Opinion issued May 26, 2016

In The

Court of Appeals

For The

First District of Texas

NO. 01-15-01030-CV

IN THE INTEREST OF A.W. AND B.M.W., CHILDREN

On Appeal from the 314th District Court
Harris County, Texas
Trial Court Case No. 2014-04355J

MEMORANDUM OPINION

After an October 2015 bench trial, the trial court, citing the grounds for termination set forth in section 161.001(1)(E) and (O) of the Texas Family Code, found that it was in the best interest of A.W. and B.M.W., the children, that their parents' rights be terminated. The mother and the father each separately appealed the termination.

R.A.S., the mother, appeals from the trial court's decree terminating her parental rights to her children. She contends that the evidence was neither legally nor factually sufficient to support the trial court's findings that: (1) she engaged in conduct which endangered the physical or emotional well-being of the children; (2) she failed to comply with the court order setting forth the family service plan requirements, and (3) termination of her parental rights is in the children's best interest. We affirm the portion of the trial court's judgment terminating the mother's parental rights.

Appointed counsel for J.D.W., the father, has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967). We disagree with counsel's conclusion that there are no arguable grounds for appeal. Accordingly, we grant counsel's motion to withdraw, sever J.D.W.'s appeal from this cause, abate J.D.W.'s appeal, and direct the trial court to appoint new appellate counsel.

BACKGROUND

The mother first came to the Department's attention in 2006 for a domestic violence incident involving her first husband in the presence of their child, C., then again in 2007 for an incident after which she tested positive for marijuana and amphetamine. In 2008, she and C.'s father were arrested for child endangerment as a result of an incident involving C. While the family was staying in a motel, the mother became so intoxicated that the child managed to leave the motel room alone

to wander unsupervised in the parking lot and pool area. The mother pleaded guilty to the charge, voluntarily relinquished her parental rights to C., received a deferred order of adjudication, and completed two years of community supervision. At trial, she explained that she decided to relinquish her rights to C. because she had not complied with the Department's family service plan. She also was afraid that if her rights were terminated, she would have to relinquish her parental rights to any children she had in the future, and she wanted the chance to have a family.

By 2011, the mother had separated from C.'s father and was living with A.W.'s father. A.W. was born in October 2012. The family was living at a hotel when, a few months later, the mother and father were using marijuana and began fighting. The paternal grandmother, who lived nearby, testified that police came to her home late that night looking for the father. She told police he was not there and that she had not had any contact from him. The paternal grandmother then checked her cell phone and found numerous texts from the father and a picture of his bruised and swollen face. After reviewing the texts, the police left to continue their search for the father. They eventually found him in the bed of a truck near a motel. He was holding A.W., who was very dirty. He explained that he came to the motel to stay with a friend who lived there, but when he found his friend was not at home, he decided to wait for him in his truck.

The Department investigated a referral against the parents for neglectful supervision in 2012, but that case ultimately was closed. In 2013, the parents had another incident of domestic violence, after which both tested positive for marijuana. The Department removed A.W. from the parents' care and placed her in foster care for several months, then moved her to live with her grandmother.

The parents completed the Family-Based Safety Services (FBSS) program. B.M.W. was born during this period and was nearly three months old when the Department's suit against the parents was dismissed in late July 2014.

Approximately a week after the dismissal, the parents went out for dinner and drinks to celebrate the mother's promotion at work. They picked up A.W. and B.M.W. from the grandmother, who cared for the children while the parents worked, and returned home. The mother and the grandmother had a very contentious relationship. Shortly after arriving home, the mother told the father that she had enrolled the children in day care and that they would not be staying with the grandmother during the day anymore. This sparked a heated argument. Shortly after the argument began, the father called the grandmother to have her pick up A.W. and B.M.W. so that they would not have to be around while the parents argued.

When the grandmother arrived, she saw broken glass in the entryway of the apartment.[1] She picked up A.W. and the father got B.M.W., and they brought the children out to the grandmother's sport utility vehicle. They were strapping the children into their carseats when the mother came into the parking lot and demanded B's return. According to the grandmother, the mother appeared intoxicated and was yelling obscenities. The mother went over to the SUV, shoved the grandmother out of the way, and pulled out B.M.W.'s carseat. The straps to B.M.Ww.'s carseat were still unbuckled, and B.M.W. ended up on the pavement outside of the car seat. The grandmother did not see whether B.M.W. fell or simply rolled out of the carseat, and the mother testified that she caught B.M.W. before she landed on the pavement.

The mother took B.M.W. back into the apartment, and the father followed her while shouting at the grandmother to call 9-1-1. The grandmother called 9-1-1 and went into the apartment to check on B, but the parents had locked the bedroom door and would not let her in. The grandmother went back outside to wait for the emergency responders. When the responders arrived, they also attempted to enter the bedroom but were rebuffed. Law enforcement was called in. They retrieved B.M.W., who was examined and found unharmed.

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[1] The father testified that he swung his arm and knocked a glass off the counter earlier that evening.

The Department took the children into custody and placed them with the grandmother. Shortly before trial, the grandmother asked for the children to be placed in a foster home. She explained that she was tired of being harassed by the mother, who kept sending her threatening text messages, and she also was concerned that she was too old to be able to care for them until they were grown and did not want them to have to be uprooted again.

The trial court ordered the parents to comply with their family service plans. The family service plan for the mother set service goals that she:

- Demonstrate the willingness and ability to protect the children from harm;
- Learn to control angry feelings and actions to prevent harm to others;
- Demonstrate an ability to work together with the other parent to raise the children and stay sober/drug free and in recovery;
- Understand and support drug/alcohol recovery for the children;
- Demonstrate an ability to provide basic necessities for the children;
- Demonstrate an ability to protect the child from future abuse or neglect and show concern for future safety of the children;
- Demonstrate an understanding of the cycle of violence and be proactive in securing safety for the family;
- Cease criminal or violent behaviors that endanger the family;
- Actively cooperate in fulfilling the agreed upon safety plan in order to control the risk of abuse or neglect; and
- Demonstrate a willingness and ability to protect her children from people who may inflict serious harm.

The trial court required the parents to:

- Complete a drug and alcohol assessment and follow any recommendations;
- Complete a substance abuse treatment program (if recommended);
- Complete a psychosocial evaluation;
- Contact the caseworker at least once a week;
- Complete random urinalysis;
- Remain drug free;
- Participate in individual therapy;
- Attend all family visits, court hearings, and meetings or conferences pertaining to the case;
- Refrain from engaging in criminal activity;
- Obtain and maintain stable, hazard- and drug-free housing for at least six months or more, and provide proof of residence (either a lease agreement or utility bill with her name on it);
- Obtain and maintain stable employment for at least six months or more and provide verification of employment via paycheck stubs;
- Participate in and successfully complete an eight-week parenting class approved by the caseworker and, upon successful completion, give a copy of the certificate to the caseworker. The class may not be taken online;
- Participate in family group therapy sessions;
- Actively participate in and attend all sessions of domestic violence and anger management classes; and
- Complete a psychiatric evaluation and follow any recommendations.

Several months into the temporary conservatorship, the trial court also ordered the parents to pay monthly child support to the grandmother, calculated based on minimum wage earnings.

The caseworker testified concerning the parents' efforts to comply with the family service plans. With respect to the mother, the caseworker reported that she had completed some of her individual and group therapy, but started to have a lot of

no-shows as the trial date came closer. The mother had a psychiatric assessment within her therapy, but failed to follow through with obtaining the psychological assessment recommended by her therapist. She had a drug and alcohol assessment but again, failed to follow the recommendations. The mother did not provide the caseworker with paycheck stubs or rent receipts, and she had been unemployed for several months by the time of trial. The mother explained that she had lost her job in January and that she was actively searching for a new job. She produced a certificate of completion for an online parenting course, but she did not participate in an approved parenting course after the caseworker informed her that she had to take an approved course.

With respect to the father, the caseworker testified that he had participated in some individual and group therapy but did not finish them because he failed to attend all the sessions. The father testified that he attended four out of the six individual therapy sessions and did not complete family therapy because the grandmother was unwilling to attend. The caseworker could not say whether the grandmother's attendance was necessary for the family therapy.

The father provided the caseworker with paycheck stubs only from April and May, but did not provide a lease agreement until the October trial date. The father was enrolled in an unapproved online parenting class, but he did not complete it, and

he did not attend the required courses addressing drug and alcohol abuse, domestic violence, anger management, and parenting.

The caseworker expressed her concern that the parents were still drinking, although she admitted that the family service plans did not specifically require them to abstain from alcohol. The caseworker also testified that the parents failed to report for drug testing the prior week. The parents paid child support for a few months, but stopped when the mother lost her job, even though the father's pay stubs showed he was earning about $5,000 monthly.

The caseworker testified that the mother had a volatile temper, calm one moment and really angry the next. The mother confronted the grandmother during a visit with the children, making it necessary for subsequent visits to be supervised in the CPS office.

The trial court heard testimony from the Department's drug testing expert. The expert explained that his company tested the parents' urine and hair samples for the presence of marijuana, alcohol, bath salts, and K2, synthetic marijuana. The expert explained that the threshold for a positive finding of alcohol is 250 nanograms per milliliter, and that the results would show alcohol exposure up to 80 hours before the test. The result for an average adult who had consumed one alcoholic beverage the night before the test would typically range from 2,500 to 4,500 nanograms.

The drug testing company first tested the parents' samples in late August 2014. Those test results for the father showed a positive finding of 74,500 nanograms of alcohol metabolites for the father. In February 2015, the father's test results showed more than 100,000 nanograms. In August 2015, the father's test results showed 456,000 nanograms. The expert could not extrapolate the amount of alcohol the father may have consumed before that third test. The expert, however, noted by way of comparison that he once had a test subject provide a urine sample and blow into a breathalyzer. That subject's results were a .212 for the breathalyzer and 146,000 nanograms for the urinalysis. The expert concluded that 456,000 nanograms showed that the father had consumed "an extreme amount of alcohol," whether he drank it "the night before or three days in a row." The father's August 2015 test also came back positive for K2, showing that he had used it sometime during the previous five days. The father testified that he had asked a friend for a cigarette, and, without the father's knowledge, the friend gave him one that was laced with K2. He also stated that he shared the cigarette with the mother. The father was ordered to submit to subsequent testing, but he refused to provide the hair and nail samples required for analysis.

The test results for the mother's September 2014 hair sample were clean. The urinalysis results were positive for alcohol at 395 nanograms, slightly above the threshold. The February 2015 urine sample tested positive for alcohol at 38,900

nanograms. The mother's August 2015 test showed 25,700 nanograms for alcohol and, like the father's, had a positive finding for K2. The mother testified that she had consumed the K2 by accident from smoking a cigarette that, unbeknownst to her, was laced with the drug. The mother admitted that she was advised she needed to stay sober as part of the family service plan, and that it was not in her children's best interest for her to continue to use drugs and alcohol.

DISCUSSION

I. Mother's Appeal

A. Standard of review

A parent's right to the care, custody, and control of his child is a liberty interest protected under the Constitution, and we strictly scrutinize termination proceedings on appeal. *Santosky v. Kramer*, 455 U.S. 745, 758–59, 102 S. Ct. 1388, 1397 (1982); *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985). Clear and convincing evidence must support an involuntary termination. *Holick*, 685 S.W.2d at 20 (citing *Santosky*, 455 U.S. at 747, 102 S. Ct. at 1391). "'Clear and convincing evidence' means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." TEX. FAM. CODE ANN. § 101.007 (West 2014).

In determining legal sufficiency in a parental-rights termination case, we review "all the evidence in the light most favorable to the finding to determine

whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true." *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002). We assume that the factfinder resolved disputed facts in favor of the judgment if a reasonable factfinder could have done so. *Id.* We disregard "evidence that a reasonable factfinder could have disbelieved or found to have been incredible." *Id.* If a court determines that no reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true after conducting its legal-sufficiency review, the court must conclude that the evidence is legally insufficient. *Id.*

In determining factual sufficiency, we consider the entire record, including disputed evidence, to determine "whether the evidence is such that a factfinder could reasonably form a firm belief or conviction" about the truth of the allegation sought to be established. *Id.* (quoting *In re C.H.*, 89 S.W.3d 17, 25 (Tex. 2002)). "If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient." *Id.*

"The involuntary-termination statute sets out twenty different courses of parental conduct, any one of which may serve as a ground that satisfies the statute's first prerequisite for termination." *In re S.M.R.*, 434 S.W.3d 576, 580 (Tex. 2014)

(citing TEX. FAM. CODE ANN. § 161.001(A)–(T)). To prevail in a termination case, the Department must establish that one or more of the enumerated grounds occurred.

B. Sufficiency of the evidence supporting the predicate termination findings

1. Sufficiency of the evidence that the mother engaged in endangering conduct

Section 161.001(1)(E) of the Family Code provides a basis for terminating parental rights because of child endangerment. "'To endanger' means to expose a child to loss or injury or to jeopardize a child's emotional or physical health." *Jordan v. Dossey*, 325 S.W.3d 700, 723 (Tex. App.—Houston [1st Dist. 2010, pet. denied); *accord In re T.N.*, 180 S.W.3d 376, 383 (Tex. App.—Amarillo 2005, no pet.) (citing *In re M.C.*, 917 S.W.2d 268, 269 (Tex. 1996) (per curiam)).

"Although 'endanger' means more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal environment, it is not necessary that the conduct be directed at the child or that the child actually suffers injury." *In re T.N.*, 180 S.W.3d at 383 (citing *In re M.C.*, 917 S.W.2d at 269); *see Tex. Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987); *see also In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009) (reiterating that endangering conduct is not limited to actions directed toward child); *Jordan*, 325 S.W.3d at 723 (holding that danger to child need not be established as independent proposition and may be inferred from parental misconduct even if conduct is not directed at child and child suffers no actual injury);

Walker v. Tex. Dep't of Family & Protective Servs., 312 S.W.3d 608, 616–17 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (explaining that conduct occurring either before or after child's removal from home may be relevant).

Under subsection 161.001(1)(E), a parent's rights can be terminated when she has "engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child." TEX. FAM. CODE ANN. § 161.001(1)(E). The parent's conduct must cause the endangerment, and the endangerment must be the result of a voluntary, deliberate, and conscious course of conduct by the parent rather than a single act or omission. *Jordan*, 325 S.W.3d at 723; *In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.). The parent's conduct does not, however, have to be directed at a specific child, as "the manner in which a parent treats other children in the family can be considered in deciding whether that parent engaged in a course of conduct that endangered the physical or emotional well-being of a child." *Cervantes–Peterson v. Tex. Dep't of Family & Protective Servs.*, 221 S.W.3d 244, 253 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

The relevant inquiry is whether evidence exists that the parent's conduct—including acts, omissions, and failures to act—directly endangered the child's physical and emotional well-being. *See In re J.T.G.*, 121 S.W.3d at 125; *In re D.M.*, 58 S.W.3d 801, 811–12 (Tex. App.—Fort Worth 2001, no pet.). Parental conduct

may be relevant even if it does not involve the child or result in actual harm to the child. *See Boyd*, 727 S.W.2d at 533; *In re D.M.*, 58 S.W.3d at 811.

The mother contends that the evidence did not show that the children were endangered from the carseat incident that gave rise to the referral. She points to evidence that B.M.W. was not actually injured when she came out of the carseat onto the ground, and the grandmother's testimony that she did not think anyone did anything intentional. Other evidence, though, supports the endangerment finding. The mother had been drinking earlier in the evening and was visibly impaired when the incident occurred. She was yelling obscenities at the grandmother, and in her agitated and impaired state, did not check whether B.M.W. was secure in the carseat before yanking it out of the SUV. The fact that B.M.W. was not physically injured does not undermine the trial court's finding. *See Boyd*, 727 S.W.2d at 533; *D.M.*, 58 S.W.3d at 811. The trial court could also take into account the mother's endangering conduct with respect to C. and the 2012 incident involving A.W. to make a predicate finding under this provision. *See Cervantes–Peterson*, 221 S.W.3d at 253. We hold that clear and convincing evidence supports the trial court's finding.

2. Sufficiency of the evidence that the mother failed to comply with the court-ordered family service plan

A trial court may terminate parental rights under Subsection (O) if (1) the Department has been the child's temporary managing conservator for at least nine months, (2) the Department took custody of the child as a result of an emergency

removal for child abuse or neglect, (3) a court issued an order establishing the actions necessary for the parent to obtain the return of the child, and (4) the parent did not comply with the court order. TEX. FAM. CODE ANN. § 161.001(b)(1)(O) (West Supp. 2015); *In re S.M.R.*, 434 S.W.3d at 584. The mother contends that she substantially complied with the family service plan, but the trial court had before it conflicting evidence about the degree of her compliance. Substantial compliance with a court-ordered family service plan, moreover, may be insufficient to avoid termination. *See In re T.T.*, 228 S.W.3d 312, 319–20 (Tex. App.—Houston [14th Dist.] 2007, pet. denied). The undisputed evidence shows that the mother did not comply with the requirements that she participate in and complete Department-approved courses in parenting, domestic violence, and anger management, and that she remain drug-free. We therefore hold that the evidence is legally and factually sufficient to support the trial court's finding that the mother failed to comply with the court-ordered family service plan.

C. Sufficiency of the evidence supporting the best-interest finding

The mother next contends that the evidence is legally and factually insufficient to support the trial court's finding that it was in her children's best interest for her parental rights to be terminated. In addition to a predicate violation under section 161.001(1), the Department must establish by clear and convincing evidence that termination is in the best interest of the child. *See* TEX. FAM. CODE

ANN. § 161.001(2). The mother contends that the evidence is legally and factually insufficient to support the trial court's finding that termination of her parental rights is in her children's best interest.

"A strong presumption exists that a child's best interest are served by maintaining the parent-child relationship." *In re L.M.*, 104 S.W.3d 642, 647 (Tex. App.—Houston [1st Dist.] 2003, no pet.). In *Holley v. Adams*, the Texas Supreme Court provided a nonexclusive list of factors that the trier of fact in a termination case may use in determining the best interest of the child. 544 S.W.2d 367, 371–72 (Tex. 1976). These factors include (1) the desires of the child; (2) the emotional and physical needs of the child now and in the future; (3) the emotional and physical danger to the child now and in the future; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist these individuals to promote the best interest of the child; (6) the plans for the child by these individuals or by the agency seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions of the parent that may indicate that the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions of the parent. *Id.* These factors are not exhaustive, and there is no requirement that the Department prove all factors as a condition precedent to parental termination. *See In re C.H.*, 89 S.W.3d at 27; *Adams v. Tex. Dep't of Family & Protective Servs.*, 236 S.W.3d 271, 280 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

The children were both under age five when the trial occurred and therefore were unable to express any preference concerning whether they remained with their parents. But the children are happy and well-adjusted in their foster home, and their physical and emotional needs are being met there. They have bonded with the foster parents, who plan to adopt them. These circumstances weigh in favor of termination.

The mother has not demonstrated that she can manage her anger appropriately. The mother persisted in sending threatening text messages to the grandmother while she was fostering the children, and the mother instigated a confrontation with the grandmother that caused the Department to impose greater restrictions on her visits with the children. This conduct indicates that the mother has not learned to manage her anger to the point where she will no longer engage in a course of conduct that could endanger her children's emotional needs. In addition, the mother's failure to make progress toward mending her relationship with the grandmother adversely affects the children since the grandmother has been a constant and reliable caretaker in the past. These circumstances also weigh in favor of termination.

The mother claims that the evidence that she used alcohol twice and synthetic marijuana once during the pendency of the case might indicate that she needs additional time to attain sobriety, but not that termination of her parental rights is in her children's best interest. But the mother has demonstrated a pattern of behavior over several years that led to criminal charges for child endangerment and removal

of her children on two other occasions. Despite having access to classes and other support services for the two years before her parental rights were terminated, she has not demonstrated a significant improvement in behavior.

Viewing all the evidence in the light most favorable to the judgment, we conclude that a factfinder could have formed a firm belief or conviction that termination of the mother's parental rights was in the children's best interest. *See* TEX. FAM. CODE ANN. § 161.001(2); *J.F.C.*, 96 S.W.3d at 265–66. Viewing the same evidence in a neutral light, the disputed evidence is not so significant as to prevent a factfinder from forming a firm belief or conviction that termination of the mother's parental rights was in the children's best interest. *See* TEX. FAM. CODE ANN § 161.001(2); *J.F.C.*, 96 S.W.3d at 265–66. As a result, we hold that the evidence is legally and factually sufficient to support the trial court's finding that termination of the mother's parental rights was in the children's best interest.

II. Father's Appeal

The father challenges the trial court's final order terminating his parental rights. The father's appointed counsel has moved to withdraw and filed an *Anders* brief, asserting that the appeal is without merit and there are no arguable grounds for reversal. *See Anders v. California*, 386 U.S. 738, 744–45, 87 S. Ct. 1396, 1400 (1967).

The procedures set forth in *Anders* apply to an appeal from a trial court's order terminating parental rights when, as here, the appellant's appointed appellate counsel concludes that there are no non-frivolous issues to assert on appeal. *In re K.D.*, 127 S.W.3d 66, 67 (Tex. App.—Houston [1st Dist.] 2003, no pet.).

Counsel's *Anders* brief concludes that, a thorough review of the record reveals that the father's appeal of the termination of his parental rights is frivolous and without merit. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *K.D.*, 127 S.W.3d at 67. When we receive an *Anders* brief from an appellant's appointed attorney who asserts that no arguable grounds for appeal exist, we must determine that issue independently by conducting our own review of the entire record. *Johnson v. Dep't of Family & Protective Servs.*, No. 01-08-00749-CV, 2010 WL 5186806, at *1–2 (Tex. App.—Houston [1st Dist.] Dec. 23, 2010, no pet.) (mem. op.); *see K.D.*, 127 S.W.3d at 67.

We have independently reviewed the entire record and counsel's *Anders* brief and we disagree with counsel's assessment. We conclude that arguable grounds for appeal exist.

If grounds are deemed arguable, the reviewing court must abate appeal and remand case to trial court with orders to appoint other counsel to present those and any other grounds that might support appeal. *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400 ("[I]f [an appellate court] finds any of the legal points arguable on the merits

(and therefore not frivolous) it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal"), *quoted in Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991).

Accordingly, we grant counsel's motion to withdraw. We sever the father's appeal from this appeal and assign the father's appeal a separate cause number. We abate the father's appeal and order the trial court to appoint new counsel to represent the father and to report the appointment within 30 days. *See In re P.M.*, No. 15-0171, 2016 WL 1274748, at *3 (Tex. Apr. 1, 2016); *Stafford*, 813 S.W.2d at 510–11 (citing *Anders*, 386 U.S. at 44, 87 S. Ct. at 1400).

CONCLUSION

With respect to the mother's appeal, we hold that legally and factually sufficient evidence supports the predicate findings for termination of her parental rights and that termination of her parental rights are in the A.W. and B.M.W.'s best interest. We therefore affirm the portion of the trial court's judgment terminating the mother's parental rights.

With respect to the father's appeal, we hold that arguable grounds for appeal exist and preclude decision at this time. We therefore sever the father's appeal into a separate cause, abate the appeal, grant appointed counsel's motion to withdraw, and order the trial court to appoint new appellate counsel for the father and to report

the appointment within 30 days. Upon receiving the trial court's report, this Court will notify the parties of the briefing schedule for the father's appeal.

Jane Bland
Justice

Panel consists of Justices Higley, Bland, and Massengale.