



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

No. 07-16-00343-CV

IN THE INTEREST OF D.P., A CHILD

On Appeal from the 108th District Court
Potter County, Texas
Trial Court No. 87,415-E, Honorable Carry Baker, Presiding

March 2, 2017

MEMORANDUM OPINION

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

Appellant, E.C.,¹ challenges the trial court's order terminating her parental rights to her child, D.P. In presenting this appeal, appointed counsel has filed an *Anders*² brief in support of her motion to withdraw. We will affirm the order of the trial court.

¹ To protect the parent's and the child's privacy, we refer to each by their initials. TEX. FAM. CODE ANN. § 109.002(d) (West 2015); TEX. R. APP. P. 9.8(b) (West 2015). The parental rights of D.P.'s father also were terminated in this proceeding. The father has not appealed.

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

Background

In July 2015, the Texas Department of Family and Protective Services filed pleadings that included a request for termination of E.C.'s parental rights to D.P. At the time the pleadings were filed, D.P. was three days old. The basis for the initial removal was the Department's concern over E.C.'s history with the Department that included removal of E.C.'s other three children, and E.C.'s lack of items necessary for the care of a baby at the time of D.P.'s birth.³ Caseworkers also opined that E.C. was unable to care for D.P. and her home was unsanitary. E.C. told a caseworker the home was infested with mice and bed bugs.

After a bench trial in July 2016, the trial court found there was clear and convincing evidence to support the Department's allegations under two of the predicate grounds for termination set forth in the Family Code. See *In re T.N.*, 180 S.W.3d 376, 384 (Tex. App.—Amarillo 2005, no pet.) (only one statutory ground is required to terminate parental rights under section 161.001(1)). One caseworker testified that while E.C. completed a psychological evaluation, she failed to complete any of the other services required for return of D.P. to her care.⁴ See TEX. FAM. CODE ANN.

³ E.C. apparently reported she gave birth to D.P. "in her pants" while she was walking around a park. A Department investigator testified she went to E.C.'s home and did not find any "baby items" in the home. E.C. told the investigator she was going to be provided with "some things from friends." E.C. also said she did not yet have a car seat for D.P. but one would be given to her before she left the hospital.

⁴ During cross examination, however, the caseworker said "the only two things" E.C. "didn't do was the parenting class and the individual counseling."

§ 161.001(b)(1)(O) (West 2016).⁵ The trial court also found there was clear and convincing evidence to support the ground set forth in section 161.001(b)(1)(M) of the Family Code. See TEX. FAM. CODE ANN. § 161.001(b)(1)(M).⁶ The record shows E.C.'s parental rights to another of her children were terminated on subsection (D) and (E) grounds.

The trial court further found termination was in the best interest of D.P. 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(1) may be probative in determining best interest of child). See also *Walker v. Tex. Dep't of Family and 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). A caseworker testified to her observations of

⁵ The Family Code provides that a court may order termination of the parent-child relationship if it finds by clear and convincing evidence that the parent has:

Failed to comply with the provisions of a court order that specifically establish the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child.

TEX. FAM. CODE ANN. §161.001(b)(1)(O).

⁶ That provision says the trial court may order termination of parental rights if it finds by clear and convincing evidence that the parent has:

Had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state.

TEX. FAM. CODE ANN. § 161.001(b)(1)(M).

E.C. with D.P. She noted E.C. was “unable to soothe” D.P. when he was upset and E.C. was “always trying to put him to sleep” and they “weren’t bonding well together.” The caseworker told the court E.C. would “forget to wipe [D.C.’s] bottom” and noted “basic needs like that were not being met during the visits.” These issues were the same issues E.C. had with a previous child who had been removed from her care. The record illustrates E.C.’s inability to care for infants and her lack of capacity to learn from her prior experiences. The caseworker told the court D.P. was doing “extremely well” and “thriving” in the foster home he shared with one of his siblings. The foster father testified he and his wife planned to adopt D.P., as they had adopted D.P.’s sibling.

The mother filed notice of appeal challenging the trial court’s order.

Analysis

Pursuant to *Anders*, E.C.’s court-appointed appellate counsel has filed a brief certifying she has conducted a conscientious examination of the record, and in her opinion, the record reflects no potentially plausible basis to support an appeal. *In re Schulman*, 252 S.W.3d 403, 407 n.9 (Tex. Crim. App. 2008) (orig. proceeding); *Stafford v. State*, 813 S.W.2d 502, 510 n.3 (Tex. Crim. App. 1991); *Porter v. Tex. Dep’t of Protective & Regulatory Servs.*, 105 S.W.3d 52, 56 (Tex. App.—Corpus Christi 2003, no pet.) (“[W]hen appointed counsel represents an indigent client in a parental-termination appeal and concludes that there are no non-frivolous issues for appeal, counsel may file an *Anders*-type brief”); *In the Interest of L.J.*, No. 07-14-00319-CV, 2015 Tex. App. LEXIS 427, at *3 (Tex. App.—Amarillo January 15, 2015, no pet.) (mem. op.) (noting same).

Counsel certifies she has diligently researched the law applicable to the facts and issues and discusses why, in her professional opinion, the appeal is frivolous. *In re D.A.S.*, 973 S.W.2d 296, 297 (Tex. 1998). Counsel has demonstrated she has complied with the requirements of *Anders* by (1) providing a copy of the brief, motion to withdraw, and appellate record to appellant and (2) notifying her of her right to file a *pro se* response if she desired to do so. *Id.* See also *Kelly v. State*, 436 S.W.3d 313 (Tex. Crim. App. 2014); *In the Interest of L.V.*, No. 07-15-00315-CV, 2015 Tex. App. LEXIS 11607 (Tex. App.—Amarillo Nov. 9, 2015) (order). By letter, this Court offered appellant the opportunity to file a response to counsel’s brief. Appellant has not filed a response.

Due process requires that termination of parental rights be supported by clear and convincing evidence. *In re E.M.E.*, 234 S.W.3d 71, 72 (Tex. App.—El Paso 2007, no pet.) (citing *In re J.F.C.*, 96 S.W.3d 256, 263 (Tex. 2002)). This intermediate standard falls between the preponderance of the evidence standard of civil proceedings and the reasonable doubt standard of criminal proceedings. *In re E.M.E.*, 234 S.W.3d at 73. It is defined as 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. TEX. FAM. CODE ANN. § 101.007 (West 2008). In reviewing the legal sufficiency of the evidence supporting parental termination, a court reviews all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have “formed a firm belief or conviction about the truth of the matter on which the movant in a termination proceeding bore the burden of proof.” *In re J.F.C.*, 96 S.W.3d at 266. In reviewing the evidence for factual sufficiency, we give due deference to the fact finder’s findings and do not substitute its judgment with our own. *In re*

H.R.M., 209 S.W.3d 105, 108 (Tex. 2006). We determine whether, on the entire record, a fact finder could reasonably form a firm conviction or belief about the truth of the matter on which the movant bore the burden of proof. *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2005); *In re T.B.D.*, 223 S.W.3d 515, 517 (Tex. App.—Amarillo 2006, no pet.). By the *Anders* brief, counsel notes reversible error is not presented because sufficient evidence supports termination under subsections (O) and (M). See *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003); *In re T.N.*, 180 S.W.3d at 384 (only one predicate finding under section 161.001 is necessary to support termination when there is also a finding that termination is in a child’s best interest).

As in a criminal case, we have independently examined the entire record to determine whether there is a non-frivolous issue that might support the appeal. See *Person v. Ohio*, 488 U.S. 75, 82-83, 109 S. Ct. 346, 102 L. Ed. 2d 300 (1988); *Stafford*, 813 S.W.2d at 511. Based on this record, we conclude that a reasonable factfinder could have formed a firm belief or conviction that sufficient evidence to support at least one ground for termination existed, in compliance with section 161.001 of the Family Code, and that termination of E.C.’s parental rights was in D.P.’s best interest. See *Gainous v. State*, 436 S.W.2d 137, 137-38 (Tex. Crim. App. 1969). After reviewing the record and the *Anders* brief, we agree with counsel there are no plausible grounds for reversal.

Accordingly, the trial court's order terminating E.C.'s parental rights to D.P. is affirmed.⁷

James T. Campbell
Justice

⁷ In light of the Texas Supreme Court's decision in *In re P.M.*, No. 15-0171, 2016 Tex. LEXIS 236, at *6 (Tex. April 1, 2016) (per curiam), we call counsel's attention to the continuing duty of representation through the exhaustion of proceedings, which may include the filing of a petition for review. Counsel has filed a motion to withdraw, on which we will take no action.