

FOURTH COURT OF APPEALS OF TEXAS, SAN ANTONIO

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

No. 04-21-00108-CV (Tex. App.—San Antonio June 7, 2021) · No. No. 04-21-00108-CV · Decided June 7, 2021

SUMMARY

The Fourth Court of Appeals of Texas addresses an Anders-type brief and motion to withdraw filed in an appeal from the termination of K.D.'s parental rights. The court ordered deadlines for reviewing the appellate record and filing a pro se brief, while holding counsel's motion to withdraw in abeyance.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas, San Antonio
WRITING FOR THE COURT	Liza A. Rodriguez
JURISDICTION	Texas
DECIDED	June 7, 2021
DOCKET	No. 04-21-00108-CV
DISPOSITION	other
PROCEDURAL POSTURE	K.D. appealed an order terminating his parental rights. His court-appointed appellate attorney filed an Anders brief and motion to withdraw asserting that the appeal presented no meritorious issues. The court issued an order establishing deadlines for review of the record and submission of a pro se brief, while holding the motion to withdraw in abeyance.
PRECEDENTIAL VALUE	Published
PARTIES	K.D. v. B.K.C., a Child

TOPICS

termination of parental rights parental rights appellate procedure family law procedure civil procedure

PRACTICE AREAS

family law appellate procedure civil procedure

QUESTIONS PRESENTED

1. Whether an Anders-type procedure is required in an indigent appeal from an order terminating parental rights.
2. Whether appointed appellate counsel complied with the required procedure by advising K.D. of his rights and providing access to the brief, motion to withdraw, and appellate record.

HOLDINGS

1. A procedure akin to *Anders v. California* is necessary in parental-termination appeals to protect the statutory right to appellate counsel, permit counsel to fulfill ethical obligations, assist the court in deciding the appeal, and provide consistent procedures for indigent litigants.
2. Counsel complied with the required procedure by sending K.D. a letter explaining his right to review the record and file a pro se brief, enclosing the brief, motion to withdraw, and a form motion for record review, and informing him of the steps and deadlines for exercising those rights.

KEY QUOTATIONS

“We have held that in parental-termination appeals, a procedure akin to Anders is necessary to best protect the statutory right to counsel on appeal, to provide a procedural mechanism for counsel to fulfill her ethical obligations, to assist the court in deciding appeals, and to provide consistent procedures for all indigent litigants.”

FACTUAL BACKGROUND

The case concerns the termination of K.D.'s parental rights to B.K.C. On appeal, appointed counsel concluded that no meritorious issues existed and filed an Anders brief and motion to withdraw. Counsel represented that she had advised K.D. of his right to review the appellate record and file a pro se brief and had provided the necessary documents and a form motion.

PROCEDURAL HISTORY

The 57th Judicial District Court of Bexar County, Texas, in trial court cause number 2019PA00984, terminated K.D.'s parental rights. K.D. appealed, and appointed counsel filed an Anders brief and motion to withdraw. The Fourth Court of Appeals directed the procedures and deadlines applicable to the Anders-type review but did not finally resolve the appeal in this order.

DISPOSITION

other

CASES CITED

- *Anders v. California*, 386 U.S. 738 (1967)
- *In re R.R.*, No. 04-03-00096-CV, 2003 WL 21157944, at *4 (Tex. App.—San Antonio 2003, no pet.)
- *In re P.M.*, 520 S.W.3d 24, 27 n.10 (Tex. 2016) (per curiam)
- *Kelly v. State*, 436 S.W.3d 313 (Tex. Crim. App. 2014)

- In re A.L.H., No. 04-18-00153-CV, 2018 WL 3861695, at *2 (Tex. App.—San Antonio Aug. 15, 2018, no pet.)

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas June 7, 2021 No. 04-21-00108-CV IN THE INTEREST OF B.K.C., A CHILD From the 57th Judicial District Court, Bexar County, Texas Trial Court No. 2019PA00984 Honorable Mary Lou Alvarez, Judge Presiding ORDER Appellant K.D. appeals the trial court's termination of his parental rights. Appellant's court-appointed attorney has filed a brief and motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), in which she asserts there are no meritorious issues to raise on appeal.

We have held that in parental-termination appeals, a procedure akin to *Anders* is necessary to best protect the statutory right to counsel on appeal, to provide a procedural mechanism for counsel to fulfill her ethical obligations, to assist the court in deciding appeals, and to provide consistent procedures for all indigent litigants.

In re R.R., No. 04-03-00096-CV, 2003 WL 21157944, at *4 (Tex. App.—San Antonio 2003, no pet.); see In re P.M., 520 S.W.3d 24, 27 n.10 (Tex. 2016) (per curiam) (applying *Anders* procedures in appeal from order terminating parental rights).

In compliance with the procedure set out in *Anders*, appellant's attorney has shown that she sent a letter to appellant, which explained his right to review the record and file a pro se brief. See *Kelly v. State*, 436 S.W.3d 313 (Tex. Crim. App. 2014); In re A.L.H., No. 04-18-00153-CV, 2018 WL 3861695, at *2 (Tex. App.—San Antonio Aug. 15, 2018, no pet.); In re R.R., 2003 WL 21157944, at *4.

In the letter to appellant, counsel stated that she had enclosed copies of the brief and motion to withdraw. See *Kelly*, 436 S.W.3d at 313; In re A.L.H., 2018 WL 3861695, at *2; In re R.R., 2003 WL 21157944, at *4. Counsel's letter also advised appellant that if he wished to review the appellate record, he must file a motion in this court. Counsel also enclosed a form motion for this purpose.

See *Kelly*, 436 S.W.3d at 313; In re A.L.H., 2018 WL 3861695, at *2; In re R.R., 2003 WL 21157944, at *4. If appellant desires to review the record, he must file a motion on or before June 17, 2021. Further, if appellant desires to file a pro se brief, we ORDER that he do so on or before June 28, 2021. If appellant files a pro se brief, appellee may file a responsive brief no later than twenty days after the date appellant's pro se brief is filed in this court.

We ORDER the motion to withdraw, filed by appellant's counsel, to be HELD IN ABEYANCE pending further order of the court. _____ Liza A. Rodriguez,

Justice IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 7th day of June, 2021. _____ Michael A. Cruz,
Clerk of Court

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