

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: T.L., J.B., J.J.B.

C.A. No. 25484

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE Nos. DN 08-03-232
 DN 08-03-233
 DN 09-01-13

DECISION AND JOURNAL ENTRY

Dated: November 17, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} This appeal is from a judgment terminating a mother’s parental rights to her three children. In lieu of a merit brief, the mother’s lawyer has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and has also filed a motion for permission to withdraw from the case. This Court has reviewed the potential issue set forth in the *Anders* Brief and the mother’s responsive filing, and has independently reviewed the record, finding no issues meriting reversal of the trial court judgment. Accordingly, this Court affirms the judgment of the trial court and grants counsel’s motion to withdraw.

FACTS

{¶2} Tamira B. is the mother of T.L., born October 25, 2003; J.B., born August 11, 2006; and J.J.B., born January 7, 2009. Deaire Palmer is the father of T.L., and Richard B. is the father of J.B. and J.J.B. Neither of the fathers is a party to this appeal. At the permanent custody

hearing, Richard testified in favor of granting custody of J.B. and J.J.B to the mother, and Mr. Palmer asked the court to grant custody of his son, T.L., to the child's paternal grandfather.

{¶3} Summit County Children Services Board had previously been involved with the family in October 2006. At that time, the children remained in the home under the protective supervision of the agency for approximately four months. The record does not include the details of that involvement, but the matter was apparently resolved with a return of the children to the home. This case was brought by Children Services Board approximately one year later, on March 31, 2008, based on concerns that the two older children had been exposed to violence in the home and that J.B. was exhibiting symptoms of failure to thrive.

{¶4} On May 14, 2008, J.L. and J.B. were adjudicated dependent, and they were subsequently placed in the temporary custody of the agency. Following J.J.B.'s birth, he was also adjudicated dependent based on concern for his safety, and he was likewise placed in the temporary custody of the agency. The three children have been in the same foster home throughout this case.

{¶5} The case plan goals for the mother focused on mental health issues, parenting skills, anger management, and her being able to provide for the basic needs of her children on a consistent basis. Subsequent amendments to the case plan added requirements for couples' counseling, parent-focused counseling, and a domestic violence support group. Case plans were prepared for both fathers, but the fathers did little to address their case plan objectives.

{¶6} In September 2009, the agency moved for permanent custody of all three children. Following a hearing on the motion, the trial court found that the two older children had been in the custody of the agency for more than 12 of 22 consecutive months, that J.J.B. could not be placed with either parent within a reasonable time, and that permanent custody was in the best

interest of all three children. Accordingly, the trial court terminated the parental rights of all three parents and placed the children in the permanent custody of the agency.

{¶7} The mother has appealed from the judgment of the trial court. In lieu of a merit brief, her appellate lawyer filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), in which he concluded that there were no meritorious assignments of error. He also filed a motion to withdraw from representation of his client because, after a review of the record, he believed any appeal would be frivolous. Nevertheless, consistent with the directive of the United States Supreme Court to assist the appellate court by referring to any matters of record that might arguably support an appeal, the mother's lawyer submitted a possible issue to this Court. See *id.* at 744. The mother was served with a copy of that brief and has filed a response. She has argued that she should have custody of her children, but did not assign any additional legal errors or present any additional arguments. Children Services Board did not file an appellate brief.

ISSUES FOR REVIEW

{¶8} In his *Anders* brief, the mother's lawyer has submitted the question of whether the agency used reasonable efforts to reunite the minor children with their mother and also whether the evidence presented at the hearing clearly and convincingly established that permanent custody was in the best interests of the children. The mother's lawyer concluded that there is no merit in these issues.

{¶9} 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 Section 2151.41.4(E) of the Ohio Revised Code; and (2) that the grant of permanent custody to the agency is in the best interest of the child, based on an analysis under Section 2151.41.4(D) of the Ohio Revised Code. See R.C. 2151.41.4(B)(1) and 2151.41.4(B)(2); see also *In re William S.*, 75 Ohio St.3d 95, 99 (1996).

{¶10} The trial court found that the first prong of the permanent custody test was satisfied in regard to the two older children because they had been in the temporary custody of the agency for at least 12 of 22 consecutive months. See R.C. 2151.41.4(B)(1)(d). The record supports this finding.

REASONABLE CASE PLANNING AND DILIGENT EFFORTS

{¶11} In addition, the trial court found that the first prong was satisfied in regard to the youngest child by a finding that he could not be placed with a parent within a reasonable time or should not be placed with a parent. See RC. 2151.41.4(B)(1)(a). In so doing, the trial court determined that, despite reasonable case planning and diligent efforts by the agency, the parents failed to remedy the conditions that brought the child into care. See R.C. 2151.41.4(E)(1). The record supports this finding as well.

{¶12} The children were initially removed from the home based on concerns regarding the existence of domestic violence in the home and the parents' ability to provide for the needs of the children. At that time, the second child appeared to be underweight and small for his age. He was later diagnosed as being a non-organic-failure-to-thrive child. There were general concerns about the parents' ability to appropriately care for the children. Despite referrals for parenting classes and efforts to include parenting issues in her counseling sessions, the mother was not able to demonstrate parenting skills.

{¶13} Concerns regarding domestic violence also continued as the mother and Richard engaged in an on-again, off-again relationship throughout these proceedings. The mother had been victimized repeatedly by both of the men that fathered her children, and she has failed to separate herself from Richard, her current husband. She considered going back to Mr. Palmer even though he broke out her car windows, slashed her tires, and gave her a head injury. The record demonstrates that the mother made allegations of domestic violence and then denied them; made plans for divorce, and then changed her mind; petitioned the court for one civil protection order against Richard, but later withdrew her request in an effort to rehabilitate the marriage through couples' counseling; and had a subsequent civil protection order against Richard, but permitted him to contact her in violation of it. Despite referrals for individual counseling, couples' counseling, a domestic violence support group, and anger management, Richard was arrested for domestic violence against the mother in December 2009 and was incarcerated at the time of the permanent custody hearing. While Richard was in jail on those charges, he and the mother continued to have telephone contact in violation of a civil protection order.

{¶14} The mother's failure to fully address her lack of insight into the domestic violence issue leaves her children at risk of harm. Specifically, the mother failed to engage in the mental health counseling that was recommended to assist her in developing an ability to care for her children. In her psychological evaluation, the mother was diagnosed with borderline personality disorder with dependent and antisocial personality traits. The diagnosing psychologist explained that this condition is characterized by impulsivity, poor decision-making, chronic instability, intense personal relationships, and difficulty regulating emotions. The additional features suggest difficulty in following social norms, a lack of empathy for other people, and relying on

others to make decisions for you. The psychologist recommended that the mother should engage in an intensive therapy program to address these issues and to protect the safety and well-being of her children. Despite starting two such programs at two separate agencies, the mother quit both without progressing beyond the introductory sessions. Instead, she began attending traditional counseling, but even her attendance in that program grew increasingly inconsistent. According to her counselor, the mother made some progress in her ability to communicate and in lessening her depressive symptoms, but she failed to demonstrate an understanding of the domestic violence issue and its impact on her and her children. The counselor expressed concern that the mother continues to be involved in violent and unstable relationships.

{¶15} The caseworker testified that the mother frequently called the agency and the caseworker, and went through a full range of emotions during each telephone call. She explained that the mother was often irrational, angry, and repetitious during those calls.

{¶16} Of additional significance is the fact that the information the mother conveyed to her caseworker and service providers was not always reliable. For example, the mother initially denied any domestic violence between her and Richard, but later admitted that there had been violence between them. At one point, upon getting the mother's assurance that Richard was not residing in her home, the agency allowed visits to take place there. After the agency discovered that Richard was, in fact, staying at the home, visits were moved back to the visitation center.

{¶17} Richard had a case plan, but failed to seriously address any of the components of that plan, and also failed to demonstrate any benefit from the efforts he did make. Despite engaging in some counseling services, he was arrested during these proceedings on drug charges and for domestic violence against the mother. He was incarcerated at the time of the permanent

custody hearing. Mr. Palmer also had a case plan, but failed to engage in any of the services offered to him, except for attending a few visits with T.L. early on.

{¶18} The trial court's finding that J.J.B. could not be returned to either of the parents within a reasonable time or should not be returned to either of the parents is supported by the evidence. The trial court's finding that the parents failed to remedy the conditions that brought J.J.B. into care is supported by the evidence. Furthermore, the record does not demonstrate that the agency failed to make reasonable efforts to remedy the conditions that caused the removal of J.J.B. and his siblings from the care of their parents.

BEST INTERESTS OF THE CHILDREN

{¶19} Regarding the second prong of the permanent custody test, the trial court found that it was in the best interests of all of the children to be placed in the permanent custody of the agency. In making that determination, a 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 Section 2151.41.4(E)(7) to (11) of the Ohio Revised Code apply. R.C. 2151.41.4(D). Upon review, this Court concludes that the trial court's finding that permanent custody was in the best interest of all three children was supported by the evidence presented at the permanent custody hearing.

Personal Interactions and Relationships

{¶20} At the time of the permanent custody hearing, the mother was married to Richard. Both that relationship and the mother's relationship with T.L.'s father included violent episodes. The mother has been married to Richard since August 2006. At some point, they lived together in Alabama, but Mr. Palmer persuaded her to leave Richard and return to Ohio. Richard

apparently returned to Ohio later. The record reveals incidents of domestic violence in 2008 and December 2009. Richard has five convictions for domestic violence spread over the course of the last sixteen years. At the time of the permanent custody hearing, he was serving a one-year sentence for domestic violence against the mother. The mother testified that she is considering divorce from Richard, but has gone back and forth on the question in the past, and has not actually initiated a divorce. The mother has convictions for attempted child endangering, attempted theft, and attempted forgery. Although the mother was said to have generally interacted in an appropriate and positive manner with her children during visits, most of the visits were conducted at the visitation center and were of limited duration.

{¶21} Regarding the children’s relationship with their parents, T.L., the oldest child, was said to have a very close relationship with his mother, closer than that of the two younger boys. T.L. refers to both Richard and Mr. Palmer as “dad,” but there was little evidence of a positive relationship between him and either man.

{¶22} The three boys are very bonded with one another, especially the two older ones. T.L. also has a positive relationship with his paternal grandfather. The children have no significant bond with any maternal relatives. All of the children are said to be closely bonded with their foster parents, who would be interested in adopting all three of them should the agency receive permanent custody.

Wishes of the children

{¶23} The wishes of a child concerning his or her own custody may be expressed directly by the child or through the child’s guardian ad litem, with due regard for the maturity of the child. See R.C. 2151.41.4(D)(1)(b). The two younger children, at ages one and three, were not of sufficient maturity to independently express their wishes concerning custody. Six-year-

old T.L. initially said he wanted to go home to be with his mother. Later, he expressed a desire to live with his grandfather. The grandfather, however, is not able to assume custody of all three boys, and T.L. did not want to leave his brothers. When a possible placement with his grandfather was being explored through home visits, T.L. enjoyed the visits, but had nightmares and experienced anxiety symptoms about leaving his brothers. He started having daytime and nighttime bed-wetting problems. The guardian ad litem acknowledged T.L.'s desire to live with his grandfather, but also recognized the close relationship among the boys. In her testimony and her final report, she recommended that permanent custody be granted to the agency for all three boys.

Custodial history

{¶24} T.L. and J.B. lived with their mother until they were removed during this case. They have been in agency custody for approximately two years, including 12 of 22 consecutive months under Section 2151.41.4(B)(1)(d) of the Ohio Revised Code. J.J.B. has been in the custody of the agency virtually his entire life and has been in foster care for 15 months, but was in the temporary custody of the agency for only seven months before Children Services filed the motion for permanent custody. See *id.* J.J.B. never resided with either of his parents.

Legally secure permanent relationship

{¶25} An attempt was made to place the boys with a maternal great aunt in May 2008. After two months, however, she concluded that she was not able to take care of them and asked that the boys be removed from her home. A placement of T.L. with his paternal grandfather was also attempted. Although the grandfather expressed interest in obtaining custody of T.L., he was not willing or able to take custody of all three boys, and he did not file a motion for legal custody. A placement of T.L. with his grandfather would necessitate separation by T.L. from his

brothers, and T.L. did not want to be separated from them. The caseworker believed it was in T.L.'s best interest to remain with his brothers. She also believed that permanency could only be achieved through a grant of permanent custody and that permanent custody was in the best interests of all three children. She asserted that the parents have not been able to remedy the conditions that caused removal of the children and that they would be at risk of harm if they were returned to the home.

{¶26} This Court concludes that the evidence clearly and convincingly supports the finding that permanent custody was in the best interest of the children and also supports the finding that the Children Services Board made reasonable efforts to reunite the minor children with their mother. The proposed issues are without merit.

CONCLUSION

{¶27} None of the issues presented for review by the mother's appointed lawyer are meritorious. The mother's responsive filing contains no arguments that were not previously raised or otherwise considered by this Court. Furthermore, this Court has independently reviewed the trial court record, and that review has failed to reveal the existence of reversible error. Accordingly, this appeal is without merit and wholly frivolous under *Anders*. The request by the mother's lawyer for permission to withdraw is granted. The judgment of the trial court 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.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
BELFANCE, J.
CONCUR

APPEARANCES:

ADAM N. VAN HO, attorney at law, for appellant.

SHERRI BEVAN WALSH, prosecuting attorney, and RICHARD KASAY, assistant prosecuting attorney, for appellee.