TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00862-CV

S. E. & F. J., Appellants

v.

Texas Department of Family and Protective Services, Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 53RD JUDICIAL DISTRICT
NO. D-1-FM-15-004170, HONORABLE SCOTT H. JENKINS, JUDGE PRESIDING

MEMORANDUM OPINION

This is an appeal from a final decree, based on jury findings, terminating the parental rights of S.E. and F.J. to their five children. Counsel for S.E. and F.J. have each filed a motion to withdraw and an *Anders* brief, concluding that the appeal is frivolous and without merit.[1] Each 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] S.E. and F.J. were each provided with a copy of their respective counsel's brief and advised of their right to examine the appellate record and to file a pro se brief. No pro se brief has been filed.

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[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.

During trial, the jury heard evidence tending to show that the Department's case against S.E. and F.J. began when the children subject to the suit were found playing in and around a minivan located at a Walmart parking lot. Claire McCullough, a social worker for the Austin Police Department Victim Services Unit who had responded to the scene, testified that the children, who were between the ages of two and nine at the time, were observed to be "pretty grimy and dirty" and only partially clothed—some of the children were not wearing shirts and shoes while they were running around the van and appeared to have urinated on themselves. According to McCullough, S.E., the mother of the children, was found asleep inside the van while the children were outside. After S.E. had been awakened, she explained to McCollough that "these were her children, that her husband or partner[, F.J.,] was at work, that they had been homeless for years, . . that they had stayed in shelters off and on, motels, doubled up with their family or friends, and also often slept in their car." McCollough testified that the interior of the vehicle was in "very, very poor condition," with the floor of the minivan "covered in dirty wrinkled papers, pieces of clothing, broken toys," and "old food parts, like chicken bones, like . . . old chicken wing bones just all over the floor of the car, and just kind of grimy dirt on the windows, that kind of thing." S.E. was subsequently arrested for outstanding traffic tickets, and the Department took custody of the children.

Other evidence tended to show that S.E. and F.J. had a history of domestic violence and drug use and that they had tested positive for marihuana and cocaine use while the case was ongoing. Additionally, the two oldest children claimed in interviews that S.E. and F.J. had physically abused them and that F.J. had sexually abused them, although S.E. and F.J. denied that any such abuse had occurred.

While the case was ongoing, the children had been placed with Y.E., S.E.'s sister, who testified that she wanted to adopt the children. There was evidence presented that it was in the best interest of the children to remain in the care of Y.E. and her husband. According to Shanti Duncan, a licensed professional counselor who had worked with and interviewed the children during the case, the children were "clearly comfortable living with their aunt. They have all reported feeling safe there. The two older children in particular have been very clear that that is where they want to live. And I think that that is in their best interest." Other witnesses for the Department testified similarly.

Based on the above and other evidence, the district court submitted to the jury, as alternative statutory grounds within broad-form termination issues, whether S.E. and F.J. had (1) engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangered the physical or emotional well-being of the children or (2) knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endangered the physical or emotional well-being of the children.[3] In addition to these alternative statutory termination grounds, the broad-form termination question also submitted whether it was in the best interest of the children to terminate S.E.'s and F.J.'s parental rights.[4] The jury found that S.E.'s and F.J.'s parental rights should be terminated and the trial court rendered judgment accordingly. This appeal followed.

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[3] *See* Tex. Fam. Code § 161.001(b)(1)(D), (E).

[4] *See id*. § 161.001(b)(2).

We have reviewed the record and counsels' briefs 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 district court's termination decree. We deny the motion to withdraw filed by each counsel.[5]

Bob Pemberton, Justice

Before Justices Puryear, Pemberton, and Goodwin

Affirmed

Filed: June 1, 2017

[5] *See In re P.M.*, No. 15-0171, 2016 Tex. LEXIS 236, at *7-8 (Tex. Apr. 1, 2016) (per curiam). 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, each counsel's obligation to his client has not yet been discharged. *See id*. If either S.E. or F.J., after consulting with their respective counsel, desires to file a petition for review, that counsel should timely file with the Texas Supreme Court "a petition for review that satisfies the standards for an *Anders* brief." *Id*.