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

No. 07-22-00156-CV

IN THE INTEREST OF H.G., A CHILD

On Appeal from the 72nd Judicial District Court
Lubbock County, Texas,
Trial Court No. 2019-536,090, Honorable William C. Sowder, Presiding

August 29, 2022

## MEMORANDUM OPINION

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

Appellant, D.D. (Father), appeals from the district court's final order terminating his parental rights to H.G.[1] Appellee is the Texas Department of Family and Protective Services. The Department's case for termination of parental rights against Father and Mother was tried before the associate judge of the referring court. By order, that court terminated the parental rights of both parents. Mother did not seek review. Father requested and received a de novo hearing by jury before the referring district court. The

[1] To protect H.G.'s privacy, we will refer to him by initials, to D.D. as "Father," and to H.G.'s mother, V.R., as Mother. *See* TEX. FAM. CODE ANN. § 109.002(d); TEX. R. APP. P. 9.8(b).

case was tried over three days during April 2022. Following the close of evidence, the district court submitted a charge separately inquiring of whether Father committed acts identified in predicate grounds (D), (E), and (O) and whether termination was in the best interest of H.G.[2] The jury answered "yes" to each of the questions. The district court signed a written judgment accordingly and this appeal followed.

Father's court-appointed appellate counsel has filed a motion to withdraw from the representation, supported by an *Anders* brief.[3] After reviewing the entire record we find no arguable ground for reversal and affirm the district court's final order of termination.

## Analysis

Counsel's *Anders* brief presents a professional evaluation of the record supporting her opinion the case presents no arguable ground for appeal. *See Anders,* 386 U.S. at 744–45.[4] We find that counsel's motion to withdraw and brief meet the requirements of *Anders*. Counsel also showed she provided Father a copy of her motion to withdraw, brief, and the record, and notified Father of his right to file a pro se response if desired. *See Kelly v. State,* 436 S.W.3d 313, 319 (Tex. Crim. App. 2014). By letter from the Clerk of this Court, Father was notified of his opportunity to respond to counsel's brief. Father

[2] *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O) and (2); TEX. R. CIV. P. 277; *In re J.W.*, 645 S.W.3d 726, 750–52 (Tex. 2022) (discussing broad-form submission of jury questions in termination of parental rights cases).

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

[4] *See In re P.M.*, 520 S.W.3d 24, 27 n.10 (Tex. 2016) (per curiam) (noting the *Anders* procedure strikes a balance between the indigent parent's statutory right to appointed counsel on appeal in a termination case and counsel's obligation not to prosecute frivolous appeals).

did not submit a response. The Department notified us it would not file a response unless specifically requested. We made no request.

As a part of our *Anders* review, we examine the entire record to decide whether counsel has correctly determined that no arguable ground for appeal exists. *See Stafford v. State,* 813 S.W.2d 503, 511 (Tex. Crim. App. 1991); *In re A.W.T.,* 61 S.W.3d 87, 89 (Tex. App.—Amarillo 2001, no pet.). This includes considering whether legally and factually sufficient evidence supports the jury's findings. *See In re A.C.,* No. 07-21-00306-CV, 2022 Tex. App. LEXIS 1801, at *5 n.4 (Tex. App.—Amarillo Mar. 16, 2022, no pet.) (mem. op.) (noting in a termination of parental rights case the correct standard of review is sufficiency of the evidence) (citation omitted). The well-established standards for reviewing the sufficiency of evidence on appeal are discussed in our opinion in *In re A.M.*, No. 07-21-00052-CV, 2021 Tex. App. LEXIS 5447 (Tex. App.—Amarillo July 8, 2021, pet. denied) (mem. op.).

Via section 161.001(b) of the Texas Family Code, our Legislature authorizes courts to order the involuntary termination of the parent-child relationship when evidence shows the parent engaged in at least one of twenty-one enumerated predicate acts or omissions, provided that termination is in the best interest of the child. *See* TEX. FAM. CODE ANN. § 161.001(b)(1),(2). Only one predicate ground finding is necessary to support termination of parental rights when there is also a finding that termination is in a child's best interest. *In re J.F.-G.,* 627 S.W.3d 304, 312 (Tex. 2021).

A finding that a parent engaged in conduct supporting termination under predicate grounds (D) or (E) potentially affects the parent's relationships with other children. *See*

TEX. FAM. CODE ANN. § 161.001(b)(1)(M) (authorizing courts to terminate the parent-child relationship when the parent's relationship with another child has been terminated for a violation of predicate grounds (D) or (E)). In an ordinary appeal, our Supreme Court has held that when a parent challenges a trial court's (D) or (E) ground finding on appeal, "due process and due course of law requirements mandate that an appellate court detail its analysis for an appeal of termination of parental rights under section 161.001(b)(1)(D) or (E) of the Family Code." *In re N.G.,* 577 S.W.3d 230, 237 (Tex. 2019) (per curiam). That Court has not definitively instructed, however, whether an appellate court must detail its analysis of the evidence supporting (D) and (E) grounds for termination in the *Anders* context. *See In re E.K.*, 608 S.W.3d 815, 815 (Tex. 2020) (Green, J., concurring in denial of petition for review). At least two of our sister courts have chosen not to provide a detailed analysis under (D) and (E) grounds in an *Anders* disposition. *See In re A.D.,* Nos. 10-21-00324-CV, 10-21-00330-CV, 2022 Tex. App. LEXIS 2796 (Tex. App.—Waco Apr. 27, 2022, pet. denied) (mem. op.) (father's appeal); *In re J.P.*, No. 14-21-00272-CV, 2021 Tex. App. LEXIS 7567, at *2 n.1 (Tex. App.—Houston [14th Dist.] Sept. 14, 2021, pet. denied) (mem. op.).

Here, Father has not challenged the (D) or (E) ground findings on appeal. Because termination of the parent-child relationship between Father and another child under predicate ground (M) in a subsequent suit could be based on either a (D) or (E) ground finding in the present case, we will take the expression of our analysis no further than predicate ground (E). *See In re E.K.,* 594 S.W.3d 435, 438 n.3 (Tex. App.—Waco 2019) (Gray, C.J., concurring) (noting in *Anders* context court would not undertake obligation of *In re N.G.* to "show [its] work" until directed by Supreme Court of Texas)*, pet. denied,* 608

S.W.3d 815 (Tex. 2020). We discuss the predicate ground (E) finding not only because it potentially supplies the basis for a subsequent (M) ground finding but because of its unique operation here. The applicable law was that given the jury by the trial court through its instructions, including those concerning criminality, and juxtaposed with those instructions was Father's substantial criminal record.

***Predicate Ground (E)***

Predicate ground (E) is satisfied by proof that the parent engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangered the physical or emotional well-being of the child. TEX. FAM. CODE ANN. § 161.001(b)(1)(E). Relevant here, the district court's charge to the jury included the following instructions:

> Evidence of a parent's criminal history, convictions, and resulting imprisonment may establish [an] endangering course of conduct.
>
> * * *
>
> "Engaged in Conduct" can be considered as endangering the child's physical or emotional wellbeing by the following things:
>
> 1. absence from his childhood because of incarceration,
> 2. criminal activity,
> 3. not monitoring the child's safety during prison,
> 4. minimal effort to contact the child, and
> 5. not part of the child's health[,] education[,] or wellbeing.

Because these instructions were submitted to the jury without objection, we assess the sufficiency of the evidence in light of the charge submitted. *See Osterberg v. Peca,* 12 S.W.3d 31, 55 (Tex. 2000) ("it is the court's charge, not some other unidentified law, that

measures the sufficiency of the evidence when the opposing party fails to object to the charge.").

We find that the evidence of Father's "criminal history, convictions, and resulting imprisonment" sufficiently supports an endangering-course-of-conduct finding under the trial court's instruction. We further find that sufficient evidence overwhelmingly supports a finding that Father engaged in endangering conduct as charged by the trial court. Because of the detailed evidence regarding his lengthy criminal history and convictions,[5] Father was absent during H.G.'s childhood due to incarceration. During his time in jail and prison, Father engaged in minimal effort to contact the child. Evidence suggests Father wrote a single letter to H.G. Upon his return to the county jail for appearance at the de novo hearing, the evidence shows Father availed himself of the facility's video call

[5] Testimonial and documentary evidence established Father was:

- convicted in 2001 of "assault-domestic" and sentenced to thirty-days' confinement in the county jail;
- convicted in 2003 of burglary of a habitation and sentenced to four years' confinement in prison;
- convicted in 2005 of tampering with a government record and sentenced to nine months' confinement in a state jail facility;
- convicted in 2008 of burglary of a habitation and sentenced to six years' confinement in prison;
- convicted in 2012 of unauthorized use of a vehicle and sentenced to nine months' confinement in a state jail facility;
- convicted in 2013 of failure to identify and sentenced to forty-five days' confinement in the county jail;
- convicted in 2015 of evading arrest in a vehicle and felon in possession of a firearm and sentenced to five years' confinement in prison; and
- arrested for aggravated assault-serious bodily injury and deadly weapon in February or March 2018 and continuously incarcerated thereafter in the county jail before pleading guilty in December 2021 and receiving a five-year prison sentence with credit for time served.

and text messaging systems to converse with three women. He chose not to use those communicative tools, however, to communicate with the Department or anyone else, for that matter, on behalf of H.G. Moreover, from the evidence the jury was entitled to believe Father took no part in H.G.'s health, education, or wellbeing. After reviewing the evidence in the light most favorable to the verdict and in a neutral light, we hold that the jury's verdict on predicate ground (E) is supported by legally and factually sufficient evidence.

## Conclusion

Based on our review of the record, we conclude that a reasonable factfinder could have formed a firm belief or conviction that a ground for termination existed and that termination of Father's parental rights was in the best interest of H.G. *See* TEX. FAM. CODE ANN. § 161.001(b)(1),(2). We agree with counsel that there are no plausible grounds for reversal.[6] The final order of the district court terminating Father's parental rights to H.G. is affirmed.

Lawrence M. Doss
Justice

[6] We take no action on counsel's motion to withdraw from representation but call counsel's attention to the continuing duty of representation through the exhaustion of proceedings, which may include filing a petition for review in the Supreme Court of Texas. *See In re P.M.,* 520 S.W.3d at 27.