

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-20-00114-CV

S. W., Appellant

v.

Texas Department of Family and Protective Services, Appellee

**FROM THE 428TH DISTRICT COURT OF HAYS COUNTY
NO. 18-1542, THE HONORABLE WILLIAM R. HENRY, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant S.W. (the father) appeals from the district court's order, following a jury trial, terminating his parental rights to his daughter D.W. (the child), who was two years old at the time of trial. The father's counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 744 (1967). We will affirm the district court's termination order.

The case began in July 2018, after the child's three-year-old brother M.W. (the brother) died while in the care of the mother and the father. The jury heard evidence that on July 4, 2018, the mother called 911 to report that the brother was not breathing. By the time EMS arrived, the brother was dead, and evidence admitted at trial tended to show that the brother had died at least two hours before the mother had called EMS.

According to Dr. Suzanna Dana, the forensic pathologist who performed an autopsy on the brother's body, the cause of death was "hypoxic encephalopathy caused by

asphyxia.” Dr. Dana explained that this meant that the “brain did not get enough oxygenated blood, for one reason or another, and caused it to swell and that was the cause of death.” Dana testified that in this case, the brother had suffered internal injuries, which included multiple rib fractures, a skull fracture, and internal hemorrhaging. Based on the extent and severity of the brother’s injuries, Dr. Dana believed that the manner of death was “homicide.”

During the CPS and police investigations that followed the brother’s death, investigators discovered that the child had injuries similar to the injuries her brother suffered. Dr. Marion Forbes, a pediatrician who had consulted on the case, testified that the child’s injuries included 23 rib fractures, a skull fracture, a cardiac contusion, a laceration to her right kidney caused by blunt force trauma to her abdomen, and external bruising. Dr. Forbes described these injuries as serious and life-threatening, and she opined that both the child and her brother had been victims of physical abuse.

The mother and the father were arrested on charges of capital murder and injury to a child. The charges remained pending at the time of the termination trial, and both the mother and the father invoked the Fifth Amendment during trial.

The child was placed with foster parents upon her removal from the mother and the father, and the Department’s plan for the child was adoption by the foster parents. Both foster parents testified at trial that they loved the child and wanted to adopt her. Department caseworker Dallas Skeens testified that the child was bonded with the foster parents, that the foster parents were “doing an excellent job in every regard to meeting her needs,” and that termination of the mother’s and the father’s parental rights was in the best interest of the child. Tammy Gorman, a CASA volunteer, provided similar testimony.

At the conclusion of trial, the district court submitted in its charge to the jury the following statutory grounds for termination: (1) that each parent had engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangered the physical or emotional well-being of the child; and (2) that each parent had knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endangered the physical or emotional well-being of the child. *See* Tex. Fam. Code § 161.001(b)(1)(D), (E). The jury found that the mother and the father had each committed at least one of the alleged grounds for termination and that termination of the mother’s and the father’s parental rights was in the best interest of the child. *See id.* § 161.001(b)(2). Consistent with the jury’s verdict, the district court rendered judgment terminating the mother’s and the father’s parental rights. This appeal by the father followed.¹

Court-appointed counsel has filed an *Anders* brief and a motion to withdraw as counsel, 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

¹ The mother has not appealed from the district court’s order.

informed him of his 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 father’s behalf, we have found nothing in the record that might arguably support an appeal. Our review included the jury’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 termination order. We deny counsel’s motion to withdraw.²

Gisela D. Triana, Justice

Before Chief Justice Rose, Justices Baker and Triana

Affirmed

Filed: June 26, 2020

² The Texas Supreme Court has held that the right to counsel in suits seeking 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.*, 520 S.W.3d 24, 27-28 (Tex. 2016) (per curiam). Accordingly, if after consulting with counsel the father 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.*