

COURT OF APPEALS OF TEXAS, SEVENTH DISTRICT AT AMARILLO

In the Interest of B.C.A., a Child

No. 07-20-00258-CV · No. 07-20-00258-CV · Decided January 6, 2021

SUMMARY

The Texas Court of Appeals for the Seventh District affirmed an order terminating Father's parental rights to B.C.A. The court held, after independently reviewing the record in connection with appointed counsel's Anders brief, that sufficient evidence supported termination based on endangerment and that termination was in the child's best interest.

CASE DETAILS

COURT	Court of Appeals of Texas, Seventh District at Amarillo
WRITING FOR THE COURT	Judy C. Parker; Pirtle, J.; Parker, J.; Doss, J.
JURISDICTION	Texas
DECIDED	January 6, 2021
DOCKET	07-20-00258-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed an order terminating his parental rights. His appointed appellate counsel filed an Anders brief and a motion to withdraw, asserting that the appeal presented no arguably reversible error. The court independently reviewed the record and affirmed.
STANDARD OF REVIEW	Termination of parental rights must be supported by clear and convincing evidence. For legal sufficiency, the court reviews all evidence in the light most favorable to the finding to determine whether a reasonable factfinder could have formed a firm belief or conviction that the finding was true. For factual sufficiency, the court considers the entire record to determine whether a factfinder could reasonably form a firm conviction or belief. In an Anders parental-termination appeal, the appellate court independently examines the entire record for nonfrivolous grounds for reversal.
PRECEDENTIAL VALUE	Published memorandum opinion under the supplied metadata; no reporter citation appears in the source.
PARTIES	Father v. Texas Department of Family and Protective Services

TOPICS

termination of parental rights parental rights family law procedure appellate procedure due process

PRACTICE AREAS

family law termination of parental rights appellate procedure constitutional law

QUESTIONS PRESENTED

1. Whether the record presented any nonfrivolous or arguably reversible issue in Father's Anders appeal from the termination of his parental rights.
2. Whether clear and convincing evidence supported termination under Texas Family Code section 161.001(b)(1)(E), based on conduct endangering the child's physical or emotional well-being.
3. Whether the evidence supported the finding that termination of Father's parental rights was in B.C.A.'s best interest.

HOLDINGS

1. After independently examining the entire record and the Anders brief, the court found no plausible or nonfrivolous ground for reversal.
2. Clear and convincing evidence supported termination under subsection (E) because Father's methamphetamine use and unwillingness to seek treatment demonstrated conduct endangering B.C.A.'s physical or emotional well-being.
3. The evidence supported the trial court's finding that termination of Father's parental rights was in B.C.A.'s best interest.

KEY QUOTATIONS

"Due process requires that termination of parental rights be supported by clear and convincing evidence."
(4)

"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.'" (4)

"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." (5)

FACTUAL BACKGROUND

The Department became involved after Mother and newborn B.C.A. tested positive for methamphetamine. Father was identified as the biological father nearly a year later, after which he received an abbreviated service plan. Father tested positive for methamphetamine twice, admitted using methamphetamine during counseling, had been dishonest about his drug use, and showed no interest in obtaining addiction services. B.C.A. had remained in the same foster home since shortly after birth, was bonded with the foster mother, and the foster mother was willing to adopt him.

PROCEDURAL HISTORY

The Department filed a petition for protection, conservatorship, and termination after Mother and the newborn child tested positive for methamphetamine. After genetic testing established Father's paternity, the Department amended its petition and provided Father services. Following trial, the 84th District Court of Ochiltree County terminated Father's parental rights under Texas Family Code section 161.001(b)(1)(E) and (O), finding termination in the child's best interest. Father appealed, and the Amarillo Court of Appeals affirmed after an Anders review.

DISPOSITION

affirmed

CASES CITED

- Anders v. California, 386 U.S. 738 (1967)
- 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.)
- 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.)
- In re D.A.S., 973 S.W.2d 296, 297 (Tex. 1998) (orig. proceeding)
- 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.)
- 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)
- In re E.M.E., 234 S.W.3d 71, 72-73 (Tex. App.—El Paso 2007, no pet.)
- In re J.F.C., 96 S.W.3d 256, 263, 266 (Tex. 2002)
- 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.)
- In re N.G., 577 S.W.3d 230, 234-37 (Tex. 2019) (per curiam)
- In re M.M., 584 S.W.3d 885, 889-90 (Tex. App.—Amarillo 2019, pet. denied) (mem. op.)
- In re J.T.G., 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.)
- Tex. Dep't of Human Servs. v. Boyd, 727 S.W.2d 531, 533 (Tex. 1987)
- In re J.O.A., 283 S.W.3d 336, 345 (Tex. 2009)
- In re K.C.F., No. 01-13-01078-CV, 2014 Tex. App. LEXIS 6131, at *27 (Tex. App.—Houston [1st Dist.] June 5, 2014, no pet.) (mem. op.)
- Penson v. Ohio, 488 U.S. 75, 82-83 (1988)
- Stafford v. State, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991)
- In re P.M., 520 S.W.3d 24, 27 (Tex. 2016) (per curiam)

