



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

No. 07-18-00069-CV

IN THE INTEREST OF X.S., A CHILD

On Appeal from the County Court at Law No. 1
Randall County, Texas
Trial Court No. 71,072-L1, Honorable Jack M. Graham, Presiding

April 18, 2018

MEMORANDUM OPINION

Before **CAMPBELL** and **PIRTLE** and **PARKER, JJ.**

Appellant, J.S., appeals the trial court's order terminating his parental rights to his son, X.S.¹ Appointed counsel for J.S. has filed an *Anders*² brief in support of a motion to withdraw. Finding no arguable grounds for appeal, we affirm the judgment of the trial court.

¹ To protect the privacy of the parties involved, we refer to them by their initials. See TEX. FAM. CODE ANN. § 109.002(d) (West Supp. 2017); TEX. R. APP. P. 9.8(b).

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

Background

The Department of Family and Protective Services became involved with X.S. on October 26, 2016, because of concerns of homelessness and ongoing domestic violence and drug use by X.S.'s parents. The Department's investigator interviewed X.S. at school, spoke to his school counselor, and spoke to A.S.³ and J.S. According to X.S., he did not have a place to live. His parents recently moved to Amarillo from Elkhart, Kansas. The three of them had been staying at the Executive Inn for a couple of weeks. After his parents got into a fight, J.S. made them leave. A.S. called the police for assistance in getting their belongings. A.S. and X.S. spent the night with an aunt, then stayed with "someone he didn't know." He did not know where he was going to stay next.

A.S. confirmed the violence in her relationship with J.S. Although A.S. and J.S. were divorced, they maintained a relationship and A.S. was financially dependent on him. In July of 2016, A.S. had moved to Amarillo to await a hearing on a motion to revoke her deferred adjudication probation. A.S. tested positive for methamphetamine in August and November of 2016. In a telephone interview, J.S. admitted that he had a history of drug use and recently used methamphetamine. He also admitted to violence in his relationship with A.S. but maintained that she was the aggressor.

On November 18, 2016, the Department filed a petition seeking conservatorship and termination of parental rights. Following an adversary hearing, the Department was appointed temporary managing conservator and X.S. was placed with his maternal aunt

³ A.S. is the mother of X.S. Her parental rights were also terminated. Her appeal was resolved in cause number 07-17-00422-CV.

in Amarillo. His maternal grandmother came to Amarillo to help take care of him until her home in Kansas could be approved as a placement.

The Department developed a service plan for J.S. According to the plan, J.S. was required to: abstain from the use of illegal drugs; submit to random drug screens; complete a substance abuse assessment and follow recommendations; locate stable housing and employment; take parenting classes; complete a psychological evaluation; attend couple's therapy, individual counseling, and anger management classes; participate in rational behavior therapy (RBT); participate in the Batterer Intervention and Prevention Program (BIPP); attend visits with X.S., and pay child support.

On April 17, 2017, J.S. tested positive for methamphetamine. He did not complete the recommended drug rehabilitation services. J.S. failed to pay child support and he did not complete anger management classes, RBT, or BIPP.

J.S. maintained visitation with X.S. in Amarillo and in Elkhart, Kansas, prior to moving to Canton, Texas in August of 2017. After A.S. was released from prison,⁴ J.S. completed a parenting class, attended a couple's counseling class with A.S., and began attending Alcoholics Anonymous meetings in September 2017. He completed an alcohol and drug assessment and began outpatient drug rehabilitation services on October 10, 2017. Although he was notified of the final hearing, J.S. did not appear.

X.S. is "very happy" in his placement with his maternal grandparents. He is doing well in school and he is playing football. He visits his paternal grandmother and his two

⁴ During the pendency of the termination case, A.S. pled true to the allegations of a motion to revoke her deferred adjudication probation. She was incarcerated from February 2 through August 8, 2017.

half-siblings. X.S. loves his parents but he does not want to live with them. X.S. was aware of the termination trial and experienced “bad dreams” and stress about returning to his parents’ care. X.S.’s maternal grandparents plan to adopt him.

On October 30, 2017, the trial court terminated J.S.’s parental rights on the grounds of endangering conditions, endangerment, and failure to comply with a court order that established actions necessary to retain custody of the child. See TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O) (West Supp. 2017).⁵ The trial court also found that termination was in the best interest of X.S. See § 161.001(b)(2).

Analysis

Pursuant to *Anders*, J.S.’s court-appointed appellate counsel has filed a brief certifying that she has diligently searched the record and has concluded that the record reflects no arguably reversible error that would support an appeal. *In re Schulman*, 252 S.W.3d 403, 406 n.9 (Tex. Crim. App. 2008) (orig. proceeding); *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 re L.J.*, No. 07-14-00319-CV, 2015 Tex. App. LEXIS 427, at *2-3 (Tex. App.—Amarillo Jan. 15, 2015, no pet.) (mem. op.) (same).

Counsel certifies that 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*

⁵ Further references to provisions of the Texas Family Code will be by reference to “section ___” or “§ ___.”

D.A.S., 973 S.W.2d 296, 297 (Tex. 1998) (orig. proceeding). Counsel has complied with the requirements of *Anders* by providing a copy of the brief, motion to withdraw, and appellate record to J.S., and notifying him of his right to file a pro se response if he desired to do so. *Id.*; *Kelly v. State*, 436 S.W.3d 313, 319-20 (Tex. Crim. App. 2014); *In re L.V.*, No. 07-15-00315-CV, 2015 Tex. App. LEXIS 11607, at *2-3 (Tex. App.—Amarillo Nov. 9, 2015) (order) (per curiam). J.S. 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 standard falls between the civil preponderance of the evidence standard and the reasonable doubt standard of criminal proceedings. *Id.* at 73. Clear and convincing evidence is that “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 2014). Reviewing the legal sufficiency of the evidence supporting parental termination requires us to review “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 that its finding was true.” *In re J.F.C.*, 96 S.W.3d at 266. In a factual sufficiency review, we are to determine whether, on the entire record, a factfinder 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, 28-29 (Tex. 2002); *In re T.B.D.*, 223 S.W.3d 515, 517 (Tex. App.—Amarillo 2006, no pet.). By her *Anders* brief, counsel concludes that reversible error is not present because sufficient evidence supports termination under subsection (O). See *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(b)(1) 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 *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 factfinder could have formed a firm belief or conviction that sufficient evidence existed to support at least one ground for termination, and that termination of J.S.'s parental rights was in the child's best interest. See *In re A.V.*, 113 S.W.3d at 362; *In re T.N.*, 180 S.W.3d at 384. After reviewing the record and the *Anders* brief, we agree with counsel that there are no plausible grounds for reversal.

Accordingly, the trial court's order terminating J.S.'s parental rights to the child is affirmed.⁶

Judy C. Parker
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).