

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00477-CV

C. D. G. D. M., Appellant

v.

Texas Department of Family and Protective Services, Appellee

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 126TH JUDICIAL DISTRICT
NO. D-1-FM-15-007294, HONORABLE SCOTT H. JENKINS, JUDGE PRESIDING**

MEMORANDUM OPINION

C.D.G.D.M. appeals from the trial court's order terminating her parental rights to her minor child, I.K.M.R.¹ *See* Tex. Fam. Code § 161.001. Following a hearing, the trial court found by clear and convincing evidence that statutory grounds for terminating C.D.G.D.M.'s parental rights existed and that termination was in the child's best interest. *See id.* § 161.001(b)(1)(N), (O), (2).

On appeal, C.D.G.D.M.'s court-appointed attorney has filed a motion to withdraw and a brief concluding that the appeal is frivolous and without merit. *See Anders v. California*, 386 U.S. 738, 744 (1967); *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). The brief meets the requirements of *Anders* by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be

¹ We refer to the mother and her child by their initials only. *See* Tex. Fam. Code § 109.002(d); Tex. R. App. P. 9.8.

advanced on appeal. *See* 386 U.S. at 744; *Taylor*, 160 S.W.3d at 646–47. C.D.G.D.M.’s counsel has certified to this Court that he provided C.D.G.D.M. with a copy of the *Anders* brief and motion to withdraw as counsel and informed her of her right to examine the appellate record and to file a pro se brief. The Department of Family and Protective Services has filed a response to the *Anders* brief waiving its right to file an appellee’s brief unless it deems a brief necessary after review of any pro se brief filed by C.D.G.D.M. To date, C.D.G.D.M. has not filed a pro se brief.

Upon receiving an *Anders* brief, we must conduct a full examination of all of the proceedings to determine whether the appeal is wholly frivolous. *Penson v. Ohio*, 488 U.S. 75, 80 (1988). We have reviewed the entire record, including the *Anders* brief submitted on C.D.G.D.M.’s behalf, and have found nothing that would arguably support an appeal.

We note specifically that C.D.G.D.M. notified the Department of I.K.M.R.’s potential Native American heritage, specifically Cherokee heritage, pursuant to the Indian Child Welfare Act (ICWA). *See* 25 U.S.C. §§ 1901–1963. No evidence of tribal membership was found in C.D.G.D.M.’s family. I.K.M.R.’s other parent denied tribal membership and denied any relatives’ tribal membership. The Department filed Notice of Proceedings Pursuant to 25 U.S.C. § 1912 and Request for Verification of Tribal Membership and delivered notice to the U.S. Department of Interior, Bureau of Indian Affairs, the Cherokee Nation of Oklahoma, the United Keetoowah Band of Cherokee Indians, the Bureau of Indian Affairs Anadarko Area Director, and the Eastern Band of Cherokee Indians ICWA Coordinator. *See id.* § 1912. The Cherokee Nation of Oklahoma, the United Keetoowah Band of Cherokee Indians of Oklahoma Office of Enrollment and Indian Child Welfare Office, and the Eastern Band of Cherokee Indians ICWA Coordinator all responded to the

notice stating that after a search of their records, I.K.M.R. did not meet the definition of an Indian Child as defined by the ICWA.

The trial court found that the ICWA did not apply to this case, that there were statutory grounds for termination, and that termination was in the child's best interest. *See* Tex. Fam. Code § 161.001(b)(1)(N), (O), (2). We agree that the appeal is frivolous and without merit. Accordingly, we affirm the trial court's order terminating C.D.G.D.M.'s parental rights. We deny counsel's motion to withdraw.²

Melissa Goodwin, Justice

Before Chief Justice Rose, Justices Pemberton and Goodwin

Affirmed

Filed: September 27, 2017

² *See In re P.M.*, 520 S.W.3d 24 (Tex. 2016) (per curiam). In *In re 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 27. Accordingly, counsel's obligation to C.D.G.D.M. has not yet been discharged. *See id.* If C.D.G.D.M., 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." *See id.* at 27–28.