



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-16-00026-CV

IN THE INTEREST OF Z.B. AND Z.B., CHILDREN

On Appeal from County Court at Law No. 1
Randall County, Texas
Trial Court No. 9531-L1; Honorable Jack Graham, Presiding

March 8, 2016

ORDER OF ABATEMENT AND REMAND

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

Appellant, M.B., appeals the trial court's order terminating his parental rights to his children, Z.B. and Z.B.¹ In presenting this appeal, appointed counsel has filed an *Anders*² brief in support of her motion to withdraw concluding there are no non-frivolous issues that could be presented on appeal and that any appeal would be without merit. We grant counsel's motion and she is relieved as M.B.'s appellate attorney of record.

¹ To protect the privacy of the parties involved, we refer to them by their initials. See TEX. FAM. CODE ANN. § 109.002(d) (West 2014). See *also* TEX. R. APP. P. 9.8(b). The mother's parental rights were also terminated but she did not appeal.

² *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

We abate the appeal and remand the cause to the trial court for appointment of new counsel to address potentially meritorious issues in this appeal.

BACKGROUND

M.B.'s children were removed from their home in 2012. The Department of Protective and Regulatory Services filed a petition for termination on May 11, 2012. According to statements contained in the reporter's record, pursuant to a mediated settlement agreement, on April 25, 2014, the trial court entered an SAPCR order appointing the Department as permanent managing conservator and the parents as possessory conservators. M.B. was granted unsupervised visitation every other Saturday for four hours. In 2015, the Department again pursued termination of M.B.'s parental rights.³ Following a hearing, the associate judge signed an order terminating M.B.'s parental rights on two statutory grounds.

Under section 161.001(b)(1)(N), the trial court found that M.B. constructively abandoned his children who had been in the Department's care for not less than six months and that the Department had made reasonable efforts to return the children, M.B. did not regularly visit or maintain significant contact with his children, and he demonstrated an inability to provide them with a safe environment. Under section 161.001(b)(1)(O), the trial court found that M.B. failed to comply with the provisions of a court order that specifically established the actions necessary for the father to obtain the return of his children who had been in the Department's care for not less than nine months as a result of their removal under chapter 262 for abuse or neglect. TEX. FAM.

³ As subsequently noted, the clerk's record does not contain a new petition following entry of the SAPCR order entered as a result of the original petition.

CODE ANN. § 161.001(b)(1)(N), (O) (West Supp. 2015). The trial court also found that termination was in the children's best interest. *Id.* at 161.001(b)(2).

ANALYSIS

Although the Texas Supreme Court has yet to consider the issue, for many years Texas appellate courts, including this court, have found the procedures set forth in *Anders v. California* applicable to appeals of orders terminating parental rights. See *In re A.W.T.*, 61 S.W.3d 87, 88 (Tex. App.—Amarillo 2001, no pet.).⁴ We are required to make an independent examination of the entire record to determine whether there are any arguable grounds that might support the appeal. *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). From this court's independent review of the record before us, it appears that neither the clerk's record nor reporter's record supports termination of M.B.'s parental rights.

First, when an associate judge signs an order of termination, a party may request a *de novo* hearing before the referring court. TEX. FAM. CODE ANN. § 201.015(a) (West Supp. 2015). Except as provided by section 201.007(c) of the Texas Family Code, the proposed order or judgment of an associate judge becomes the order or judgment of the referring court only on the referring court's signature. *Id.* at § 201.013(b) (West

⁴ See also *In re R.M.C.*, 395 S.W.3d 820 (Tex. App.—Eastland 2013, no pet.); *In re P.M.H.*, No. 06-10-00008-CV, 2010 Tex. App. LEXIS 3330, at *2 (Tex. App.—Texarkana May 6, 2010, no pet.) (mem. op.); *In re K.R.C.*, 346 S.W.3d 618, 619 (Tex. App.—El Paso 2009, no pet.); *In the Interest of D.D.*, 279 S.W.3d 849, 850 (Tex. App.—Dallas 2009, pet. denied); *In the Interest of L.D.T.*, 161 S.W.3d 728, 731 (Tex. App.—Beaumont 2005, no pet.); *Taylor v. Tex. Dep't of Protective & Regulatory Servs.*, 160 S.W.3d 641, 646 (Tex. App.—Austin 2005, pet. denied); *In re D.E.S.*, 135 S.W.3d 326, 329 (Tex. App.—Houston [14th Dist.] 2004, no pet.); *In re K.D.*, 127 S.W.3d 66, 67 (Tex. App.—Houston [1st Dist.] 2003, no pet.); *Porter v. Texas Dep't of Protective & Regulatory Services*, 105 S.W.3d 52, 56 (Tex. App.—Corpus Christi 2003, no pet.); *In re K.M.*, 98 S.W.3d 774, 777 (Tex. App.—Fort Worth 2003, no pet.); *In the Interest of R.R.*, No. 04-03-00096-CV, 2003 Tex. App. LEXIS 4283, at *10-12 (Tex. App.—San Antonio May 21, 2003, no pet.) (mem. op.); *In re E.L.Y.*, 69 S.W.3d 838, 841 (Tex. App.—Waco 2002, no pet.); *In re K.S.M.*, 61 S.W.3d 632, 634 (Tex. App.—Tyler 2001, no pet.).

2014). The order in the supplemental clerk's record is signed only by the associate judge. Section 201.007(c) provides that an order described under section 201.007(a)(14), rendered and signed by an associate judge, constitutes an order of the referring court. *Id.* at § 201.007(c) (West 2014). Under section 201.007(a)(14)(A), an associate judge has authority to render and sign "a final order agreed to in writing as to both form *and substance* by all parties." *Id.* at § 201.007(a)(14)(A) (West 2014) (emphasis added). The order of termination before us, although signed by all parties, recites that it is "APPROVED AS TO FORM ONLY."

Second, the clerk's record does not contain a subsequent petition seeking termination of M.B.'s parental rights following entry of the 2014 order appointing M.B. possessory conservator. The current record does not contain any family service plans or orders establishing the actions M.B. needed to take to obtain the return of his children. The Department had the burden to establish by clear and convincing evidence (1) one or more acts or omissions enumerated under section 161.001(b)(1) of the Code and (2) that termination of M.B.'s parental rights was in his children's best interest. *Holley v. Adams*, 544 S.W.2d 367, 370 (Tex. 1976).

Accordingly, we find there are arguable grounds that might support an appeal and that due process requires the appointment of new counsel. Upon remand, due to the time-sensitive nature of an appeal from a parental termination order, see TEX. R. JUD. ADMIN. 6.2(a),⁵ the trial court shall immediately appoint new counsel to represent M.B. in this appeal. The name, address, telephone number, and State Bar of Texas

⁵ "[A]ppellate courts are required to ensure that, so far as reasonably possible, the appeal is brought to final disposition" within 180 days from the date the notice of appeal is filed.

identification number of newly appointed counsel shall be provided to the clerk of this court. The trial court shall execute findings of fact and conclusions of law and shall cause its findings, conclusions, and any necessary orders to be included in a supplemental clerk's record to be filed with the clerk of this court by March 21, 2016. The trial court is directed to order newly appointed counsel to file an appellant's brief developing the aforementioned issues and analyze the sufficiency of the evidence and any other issues that might support M.B.'s appeal. M.B.'s appellate brief shall be due twenty days from the date of the trial court's order appointing new counsel. TEX. R. APP. P. 38.6(a). The Department's brief, if any, shall be filed twenty days following the filing of M.B.'s brief. *Id.* at (b). By this order, we express no opinion on the final merits of any issue or potential issue the record may present.

It is so ordered.

Per Curiam