

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00071-CV

M. R., Appellant

v.

Texas Department of Family and Protective Services, Appellee

**FROM THE DISTRICT COURT OF BELL COUNTY, 146TH JUDICIAL DISTRICT
NO. 268,363-B, HONORABLE JACK WELDON JONES, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant M.R. appeals from the trial court's order terminating his parental rights to his children, M.R., M.K., and T.R. In February 2014 , when the children were seven, five, and three years old, respectively, the Texas Department of Family and Protective Services (Department) filed suit to terminate M.R.'s parental rights, alleging that the children had been left unsupervised in the home, that the three-year-old child was afraid of M.R., and that the local police department was planning on taking M.R. into custody for abandonment of the children. At the conclusion of the initial hearing, the court appointed the Department as the temporary managing conservator of the children.¹

¹ The children's mother was incarcerated during the time periods discussed in this opinion and is not a party to the appeal.

In April, while M.R. was incarcerated, the trial court conducted a status hearing during which the court admitted the Department's family service plan that required M.R. to maintain a safe home, obtain employment, demonstrate his ability to meet the children's basic needs and submit to random drug testing. The Department's stated goal was family reunification. In August, the Department filed a report stating that M.R. had been uncooperative with the Department, that he had not submitted to drug testing since his release from custody, and that, in therapeutic settings, the children had individually made outcries of being exposed to sexualized behaviors while living in the home with their father. In November, the Department filed a report noting outcry allegations from the children that M.R. had given them alcohol and exposed himself to them while masturbating. The report also indicated that he was not providing any support to the caregivers with whom the children had been placed, that he had not been cooperative with the Department, that he had not completed his psychological or psychosexual evaluation, and that he had missed nearly all random drug screenings. The Department's stated goal had changed from family reunification to termination and adoption of the children.

In March 2015, the trial court commenced its final hearing before the associate judge, which was held over three separate days, concluding in May. The court terminated M.R.'s parental rights and made the Department the children's managing conservator. In May, M.R. exercised his right to a de novo final hearing. In October, the court commenced the de novo final hearing and heard testimony from a Department case worker; various relatives of M.R., with whom he requested that the children be given a permanent placement; and the guardian ad litem for the children. In November, at the conclusion of the de novo final hearing, the court terminated M.R.'s parental rights

but delayed ruling on the matter of managing conservatorship for the purpose of exploring placement options with the children's relatives. In its ruling, the Court found by clear and convincing evidence that M.R. had engaged in conduct and knowingly placed the children with persons who engaged in conduct that endangered their physical and emotional well-being; constructively abandoned the children, who had been in the temporary managing conservatorship of the Department for not less than six months; had not regularly visited or maintained significant contact with the children; had demonstrated an inability to provide the children with a safe environment; and had failed to comply with the provisions of a court order that specifically established the actions necessary to obtain the return of the children to the home. *See* Tex. Fam. Code § 161.001(b)(1)(D), (E), (N), (O). The court further found that termination of M.R.'s parental rights is in the best interest of the children. *See id.* § 161.001(b)(2).

On appeal, M.R.'s attorney has filed a brief stating that after reviewing the record, he believes that the appeal is frivolous.² Counsel has presented a professional evaluation of the record and explained why he believes there are no arguable grounds for reversal. Counsel has represented to the Court that he provided a copy of the brief to M.R.; advised him of his right to a file a pro se brief; provided him a copy of the appellate record; and notified him of his deadline for filing a pro se brief. *See Taylor v. Texas Dep't of Protective & Regulatory Servs.*, 160 S.W.3d 641, 646-47 & n.4 (Tex. App.—Austin 2005, pet. denied); *see also Kelly v. State*, 436 S.W.3d 313, 319-

² This and other Texas courts have held that it is appropriate in a parental termination case to file a brief asserting that the appeal is frivolous. *See Taylor v. Texas Dep't of Protective & Regulatory Servs.*, 160 S.W.3d 641, 646 & n.4 (Tex. App.—Austin 2005, pet. denied); *In re D.E.S.*, 135 S.W.3d 326, 329 (Tex. App.—Houston [14th Dist.] 2004, no pet.); *In re K.D.*, 127 S.W.3d 66, 67 (Tex. App.—Houston [1st Dist.] 2003, no pet.).

21 (Tex. Crim. App. 2014) (setting out requirements in criminal context). M.R. has not filed a pro se brief or made contact with this Court. We have conducted our own review of the record and we agree that the appeal is frivolous. We therefore affirm the trial court’s final decree. Further, in accordance with the Texas Supreme Court’s recent decision, we deny counsel’s motion to withdraw. *In re P.M.*, No. 15-0171, 2016 Tex. LEXIS 236, at *7-8 (Tex. Apr. 1, 2016).³

David Puryear, Justice

Before Justices Puryear, Pemberton, and Goodwin

Affirmed

Filed: April 6, 2017

³ 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. *In re P.M.*, No. 15-0171, 2016 Tex. LEXIS 236, at *7 (Tex. Apr. 1, 2016). Accordingly, counsel’s obligation to M.R. has not yet been discharged. *See id.* If M.R., 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.* at *8.