

Affirm and Opinion Filed August 30, 2022



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

No. 05-22-00458-CV

IN THE INTEREST OF K.R.R., A CHILD

**On Appeal from the 354th District Court
Hunt County, Texas
Trial Court Cause No. 89497**

MEMORANDUM OPINION

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

Mother and Father appeal the trial court's order terminating their parental rights to K.R.R. Counsel for each appellant has filed an *Anders* brief, each contending the record contains no reversible error. *See Anders v. Cal.*, 386 U.S. 738 (1967). Father also argues, however, that insufficient evidence supports the trial court's finding that he constructively abandoned K.R.R. under section 161.001(b)(1)(N) of the family code, though he concedes sufficient evidence supports the trial court's finding for another predicate ground for termination. Because we find no meritorious issues in our review of the record, we affirm the trial court's order.

Section 161.001(b)(1)(N) Finding

Appellant Father argues that insufficient evidence supports the trial court’s finding that he constructively abandoned K.R.R. under section 161.001(b)(1)(N) of the family code. However, he concedes sufficient evidence supports the court’s finding under section 161.001(b)(1)(O)—that he failed to comply with the service plan—and the court’s best interest finding under section 161.001(b)(2). Section 161.001(b) allows the termination of parental rights if the trial court finds by clear and convincing evidence that the parent has engaged in at least one of the numerous grounds for termination and that termination is in the best interest of the child. TEX. FAM. CODE § 161.001(b). Thus, even if the trial court bases termination on more than one predicate ground, “[o]nly one predicate finding under section 161.001(b)(1) is necessary” for us to affirm a termination order on appeal when there is also a finding that termination is in the child’s best interest. *See In re K-A.B.M.*, 551 S.W.3d 275, 284 (Tex. App.—El Paso 2018, no pet.).

However, due process requires we review a finding on a predicate ground that carries significant collateral consequences even if the trial court found another ground and sufficient evidence supports that other finding. *See In re N.G.*, 577 S.W.3d 230, 235 (Tex. 2019) (holding courts of appeals should review findings under section 161.001(b)(1)(D) or (E) even if other grounds support termination because (D) and (E) findings can be the basis for termination as to other children under section 161.001(b)(1)(M)).

Here, Father does not contend a finding under section 161.001(b)(1)(N) carries collateral consequences like, as discussed in *In re N.G.*, findings under sections 161.001(b)(1)(D) and (E) do, and we are unaware of any such consequences. Consequently, we need not resolve Father’s complaint about section 161.001(b)(1)(N). *See* TEX. R. APP. P. 47.1 (“The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.”); *In re G.D.P.*, No. 05-19-01068-CV, 2020 WL 401760, at *5 (Tex. App.—Dallas Jan. 24, 2020, pet. denied) (mem. op.) (“[I]f we conclude the evidence is legally and factually sufficient to support the trial court’s finding under section 161.001(b)(1)(O), we need not address Mother’s arguments under section[] . . . 161.001(b)(1)(N).”).

Anders Analysis

On December 15, 2020, the Texas Department of Family and Protective Services filed a petition seeking to terminate Mother’s and Father’s parental rights to K.R.R. after K.R.R.’s meconium was positive for cocaine and Mother tested positive for opiates after giving birth. Jury trial was conducted in April 2022. Evidence showed Mother and Father failed to complete court-ordered service plans. Evidence showed each of them failed drug tests in the past and refused to take drug tests in this case. After hearing evidence and arguments, the jury found Mother and Father each failed to comply with the provisions of court orders that established the actions necessary for K.R.R.’s return under section 161.001(b)(1)(O) and Mother

and Father each constructively abandoned K.R.R. under section 161.001(b)(1)(N). The jury further found termination of each of their parental rights would be in the best interest of K.R.R. The trial court subsequently made the same findings and ordered that the parent-child relationships between Mother and K.R.R. and Father and K.R.R. were terminated.

Counsel for both Mother and Father filed briefs pursuant to *Anders*, 386 U.S. at 738. Mother's counsel additionally filed a motion to withdraw. The Clerk of this Court provided Mother and Father copies of the *Anders* briefs and informed them of their right to file a pro se response. We have received no responses. The procedures outlined in *Anders* apply in termination of parental rights cases. *In re D.D.*, 279 S.W.3d 849, 850 (Tex. App.—Dallas 2009, pet. denied). In reviewing *Anders* briefs, we do not review the merits of each claim raised in the brief or pro se response. *Id.* Instead, we determine whether there are any arguable grounds for reversal, and if there are, we remand the case for new counsel to be appointed. *Bledsoe v. State*, 178 S.W.3d 824, 827 (Tex. Crim. App. 2005).

In their *Anders* briefs, counsel for Mother and Father demonstrate they reviewed the record and concluded the appeal is without merit and frivolous. *See Anders*, 386 U.S. at 744. We conclude the two briefs meet the requirements of *Anders*. Further, we independently reviewed the whole record and counsels' briefs, and we agree the appeal is frivolous and without merit. We find nothing in the record that could arguably support the appeal.

However, we deny Mother’s counsel’s motion to withdraw. The basis for counsel’s motion is her “firm belie[f] that there are no meritorious grounds for appeal.” The frivolous nature of an appeal is not sufficient good cause for withdrawal in an appeal from the termination of parental rights. *See In re P.M.*, 520 S.W.3d 24, 27 (Tex. 2016) (per curiam) (“[A]n *Anders* motion to withdraw brought in the court of appeals, in the absence of additional grounds for withdrawal, may be premature.”). If Mother, “after consulting with counsel, desires to file a petition for review, counsel must file a petition for review that satisfies *Anders*.” *In re A.L.D.-B.*, No. 05-22-00277-CV, 2022 WL 3584629, at *2 (Tex. App.—Dallas Aug. 22, 2022, no pet. h.) (mem. op.).

Conclusion

We affirm the trial court’s order terminating Mother’s parent-child relationship with K.R.R. and Father’s parent-child relationship with K.R.R. We deny Mother’s counsel’s motion to withdraw.

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/Ken Molberg/

KEN MOLBERG
JUSTICE



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

JUDGMENT

IN THE INTEREST OF K.R.R., A
CHILD

No. 05-22-00458-CV

On Appeal from the 354th District
Court, Hunt County, Texas
Trial Court Cause No. 89497.
Opinion delivered by Justice
Molberg. Justices Reichek and
Garcia participating.

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

Judgment entered this 30th day of August 2022.