



IN THE
TENTH COURT OF APPEALS

No. 10-15-00281-CV

IN THE INTEREST OF R.R.H. AND J.L.H., CHILDREN

From the 66th District Court
Hill County, Texas
Trial Court No. 51866

MEMORANDUM OPINION

Melissa L. appeals from a judgment that terminated the parent-child relationship between her and her children, R.R.H. and J.L.H. See TEX. FAM. CODE ANN. § 161.001 (West 2008). In presenting this appeal, Melissa's appointed counsel has filed an *Anders* brief in support of a motion to withdraw. See *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed.2d 493 (1967). We grant Melissa's counsel's motion to withdraw and affirm the judgment of the trial court.

Anders v. California

The procedures set forth in *Anders v. California* are applicable to appeals of orders terminating parental rights. *In re E.L.Y.*, 69 S.W.3d 838, 841 (Tex. App.—Waco 2002,

order) (per curiam) (applying *Anders* to parental termination appeals). *See also Taylor v. Texas Dep't of Protective & Regulatory Servs.*, 160 S.W.3d 641, 646-647 (Tex. App.—Austin 2005, pet. denied). In support of Melissa's counsel's motion to withdraw, counsel certifies that a conscientious examination of the record has been conducted and, in his opinion, the record reflects no potentially plausible basis to support an appeal. Counsel certifies that he has diligently researched the law applicable to the facts and issues and candidly discusses why, in his professional opinion, Melissa's appeal is frivolous. *In re D.A.S.*, 973 S.W.2d 296, 297 (Tex. 1998). Counsel has demonstrated compliance with the requirements of *Anders* by (1) providing a copy of the brief to Melissa and (2) notifying her of her right to file a *pro se* response if she desired to do so. *Id.* Although she was granted an extension of time to do so, Melissa has not filed a *pro se* response to the *Anders* brief.

Upon receiving a "frivolous appeal" brief, this Court must conduct a full examination of all proceedings to determine whether the case is wholly frivolous. *See Penson v. Ohio*, 488 U.S. 75, 80, 109 S. Ct. 346, 349-50, 102 L. Ed. 2d 300 (1988); *see also In re M.A.R.*, No. 10-10-00237-CV, 2011 Tex. App. LEXIS 3596, at *2 (Tex. App.—Waco May 11, 2011, no pet.) (mem. op.).

Standard of Review in Termination Cases

Due process requires application of the clear and convincing standard of proof in cases involving involuntary termination of parental rights. *In re J.F.C.*, 96 S.W.3d 256,

263 (Tex. 2002). Clear and convincing evidence is that measure or degree of proof which 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. See TEX. FAM. CODE ANN. § 101.007. See also *In re C.H.*, 89 S.W.3d 17, 25-26 (Tex. 2002).

The Family Code permits a court to order termination of parental rights if the petitioner establishes one or more acts or omissions enumerated under subsection (1) of the statute and also proves that termination of the parent-child relationship is in the best interest of the child. See TEX. FAM. CODE ANN. § 161.001; *Holley v. Adams*, 544 S.W.2d 367, 370 (Tex. 1976).

Acts or Omissions

The order of termination recites that Melissa:

knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endangered the physical or emotional well-being of the child;

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;

constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services or an authorized agency for not less than six months, and: (1) the department or authorized agency has made reasonable efforts to return the child to the parent; (2) the parent has not regularly visited (3) or maintained significant contact with the child; and the parent has demonstrated an inability to provide the child with a safe environment;

failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the

child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse and neglect of the child; and [sic]

TEX. FAM. CODE ANN. § 161.001(1)(D), (E), (N), & (O).

Appellate counsel was appointed for Melissa. A motion for new trial was filed in this proceeding, but there is nothing in the record to indicate that a hearing was requested or held on the motion.

By the *Anders* brief, counsel evaluates potential issues on two of the grounds supporting termination, sections 161.001(1)(D) and (E). Counsel acknowledges that only one statutory ground is necessary to support an order of termination in addition to a finding that termination is in the children's best interest. *See In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003).

We have reviewed the record and agree with counsel's evaluation that there is clear and convincing evidence to support termination under sections 161.001(1)(D) and (E). Further, because only one statutory ground is necessary to support an order of termination, we need not evaluate the evidence as it pertains to the other grounds for termination alleged, subsections (N) and (O).

Best Interest of the Children

Notwithstanding the sufficiency of the evidence to support termination under section 161.001(1), we must also find clear and convincing evidence that termination of the parent-child relationship was in the children's best interest. *See* TEX. FAM. CODE

ANN. § 161.001(2). There is a long-standing non-exhaustive list of factors for a court to consider in deciding the best interest of a child in a termination case. See *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976).

The evidence to support the termination order regarding the best interest of the children was analyzed in counsel's brief and counsel concluded there is no arguable error. Counsel's brief evidences a professional evaluation of the record for error, and we conclude that counsel performed the duties required of an appointed counsel. After reviewing the record, we agree with counsel's evaluation that there is clear and convincing evidence under the appropriate legal and factual sufficiency standards for the trial court to have determined that termination of the parent-child relationship was in the best interest of R.R.H. and J.L.H.

Summary

After our review of the entire record and counsel's brief, we agree with counsel that there are no plausible grounds for appeal. See *Bledsoe v. State*, 178 S.W.3d 824, 827-28 (Tex. Crim. App. 2005). Accordingly, we affirm the trial court's judgment.

Motion to Withdraw

In accordance with *Anders*, counsel has filed a motion to withdraw in this appeal. See *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; see also *In re Schulman*, 252 S.W.3d 403, 407

n.17 (Tex. Crim. App. 2008). We grant counsel's motion to withdraw.¹ Within five days of the date of this Court's opinion, counsel is ordered to send a copy of the opinion and judgment to Melissa and to advise her of her right to pursue a petition for review in the Texas Supreme Court. *See In re K.D.*, 127 S.W.3d 66, 68 n.3 (Tex. App.—Houston [1st Dist.] 2003, no pet.).

Conclusion

Melissa's appellate counsel's motion to withdraw is granted. Therefore, the judgment of the trial court is affirmed.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Affirmed; Motion to Withdraw Granted
Opinion delivered and filed January 7, 2016
[CV06]



¹ No substitute counsel will be appointed. Should Melissa wish to seek further review of this case by this Court or the Texas Supreme Court, she must either retain an attorney to file a motion for rehearing or a petition for review or file a *pro se* motion for rehearing or a petition for review. Any motion for rehearing must be filed within fifteen days of this opinion. Any petition for review must be filed within forty-five days after the date of either this opinion or the last ruling by this Court on all timely-filed motions for rehearing. *See* TEX. R. APP. P. 53.7(a). Any petition for review must comply with the requirements of Texas Rule of Appellate Procedure 53.2. *See* TEX. R. APP. P. 53.2.