



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

**NO. 02-17-00061-CV**

IN THE MATTER OF D.T.

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FROM THE 323RD DISTRICT COURT OF TARRANT COUNTY  
TRIAL COURT NO. 323-103844-16

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

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This is an appeal from a juvenile court's order transferring appellant D.T.'s case to criminal district court for D.T. to be tried as an adult. See Tex. Fam. Code Ann. § 54.02 (West 2014). D.T.'s court-appointed appellate counsel has filed a brief in which he states that he has reviewed the record and believes the appeal is frivolous. Counsel's brief—apart from his failure to file a motion to withdraw—

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

meets the requirements of *Anders v. California* by presenting a professional evaluation of the record demonstrating why there are no arguable grounds for relief. See 386 U.S. 738, 87 S. Ct. 1396 (1967); *In re D.A.S.*, 973 S.W.2d 296, 299 (Tex. 1998) (orig. proceeding) (holding that *Anders* procedures apply to juvenile appeals).

Appellate counsel notified D.T.'s mother by mail of the right to file a pro se response to counsel's *Anders* brief, and this court further notified both D.T. and his mother by mail of the right to file a response to counsel's *Anders* brief. We have not received any response. The State declined to file a brief.

Once an appellant's court-appointed attorney files an *Anders* brief on the ground that the appeal is frivolous and fulfills the requirements of *Anders*, this court is obligated to undertake an independent examination of the record. See *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991); *Mays v. State*, 904 S.W.2d 920, 922–23 (Tex. App.—Fort Worth 1995, no pet.). When analyzing whether any grounds for appeal exist, we consider the record, the *Anders* brief, and any pro se response. *In re Schulman*, 252 S.W.3d 403, 408–09 (Tex. Crim. App. 2008) (orig. proceeding).

We have carefully reviewed counsel's brief and the appellate record. Finding no reversible error, we agree with counsel that this appeal is without merit. See *In re K.C.*, No. 2-09-150-CV, 2010 WL 323532, at \*1 (Tex. App.—Fort Worth Jan. 28, 2010, no pet.) (mem. op.). Therefore, we affirm the trial court's transfer order.

Ordinarily in an *Anders* case, the court-appointed appellate attorney files a motion to withdraw and a brief—the *Anders* brief—in support of the motion. *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400. But this is not an ordinary *Anders* case because appointed appellate counsel did not file a motion to withdraw in conjunction with his *Anders* brief and declined to do so even after the court, by clerk’s letter, specifically asked him to. Appellate counsel’s *Anders* brief nonetheless prays that we grant his (non-existent) motion to withdraw in addition to granting all other relief to which his client may be entitled.

Normally upon our finding that an appeal is frivolous, we would grant counsel’s motion to withdraw. But in *In re P.M.*, a termination-of-parental-rights appeal, our supreme court held—in reliance on family code section 107.013 providing that appointed counsel continues to serve in that capacity until the date all appeals are exhausted or waived—that the mere filing of an *Anders* brief in the court of appeals does not warrant counsel’s withdrawal for purposes of proceeding in the supreme court. No. 15-0171, 2016 WL 1274748, at \*3 (Tex. Apr. 1, 2016) (order). The Juvenile Justice Code contains a similar provision: when, as in this case, the trial court finds a child’s family indigent and appoints counsel, that counsel must continue to represent the child “*until the case is terminated*, the family retains an attorney, or a new attorney is appointed by the juvenile court.” Tex. Fam. Code Ann. § 51.101 (West Supp. 2016) (emphasis added).

The record does not show that either of the latter two events has occurred here, and under the reasoning of *In re P.M.*, this case has not “terminated” because not all appeals have been exhausted. See 2016 WL 1274748, at \*2 & n.5, \*3. Accordingly, in similar cases where appointed appellate counsel has filed both a motion to withdraw and an *Anders* brief in support of the motion, even though we affirmed the trial court’s judgment we nevertheless denied counsel’s motion to withdraw. See *In re A.H.*, No. 02-16-00320-CV, 2017 WL 1573735, at \*1 (Tex. App.—Fort Worth Apr. 27, 2017, no pet.) (citing *In re P.M.* in denying counsel’s motion to withdraw in frivolous appeal); *In re J.B., Jr.*, No. 02-16-00205-CV, 2017 WL 1536201, at \*1 (Tex. App.—Fort Worth Apr. 27, 2017, no pet.) (mem. op) (same); *In re Z.N.*, No. 02-16-00426-CV, 2017 WL 1352123, at \*1 (Tex. App.—Fort Worth Apr. 13, 2017, no pet.) (mem. op) (same); *In re T.J.-F.*, No. 02-16-00372-CV, 2017 WL 218297, at \*1 (Tex. App.—Fort Worth Jan. 19, 2017, no pet.) (mem. op.) (same); see also *In re T.T.*, No. 12-16-00326-CV, 2017 WL 1427257, at \*2 (Tex. App.—Tyler Apr. 19, 2017, no pet.) (mem. op.) (same); *M.R. v. Tex. Dep’t of Family & Protective Servs.*, No. 03-17-00071-CV, 2017 WL 1315445, at \*2 n.3 (Tex. App.—Austin Apr. 6, 2017, no pet.) (mem. op.) (same); *In re A.C.*, Nos. 01-15-00931-CV, 01-15-00932-CV, 01-15-00933-CV, 2016 WL 1658777, at \*1 (Tex. App.—Houston [1st Dist.] Apr. 26, 2016, no pet.) (mem. op.) (same).

At least one court has disapproved of counsel’s failure to file a motion to withdraw under these circumstances. See *In re G.L.R.*, No. 07-17-00057-CV,

2017 WL 1908562, at \*2 n.4 (Tex. App.—Amarillo May 3, 2017, no pet. h.) (mem. op.) (disapproving counsel’s failure to file motion to withdraw but dispensing with the motion because counsel’s duty was to remain on the case through the exhaustion of proceedings, including the possible filing of a petition for review). Yet if counsel had filed a motion to withdraw, that same court would have declined to rule on it because of counsel’s continuing duty to represent the client. See *In re S.M.*, No. 07-16-00407-CV, 2017 WL 1449222, at \*1 n.2 (Tex. App.—Amarillo Apr. 17, 2017, no pet.) (mem. op.) (declining to rule on motion to withdraw). The conundrum is that *Anders* requires a motion to withdraw, but in a case like this one, moving to withdraw contravenes counsel’s duty to remain on the case.

Our review of United States Supreme Court authority shows that the Supreme Court did not intend the *Anders* procedures to be mandatory. See *Smith v. Robbins*, 528 U.S. 259, 272–76, 120 S. Ct. 746, 757–59 (2000). The procedure set out in *Anders* was a suggestion, not a “straightjacket.” *Id.* at 273, 120 S. Ct. at 757.

In a similar manner, the Texas supreme court appears to have contemplated dispensing with the motion-to-withdraw requirement in this context; it stated, “Counsel’s obligation to the client may still be satisfied by filing an appellate brief meeting the standards set in *Anders v. California*.” *In re P.M.*, 2016 WL 1274748, at \*3 (footnote omitted). The supreme court also intimated that a motion to withdraw was effectively a moot issue unless the motion was

based on something other than *Anders*. *Id.* at \*3–4 (stating that a motion to withdraw may be premature, but a motion to withdraw on some basis other than *Anders* may be ripe).

We thus dispense with a motion to withdraw in this case and disregard any reference to withdrawing as counsel in counsel’s *Anders* brief. See *In re G.P.*, 503 S.W.3d 531, 534–35 (Tex. App.—Waco 2016, pet. denied). In the event we disagree with an *Anders* brief—that is, if we determine that there were non-frivolous issues that counsel should have pursued—we have the means of proceeding notwithstanding that absence of a motion to withdraw. See *In re X.H.*, No. 07-16-00410-CV, 2017 WL 491941, at \*2 n.4 (Tex. App.—Amarillo Feb. 6, 2017, order) (disagreeing with appointed counsel’s *Anders* brief that the appeal was frivolous and disapproving of counsel’s failure to file a motion to withdraw but removing counsel anyway and abating the appeal for purpose of having trial court appoint new appellate counsel), *disp. on merits*, 2017 WL 1908560 (Tex. App.—Amarillo May 2, 2017, no pet. h.) (mem. op.).

After reviewing counsel’s *Anders* brief and reviewing the record, we agree that the appeal is frivolous and affirm the trial court’s transfer order. Counsel is reminded of his continuing duty to represent D.T. through the exhaustion of proceedings, including possibly filing a petition for review in the supreme court. See *In re G.L.R.*, 2017 WL 1908562, at \*2 n.4.

/s/ Elizabeth Kerr  
ELIZABETH KERR  
JUSTICE

PANEL: LIVINGSTON, C.J.; KERR and PITTMAN, JJ.

DELIVERED: June 29, 2017