In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00439-CV

IN THE INTEREST OF N.M. AND K.M., CHILDREN

On Appeal from the 140th District Court
Lubbock County, Texas
Trial Court No. 2014-513,365, Honorable Jim Bob Darnell, Presiding

March 23, 2017

ORDER OF ABATEMENT AND REMAND

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

L.M. and G.G. appeal the order terminating their parental rights to N.M. and K.M. Their appointed counsel filed an *Anders*[1] brief. In it, counsel certified that the record was diligently searched and that the appeal was without merit. Appellate counsel also attached a copy of a letter sent to both parents informing them of their right to file a *pro se* response. They were also provided a copy of the appellate record, according to counsel. By letter dated March 1, 2017, this court also notified L.M. and G.G. of their right to file their own briefs or responses by March 20, 2017, if they wished to do so. To date no responses have been received.

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

In compliance with the principles enunciated in *Anders*, appellate counsel discussed potential areas for appeal which included the sufficiency of the evidence to support one of the alleged statutory grounds found for termination and whether termination was in the best interests of the children. Counsel then explained that termination can be supported by a single statutory ground and that termination was supported by sufficient evidence in the case at bar.

Per our obligation described in *In re D.D.*, 279 S.W.3d 849, 850 (Tex. App.—Dallas 2009, pet. denied) (*citing Bledsoe v. State,* 178 S.W.3d 824, 827 (Tex. Crim. App. 2005)), we too reviewed the appellate record in search of arguable issues for appeal. In reviewing it, we found that the initial termination hearing was held by an associate judge who ultimately recommended that the parental rights of both parents be ended. Both parents then requested a *de novo* hearing from the 140th Judicial District Court for Lubbock County, Texas, per Texas Family Code § 201.2042 (West 2014).

A hearing was set by the district court, but neither L.M. nor G.G. appeared; however, their counsel did. Furthermore, the trial court advised those present that it had requested the court reporter to prepare the record of the trial before the associate judge. It then asked if there was any additional evidence or testimony about which it needed to be informed. The one attorney representing both parents told the trial court that his contact with his clients had been sporadic but that they were aware of the hearing date. Counsel also stated that without his clients being present he had no witnesses to call for purposes of presenting additional evidence. The State's attorney also informed the trial court that it would not present additional evidence. At that point

the trial court said: "[b]ased on the Court's review of the prior testimony, the Court will deny the *de novo* appeal at this time."

Whether the circumstances at bar illustrate compliance with the statute mandating a *de novo* review by the district court is an arguable issue preventing us from simply affirming the judgment via the *Anders* protocol. Thus, we abate and remand the cause to the 140th District Court of Lubbock County. On remand and by April 3, 2017, the district court shall appoint new counsel to represent the parents in this appeal.[2] *See In re P.M.*, __ S.W.3d __, __, 2016 Tex. LEXIS 236, at *8 (Tex. 2016) ("An appellate court must ordinarily refer the matter of appointment of replacement counsel to the trial court"). The district court shall cause the name, email and postal addresses, telephone number, and state bar number of the newly-appointed counsel to be included in a supplemental record. The record of that appointment also shall be filed with the Clerk of this Court on or before April 3, 2017.

Additionally, newly-appointed counsel is directed to file an appellant's brief, comporting with the Texas Rules of Appellate Procedure, addressing the aforementioned issue and any other arguably meritorious issue discovered. Absent a request for extension from the newly-appointed counsel, the appellant's brief shall be filed with the Clerk of this Court no later than twenty days from his or her appointment. The appellee's brief must be filed within twenty days after the filing of the appellant's brief.

It is so ordered.

Per Curiam

[2] The short time within which to make the appointment arises from the statutory condition obligating this court to dispose of termination appeals wherein termination was sought by a governmental entity within 180 days. *See* TEX. R. JUD. ADMIN. 6.2(a).