



IN THE  
TENTH COURT OF APPEALS

No. 10-16-00347-CV

IN THE INTEREST OF K.W., D.W. AND K.W., CHILDREN

From the 77th District Court  
Limestone County, Texas  
Trial Court No. CPS-275-A

---

---

MEMORANDUM OPINION

---

---

Kimberly and Roger appeal from an order that terminated the parent-child relationship between them and their children, K.W., D.W., and K.W. *See* TEX. FAM. CODE ANN. § 161.001 (West 2014).

Kimberly's and Roger's appointed counsel has filed an *Anders* brief<sup>1</sup> asserting that the appeal presents no issues of arguable merit. *See Anders v. California*, 386 U.S. 738, 87

---

<sup>1</sup> In a criminal case where an attorney has determined the appeal to be frivolous, the attorney must file a motion to withdraw accompanied by an "*Anders* brief" which assures the appellate court that the motion to withdraw is "well-founded." *In re Schulman*, 252 S.W.3d 403, 407 (Tex. Crim. App. 2008). There is no other option. In contrast, the Texas Supreme Court has determined that a frivolous appeal is not good cause to allow withdrawal of counsel. *In the Interest of P.M.*, No. 15-0171, 2016 Tex. LEXIS 236, at \*8 (Tex. Apr. 1, 2016). Thus, in civil termination appeals, an *Anders* motion to withdraw, in the absence of additional grounds for withdrawal, is premature. *Id.* at \*9.

S. Ct. 1396, 18 L. Ed.2d 493 (1967). 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). Counsel advised Kimberly and Roger that counsel had filed the brief pursuant to *Anders* and that Kimberly and Roger had the right to review the record and file a pro se response on their own behalf. Counsel also provided Kimberly and Roger with a copy of the record. Kimberly and Roger filed a response with this Court; the Department did not.

Counsel asserts in the *Anders* brief that counsel reviewed the trial court's jurisdiction and the entire record for any potentially meritorious issues, and determined there is no non-frivolous issue to raise in this appeal. Counsel's brief evidences a professional evaluation of the record, and we conclude that counsel performed the duties required of appointed counsel. *See Anders*, 386 U.S. at 744; *High v. State*, 573 S.W.2d 807, 812-813 (Tex. Crim. App. 1978); *see also In re Schulman*, 252 S.W.3d 403, 406-408 (Tex. Crim. App. 2008).

In their response to counsel's *Anders* brief, Kimberly and Roger assert that the visitation schedule was not accommodating to their location and work schedules; testimony regarding therapy was not consistent with what was actually occurring; they stopped seeing one therapist because they felt they were not being counseled but rather were being interrogated; and since January of 2016, they have had a stable and clean home for the children.

Upon the filing of the *Anders* brief, as the reviewing appellate court, it is our duty to independently examine the record to decide whether counsel is correct in determining that an appeal is frivolous. See *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991); 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.). Arguments are frivolous when they "cannot conceivably persuade the court." *McCoy v. Court of Appeals*, 486 U.S. 429, 436, 108 S. Ct. 1895, 100 L. Ed. 2d 440 (1988).

Having carefully reviewed the entire record and the *Anders* brief, as well as Kimberly's and Roger's response, we have determined that the appeal is frivolous. See *In re D.D.*, 279 S.W.3d 849, 850 (Tex. App.—Dallas 2009, pet. denied). Accordingly, we affirm the trial court's order of termination.

We note that counsel did not file a motion to withdraw as has historically been required in order to comply with the procedures set forth in *Anders* and its Texas progeny. However, the Texas Supreme Court has stated that the lack of an arguable issue and the subsequent filing of a motion to withdraw and an *Anders* brief in support may not be considered "good cause" for purposes of granting the *Anders* motion to withdraw pursuant to the Texas Family Code. See *In the Interest of P.M.*, No. 15-0171, 2016 Tex. LEXIS 236, \*7-8 (Tex. Apr. 1, 2016) ("[A]n *Anders* motion to withdraw brought in the court of appeals, in the absence of additional grounds for withdrawal, may be premature."). Accordingly, we no longer require a motion to withdraw when filing an *Anders* brief in

an appeal of an order terminating parental rights. *See In the Interest of G.P.*, 503 S.W.3d 531, 535-36 (Tex. App.—Waco 2016, pet. denied). Consequently, if Kimberly and Roger desire to file a petition for review, counsel is still under a duty to timely file with the Texas Supreme Court "a petition for review that satisfies the standards for an *Anders* brief." *See id.*

TOM GRAY  
Chief Justice

Before Chief Justice Gray,  
Justice Davis, and  
Justice Scoggins

Affirmed

Opinion delivered and filed September 6, 2017  
[CV06]

