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**APPENDIX A**  
**OFFICE NOTICE FROM**  
**SUPREME COURT OF TEXAS**  
**AUSTIN, TEXAS**

Case No. 18-0858

COA# 02-

TC#

STYLE IN THE INTEREST OF D.B. AND G.B., A CHILD

DATE: FEBUARY, 15 2019

Today the Supreme Court of Texas denied the motion for rehearing of the above-reference petition for review.

FILE COPY

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review. The Motion to Vacate is denied.

D. B.  
\* DELIVERED VIA E-MAIL \*

FILE COPY

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review. The Motion to Vacate is denied.

DISTRICT CLERK COOKE COUNTY  
COOKE COUNTY COURTHOUSE  
101 SOUTH DIXON, RM 207  
GAINESVILLE, TX 76240-4796  
\* DELIVERED VIA E-MAIL \*

FILE COPY

RE: Case No. 18-0585  
COA #: 02-18-00015-CV  
STYLE: PT CASE: IN RE D.B. AND G.B., CHILDREN

DATE: 2/15/2019  
TC#: CV16-00788  
Today the Supreme Court of Texas denied the motion for  
rehearing of the above-referenced petition for review. The  
Motion to Vacate is denied.

MR. MARK T. ZUNIGA  
TDFPS  
2401 RIDGEPOINT DRIVE  
BLDG. H-2, MC: Y-956  
AUSTIN, TX 78754  
\* DELIVERED VIA E-MAIL \*

FILE COPY

RE: Case No. 18-0585 DATE: 2/15/2019  
COA #: 02-18-00015-CV TC#: CV16-00788  
STYLE: PT CASE: IN RE D.B. AND G.B., CHILDREN

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review. The Motion to Vacate is denied.

MS. DEBRA SPISAK  
CLERK, SECOND COURT OF APPEALS  
401 WEST BELKNAP, SUITE 9000  
FORT WORTH, TX 76196  
\* DELIVERED VIA E-MAIL \*

FILE COPY

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review. The Motion to Vacate is denied.

MS. EMMA GUZMAN  
LAW OFFICE OF EMMA GUZMAN RAMON  
PO BOX 51014  
DENTON, TX 76206-1014  
\* DELIVERED VIA E-MAIL \*

**2a**

**APPENDIX B**

**OFFICIAL NOTICE FROM  
SUPREME COURT OF TEXAS  
AUSTIN, TEXAS**

**CASE NO. 18-0858**

**STYLE: IN THE INTEREST OF**

**DATE: NOV 16, 2018**

**Today the Supreme Court of Texas denied the petition for review in the above case.**

FILE COPY

Today the Supreme Court of Texas denied the petitions for review in the above-referenced case. The Motion to Withdraw as Counsel and the Motion for Leave to File Amended Petition are granted. The Motion for Relief is denied.

DISTRICT CLERK COOKE COUNTY  
COOKE COUNTY COURTHOUSE  
101 SOUTH DIXON, RM 207  
GAINESVILLE, TX 76240-4796  
\* DELIVERED VIA E-MAIL \*

**3a**

**APPENDIX C**

**FILED**

**COURT OF APPEALS**

**SECOND DISTRICT OF TEXAS**

**Filed on January 8, 2018**

**DEBRA SPIVACK, CLERK**

**COURT OF APPEALS**

**SECOND DISTRICT OF TEXAS**

**FORT WORTH**

**NO: 02-18-000015-CV**

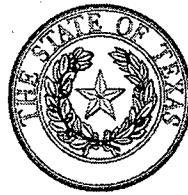
**May 22, 2018**

**In the Interest of D.B. & G.B., A Child**

**FROM THE 235<sup>TH</sup> DISTRICT COURT OF**

**COOKE COUNTY**

**OPINION**



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 02-18-00015-CV**

**IN THE INTEREST OF D.B. AND  
G.B., CHILDREN**

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**FROM THE 235TH DISTRICT COURT OF COOKE COUNTY TRIAL  
COURT NO. CV16-00788**

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**MEMORANDUM OPINION<sup>1</sup>**

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Appellants D.B. (Mother) and S.B. (Father) appeal from the trial court's order terminating the parent-child relationship between them and D.B. (Dylan) and G.B.

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<sup>1</sup> See Tex. R. App. P. 47.4.

(Gabby).<sup>2</sup> The trial court found by clear and convincing evidence that Mother and Father had committed the acts specified in family code subsections

161.001(b)(1)(D) and (E) and that termination of their parental rights was in Dylan and Gabby's best interest. See Tex. Fam. Code Ann. § 161.001(b)(1)(D), (E), (b)(2) (West Supp. 2017). In two issues, Mother contends that the trial court reversibly erred by admitting an affidavit into evidence at trial and that the evidence is legally and factually insufficient to support the trial court's statutory grounds and best-interest findings. In his sole point,<sup>3</sup> Father argues that the evidence is legally and factually insufficient to support the trial court's bestinterest finding. Because we conclude that legally and factually sufficient evidence supports the trial court's findings and that Mother was not harmed by the admission of the affidavit even

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<sup>2</sup> We use aliases for the children and their relatives throughout this opinion. See Tex. R. App. P. 9.8(b)(2).

<sup>3</sup> Although in the "point of error" portion of his brief Father indicates he also challenges the legal and factually sufficiency of the evidence supporting the trial court's statutory-grounds findings as to him, he presented no argument, analysis, citation to authorities, or record references relating to the trial court's statutory grounds findings in the body of his brief. Thus, to the extent Father's brief can be construed as presenting a sufficiency point regarding the trial court's statutory grounds findings, we overrule that point as inadequately briefed. See Tex. R. App. P. 38.1(i) ("The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record."); *In re D.V.*, No. 06-16-00065-CV, 2017 WL 1018606, at \*7 (Tex. App.—Texarkana Mar. 16, 2017, pet. ref'd) (mem. op.) (overruling as inadequately briefed appellant's legal and factual sufficiency challenge to trial court's best-interest finding where appellant "fail[ed] to cite any authority in support of his argument or provide any substantive analysis of the evidence regarding the child's best interest.").

assuming the trial court abused its discretion by admitting it, we affirm the trial court's order of termination.<sup>4</sup>

## I. BACKGROUND

This particular case traces back to Oklahoma on November 16, 2016, when Mother took her children, seven-year-old Dylan and five-year-old Gabby, with her to a domestic violence shelter in Oklahoma. Dylan ran away from the shelter and back to his residence across town because he did not want to stay in a shelter. Oklahoma's Department of Human Services (DHS) opened an investigation, and Mother told an investigating social worker that she had gone to the domestic violence shelter because Father had been aggressive with her that morning before leaving town for Tennessee and changing his phone number so Mother could not reach him. However, when the social worker followed up with Mother at her home later that evening, she found Father sitting on the couch, and

because Mother is represented by an attorney in this appeal and has no right to hybrid representation. See *Turner v. State*, 805 S.W.2d 423, 425 n.1 (Tex. Crim. App. 1991). Mother filed motions to dismiss her attorney complaining of his representation and requesting new appointed counsel. She also suggested that she wished to represent herself in this appeal while still pursuing new appointed counsel. Counsel for Mother filed a motion to withdraw as attorney of record at Mother's request. This court then abated this appeal to the trial court to make findings concerning the issues raised by these motions.

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<sup>4</sup> Mother has filed numerous motions on her own behalf during the pendency of this appeal. Initially, some were returned to her by this court

On April 12, 2018, the trial court held a hearing with both Mother and Father present. At the conclusion of the hearing, the trial court made “the explicit finding that [Mother] and her appointed appellate counsel have not met the required showing of good cause for [Mother’s] appointed appellate counsel to be relieved of his duties.” The trial court further found that if Mother was asking to represent herself, the trial court had “real concerns about [Mother’s] competence” and that any decision to do so was not competently and intelligently made. The trial court denied the motion to withdraw. Having thoroughly reviewed the record from the abatement hearing, this court adopts the findings and ruling of the trial court on the motion to withdraw.

Mother stated that she had no recollection of speaking with DHS earlier in the day.

A little more than a month later, on December 19, 2016, the social worker learned that Mother and Father had been in a physical altercation in front of their home. Upon investigation, the social worker learned that Mother had raised a hammer at Father and that Father had taken Dylan and Gabby outside to the car. Mother pulled Gabby out of the car, and Father then began to assault Mother while she was holding Gabby. Father was arrested and charged with domestic assault and battery in the presence of a minor. The social worker interviewed Father at the jail. During his interview with the social worker, Father was hostile and aggressive and, in reference to Mother, he began screaming that he “should have taken care of the problem” and that he “should have f\*\*\*\*\*g murdered her.” Mother told the social worker that she would be contacting domestic violence shelters, and when the social worker followed up with Mother the following day, Mother told her she was near Ada or Ardmore, Oklahoma; Mother was actually at a shelter in Gainesville, Texas.

On December 21, 2016, the Texas Department of Family and Protective Services (Department) received a referral for neglectful supervision of Dylan and Gabby by Mother and for physical abuse of Dylan and Gabby by Father. The next day, Child Protective Services (CPS) Investigator Teniqua Teamer contacted the person who had made the referral and learned that Mother had extensive prior CPS history in both Oklahoma and Florida. The reporter relayed that Mother had previously made many false reports, that she was known to falsify situations to get her way, and that she often acted as if she had a hard time remembering things she had previously said. The reporter told Teamer that there were concerns for Dylan and Gabby due to multiple CPS referrals, exposure to domestic violence, and Mother's mental health issues. Teamer further learned that Mother had a pattern of going to various domestic violence shelters and then leaving them to return back to Father.

The reporter informed Teamer that the Florida Department of Children and Families had previously removed two of Mother's children from a prior marriage from her custody, that Mother had no contact with those children, and that Mother was even known not to claim them. The reporter conveyed concerns regarding Mother's ability to care for Dylan and Gabby because Mother had never undergone a psychological evaluation for which she had previously been referred. And Teamer learned of Father's earlier outburst that he should have murdered Mother.

On December 22, 2016, Teamer, along with another CPS Investigator,

Jennifer Tansini, went to the Gainesville women's shelter where Mother was staying. Teamer interviewed Gabby, who stated that Mother and Father often argued with one another and that the police had been to their home on several occasions. Gabby said that Mother had a lot of blood on her knee and other marks on her body. According to Gabby, Father had hurt Mother, something that had happened on other occasions, and Gabby further relayed that there had been several occasions where she and Dylan had tried to stop Mother and Father from fighting.

Teamer also interviewed Mother, who acknowledged that she had a history of domestic violence. But she also stated that she would always return to Father because she was his wife and that was what she was supposed to do. Mother told Teamer that the police had come to her home on three occasions because of domestic violence. Teamer asked Mother about the details of the December 19 domestic-violence incident. Mother stated that while she was homeschooling Dylan, she stood up, and Father forcefully pushed her to the ground, causing her to hurt her head and back. She yelled for Dylan and Gabby to get help, but Father made the children get in the car and locked them inside. Mother said that Father was angry, came back toward her, and blocked her path, but she was able to move away from him and get her children out of the car. After she did so, however, Father came after her, knocked her to the ground while she was holding Gabby, and attacked her.

Teamer also spoke with Sarah Roberson, a DHS employee. Roberson stated that in 2012, DHS had set up a safety plan for Dylan and Gabby, placing them with a family where they went to church. But according to Roberson, Mother kept stalking the family with whom Dylan and Gabby had been placed and calling their phones. Roberson further said that Mother always appeared to be dishonest and was known to falsely report to the sheriff's office and the child abuse hotline. According to Roberson, Mother often would say things and then claim that she had not said them, and she often appeared as if she did not remember things she had been told.

Following the investigation on December 22, Tansini and Teamer notified Mother that the Department intended to take emergency possession of Dylan and Gabby. See Tex. Fam. Code Ann. §§ 262.104, .109 (West Supp. 2017). Mother was allowed to visit with Dylan and Gabby, and Teamer observed this visit. Mother was instructed not to discuss the case with the children. Nevertheless, she told Dylan that CPS was taking him away, causing him to start crying and screaming. She told Dylan several times that it was not her fault that CPS was taking him away. Mother repeatedly spoke of the case to Dylan and told him that CPS was awful, and she was repeatedly told not to talk about the case or the visit would be ended. Still Mother continued, stating that CPS did not like Christians and that the children did not have a father and now would not have a mother. After this remark, Teamer ended the visit.

Based on her investigation, Teamer believed that Mother and Father had endangered Dylan's and Gabby's lives and concluded there was an immediate danger to their physical health or safety. Consequently, the Department took emergency possession of Dylan and Gabby. See Tex. Fam. Code Ann.

§ 262.104. The Department then filed a petition to terminate Mother's and Father's parental rights as to Dylan and Gabby. On December 27, 2016, the trial court signed an order naming the Department as temporary sole managing conservator of Dylan and Gabby, and the case eventually proceeded to final trial on December 20, 2017.

Following a bench trial, the trial court found by clear and convincing evidence that Mother and Father had committed the acts specified in family code subsections 161.001(b)(1)(D) and (E) and that termination of their parental rights was in Dylan's and Gabby's best interest. See Tex. Fam. Code Ann. § 161.001(b)(1)(D), (E), (b)(2). Based on those findings, the trial court terminated Mother's and Father's parental rights to Dylan and Gabby. Mother and Father appeal from the trial court's termination order.

## **II. SUFFICIENCY OF THE EVIDENCE**

In her second issue, Mother contends the trial court's statutory-grounds and best-interest findings are not supported by legally or factually sufficient evidence. In his sole point, Father contends the evidence is legally and factually insufficient to support the trial court's best-interest finding. Since the applicable law and

analysis relevant to Mother's second issue and Father's sole point are similar, we discuss Mother's second issue and Father's sole point together.

#### **A. APPLICABLE LAW AND STANDARD OF REVIEW**

A trial court may terminate a parent-child relationship if it finds by clear and convincing evidence that the parent's conduct satisfies one of the statutory grounds for termination set forth in the family code and that termination is in the best interest of the child.<sup>5</sup> See Tex. Fam. Code Ann. § 161.001(b)(1), (2).

Evidence is clear and convincing if it "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 2014)

In reviewing the evidence for legal sufficiency, we determine whether all of the evidence, when viewed in the light most favorable to the challenged finding, is such that a factfinder could reasonably form a firm belief or conviction that the challenged finding is true. See *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005). In conducting this inquiry, we resolve any disputed facts in favor of the finding if a reasonable factfinder could have done so; we disregard all evidence that a

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<sup>5</sup> Where, as here, the termination suit has been filed by the Department and seeks to terminate the parent-child relationship for more than one parent of the child, "the court may order termination of the parent-child relationship for the parent only if the court finds by clear and convincing evidence grounds for the termination of the parent-child relationship for that parent." See Tex. Fam. Code Ann. § 161.206(a-1) (West Supp. 2017).

reasonable factfinder could have disregarded; and we defer to the factfinder's determinations of witness credibility unless those determinations are unreasonable. See *id.*

In reviewing the evidence for factual sufficiency, we conduct an exacting review of the entire record to determine whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the Department's allegations. *In re A.B.*, 437 S.W.3d 498, 502–03 (Tex. 2014). In conducting this inquiry, we afford due deference to the factfinder's findings. *Id.* at 503. The evidence is factually insufficient 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. *Id.*

## **B. STATUTORY TERMINATION GROUNDS FINDINGS**

Upon hearing the evidence presented at trial, the trial court found that Mother's and Father's conduct satisfied two of the statutory grounds for termination: it found that Mother and Father had knowingly placed or knowingly allowed Dylan and Gabby to remain in conditions or surroundings which endangered their physical or emotional wellbeing, see Tex. Fam. Code Ann. § 161.001(b)(1)(D), and it found that Mother and Father had engaged in conduct or knowingly placed Dylan and Gabby with persons who engaged in conduct which endangered their physical or emotional well-being, see *id.* § 161.001(b)(1)(E).

Subsections (D) and (E) are commonly referred to as the endangerment grounds for termination. See *In re S.M.R.*, 434 S.W.3d 576, 579 (Tex. 2014).

Along with a best interest finding, a finding of only one ground alleged under section 161.001(b)(1) is sufficient to support a judgment of termination. *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). In resolving the first part of Mother's second issue—her contention that the evidence is legally and factually insufficient to support the trial court's statutory-grounds findings—we will focus our analysis on the trial court's subsection (E) finding.

"Endangerment" means to expose to loss or injury, to jeopardize. *Tex. Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987); *In re M.E.M.N.*, 342 S.W.3d 254, 261 (Tex. App.—Fort Worth 2011, pet. denied). Under subsection (E), the relevant inquiry is whether evidence exists that the endangerment of the child's physical or emotional well-being was the direct result of the parent's conduct, including acts, omissions, or failures to act. *M.E.-M.N.*, 342 S.W.3d at 262; see *Tex. Fam. Code Ann.* § 161.001(b)(1)(E). Additionally, termination under subsection (E) must be based on more than a single act or omission; the statute requires a voluntary, deliberate, and conscious course of conduct by the parent. *M.E.-M.N.*, 342 S.W.3d at 262; see *Tex. Fam. Code Ann.* § 161.001(b)(1)(E). It is not necessary, however, that the parent's conduct be directed at the children or that the children actually suffer injury. *Boyd*, 727 S.W.2d at 533; *M.E.-M.N.*, 342 S.W.3d at 262. The specific danger to the children's well-being may be inferred

from parental misconduct standing alone. *Boyd*, 727 S.W.2d at 533; *M.E.-M.N.*, 342 S.W.3d at 262. To determine whether termination is necessary, courts may look to parental conduct occurring both before and after the child's birth. *M.E.-M.N.*, 342 S.W.3d at 262.

"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." *N.A.B. v. Tex. Dep't of Family & Protective Servs.*, No. 03-14-00377-CV, 2014 WL 6845179, at \*2 (Tex. App.—Austin Nov. 26, 2014, no pet.) (mem. op.) (cleaned up). Domestic violence, want of self-control, and propensity for violence may be considered as evidence of endangerment, as can a parent's exposing her child to the risk of domestic violence from others. *Id.*

### **1. MOTHER'S CONTENTION**

In the first part of her second issue, Mother focuses her argument specifically on the evidence of domestic violence between her and Father. She contends the record shows that she and Father only had "two isolated events of domestic violence" over the course of six or seven years: the December 19, 2016 altercation that led to the Department's emergency removal of the children and another instance of domestic violence that occurred sometime in 2010 or 2011. She argues that this evidence is legally and factually insufficient to support the trial court's endangerment findings because those two incidents did not

demonstrate that she engaged in a deliberate and conscious course of endangering conduct.

## **2. FACTUALLY AND LEGALLY SUFFICIENT EVIDENCE SUPPORTS THE TRIAL COURT'S SUBSECTION (E) FINDING**

We do not agree with Mother's suggestion, implicit in her argument, that the only evidence of endangering conduct in the record is "two isolated events of domestic violence" over the course of six or seven years.<sup>6</sup> Instead, the entire record discloses that Mother has engaged in a pattern of endangering conduct encompassing no fewer than three states over a period of nearly two decades that involves not only the two children at issue in this proceeding but also two children from a previous marriage.

### **a. Mother's Previous Marriage and Conduct Involving Her Children from that Marriage**

At trial, Mother testified that prior to her marriage to Father, she was married two other times. One of those marriages was to R.S., whom she testified she married in 1995. While living in Florida, Mother and R.S. had two children, Nancy and Natalie.<sup>7</sup> Mother testified that she and R.S. divorced in 1998.

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<sup>6</sup> Because, as we explain below, there is other evidence of endangerment in the record in addition to the two instances of domestic violence identified in Mother's brief, we need not address, and therefore express no opinion regarding, whether those two instances of domestic violence, standing alone, would enable the trial court's endangerment findings to withstand a sufficiency challenge. Tex. R. App. P. 47.1.

<sup>7</sup> We use aliases for these children as well. See Tex. R. App. P. 9.8(b)(2).

According to Mother's testimony, she was awarded custody of Nancy and Natalie, but R.S. eventually obtained custody of them.

The trial court admitted a complaint affidavit showing that in December 1999, the State of Florida charged Mother with knowingly giving false information to a law enforcement officer concerning the alleged commission of a capital felony and with knowingly and willfully making a false report of child abuse. See Fla. Stat. Ann. §§ 39.205(9)<sup>8</sup>, 837.05(2). According to the complaint affidavit, in June 1999, Mother reported to the Polk County Sheriff's Department that R.S. had sexually abused two-year-old Nancy. An investigation ensued, and the Polk County Sheriff's department had Nancy undergo a sexual assault examination at the hospital, which resulted in negative findings. Further investigation revealed that Mother had called Florida's child abuse registry on eighteen occasions over a four-month period to report that R.S. was sexually abusing Nancy, with each report being nearly identical. An investigator interviewed Nancy, who told the investigator that Mother had told her to tell the investigator that R.S. had touched her.

In October 1999, Mother made two additional reports to the Polk County Sheriff's Department that R.S. was sexually abusing Nancy, and Mother even took Nancy to the hospital to undergo yet another sexual assault examination, an examination that yielded no physical findings of sexual abuse. According to the

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<sup>8</sup> Since 1999, this statute has been amended several times. In this opinion, we cite to the current provision.

complaint, from June 1999 to November 1999, investigators interviewed Nancy approximately five times, and she had been examined by three doctors for sexual abuse. Neither the interviews nor the examinations revealed that Nancy had been sexually abused.

In November 1999, Mother reported to the Polk County Sheriff's Department that R.S. had sexually abused her during their marriage, an allegation investigators determined was unfounded. Based upon all of this conduct, Mother was charged with making a false report to law enforcement and with making a false report to the child abuse registry.

The trial court admitted another complaint affidavit showing that in November 2000, the State of Florida charged Mother with interfering with child custody. See Fla. Stat. Ann. § 787.03. The affidavit stated that R.S. had been awarded custody of Nancy and Natalie in April 2000, a fact known to Mother. Yet on October 30, 2000, Mother attempted to have a deputy remove Nancy and Natalie from R.S. by presenting custody papers dated March 27, 2000. The deputy informed Mother that her papers were not current and that R.S. had custody of Nancy and Natalie. The next day, Mother presented the same March 27, 2000 papers to a different deputy in another attempt to have the deputy remove Nancy and Natalie from R.S.'s custody. Mother was subsequently charged with interfering with child custody.

The trial court admitted another complaint affidavit showing that in July 2001, the State of Florida had charged Mother with causing a Florida circuit court judge

to make a false report of child abuse. See Fla. Stat. Ann. § 39.205(9). The affidavit stated that Mother had filed an emergency motion with the court requesting that Nancy be seen by a doctor because she appeared to be dehydrated, pale, and very feverish. The motion was referred to the judge, who, upon reading it, reported the allegation of neglect to Florida's child abuse registry. The investigation of that allegation revealed that Nancy had suffered no abuse or neglect. Consequently, the State of Florida charged Mother with causing the circuit court judge to make a false report of neglect.

**b. Mother's Marriage to Father and Conduct in Florida Involving Dylan and Gabby**

Mother married Father in January 2009. They lived in Florida, where Dylan was born in September 2009, and Gabby was born in March 2011. The trial court admitted records from the Florida Department of Children and Families showing that Mother's previous pattern of making false reports had continued during her marriage to Father and that the Department of Children and Families had become involved when Dylan was only five days old. These records are voluminous, but we highlight some of the probative evidence they contain.

**September 2009**

- The Department of Children and Families opened an investigation five days after Dylan was born. Mother had made a claim of domestic violence against Father. The report notes that Mother had made similar false claims of domestic violence against Father in the past.
- Mother had a pattern of false reporting and physical violence, as well as a pattern of contacting law enforcement during verbal

- disagreements and alleging that she was a victim of domestic violence.
- Father indicated that Mother regularly accused him of being physically abusive and that he had been arrested due to false allegations Mother had made in the past.
- Father indicated that Mother threw things and slammed doors when they had verbal disagreements, that she had recently thrown a plate during a verbal disagreement with him, and that Dylan was present when that incident occurred.
- The Department of Children and Families had eleven prior intakes involving Mother dating back to her interactions with Nancy and Natalie.

#### **November 2010**

- The Department of Children and Families opened an investigation upon a report that Mother and Father had gotten into a disagreement. Mother was pregnant and felt unsafe in the home.
- Mother told an investigator that Father was acting irrational and unpredictable. She stated she had called a domestic violence shelter and intended to go to the domestic violence shelter as soon as the investigator left.
- The investigation yielded no evidence of current violence, and the report noted Mother had a history of calling law enforcement and making false reports of domestic violence.

#### **May 2011**

- The Department of Children and Families opened an investigation upon a report that Father told Mother to make Gabby stop crying and then hit Gabby, leaving a red mark near her back.
- Mother had locked Father out of the house, Dylan could see Father outside, and Dylan was screaming that he wanted Father.

- Mother and Father had unrealistic expectations in thinking that their behavior and the condition of their house would not have an impact on Dylan and Gabby.
- Father stated that Mother cursed and threw things in the home and that she made false allegations against him.

### **August 2011**

- The Department of Children and Families opened an investigation upon a report that Father had been arrested for domestic violence against Mother.
- Mother and Father were driving in a car with Gabby. Father was driving and he was drinking. Mother grabbed the steering wheel and forced the car off the road, resulting in an accident. Father hit Mother in the face.
- Mother left Dylan with a woman whom she had only just met the day before and did not pick Dylan up until the following day. The woman was not able to contact Mother. This was not the first time she had done something like this.
- Mother, Dylan, and Gabby had been evicted from their residence. Mother was living with a friend who was trying to help them get into a domestic violence shelter.
- Mother's statements to investigators suggested that domestic disputes between Mother and Father in the presence of the children were an ongoing behavior between them.

### **September 2011**

- The Department of Children and Families opened another investigation upon a report that Mother had not been properly supervising Dylan and Gabby and that she sometimes left Dylan in the care of a friend who was unable to supervise him due to a mental disability.

- Mother had been living in a Salvation Army shelter but was terminated due to noncompliance. Mother had been living in a hotel for approximately two to three weeks.
- Mother sometimes left the children in the care of individuals without knowing much about them.

### **November 2011**

- The Department of Children and Families opened another investigation upon a report that Mother and Father had gotten into a domestic violence altercation while Gabby was present. Father was arrested.

### **February 2012**

- The Department of Children and Families opened another investigation upon a report that Mother had been living in a domestic violence shelter due to ongoing violence between her and Father.

### **April 2012**

- By April, Mother and Father were back to living together, and they were living with the children in a hotel room.

#### **c. Mother's Conduct in Oklahoma Involving Dylan and Gabby**

Mother testified that the family moved to Oklahoma after Father took a job with Halliburton. The trial court admitted records from Oklahoma's DHS, and those records reflect Mother's pattern of endangering conduct continued. In fact, the evidence shows that the family moved to Oklahoma in June 2012, and by July 2012, DHS received a referral that Mother was not supervising Dylan and Gabby and had allowed strangers at the library to supervise them. As with the records from Florida, the records from Oklahoma are voluminous, but we highlight some of the probative evidence contained in them.

October 2012

- DHS opened an investigation upon receiving a referral that, among other things, Mother was asking strangers to watch her children and that the children were stealing food from a Republican convention.
- Mother did not change the children's diapers or keep them clean, and she allowed strangers to watch them. Mother displayed erratic behaviors and had difficulty completing thoughts.
- Mother was recommended for a mental health assessment and to follow all recommendations from the assessment.
- Mother's home was filled with dirty diapers, moldy food, and dirty dishes. Dylan was observed gnawing on a piece of cheese that was green and had mold on it. Dylan had a full diaper hanging off of him, and Gabby had a full diaper that was old and soaked through her pants.
- Father acknowledged Mother's erratic behaviors and stated that she can get to a point where she is a danger to herself and others.
- A social worker spoke with twenty individuals from Mother's past and present and discovered that she has a severe mental illness but does not treat it.
- Father had been told not to allow Dylan and Gabby to be alone with Mother because of her mental health issues and chaotic behavior, yet he went out of town for work and left the children alone with Mother.
- DHS put a safety plan in place for Dylan and Gabby, and they went to temporarily stay with a foster parent. During the week the children resided there, Mother harassed the foster parent by calling her repeatedly from different people's phones. Mother threatened the foster parent and spoke ill of her to people she met in town. The foster parent became scared of Mother and no longer wanted to be involved in the case.
- Mother had already made several police incident reports in the approximately four months she had lived in Oklahoma.

- A supervisor with Florida's Department of Children and Families informed DHS case workers that in Florida, Mother had often moved with the children and lived in her car; that she had been provided with an apartment, clothing, and daycare, but nevertheless went to live in a shelter; and that the Department of Children and Families had attempted to set up services for Mother, but she would always move.
- Father stated that Mother gets violent and throws dishes at him in front of Dylan and Gabby. He stated that he knew Dylan and Gabby were not safe with Mother and that Mother makes their life chaotic.
- Father stated that Mother's perception of things is different from everyone else's. He also stated that Mother had once left with the children for two months without him knowing where they were.
- In early September, the police had responded to the home due to domestic violence.
- Father stated that he did not think anything with Mother was going to change and that he needed to stand up for his children. He looked at her history and could not figure out what was going on, but he did not believe it was normal.
- Mother left Father on multiple occasions to go to a shelter.

### **November 2015**

- DHS opened an investigation upon receiving a referral that police had responded to a doctor's office after Dylan was observed spitting, hitting, and verbally assaulting Mother; hitting Gabby twice, almost knocking her down; and hitting, spitting, and cussing at other children in the lobby. Mother did nothing to address the behavior.
- The month prior, Mother had withdrawn Dylan from school. While in school, there had been times where Dylan had been so disruptive that he had been dismissed from class. He had bitten classmates, turned over desks, and thrown chairs. He had also postured to hit a teacher once.
- Dylan was observed behaving very aggressively toward Mother, kicking, hitting, and biting her.

- Gabby was observed displaying some of the same concerning behaviors as Dylan, just to a lesser degree.
- Mother had been dishonest about how she disciplined Dylan and Gabby. The children were observed defying Mother and acting physically and verbally aggressive toward Mother, and she did not effectively address those behaviors.
- Father was upset that DHS was involved again. He stated that Mother was the problem. He stated that something was wrong with Mother.
- Father stated that Mother has had issues for a long time, and he had had to deal with those issues ever since he had been with Mother.
- DHS referred Mother for a psychiatric evaluation due to her enabling of her children's concerning behaviors, as well as the behaviors that were negatively affecting the relationship between Father and her.

#### **November 2016**

- DHS opened an investigation upon receiving a referral that Mother and Father had been in a physical altercation, that Mother had left Dylan at home, yet was searching for him at a store, and that Father left Dylan and Gabby with Mother despite knowing of her mental health issues.
- Both Dylan and Gabby stated that they saw Mother and Father fight.
- When interviewed, Mother stated she had been at a shelter earlier and that Dylan had run away from the shelter back to the house because he did not want to be at a shelter. Mother stated that Father had gone to Tennessee and changed his phone number, but when the worker returned later in the evening, Father was sitting with Mother on the couch.

#### **December 2016**

- In the background section of this opinion, we summarized the evidence concerning the December 19, 2016, domestic violence incident between Mother and Father as well as the pertinent events that occurred after that time through the time the Department removed

Dylan and Gabby from Mother's care. That evidence is relevant to our analysis of the first part of Mother's second issue, but we need not repeat our summary here.

#### **d. DISCUSSION**

Conduct that subjects a child to a life of uncertainty and instability endangers the physical and emotional well-being of a child, as does domestic violence or conduct that exposes a child to the risk of domestic violence. See *N.A.B.*, 2014 WL 6845179, at \*2. From the above evidence, the trial court could have reasonably concluded that Mother has engaged in a longstanding voluntary, deliberate, and conscious course of conduct of making false reports of abuse and domestic violence while participating in actual violent episodes, exposing her children to that conduct, and taking Dylan and Gabby to domestic violence shelters. See *M.E.-M.N.*, 342 S.W.3d at 262. Given that, the trial court could have also reasonably concluded that Mother's pattern of conduct endangered Dylan's and Gabby's physical and emotional well-being not only because it subjected them to a life of uncertainty and instability but also because it exposed them to domestic violence.

We conclude that a reasonable factfinder, when viewing all of the evidence in the light most favorable to the trial court's subsection (E) finding as to Mother, could form a firm belief or conviction that that finding is true. See *J.P.B.*, 180 S.W.3d at 573. And, having performed an exacting review of the entire record, we conclude that the evidence is such that a factfinder could reasonably form a firm

belief or conviction that the State's allegations as to subsection (E) are true. See A.B., 437 S.W.3d at 502–03. We therefore hold that the trial court's finding that Mother's conduct satisfies the subsection (E) statutory termination ground is supported by legally and factually sufficient evidence.

Having so held, we need not address Mother's sufficiency challenge to the trial court's subsection (D) finding. See Tex. R. App. P. 47.1; A.V., 113 S.W.3d at 362.

We overrule the first part of Mother's second issue.

#### **C. BEST-INTEREST FINDINGS**

In the second part of her second issue, and in his sole point, Mother and Father, respectively, argue that the trial court's best-interest findings are not supported by legally and factually sufficient evidence.

There is a strong presumption that keeping a child with a parent is in the child's best interest. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006). We review the entire record to determine the child's best interest. *In re E.C.R.*, 402 S.W.3d 239, 250 (Tex. 2013). The same evidence may be probative of both the statutory termination grounds and the child's best interest. *Id.* at 249; *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002). There are several nonexclusive factors a trial court may consider in determining a child's best interest, including the emotional and physical needs of the child now and in the future, the parenting abilities of the individuals seeking custody, the plans for the child, the stability of the home or proposed placement, the acts or omissions of the parent indicating that the parent-child

relationship is not a proper one, and the desires of the child. See *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976); see also *C.H.*, 89 S.W.3d at 27. Undisputed evidence of just one factor may be sufficient in a particular case to support a finding that termination is in the best interest of the child. *C.H.*, 89 S.W.3d at 27.

### **1. Legally and Factually Sufficient Evidence Supports the Trial Court's Best-Interest Finding as to Mother**

At the outset, we note that much of the evidence we have already summarized is also probative in our analysis of the trial court's best-interest finding. See *E.C.R.*, 402 S.W.3d at 250; *C.H.*, 89 S.W.3d at 28. In addition to that evidence, the record shows Mother underwent a psychological evaluation in connection with this case. Dr. Toni Hill conducted that evaluation. Dr. Hill explained at trial that Mother exhibited features that were in alignment with schizotypal personality disorder and borderline personality disorder. Explaining the characteristics of schizotypal personality disorder, Dr. Hill explained that

the person's real view tends to be a bit skewed from what most people perceive as reality. They can have difficulty with reality testing, knowing what is really in the environment and what is really just based on their own internal perception, erratic behaviors, some suspiciousness, distrust of others; and that kind of being the cornerstone of how they view the world, how they respond to the environment. . . .

Another main characteristic is that they may want to form close relationships with others, but typically have difficulty doing that, and understanding interpersonal nuances and social norms.

When asked whether Mother's diagnosis would make it hard for her to effectively and successfully raise children, Dr. Hill replied that it "could definitely raise

concerns as to her ability to parent children." In her report, Dr. Hill opined that while "[Mother] may say she wants treatment, she has a somewhat poor prognosis. Because she is prone to blaming others for her problems, she is likely to have little or no motivation to change[.]"

Further, Spencer Brown, the Department caseworker assigned to this case, testified at trial. Brown testified, based upon his involvement in this case, that he was concerned that if Dylan and Gabby were returned to Mother, then there would be similar instances of Mother making false reports, of police getting involved, and of the children being put through chaos again. And the children's guardian ad litem, Bob Broun, testified similarly. Brown and Broun both testified that termination of Mother's rights was in Dylan's and Gabby's best interest. And when the trial court asked for a recommendation from the children's attorney ad litem, she also recommended the trial court terminate Mother's rights and stated that it was in Dylan's and Gabby's best interest to do so.

From the evidence, the trial court could have reasonably concluded that Mother's nearly twenty-year pattern of endangering conduct—a pattern that had continued despite the well-intentioned intervention of the child protective service agencies, law enforcement agencies, and court systems in three different states—would simply continue if she were to regain possession of Dylan and Gabby. Based on these reasonable conclusions, the trial court could have determined that a

consideration of Dylan's and Gabby's emotional and physical needs now and in the future; of the emotional and physical danger to Dylan and Gabby now and in the future; of the stability of Mother's home; and of whether the existing parent-child relationship between Mother and Dylan and Gabby was a proper one all weighed heavily in favor of terminating the parent-child relationship between Mother and Dylan and Gabby. See *Holley*, 544 S.W.2d at 371-72.

We conclude that a reasonable factfinder, when viewing all of the evidence in the light most favorable to the trial court's best-interest finding as to Mother, could form a firm belief or conviction that terminating Mother's parental rights to Dylan and Gabby was in their best interest. See *J.P.B.*, 180 S.W.3d at 573. And, having performed an exacting review of the entire record, we also conclude that the evidence is such that a factfinder could reasonably form a firm belief or conviction that termination of Mother's parental rights to Dylan and Gabby was in their best interest. *A.B.*, 437 S.W.3d at 502-03. We therefore hold that the trial court's best-interest finding as to Mother is supported by legally and factually sufficient evidence.

We overrule the second part of Mother's second issue.

## **2. Legally and Factually Sufficient Evidence Supports the Trial Court's Best-Interest Finding as to Father**

### **a. Father's Mental-Health History**

The record contains evidence of Father's mental-health history that is relevant in our evaluation of the trial court's best-interest finding. See *In re T.M.D.*,

No. 01-13-00970-CV, 2014 WL 1803004, at \*9 (Tex. App—Houston [1st Dist.] May 6, 2014, no. pet.) (mem. op.) (noting that the impact of a parent’s mental illness on his ability to parent and the stability of the home are relevant factors in the best interest of the child analysis). Father testified that he first received treatment for mental illness in 1983, when he was living in Orlando, Florida. He was also admitted to a psychiatric hospital in Melbourne, Florida, sometime in 2010. Father testified the Melbourne hospitalization stemmed from an incident between Mother and him as they were driving home from a restaurant with Dylan in the car. Father stated that Mother was driving, and he asked her to stop so he could use the restroom. According to Father, Mother refused to pull over, so when they finally came to a stop in the turn lane for a stop light at a busy intersection, Father got out of the car and went into a store to use the restroom. When he came back outside, Mother had not moved from the turn lane, traffic had backed up, and eventually police responded to the scene. Father stated that because Mother had previously reported that he had mental illness, the police recommended that he get evaluated at a psychiatric facility.

Father was also admitted to a psychiatric facility in Oklahoma. According to Father, he went to the hospital because of the stress Mother was causing him:

[Father]: I was at the hospital and I made -- a recommendation was there from the hospital. I went voluntarily to the hospital.

Q. And why did you go to the hospital?

[Father]: Because there was issues. It was very difficult. I had come home from work, and I'm just dealing with stresses and difficulties from [Mother]. [Mother] kept on, so I'm like, all right, well, let's go -- I'll go to the hospital. I'll go to the hospital.

Father testified that this hospitalization lasted “[j]ust a few days” and that he left Dylan and Gabby in Mother’s care during that time.

In August 2017, Father had a psychotic episode that resulted in his being again admitted to a psychiatric facility in Oklahoma. He was admitted after he went into a gas station in Duncan, Oklahoma, and said that he was going to “shoot up the store.” When he was admitted, he displayed delusional behavior, made bizarre statements to staff, and had disorganized thinking. He was discharged a week later with a diagnosis of psychotic disorder and a recommendation to follow up with outpatient care and counseling. He was also prescribed medication for his psychosis.

Like Mother, Father was ordered to undergo a psychological evaluation in connection with this case, and Dr. Hill performed that evaluation. In her report, Dr. Hill stated that individuals with Father’s profile tend not to self-refer for therapy because they feel that they have few problems. She further stated that such individuals may be seen in a mental health assessment setting because of a court order or because a family member has insisted they seek treatment; however, Dr. Hill indicated that individuals with Father’s profile are not very motivated to change their behavior and may leave treatment prematurely.

Dr. Hill diagnosed Father as having unspecified bipolar disorder and testified that Father needed to be treating it. In her report, Dr. Hill recommended among other things that Father participate in individual therapy and that he undergo a psychiatric evaluation to determine if he needed medication to treat his diagnoses. Further, Dr. Hill stated that a person who has experienced an acute psychotic episode and who has been hospitalized because they presented a danger to themselves or others should continue to receive treatment even after the episode had ended. She also testified that she would have concerns about Father parenting a child if he had not done anything to address his diagnoses.

Brown testified that Father had not followed Dr. Hill's recommendations from her psychological evaluation, something he was required to do under the trial court's status hearing order. Indeed, Father testified that he was not in counseling or receiving any psychiatric or psychological treatment, that he was not taking any medication, and that he was not doing anything to deal with his bipolar disorder. And this was not the first time Father stopped treating or failed to treat his bipolar diagnosis. Father testified that in 2010, he had been diagnosed with bipolar disorder and subsequently took medication and attended counseling.<sup>9</sup> He stated

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<sup>9</sup> Dr. Hill testified that Father did not inform her of this previous diagnosis when she performed his psychological evaluation and that having that information would have "help[ed] [her] understand him a bit better."

that his treatment was "at his discretion" and that his treatment eventually "just stopped."

The record also shows that at the time of trial, Father did not believe he had ever had bipolar disorder. In the context of his explanation for why his treatment for his 2010 bipolar diagnosis "just stopped," Father stated, "I am not bipolar, and I am not mentally ill." Moments later, Father reiterated that sentiment:

Q. And you understand that the Court has some concerns in regards to your bi -- being bipolar?

A. Yes, but I'm not bipolar.

Q. Okay. But do you understand that -- that some consider bipolar -- to be bipolar, not necessarily something that you can get over?

A. I understand that and I -- I agree, I understand.

Q. Do you think you were never bipolar to begin with?

A. That is correct. I -- I -- I do not, no, sir.

Father later testified that he could not assure the trial court that a psychotic episode like the one he experienced in August 2017 would not occur again at a time when his children were in his presence.

#### **b. Stability of Father's Home**

At the December 2017 trial, Father testified that he had been unemployed since the previous August. A little more than a month before trial, Mother told her therapist that she was having financial pressure because she had to give money to Father to help him pay bills. About a week later, Mother told her therapist that

she was having to work long hours in order to help Father pay bills, stating that Father had lost his job and was not working. Mother testified that she had provided Father with money to help him financially, stating that Father had told her that he needed it.

**c. Father's Failure to Complete Violence Intervention Program**

Dr. Hill also recommended that Father participate in an anger management training program, and the Department's service plan, which the trial court adopted as an order, provided that Father would participate in and complete a violence intervention program. Father testified that he went through a batterer's intervention prevention protection (BIPP) class as ordered by the court and that he completed it. However, Broun provided a report to the trial court which stated that Father had actually failed his BIPP class. In response to questioning from the trial court, Father's explanation for failing his BIPP class was as follows:

THE COURT: Okay. It's been reported to the Court that you -- and I didn't even know if this is a pass/fail. It says you failed the BIPP program. How did you fail the BIPP program?

[Father]: I don't -- I don't understand that either, ma'am. I -- I completed 28 weeks. I guess my -- what I initially received was that my final submission was -- my instructor didn't really feel that -- she wasn't happy with my submission. I don't know how to say it, other than that.

THE COURT: Okay. So --

[Father]: It didn't mean that I -- she felt that I still needed further -- further instruction.

THE COURT: Okay. Have you taken that advice and gotten further instruction?

[Father]: That's been just recent. I started -- I'm beginning to address that.

During his testimony, Brown confirmed Father did not successfully complete the BIPP program.

#### **d. Previous History With Child Protection Agencies**

In addition, much of the evidence we previously outlined regarding Mother's and Father's extensive history with state agencies charged with protecting children is also probative of the issue whether termination of Father's parental rights to Dylan and Gabby was in their best interest. The records from Florida's Department of Children and Families show that during the investigation that it opened in September 2009 (five days after Dylan's birth), Father informed investigators that Mother had regularly accused him of being physically abusive and that he had been arrested as a result of her false allegations. He also stated that while Dylan was present, Mother had thrown a plate at him during a verbal disagreement. In the Department of Children and Families' May 2011 investigation, Father again indicated that Mother threw things in the home and made false allegations against him, and he also stated that he believed she was suffering from a mental illness and indicated he wanted help in having her evaluated.

During the October 2012 investigation Oklahoma's DHS conducted, Father told investigators that he was concerned about Mother's mental state and wanted things to change. Father stated that the police had responded to the home a few weeks prior (the record shows they responded for domestic violence). Father told the investigators that Mother often threw things at him and yelled at him, and he also stated that he believed Dylan and Gabby would be negatively impacted if Mother's behavior continued.

Father stated his belief that things were never going to change with Mother and that he needed to stand up for his children. He agreed that Mother should not be left alone with Dylan and Gabby because he did not believe they would be safe. Father took Dylan and Gabby to stay with their paternal grandmother in Tennessee because of the danger Mother posed to them. Father said that he was going to get a divorce because Mother's behavior was causing chaos. But by March 2013, Father had not obtained a divorce, and in fact he took Mother with him to Tennessee, picked up Dylan and Gabby, and brought them back to Oklahoma to live with Mother and him.

In addition to the records showing Father's firm awareness of Mother's longstanding endangering conduct, Father testified at trial that while the family was living in Florida and Oklahoma, Mother had accused him of assaulting her many times, making those allegations to the police, pastors of churches, and church congregants. Father stated that the police had come to his home on more than

twenty occasions based on Mother's false accusations of domestic violence. He stated that he had filed for divorce from Mother three times. The first time he filed was in 2013 or 2014; the second was in 2014 or 2015; and the most recent filing was in 2017. Father stated that he did not follow through with the first two divorce filings because of his financial situation, but he also testified that he was making seventy to ninety thousand dollars per year at the time.

Father agreed that his staying with Mother had put stress on his children. And despite everything he knew of Mother's longstanding behavior, when asked whether it was in Dylan's and Gabby's best interest for Mother to have contact with them, Father stated that he was not qualified to say; rather, he stated he had a conviction that a mother should be involved in her children's lives.

Father further testified that he did not have any mental health issues before meeting Mother, and when asked the cause of his mental health issues, Father blamed Mother:

Q. How much of your bipolar, psychotic disorder or any of those or any mental health disorders that you've had, how much of that would you attribute to your wife?

A. All of it, sir.

Father also admitted he had interacted with Mother after the Department removed the children from Mother's care and while this termination proceeding was pending. Father testified that Mother had come to Oklahoma where he was residing, though he stated she had not spent the night with him. And Mother

testified that while this case was pending, she had provided Father with financial assistance, he had helped her move furniture into her apartment in Dallas, and he had helped her with her vehicle.

In reference to Father, Brown testified that he was concerned that Father had been receiving financial assistance from Mother while this case was pending because any tie between the two parents served as chaos for the children. Brown further testified that one of the biggest concerns with respect to Father was that he had left Dylan and Gabby in the chaotic environment that stemmed from his relationship with Mother. Brown stated he was concerned that if the children were returned to Father, he might let Mother around them, resulting in the children suffering further psychological damage. Broun testified that he shared Brown's concerns. As with Mother, Brown and Broun both testified that termination of Father's parental rights was in the children's best interest. And, as she had with regard to Mother, the children's attorney ad litem recommended the trial court terminate Father's rights and stated that it was in Dylan's and Gabby's best interest to do so.

In light of the above evidence, the trial court could have reasonably concluded that Father's history of denying and failing to treat his mental health diagnoses subjected Dylan and Gabby to uncertainty and instability. See *T.M.D.*, 2014 WL 1803004, at \*9 (stating mother's failure to address mental health issues which had previously led to her being hospitalized in the past supported trial court's best-interest finding because the failure subjected her children to uncertainty and

instability). In addition, from the evidence, the trial court could have reasonably concluded that Father knew of the chaotic environment his continued relationship with Mother had created for Dylan and Gabby yet nevertheless allowed them to remain in that environment to their detriment for several years. The trial court could have also reasonably concluded that Father had long been aware that the environment was dangerous not only to the children but also to himself yet failed to act to protect the children. And the trial court could have also reasonably concluded that if the children were returned to Father, he would allow Mother to be involved in their lives, reuniting them with the chaos and emotional turmoil from which the Department had justifiably removed them.

Based on these reasonable conclusions, the trial court could have determined that a consideration of Dylan's and Gabby's emotional and physical needs now and in the future; of the emotional and physical danger to Dylan and Gabby now and in the future; of the stability of Father's home; and of whether the existing parent-child relationship between Father and Dylan and Gabby was a proper one all weighed heavily in favor of terminating the parent-child relationship between Father and Dylan and Gabby.

We conclude that a reasonable factfinder, when viewing all of the evidence in the light most favorable to the trial court's best-interest finding as to Father, could form a firm belief or conviction that terminating Father's parental rights to

Dylan and Gabby was in their best interest. See *J.P.B.*, 180 S.W.3d at 573. And, having performed an exacting review of the entire record, we also conclude that the evidence is such that a factfinder could reasonably form a firm belief or conviction that termination of Father's parental rights to Dylan and Gabby was in their best interest. *A.B.*, 437 S.W.3d at 502–03. We therefore hold that the trial court's best-interest finding as to Father is supported by legally and factually sufficient evidence.

We overrule Father's sole point.<sup>10</sup>

### **III. ADMISSION OF EVIDENCE**

In her first issue, Mother argues the trial court reversibly erred by admitting an affidavit at trial. Prior to receiving testimony, the trial court admitted a copy of the Department's original petition. Attached to that petition was a notarized document signed by Sara Roberson, a DHS social worker. Mother claims the trial court erred by admitting that document because it did not meet the statutory requirements to constitute an affidavit.

#### **A. STANDARD OF REVIEW**

We review a trial court's decision to admit evidence for an abuse of discretion. *In re J.T.G.*, 121 S.W.3d 117, 133 (Tex. App.—Fort Worth 2003, no

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<sup>10</sup> On April 6, 2018, this court received a faxed document that contained a blank signature line with Father's name typed below the line. The last line of the document requested this court to "please remove my attorney and appoint one for me from the panel." At the abatement hearing, Mother admitted that she prepared this document and presented it to Father for him to sign, which he

pet.) Even where the trial court's decision to admit evidence was erroneous, however, we will not reverse the trial court's judgment because of that error unless the appellant shows that the error probably caused the rendition of an improper judgment. Tex. R. App. P. 44.1(a); *In re J.C.R.*, No. 02-10-00006-CV, 2011 WL 679316, at \*1 (Tex. App.—Fort Worth Feb. 24, 2011, no pet.) (mem. op.).

## B. ANALYSIS

For purposes of our analysis, we assume, without deciding, that the trial court abused its discretion by admitting the document in question. To establish harm in the erroneous admission of evidence, the complaining party must usually

refused to do. Despite the fact that father refused to sign the document, Mother faxed it to this court. This noncompliant motion was returned unfiled. show that the whole case turned on the evidence at issue. See *J.C.R.*, 2011 WL 679316, at \*1. If erroneously admitted or excluded evidence was crucial to a key issue, the error was likely harmful. *Id.* We examine the entire record in making this determination of harm. *Id.*

Mother argues that the document in question contained the following statements that were not cumulative of other evidence admitted at trial:

- “On 12/16/16 [DHS social] worker received a call that [Mother] was at Wal-Mart yelling at [Father] saying he had kidnapped the children. Duncan Police were called at this time”;
- “In prior [DHS] investigations, a safety plan was put in place because [Mother’s] children were unsafe due to [Mother’s] behaviors, which were bizarre and unstable”;

- “[Mother] continuously violated the safety plan”; and
- “[Previous DHS investigations] found [Mother] has a severe mental illness but does not treat it.”

And to show the trial court’s reliance on the complained-of statements, Mother refers us to the following exchange:

THE COURT: Okay. I just have a question. Is it your testimony today that [Father] has never been violent towards you? Is that your testimony today?

[Mother]: He has not physically -- well, pushing, yes, but not physically. I think violence has a large definition.

THE COURT: In Oklahoma, in December of 2016, didn’t you tell the workers up there or the police up there that he pulled a weapon on you, and that he forcefully pushed you to the floor where you hurt your head and your back, and you had to crawl up on a desk, and that you think he had been drinking something like gin or moonshine? Did you make any of those statements?

[Mother]: I made two of those statements.

Using this exchange, Mother argues the trial court used the Roberson document to impeach Mother’s testimony that Father had not assaulted her. Thus, Mother argues, the complained-of statements in the Roberson document “likely added support” to the trial court’s endangerment and best-interest findings.

Yet none of the complained-of evidence contained within the Roberson document actually appears in the exchange Mother points us to. In its questioning, the trial court made no reference to Mother yelling at Father at WalMart and accusing him of kidnapping the children; to police responding to the Wal-Mart incident; to a safety

plan; to Mother's violation of the safety plan; to the fact that the children were unsafe due to Mother's bizarre and unstable behaviors; or to the fact that DHS investigations had determined that Mother suffered from a severe mental illness that she did not treat.

While the trial court's questioning was clearly not premised upon the Roberson document, it was likely based on Teamer's affidavit, which also was attached to the Department's original petition, an affidavit to which Mother did not object.

Teamer's affidavit stated the following:

I asked [Mother] about the domestic violence incident at her house on Monday, December 19, 2016. [Mother] stated that . . . [Father] pushed her very forcefully and she fell onto the floor and hurt her head and back. She states she had to crawl up the desk to get up . . . [Mother] stated [Father] had been drinking something like gin or moonshine.

Thus, Mother has not even pointed us to anything in the record showing that the trial court considered the complained-of evidence. But in any event, in addressing Mother's and Father's sufficiency challenges above, we outlined the evidence in this case. Given that evidence, and having examined the entire record, we conclude that Mother has not shown that the whole case turned upon the statements Mother complains of or that those statements were crucial to the trial court's endangerment and best-interest findings. See *id.* Thus, assuming the trial court abused its discretion by admitting the Roberson document, we hold that Mother has not shown that such error probably resulted in the rendition of an improper judgment. See Tex. R. App. P. 44.1(a); J.C.R., 2011 WL 679316, at \*1.

Therefore, we conclude that any error in the trial court's admission of the Roberson document was harmless.

We overrule Mother's first issue.<sup>11</sup>

#### IV. CONCLUSION

Having overruled Mother's two issues and Father's sole point, we affirm the trial court's order of termination. See Tex. R. App. P. 43.2(a).

PER CURIAM

DELIVERED: May 22, 2018

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<sup>11</sup> Mother has attempted to raise a multitude of unpreserved issues in her pro se filings in this court. These filings have continued following the abatement hearing. Mother is represented by counsel in this appeal. Mother is not entitled to hybrid representation and thus her motions present nothing for our consideration. See *Robinson v. State*, 240 S.W.3d 919, 922 (Tex. Crim. App. 2007); *Patrick v. State*, 906 S.W.2d 481, 498 (Tex. Crim. App. 1995). This court has determined that Mother's pro se motions should be disregarded. See *In re Riley*, No. 02-11-00052-CV, 2011 WL 1103829, at \*1 (Tex. App.—Fort Worth Mar. 24, 2011, orig. proceeding) (mem. op).

**Additional material  
from this filing is  
available in the  
Clerk's Office.**