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

No. 07-17-00184-CV

IN THE INTEREST OF R.Z., A.V., AND D.Z., CHILDREN

On Appeal from the 242nd District Court
Hale County, Texas
Trial Court No. B40353-1505; Honorable Kregg Hukill, Presiding

September 29, 2017

## MEMORANDUM OPINION

Before CAMPBELL, PIRTLE and PARKER, JJ.

Appellant, M.V.A., appeals the trial court's order terminating her parental rights to her children, R.Z., A.V., and D.Z.[1] In presenting this appeal, appointed counsel has filed an *Anders* brief.[2] The trial court's order terminating M.V.A.'s parental rights to R.Z., A.V., and D.Z. is affirmed.

[1] To protect the privacy of the parties, 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 parental rights of the children's alleged fathers, A.Z., L.V., and G.G., and presumed father, D.Z. were also terminated. They did not appeal.

[2] *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). Counsel's motion to withdraw did not cite his continuing duty of representation through the exhaustion of proceedings, including the possible filing of a petition for review. *See In re P.M.*, 520 S.W.3d 24, 27-28 (Tex. 2016).

BACKGROUND

In May 2015, the Department of Family and Protective Services filed its *Original Petition for Protection of Child, for Conservatorship, and for Termination in Suit Affecting Parent-Child Relationship*, seeking termination of M.V.A.'s parental rights as to five children, R.G., J.G., R.Z., A.V., and D.Z.[3] The children's removal was based on physical abuse and neglectful supervision. While in his father's care, D.Z. suffered a head bleed, small subdural hematomas, a wrist fracture, and a rib fracture. The trial court established a family service plan and M.V.A. began working her services.

In November 2015, six months later, M.V.A. began a relationship with R.A. In December, J.G. and R.Z. were placed back with M.V.A. After a few months, M.V.A.'s relationship with R.A. became abusive. She hid the abuse from Department caseworkers. In August 2016, after some extended visits, A.V. and D.Z. were also placed back with M.V.A. During this period of reunification, M.V.A. discontinued her services, failed to address D.Z.'s therapeutic needs, continually kept the house in an unsanitary and unsafe manner, and left the older children to care for the younger children for long periods of time. R.A. became violent and struck M.V.A. on at least four occasions. He also threatened to kill her if she left him.

In October 2016, after denying to the Department she was pregnant, M.V.A. gave birth to a daughter, E.V.[4] M.V.A. and her newborn child both tested positive for methamphetamine and M.V.A. admitted to using methamphetamine during her pregnancy. The children were again removed from M.V.A.'s care. M.V.A. asserted

[3] R.G. was subsequently dismissed when she turned 18 and "aged out." At the time of the final hearing, J.G. was 17 years and 10 months old, and after the final hearing, the trial court did not terminate M.V.A.'s parental rights as to J.G.

[4] The termination of M.V.A.'s parental rights as to E.V. are the subject of a separate proceeding.

R.A. forced her to use drugs during their relationship and she was fearful he would inflict further physical harm on her if she did not concede to his wishes. In December 2016, she moved into a shelter home, Crisis Center of the Plains. J.G., nearly eighteen years of age at the time, also moved into the shelter home with her.

On November 21, 2016, the trial court began a final hearing that was recessed and reconvened on January 27, 2017. R.Z. was eleven years old and living with a foster family in Lubbock, Texas. A.V. and D.Z., three and one years old respectively, lived in a foster home in Smyer, Texas, with G.E. and L.E.[5]

The January 27, 2017 hearing was continued and reconvened on April 2 and on May 15, a final hearing was concluded. The evidence during the bench trial established that M.V.A. repeatedly engaged in relationships that were abusive. During the proceedings and her pregnancy, she used drugs, failed to follow the service plan, sometimes left her younger children in the care of her older children for extended periods of time, failed to address D.Z.'s medical needs, and continually kept the house in an unsanitary and unsafe manner. At the hearing's conclusion, M.V.A. was residing in the crisis shelter home where she had been living continuously since December 2016.

Thereafter, the trial judge found there was clear and convincing evidence that M.V.A. had knowingly placed or allowed R.Z., A.V., and D.Z. to remain in conditions or surroundings that endangered their physical and emotional well-being; TEX. FAM. CODE ANN. § 161.001(b)(1)(D) (West Supp. 2016), and engaged in conduct or knowingly placed them with persons who engaged in conduct which endangered their physical and

[5] In April 2016, G.E. and L.E. filed a *Petition in Intervention in Suit Affecting Parent-Child Relationship* seeking the termination of M.V.A.'s parental rights to A.V. and D.Z.

emotional well-being. § 161.001(b)(1)(E). *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 the children'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 grounds 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). J.G., nearly eighteen years of age, voiced his preference to remain at the shelter with his mother until he aged-out rather than being placed in a foster home. Based on its findings, on May 25, 2017, the trial court entered an order terminating M.V.A.'s parental rights to R.Z., A.V., and D.Z. and honored J.G.'s wishes to remain at the shelter until he turned eighteen years old. As a result, the trial court did not terminate M.V.A.'s parental rights as to J.G. Thereafter, M.V.A. filed a timely notice of appeal.

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 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.).[6] The brief filed in this appeal meets the requirements of *Anders* by presenting a professional evaluation of the record and demonstrating why there are no 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

[6] *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. 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 he has complied with the requirements of *Anders* by (1) providing a copy of the brief to M.V.A. and (2) notifying M.V.A. of her right to file a *pro se* response if she desired to do so. *Id.* By letter, this court also granted M.V.A. an opportunity to exercise her right to file a response to counsel's brief, should she be so inclined. M.V.A. did not file a response.

ANALYSIS

As in any 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 that grounds for termination existed in compliance with section 161.001 and that termination of M.V.A.'s parental rights was in the children's best interest. *See Gainous v. State*, 436 S.W.2d 137, 137-38 (Tex. Crim. App. 1969).

At trial, the evidence established M.V.A. had knowingly placed or allowed R.Z., A.V., and D.Z. to remain in conditions or surroundings that endangered their physical and emotional well-being; § 161.001(b)(1)(D), and engaged in conduct or knowingly placed them with persons who engaged in conduct which endangered their physical and emotional well-being. § 161.001(b)(1)(E). The record also conclusively establishes the children were removed under chapter 262 of the Family Code for neglect, and it is undisputed that the children have been 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)(D) and (E) was established by clear and convincing evidence and termination was in the children'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

The trial court's order terminating M.V.A.'s parental rights to R.Z., A.V., and D.Z. is affirmed.[7]

Patrick A. Pirtle
Justice

[7] In light of the Texas Supreme Court's decision in *In re P.M.,* 520 S.W.3d 24, 27 (Tex. 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.