[Cite as *In re K.B.*, 2009-Ohio-3168.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

IN RE: K.B.	C.A. No. 24598
	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. DN 07-06-0571

DECISION AND JOURNAL ENTRY

Dated: June 30, 2009

CARR, Presiding Judge.

{¶1} Tabatha M. ("Mother") has appealed from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that terminated her parental rights to her minor child, K.B., and placed her in the permanent custody of Summit County Children Services Board ("CSB"). This Court affirms.

I.

{¶2} Tabitha M. is the mother of K.B., born April 22, 2004, and of five other children whose custody is not at issue here. The biological father of K.B., Jamie B., voluntarily surrendered his parental rights to his child at the permanent custody hearing and is not a party to the present appeal.

{¶3} Mother entered into a voluntary case plan with CSB shortly after K.B. was born because she was born with an addiction to methadone. The current case was initiated three years later when Mother was arrested for theft at a convenience store at three o'clock in the morning

with the child in her presence. Mother later pled guilty to misdemeanor child endangering and theft. As a result of these events, CSB filed a complaint in the juvenile court on June 11, 2007, alleging that K.B. was abused, neglected and dependent, and sought temporary custody of the child. Following hearings, K.B. was adjudicated neglected and dependent, and was placed in the temporary custody of CSB.

{¶4} In April 2008, the case seemed to be going well enough that CSB permitted unsupervised overnight visitation in the home of the parents and requested a grant of legal custody to the parents under the protective supervision of the agency. Within one month, however, the guardian ad litem, sought a return to temporary custody, based upon concerns with recently discovered illegal drug use by Mother, Mother's failure to engage in counseling, Father's inability to properly supervise in-home visitation, and verbal confrontations between the parents. Following a hearing, the trial court ordered the child to continue in the temporary custody of the agency and suspended the in-home visitations.

{¶5} On September 16, 2008, CSB moved for permanent custody. At the permanent custody hearing, Father voluntarily surrendered his parental rights to the child. At the conclusion of the hearing, the trial court terminated the parental rights of both parents and granted permanent custody to CSB.

{¶6} Mother filed a notice of appeal from that judgment. In lieu of a merit brief, Mother's appellate counsel filed a brief in accordance with *Anders v. California* (1967), 386 U.S. 738, in which she asserted that there were no meritorious issues to raise on Mother's behalf. Counsel moved the Court to accept the *Anders* Brief in lieu of a merit brief and to permit her to withdraw from the case.

II.

Possible Issues for Review

"WAS THE TRIAL COURT'S JUDGMENT GRANTING PERMANENT CUSTODY TO SUMMIT COUNTY CHILDREN SERVICES BOARD AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE?"

"WAS APPELLANT-MOTHER PREJUDICED BY INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL?"

{¶7} Mother's attorney filed an *Ander*s Brief with this Court, asserting that there are no issues justifying reversal of the trial court judgment. See *Anders v. California* (1967), 386 U.S. 738. She has submitted two possible issues for the consideration of this Court: (1) whether the judgment is against the manifest weight of the evidence and (2) whether Mother was prejudiced by the ineffective assistance of trial counsel.

{¶8} Before a juvenile court may terminate parental rights and award permanent custody of a child to a proper moving agency it must find clear and convincing evidence of both prongs of the permanent custody test: (1) that the child is abandoned, orphaned, has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period, or that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent, based on an analysis under R.C. 2151.414(E); and (2) that the grant of permanent custody to the agency is in the best interest of the child, based on an analysis under R.C. 2151.414(D). See R.C. 2151.414(B)(1) and 2151.414(B)(2); see, also, *In re William S.* (1996), 75 Ohio St.3d 95, 99.

{¶9} The trial court found that the first prong of the permanent custody test was satisfied because K.B. had been in the temporary custody of CSB for at least 12 of the prior 22 months. The record supports that finding. The trial court also found that it was in the best interest of the child to be placed in the permanent custody of the agency. Mother's attorney first

suggests that the best interest finding could be challenged on the basis that it is not supported by the evidence. Neither appellate counsel nor this Court finds merit in that argument, however.

{¶10} When determining whether a grant of permanent custody is in the child's best interest, the juvenile court must consider: (1) the child's personal interactions and relationships; (2) the child's wishes regarding placement; (3) the custodial history of the child; (4) whether there are appropriate alternatives to permanent custody: and (5) whether any of the factors in R.C. 2151.414(E)(7) to (11) apply. R.C. 2151.414(D).

{¶11} Mother's case plan addressed concerns of substance abuse, mental health, and lack of stable housing. The record demonstrates that Mother has had substance abuse addiction problems since at least 1996 and has criminal convictions for possession of drugs, receiving stolen property, theft, and child endangering. At the permanent custody hearing, Mother admitted that she had regressed in her case plan progress and was not in a position to take custody of her daughter at that time. She has a long history of participating in a variety of inpatient and outpatient substance abuse treatment programs. Her treatment and counseling, however, have been inconsistent and there have been repeated relapses, including five or six relapses within the last year. She attempted suicide in November 2008, and is currently attempting to enter another inpatient treatment center. Mother acknowledges that she has a problem, but asserts her love for her child and does not want to lose her. She claims she is not currently using drugs and is living with a relative who does not use drugs. She does not have custody of any of her five other children. Two reside with their father, two more are in the legal custody of paternal grandparents, and Mother voluntarily surrendered the fifth child.

{¶12} Dr. Ralph Huhn, Jr., Mother's psychologist, testified that Mother has been diagnosed with polysubstance dependence on prescription pain medications and on illegal drugs.

She has had marital and relationship problems. Dr. Huhn considers Mother a moderate risk to relapse again and would have concerns about her ability to care for a child. He explained that she is very emotional and gets upset easily. He believed that Mother relied too heavily on pills to address her problems.

{¶13} Mother's visits with her child were appropriate, but sporadic, and Mother had not visited K.B. for the two months prior to the permanent custody hearing. Mother has no job, no housing, little support system, and is struggling with a serious and chronic addiction. She cannot care for K.B. Mother has proposed the maternal great grandmother as a legal custodian for four-and-one-half-year-old K.B. The maternal great grandmother is 74 years old, has never met K.B., and did not attend the permanent custody hearing. There are no other relatives who can offer suitable placements. K.B. is reported to be doing well in her foster placement and is very bonded to her foster mother.

{¶14} The caseworker and the guardian ad litem both believe that permanent custody is in the best interest of this young child. The guardian ad litem expressed concern with Mother's multiple sources of prescriptions for pain medication and the fact that Mother continues to relapse and struggle with her addictions. She was also concerned with Mother's ability to provide stability and keep her daughter safe. She explained that Mother is worse off now than six months ago and does not believe Mother could take care of her child now or within a reasonable time. The guardian ad litem stated that she did not believe placement with the maternal great grandmother would be in the child's best interest based on the great grandmother's age and the lack of any personal relationship between them.

{¶15} The child's custodial history indicates that she was removed from her home at the age of three and remained in the temporary custody of the agency for one and one-half years

until the permanent custody hearing. There was evidence before the trial court that K.B. was in need of a safe, secure, and stable environment and that an award of permanent custody to the agency is the only means of achieving a legally secure permanent placement. In addition, Mother placed the child at substantial risk through her substance abuse and repeatedly relapsed in her court-ordered substance abuse treatment.

{¶16} Regarding the second possible issue for review, Mother's attorney has not pointed to any cognizable examples of ineffective assistance by trial counsel, nor has our review revealed any. This Court has carefully reviewed the record and agrees with Mother's counsel that there are no issues which support a reversal of the judgment of the trial court.

III.

{¶17} Neither of the two possible issues presented for review by Mother's counsel is meritorious. Accordingly, Mother's appeal is without merit and wholly frivolous under *Anders v. California* (1967), 386 U.S. 738. Appellate counsel's request for permission to withdraw is granted. The judgment of the Summit County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
SLABY, J.
CONCUR

(Slaby, J., retired, of the Ninth District Court of Appeals, sitting by assignment pursuant to §6(C), Article IV, Constitution.)

APPEARANCES:

BARBARA J. ROGACHEFSKY, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.

JOSEPH KERNAN, Attorney at Law, for Guardian ad Litem.