[Cite as *In re M. B.*, 2009-Ohio-4334.]

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

IN RE: M. B.	C. A. No. 24734
	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. DN 07-12-1206

DECISION AND JOURNAL ENTRY

Dated: August 26, 2009

MOORE, Presiding Judge.

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

I.

{¶2} Edward B. is the father of M.B., born June 27, 2006. The mother of M.B., Christina B. ("Mother"), voluntarily surrendered her parental rights to the child and is not a party to the present appeal.

{¶3} CSB became involved in this case after the police were called to the home to investigate allegations of domestic violence between the parents. Upon arriving at the home, the police observed 18-month-old M.B., lying on a mattress on the floor with an electrical fan operating nearby. There was standing water on the floor and a strong odor in the home. Both

parents are mentally delayed, and there were concerns that the child was developmentally delayed. There was no baby food and only one clean diaper in the home. Father was arrested at the time for domestic violence menacing and child endangering. CSB filed a complaint in the juvenile court on December 28, 2007, alleging that M.B. was abused, neglected, and dependent, and sought temporary custody of the child.

{¶4} Guardians ad litem were appointed for each parent and also for the child. Upon adjudication and disposition, M.B. was found to be a dependent child and was placed in the temporary custody of CSB. The case plan addressed concerns of safe housing, parenting skills, and anger management.

{¶5} In October 2008, the parents moved for a six-month extension, and on November 20, 2008, CSB moved for permanent custody. At the outset of the permanent custody hearing, Mother voluntarily surrendered her parental rights, and thereafter, the trial court terminated Father's parental rights and granted permanent custody to CSB. In so doing, the trial court determined that M.B. could not be returned to the custody of Father within a reasonable time or should not be returned to Father's custody. In addition, the trial court found that permanent custody was in the best interest of M.B.

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

II.

POSSIBLE ISSUE FOR REVIEW

"THE TRIAL COURT ERRED IN FINDING THAT PERMANENT CUSTODY WAS SUPPORTED BY CLEAR AND CONVINCING EVIDENCE; AND THE GRANT OF PERMANENT CUSTODY WAS AGAINST THE WEIGHT OF THE EVIDENCE."

{¶7} Father's attorney filed an *Ander*s Brief in this Court, asserting that there are no issues justifying reversal of the trial court judgment. See *Anders*, 386 U.S. 738. As a possible issue, he submitted consideration of the question of whether the evidence presented at the hearing clearly and convincingly established that permanent custody should be awarded to CSB.

{¶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. In support of the trial court's determination that M.B. could not or should not be returned to her Father, the trial court specifically relied upon a finding that Father suffers from chronic mental retardation so severe that it makes him unable to provide an adequate permanent home for M.B. at the present time or within one year. See R.C. 2151.414(E)(2). In 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). Upon review, this Court concludes that the trial court's determination that M.B. could not or should not be returned to her parents and its finding that permanent custody was in the best interest of the child were both amply supported by the evidence presented at the permanent custody hearing.

{¶9} Dr. Cynthia Yamokoski, a psychologist with the Veterans Affairs Medical Center in Brecksville, conducted a parenting assessment of both parents in July 2008. She testified that Father's overall IQ was 49, which indicated moderate mental retardation and that he had difficulty with adaptive behavior. Dr. Yamokoski stated that Father has the general ability of an eight-year-old and the non-verbal skills of a five-year-old. She explained that Father might learn concrete behaviors, such as responding to a cry by offering a bottle or by changing a diaper, but she had serious reservations about Father's ability to independently engage in the sort of problem-solving that is typically required to parent a child. She noted that he exhibited poor decision-making and lacked insight into his own limitations as a parent. He tended to minimize those concerns and became upset and angry upon any expression of them by others. In addition, Dr. Yamokoski noted that Father did not have a good support system of family or friends that might provide assistance or supervision. She believed that Father lacked the ability to safely and competently parent M.B. and lacked the potential to develop those skills. She concluded that Father could not independently care for his child because his problems were not amenable to treatment. This opinion was corroborated by the CSB caseworker, a representative from the Summit County Board of Mental Retardation and Developmental Disabilities ("MRDD"), and the child's guardian ad litem.

{¶10} Rachel Hendrickson, the service coordinator from MRDD, testified regarding the ability of the agency to provide services to Father. Ms. Hendrickson explained that she had some difficulty meeting with Father because he moved three times and his telephone number changed at least five times in the three months she had been working with him. In addition, Father would occasionally not be at home or refuse to answer the door for scheduled appointments. Ms. Hendrickson attempted to assist Father in making appointments with a vocational counselor, but Father failed to keep several of those appointments. She said that Father had been cooperative, but lacked follow-through and consistency. Ms. Hendrickson believed that MRDD could offer services to Father – such as counseling, life-skills training, and free Metro bus passes for jobs – but his failure to show up for appointments and the agency's difficulty in contacting him meant that MRDD might be forced to discontinue services.

{¶11} Darren Cooper, the CSB caseworker assigned to this case, testified about his work with Father. He testified that he had weekly personal contact with Father and multiple telephone calls per week, and he kept Father informed about the case plan. Mr. Cooper stated that he had 11 different addresses for Father during this case. When he informed Father of the results of the parenting assessment, Father became very irate, but eventually calmed down and stated that he wanted to comply and be reunited with his daughter.

{¶12} Mr. Cooper explained that Father attended anger management and parenting classes, but his lack of any active participation in those classes made it difficult to gauge how much Father retained and would be able to apply. The parents attended only one marriage counseling session before deciding to separate. Father claimed to be employed at a temporary service for the last six months, but provided no verification of that job to his caseworker.

{¶13} Visitation was offered to Father, and the caseworker reported no major concerns with the visits that did occur. However, the visits were all supervised and were sporadically attended. Father's visitation schedule was cancelled on four occasions due to his failure to attend consistently. Father's request for unsupervised or in-home visits was refused because of his history of domestic violence and unstable housing. Father did explain that he did not attend visits for approximately two months for fear of coming in contact with Mother at the visitation center and thereby violating a protective order, but Father only attended 20 visits over the course of 15 months.

{¶14} The caseworker concluded that Father is unlikely to be able to care for the child now or within a six-month extension. He also observed that M.B. has made significant developmental progress while in foster care. When M.B. was removed from the home, she was delayed twelve months in her overall development, but since she has been in her foster placement, she has made great progress. She is now walking, has improved her large and small motor skills, and is communicating with a few words. The caseworker expressed her belief that permanent custody is in the child's best interest.

{¶15} Caseworker Cooper and Nicole Welsh, the guardian ad litem, both recognized that M.B. and Father share a significant bond and that they love each other, but these witnesses also expressed great concern with Father's ability to care for his child. They observed that M.B. is extremely well-bonded to her foster family and is thriving in that placement. Ms. Welsh testified that M.B. has now "closed the gap" on gross motor skills as well as on emotional and social delays, and she has only a four-to-six month delay in speech. Ms. Welsh stated that M.B. has made an "impressive" transition from "an introverted, nonverbal, nonwalking 18 month old" to a "[h]appy, bubbly" child who "runs, leaps, [and] plays with the dog[.]" Ms. Welsh explained

that the same concerns that brought the child into custody remain. She did not believe Father could provide a stable and safe environment in which M.B. could thrive, grow, and learn, as opposed to regressing from the progress she has made. No other relative has come forward to develop a relationship with M.B. or to seek custody of her. On behalf of this young child, the guardian ad litem expressed her belief that permanent custody was in the best interest of M.B.

{¶16} Father testified on his own behalf. He clearly loves his daughter and stated that he would do anything for her. He explained that he had been in his current residence for just six days and was working part-time repossessing cars. He said the family had moved frequently because Mother chose to do so, but he indicated that he would stay in one place now that he was separated from Mother. He said that he intends to work with MRDD and claimed that he has people who could care for M.B. while he works.

{¶17} This Court has carefully reviewed the entire record and concludes that the evidence clearly and convincingly supports the judgment of the trial court. There do not appear to be any issues which support a reversal of the judgment of the trial court.

III.

{¶18} The possible issue for review presented by Father's counsel lacks merit. Accordingly, Father's appeal is without merit and wholly frivolous under *Anders v. California* (1967), 386 U.S. 738. The request by Father's attorney for permission to withdraw is granted. The judgment of the Summit County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

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.

CARLA MOORE
FOR THE COURT

DICKINSON, J.
CONCURS

CARR, J.
CONCURS IN JUDGMENT ONLY

APPEARANCES:

NEIL P. AGARWAL, Attorney at Law, for Appellant.

PAMELA HAWKINS, Guardian Ad Litem, for Appellant.

LINDA BENNETT, Attorney for CASA/GAL.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.

ROBERT BENEDICT, Attorney at Law, for Appellee.