that the evidence is legally and factually insufficient to support the trial court's order terminating their respective parental rights pursuant to Texas Family Code, Section 161.001(b)(1)(E).

Applicable Law

The court may order termination of the parent-child relationship if it finds by clear and convincing evidence that the parent knowingly has placed or knowingly has allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D) (West Supp. 2019). Subsection (D) addresses the child's surroundings and environment. ***In re N.R.***, 101 S.W.3d 771, 775–76 (Tex. App.—Texarkana 2003, no pet.). The child's "environment" refers to the suitability of the child's living conditions as well as the conduct of parents or others in the home. ***In re S.R.***, 452 S.W.3d 351, 360 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). The relevant time frame to determine whether there is clear and convincing evidence of endangerment is before the child was removed. ***Ybarra v. Tex. Dep't of Human Servs.***, 869 S.W.2d 574, 577 (Tex. App.—Corpus Christi 1993, no pet.). Further, Subsection (D) permits termination based upon only a single act or omission. ***In re R.D.***, 955 S.W.2d 364, 367 (Tex. App.—San Antonio 1997, pet. denied).

The court also may order termination of the parent-child relationship if it finds by clear and convincing evidence that the parent has engaged in conduct, or knowingly has placed the child with persons who engaged in conduct that endangers the physical or emotional well-being of the child. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E) (West Supp. 2019). Scienter is not required for an appellant's own acts under Section 161.001(b)(1)(E), although it is required when a parent places her child with others who engage in endangering acts. ***In re U.P.***, 105 S.W.3d 222, 236 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). Finally, the need for permanence is a paramount consideration for the child's present and future physical and emotional needs. ***In re N.K.***, 99 S.W.3d 295, 301 n.9 (Tex. App.—Texarkana 2003, no pet.); ***In re M.D.S.***, 1 S.W.3d at 200.

"Endanger" means to expose to loss or injury or to jeopardize. ***Tex. Dep't of Human Servs. v. Boyd***, 727 S.W.2d 531, 533 (Tex. 1987); ***In re D.M.***, 58 S.W.3d 801, 811 (Tex. App.—Fort Worth 2001, no pet.). It is not necessary that the conduct be directed at the child or that the child actually suffers injury. ***Boyd***, 727 S.W.2d at 533; ***In re J.J.***, 911 S.W.2d at 440. When seeking termination under Subsection (D), the Department must show that the child's living conditions pose a real threat of injury or harm. ***In re N.R.***, 101 S.W.3d at 776; ***Ybarra***, 869 S.W.2d at 577. Further, there must be a connection between the conditions and the resulting danger to the child's emotional or physical well-being. ***Ybarra***, 869 S.W.2d at 577–78. It is sufficient that the

parent was aware of the potential for danger to the child in such an environment and disregarded that risk. ***In re N.R.***, 101 S.W.3d at 776. In other words, conduct that demonstrates awareness of an endangering environment is sufficient to show endangerment. ***In re S.M.L.***, 171 S.W.3d 472, 477 (Tex. App.—Houston [14th Dist.] 2005, no pet.). We previously have concluded it is illogical to reason that inappropriate, debauching, unlawful, or unnatural conduct of persons who live in the home of a child, or with whom a child is compelled to associate on a regular basis in his home, inherently is not a part of the "conditions and surroundings" of that place or home. *See* ***In re B.R.***, 822 S.W.2d 103, 106 (Tex. App.—Tyler 1991, writ denied). Subsection (D) is designed to protect a child from precisely such an environment. ***Id***.

"[A]busive or violent conduct by a parent . . . can produce an environment that endangers the physical or emotional well-being of a child within the ambit of [Subsection (D)]." ***D.O. v. Tex. Dep't of Human Servs.***, 851 S.W.2d 351, 354 (Tex. App.—Austin 1993, no writ) (quoting ***In re B.R.***, 822 S.W.2d at 106). Furthermore, a parent's failure to remove herself and her children from a violent relationship endangers the physical or emotional well-being of the children. *See* ***In re M.R.***, 243 S.W.3d 807, 818–19 (Tex. App.—Fort Worth 2007, no pet.); ***Sylvia M. v. Dallas Cty. Child Welfare Unit of the Tex. Dep't of Human Servs.***, 771 S.W.2d 198, 203–04 (Tex. App.—Dallas 1989, no writ).

Subsection (E) requires us to consider the parent's conduct alone, including actions, omissions, or the parent's failure to act. ***In re D.J.***, 100 S.W.3d 658, 662 (Tex. App.—Dallas 2003, pet. denied); ***In re D.M.***, 58 S.W.3d at 811. Termination under Subsection (E) must be based on more than a single act or omission. ***In re D.M.***, 58 S.W.3d at 812; ***In re D.T.***, 34 S.W.3d 625, 634 (Tex. App.—Fort Worth 2000, pet. denied). A voluntary, deliberate, and conscious "course of conduct" by the parent that endangers the child's physical and emotional well-being is required. ***In re D.M.***, 58 S.W.3d at 812; ***In re D.T.***, 34 S.W.3d at 634.

As a general rule, conduct that subjects a child to a life of uncertainty and instability endangers the physical and emotional well-being of a child. ***In re M.R.J.M.***, 280 S.W.3d 494, 503 (Tex. App.—Fort Worth 2009, no pet.); ***In re R.W.***, 129 S.W.3d 732, 739 (Tex. App.—Fort Worth 2004, pet. denied). Endangering conduct is not limited to actions directed toward the child. ***Boyd***, 727 S.W.2d at 533. Thus, it is reasonable that the endangering conduct may include the parent's actions before the child's birth and while the parent had custody of older children. *See* ***id.*** (although endanger means more than threat of metaphysical injury or possible ill effects of less

than ideal family environment, it is not necessary that parent's conduct be directed at child or that child actually suffers injury); *see also* ***In re M.N.G.***, 147 S.W.3d 521, 536 (Tex. App.—Fort Worth 2004, pet. denied) (holding that courts may look to parental conduct both before and after child's birth to determine whether termination is appropriate). Further, the conduct may occur before the child's birth and both before and after the child has been removed by the Department. ***Walker v. Tex. Dep't of Family & Protective Servs.***, 312 S.W.3d 608, 617 (Tex. App.—Houston [1st Dist.] 2009, pet. denied).

A fact finder can consider the history of abuse between the mother and the father for purposes of Subsection (E) even if the children are not always present. *See* ***In re Z.M.***, 456 S.W.3d 677, 686 (Tex. App.—Texarkana 2015, no pet.) (citing ***In re A.V.M.***, No. 13-12-00684-CV, 2013 WL 1932887, at *5 (Tex. App.—Corpus Christi May 9, 2013, pet. denied) (mem. op.) (concluding that history of drug and alcohol abuse lends itself to unstable home environment and weighs in favor of termination of parental rights)); *but see* ***In re L.C.L.***, No. 14-19-00062-CV, 2020 WL 1860221, at *3-4 (Tex. App.—Houston [14th Dist.] Mar. 31, 2020, no pet.) (concluding that parent's drug use alone is insufficient to support endangerment finding without causal connection between parent's drug use and alleged endangerment). Domestic violence may be considered as evidence of endangerment. ***In re C.E.K.***, 214 S.W.3d 492, 497 (Tex. App.—Dallas 2006, no pet.). While domestic violence is not conduct directed at the child, such conduct is clear and convincing support for the trial court's termination decision based on the ground of endangerment because the conduct places a child in jeopardy. *See* ***id.***; *see also* ***In re C.H.***, 89 S.W.3d at 28 (criticizing court of appeals for failing to account for father's pattern of conduct that is "inimical to the very idea of child-rearing," including conduct displaying criminal proclivities and fact that father had seen child only twice). A mother's involvement in repeated domestic violence with the father and her denial of the same, along with her failure to remove herself and her children from the relationship constitutes conduct endangering the physical or emotional well-being of the children. *See* ***In re C.J.F.***, 134 S.W.3d 343, 351 (Tex. App—Amarillo 2003, pet. denied) ("domestic violence, want of self-control, and propensity for violence may be considered as evidence of endangerment"); ***In re I.G.***, 383 S.W.3d 763, 770 (Tex. App—Amarillo 2012, no pet.).

The Evidence at Trial

On June 3, 2018, C.L.S. was seven months old. That day, S.S. and B.M.S. had been swimming with C.L.S. in a backyard pool when S.S. noticed a soft spot on the left side of C.L.S.'s

head, slightly above his ear. S.S. took C.L.S. to a hospital in Athens, Texas, and later, C.L.S. was transported by ambulance to Children's Medical Center in Dallas, Texas. Kristin Reeder, M.D. testified that she is an attending physician in the Referral and Evaluation of At-Risk Children Clinic at Children's Medical Center. She further testified that she completed a medical evaluation and provided her assessment of C.L.S.'s injuries. Reeder stated that C.L.S. suffered a right posterior parietal skull fracture, located on the right side of the back of his head, and a thin subdural hemorrhage on the left side of the back of his head. According to Reeder, C.L.S.'s injuries were consistent with his having received a blunt force to the head, which was sufficient to cause contralateral subdural hemorrhage. Reeder stated that this force not only resulted in C.L.S.'s skull fracture and subdural hemorrhage but also caused his brain to move inside his skull, resulting in the tearing of the "bridge and veins."

At that time, S.S. and B.M.S. initially denied that C.L.S. had any history of trauma. However, they later told Reeder he may have hit his head as a result of a fall. More specifically, they speculated that he fell out of his swing or fell against a bed rail or out of a bed. Reeder stated that none of these actions could have caused C.L.S.'s injuries. As a result, Reeder believed that "possible" abuse or neglect caused C.L.S.'s injuries because she did not have a history of trauma to explain them in an "essentially non-mobile child." The record reflects that as a result of this incident, the Department removed C.L.S.

Parents' Alternative Explanations for C.L.S.'s Injuries

At trial, B.M.S. and S.S. denied causing C.L.S.'s injuries. S.S. stated that C.L.S. may have suffered a skull fracture when C.L.S.2, his other son who lived with them and who has autism, threw a toy at C.L.S. He further stated that, during a recent trip to Galveston, C.L.S.2 jumped into a pool and pushed C.L.S.'s floaty, which caused C.L.S.'s head to hit the side of the pool. Reeder testified that the amount of force that would be required to cause C.L.S.'s injuries would be a force that a caregiver would recognize could cause an injury. Further, Reeder stated that, if at the time of her assessment she had been provided with information indicating that C.L.S. had a brother who was violent toward his siblings when he was angry or displayed behavior that could result in physical harm to another, it may have changed her assessment. According to A.S., B.M.S. told her that she knew what had caused C.L.S.'s injuries.

Domestic Violence

The record reflects that B.M.S. and S.S had a history of domestic violence between them. At trial, B.M.S. stated that she learned of S.S.'s history of violence after they had been dating a few months but was "not really" concerned about it. However, according to A.S., S.S. was abusive to her during their relationship from October 2013 to February 2017. A.S. elaborated, stating that S.S. had done things such as pour lighter fluid on food and attempt to make her eat it, call her names such as "dogface," "bitch," and "cunt," throw a boiling pan of hot dogs at her, throw her over a porch rail, into the house, and onto a table, which broke as a result. She also stated that S.S. attempted to choke her and told her that she was "about to find a new home" and that he would "see her in hell." A.S. said she called 9-1-1 following this incident but ultimately declined to press charges.

A.S. further testified that in October 2017, B.M.S. told her that S.S. hit her and that he scared her when he was drunk. B.M.S. did not recall making this statement. After E.G.S. was born in November 2018, B.M.S. told Department Investigator Heather McKinley that S.S. was mentally and verbally abusive toward her but denied that he physically had harmed her. B.M.S. told McKinley that S.S. threatened to come to the house and "shoot up" everyone. McKinley testified that, as a result, she advised B.M.S. to obtain a protective order and a "no trespass" order for her residence. At the time, B.M.S. stated that she was living at her grandmother's house with E.G.S. According to McKinley, the Department implemented a safety plan wherein B.M.S. would not have unsupervised contact with E.G.S. and S.S. would have no contact with E.G.S. other than his weekly supervised visitations. At that time, S.S. denied committing acts of domestic violence against B.M.S.

Both in her trial testimony and in her statements to her caseworker, B.M.S. frequently denied that S.S. was violent toward her or could not recall any incidents of domestic violence between them. Nonetheless, the record reflects that she signed an affidavit for an application for a protective order in November 2018, in which she stated that S.S. had been physically violent toward her and had shoved her off the stairs of the back porch of their residence while she held C.L.S. in her arms. At trial, she claimed that she signed the affidavit without having read it and denied that S.S. pushed her off the porch. She further claimed she was unaware of her statements in her affidavit that S.S. threatened her caseworker, her grandmother, and her aunt, and that he was going to kill a lot of people "if they tried to take away his kids."

According to Department Caseworker Jade Starkey, B.M.S. made an outcry of domestic violence in December 2018. Starkey stated that B.M.S. told her that S.S. pushed her off the back porch when she was seven months pregnant with C.L.S., slapped her after a confrontation in October 2018, and left her at a Brookshire's grocery store after a verbal altercation. Starkey testified that B.M.S. told her that S.S. had "put her out of the house" on numerous occasions. Starkey further testified that on April 29, 2019, B.M.S. contacted her and told her that she was leaving S.S., that he was "abusive in every way[,]" and that he had called her a "cunt." At trial, B.M.S. denied having made these allegations against S.S.

Criminal Activity

The record reflects that S.S. previously was convicted of three Class A misdemeanor assaults, which arose from an incident in which S.S. pepper sprayed his mother-in-law while his oldest child and another child were present. The record reflects that S.S. pleaded "guilty" to and was found "guilty" of assault by striking a female in the head, was placed on community supervision, which the trial court ultimately revoked before sentencing him to confinement for forty-five days.

Moreover, in 2012, the record reflects that S.S. pleaded "guilty" to interfering with a 9-1-1 call by spitting in his first wife's face. S.S. was found "guilty" of this offense and sentenced to confinement for thirty-three days. However, at trial, he denied interfering with the 9-1-1 call or spitting in his first wife's face. Lastly, the record reflects that B.M.S. pleaded "guilty" to committing theft in 2017, and was placed on deferred adjudication community supervision as a result.

Galveston Trip

S.S. testified that, approximately two weeks before trial, he and B.M.S. planned to travel to Galveston, Texas with C.L.S., and C.L.S.2. He further testified that when C.L.S. began vomiting, he and B.M.S. agreed to leave C.L.S. with B.M.S.'s mother. Both parents admitted that they never had visited B.M.S.'s mother at her apartment and did not inspect the premises before leaving him there overnight. When they returned to pick up C.L.S., S.S. noticed that the apartment appeared as if it were occupied by a "hoarder" because there were piles of various items stacked to the ceiling. He stated that in response, he notified the manager of the apartment complex as well as law enforcement.

E.G.S.'s Birth

While the case was pending, B.M.S. became pregnant with E.G.S. Both parents pretended at a visitation with C.L.S. that B.M.S. still was pregnant even though she gave birth approximately four days prior to that time. Among the requirements of their service plan was that they conduct themselves with "honesty." S.S. stated that they "pretended" because they were afraid that if they were truthful, the Department would remove the baby. B.M.S. testified that she knew it was her responsibility to notify the Department when she gave birth to E.G.S.

E.G.S.'s Removal

In April 2019, McKinley received allegations about a baby's being in a home with inappropriate conditions and caregivers. The allegations did not contain any names but did set forth an address. McKinley testified that in response, she traveled to that address alleged and, upon talking to the person who answered the door, she realized that the baby at the house was E.G.S. McKinley stated that B.M.S. was not at the house and, once inside, she observed that the house was roach infested, littered with feces, dirt, trash, and other items. She further stated that there were hospital beds occupied by two morbidly obese men, whose upper bodies were unclothed. According to McKinley, the men both appeared to be bedridden. McKinley testified that there was a car seat in the middle of the room on the floor with a bucket full of urine about two feet from it. She described the odor she smelled outside of the home as intensifying once she was inside. McKinley further testified that she discovered E.G.S. asleep in the car seat and determined that she had been there overnight. She stated that she learned that the caregiver would put E.G.S. on the men's chests while they urinated into a Styrofoam tray. She further stated that once E.G.S. was removed, she discovered that her diaper bag and car seat also were infested with roaches, and she had a severe diaper rash.

McKinley spoke to B.M.S. after E.G.S.'s removal. She testified that B.M.S. initially claimed that E.G.S. only was in the house for a few hours. But when McKinley informed B.M.S. that she knew the baby had been in the house for a longer period of time, B.M.S. stated that she had been running errands, that the child had been there during the day, and that she had checked on the child and was not concerned with the conditions of the home. According to McKinley, B.M.S. later admitted that the child stayed overnight in the house.

Mental Health

B.M.S. testified she has been diagnosed with anxiety disorder, post traumatic stress disorder, and depression. As a result, she was prescribed Xanax and is in therapy. She further testified that she has been diagnosed with a learning disability.

Analysis Under Subsection (D)

From the foregoing evidence, a reasonable fact finder could have formed a firm belief or conviction that S.S. had a history of criminal activity and domestic violence and that B.M.S. was unconcerned about his history and denied S.S.'s commission of any acts of domestic violence against her, even though the record reflects that she made numerous outcries to different Department employees. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D). The evidence also showed that B.M.S. made numerous allegations of domestic violence before C.L.S. was removed but remained in the house with the child. Thus, the trial court reasonably could have formed a firm believe that B.M.S. did not attempt to protect C.L.S. from that violence or to protect C.L.S. from the conditions in her mother's home by investigating it before she left the child there overnight. Therefore, we hold that the evidence, viewed in the light most favorable to the trial court's finding, was sufficiently clear and convincing that a reasonable trier of fact could have formed a firm belief or conviction that B.M.S. knowingly placed or knowingly allowed C.L.S. to remain in conditions or surroundings that endangered his physical or emotional well-being. *See* ***In re J.F.C.***, 96 S.W.3d at 266.

Moreover, although B.M.S argued that she was not aware of any danger at her mother's house and that none of the domestic violence, if any, occurred in front of C.L.S., we cannot conclude that this evidence is so significant that a reasonable trier of fact could not have reconciled it in favor of its finding and formed a firm belief or conviction that B.M.S. knowingly placed or knowingly allowed C.L.S. to remain in conditions or surroundings that endangered his physical or emotional well-being. *See* ***In re C.H.***, 89 S.W.3d at 25.

Analysis Under Subsection (E)

From the foregoing evidence, a reasonable fact finder also could have formed a firm belief or conviction that S.S. has a history of criminal activity and domestic violence, which necessitated B.M.S.'s seeking a protective order against him and alternative safety plans for his visitations with C.L.S. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E). "Evidence that a person has engaged in abusive and violent conduct in the past permits an inference that the person will continue to engage

in violent behavior in the future." ***In re M.D.M.***, 579 S.W.3d 744, 765 (Tex. App.—Houston [1st Dist.] 2019, no pet.). Further, the fact finder could have formed a firm belief that both parents failed to identify any trauma associated with C.L.S.'s skull fracture, failed to investigate B.M.S.'s mother's house before leaving him there, and that the conditions of the home where B.M.S. left E.G.S. were appalling, even though B.M.S. seemingly approved of them. Therefore, we hold that the evidence, viewed in the light most favorable to the trial court's finding, was sufficiently clear and convincing that a reasonable trier of fact could have formed a firm belief or conviction that S.S. and B.M.S. engaged in conduct or knowingly placed C.L.S. with persons who engaged in conduct that endangered his physical or emotional well-being. *See* ***In re J.F.C.***, 96 S.W.3d at 266.

Moreover, although B.M.S. argued that E.G.S. was not removed from her home and S.S. argued that there was no evidence of domestic violence occurring in front of the child, we cannot conclude that this evidence is so significant that a reasonable trier of fact could not have reconciled it in favor of its finding and formed a firm belief or conviction that S.S and B.M.S. engaged in conduct or knowingly placed C.L.S. with persons who engaged in conduct that endangered his physical or emotional well-being. *See* ***In re C.H.***, 89 S.W.3d at 25.

Conclusion

Therefore, we hold that the evidence is legally and factually sufficient to support the trial court's order terminating B.M.S.'s parental rights under Texas Family Code, Section 161.001(b)(1)(D). Accordingly, we overrule B.M.S.'s first issue to the extent it relates to the termination of her parental rights under Subsection (D). Further, we hold that the evidence is legally and factually sufficient to support termination of S.S.'s and B.M.S.'s parental rights under Texas Family Code, Section 161.001(b)(1)(E). Accordingly, we overrule S.S.'s second issue and B.M.S.'s first issue to the extent they relate to the termination of her parental rights under Subsection (E).[2]

[2] Because we conclude that the evidence is legally and factually sufficient to support the termination of S.S.'s parental rights under Subsection (E) and to support the termination of B.M.S.'s parental rights under Subsections (D) and (E), we need not address their respective issues regarding Texas Family Code, Section 161.001(b)(1)(O). *See* TEX. FAM. CODE ANN. § 161.001(b)(1); TEX. R. APP. P. 47.1; *see also* ***In re K.S.***, 448 S.W.3d 521, 545 n.24 (Tex. App.—Tyler 2014, pet. denied) (when evidence is sufficient to support termination under one ground, appellate court need not address sufficiency challenges to other grounds for termination in Section 161.001(b)); *but see* ***In re N.G.***, 577 S.W.3d 230, 237 (Tex. 2019) (due process and due course of law requirements mandate that an appellate court detail its analysis in an appeal of termination of parental rights under Section 161.001(b)(1)(D) or (E) of the family code if parent raises such issues).

BEST INTEREST OF THE CHILD

In S.S.'s third issue and B.M.S.'s second issue, they argue that the evidence is legally and factually insufficient to support the trial court's finding that the termination of their parental rights is in the child's best interest. In determining the best interest of the child, a number of factors have been considered, including (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, (6) the plans for the child by these individuals, (7) the stability of the home, (8) the acts or omissions of the parent that may indicate the existing parent-child relationship is not a proper one, and (9) any excuse for the acts or omissions of the parent. ***Holley v. Adams***, 544 S.W.2d 367, 371–72 (Tex. 1976).

The family code also provides a list of factors that we will consider in conjunction with the aforementioned ***Holley*** factors. *See* TEX. FAM. CODE ANN. § 263.307(b) (West 2019). These factors include (1) the child's age and physical and mental vulnerabilities, (2) the magnitude, frequency, and circumstances of the harm to the child, (3) the results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home, (4) whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home, (5) whether there is a history of substance abuse by the child's family or others who have access to the child's home, (6) the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision, (7) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time, (8) whether the child's family demonstrates adequate parenting skills, including providing the child and other children under the family's care with minimally adequate health and nutritional care, a safe physical home environment, protection from repeated exposure to violence even though the violence may not be directed at the child, and an understanding of the child's needs and capabilities, and (8) whether an adequate social support system consisting of an extended family and friends is available to the child. *See* ***id.*** § 263.307(b)(1), (3), (6), (7), (8), (10), (11), (12), (13).

The evidence need not prove all of the statutory or ***Holley*** factors in order to show that the termination of parental rights is in a child's best interest. *See* ***Holley***, 544 S.W.2d at 372; ***In re***

J.I.T.P., 99 S.W.3d 841, 848 (Tex. App.—Houston [14th Dist.] 2003, no pet.). In other words, the best interest of the child does not require proof of any unique set of factors, nor does it limit proof to any specific factors. ***In re D.M.***, 58 S.W.3d at 814. Undisputed evidence of just one factor may be sufficient in a particular case to support a finding that termination is in the child's best interest. ***In re M.R.J.M.***, 280 S.W.3d at 507. But the presence of scant evidence relevant to each factor will not support such a finding. ***Id.*** Evidence supporting termination of parental rights also is probative in determining whether termination is in the best interest of the child. *See* ***In re C.H.***, 89 S.W.3d at 28–29.

Analysis

In the instant case, the evidence at trial showed that neither parent could explain C.L.S.'s injuries, that there were allegations of domestic violence between S.S. and B.M.S., that S.S. had a history of criminal activity and domestic violence with another partner, that S.S. and B.M.S. did not investigate her mother's home before leaving the child there, and that B.M.S. left E.G.S. in conditions that were inappropriate.

According to Starkey, S.S. threatened her life and the lives of others involved in the case, including her supervisor. Starkey stated that the Department received verification of the threats from B.M.S.'s attorney at the time and put safety protocols in place. She also testified that S.S. threatened to "blow [their] heads off" and that he had a journal containing the names of all of the threatened persons' children. B.M.S. denied that she saw S.S.'s journal with a list of names and personal information about the trial court judge, attorneys, caseworkers, or foster parents he intended to harm. Starkey also stated that she was contacted by the Federal Bureau of Investigation regarding these threats.

A.S. testified that after court proceedings adjourned in this case, S.S. followed her and, at some point, made a gun motion and two "pop" sounds, which resulted in her filing a police report. S.S. also told her that he had followed C.L.S.2's foster family to their home where he sat outside. The record reflects B.M.S. overheard S.S.'s statement, and told him not to do this, even though B.M.S. denied this fact at trial. Although S.S. denied following any foster parents to their homes, he admitted to having obtained prescription records for C.L.S.2 while he was in foster care. He further acknowledged that these records contained the physical address of the foster family. The record reflects that C.L.S.2 was moved to another foster family as a result of S.S.'s actions.

We next consider S.S.'s compliance with his service plan. The record indicates that he completed parenting classes, anger management classes, individual counseling, drug tests, and a psychological evaluation. He also attended visitations with C.L.S. and maintained weekly contact with his caseworker. However, he did not complete the Batterer Intervention Prevention Program (BIPP) and was not honest with the Department, notably for his failure to inform it of E.G.S.'s birth. S.S. stated that he did not believe he needed BIPP, could not pay for it despite the fact he paid for couples counseling, and began it too late to complete it before trial.

Starkey testified that S.S. did not complete his service plan. Rather, she believed that S.S. merely "checked the boxes" of his service plan, but his behavior called his parenting skills into question. During an April 2019, visitation, Starkey said that S.S. initially responded and disciplined C.L.S.2 appropriately, but he told the child if he did not remain in timeout, he would be sent back to foster care. Starkey stated that she attempted to address the situation with S.S., but he was not receptive and raised his voice to her. During another visitation, a neutral observer testified that C.L.S.2 was playing with a toy and threw it across the room after S.S. asked him to put it away. The observer said that C.L.S.2 punched S.S. and threw a fit. In response, S.S. began screaming and, according to the observer, two Department employees and Starkey ran into the room. The observer acknowledged that S.S. later calmed C.L.S.2.

Regarding B.M.S.'s service plan, the record indicates that she completed individual counseling and parenting classes, participated in a psychological evaluation, maintained weekly contact with her caseworker, and submitted to all drug testing. However, B.M.S. testified that she did not complete the "Help End Abusive Relationship Tendencies" program before trial. Her visitations were appropriate although the observer noticed that she was "zoned out" during a recent visitation. The evidence also showed that S.S. and B.M.S. had an appropriate house and neither tested positive for drug use during the case.

C.L.S.'s foster mother testified that he was a happy, enjoyable child. She stated that he is receiving speech therapy and adaptive therapy and is learning to feed and dress himself. The Court Appointed Special Advocates volunteer believed it was in C.L.S.'s best interest for S.S.'s and B.M.S.'s parental rights to be terminated because the parental home was unstable and unsafe. Starkey testified that she was concerned about returning the child to S.S. and B.M.S. because S.S. will be in the home and B.M.S. is not protective of C.L.S. She stated that she is worried based on

B.M.S.'s outcries of domestic violence and S.S.'s pattern of behavior and his history of domestic violence. Further, she stated that neither parent was honest with the Department.

Conclusion

After viewing the evidence in the light most favorable to the trial court's finding and applying both the statutory and ***Holley*** factors, we conclude that a reasonable trier of fact could have formed a firm belief or conviction that termination of S.S.'s and B.M.S.'s parental rights was in C.L.S.'s best interest. *See* TEX. FAM. CODE ANN. § 161.001(b)(2); ***In re J.F.C.***, 96 S.W.3d at 266. Although some evidence might weigh against the trial court's finding, such as their maintaining contact with the child, obtaining stable housing, and testing negative for drugs, this evidence is not so significant that a reasonable fact finder could not have reconciled it in favor of its finding and formed a firm belief or conviction that terminating S.S.'s and B.M.S.'s parental rights is in C.L.S.'s best interest. *See* TEX. FAM. CODE ANN. § 161.001(b)(2); ***In re J.F.C.***, 96 S.W.3d at 266. Therefore, we hold that there is legally and factually sufficient evidence to support the trial court's finding. Accordingly, we overrule S.S.'s second issue and B.M.S.'s third issue.

DISPOSITION

Having overruled S.S.'s first and third issues and B.M.S.'s second issue and part of her first issue, we ***affirm*** the trial court's judgment.

JAMES T. WORTHEN
Chief Justice

Opinion delivered June 5, 2020.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 5, 2020

NO. 12-19-00418-CV

IN THE INTEREST OF C.L.S., A CHILD

Appeal from the 392nd District Court
of Henderson County, Texas. (Tr.Ct.No. FAM18-0452-173)

THIS CAUSE came to be heard on the appellate record and the briefs filed herein, and the same being considered, because it is the opinion of this court that there was no error in the judgment of the court below, it is ORDERED, ADJUDGED and DECREED by this court that the trial court's judgment be **affirmed**; and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.