

AFFIRMED and Opinion Filed August 9, 2022



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-22-00323-CV

IN THE INTEREST OF P.P., T.P., J.P., AND J.P., CHILDREN

**On Appeal from the 59th Judicial District Court
Grayson County, Texas
Trial Court Cause No. FA-20-959**

MEMORANDUM OPINION

Before Justices Molberg, Reichel, and Garcia
Opinion by Justice Reichel

Following a jury trial, the trial court terminated the parental rights of Mother to her four children, P.P., T.P., J.P., and J.P.¹ Mother's court-appointed attorney filed a brief concluding the appeal was frivolous and without merit. *See Anders v. California*, 386 U.S. 738, 744 (1967); *In re D.D.*, 279 S.W.3d 849, 849–50 (Tex. App.—Dallas 2009, pet. denied) (applying *Anders* procedure in appeal from termination of parental rights). Because we find no meritorious issues in our review of the record, we affirm the trial court's order.

¹ Father's rights to the children were also terminated, but he did not appeal the order.

BACKGROUND

Evidence at trial showed the following. Mother and Father, who were not married, had four children, P.P., T.P., J.P., and J.P. In May 2020, the Texas Department of Family and Protective Services received a report of domestic violence and sexual abuse in the family. At the time, the children's ages ranged from two to thirteen. An investigator went to the home and talked to Mother. Mother told the investigator that her seven-year-old daughter previously made an outcry of sexual abuse against Father while the family was living in Georgia. Mother did not give a timeline for the abuse but said she reported it to Georgia authorities. Sometime after the allegation, Mother and the children moved to Texas and were living with Mother's mother. At some point, Father followed.

Despite the abuse allegation, Mother acknowledged that she had allowed the children to be around Father because she "couldn't control him" and Father "does what he wants pretty much." Mother also acknowledged violence in her relationship with Father. The most recent event had occurred two weeks earlier, when Father hit her and knocked her through a screen door. The police were called, but no one was arrested. Mother said she had not seen Father since then.

Over the next several weeks, the Department attempted to retrieve records from Georgia regarding the abuse allegations but was unsuccessful in obtaining them

because of the pandemic.² The Department also followed up with Mother and offered services and resources, but Mother would not agree to a “safety plan” that would ensure none of the children had contact with Father until the Department could talk to him and complete its investigation. She also refused drug testing, which the Department believed was necessary because of Mother’s earlier history with the Department.³

In July 2020, the Department learned Mother had been arrested for possession of methamphetamine the previous month and its investigator went back to talk to Mother. Mother acknowledged the arrest but said “was no concern,” was not a “big deal,” and her children were “safe.” Because Mother was not willing to do the things needed to ensure the children’s safety during the investigation, the Department obtained an order removing the children from her care. Although the Department tried to place the children with a family member, it could not find one willing or able to assist.

Once the children were removed, Mother was provided a service plan, which required that she obtain stable employment and safe and stable housing, complete parenting classes, attend Narcotics Anonymous, submit to a substance abuse

² It is not clear when the Department located Father, but Father was present at trial in March 2022.

³ The Department previously investigated the family in 2019. The allegation at that time was that Father had a drug problem, and Georgia Child Protective Services had an “open case” on the family because the seven-month-old sibling tested positive for methamphetamine and amphetamine. Mother tested positive for marijuana on her last drug test and refused further services. The Department found “reason to believe” neglectful supervision by Mother and subsequently closed the case.

assessment and random drug testing, complete a psychological evaluation, and participate in counseling, an eight-week anger management course, and a domestic violence support group. In the beginning, Mother was cooperative and had supervised visits with her children. But in September, only two months from the removal, the trial court halted Mother's supervised visitations because, according to one witness, she "traumatized the children during those visits" and refused to be drug tested.

At some point after that, Mother stopped communicating at all with the Department for several months. In May 2021, she contacted the Department and admitted she was using illegal substances, but when the Department told her she had a warrant out for her arrest in the criminal drug case, she disconnected the call. In a later court hearing, she also made the same representations and said she wanted to "get clean," but the Department said she did not take advantage of the resources offered to her. The Department next saw her in December 2021, when she had her fifth child. Mother never completed her services, and her visitations never resumed. She had not seen her children in seventeen months at the time of trial.

Mother's eldest child, P.P., testified at trial and described the chaotic household that she and her siblings lived in with Mother and Father. P.P., who was fifteen, testified that her parents argued a lot and the arguments "would escalate to getting physical a lot." P.P. witnessed some of those events, including two incidents involving knives with Mother as the attacker. She also witnessed her parents' drug

use and described seeing them smoke “white stuff” from a clear pipe. According to P.P., just weeks before she was removed from her Mother’s care, she found needles around the house in the kitchen, bedroom, and bathroom. She threw away the needles found in the kitchen and bathroom, but left the ones found in Mother’s bedroom.

P.P. also said her Mother told her not to be truthful with child protective services so that she would not be taken away. When her Mother was angry, she would “scream” and “throw stuff” and then get in the car and leave, leaving her in charge of her siblings. P.P. told the jury she wanted to be adopted by her foster family and wanted the same outcome for her brothers and sister. She said that, although she loved her parents, she believed that would be in her and her siblings’ best interest.

The children, who are the subject of this termination order, have been in foster care since their removal. The two boys are in one placement, and the girls are in another placement. The families work together to see that the siblings see each other often. The evidence showed that all of the children are doing well, and the Department recommended the parents’ rights be terminated so that the children could have some permanency and be adopted.

In her testimony, Mother admitted she and Father had been violent against one another and that the children had witnessed some of the physical abuse. She also admitted using drugs, such as Xanax, marijuana, and methamphetamine, and

admitted to an extensive criminal history in Georgia that included incarceration in prison. She also admitted that she was using methamphetamine when this investigation began. She said she had a fifth baby in December 2021 and continued to use drugs after that. According to Mother, she last used methamphetamine on January 31, 2022, two months before trial.

Mother took the position that she always took care of her children, despite her difficult financial situation. She said that when her children were with her, they had “well more than extra” and had all the “toys” and “clothes you could think of” because family members helped her out. She said they were happy and healthy and did well in school. She said when she first came to Texas in 2019, she was sober. But after Father came, she relapsed in her recovery. She said she and Father were “poison together,” and she believed he was now living in Georgia. She said she is “clean” and willing and able to complete whatever she needs to do. She is on probation on the June 2020 methamphetamine charge and reports to probation twice a week. She was currently performing services in connection with a separate case with the Department involving the baby born in December 2021.

At the conclusion of the evidence, a jury found that Mother had (1) knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endangered their physical or emotional well-being, (2) engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangered their physical or emotional well-being, (3) constructively abandoned her

children, (4) failed to comply with a court order that specifically established the action necessary to obtain the return of the children, and (5) used a controlled substance in a manner that endangered the health or safety of her children. The jury also found termination of Mother's parental rights was in the children's best interest. In accordance with the verdict, the trial court terminated Mother's parental rights. Mother appealed.

DISCUSSION

Mother's court-appointed counsel filed an *Anders* brief. Counsel stated that he provided a copy of the brief to Mother, advised her of her right to review the record and file a pro se brief, and notified her of his motion to withdraw. In addition, this Court provided Mother with a copy of the *Anders* brief filed by her counsel and notified her of her right to file a pro se response. Mother did not file a response.

Upon receiving an *Anders* brief, we must conduct a full examination of the proceedings to determine whether the appeal is wholly frivolous. *Penson v. Ohio*, 488 U.S. 75, 80 (1988). We determine whether there are any arguable grounds for reversal and, if so, remand the case to the trial court so that new counsel may be appointed to address the issues. *See In re D.D.*, 279 S.W.3d at 850.

The brief filed by Mother's counsel meets the requirements of *Anders* by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced on appeal. *See Anders*, 386 U.S. at 744; *In re D.D.*, 279 S.W.3d at 849–50. We independently reviewed the entire record and counsel's

Anders brief, and we agree that the appeal is frivolous and without merit. We find nothing in the record that could arguably support the appeal.

Counsel filed a motion to withdraw as appellate counsel. The Supreme Court has held that a court-appointed attorney's duties to a client in a parental rights termination case continue through the filing of a petition for review, and a motion to withdraw may be premature unless good cause is shown. *In re P.M.*, 520 S.W.3d 24, 27 (Tex. 2016) (per curiam). Counsel has not shown good cause for withdrawing from his representation of Mother, and, as a result, his obligations have not been discharged. *See id.* We therefore deny counsel's motion.

We affirm the trial court's final order terminating Mother's rights to P.P., T.P., J.P., and J.P.

/Amanda L. Reichek/

AMANDA L. REICHEK
JUSTICE

220323F.P05



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

IN THE INTEREST OF P.P., T.P.,
J.P., AND J.P., CHILDREN
No. 05-22-00323-CV V.

On Appeal from the 59th Judicial
District Court, Grayson County,
Texas
Trial Court Cause No. FA-20-959.
Opinion delivered by Justice
Reichek; Justices Molberg and
Garcia participating.

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

Judgment entered this 9th day of August 2022.