In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-17-00159-CV

IN THE INTEREST OF S.S. AND N.S., CHILDREN

On Appeal from the County Court at Law No. 2
Potter County, Texas
Trial Court No. 87,689-2, Honorable Carry Baker, Presiding

October 5, 2017

MEMORANDUM OPINION

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

Appellant, the mother of S.S. and N.S.,[1] appeals from the trial court's order terminating her parental rights to her children. In presenting this appeal, appointed counsel for the mother filed an *Anders*[2] brief in support of a motion to withdraw. We will affirm the order of the trial court.

[1] To protect the children's privacy, we will refer to appellant as "the mother" and to the children by their initials. *See* TEX. FAM. CODE ANN. § 109.002(d) (West 2016); TEX. R. APP. P. 9.8(b). The father's parental rights were also 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 October 2015, the Texas Department of Family and Protective Services filed pleadings that included a request for termination of the mother's parental rights to S.S. and N.S. At the time of removal, S.S. was 11 years old and N.S. was almost 9 years old. In its pleadings, the Department alleged several grounds for termination. Among the Department's chief concerns were: (1) the mother's history of drug use and recent relapse into methamphetamine use; (2) the mother and the children were homeless, living in their small SUV; (3) the mother and children did not have food or money; (4) the children had head lice; (5) the mother's neglectful supervision; and (6) a lifetime registered sex offender lived and worked at the address of the property where the mother's SUV was parked.

The trial court held a bench trial in February 2017. At the time of the final hearing, S.S. and N.S. lived in a non-adoptive foster care placement. A Department caseworker testified to the mother's history of drug use, including her admitted use of methamphetamine two weeks before the children were removed and her positive drug screens during the pendency of the case. The caseworker also testified that at the time of removal, the mother and children were homeless, living in their car, on the property of a business in which a registered sex offender lived and worked. The caseworker testified "[e]veryone seemed to be well aware of the fact that [this man] was a registered sex offender, because they talked about it during the investigation." The caseworker also told the court the mother failed to complete the services set forth in her service plan required for return of her children. The caseworker also said it was in the children's

best interest for the mother's parental rights to be terminated. She told the court the children are "kind of in limbo" and if "parental rights are terminated, it's going to give them a direction of where to go." She also told the court the Department would continue to look for an adoptive home.

The mother testified at the final hearing, admitting her history of use of methamphetamine. She told the court she used methamphetamine "two weeks prior to my children coming to stay with me" and had used the drug three weeks before the final hearing. She also admitted that at the time of removal, her children were "infested with head lice" and that she did not have any food but "did get food for my children every day." She also acknowledged she would not go to a shelter because she had active warrants. The mother further admitted she had "recently found out" about the registered sex offender on the property where she parked her SUV and stated, "that's why my children were not allowed on the property, and I would not take them on the property if he was there."

The record does contain some evidence contrary to the trial court's ruling terminating the mother's parental rights. Both the caseworker and the mother testified the mother was very consistent with visits with her children. The mother also told the court she was attending NA and AA meetings "at least twice a week. If I don't make it twice a week, I do go once a week." While she admitted she had "not maintained a drug-free lifestyle," she told the court, "I'm still working on it." She told the court "family is very important."

The mother also asked the court not to terminate her parental rights and to place her children with her mother.[3] But, the record indicates S.S. and N.S. expressed a desire to be adopted by nonrelatives.[4] And, the caseworker testified that while the children were not in an adoptive placement, they were "doing pretty well" and she did not have any concerns about the care S.S. and N.S. were receiving. Further, the caseworker told the court that the children's current placement was willing to care for the children until an adoptive placement was found.

The trial court found clear and convincing evidence that it was in the best interest of the children that the parental rights between the mother and S.S. and N.S. be terminated, based on sections 161.001(b)(1)(D), (E), and (O) and 161.001(b)(2). TEX. FAM. CODE ANN. §§ 161.001(b)(1)(D), (E), (O); 161.001(b)(2) (West 2016). *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 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).

[3] The maternal grandmother also testified. She told the court she was willing to take S.S. and N.S. into her home in New Mexico and testified to her ability to care for them.

[4] The attorney ad litem for the children told the court that S.S. and N.S. "made it clear to me that they do not want to be placed with family members. They want to be placed to where they can be adopted by nonfamily members. They were very adamant when I asked about family that they did not feel comfortable with any of the family members that have been in their lives, their ability to offer any stability for them. And that was very important for them. They wanted me to convey that to you."

The mother filed a motion for new trial that was overruled. The mother also filed a request for a *de novo* hearing.[5] That request was denied as untimely. The mother filed notice of appeal challenging the trial court's final order.

Analysis

Pursuant to *Anders,* the mother's court-appointed appellate counsel has filed a brief certifying 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 Schulman,* 252 S.W.3d 403, 406 n.9 (Tex. Crim. App. 2008) (orig. proceeding); *Stafford v. State,* 813 S.W.2d 503, 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"). *See also 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 he has diligently researched the law applicable to the facts and issues. He also thoroughly discusses why, in his professional opinion, the appeal is frivolous. *In re D.A.S.,* 973 S.W.2d 296, 297 (Tex. 1998). Counsel also has demonstrated he has (1) provided a copy of his brief to the mother and (2) notified her of her right to file a *pro se* response if she desired to do so. *Kelly v. State,* 436 S.W.3d

[5] *See* TEX. FAMILY CODE ANN. § 201.015 (addressing *de novo* hearing before referring court).

313 (Tex. Crim. App. 2014). By letter, we also made the mother aware of her opportunity to exercise her right to file a response to her counsel's brief. The mother has not filed a response.

Due process requires that termination of parental rights be supported by clear and convincing evidence. *In the Interest of D.P.,* No. 07-16-00343-CV, 2017 Tex. App. LEXIS 1820, at *5-6 (Tex. App.—Amarillo, Mar. 2, 2017, no pet.) (mem. op.) (citing *In re E.M.E.,* 234 S.W.3d 71, 72 (Tex. App.—El Paso 2007, no pet.)). This "intermediate standard falls between the preponderance of the evidence standard of civil proceedings and the reasonable doubt standard of criminal proceedings." *Id.* (citing *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. *Id.* (citing TEX. FAM. CODE ANN. § 101.007 (West 2008)).

Counsel's brief identifies potential appellate issues, including the sufficiency of the evidence supporting the three predicate grounds found by the trial court and that supporting the court's best-interest finding. In reviewing the legal sufficiency of the evidence supporting parental rights 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. *Id.* (citing *In re J.F.C.,* 96 S.W.3d 256, 266 (Tex. 2002)). 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. *Id.* (citing *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. *Id.* (citing *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.)). Counsel's brief demonstrates why no arguable issue is presented concerning the sufficiency of evidence supporting the court's judgment of termination. *See id.* (citing *In re A.V.,* 113 S.W.3d 355, 362 (Tex. 2003); *In re T.N.,* 180 S.W.3d 376, 384 (Tex. App.—Amarillo 2005, no pet.) (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)).

Counsel also addresses a potential appellate issue arising from trial counsel's failure to timely file a request for a *de novo* hearing after the case was tried by the associate judge. From our review of counsel's brief and the record, we are satisfied this issue, like the others counsel discusses, presents no arguable ground for reversal.

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 Penson 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. After reviewing the record and the *Anders* brief, we agree with counsel there are no plausible grounds for reversal.

Conclusion

The trial court's order terminating the mother's parental rights to S.S. and N.S. is affirmed.[6]

James T. Campbell
Justice

[6] 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. *In re P.M.,* 520 S.W.3d 24, 27 (Tex. 2016) (per curiam).