NO. 12-22-00033-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN THE INTEREST OF	***§***	***APPEAL FROM THE***
D.A., A.A., AND A.A.,	***§***	***COUNTY COURT AT LAW***
CHILDREN	***§***	***CHEROKEE COUNTY, TEXAS***

MEMORANDUM OPINION
PER CURIAM

D.A. appeals the termination of his parental rights. His counsel filed a brief in compliance with ***Anders v. California***, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and ***Gainous v. State***, 436 S.W.2d 137 (Tex. Crim. App. 1969). We affirm.

BACKGROUND

D.A. is the father of D.A.1, A.A., and A.A.1, and A.D. is the children's mother.[1] On September 22, 2020, the Department of Family and Protective Services (the Department) filed an original petition for protection of a child, for conservatorship, and for termination of D.A.'s and A.D.'s parental rights. The Department was appointed temporary managing conservator of the children, and the parents were allowed limited access to, and possession of, the children.

The evidence at trial showed that the children were removed due to concerns over abuse and neglect. At the time of removal, D.A. was incarcerated. However, there were allegations A.D. was using illegal substances in front of the children and that A.D. had a history of abusing substances. In addition, A.A.1 had been missing since September 18, 2020. D.A. testified that he smoked "K2" on the morning of September 18, which impaired him to the point that A.A.1 was removed from his care by an "unknown person." The evidence also showed that D.A. was the last person to see A.A.1. A.A.1's disappearance resulted in D.A. being convicted of

[1] A.D. is not a party to this appeal.

"abandoning child imminent danger bodily injury" during the pendency of the Department's case and he is currently serving a fifteen-year sentence. The court appointed special advocate (CASA) for the children testified that she did not believe D.A. could provide a safe home for his children because his "priority is drug use and domestic violence." The trial court also heard evidence of D.A.'s lengthy criminal history.

At the conclusion of trial, the trial court found, by clear and convincing evidence, that D.A. engaged in one or more of the acts or omissions necessary to support termination of his parental rights under subsections (E) and (Q) of Texas Family Code Section 161.001(b). The trial court also found that termination of the parent-child relationship between D.A. and the children is in the children's best interest. Based on these findings, the trial court ordered that the parent-child relationship between D.A. and the children be terminated. This appeal followed.

ANALYSIS PURSUANT TO *ANDERS V. CALIFORNIA*

D.A.'s counsel filed a brief in compliance with ***Anders***, stating that he has diligently reviewed the appellate record and is of the opinion that the record reflects no reversible error and that there is no error upon which an appeal can be predicated. This Court has previously held that ***Anders*** procedures apply in parental rights termination cases when the Department has moved for termination. *See* ***In re K.S.M.***, 61 S.W.3d 632, 634 (Tex. App.–Tyler 2001, no pet.). In compliance with ***Anders***, counsel's brief presents a professional evaluation of the record demonstrating why there are no reversible grounds on appeal and referencing any grounds that might arguably support the appeal. *See* ***Anders***, 386 U.S. at 744, 87 S. Ct. at 1400; ***Mays v. State***, 904 S.W.2d 920, 922–23 (Tex. App.–Fort Worth 1995, no pet.).

As a reviewing court, we must conduct an independent evaluation of the record to determine whether counsel is correct in determining that the appeal is frivolous. *See* ***Stafford v. State***, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991); ***Mays***, 904 S.W.2d at 923. We have carefully reviewed the appellate record and counsel's brief. We find nothing in the record that might arguably support the appeal.[2] *See* ***Taylor v. Tex. Dep't of Protective & Regulatory Servs.***, 160 S.W.3d 641, 646–47 (Tex. App.–Austin 2005, pet. denied).

[2] Counsel for D.A. certified that he provided D.A. with a copy of the brief and informed him that he had the right to file his own brief and took concrete measures to facilitate review of the record. *See* ***Kelly v. State***, 436 S.W.3d 313, 319 (Tex. Crim. App. 2014); ***In the Matter of C.F.***, No. 03-18-00008-CV, 2018 WL 2750007, at *1

DISPOSITION

We agree with D.A.'s counsel that the appeal is wholly frivolous. 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." *See* ***In re P.M.***, 520 S.W.3d 24, 27 (Tex. 2016). Accordingly, counsel's obligations to D.A. have not yet been discharged. *See* ***id***. If D.A., 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***.; *see* ***A.C. v. Tex. Dep't of Family & Protective Servs.***, No. 03–16–00543–CV, 2016 WL 5874880, at *1 n.2 (Tex. App.–Austin Oct. 5, 2016, no pet.) (mem. op.). Accordingly, we ***affirm*** the trial court's judgment. *See* TEX. R. APP. P. 43.2.

Opinion delivered May 11, 2022.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)

(Tex. App.—Austin June 8, 2018, no pet.) (mem. op.). D.A. was given the time to file his own brief, but the time for filing such brief has expired and we have received no pro se brief.

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MAY 11, 2022

NO. 12-22-00033-CV

IN THE INTEREST OF D.A., A.A., AND A.A., CHILDREN

Appeal from the County Court at Law
of Cherokee County, Texas (Tr.Ct.No. FM2000303)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

By *per curiam* opinion.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.