In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-10-00264-CV

IN THE INTEREST OF C.H. AND K.R.

On Appeal from the 418th District Court
Montgomery County, Texas
Trial Cause No. 09-05-05047-CV

MEMORANDUM OPINION

Appellant, B.H, filed this appeal from the trial court's final order terminating her parental rights to minor children C.H. and K.R. The Department of Family and Protective Services alleged and the trial court found by clear and convincing evidence that termination of B.H.'s parental rights was in the best interest of the children and that B.H. "knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endanger the physical or emotional well-being of the children," and "engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangers the physical or emotional well-being of the children." *See* Tex.

Fam. Code Ann. § 161.001(1)(D), (E) (West Supp. 2010). After final hearing, the trial court ordered B.H.'s parental rights terminated.

Following the termination proceeding, B.H. was appointed new counsel for purposes of appeal. B.H. filed a motion for new trial, a statement of points on appeal, and a notice of appeal. The trial court held a hearing pursuant to section 263.405 of the Family Code. *See id.* § 263.405 (West 2008) (procedure for appealing final order). The trial court found B.H. to be indigent, but after considering her statement of points on appeal, determined that her appeal was frivolous and denied B.H. a free copy of the record. *See id.* § 263.405(e), (f), (i).

B.H.'s appointed counsel filed an *Anders* brief stating her professional opinion that no arguable grounds of error existed. *See Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967); *see also Taylor v. Tex. Dep't of Protective & Regulatory Servs.*, 160 S.W.3d 641, 646-47 (Tex. App.—Austin 2005, pet. denied) (applying *Anders* procedure in appeal from termination of parental rights); *In re L.D.T.*, 161 S.W.3d 728, 731 (Tex. App.—Beaumont 2005, no pet.) (holding that "when appointed counsel represents an indigent client in a parental termination appeal and concludes there are no non-frivolous issues for appeal, counsel may file an *Anders* brief."). Counsel's review was limited to the trial court's frivolous finding and the record from the hearing held pursuant to section 263.405(d) of the Family Code. *See* Tex. Fam.

Code Ann. § 263.405(d), (g). B.H. then paid to have the clerk's record and reporter's record of the termination proceeding prepared and filed and submitted a *pro se* brief.

When faced with an *Anders* brief, and if a later *pro se* brief is filed, the court of appeals has two choices: (1) it may determine that the appeal is wholly frivolous and issue an opinion explaining that it has reviewed the record and finds no reversible error, or (2) it may determine that arguable grounds for appeal exist and remand the cause to the trial court so that new counsel may be appointed to brief the issues. *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). "Only after the issues have been briefed by new counsel may the court of appeals address the merits of the issues raised." *Id.* at 827. "If the court of appeals were to review the case and issue an opinion which addressed and rejected the merits raised in a *pro se* response to an *Anders* brief, then Appellant would be deprived of the meaningful assistance of counsel." *Id.*

The trial court's termination order can be upheld on a finding that termination would be in the best interest of the children and a finding on any one of the statutory grounds for termination set forth in section 161.001(1). *In re B.K.D.*, 131 S.W.3d 10, 16 (Tex. App.—Fort Worth 2003, pet. denied); *see also* Tex. Fam. Code Ann. § 161.001. The trial court filed separate findings of fact and conclusions. Because a complete copy of the clerk's record and reporter's record has been filed with this court, we have reviewed the full record in determining whether arguable grounds for appeal exist. *See In re M.D.C.D.*, No. 13-10-00624-CV, 2011 WL 2462987, at *2 n.4 (Tex. App.—Corpus

Christi June 16, 2011, no pet.) (mem. op.) (conducting review of full trial record to determine whether court erred in finding appeal wholly frivolous); *see also In re K.E.L.*, No. 11-10-00144-CV, 2011 WL 2204071, at *2 (Tex. App.—Eastland June 2, 2011, no pet.) (mem. op.) (reviewing full trial record where full record was before the court and appellant's brief challenged not only court's frivolous finding but also the court's order terminating parental rights).

We have independently reviewed the clerk's record and the reporter's record, the *Anders* brief, and the *pro se* brief in this case, and we agree with appellate counsel's contention that no arguable issues support an appeal. *See Bledsoe*, 178 S.W.3d at 826-27. Therefore, we find it unnecessary to order appointment of new counsel to re-brief B.H.'s appeal. *See id.*; *compare Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). We affirm the trial court's judgment.[1]

AFFIRMED.

CHARLES KREGER
Justice

Submitted on June 22, 2011
Opinion Delivered August 11, 2011

Before McKeithen, C.J., Kreger and Horton, JJ.

[1] We grant B.H.'s appellate attorney's motion to withdraw. We order B.H.'s appellate attorney to notify B.H. of the disposition of this appeal and the availability of discretionary review to the Texas Supreme Court. *See In re K.D.*, 127 S.W.3d 66, 68 n.3 (Tex. App.—Houston [1st Dist.] 2003, no pet.).