



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-20-00076-CV

IN THE INTEREST OF A.S., A CHILD

On Appeal from the 108th District Court
Potter County, Texas
Trial Court No. 88,531-E, Honorable Carry Baker, Associate Judge Presiding

May 28, 2020

MEMORANDUM OPINION

Before PIRTLE and PARKER and DOSS, JJ.

Appellant, Mother, appeals the trial court's order terminating her parental rights to her daughter, A.S.¹ Appointed counsel for Mother has filed an *Anders*² brief in support of a motion to withdraw. Finding no arguable grounds for appeal, we affirm the judgment of the trial court.

¹ To protect the privacy of the parties involved, we will refer to the appellant as "Mother" and to the child by initials. See TEX. FAM. CODE ANN. § 109.002(d) (West Supp. 2019); TEX. R. APP. P. 9.8(b). Father's parental rights were also terminated in this proceeding. Father does not appeal.

² See *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

Factual and Procedural Background

In November of 2018, the Texas Department of Family and Protective Services filed its petition for protection, conservatorship, and termination of parental rights of Mother and Father as to their four-year-old daughter, A.S., due to concerns of domestic violence and illicit drug use.

During the Department's investigation, Mother admitted to long-term domestic violence and a ten-year history of using methamphetamine. A hair follicle drug test confirmed that Mother also used cocaine. A.S. tested positive for cocaine and methamphetamine. The Department's investigator interviewed A.S. at school. According to A.S., "Mommy gets crazy mad and screams. She screams at daddy. Daddy spanked mommy in the face. Mommy scratched daddy in the eye."

The Department was granted temporary managing conservatorship of A.S. and she was placed with maternal relatives. A service plan was developed for Mother to assist her in regaining custody of A.S., and the court ordered compliance with the plan requirements.

Mother completed a mental health assessment, but she did not follow through with the treatment recommendations for individual counseling. She failed to maintain a drug-free lifestyle or stable housing, and she did not submit to a substance abuse assessment. Mother continued to test positive for methamphetamine throughout the pendency of the case.

A.S. was placed with her maternal aunt and maternal grandmother. A.S. is “doing phenomenally” in her placement. The Department has no concerns about A.S.’s placement. A.S.’s placement is willing to adopt her if parental rights are terminated. According to the caseworker, appointing the Department as permanent managing conservator pending an adoption by her placement is in the best interest of A.S.

The trial court terminated Mother’s parental rights to A.S. on the grounds of endangering conditions, endangerment, failure to comply with a court order that established actions necessary to retain custody of the child, and failure to complete a court-ordered substance abuse treatment program. See TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O), (P) (West Supp. 2019).³ The trial court also found that termination was in the best interest of A.S. See § 161.001(b)(2).

Analysis

Pursuant to *Anders*, Mother’s court-appointed appellate counsel has filed a brief certifying that she has diligently searched the record and has concluded that the record reflects no arguably reversible error that would support an appeal. *In re Schulman*, 252 S.W.3d 403, 406 n.9 (Tex. Crim. App. 2008) (orig. proceeding); *Porter v. Tex. Dep’t of Protective & Regulatory Servs.*, 105 S.W.3d 52, 56 (Tex. App.—Corpus Christi 2003, no pet.) (“[W]hen appointed counsel represents an indigent client in a parental termination appeal and concludes that there are no non-frivolous issues for appeal, counsel may file

³ Further references to provisions of the Texas Family Code will be by reference to “section __” or “§ __.”

an *Anders*-type brief”); *In re L.J.*, No. 07-14-00319-CV, 2015 Tex. App. LEXIS 427, at *2-3 (Tex. App.—Amarillo Jan. 15, 2015, no pet.) (mem. op.) (same).

Counsel certifies that she has diligently researched the law applicable to the facts and issues and discusses why, in her professional opinion, the appeal is frivolous. *In re D.A.S.*, 973 S.W.2d 296, 297 (Tex. 1998) (orig. proceeding). Counsel has complied with the requirements of *Anders* by providing a copy of the brief, motion to withdraw, and appellate record to Mother, and notifying her of her right to file a pro se response if she desired to do so. *Id.*; *Kelly v. State*, 436 S.W.3d 313, 319-20 (Tex. Crim. App. 2014); *In re L.V.*, No. 07-15-00315-CV, 2015 Tex. App. LEXIS 11607, at *2-3 (Tex. App.—Amarillo Nov. 9, 2015) (order) (per curiam). Mother has not filed a response to her counsel’s *Anders* brief.

Due process requires that termination of parental rights be supported by clear and convincing evidence. *In re E.M.E.*, 234 S.W.3d 71, 72 (Tex. App.—El Paso 2007, no pet.) (citing *In re J.F.C.*, 96 S.W.3d 256, 263 (Tex. 2002)). This standard falls between the civil preponderance of the evidence standard and the reasonable doubt standard of criminal proceedings. *Id.* at 73. Clear and convincing evidence is that “measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.” § 101.007 (West 2019). Reviewing the legal sufficiency of the evidence supporting parental termination requires us to review “all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true.” *In re J.F.C.*, 96 S.W.3d at 266. In a factual sufficiency review, we are to determine whether, on the entire record, a factfinder could reasonably form a firm conviction or belief about

the truth of the matter on which the movant bore the burden of proof. *In re C.H.*, 89 S.W.3d 17, 28-29 (Tex. 2002); *In re T.B.D.*, 223 S.W.3d 515, 517 (Tex. App.—Amarillo 2006, no pet.).

By her *Anders* brief, counsel concludes that reversible error is not present because sufficient evidence supports termination under subsections (D), (E), and (O). See *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003); *In re T.N.*, 180 S.W.3d 376, 384 (Tex. App.—Amarillo 2005, no pet.) (only one predicate finding under section 161.001(b)(1) is necessary to support termination when there is also a finding that termination is in a child's best interest). Pursuant to the Texas Supreme Court opinion in *In re N.G.*, we also conducted an independent review of the trial court's findings under section 161.001(b)(1)(D) and (E), because of the potential future consequences to appellant's parental rights concerning a different child. *In re N.G.*, 577 S.W.3d 230, 235-37 (Tex. 2019) (per curiam);⁴ *In re M.M.*, 584 S.W.3d 885, 889 (Tex. App.—Amarillo 2019, pet. denied) (mem. op.).

Section 161.001(b)(1)(D) permits termination when clear and convincing evidence shows that the parent knowingly placed or knowingly allowed the child to remain in

⁴ Subsection (b)(1)(M) permits parental rights to be terminated if the parent has "had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state." *In re N.G.*, 577 S.W.3d at 234 (quoting section 161.001(b)(1)(M) of the Family Code). Because findings based on subsections (b)(1)(D) or (E) may become "a basis to terminate parent's rights to other children," the Supreme Court reasoned that when a parent presents an appellate issue related to subsections (b)(1)(D) or (E) and the appellate court does not address the issue on appeal, the appellate court "eliminates the parent's only chance for review of a finding that will be binding as to parental rights to other children." *Id.* at 235. According to the Supreme Court, "the parent's fundamental liberty interest at stake outweighs the state's interest in deciding only what is necessary for final disposition of the appeal." *Id.* at 237. "Allowing section 161.001(b)(1)(D) or (E) findings to go unreviewed on appeal when the parent has presented the issue to the court thus violates the parent's due process and due course of law rights." *Id.*

conditions or surroundings which endanger the physical or emotional well-being of the child. See § 161.001(b)(1)(D). Subsection (D) requires a showing that the environment in which the child was placed posed a danger to the child's physical or emotional health, and it permits termination based on a single act or omission by the parent. *In re J.A.S.*, No. 07-12-00150-CV, 2012 Tex. App. LEXIS 8087 at *13-14 (Tex. App.—Amarillo Sept. 25, 2012, no pet.) (mem. op.). Subsection (D) concerns the child's living environment, rather than the parent's conduct, though parental conduct may produce an endangering environment. *Jordan v. Dossey*, 325 S.W.3d 700, 721 (Tex. App.—Houston [1st Dist.] 2010, pet. denied). It is not necessary that the child's living environment directly threaten the child or that the child be injured, but the parent must at least be aware of the potential for danger to the child in such an environment and must have disregarded that risk. *In re S.M.L.*, 171 S.W.3d 472, 477 (Tex. App.—Houston [14th Dist.] 2005, no pet.). Illegal drug use and criminal activity support a conclusion that the child's surroundings endanger his or her physical or emotional well-being. *In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.). The relevant time frame under this subsection is prior to the child's removal. *In re O.R.F.*, 417 S.W.3d 24, 37 (Tex. App.—Texarkana 2013, pet. denied).

Section 161.001(b)(1)(E) permits termination when clear and convincing evidence shows that the parent has engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the child's physical or emotional well-being. See § 161.001(b)(1)(E). Under subsection (E), the relevant inquiry is whether evidence exists that the endangerment of the child's physical or emotional well-being was the direct result of the parent's conduct, including acts, omissions, and failures to act. *In re J.T.G.*,

121 S.W.3d at 125. Termination under subsection (E) must be based on more than a single act or omission. A voluntary, deliberate, and conscious course of conduct by a parent is required. *Id.* Thus, while both subsections (D) and (E) focus on endangerment, they differ regarding the source and proof of endangerment. *In re S.M.L.*, 171 S.W.3d at 477. To support a finding of endangerment, the parent's conduct does not necessarily have to be directed at the child, nor is the child required to actually suffer injury. *Tex. Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987).

In this case, the evidence of Mother's domestic violence in the home and the use of illicit drugs created a dangerous and unstable environment for A.S. A.S. described the physical violence she witnessed between Mother and Father, and she tested positive for cocaine and methamphetamine at the time she was removed from Mother's care. After A.S. was placed with maternal relatives, Mother continued to test positive for methamphetamine and she failed to complete court-ordered services designed to address her drug addiction. See *In re V.A.*, No. 07-17-00413-CV, 2018 Tex. App. LEXIS 1521, at *10 (Tex. App.—Amarillo Feb. 27, 2018, no pet.) (mem. op.) (stating that a parent's continued use of drugs demonstrates an inability to provide for the child's emotional and physical needs and a stable environment); *In re S.S.*, No. 07-19-00309-CV, 2020 Tex. App. LEXIS 1095, at *11 (Tex. App.—Amarillo Feb. 6, 2020, no pet.) (mem. op.) (domestic violence and drug use are circumstances the trial court can consider as endangering under subsections (D) and (E)). We conclude that the trial court's findings with respect to (D) and (E) is supported by legally and factually sufficient evidence.

As in a criminal case, we have independently examined the entire record to determine whether there is a non-frivolous issue that might support the appeal. See

Penson v. Ohio, 488 U.S. 75, 82-83, 109 S. Ct. 346, 102 L. Ed. 2d 300 (1988); *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). Based on this record, we conclude that a reasonable factfinder could have formed a firm belief or conviction that grounds for termination existed and that termination of Mother's parental rights was in A.S.'s best interest. See § 161.001(b)(1), (2) (West Supp. 2019); *In re M.M.*, 584 S.W.3d at 890.

After reviewing the entire record, we agree with counsel that there are no plausible grounds for reversal on appeal.

Accordingly, the trial court's order terminating Mother's parental rights to A.S. is affirmed.⁵

Judy C. Parker
Justice

⁵ We call counsel's attention to the continuing duty of representation through the exhaustion of proceedings, which may include the filing of a petition for review. Counsel has filed a motion to withdraw, on which we will take no action. See *In re P.M.*, 520 S.W.3d 24, 27 (Tex. 2016) (per curiam).