

Opinion issued December 20, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-22-00320-CV

IN THE INTEREST OF S.A.W., A CHILD

**On Appeal from the 507th District Court
Harris County, Texas
Trial Court Case No. 2020-46728**

MEMORANDUM OPINION

Appellant, T.L.K., challenges the trial court's final order terminating her parental rights to her child, S.A.W. Appellant's court-appointed appellate counsel has filed an *Anders* brief, stating that, in her professional opinion, the appeal is without merit and there are no arguable grounds for reversal. *See Anders v. California*, 386 U.S. 738, 744 (1967).

The procedures set forth in *Anders* are applicable 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 J.S.*, 584 S.W.3d 622, 638 (Tex. App.—Houston [1st Dist.] 2019, no pet.). In her *Anders* brief, counsel stated that she had complied with all *Anders* requirements, and she requested that she be allowed to withdraw as appellant's appointed counsel.¹ Appellant has not filed a response.

Counsel's *Anders* brief states her professional opinion that no arguable grounds for reversal of the trial court's termination order exist and that any appeal would therefore lack merit and would be frivolous. *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.*; *In re Schulman*, 252 S.W.3d 403, 406 (Tex. Crim. App. 2008) (stating that purpose of *Anders* brief is to assure appellate court that

¹ Counsel certified that she sent a copy of her *Anders* brief and motion to withdraw and notified appellant of her right to request a copy of the appellate record and file a response via certified mail to appellant's last known address. The Clerk of this Court independently has attempted to notify appellant that her counsel filed an *Anders* brief and a motion to withdraw, that appellant had the right to file a pro se response to her counsel's *Anders* brief, and that appellant was entitled to a copy of the appellate record to assist in preparing her response. This document was returned, marked "RETURN TO SEND VACANT UNABLE TO FORWARD." The Clerk of this Court also asked counsel to provide alternative contact information for appellant, such as a telephone number or email address. Counsel responded that after "a diligent search" and consultation with appellant's court-appointed trial counsel, she was unable to locate different contact information for appellant.

appointed attorney has made thorough and conscientious examination of record, provided court with appropriate facts of case and procedural history, and pointed out any potentially plausible points of error).

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 (Tex. App.—Houston [1st Dist.] Dec. 23, 2010, no pet.) (mem. op.); see *In re K.D.*, 127 S.W.3d 66, 67 (Tex. App.—Houston [1st Dist.] 2003, no pet.). 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 attorney to withdraw. *Johnson*, 2010 WL 5186806, at *2. Then, the trial court appoints another attorney to present all arguable grounds for appeal. *Id.* If, however, after independently reviewing the record, we conclude that the appeal is frivolous, we may affirm the trial court's termination judgment by issuing an opinion explaining that we have reviewed the record and found no reversible error. *Id.* The parent may challenge that holding by filing a petition for review with the Texas Supreme Court. *Id.*

We have independently reviewed the entire record and counsel's *Anders* brief and agree with counsel's assessment that the appeal is frivolous and without merit.

In re A.M., 495 S.W.3d 573, 582 (Tex. App.—Houston [1st Dist.] 2016, pet. denied).

Accordingly, we affirm the trial court’s termination decree as to appellant.

In her *Anders* brief, appellant’s counsel also requested that she be allowed to withdraw from representing appellant. In the context of a termination of parental rights case, the Texas Supreme Court has held that “counsel’s belief that the client has no grounds to seek further review from the court of appeals’ decision” is not “good cause” sufficient to justify counsel’s withdrawal. *See In re P.M.*, 520 S.W.3d 24, 27 (Tex. 2016) (per curiam); *In re A.M.*, 495 S.W.3d at 582–83 (following *In re P.M.* and denying counsel’s motion to withdraw after filing *Anders* brief in termination case). Instead, counsel’s duty to her client extends through the exhaustion of “all appeals.” TEX. FAM. CODE § 107.016(3); *In re P.M.*, 520 S.W.3d at 26–27 (holding that “exhaustion of appeals” includes all proceedings in Texas Supreme Court, including filing of petition for review); *In re A.M.*, 495 S.W.3d at 583. If appellant chooses to pursue a petition for review to the Texas Supreme Court, “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; *In re A.M.*, 495 S.W.3d at 583.

Conclusion

We affirm the trial court's judgment terminating appellant's parental rights to S.A.W. We deny the request of appellant's appointed counsel to withdraw from representing appellant.

Sarah Beth Landau
Justice

Panel consists of Justices Kelly, Landau, and Farris.