

Opinion issued July 27, 2021



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00157-CV

IN THE INTEREST OF J.R.W. AND J.M., CHILDREN

**On Appeal from the 308th District Court
Harris County, Texas
Trial Court Case No. 2019-03761**

MEMORANDUM OPINION

This is an accelerated appeal brought by the appellant, mother, from the trial court's March 7, 2021 "Decree for Termination and Decree in Suit Affecting the Parent-Child Relationship," terminating mother's parental rights to her minor children, J.R.W. and J.M. Mother's court-appointed trial counsel filed a notice of appeal on mother's behalf. Mother's court-appointed appellate counsel has filed a

brief with this Court, stating her professional opinion that the appeal is without merit and that there are no arguable grounds for reversal. *See Anders v. California*, 386 U.S. 738, 744 (1967).

Anders procedures are appropriate in an appeal from a trial court's final order in a suit brought by the Department of Family and Protective Services ("DFPS") for the termination of parental rights. *In re K.D.*, 127 S.W.3d 66, 66–67 (Tex. App.—Houston [1st Dist.] 2003, no pet.). An attorney has an ethical obligation to refuse to prosecute a frivolous appeal. *In re Schulman*, 252 S.W.3d 403, 407 (Tex. Crim. App. 2008). If an appointed attorney finds a case to be wholly frivolous, her obligation to her client is to seek leave to withdraw. *Id.* Counsel's obligation to the appellate court is to assure it, through an *Anders* brief, that, after a complete review of the record, the request to withdraw is well-founded. *Id.*

Here, counsel has certified that she delivered a copy of her *Anders* brief to the mother and informed her of her right to examine the appellate record and to file a pro se response. *See id.* at 408. Mother did not timely file a response and the DFPS waived its right to respond.

The brief submitted by the mother's appointed appellate counsel states her professional opinion that no arguable grounds for reversal exist and that any appeal would therefore lack merit. *See Anders*, 386 U.S. at 744. Counsel's brief meets the minimum *Anders* requirements by presenting a professional evaluation of the record

and stating why there are no arguable grounds for reversal on appeal. *See id.* at 744; *Schulman*, 252 S.W.3d at 409 n.23.

When we receive an *Anders* brief from an appellant's appointed appellate counsel 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 (Tex. App.—Houston [1st Dist.] Dec. 23, 2010, no pet.) (mem. op.); *see In re K.D.*, 127 S.W.3d at 67; *In re D.E.S.*, 135 S.W.3d 326, 330 (Tex. App.—Houston [14th Dist.] 2004, no pet.). Thus, our role in this appeal is to determine whether arguable grounds for appeal exist. *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). If we determine that arguable grounds for appeal exist, we abate the appeal and remand the case to the trial court to allow the appointed appellate counsel to withdraw. *See id.* Then, the trial court appoints another attorney to present all arguable grounds for appeal. *See id.* “Only after the issues have been briefed by new [appellate] counsel may [we] address the merits of the issues raised.” *Id.* at 827.

On the other hand, if our independent review of the record leads us to conclude that the appeal is wholly frivolous, we may affirm the trial court's judgment by issuing an opinion in which we explain that we have reviewed the record and find no reversible error. *See id.* at 826–27. Although we may issue an opinion explaining

why the appeal lacks arguable merit, we are not required to do so. *Id.* Appellant may challenge the holding that there are no arguable grounds for appeal by petitioning for review in the Supreme Court of Texas. *Id.* at 827 & n.6.

In this appeal, we have conducted the required independent review of the entire record and appointed appellate counsel's *Anders* brief and agree with counsel's assessment that the appeal is frivolous and without merit. Accordingly, we affirm the trial court's judgment. *In re A.M.*, 495 S.W.3d 573, 582 (Tex. App.—Houston [1st Dist.] 2016, pet. denied). We note, however, that appointed appellate counsel's duty to her client extends through the exhaustion or waiver of "all appeals." TEX. FAM. CODE ANN. § 107.016(3)(B); *see also In re P.M.*, 520 S.W.3d 24, 27 (Tex. 2016). Accordingly, if mother wishes to pursue an appeal to the Supreme Court of Texas, "appointed [appellate] counsel's obligations can be satisfied by filing a petition for review that satisfies the standards for an *Anders* brief." *In re P.M.*, 520 S.W.3d at 27–28.

We reinstate the appeal and affirm the decree of the trial court terminating mother's parental rights to J.R.W. and J.M.

PER CURIAM

Panel consists of Justices Kelly, Guerra, and Farris.