

Opinion issued December 16, 2021



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00343-CV

IN THE INTEREST OF R.R.W., A MINOR CHILD

**On Appeal from the 314th District Court
Harris County, Texas
Trial Court Case No. 2020-00702J**

MEMORANDUM OPINION

This is an accelerated appeal¹ from the trial court’s “Final Decree for Termination” in a suit brought by the Department of Family and Protective Services (“DFPS”) to terminate mother’s and father’s parental rights to their minor child, R.R.W. (the “child”). In its final decree, the trial court terminated the parental rights

¹ See TEX. FAM. CODE ANN. § 263.405(a); TEX. R. APP. P. 28.4.

of mother and father and appointed DFPS as sole managing conservator of the child. Mother and father timely filed notices of appeal through their respective court-appointed appellate counsel. Each court-appointed appellate counsel filed a brief with this Court, stating that, in each attorney's professional opinion, 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 DFPS for the termination of parental rights. *In re K.D.*, 127 S.W.3d 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.* An attorney'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 for each parent has certified that he or she delivered a copy of the *Anders* brief to mother and father and informed them of their right to examine the appellate record and to file a pro se response. *See id.* at 408. Neither parent has filed a response, and DFPS waived its right to respond to each *Anders* brief.

The brief submitted by mother’s court-appointed appellate counsel states that it is 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. The 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.*; *Schulman*, 252 S.W.3d at 409 n.23.

The brief submitted by father’s court-appointed appellate counsel states that it is his professional opinion that no arguable grounds for reversal exist and that any appeal would therefore lack merit. *See Anders*, 386 U.S. at 744. The 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 court-appointed 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, independently, 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 court-appointed 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 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 final decree 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.* An 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 have concluded that mother’s appeal is frivolous and without merit. *See Anders*, 386 U.S. at 744 (emphasizing reviewing court—and not counsel—determines, after full examination of proceedings, whether appeal is wholly frivolous). Accordingly, we affirm the trial court’s final decree as to mother. *See In re P.M.*, 520 S.W.3d 24, 27 (Tex. 2016); *In re A.M.*, 495 S.W.3d 573, 582 (Tex. App.—Houston [1st Dist.] 2016, pet. denied).

We have also conducted the required independent review of the entire record and have concluded that father’s appeal is frivolous and without merit. *See Anders*, 386 U.S. at 744 (emphasizing reviewing court—and not counsel—determines, after full examination of proceedings, whether appeal is wholly frivolous). Accordingly, we affirm the trial court’s final decree as to father. *See In re P.M.*, 520 S.W.3d at 27; *In re A.M.*, 495 S.W.3d at 582.

We note however that mother’s and father’s respective court-appointed appellate counsel each maintain their duty to their client through the exhaustion or waiver of “all appeals.” TEX. FAM. CODE ANN. § 107.016(3)(B). Accordingly, if either parent wishes to pursue an appeal to the Supreme Court of Texas, “appointed 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 affirm the final decree of the trial court terminating mother’s and father’s parental rights to the child.

PER CURIAM

Panel consists of Justices Goodman, Rivas-Molloy, and Farris.