TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00916-CV

B. L., Appellant

v.

Texas Department of Family and Protective Services, Appellee

FROM THE 146TH DISTRICT COURT OF BELL COUNTY
NO. 304,143-B, THE HONORABLE JACK WELDON JONES, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

This is an appeal from a judgment terminating appellant B.L.'s parental rights to her daughter, T.S., and appointing the Department of Family and Protective Services (the Department) sole managing conservator of the child following a jury trial. B.L. challenges the legal and factual sufficiency of the evidence supporting the jury's findings that B.L. knowingly placed or allowed T.S. to be placed or remain in conditions that endangered her physical and emotional well-being, that she failed to comply with a court order establishing actions necessary for reunification, and that termination of B.L.'s parental rights was in T.S.'s best interest. *See* Tex. Fam. Code §§ 161.001(b)(1)(D), (O); 161.001(b)(2). B.L. also contends that the trial court erred by submitting a broad form jury question. We will affirm.

BACKGROUND

In August 2018, the Department received an allegation of child abuse and neglect after B.L. took one-year-old T.S. to the hospital because she was having seizures.[1] Department caseworker Linda Allen visited B.L.'s home and on August 7 put a safety plan in place but did not remove T.S. from B.L.'s care. At the time, B.L. was living on base at Fort Hood with her husband, Z.L.[2] On August 12, the military issued a protective order prohibiting Z.L. from having contact with B.L. The no-contact order resulted from bruising on B.L.'s body that B.L. and Z.L. claimed were "hickeys." The Department received a second allegation of abuse on September 8, 2018. The allegation was that B.L. and Z.L. got into a fight at a baby shower and that B.L. was observed to have bruises on her neck and shoulder. It was also reported that T.S. had a golf ball sized black eye, which B.L. said was caused by T.S.'s having fallen off some playground equipment. The Department did not remove T.S. at that time because, as of September 25, it was trying to place the family in Family Based Safety Services (FBSS), a program that is the step before the Department seeks conservatorship of a child for abuse and neglect. By then, Allen had left the Department, and Shantara McKnight took over as the Department's investigator for the family.

McKnight and FBSS caseworker Alicia Cope visited B.L.'s home on September 25. McKnight observed the conditions of the home and noted that T.S. had a bruise on her forehead. According to McKnight, the bedroom had debris on the floor, there was a used sanitary napkin

[1] The seizures were described as "febrile seizures," and the Department did not argue that the seizures themselves resulted from abuse or neglect. The allegation was that B.L. did not seem to engage with T.S. or the doctors during the visit.

[2] Z.L. is T.S.'s stepfather. T.S.'s father, D.S., lived in another state and had no contact with T.S. D.S. did not challenge the trial court's termination of his parental rights to T.S.

located next to a child's plate and spoon, and there was a dried spot of urine on T.S.'s bedroom floor. McKnight stated that T.S.'s potty training toilet was in the living room with urine and feces in it. On October 31, McKnight made another visit to B.L.'s home and observed a bruise on T.S.'s forehead and what appeared to be a bite mark on the child's arm. McKnight directed B.L. to take T.S. to the emergency room. Afterwards, McKnight met B.L. at a local emergency room where she told B.L. that she needed to take T.S. to McLane Children's Hospital because of its pediatric specialty. B.L. did not take T.S. to McLane Children's Hospital, claiming she did not have any way to get there and no money to pay someone to take her there, and left before seeking medical treatment at the initial emergency room. When McKnight contacted B.L. the following day, B.L. advised McKnight that she had contacted a lawyer who had advised her not to take T.S. to the pediatric hospital's emergency room.

On November 1, The Department filed an original petition seeking temporary managing conservatorship of T.S. and to terminate B.L.'s and D.S.'s parental rights to T.S. in the event reunification efforts failed. In a supporting affidavit, McKnight averred that the Department was concerned that B.L. was not providing a safe and nurturing environment for T.S., that T.S. had been observed with unexplained bruising to her face and a bite mark on her arm, that there were safety hazards in the home, and that B.L. and Z.L. engaged in domestic violence in proximity to T.S. T.S. was placed with a foster family in Williamson County, where she remained throughout the case.

At a hearing on November 20, the trial court appointed the Department T.S.'s temporary managing conservator, granted B.L. visitation supervised by the Department, allowed Z.L. to participate in the visits, ordered a relative-placement homestudy, and ordered B.L. to do 20 hours of community service each week in lieu of paying child support. The Department then

filed a family service plan for B.L. and for D.S. Because B.L. was remaining in a relationship with Z.L., the Department filed a family service plan for him as well. By a January 15, 2019 status hearing, B.L. had attended a Family Group Conference, an individual therapy appointment, and had visited the child three times accompanied by Z.L. Because of concerns the caseworker had during the first supervised visit, the second two visits were "therapeutic child visits" conducted in the presence of B.L.'s therapist, Nicol Serna. B.L. had also undergone a psychiatric evaluation and reported that she was doing community service.

B.L.'s psychiatric evaluation resulted in diagnosis of "major depressive disorder, severe" and ruled out post traumatic stress disorder. B.L. reported that she was 16 weeks pregnant with her and Z.L.'s child. B.L. also stated that she had a history of learning disability, seizure disorder, untreated depression, and that she had been the childhood victim of sexual abuse. She also reported past abusive relationships, including with T.S.'s father, D.S. She denied having any suicidal ideation or hallucinations.

In early February 2019, Serna discharged B.L. from individual counseling after an altercation between Z.L. and Serna at Serna's office. By that time, B.L. had participated in four counseling sessions with Z.L., including the two therapeutic visits with T.S. B.L. underwent a psychological evaluation in March 2019, resulting in a diagnosis of "major depression" and "provisional Borderline Personality Disorder." B.L. scored 99 on an I.Q. test, a score considered to be average. The psychologist recommended that B.L. participate in evidence-based therapy for individuals with Borderline Personality Disorder, take parenting and protective parenting classes, join a support group for victims of sexual abuse, engage in couple's therapy with Z.L., and seek job placement and job training services.

In April 2019, the Department filed a Permanency Report stating that the primary permanency goal was unrelated adoption. The Department stated that the plan was changed to unrelated adoption because the Department believed that, because of B.L.'s lack of progress to engage in therapy designed to decrease the risk of abuse and neglect, it was in T.S.'s best interest to remain with her foster parents, who had stated that they are interested in caring for T.S. long term and through adoption. The Department reported that B.L. had struggled to progress on the family plan of service and to provide T.S. a safe and stable home. Z.L. was discharged from the United States Army in March and B.L. had moved with him to Quinlan, Texas, where the two lived briefly with Z.L.'s father before purchasing a mobile home. The Department assigned a courtesy worker to B.L. in April 2019. The Department's caseworker stated that she had not received any proof of B.L.'s required community service since December 2018. At a May 2019 permanency hearing, the court found that B.L. was unable to provide T.S. with a safe environment and that returning T.S. to B.L.'s care was not in her best interest. The court ordered that T.S. remain placed with the foster family and that Z.L. not be present during B.L.'s visits with T.S. B.L.'s last visit with T.S. before the October trial was on August 23, 2019. B.L. stated that she was unable to visit T.S. after that due to issues with transportation and illness.

The case was tried to a jury in a proceeding lasting three days. Throughout the trial, the jury heard testimony from a number of witnesses regarding the circumstances surrounding T.S.'s removal, the Department's efforts to achieve reunification, and the events driving the Department to seek to terminate the parental rights to T.S. B.L. and Z.L. testified, as did Z.L.'s father and the various professionals involved in B.L.'s family service plan. B.L. testified that she would not end her relationship with Z.L. even if her staying with him negatively impacted her ability to have T.S. returned to her care. The jury charge presented two predicate grounds for

termination in the disjunctive and included the following broad form question regarding whether the parent-child relationship should be terminated:

> For the parent-child relationship between [B.L.], the mother of the child, to be terminated, it must be proved by **clear and convincing evidence** that at least one of the following events has occurred:
>
> > 1. [B.L.] knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child.
> >
> > 2. [B.L.] failed to comply with the provisions of 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 of Family and Protective Services for not less than nine months as a result of the child's removal from the parent for the abuse or neglect of the child.
>
> For the parent-child relationship to be terminated in this case, it must also be proved by **clear and convincing evidence** that termination of the parent-child relationship would be in the best interest of the child.
>
> **Answer to Question No. 1**
>
> Should the parent-child relationship between [B.L.] and the child [T.S.] be terminated? Answer "Yes" or "No."

There was no objection to the charge. The jury answered the question in the affirmative, and the court rendered judgment on the jury's verdict terminating B.L.'s parental rights to T.S. This appeal followed.

DISCUSSION

B.L. challenges the factual and legal sufficiency of the evidence supporting the jury's findings on both predicate grounds for terminating her parental rights and on best interest. *See* Tex. Fam. Code §§ 161.001(b)(1)(D), (O); 161.001(b)(2). In a proceeding to terminate the

parent-child relationship, the petitioner must establish by clear and convincing evidence a predicate violation—i.e., that the parent's acts or omissions constitute a ground for termination under section 161.001(b)(1)—and that termination of parental rights is in the child's best interest. *Id.* § 161.001(b)(1), (2); *In re S.M.R.*, 434 S.W.3d 576, 580 (Tex. 2014). Only one statutory ground is necessary to support a judgment in a parental-rights termination case. *See In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003); *Spurck v. Texas Dep't of Family & Protective Servs.*, 396 S.W.3d 205, 221 (Tex. App.—Austin 2013, no pet.). Accordingly, when multiple statutory grounds for termination are alleged and the trial court issues a broad-form question asking whether the parent-child relationship should be terminated, we must uphold the jury's finding if any of the statutory grounds alleged supports it. *Spurck*, 396 S.W.3d at 221. The Texas Supreme Court has directed courts of appeals to review affirmative findings of the endangerment grounds in subsection 161.001(D) and (E) because of the collateral consequences of such findings in future parental-rights termination cases. *See In re N.G.*, 577 S.W.3d 230, 235, 239 (Tex. 2019) (per curiam) (requiring appellate courts reviewing termination findings that are based on subsection (D) or (E) to ensure that evidence is sufficient to support at least one of those two grounds because finding under either could be used in future proceedings to terminate parent's right to other children); *see also* Tex. Fam. Code § 161.001(b)(1)(M) ("The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence that the parent has had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E)."). If, however, the court of appeals concludes that the evidence is sufficient to support either a (D) or an (E) finding, it is not required to review affirmative findings on any additional

grounds submitted in a broad-form jury charge because only one statutory ground is necessary to support a judgment in a parental-rights termination case. *See In re A.V.*, 113 S.W.3d at 362.

"The purpose of terminating parental rights . . . is not to punish parents or deter their 'bad' conduct, but rather to protect the interests of the child." *In re A.B.*, 437 S.W.3d 498, 504 (Tex. 2014). We evaluate the legal sufficiency of the evidence in parental-rights termination cases by reviewing all the evidence in the light most favorable to the finding to determine whether a reasonable fact finder could have formed a firm belief or conviction that the challenged finding was true. *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005). We must assume that the fact finder resolved disputed facts in favor of its finding if a reasonable fact finder could do so, and we disregard all evidence that a reasonable fact finder could have disbelieved or found incredible. *Id.*

We evaluate the factual sufficiency of the evidence by reviewing the entire record, and we uphold the finding unless the disputed evidence that could not reasonably have been credited in favor of the finding is so significant that a reasonable fact finder could not have formed a firm conviction or belief that the allegation was true. *In re A.B.*, 437 S.W.3d at 502-03. We do not weigh credibility issues that depend on appearance and demeanor, and when credibility issues are reflected in the record, we must defer to the fact finder's determinations if they are not unreasonable. *In re J.P.B.*, 180 S.W.3d at 573; *see In re A.B.*, 437 S.W.3d at 503 (directing appellate courts to give "due deference to the decisions of the factfinder, who, having full opportunity to observe witness testimony first-hand, is the sole arbiter when assessing the credibility and demeanor of witnesses").

Sufficiency of the Evidence Supporting Jury's Finding that B.L. Endangered T.S.

In this appeal, B.L. challenges the factual and legal sufficiency of the jury's finding that she endangered T.S. Subsection (D) requires proof of child endangerment, that is, "exposing a child to loss or injury or jeopardizing a child's emotional or physical well-being." *A.C. v. Texas Dep't of Family & Protective Servs.*, 577 S.W.3d 689, 699 (Tex. App.—Austin 2019, pet. denied) (citing *Texas Dep't of Human Servs. v. Boyd*, 727 S.W.2d 532, 533 (Tex. 1987)). "Endangerment does not need to be established as an independent proposition but may be inferred from parental misconduct." *Id.* "Although '"endanger" means more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment, it is not necessary that the conduct be directed at the child or that the child actually suffers injury.'" *In re M.C.*, 917 S.W.2d 268, 269 (Tex. 1996) (per curiam) (quoting *Boyd*, 727 S.W.2d at 533).

An analysis of endangerment under subsection (D) focuses on evidence of the child's physical environment, rather than the parent's conduct, although a parent's conduct is relevant to the child's environment. *In re J.D.*, 436 S.W.3d 105, 114 (Tex. App.—Houston [14th Dist.] 2014, 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 the home is a part of the 'conditions or surroundings' of the child's home" under subsection (D). *See Jordan v. Dossey*, 325 S.W.3d 700, 721 (Tex. App.—Houston [1st Dist.] 2010, pet. denied). The parent need not have certain knowledge that an actual injury is occurring, but the parent must at least be aware of the potential for danger to the child in such an environment and must have disregarded that risk. *Id.*

The Department investigation began after T.S. was taken by B.L. to the emergency room because she was having seizures.[3] While at the hospital, Max Rothbaum, a hospital social worker, was asked by a doctor to visit B.L. because she was not engaging with T.S. Rothbaum testified that B.L. and Z.L. were watching television and did not engage with either T.S. or the medical professionals. When Rothbaum attempted to talk with them, B.L. was looking at her phone and Z.L. was watching television. Rothbaum stated that at one point when T.S. was being "fussy" in the crib B.L. "whacked the side of the crib." B.L. testified that she had not hit the crib to quiet T.S., but rather was attempting to keep her from having another seizure. B.L. also testified that when T.S. was fussy during Rothbaum's visit she picked the baby up. B.L. later testified that she did not remember Rothbaum ever being in the room and only recalled speaking with a woman.

When Allen, the initial Department investigator, went to B.L.'s home to investigate the allegation of abuse and neglect, she found that B.L. was doing laundry in her bathtub and bathing T.S. in the same bathtub. Allen reported that there was old food and urine stains on the floor and that a used sanitary napkin was near a plate and spoon T.S. was using. B.L. denied that she was doing laundry and bathing T.S. at the same time. She testified that the laundry had already been washed and pushed to the back of the tub and that she was simply rinsing some food off of T.S. She also denied that there was a used sanitary napkin near T.S.'s utensils. She testified that T.S. only used "clean napkins" and that each time she wiped her face with a napkin it was thrown away.[4]

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[3] The facts are summarized from the testimony and exhibits admitted into evidence at trial.

[4] B.L.'s testimony in this regard was confusing and it was unclear whether she understood what counsel meant by the term "sanitary napkin."

McKnight, the Department investigator who took over after Allen, testified that the Department was concerned because T.S. had a history of unexplained injuries including bruises and bumps on her head. The event that caused the Department to remove T.S. was the visit on October 31st when McKnight found T.S. with a mark on her forehead and a bite mark on her arm. When McKnight questioned B.L. about the injuries, B.L. said they happened while T.S. was being cared for by B.L.'s sister "Mandy." When McKnight tried to contact "Mandy" using a telephone number provided by B.L., the person answering the phone identified herself as "Tiffany." McKnight could not locate "Mandy" and later learned that "Mandy" lived in another state and could not have been watching T.S. B.L. testified that the confusion was due to the fact that she has two sisters named "Mandy," one on her father's side and one on her mother's side, and the "Mandy" who had been watching T.S. when she got the bruising had abruptly stopped speaking to her and therefore could not be contacted to explain what had happened to T.S. McKnight testified that the Department was concerned because B.L. did not appear to be truthful regarding what happened to T.S. and was providing inaccurate explanations for the injuries.

McKnight advised B.L. to take T.S. to the emergency room to have the bite mark and bruising checked out. McKnight testified that the Department wanted a professional opinion as to whether the bite mark was caused by an adult or a child. McKnight followed B.L. to one emergency room and when they arrived she requested that B.L. take T.S. to McLane Children's Hospital because it specialized in children. B.L. did not take T.S. to McLane and at trial testified that it was because she did not have gas or money to pay someone to take her to McLane and that she could not have Z.L. take her because Z.L. was not supposed to be around T.S. B.L. stated that she later contacted an attorney with "LegalShield" through an 800 number and had been advised not to follow the Department's directive because it was "probably a trap."

The Department was also concerned because T.S. had not been taken to regular doctor's appointments and had not received vaccines. B.L. explained that she did not take T.S. for wellness visits because she had been unable to get her medical records transferred from West Virginia. She denied that she failed to take T.S. to follow up doctor visits after her seizures. B.L. acknowledged that she could have sought medical care for T.S. through Z.L.'s military benefits.

B.L. testified that she had a series of abusive relationships when she lived in West Virginia, including with T.S.'s father. She met Z.L. after she moved to Texas and they married several months later when T.S. was less than one year old. B.L. testified that Z.L. would punch holes in walls at the house "when his sergeants were harassing him," but denied that he was ever physically abusive to her. B.L. testified that after Z.L. was diagnosed with bipolar disorder and provided medication, he stopped punching holes in the walls. When asked about a no-contact order placed on Z.L. by the military because of bruising on her body, B.L. testified that the bruises were "hickeys." When asked about Z.L. being arrested for violating the no-contact order, B.L. said that the arrest was unjustified, that Z.L. had not violated the order, and blamed the arrest on the actions of neighbors she had "made enemies with." When asked why T.S.'s head had been shaved when the Department removed her, B.L. explained that T.S. had lice and that the product she used to treat the lice caused T.S. to break out in hives so she shaved T.S.'s head. B.L. stated that she was not aware that she could take T.S. to a doctor for treatment of lice.

When asked about T.S.'s history of bruising, B.L. testified that T.S. had a habit of banging her head against the door and throwing herself either forward or backward when having "a fit." B.L. stated that T.S. got bruises because she is a child. B.L. denied telling a social worker that she would leave T.S. alone in a room while she mowed the lawn. B.L. stated

that when she mowed the lawn she had the door open with baby gates up and could see T.S. at all times.

When asked about having left T.S. in the care of her mother, who had abused her as a child and let others sexually abuse her, B.L. testified that she had been told that as long as her mother was not alone with T.S. and was taking her medication, she would be fine. B.L. testified that when T.S. had a yeast infection after being in her mother's care, B.L. was worried that T.S. had been sexually abused and took her to the hospital for an examination. B.L. stated that there was no finding of sexual abuse. B.L. stated that she would not in the future permit her family members to care for T.S.

Christina Gray, the Department caseworker, testified about the first visit she supervised after the Department removed T.S. Gray testified that when B.L. and Z.L. arrived, T.S. seemed afraid of Z.L. and clung to Gray. When Gray tried to encourage T.S. to engage with Z.L. and B.L., T.S. seemed to start to but then ran to a corner of the room. Gray described T.S. as trying to "claw her way" out of the room. Gray testified that T.S. then ran and hid behind a changing table. Gray testified that T.S. was obviously in distress and fearful and that it was traumatic for her to be in the room with B.L. and Z.L. Gray contacted her supervisor, who advised her to allow the visit to continue. Gray stated that she regretted allowing the visit to happen and would never put a child through that again. As a result of that first visit, the Department determined that the next visits should be "therapeutic" visits supervised by B.L.'s therapist, Nicol Serna. When asked about that first visit, B.L. described T.S. as "skittish" and attributed that to her not having seen Z.L. in a long time. B.L. said that T.S. backed away from Z.L. but denied that she seemed fearful. B.L. testified that T.S. was "standoffish" for a bit and

went to a corner of the room but denied that she was trying to get out of the room as Gray described. B.L. also denied that T.S. hid behind a changing table.

From the testimony and exhibits admitted at trial, we conclude that there was legally sufficient evidence to support the jury's finding that B.L. knowingly placed or allowed T.S. to remain in conditions or surroundings that endangered both her physical and emotional well-being. Reviewing the evidence in the light most favorable to the finding, a reasonable fact finder could have formed a firm belief or conviction that B.L. allowed T.S. to remain in conditions or surroundings where she suffered unexplained bruises and a bitemark, that B.L. left T.S., a child under two years old, in a room alone while she attended to household chores, that B.L. bathed T.S. in the same tub she was using to wash dirty laundry, and that B.L. allowed T.S. to remain in a house where urine and old food were on the floor and where a used sanitary napkin was nearby utensils used by T.S. Such conditions or surroundings endangered T.S.'s physical well-being. A reasonable fact finder could also have formed a firm belief or conviction that T.S.'s emotional well-being was endangered by her conditions or surroundings. There was evidence that Z.L., with whom T.S. lived, punched walls in anger and that he and B.L. had a volatile relationship. Although B.L. denied any physical abuse, the fact finder could have resolved the disputed evidence in favor of finding that B.L. had bruising on her body caused by Z.L. Moreover, although it was disputed, there was evidence that T.S. was fearful of Z.L. and that B.L. and Z.L. were neglectful of T.S. and did not comfort her when she cried or was fussy, but banged on her crib instead.

We also conclude that the evidence was factually sufficient to support the endangerment finding. The record does not contain significant disputed evidence that could not reasonably have been credited in favor of the finding such that a reasonable fact finder could not

have formed a firm conviction or belief that B.L. knowingly placed or allowed T.S. to remain in conditions or surroundings that endangered her physical or emotional well-being.

Sufficiency of the Evidence Supporting Jury's Best Interest Finding

We next address B.L.'s legal and factual sufficiency challenges to the jury's best interest finding. In determining whether termination of parental rights was in the child's best interest, we may consider a non-exhaustive list of factors 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 to promote the best interest of the child; (6) the plans for the child by the individuals seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions of the parent which may indicate the existing parent-child relationship is not proper; and (9) any excuse for the acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976); *see* Tex. Fam. Code § 263.307 (noting that "prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest" and setting forth factors to consider in evaluating parent's willingness and ability to provide child with safe environment).[5] Proof of all these

[5] Several of the *Holley* factors overlap with the statutory factors set forth in section 263.307 of the Family Code, which include: the child's age and physical and mental vulnerabilities; the frequency and nature of out-of-home placements; the magnitude, frequency, and circumstances of the harm to the child; whether the child has been the victim of repeated harm after the initial report and intervention by the Department; whether the child is fearful of living in or returning to the child's home; 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; 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; whether there is a history of substance abuse by the child's family or others who have access to the child's home; whether the perpetrator of the harm to the child is identified; the willingness and ability of the child's family

factors is not a prerequisite to termination of parental rights, and the absence of some factors does not preclude the jury from finding by clear and convincing evidence that termination is in the child's best interest. *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). Evidence that proves one or more of the statutory grounds for termination may also constitute evidence illustrating that termination is in the child's best interest. *Id.* at 28.

As to the desires of the child, the jury heard that T.S. was only three years old at the time of trial and thus too young to express her desires. In such cases, the fact finder may consider the quality and extent of the child's relationship with the prospective placements. *See In re U.P.*, 105 S.W.3d 222, 230 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (considering evidence that child was well cared for by foster parents, had bonded with them, and spent minimal time with parent when assessing toddler's desires). Here, T.S. has been living with her foster placement for a year, approximately a third of her life. There was evidence that T.S. was bonded to the foster parents, who would like to adopt her, that she loved interacting with them and calls them "Mommy" and "Daddy," and that she was doing well in their home. T.S.'s guardian ad litem had no safety concerns about T.S. continuing to live with the foster placement and described how she has thrived in their care and progressed from a sad and fearful child to one who is lively, playful, and interactive.

As to the emotional and physical needs of the child and the emotional and physical danger to the child, Gray, the Department caseworker, testified that she did not believe

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to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision; the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time; whether the child's family demonstrates adequate parenting skills; and whether an adequate social support system consisting of an extended family and friends is available to the child. Tex. Fam. Code § 263.307.

that B.L. could provide T.S. a safe, suitable, and appropriate home because of her failure to complete services designed to address her parenting skills or to participate regularly in therapy needed to address her history of family violence. Gray stated that T.S. appeared to be fearful of Z.L. and, because B.L. intends to remain in a relationship with Z.L., Gray expressed concern for T.S.'s emotional well-being given Z.L.'s history of violent outbursts. Gray testified that B.L.'s tendency to minimize the domestic violence issue creates a risk to T.S.'s well-being. Gray described T.S.'s current foster placement as very good for T.S. T.S. is happy and excited to see Gray and to show Gray her toys and her bedroom. Gray stated that T.S. is bonded to her foster parents and is thriving.

Cathy Rothas, T.S.'s guardian ad litem, described the same improvement in T.S. after she was removed and placed in her foster home. Rothas stated that T.S. had gone from looking forlorn and sad to a silly, playful, and happy child. Rothas also testified about her concerns about domestic violence and Z.L.'s behavior. Rothas expressed specific concern about an incident when Z.L. had been extremely aggressive toward B.L.'s therapist, who was so frightened of Z.L. after that encounter that she discharged B.L. from therapy. Rothas echoed Gray's concern about B.L. not completing her services and minimizing the issues that caused the Department to remove T.S. from her care. Rothas was concerned that B.L. had no verifiable explanation for injuries T.S. suffered while in her care and believed that B.L. was providing inaccurate information to the Department. Rothas testified that T.S. needs to be somewhere safe and not in a home where she wakes up to sounds of yelling and someone punching walls. Rothas stated that T.S. has suffered no injuries while in her foster placement and is safe and happy living with them. Rothas testified that because B.L. has not completed the services that would alleviate the risk of harm to T.S., T.S. would be at risk of emotional and physical harm if she were

returned to B.L. *See Castorena v. Texas Dep't of Protective & Regulatory Servs.*, No. 03-02-00653-CV, 2004 WL 903906, at *10 (Tex. App.—Austin Apr. 29, 2004, no pet.) (mem. op.) ("[A] fact finder 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.").

As to the parental abilities of the individuals seeking custody and the stability of the home or proposed placement, the evidence showed that the foster parents have been married for two years and have had T.S. living with them for almost a year. The foster mother works as a neonatal nurse and the foster father is an IT project manager. The foster parents are interested in adopting T.S. and can support her without assistance from the State. The foster mother stated that T.S. has become much more talkative and happier over time and described how she and her husband helped reassure T.S. that she was in a safe place and helped her learn to be comfortable in her room. *See In re J.D.*, 436 S.W.3d at 118 (noting that stability and permanence are paramount in upbringing of children). Gray and Rothas both testified that the foster parents and T.S. have developed a strong bond and that T.S. is thriving in their home.

As to the plans for the child by the individuals seeking custody, the foster parents both testified that they would like to adopt T.S. The foster parents testified that T.S. is on track developmentally, attends a daycare, and will soon transition to pre-kindergarten. Both the Department and the guardian ad litem support the foster parents' plan to adopt T.S., and there was testimony from both that termination of parental rights and adoption is in T.S.'s best interest.

As to B.L.'s acts or omissions that may indicate the existing parent-child relationship is not proper, the evidence principally focused on B.L.'s tendency to minimize or discount dangers to T.S.'s emotional and physical well-being. Matthew Ferrara, the psychologist who evaluated B.L., testified that she scored very high on the Paulhus Impression Management

Scale, which measures a person's attempts to appear overly virtuous or overly positive. Ferrara stated that this testing tool indicated that B.L. denies problems and accentuates the positive more than the average person. Ferrara stressed the importance of B.L. participating in evidence-based therapies to address B.L.'s tendency to deny the existence of problems and thereby lower the risk that her child will be exposed to abuse. Throughout her testimony, B.L. denied or disputed accounts of family violence or aggressive behavior by Z.L. and did not take responsibility for her failures to complete required elements of her family services plan. B.L. denied that T.S. ever acted fearful of Z.L., denied that Z.L. was aggressive toward the therapist, and stated that she has no concern about Z.L. being around T.S. B.L. admitted that she tends to see things in an unrealistically positive light and is not a perfect parent but stated that she is trying. The Department's witnesses consistently testified that B.L.'s unwillingness or inability to provide satisfactory explanations for T.S.'s bruising, her refusal to acknowledge what they view as an abusive relationship between her and Z.L., and her failure to actively participate in therapy raise the concern that returning T.S. to B.L. would expose her to the risk of future emotional and physical harm.

Viewing the evidence in the light most favorable to the jury's findings, and assuming that the jury resolved any disputed facts in favor of its findings, we conclude that the jury could have formed a firm belief or conviction that termination of B.L.'s parental rights was in T.S.'s best interest. *See* Tex. Fam. Code § 161.001(b)(2). Further, considering the entire record, we conclude that any disputed evidence could have been reconciled in favor of the jury's findings, such that the jury could have formed a firm belief or conviction that termination of B.L.'s parental rights was in T.S.'s best interest. *See id.* Thus, the evidence is legally and factually sufficient to support the jury's best-interest finding.

Broad-form Jury Charge

B.L. contends that the broad form submission of the court's charge permitted her parental rights to be terminated based on endangerment grounds—subsection (D)—even if there was only clear and convincing evidence of the alternate predicate ground of failure to comply with a court-ordered family service plan—subsection (O). B.L. argues that because of the collateral consequences of an endangerment predicate finding, the broad form jury charge violated her right to due process. *See* Tex. Fam. Code § 161.001(b)(1)(M) (providing that parental rights may be terminated if clear and convincing evidence supports that parent "had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state"). B.L. contends that the broad form submission could result in a subsection (D) finding that is unsupported by clear and convincing evidence but is nevertheless used as a basis for terminating her parental rights under subsection (M), in violation of her right to due process. *See In re N.G.*, 577 S.W.3d 230, 235 (Tex. 2019) (holding that appellate court that denies review of subsection (D) or (E) finding deprives parent of meaningful appeal and eliminates parent's only chance for review of finding that will be binding as to parental rights to other children).

This constitutional challenge was not raised in the trial court. However, even assuming, without deciding, that (1) this argument could be raised for the first time on appeal, and (2) the charge erred in this regard, we do not reach the constitutional challenge because the evidence supports a termination of B.L.'s parental rights on the predicate endangerment ground found in subsection 161.001(b)(1)(D). Therefore, the alleged error did not cause the rendition of an improper judgment. *See In re J.F.C.*, 96 S.W.3d 256, 277 (Tex. 2002) (addressing constitutional

challenge to alleged charge error raised for first time on appeal). Nor did the alleged charge error prevent B.L. "from properly presenting the case to the court of appeals." *See* Tex. R. App. P. 44.1(a)(2). Courts of appeals are required to conduct an evidentiary sufficiency review of endangerment findings even if other predicate grounds for termination of parental rights are supported by sufficient evidence. *See In re N.G.*, 577 S.W.3d at 235 (holding that when parent has presented issue on appeal, appellate court must review endangerment findings). When a broad form jury question is submitted, the parent may challenge the endangerment finding on appeal, and the court of appeals is required to review it, thereby protecting the parent's due process rights. *See id.* at 239. In fact, in this case, B.L. challenged the sufficiency of the evidence supporting the subsection (D) finding and we have reviewed the finding for legal and factual sufficiency.[6] Any alleged charge error did not cause rendition of an improper judgment or prevent B.L. from seeking, and obtaining, appellate review of the endangerment finding.

CONCLUSION

The evidence supporting the jury's finding of a predicate ground for termination of B.L.'s parental rights as well as its finding that termination of those rights was in T.S.'s best interest was legally and factually sufficient. Any alleged charge error did not result in the rendition of an improper judgment or prevent B.L. from presenting her challenge to the endangerment finding to the court of appeals. Accordingly, we affirm the trial court's order of termination.

[6] The Texas Supreme Court previously approved the submission of a broad form charge in parental-rights termination case. *See Texas Dep't of Human Servs. v. E.B.*, 802 S.W.2d 647, 649 (Tex. 1990). However, in January 2020, the Texas Supreme Court superseded *E.B.* and ordered that Texas Rule of Civil Procedure 277 be amended to require "submission of a separate question on each individual statutory ground for termination of the parent-child relationship, Tex. Fam. Code § 161.001(b)(1), as to each parent and each child." *See Order Amending Texas Rule of Civil Procedure 277*, Misc. Docket No. 20-9008 (Tex. Jan. 8. 2020) (amendment effective May 1, 2020). This amendment was not effective until May 1, 2020.

Chari L. Kelly, Justice

Before Justices Goodwin, Kelly, and Smith

Affirmed

Filed: May 8, 2020