



Jamie Johnson v. Department of Family and Protective Services

2010 | Cited 0 times | Court of Appeals of Texas | December 23, 2010

MEMORANDUM OPINION

The trial court terminated appellant Jamie Johnson's parental rights to her six children.¹ Johnson's court-appointed appellate counsel filed motions to withdraw along with briefs stating his professional opinion that the appeals are without merit and that there are no arguable grounds for reversal. See *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (1967). We have reviewed the record and, having found no reversible error, we affirm the trial court's judgment.

Background

In 2003, Johnson's aunt was named permanent managing conservator for two of Johnson's children, E.J. and V.B. After her aunt passed away in 2005, all six of Johnson's children were cared for by another relative while Johnson was incarcerated. In 2007, the Department of Family and Protective Services ("the Department"), received a report of medical neglect by Johnson concerning her children A.B., E.J., and V.B. Johnson was drug tested because of her prior history and tested positive for PCP. The children were placed with relatives or in foster homes.

The Department prepared a service plan that included a number of actions for Johnson to complete to obtain the return of her children. Johnson failed to comply with several of these requirements. Although Johnson completed parenting classes and an inpatient substance abuse program, she tested positive on three drug tests and did not follow the recommendations from her substance abuse program. Additionally, although she was referred to individual therapy sessions, she did not attend. After hearing the evidence, the trial court ordered Johnson's parental rights terminated for all six of her children under sections 161.001(1)(D), (E), and (O), and chapter 261 of the Texas Family Code. See TEX. FAM. CODE ANN. § 161.001(D), (E), (O); see also TEX. FAM. CODE ANN. §§ 261.001-.410 (Vernon 2008 & Supp. 2010). The trial court also found that termination was in the children's best interest.

Discussion

Anders procedures are appropriate in parental-rights termination cases. In *re K.D.*, 127 S.W.3d 66, 67 (Tex. App.--Houston [1st Dist.] 2003, no pet.). The brief submitted by Johnson's court-appointed appellate counsel states his professional opinion that no arguable grounds for reversal exist, and any appeal would therefore lack merit. *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400. Counsel's brief meets the minimum *Anders* requirements by presenting a professional evaluation of the record and stating why



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there are no arguable grounds for reversal on appeal. See *id.* at 744, 87 S. Ct. at 1400; *In re Schulman*, 252 S.W.3d 403, 409 n.23 (Tex. Crim. App. 2008). This Court notified Johnson of her right to review the record and file a pro se response. Johnson did not file a response.

When we receive an Anders brief from a defendant's court-appointed attorney who asserts that no arguable grounds for appeal exist, we must determine that issue independently by conducting our own review of the entire record. See *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400 (emphasizing that reviewing court--and not counsel--determines, after full examination of proceedings, whether case is "wholly frivolous"); *Stafford v. State*, 813 S.W.2d 503, 510 (Tex. Crim. App. 1991). We also consider any pro se response. See *Bledsoe v. State*, 178 S.W.3d 824, 826-28 (Tex. Crim. App. 2005).

Thus, our role in this Anders appeal, which consists of reviewing the entire record, is to determine whether arguable grounds for appeal exist. See *id.* at 827. If we determine that arguable grounds for appeal exist, we abate the appeal and remand the case to the trial court to allow the court-appointed attorney to withdraw. See *id.* Then, the trial court appoints another attorney to present all arguable grounds for appeal. See *id.* "Only after the issues have been briefed by new counsel may [we] address the merits of the issues raised." *Id.*

On the other hand, if our independent review of the record leads us to conclude that the appeal is wholly frivolous, we may affirm the trial court's judgment by issuing an opinion in which we explain that we have reviewed the record and find no reversible error. *Id.* Johnson may challenge the holding that there are no arguable grounds for appeal by petitioning for review in the Supreme Court of Texas. See *id.* at 827 & n.6.

Following *Anders* and *Bledsoe*, we have reviewed the records and counsel's Anders briefs. We conclude that no reversible error exists. Consequently, we affirm the judgments of the trial court and grant counsel's motions to withdraw.²

Conclusion

We affirm the judgments of the trial court and grant appointed counsel's motions to withdraw.

Panel consists of Chief Justice Radack and Justices Bland and Massengale.

1. In trial court cause number 2002-02875J, which is appellate number 01-08-00749-CV, the trial court terminated Johnson's parental rights to V.B. and E.J. In trial court cause number 2007-00884J, which is appellate number 01-08-00750-CV, the trial court terminated Johnson's parental rights to A.B., R.J., D.S., and J.S.

2. Appointed counsel still has a duty to inform appellant of the result of this appeal and notify appellant that she may, on her own, pursue a petition for review in the Supreme Court of Texas. *In re K.D.*, 127 S.W.3d 66, 68 n.3 (Tex. App.--Houston [1st Dist.] 2003, no pet.); see also *Bledsoe v. State*, 178 S.W.3d 824, 827 & n.6 (Tex. Crim. App. 2005).

