



In The
Eleventh Court of Appeals

No. 11-17-00009-CV

IN THE INTEREST OF E.V., A CHILD

**On Appeal from the 446th District Court
Ector County, Texas
Trial Court Cause No. A-3534-PC**

MEMORANDUM OPINION

The Department of Family and Protective Services filed a suit for conservatorship of E.V. and for termination of the parents' parental rights. The trial court ultimately entered a final order in which it appointed relatives of the father as the permanent managing conservators of the child and appointed the parents as possessory conservators with limited access to the child. The father filed a notice of appeal. We dismiss the appeal.

The father's court-appointed appellate counsel has filed a motion to withdraw and a supporting brief in which he professionally and conscientiously examines the record and applicable law and concludes that the appeal is frivolous and presents no

issues of arguable merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738 (1967), by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. See *In re Schulman*, 252 S.W.3d 403, 406–08 (Tex. Crim. App. 2008); *High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. [Panel Op.] 1978). In light of a recent holding by the Texas Supreme Court, however, an *Anders* motion to withdraw “may be premature” if filed in the court of appeals under the circumstances presented in this case. See *In re P.M.*, No. 15-0171, 2016 WL 1274748, at *3 (Tex. Apr. 1, 2016). The court in *P.M.* stated that “appointed counsel’s obligations can be satisfied by filing a petition for review that satisfies the standards for an *Anders* brief.” *Id.*

Appellant’s counsel provided Appellant with a copy of the brief, the motion to withdraw, and an explanatory letter. Counsel also informed Appellant of his right to review the record and file a pro se response to counsel’s brief. In compliance with *Kelly v. State*, 436 S.W.3d 313, 318–20 (Tex. Crim. App. 2014), counsel provided Appellant with a copy of the reporter’s record and the clerk’s record. This court also provided Appellant with a copy of the appellate record upon his filing of a motion for pro se access to the record. We note that there was no record from any de novo hearing as the documents on file in this court reflect that, after a lengthy discussion with his trial counsel, Appellant agreed to the order from which he now appeals. We conclude that Appellant’s counsel has satisfied his duties under *Anders*, *Schulman*, and *Kelly*.

Appellant, who is incarcerated, filed a lengthy pro se response to counsel’s *Anders* brief, and we have reviewed that response. Following the procedures outlined in *Anders* and *Schulman*, we have independently reviewed the record, and we agree with counsel that the appeal is without merit and should be dismissed. See *Schulman*, 252 S.W.3d at 409. However, in light of *P.M.*, we deny the motion to

withdraw that was filed by Appellant's court-appointed counsel on appeal. *See P.M.*, 2016 WL 1274748, at *3.

Counsel's motion to withdraw is denied, and the appeal is dismissed.

PER CURIAM

June 30, 2017

Panel consists of: Wright, C.J.,
Willson, J., and Bailey, J.