

**Affirmed and Memorandum Opinion filed March 28, 2019.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-18-00881-CV**

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**IN THE INTEREST OF M.M. AND C.M., CHILDREN**

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**On Appeal from the 300th District Court  
Brazoria County, Texas  
Trial Court Cause No. 90237-F**

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**MEMORANDUM OPINION**

The issues in this case involve whether the district court's findings to terminate parents' parental rights are supported by legally and factually sufficient evidence. This accelerated appeal arises from a final order in which, after a hearing without a jury, the district court terminated the parental rights of D.W. (Mother) and C.M.S. (Father) with respect to their children, M.M. (Mary) and C.J. (Charles),<sup>1</sup> and appointed the Department of Family and Protective Services to be the children's sole

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<sup>1</sup> To protect the minors' identities, we have not used the actual names of the children, parents, or other family members. *See* Tex. R. App. P. 9.8.

managing conservator. *See* Tex. Fam. Code Ann. § 109.002(a-1).

Both parents appealed. In six issues, Mother challenges the legal and factual sufficiency of the evidence to support the district court’s findings on the predicate ground of endangerment, that termination is in the children’s best interest, and appointment of the Department as the children’s sole managing conservator. Mother further argues she received ineffective assistance of counsel, the district court abused its discretion in denying her motion for continuance, and the district court improperly ordered new evidence in violation of Texas Rule of Evidence 605. Father challenges the legal and factual sufficiency of the evidence to support the district court’s endangerment finding and the finding that termination is in the children’s best interest. *See* Tex. Fam. Code Ann. § 161.001(b)(1)(D), (E), (2). We affirm.

## I. BACKGROUND

### A. Pretrial proceedings

#### 1. Pretrial removal affidavit

Early in 2017, more than one year before the final hearing commenced,<sup>2</sup> the Department received a referral stating that shortly after midnight law enforcement officers responded to a report by a Walmart employee that Mary and Charles had been left unattended in a car parked in the Walmart parking lot. While law enforcement officers were present, Mother appeared and identified herself as “Lawanda.” Law enforcement officers later learned that Lawanda was Mother’s neighbor. Mother and the children were transported to the police station where Mother dropped a small packet of methamphetamine on the floor. Mary tried to pick it up saying, “That is mommy’s, and I need to save it.” Mother admitted “being very

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<sup>2</sup> The Family Code uses the terms “final trial” and “final hearing on the merits.” *E.g.*, Tex. Fam. Code Ann. §§ 161.2011(a), .202. In this opinion we use either “final hearing on the merits” or “final hearing.”

messed up on methamphetamine” and using Lawanda’s identification card to impersonate her neighbor. Mother was arrested for possession of methamphetamine and reported there were no relatives available to care for the children. It was reported that “Father is hiding out in the area and may not be reachable.”

Mary, who was five years old at the time, told an investigator that she and her brother stayed in the truck while Mother shopped in Walmart. Mary said she had to urinate in the truck because there was no one there to take her in the store. Mary also reported that Father had hurt Mother. Mary reported that “when my mom and dad play with crystals I can’t be around them.”

Law enforcement officers reported that Mother had been shoplifting in Walmart and was taken to the police station due to outstanding warrants. A dispatcher saw Mary pick up the bag of methamphetamine and told Mary to throw it away. Mary told the dispatcher the bag was not trash but belonged to Mother. Father also had outstanding arrest warrants.

Mother reported that she suffers from bipolar disorder and depression. Mother left her abusive husband who is a methamphetamine dealer. Mother possessed the methamphetamine because she took it from her abusive husband.

## **2. Criminal History**

Mother had two traffic offenses, which were referred to the arresting agencies for disposition. Mother also had a charge for theft, which was listed as “disposition held.”

Father had a prior conviction for criminal trespass. Father received deferred adjudication probation for three drug offenses and had his probation revoked on one drug offense. Father had other charges of criminal trespass, burglary of a building, failure to identify, and possession of a controlled substance, which were either

deferred or referred to the arresting agencies.

### **3. Department History**

Approximately one year before the referral from the Walmart incident, the Department received a referral of physical abuse, physical neglect, and neglectful supervision of Mary, Charles, and S.M. (Susie).<sup>3</sup> The report noted that Mother was seen hitting Mary while Mary was playing outside. The home had no running water, severe sewage backup, and was infested with roaches. The children were sleeping on the living room floor. It was noted that no food was in the home and the children had been seen outside asking neighbors for food. It was further reported that strangers were “constantly coming and going due to the drugs being used in the home.” Mother and Father were reported to be known users of heroin and methamphetamine. Mary was seen with burns on her shoulder that appeared to be approximately one week old. It was noted that the burns were dirty and appeared to be infected.

The investigation revealed that both Mother and Father “actively hide the family from CPS.” The case was closed because the family fled the state and the Department could not locate them.

Four years earlier, the Department received a referral of neglectful supervision of Susie and Mary. The report noted that the children lived with Mother, Father, and a paternal uncle. The parents provided negative drug tests and the children were eventually returned to them. Other than the negative drug tests, the report does not list the reason the children were returned.

### **4. Removal**

The children were removed on an emergency basis and family service plans

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<sup>3</sup> Susie is Mother’s oldest child who no longer lives with Mother.

were developed. The district court ordered the parents to provide support to the children and ordered compliance with the service plans. At the time of the removal Mother was arrested and incarcerated in the Brazoria County Jail.

## **B. Final Hearing**

The case was initially called to a final hearing in June 2018. The district court announced that the parties agreed to start on that date, and recess at a later date in July. The witnesses were sworn, and the caseworker began her testimony with a statement that she works for the Department. The district court secured the parties' agreement that they would return in July to continue the hearing.

When the final hearing resumed in July, Mother was the only witness to testify the first day of the hearing. Mother testified that she was arrested for methamphetamine possession the day her children were removed. On the day of her arrest Mother did not know Father's location. The district court admitted, without objection, a certified copy of the judgment of conviction for possession of methamphetamine, which reflected that Mother pleaded guilty to the offense in exchange for a sentence of 150 days in the Brazoria County Jail.

Mother voluntarily admitted to the Santa Maria substance abuse treatment center. Mother completed a four-month program and was successfully discharged. Mother completed a psychological evaluation and parenting classes. Mother was unable to maintain stable employment or maintain a stable home. Mother had been homeless since being released from jail. Mother's family lived in Kentucky; if the children were returned to her she would take them to Kentucky.

The day the children were removed, Mother had visible bruises and a black eye. Mother claimed she went to the police station because Mary reported that the bruises were a result of physical abuse by Father. Mother went with the police

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