

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE:

J. D.
J. D.

C. A. No. 24813

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE Nos. DN 07-02-0131
 DN 07-02-0132

DECISION AND JOURNAL ENTRY

Dated: October 21, 2009

BELFANCE, Judge.

{¶1} The juvenile court terminated the parental rights of Pearl Lantz (“Mother”) to her two youngest children and placed them in the permanent custody of Summit County Children Services Board (“CSB”). Mother’s counsel filed an appeal on her behalf, but has asserted that there are no meritorious issues to raise on Mother’s behalf. We affirm the trial court’s judgment.

FACTS

{¶2} Mother is the natural mother of five minor children, only two of whom are parties to this case. When this case began, Mother’s three oldest children were living outside her home in the custody of relatives. Mother’s only children living with her at that time were J.D., born August 10, 2004, and J.D., born July 26, 2006. Although their father participated in the proceedings below, he is not a party to this appeal.

{¶3} Although CSB originally became involved with this family on a voluntary basis, the agency filed involuntary dependency complaints on February 5, 2007, alleging that the children were being exposed to substance abuse and domestic violence in the home. The trial court initially allowed the children to remain in Mother's home under an order of protective supervision, but later ordered that they be placed in the temporary custody of CSB. The trial court reasoned that Mother had not been complying with the requirements of the case plan and there were new concerns about the unsafe and unsanitary condition of the home.

{¶4} Throughout this case, the primary concern of CSB and the trial court was Mother's long history of drug abuse. Mother had become addicted to pain medication during high school after suffering a serious hand injury in her industrial arts class. She had been abusing drugs ever since, including during her pregnancies with J.D. and J.D. and throughout the young lives of both children. Consequently, the case plan required Mother to achieve ongoing sobriety. She was also required to address her mental health problems, the history of domestic violence in her home, and her lack of employment and stable housing.

{¶5} During the next 22 months, however, Mother did not work on any of these goals on a consistent basis. On December 22, 2008, CSB moved for permanent custody of J.D. and J.D. Following a hearing on the motion, the trial court found that the children had been in the temporary custody of CSB for at least 12 of the prior 22 months and that permanent custody was in their best interests. Consequently, it terminated parental rights and placed both children in the permanent custody of CSB.

{¶6} Mother appealed from the trial court's judgment. In lieu of a merit brief, her 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 Mother'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.

BEST INTERESTS OF THE CHILDREN

{¶7} Mother's counsel has presented one potential issue for review: whether the evidence supported the trial court's conclusion that permanent custody was in the best interests of the children. Counsel has concluded that this issue has no merit to it and, after a thorough review of the evidence before the trial court, we agree.

{¶8} Before a juvenile court can terminate parental rights and award to a proper moving agency permanent custody of a child, 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 the prior 22 months, 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) 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 the children had been in the temporary custody of CSB for 12 of the prior 22 months and that finding is fully supported by the record. Thus, the only potential challenge would be to the trial court's conclusion that permanent custody was in the children's best interests.

{¶10} When determining whether a grant of permanent custody is in the children's best interests, the juvenile court must consider all the relevant factors, including those enumerated in

R.C. 2151.414(D): the interaction and interrelationships of the children, the wishes of the children, the custodial history of the children, and the children's need for permanence in their lives. See *In re S.N.*, 9th Dist. No. 23571, 2007-Ohio-2196, at ¶27.

{¶11} Although there was evidence that Mother visited the children regularly and interacted well with them, CSB never expanded her visits or allowed her to have unsupervised visits with her children. The agency remained concerned that Mother had not been working to resolve the problems that led to the removal of the children from her home. Despite Mother's recognition that she had serious problems with drug abuse and domestic violence in her home, she did little to address either of those problems during the entire two-year length of this case.

{¶12} Mother did not follow through with drug treatment or counseling and she did not submit urine samples for drug screening as required. Many of the urine samples that Mother did submit tested positive for drugs, including heroin and oxycodone. Mother admitted that she had a long-term drug problem and that she had continued to use drugs during the time that she should have been working on the case plan. She was also facing numerous criminal charges that she did not resolve during the pendency of this case.

{¶13} Mother's caseworker testified that Mother would continually tell her that she was going to work on her case plan, but she never followed through with what she promised. Although Mother would comply with the case plan for brief periods of time, she never did so consistently. Moreover, she repeatedly lost contact with the caseworker, the guardian ad litem, and the service providers. The caseworker explained that Mother did not seem to appreciate the significance of this case and that she did not know what else she could have done to get through to her. At the permanent custody hearing, Mother expressed regret that she had not taken this case more seriously.

{¶14} Because the children were only two and four years old at the time of the hearing, the guardian ad litem spoke on their behalf. She recommended permanent custody for both children because she believed it was in their best interests. The guardian emphasized the failure of Mother to resolve her long-term drug addiction.

{¶15} The custodial history of the children included more than one year living in the temporary custody of CSB. Prior to that time, they resided with Mother, where they were exposed to domestic violence and Mother's ongoing drug use.

{¶16} J.D. and J.D. were in need of a legally secure permanent placement and neither parent was in a position to provide them with a suitable home. Although the children were doing well in their temporary placement with the paternal grandmother, she was not able to provide them with a permanent home. CSB was unable to find any other suitable relatives who were able to take legal custody of the children. Consequently, the trial court reasonably concluded that a legally secure permanent placement could only be achieved through a grant of permanent custody to CSB.

{¶17} The trial court had ample evidence to support its conclusion that permanent custody was in the best interests of these children. The possible issue for review presented by Mother's counsel lacks merit. Moreover, 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.

CONCLUSION

{¶18} Mother's appeal is without merit and wholly frivolous under *Anders v. California* (1967), 386 U.S. 738. The request by Mother'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.

EVE V. BELFANCE
FOR THE COURT

MOORE, P. J.
DICKINSON, J.
CONCUR

APPEARANCES:

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

PEARL LANTZ, pro se, Appellant.

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

LINDA BENNETT, Attorney at Law, for Guardian ad Litem.