Affirmed; Opinion Filed December 1, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-01006-CV

IN THE INTEREST OF G.W., A CHILD

On Appeal from the 305th Judicial District Court
Dallas County, Texas
Trial Court Cause No. JC-16-00551-X

MEMORANDUM OPINION

Before Justices Lang, Myers, and Stoddart
Opinion by Justice Lang

Mother appeals from the trial court's order appointing her permanent possessory conservator of her daughter G.W. Mother's court-appointed appellate counsel has filed a motion to withdraw and a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating Mother's appeal is wholly without merit and frivolous. *See id.* at 744; *In re D.D.*, 279 S.W.3d 849, 850 (Tex. App.—Dallas 2009, pet. denied).

We affirm the trial court's order, but deny counsel's motion to withdraw.

I. FACTUAL AND PROCEDURAL CONTEXT

After receiving and investigating allegations of substance abuse and domestic violence respecting Mother and Father, the Texas Department of Family and Protective Services (the "Department") filed a petition seeking conservatorship of G.W. and termination of the parental rights of both parents pursuant to section 161.001 of the Texas Family Code. *See* TEX. FAM.

CODE ANN. § 161.001 (West Supp. 2017). An affidavit attached to the petition stated in part the Department had received a referral alleging Mother "is a victim of domestic violence" by Father and "was trying to get into a domestic violence shelter." Additionally, a Department report filed in the trial court stated in part that at the time G.W. was removed from the parents' home pursuant to this case, Mother had bruises on her arm, a black eye, and a cut lip, all of which she "did not want to talk about."

Subsequently, represented by separate appointed counsel, Mother and Father entered into a mediated settlement agreement with the Department (the "MSA"). The MSA provided in part (1) Mother shall be appointed as possessory conservator of G.W., (2) Father, his cousin, and his cousin's spouse shall be appointed joint managing conservators, and (3) all parties agree the MSA is in the best interest of G.W.

At the hearing to prove-up the MSA, a Department caseworker testified she believed (1) the MSA is in the best interest of G.W. and (2) the appointment of Mother as the managing conservator of G.W. "would significantly impair the child's physical health, emotional development." Additionally, Mother's trial counsel stated, "I have no witnesses, Judge. My client did participate in the MSA, and she did sign off on it. And she does believe that this MSA is in the best interest of the child." Further, G.W.'s attorney ad litem and Father's trial counsel stated they agreed with the terms of the MSA.

Following that hearing, the trial court signed an "Order Appointing a Permanent Managing Conservator." The order stated in part, "The Court finds that the parties have entered into a binding mediated settlement agreement; that said mediated settlement agreement is [in] the child's best interests; and hereby adopts the same as the binding Order of the Court, incorporated by reference herein and attached hereto." This appeal timely followed.

II. APPLICABLE LAW

In reviewing an *Anders* brief, our duty is to determine whether there are any arguable grounds for reversal and, if there are, to remand the case to the trial court for the appointment of new counsel. *Bledsoe v. State*, 178 S.W.3d 824, 827 (Tex. Crim. App. 2005); *In re D.D.*, 279 S.W.3d at 850.

The Texas Family Code provides that a trial court may refer a suit affecting the parent-child relationship to mediation. FAM. CODE § 153.0071(c). If the parties reach an agreement and the agreement meets the statutory requirements, it is binding on the parties and a party is entitled to judgment on the agreement notwithstanding Texas Rule of Civil Procedure 11 or another rule of law. *See id*. § 153.0071(d)–(e); *In re L.M.M.*, 247 S.W.3d 809, 811–12 (Tex. App.—Dallas 2008, pet. denied). However, a court may decline to enter a judgment on a mediated settlement agreement if the court finds (1) "a party to the agreement was a victim of family violence, and that circumstance impaired the party's ability to make decisions," and (2) "the agreement is not in the child's best interest." FAM. CODE § 153.0071(e-1).

III. APPLICATION OF LAW TO FACTS

In the case before us, the *Anders* brief filed by Mother's appellate counsel presents a professional evaluation of the record demonstrating why there are no arguable grounds for reversal. *See In re K.P.*, No. 05-13-00335-CV, 2013 WL 2423997, at *1 (Tex. App.—Dallas June 3, 2013, no pet.) (mem. op.). Counsel conducted a thorough review of the record and analysis of the legal and factual sufficiency of the evidence about whether Mother voluntarily entered into the MSA, whether the MSA met the requirements of the family code, the grounds for termination, and whether the trial court's order was in the best interest of the child. *See id*. Specifically, the *Anders* brief states in part (1) "no testimony was presented that Mother signed the [MSA] because she was 'the victim of family violence which impaired her ability to make

decisions'"; (2) "[n]o evidence was presented that [Mother's] agreement [to the terms of the MSA] was the product of fraud, duress, or coercion"; and (3) all parties "testified that the [MSA] was in the child's best interest."

A copy of the *Anders* brief was delivered to Mother, who was notified of her right to review the record and file a pro se response. Mother has not filed a pro se response. We have reviewed the record and counsel's brief. *See Bledsoe*, 178 S.W.3d at 827. We agree the appeal is frivolous and without merit. We find nothing in the record that could arguably support the appeal. Accordingly, we affirm the trial court's order appointing Mother permanent possessory conservator of G.W. *See In re K.P.*, 2013 WL 2423997, at *1.

However, we deny counsel's motion to withdraw from her representation of Mother. *See In re P.M.*, 520 S.W.3d 24, 27 (Tex. 2016) (in parental-rights termination case, court-appointed attorney's duties to client continue through filing of petition for review and motion to withdraw in court of appeals may be premature unless good cause shown). Counsel shows no good cause for withdrawing. *See id.*; *In re Y.D.*, No. 05-16-00410-CV, 2016 WL 4701438, at *1 (Tex. App.—Dallas Sept. 8, 2016, no pet.) (mem. op.) (no good cause shown where only ground for withdrawal was that appeal was frivolous). Consequently, counsel's obligations have not been discharged. *See In re P.M.*, 520 S.W.3d at 27–28. If Mother, after consulting with counsel, desires to file a petition for review, counsel is still under a duty to timely file with the Texas Supreme Court "a petition for review that satisfies the standards for an *Anders* brief." *See id.*[1]

[1] The order of appointment in the record states in part that appellate counsel's appointment "concludes at the time a final order is entered in this matter." We do not address whether counsel's duty requires the filing of a petition for review or a motion for rehearing in the Texas Supreme Court in the absence of the client's professed desire to do so in *Anders* proceedings. *See In re E.W.*, No. 10-16-00132-CV, 2017 WL 4079713, at *10 n.3 (Tex. App.—Waco Sept. 13, 2017, no pet.) (mem. op.).

IV. CONCLUSION

We (1) affirm the trial court's order and (2) deny the motion to withdraw filed by Mother's appellate counsel.

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/Douglas S. Lang/
DOUGLAS S. LANG
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN THE INTEREST OF G.W., A CHILD,

No. 05-17-01006-CV

On Appeal from the 305th Judicial District Court, Dallas County, Texas
Trial Court Cause No. JC-16-00551-X.
Opinion delivered by Justice Lang, Justices Myers and Stoddart participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 1st day of December, 2017.