# IN THE
# TENTH COURT OF APPEALS

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## No. 10-17-00372-CV

## IN THE INTEREST OF S.R., A CHILD

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**From the County Court at Law**
**Bosque County, Texas**
**Trial Court No. CV16242**

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## MEMORANDUM OPINION

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After Appellant's parental rights to his child, S.R., were terminated following a bench trial, Appellant's appointed appellate counsel filed a notice of appeal.[1] Appellant's counsel has now filed an *Anders* brief and a motion to withdraw.[2] Counsel asserts that he has diligently reviewed the record and that, in his opinion, the appeal is frivolous. *See Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967); *In re E.L.Y.*, 69 S.W.3d 838, 841 (Tex. App.—Waco 2002, order) (applying *Anders* to termination appeal).

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[1] The parental rights of the child's mother were also terminated, but she has not appealed.

[2] Appellant's counsel filed his motion to withdraw twice—once on March 2, 2018, and again on April 6, 2018. Because the motions are identical, we will treat them as one motion.

Counsel's brief meets the requirements of *Anders*; it presents a professional evaluation demonstrating why there are no arguable grounds to advance on appeal. *See In re Schulman*, 252 S.W.3d 403, 407 n.9 (Tex. Crim. App. 2008) ("In Texas, an *Anders* brief need not specifically advance 'arguable' points of error if counsel finds none, but it must provide record references to the facts and procedural history and set out pertinent legal authorities."); *Stafford v. State*, 813 S.W.2d 503, 510 n.3 (Tex. Crim. App. 1991). Appellant's counsel has carefully discussed why, under controlling authority, there is no reversible error in the trial court's final order of termination. Counsel has informed us that he has: (1) examined the record and found no arguable grounds to advance on appeal; (2) served a copy of the brief, motion to withdraw, and appellate record on Appellant; and (3) informed Appellant of his right to file a *pro se* response.[3] *See Anders*, 386 U.S. at 744, 87 S.Ct. at 1400; *Stafford*, 813 S.W.2d at 510 n.3; *High v. State*, 573 S.W.2d 807, 813 (Tex. Crim. App. [Panel Op.] 1978); *see also Schulman*, 252 S.W.3d at 409 n.23. Appellant did not file a *pro se* response.

Upon receiving an *Anders* brief, we must conduct a full examination of all the proceedings to determine whether the case is wholly frivolous. *Penson v. Ohio*, 488 U.S. 75, 80, 109 S.Ct. 346, 349-50, 102 L.Ed.2d 300 (1988). An appeal is "wholly frivolous" or

[3] Appellant's counsel stated that he served the documents on Appellant at his last known address but that Appellant has refused contact with him, with the Department of Family and Protective Services, and with CASA since the notice of appeal was filed at Appellant's request. This Court also sent a letter to Appellant at the address, notifying him that his counsel had filed an *Anders* brief and that he had thirty days from the date of the letter to file a response to the brief, but our letter was returned as undeliverable.

"without merit" when it "lacks any basis in law or fact." *McCoy v. Court of Appeals*, 486 U.S. 429, 439 n.10, 108 S.Ct. 1895, 1902 n.10, 100 L.Ed.2d 440 (1988). We have reviewed the entire record and counsel's brief and have found nothing that would arguably support an appeal. *See Bledsoe v. State*, 178 S.W.3d 824, 827-28 (Tex. Crim. App. 2005) ("Due to the nature of *Anders* briefs, by indicating in the opinion that it considered the issues raised in the briefs and reviewed the record for reversible error but found none, the court of appeals met the requirement of Texas Rule of Appellate Procedure 47.1."); *Stafford*, 813 S.W.2d at 509.

Although we have found nothing that would arguably support an appeal, we conclude that the order of termination requires modification. The reporter's record reflects that the trial court rendered judgment in open court upon its findings that Appellant had committed the following predicate violations—Family Code subsections 161.001(b)(1)(B), (D), (E), (N), and (O). *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(B), (D), (E), (N), (O) (West Supp. 2017). The written judgment reflects that the grounds for termination were Family Code subsections 161.001(b)(1)(B), (C), (D), (N), and (O). *See id.* § 161.001(b)(1)(B), (C), (D), (N), (O). Accordingly, we modify the trial court's order of termination to reflect the proper predicate violations—Family Code subsections 161.001(b)(1)(B), (D), (E), (N), and (O). The trial court's order of termination is affirmed as modified.

We deny counsel's motion to withdraw in accordance with *In re G.P.*, 503 S.W.3d 531, 534-36 (Tex. App.—Waco 2016, pet. denied). If Appellant, after consulting with counsel, desires to file a petition for review, Appellant's appellate 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."[4] *See In re P.M.*, 520 S.W.3d 24, 27-28 (Tex. 2016).

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
(Chief Justice Gray Dissents. A separate opinion will not follow.)
Affirmed as modified
Opinion delivered and filed May 8, 2018
[CV06]


[4] We do not address whether counsel's duty requires the filing of a petition for review or a motion for rehearing in the Texas Supreme Court in the absence of the client's professed desire to do so in *Anders* proceedings.