In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-17-00196-CV

IN THE INTEREST OF K.M., A CHILD

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

October 2, 2017

MEMORANDUM OPINION

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

The trial court terminated L.M.'s and G.G.'s parental rights to K.M., and the parents appealed from that order. The termination underlying this appeal was the third to which L.M. and G.G. were party. Their parental rights to two older children had been previously terminated, and those decisions were affirmed on appeal. Furthermore, the prior terminations provided one of two grounds the trial court found that warranted termination of their parental rights to K.M. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(M) (West Supp. 2016) (stating that a court may order termination if it finds by clear and convincing evidence that a parent had his or her parent-child relationship terminated with respect to another child based on a finding that his or her conduct was in violation

of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state).

Because L.M. and G.G. were deemed indigent, they were appointed counsel to represent their interests on appeal. That attorney concluded that she could not find an arguable issue meriting appeal, filed an *Anders*[1] brief purporting to illustrate as much, and moved to withdraw from the representation of L.M. and G.G.

The attorney said that she diligently searched the record before arriving at her determination. She also filed a copy of a letter sent to L.M. and G.G. informing them of their right to file their own response or brief. L.M. and G.G. were also provided a motion for a copy of the appellate record, according to counsel.

By letter dated September 7, 2017, this Court also notified L.M. and G.G. of their right to file their own brief or response by September 27, 2017, if either wished to do so. To date, no response has been received.

The filing of an *Anders* brief imposes upon us an independent obligation to read the appellate record to determine whether it presents any arguable issues necessitating consideration on appeal. *See In re AWT*, 61 S.W.3d 87, 89 (Tex. App.—Amarillo 2001, no pet.) (per curiam); *accord In re R.A.L.*, No. 07-16-00322-CV, 2016 Tex. App. LEXIS 12257, at *2 (Tex. App.—Amarillo Nov. 15, 2016, pet. denied) (per curiam) (mem. op.) (continuing to recognize the obligation to conduct an independent review of the record for possible error). Appellate courts of Texas take this obligation quite seriously. That is illustrated by the multiple instances in which our independent review uncovered arguable issues (despite counsels' representations to the contrary) and resulted in the appointment of new appellate counsel. *See, e.g.*, *In re N.M.*, No. 07-16-00439-CV,

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

2017 Tex. App. LEXIS 4219, at *1 (Tex. App.—Amarillo May 9, 2017, pet. denied) (mem. op.) (noting that an arguable issue was found necessitating need for new counsel); *In re X.H.*, No. 07-16-00410-CV, 2017 Tex. App. LEXIS 1011, at *1 (Tex. App.—Amarillo Feb. 6, 2017, order) (per curiam) (abating and remanding for appointment of new counsel when the Court was "not yet satisfied that the appeal is wholly frivolous"). Having performed that obligation and reviewed the record carefully, we uncovered no arguable issue for review and confirm the representation by counsel appointed to L.M. and G.G. Yet, we write further to stress appointed counsel's role in the process.

As this Court said years ago, an attorney appointed to represent someone whose parental rights were terminated has no duty to argue frivolous matters. *See In re AWT*, 61 S.W.3d at 88. Nevertheless, that attorney remains obligated to zealously pursue the rights and interests of the client, *id.*, that is, the rights and interests of a person who lacks the financial wherewithal to hire someone of his own choosing. *See id.* Lacking such financial ability does not mean the client is entitled to only some lesser degree of legal representation though. It is not and must not become a situation where "you get what you pay for." The duty of zealousness continues irrespective of the weight of the client's pocketbook.

Furthermore, illustrating that such diligent, intelligent, and dedicated service has been provided often occurs only through the written product developed by counsel, filed with the court, and sent to the client. Indeed, the *Anders* process seldom encompasses the opportunity for either counsel or client to personally appear before the court. So, the

quality of that written product in both appearance and substance is of utmost importance.

The *Anders* brief provided at bar fell short of what must be expected. It would have benefitted from greater attention to detail and enhanced analysis.[2] Yet, its tenor did not reflect the accuracy of counsel's representation. As previously stated, our independent review of the entire record confirmed the absence of an arguable appellate issue.

Accordingly, the final order terminating the parental rights of G.G. and L.M. to K.M. is affirmed. However, we deny counsel's motion to withdraw. *See In re P.M.*, 520 S.W.3d 24, 27 (Tex. 2016) (per curiam) (holding that (1) the right to appointed counsel under § 107.013(a)(1) of the Family Code includes the exhaustion of appellate remedies through the Texas Supreme Court, (2) counsel's belief that his client has no grounds to seek further review is not alone good cause to permit counsel's withdrawal, and (3) appointed counsel's obligations can be satisfied by filing a petition for review with the Supreme Court comporting with *Anders*). Should counsel for G.G. and L.M. seek further relief here or elsewhere, we trust the written materials will reflect the seriousness of the effort.

Brian Quinn
Chief Justice

[2] For instance, counsel argued that the trial court's decision to terminate had sufficient evidentiary support. Some effort was spent in referring to evidence illustrating the existence of the statutory ground warranting termination. Nothing was said about the evidence touching upon child's best interests, even though both elements must be proved to support termination.