

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-10-00052-CV

William Joseph Rader and Michelle Lea Klotz, Appellants

v.

Texas Department of Family and Protective Services, Appellee

**FROM THE DISTRICT COURT OF TOM GREEN COUNTY, 340TH JUDICIAL DISTRICT
NO. C-08-0049-CPS, HONORABLE JAY K. WEATHERBY, JUDGE PRESIDING**

ORDER

Appointed counsel for appellant Michelle Lea Klotz has filed an agreed motion to withdraw as counsel. The motion complies with Texas Rule of Appellate Procedure 6.5. *See* Tex. R. App. P. 6.5 (providing requirements for motion to withdraw). The motion also includes a signed statement from Klotz, indicating that she is not opposed to counsel's motion to withdraw.

This Court issued an opinion affirming the termination of Klotz's parental rights on June 15, 2011. *See Rader v. Texas Dep't of Family & Prot. Servs.*, No. 03-10-00052-CV, 2011 Tex. App. LEXIS 4594 (Tex. App.—Austin June 15, 2011, no pet. h.) (mem. op.). In the motion to withdraw, Klotz's counsel states that he can find no meritorious ground upon which to further the appeal, but that Klotz has indicated to him that she does not wish to "give up."

The law is settled that a criminal defendant is generally not entitled to appointed counsel after the conclusion of the direct appeal in the intermediate appellate court. *See Ex parte Wilson*, 956 S.W.2d 25, 27 (Tex. Crim. App. 1997) (per curiam). The scope of the right to appellate

counsel in termination proceedings is less clear. The only court that appears to have addressed the issue is the Waco Court of Appeals in *In re K.D.*, 235 S.W.3d 452 (Tex. App.—Waco 2007, order). In that case, the court concluded that the scope of appointed representation on appeal was dictated by the trial court’s order appointing counsel. *Id.* at 454-55. Because the trial court’s order appointed counsel for “the pendency of this suit,” the court held that the appointed attorney was obligated to proceed through the filing of a petition for discretionary review in the supreme court. *Id.*

In the present case, the trial court’s order appointed counsel to represent Klotz “in connection with her appeal.” This language is similar to the language in article 26.04 of the code of criminal procedure, which states that appointed counsel must represent a criminal defendant until “appeals are exhausted.” Tex. Code Crim. Proc. Ann. art. 26.04(j)(2) (West Supp. 2010). The language of article 26.04 has not been interpreted to require appointed counsel to represent the defendant in proceedings before the court of criminal appeals. *See Wilson*, 956 S.W.2d at 27. Similarly, we do not interpret the language of the trial court’s order in this case to require Klotz’s counsel to continue to represent her beyond a direct appeal to this Court. Accordingly, we grant counsel’s motion to withdraw. *See* Tex. R. App. P. 6.5. If Klotz wishes to file a petition for discretionary review, she may do so pro se.

It is ordered July 8, 2011.

Diane M. Henson, Justice

Before Chief Justice Jones, Justices Henson and Goodwin