

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00184-CV

E. D., Appellant

v.

Texas Department of Family and Protective Services, Appellee

**FROM THE COUNTY COURT AT LAW NO. 1 OF WILLIAMSON COUNTY
NO. 15-0027-CPSC1, HONORABLE SUZANNE BROOKS, JUDGE PRESIDING**

MEMORANDUM OPINION

This is an appeal from a final decree, based on jury findings, terminating the parental rights of a mother, E.D., to her child, M.W. E.D.'s court-appointed counsel has filed a motion to withdraw and an *Anders* brief, concluding that the appeal is frivolous and without merit.¹ Counsel's brief meets the requirements of *Anders* by presenting a professional evaluation of the record and demonstrating that there are no arguable grounds for appeal.² E.D. was provided with a copy of counsel's brief and was advised of her right to examine the appellate record and to file a pro se brief. No pro se brief has been filed.

¹ See *Anders v. California*, 386 U.S. 738, 744 (1967); see also *Taylor v. Texas Dep't of Protective & Regulatory Servs.*, 160 S.W.3d 641, 646-47 (Tex. App.—Austin 2005, pet. denied) (applying *Anders* procedure in appeal from termination of parental rights).

² See *Anders*, 386 U.S. at 744; *Taylor*, 160 S.W.3d at 646-47.

At the termination trial, the jury heard evidence tending to show that E.D. had an extensive history with Child Protective Services (CPS). According to Jaclyn Roberts, a CPS investigator, E.D. had been hospitalized as a child “approximately four times and [placed] in a residential treatment center about four times” for “[s]uicidal statements or ideation,” which Roberts believed was a consequence of sexual abuse that E.D. had suffered as a child. Additionally, Roberts explained, E.D. had her parental rights to another child terminated in 2013. The prior termination proceedings, Roberts recounted, arose from “concerns about [E.D.’s] lack of parenting skills, lack of cognitive ability to take care of herself or the child, domestic violence between herself and [the father of the child], a pattern of homelessness and untreated mental health issues.” Roberts further testified that the current proceedings arose from similar concerns regarding E.D.’s mental health. Roberts recounted that during the prior proceedings, E.D. had “made statements that if she couldn’t have her child [D.W.] then nobody would, and made statements that she would kill [D.W.] if she couldn’t have him.” Roberts testified that CPS was concerned that E.D. might have similar thoughts regarding M.W. and was also concerned that E.D., given her ongoing mental-health issues, would not be able to adequately care for M.W.

During the CPS investigation, E.D. underwent a psychological evaluation by Dr. Ericka Brothers, a licensed clinical psychologist. Dr. Brothers testified that following the evaluation, she had diagnosed E.D. with major depressive disorder, posttraumatic stress disorder, and “another personality disorder with dependent and borderline features,” all of which, Brothers explained, would have adverse effects on E.D.’s parenting abilities. In Brothers’s view, “The point

[at] which I saw her, I would say that there's no question that she would not be capable of unsupervised—safe and unsupervised care of a child at that time.”

Other evidence considered by the jury included the testimony of Shelly Smith, a licensed professional counselor who had treated E.D. during multiple psychiatric hospitalizations and who testified that E.D. was “perpetually in crisis,” did not properly manage her medications, and had difficulty focusing on anything other than her own “skewed survival”; Diana Anthony, a conservatorship worker for the Department who had been assigned to the case and who testified that, based on her numerous interactions with E.D. during and after E.D.’s hospitalizations, she did not believe that E.D. had the ability to provide for the physical, emotional, and nurturing needs of a child; and Adrienne Sparks, the current placement for M.W., who testified that M.W. was doing well in Sparks’s household, which included other children, and that Sparks and her husband wanted to adopt M.W. and “parent her as best we can, as best as we’re able and love her as much as we possibly can.”

Based on the above and other evidence, the trial court submitted to the jury, as alternative statutory grounds within broad-form termination issues, whether E.D. had: (1) constructively abandoned the child; (2) failed to comply with the provisions of a court order that specifically established the actions necessary for her to obtain the return of the child; or (3) suffered from a mental or emotional illness or a mental deficiency that rendered her unable to provide for the physical, emotional, and mental needs of the child and that would continue to render her unable to provide for the child’s needs until the 18th birthday of the child.³ In addition to these alternative

³ See Tex. Fam. Code § 161.001(b)(1)(N), (O), .003(a).

statutory termination grounds, the broad-form termination question also submitted whether it was in the best interest of the child to terminate E.D.'s parental rights.⁴ The jury found that E.D.'s parental rights to her child should be terminated, and the trial court rendered judgment accordingly. This appeal followed.

We have reviewed the record and counsel's brief and agree that the appeal is frivolous and without merit. We find nothing in the record that might arguably support the appeal. We affirm the trial court's termination decree. We deny counsel's motion to withdraw.⁵

Bob Pemberton, Justice

Before Chief Justice Rose, Justices Pemberton and Bourland

Affirmed

Filed: August 18, 2016

⁴ *See id.* § 161.001(b)(2).

⁵ *See In re P.M.*, No. 15-0171, ___ S.W.3d ___, 2016 Tex. LEXIS 236, at *7-8 (Tex. Apr. 1, 2016). In *P.M.*, the Texas Supreme Court held that the right to counsel in suits seeking the termination of parental rights extends to "all proceedings in [the Texas Supreme Court], including the filing of a petition for review." *Id.* at *3. Accordingly, counsel's obligation to E.D. has not yet been discharged. *See id.* If E.D., after consulting with counsel, desires to file a petition for review, counsel should timely file with the Texas Supreme Court "a petition for review that satisfies the standards for an *Anders* brief." *Id.*