



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

No. 07-16-00294-CV

IN THE INTEREST OF H.W., A CHILD

On Appeal from the 251st District Court
Randall County, Texas
Trial Court No. 64,048-C; Honorable Ana Estevez, Presiding

December 5, 2016

MEMORANDUM OPINION

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

Appellant, T.W., appeals the court order terminating his parental rights to his child, H.W.¹ In presenting this appeal, appointed counsel has filed an *Anders* brief.² We affirm the trial court's order terminating T.W.'s parental rights.

¹ To protect the parents' and child's privacy, we refer to Appellant and other parties by their initials. See TEX. FAM. CODE ANN. § 109.002(d) (West 2014). See also TEX. R. APP. P. 9.8(b).

² *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). Counsel did not file a motion to withdraw citing his continuing duty of representation through the exhaustion of proceedings, including the possible filing of a petition for review. See *In re P.M.*, No. 15-0171, 2016 Tex. LEXIS 236, at *6 (Tex. April 1, 2016).

BACKGROUND

In April 2015, the Department of Family and Protective Services filed its *Petition to Modify Prior Order, for Protection of a Child, for Conservatorship, and for Termination in Suit Affecting the Parent-Child Relationship*. H.W.'s removal was premised on neglectful supervision. H.W.'s mother passed out from "huffing" on an inhaler while smoking marijuana and was taken to a hospital. H.W. was left alone at home. At the time, H.W.'s mother was married to a third party who accompanied her to the hospital. T.W., the child's father, was serving a four-year sentence for assault/family violence.³

In June 2015, T.W. was released from prison. After his release, he signed a family service plan that was incorporated in a court order and agreed, among other things, to (1) complete a Battering Intervention and Prevention Program (BIPP), (2) maintain regular contact with his caseworker, (3) maintain stable housing free from drugs and violence, (4) maintain a drug-free lifestyle and abstain from the use of illegal drugs, (5) submit to random drug tests, with a failure to take a random drug test on the date requested considered as a "positive" and a failure to follow a court-ordered service plan, (6) complete a parenting class, (7) participate in a substance abuse assessment, (8) attend individual counseling, and (9) complete a psychological assessment.

During the bench trial, there was evidence T.W. failed to comply with actions necessary for the return of his child. That is, he (1) did not complete a BIPP, (2) refused to undergo four drug screening tests (9/14/15, 11/10/15, 04/13/16, and 5/5/16), (3) failed to maintain contact with his caseworker, and (4) tested positive for methamphetamine

³ H.W.'s mother testified that, in February 2010, an argument with T.W. turned physical and T.W. attempted to strangle her to death. He received community supervision. In January 2014, she ended their relationship, and in February, he was incarcerated for violating his community supervision due to continued use of methamphetamine and marijuana.

on a court-ordered drug screen (01/15/16). T.W. also testified that he felt like it was in H.W.'s best interest to be with her foster parents, that he did not complete all the tasks in the service plan, and that he used methamphetamine since the beginning of the case. When the trial judge ordered him to submit to a drug test during trial, he tested positive for amphetamine.

Thereafter, the trial judge found there was clear and convincing evidence that T.W. had knowingly placed or allowed H.W. to remain in conditions or surroundings that endangered her physical and emotional well-being, TEX. FAM. CODE ANN. § 161.001(b)(1)(D) (West Supp. 2016), engaged in conduct or knowingly placed H.W. with persons who engaged in conduct which endangered her physical and emotional well-being, § 161.001(b)(1)(E), and failed to comply with the provisions of a court order that specifically established the actions necessary for T.W. to obtain the return of H.W. § 161.001(b)(1)(O). See *M.C. v. Tex. Dep't of Family and Protective Servs.*, 300 S.W.3d 305, 311 (Tex. App.—El Paso 2009, pet. denied) (only one statutory ground is required to terminate parental rights under section 161.001(b)(1)). The trial court also found termination was in H.W.'s best interest. See *In the Interest of C.H.*, 89 S.W.3d 17, 28 (Tex. 2002) (evidence of acts or omissions used to establish ground for termination under section 161.001(b)(1) may be probative in determining best interest of child). See also *Walker v. Tex. Dep't of Family & Protective Servs.*, 312 S.W.3d 608, 619 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (nonexclusive list of factors that the trier of fact in a termination case may use in determining the best interest of the child). Based on those findings, on July 8, 2016, the trial court entered an order terminating T.W.'s parental rights as to H.W. T.W. filed a timely notice of appeal

concerning that order of termination. By a prior order, the trial court also terminated the parental rights of H.W.'s mother. She did not, however, appeal that termination.

APPLICABLE LAW

The Texas Family Code permits a court to terminate the relationship between a parent and a child if the Department establishes (1) one or more acts or omissions enumerated under section 161.001(b)(1) and (2) termination of that relationship is in the child's best interest. See § 161.001(b)(1), (2); *Holley v. Adams*, 544 S.W.2d 367, 370 (Tex. 1976). The burden of proof is clear and convincing evidence. § 161.206(a) (West 2014). "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." § 101.007 (West 2012).

Only one statutory ground is needed to support termination though the trial court must also find termination is in the child's best interest. *In re K.C.B.*, 280 S.W.3d 888, 894-95 (Tex. App.—Amarillo 2009, pet. denied). In review of a termination proceeding, the standard of the sufficiency of the evidence is that discussed in *In re K.M.L.*, 443 S.W.3d 101, 112-13 (Tex. 2013). In reviewing a best interest finding, appellate courts consider, among other evidence, the factors set forth in *Holley*, 544 S.W.2d at 371-72.

ANDERS V. CALIFORNIA

Although the Texas Supreme Court has yet to directly 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 The brief filed in this appeal meets the requirements of *Anders* by presenting a professional evaluation of the record and demonstrating why there are not arguable grounds for reversible error.

In support, counsel certifies he has conducted a conscientious examination of the record, and in his opinion, the record reflects no potentially plausible basis to support an appeal. *In re D.A.S.*, 973 S.W.2d 296, 297 (Tex. 1998). Counsel has demonstrated that he has complied with the requirements of *Anders* by (1) providing a copy of the brief to T.W. and (2) notifying T.W. of his right to file a *pro se* response if he desired to do so. *Id.* By letter, this court also granted T.W. an opportunity to exercise his right to file a response to counsel's brief, should he be so inclined. T.W. did not file a response. The Department notified this court it would not file a response unless specifically requested to do so. No such request was made.

ANALYSIS

As in a criminal case, we have independently examined the entire record to determine whether there are any non-frivolous issues that might support the appeal. See *Penson v. Ohio*, 488 U.S. 75, 82-83, 109 S. Ct. 346, 102 L. Ed. 2d 300 (1988); *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). Based on this record, we conclude that a reasonable fact finder could have formed a firm belief or conviction

⁴ See also *In re R.M.C.*, 395 S.W.3d 820 (Tex. App.—Eastland 2013, no pet.); *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 (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 [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 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.); *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 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.).

that grounds for termination existed in compliance with section 161.001 and that termination of T.W.'s parental rights was in the child's best interest. See *Gainous v. State*, 436 S.W.2d 137-38 (Tex. Crim. App. 1969).

At trial, the evidence established T.W. failed to comply with material provisions of the court's orders requiring compliance in order to avoid termination of his parental rights. *In re J.F.C.*, 96 S.W.3d 256, 277-79 (Tex. 2002). The record also conclusively establishes H.W. was removed under chapter 262 of the Family Code for neglect, and it is undisputed that H.W. was in the Department's custody for more than nine months after removal. *In re E.C.R.*, 402 S.W.3d 239, 248-49 (Tex. 2013). The parental conduct described in section 161.001(b)(1)(O) was established as a matter of law and termination was in the child's best interest. *Id.* Having reviewed the entire record and counsel's brief, we agree with counsel that there are no plausible grounds for appeal.

CONCLUSION

We affirm the trial court's order granting the termination of T.W.'s parental rights.

Patrick A. Pirtle
Justice