TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-20-00072-CV

A. R., Appellant

v.

Texas Department of Family and Protective Services, Appellee

FROM THE 353RD DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-FM-18-003020,
THE HONORABLE LORA J. LIVINGSTON, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

Appellant A.R. (the mother) appeals from the district court's decree, following a bench trial, terminating her parental rights to her daughter P.H. and her son S.H. (the children), who were six and five years old at the time of trial. The mother's counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 744 (1967). We will affirm the district court's decree of termination.

The case began in May 2018, after the mother was arrested for driving while intoxicated following a traffic stop. The mother had been driving with three adult passengers and her son, who was three years old at the time. The son was found "unrestrained" inside the vehicle. During a search of the vehicle, police officers discovered an open beer bottle, marijuana, and unidentified pills. Additionally, one of the adult passengers inside the vehicle

was in possession of PCP. Following this incident, a referral was made to Child Protective Services (CPS) and the children were removed from the mother's home. The children were placed initially with the maternal grandmother, but after she failed a Department background check, the children were placed with the paternal grandmother (the grandmother), with whom they currently reside.

During the CPS investigation, the Department learned that one month prior to the mother's arrest for DWI, she had been arrested for possession of a controlled substance, cocaine, in an amount less than one gram. The cocaine had been found in her possession during another traffic stop, along with marijuana and Xanax. However, the mother was not the driver of the vehicle during this stop, and she claimed that the drugs did not belong to her.

The mother's service plan for reunification with the children included a requirement that she submit to random drug testing when requested by the Department. According to Department caseworker Ariel Pierce, the Department requested tests on a near-weekly basis, but the mother submitted to only a "handful" of tests during the pendency of the case. The mother tested positive for PCP in May 2018, at the beginning of the case, and again in June 2018. The mother failed to submit to another drug test until April 2019, when she again tested positive for PCP. At trial, the mother testified that the last time she used PCP was in May 2019, although her last positive test for PCP was in September 2019. The mother's most recent drug test, in November 2019, was negative for drugs.

Other requirements of the mother's service plan included nurturing-parenting classes, which the mother completed in October 2018, and a psychological evaluation, which she completed in June 2018. Another requirement of the mother's service plan was individual

therapy. However, the mother was discharged unsuccessfully from therapy on multiple occasions because she did not attend the therapy sessions on a consistent basis.

The mother's visits with the children were also inconsistent. Caseworker Pierce testified that the mother's visits with the children in June and July 2018 went well. However, beginning in August 2018, the mother stopped visiting the children, despite a court order that allowed the mother to visit the children on a weekly basis. Except for a single unscheduled visit with the children at the grandmother's house in December 2018, the mother did not visit the children until April 2019. Moreover, Pierce testified that during the April 2019 visit, the mother's eyes "were very, very red," she smelled "of cigarette smoke and marijuana," and she "seemed very slow, like lethargic." As a result of concerns raised during this visit, the court ordered that the mother have no more visits with the children until after she had completed additional services.

In May 2019, the mother completed an Outreach, Screening, Assessment, and Referral evaluation (OSAR) as required by the court. The result of the OSAR evaluation was a recommendation that the mother participate in an intensive outpatient program for drug addiction. At the time of trial in November 2019, the mother admitted that she had not participated in the program. She claimed that she was participating instead in Narcotics Anonymous. However, when asked to identify the last "step" of the program that she had completed, the mother was unable to do so because she had "just started" the program and was "not even familiar with it."

The Department's plan for the children was adoption by the grandmother. The grandmother, who had experience raising five children of her own, testified that she had been

involved in the children's lives before the case began and "always had a close relationship with the kids." She also testified that she loved the children and wanted to adopt them.

Mary Boothe, a CASA volunteer assigned to the case, testified that the children were bonded with the grandmother and that CASA had no concerns regarding the grandmother's ability to care for the children. When asked if she believed the children would be "safe" and "protected" in the grandmother's care, Boothe testified, "Absolutely." Boothe believed that termination of the mother's parental rights was in the best interest of the children because the mother had been "inconsistent" throughout the case. Boothe explained, "She's gone long periods of time without communication not just with me, but with all the parties on the case. She's been inconsistent with her therapy, showing up for drug testing and also with visiting her children on a regular basis."

Caseworker Pierce testified similarly that termination of the mother's parental rights was in the best interest of the children. Pierce testified that the children were doing well in the grandmother's care and that the children would not be safe with the mother. She explained,

> [W]e don't doubt that she loves her children, but throughout the case when she has attended drug tests, she's been . . . positive for PCP, even as recent as September of 2019, and with the concerns for continued use, that could potentially put her children at risk for harm if they were to go home with her.

The guardian ad litem for the children advised the court that the children loved both their mother and their grandmother but that the children viewed the grandmother's home as "their safe place" where they felt "cared for" and "protected." The guardian ad litem opined that even if the court allowed the mother to have continued contact with the children, "it is absolutely imperative that there be safeguards in place that the children not be exposed" to the mother if she

is "under the influence" of drugs. The guardian ad litem believed that the grandmother was "completely capable of providing that safe space and those boundaries and enforcing those rules." She concluded that "the children returning back home [to the mother] is, one, against their wishes, and also, I believe, against their best interest."

At the conclusion of trial, the district court took the matter under advisement and later found that termination of the mother's parental rights was in the best interest of the children and that the mother had: (1) knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endangered the physical or emotional well-being of the children; (2) 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; and (3) failed to comply with the provisions of a court order that specifically established the actions necessary for the mother to obtain the return of the children. *See* Tex. Fam. Code § 161.001(b)(1)(D), (E), (O), (2). This appeal followed.

Court-appointed counsel has filed an *Anders* brief, concluding that the appeal is frivolous and without merit. *See* 386 U.S. at 744; *In re P.M.*, 520 S.W.3d 24, 27 & n.10 (Tex. 2016) (per curiam) (approving use of *Anders* procedure in appeals from termination of parental rights because it "strikes an important balance between the defendant's constitutional right to counsel on appeal and counsel's obligation not to prosecute frivolous appeals" (citations omitted)). The brief meets the requirements of *Anders* by presenting a professional evaluation of the record and demonstrating why there are no arguable grounds to be advanced on appeal. *See* 386 U.S. at 744; *Taylor v. Texas Dep't of Protective & Regulatory Servs.*, 160 S.W.3d 641, 646-47 (Tex. App.—Austin 2005, pet. denied). Counsel has certified to this Court that he has

provided his client with a copy of the *Anders* brief and informed her of her right to examine the appellate record and to file a pro se brief. No pro se brief has been filed.

Upon receiving an *Anders* brief, we must conduct a full examination of the record to determine whether the appeal is wholly frivolous. *See Penson v. Ohio*, 488 U.S. 75, 80 (1988); *Taylor*, 160 S.W.3d at 647. After reviewing the entire record and the *Anders* brief submitted on the mother's behalf, we have found nothing in the record that might arguably support an appeal. Our review included the trial court's endangerment findings, *see* Tex. Fam. Code § 161.001(b)(1)(D), (E), and we have found no issues that could be raised on appeal with respect to those findings, *see In re N.G.*, 577 S.W.3d 230, 237 (Tex. 2019). We agree with counsel that the appeal is frivolous. Accordingly, we affirm the district court's decree terminating the mother's parental rights.

Gisela D. Triana, Justice

Before Chief Justice Rose, Justices Baker and Triana

Affirmed

Filed: June 26, 2020