



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

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No. 07-19-00105-CV

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**IN THE INTEREST OF M.M., K.M., I.T., B.J., P.M.,  
I.M., JR., J.M., AND J.N.M., CHILDREN**

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**On Appeal from the 237th District Court  
Lubbock County, Texas  
Trial Court No. 2014-513,191; Honorable Les Hatch, Presiding**

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August 21, 2019

**OPINION**

**Before QUINN, CJ., and CAMPBELL and PIRTLE, JJ.**

Appellant, C.M., appeals the trial court's order terminating her parental rights to her children, M.M., K.M., I.T., B.J., P.M., I.M., Jr., J.M., and J.N.M.<sup>1</sup> In presenting this appeal, appointed counsel has filed an *Anders*<sup>2</sup> brief in support of her motion to withdraw.

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<sup>1</sup> Multiple fathers' rights were also terminated but those fathers did not appeal. To protect the privacy of the parents and their children, we refer to them by their initials. See TEX. FAM. CODE ANN. §109.002(d) (West Supp. 2018). See also TEX. R. APP. P. 9.8(b). Throughout the remainder of this opinion, we will cite provisions of the Texas Family Code as "§\_\_\_\_" and "section \_\_\_\_."

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

We affirm the trial court's order terminating C.M.'s parental rights, but we defer ruling on counsel's motion to withdraw.

## **BACKGROUND**

Based upon an outcry from one of C.M.'s children in 2017, the Texas Department of Family and Protective Services initiated an investigation and ultimately removed the children from C.M.'s care for neglectful supervision, physical neglect, and physical abuse. Prior to the removal, C.M. and her children had an extensive history with the Department dating back to 2006.<sup>3</sup>

C.M. and the Department executed a family service plan with a goal of family reunification. C.M.'s caseworker reviewed the family service plan with C.M. and explained the services she needed to complete. C.M. acknowledged the requirements of the plan but she did not complete her services. She offered lack of transportation as an excuse.<sup>4</sup>

At the final hearing, the Department's evidence established that C.M. had engaged in a pattern of behavior that exposed her children to domestic violence wherein the children regularly observed I.M. verbally and physically abuse their mother. The children also suffered repeated physical and emotional abuse by I.M., underwent repeated

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<sup>3</sup> As recently as 2014, the Department closed a termination proceeding against C.M. involving many of the same children wherein she completed her domestic abuse classes, parenting classes, and individual counseling sessions. Her boyfriend, I.M., father of I.M., Jr., P.M., J.M., and J.N.M. was also a party to the termination proceedings and completed approximately one-half of his services. When the children were removed in 2017, I.M. continued to live with C.M. in a single hotel room with the children and was a major factor in their abuse and neglect. As previously noted, his parental rights were also terminated.

<sup>4</sup> During her periods of absence, the Department had provided her with bus passes; she owned a car that could be driven by her daughter's boyfriend to attend appointments; and when she did attend, she usually walked to appointments.

exposure to drug use (resulting in positive drug tests for several children), participated in numerous and unplanned housing changes between shelters, hotels, and apartments (creating emotional instability for the children), lived in unsanitary conditions, and were exposed to sexual behavior between their mother and I.M. At the time of the children's removal, C.M., in order to placate I.M., had failed to enroll the children in school or supply necessary medications. She also abandoned two children as runaways and misspent the disability checks of two other children by relying on them as the family's only source of income.

Regarding the children's best interests, the Department's evidence established that the children were well placed. Many were in stable homes where the foster parents intended to adopt them. Others were placed at Boy's Ranch where they will, in all probability, remain until permanent placements can be found. Their caseworker testified that termination was in their best interests because the children would remain in environments that were safe, stable, and free of domestic violence and drug use. She testified that their basic needs were being met and the behaviors exhibited by the children that were caused by their prior home environment were significantly improving and would continue to improve with individual counseling.

C.M.'s testimony largely corroborated the Department's evidence. She agreed she had a pattern of choosing the wrong men, there was domestic violence that occurred where they were living, and drugs were used around the children. She was constantly moving, and she had improperly used disability checks intended for her children to support her family while she was unemployed for extended periods of time. Although she candidly admitted that she had a pattern of decisions that placed her children in

dangerous positions, her desire was that she be allowed to keep the children and live in a rent house she had acquired shortly before the final hearing.

On November 5, 2018, a duly appointed and assigned associate judge entered an *Order of Termination* finding that termination of C.M.'s parental rights was in the children's best interests. The order found, by clear and convincing evidence, that C.M. (1) knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endangered their physical or emotional well-being, (2) engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangered their physical or emotional well-being, and (3) failed to comply with the provisions of a court order that specifically established the actions necessary for C.M. to obtain the return of her children. See §161.001(b)(1)(D), (E), (O) (West Supp. 2018).

On February 28, 2019, the trial court held a *de novo* hearing at C.M.'s request. For the same reasons set forth in the initial *Order of Termination*, the referring court terminated C.M.'s parental rights to the children. A new *Order of Termination* was signed on March 25, 2019, and this appeal timely followed.

#### **APPLICABLE LAW**

The Texas Family Code permits a court to terminate the parent-child relationship if the Department establishes one or more acts or omissions enumerated under section 161.001(b)(1) and termination of that relationship is in the child's best interest. See § 161.001(b)(1), (2) (West Supp. 2018). See also *Holley v. Adams*, 544 S.W.2d 367, 370 (Tex. 1976). The burden of proof is by clear and convincing evidence. § 161.206(a-1) (West Supp. 2018). "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 2014).

Only one statutory ground is needed to support termination though the trial court must also find that termination is in a child’s best interest. *In re K.C.B.*, 280 S.W.3d 888, 894-95 (Tex. App.—Amarillo 2009, pet. denied). In reviewing a termination proceeding, the standard for sufficiency of evidence is that discussed in *In re K.M.L.*, 443 S.W.3d 101, 112-13 (Tex. 2014). In reviewing a best interest finding, appellate courts consider, among other evidence, the factors set forth in *Holley*, 544 S.W.3d at 371-72.

***ANDERS V. CALIFORNIA***

The procedures set forth in *Anders v. California*, pertaining to a non-meritorious appeal of a criminal conviction, are applicable to a non-meritorious appeal of an order terminating parental rights. See *In re A.W.T.*, 61 S.W.3d 87, 88 (Tex. App.—Amarillo 2001, no pet.). In support of her motion to withdraw filed in conjunction with C.M.’s brief, counsel certifies she has conducted a conscientious examination of the entire record, and in her 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 that she has complied with the requirements of *Anders* by (1) providing a copy of the brief to C.M. and (2) notifying C.M. of her right to file a *pro se* response if she desired to do so. *Id.* By letter, this court also granted C.M. an opportunity to exercise her right to file a response to counsel’s brief, should she be so inclined. C.M. did not file a response. The Department notified this court it would not file a response unless specifically requested to do so. No such request was made.

***IN RE N.G.***

Recently, the Texas Supreme Court instructed appellate courts that due process requires a heightened standard of review of a trial court's findings under section 161.001(b)(1)(D) or (E), even when another ground for termination is sufficient because of the potential collateral consequences to an appellant's parental rights concerning a different child. See *In re N.G.*, No. 18-0508, 2019 Tex. LEXIS 465, at \*5, \*8 (Tex. May 17, 2019) (per curiam). The Court held that because section 161.001(b)(1)(M) provides for the termination of parental rights if there is clear and convincing evidence that the parent has had his or her parental rights terminated with respect to another child based on a finding that his or her conduct violated subsection (D) or (E), an appellate court denies an appellant a "meaningful appeal and eliminates the parent's only chance for review of a finding that will be binding as to parental rights to other children" if that court does not review a termination based upon either of those subsections. *Id.* at \*8-9 (citing *In re S.K.A.* 236 S.W.3d 875, 890 (Tex. App.—Texarkana 2007, pet. denied)).<sup>5</sup>

In light of *In re N.G.*, this court requested additional briefing. In C.M.'s *Supplemental Brief*, her counsel concludes the trial court's findings with respect to (D) and (E) were sufficiently supported by evidence of domestic violence and drug use in the presence of the children.

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<sup>5</sup> *But see In re E.K.*, 10-19-00070-CV, 2019 Tex. App. LEXIS 6580, at \*6 n.4 (Tex. App.—Waco July 31, 2019, no pet. h.) (Gray, C.J. concurring) (declining to impose the holding in *In re N.G.* to an *Anders* termination appeal "until the Supreme Court of Texas makes it clear the *N.G.* applies to this type of appeal").

### **SECTION 161.001(b)(1)(D)**

Subsection (D) permits termination when clear and convincing evidence shows that the parent knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child. See § 161.001(b)(1)(D).

Subsection (D) requires a showing that the environment in which the child was placed posed a danger to the child's physical or emotional health, and it permits termination based on a single act or omission by the parent. *In re J.A.S.*, No. 07-12-00150-CV, 2012 Tex. App. LEXIS 8067, at \*14 (Tex. App.—Amarillo Sept. 25, 2012, no pet.) (mem. op.) (citing *In re R.D.*, 955 S.W.2d 364, 367 (Tex. App.—San Antonio 1997, pet. denied)). Subsection (D) concerns the child's living environment, rather than the parent's conduct, though parental conduct may produce an endangering environment. *Jordan v. Dossey*, 325 S.W.3d 700, 721 (Tex. App.—Houston [1st Dist.] 2010, pet. denied). It is not necessary that the child's living environment directly threaten the child or that the child be injured, but the parent must at least be aware of the potential for danger to the child in such an environment and must have disregarded that risk. *In re S.M.L.*, 171 S.W.3d 472, 477 (Tex. App.—Houston [14th Dist.] 2005, no pet.). Illegal drug use and criminal activity support a conclusion that the child's surroundings endanger his or her physical or emotional well-being. *In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.). The relevant time frame under this subsection is prior to the child's removal. *In re O.R.F.*, 417 S.W.3d 24, 37 (Tex. App.—Texarkana 2013, pet. denied).

### **SECTION 161.001(B)(1)(E)**

Subsection (E) permits termination when clear and convincing evidence shows that the parent has engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the child's physical or emotional well-being. See § 161.001(b)(1)(E).

Under subsection (E), the relevant inquiry is whether evidence exists that the endangerment of the child's physical or emotional well-being was the direct result of the parent's conduct, including acts, omissions, and failures to act. *In re J.T.G.*, 121 S.W.3d at 125. Termination under subsection (E) must be based on more than a single act or omission. A voluntary, deliberate, and conscious course of conduct by a parent is required. *Id.* Thus, while both subsections (D) and (E) focus on endangerment, they differ regarding the source and proof of endangerment. *In re S.M.L.*, 171 S.W.3d at 477. To support a finding of endangerment, the parent's conduct does not necessarily have to be directed at the child nor is the child required to actually suffer injury. *Texas Dep't of Human Services v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987) (reversing appellate court's holding that father's imprisonment did not endanger the emotional and physical well-being of a child).

### **ANALYSIS**

As in a 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.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 and that termination of C.M.'s parental rights was in the children's best interests. See § 161.001(b)(1), (2) (West Supp. 2018). See also *Gainous v. State*, 436 S.W.3d 137, 137-38 (Tex. Crim. App. 1969). Specifically, we conclude the trial court's findings with respect to subsections (D) and (E) and its finding with respect to the best interests of the children were supported by the evidence. Having reviewed the entire record, we agree with counsel that there are no plausible grounds for appeal.

### **CONCLUSION**

We affirm the trial court's order terminating C.M.'s parental rights. Due to counsel's continuing responsibility to her client, we take no action on her motion to withdraw.<sup>6</sup>

Patrick A. Pirtle  
Justice

Quinn, C.J., concurring.

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<sup>6</sup> An *Anders* motion to withdraw filed in the court of appeals, in the absence of additional grounds for withdrawal, may be premature. See *In re P.M.*, 520 S.W.3d 24, 27 (Tex. 2016) (per curiam). Courts have a duty to see that withdrawal of counsel will not result in prejudice to the client. *Id.* In light of *In re P.M.*, 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 in the Texas Supreme Court. Accordingly, we take no action on counsel's pending motion to withdraw.