

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: J. M.

C. A. No. 25040

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DN 07-11-1121

DECISION AND JOURNAL ENTRY

Dated: February 24, 2010

WHITMORE, Judge.

{¶1} Appellant, John M. (“Father”), appeals from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that terminated his parental rights to one of his minor children and placed the child in the permanent custody of Summit County Children Services Board (“CSB”). This Court affirms.

I

{¶2} Father is the natural father of J.M., born June 28, 2003. Father has three other minor children who are not at issue in this appeal because they were placed in the legal custody of relatives, with Father’s consent. J.M.’s mother voluntarily relinquished her parental rights and is not a party to this appeal.

{¶3} On November 29, 2007, CSB filed complaints alleging that J.M. and his siblings were dependent and/or neglected children. The children were initially allowed to remain in the home, but were later removed and placed in the temporary custody of CSB. Father was

incarcerated at the time the children were removed, although the children apparently had been living with both parents at one time. The record fails to reveal when Father was arrested or convicted, only that it was sometime in 2007.¹ The record does reveal that Father was convicted of robbery and kidnapping, that he was incarcerated throughout this case, and that he was not scheduled to be released until November 2011.

{¶4} Although CSB had been able to place J.M.'s siblings with relatives, it had been unable to find an appropriate relative placement for J.M. due to his many behavioral problems. J.M. did not sleep well and often wandered through the house at night. One night while J.M. was placed in a relative's home and others in the house were sleeping, J.M. went into the bedroom of a younger cousin and pulled down her pants. J.M. was removed from the relative's home shortly after the incident.

{¶5} Although J.M.'s counselor testified that the child likely had acted out sexually because he had experienced sexual abuse earlier in his life, she had not yet established enough trust with the child to explore the origins of his trauma. Concerned that J.M. might pose a threat to younger children, CSB looked for a caregiver who had no younger children and who would be able to keep a close eye on J.M. J.M. also had developmental delays and required a caregiver who would consistently work with him to improve his academic skills.

{¶6} CSB later placed J.M. with a therapeutic foster mother who had only one older child in the home. The foster mother started J.M. in counseling, worked closely with him on his academic skills, and provided him with a structured environment.

¹ It is unclear why CSB failed to introduce such evidence, given J.M.'s interaction with Father and his custodial history were specific factors that the trial court was required to consider under R.C. 2151.414(D).

{¶7} Because neither parent was able to provide J.M. with a suitable home any time in the near future and there were no relatives who would be able to do so, CSB eventually moved for permanent custody of J.M. The agency alleged, among other things, that J.M. had been in its temporary custody for at least 12 of the prior 22 months and that permanent custody was in the child’s best interest. Following a hearing on the motion, the trial court found that J.M. had been in the temporary custody of CSB for more than 12 of the prior 22 months and that permanent custody was in his best interest.

{¶8} Father filed a timely appeal. 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 A GRANT OF PERMANENT CUSTODY IN THE BEST INTEREST OF J.M. WAS SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.”

{¶9} In his appellate brief, Father’s counsel has presented one potential issue for review but has concluded that there is no merit to it. After a thorough review of the evidence before the trial court, this Court agrees.

{¶10} 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.

{¶11} The trial court found that the first prong of the test was satisfied because J.M. had been in the temporary custody of CSB for more than 12 of the prior 22 months and that finding is fully supported by the record. Thus, the only potential issue is a challenge to the trial court's best interest finding.

{¶12} When determining whether a grant of permanent custody is in the child'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 child, the custodial history of the child, and the child's need for permanence in his life. See *In re R.G.*, 9th Dist. Nos. 24834 & 24850, 2009-Ohio-6284, at ¶11.

{¶13} Father failed to maintain any interaction with J.M. during this case. According to his own testimony, the last time Father saw J.M. was more than two years before the permanent custody hearing. Father testified that he sent a birthday card to J.M. and spoke to him on the phone once since that time, but he admitted that he had not had any contact with J.M. for more than a year. Although Father claimed to be close to J.M. prior to his incarceration, he conceded that he had done little to preserve a parent-child relationship during the past two years.

{¶14} J.M. was doing well in his current placement in a therapeutic foster home and had bonded with that family. The foster mother had been working with J.M. to address his developmental delays and behavioral problems. She had started J.M. in counseling to address

his emotional issues. J.M. had also started taking medication to help him sleep at night. The foster mother testified that she loved J.M. and was interested in adopting him.

{¶15} J.M. was six years old at the time of the hearing, but his counselor testified that he was immature for his age. Moreover, the guardian ad litem testified that he had tried to get J.M. to express his wishes to him, but had been unable to do so. The guardian offered his opinion that permanent custody was in J.M.'s best interest. He emphasized that J.M. was doing very well in his current therapeutic foster placement. The guardian commended the foster mother for her ability to understand J.M. and recognize his problems, and emphasized that the foster mother genuinely seemed to care for J.M.

{¶16} J.M.'s custodial history included more than 12 months in the temporary custody of CSB prior to the permanent custody hearing. Before January 2008, J.M. had resided with his mother. Prior to Father's incarceration, which was sometime in 2007, J.M. apparently lived in the custody of both of his parents for three to four years.

{¶17} J.M. spent a substantial part of his young life outside his parents' custody and was in need of a legally secure permanent placement. Neither parent could provide a stable home for him, nor had CSB been able to find a suitable relative placement. Although Father's cousin had expressed interest in legal custody of J.M., she had not filed a motion for legal custody. Moreover, she testified that she was not aware of J.M.'s sexual misbehavior. CSB did not believe that the cousin could provide a suitable placement for J.M. because she had four young children living in her home, three of whom were younger than J.M. CSB and the trial court remained concerned that J.M. had acted out sexually against a younger child in another relative's home and he had yet to begin addressing that problem with his counselor.

{¶18} J.M. had achieved a level of stability in his current foster placement, he was making progress in counseling and was attending school in that community, and the foster mother was interested in adopting him. Consequently, the trial court concluded that a legally secure permanent placement could only be achieved through a grant of permanent custody to CSB.

{¶19} The trial court had ample evidence before it to support its conclusion that permanent custody was in J.M.'s best interest. The possible issue for review presented by Father'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 that support a reversal of the judgment of the trial court.

{¶20} Father's appeal is without merit and frivolous under *Anders v. California* (1967), 386 U.S. 738. The request by Father's attorney for permission to withdraw is granted.

III

{¶21} Father's appeal is without merit. 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.

BETH WHITMORE
FOR THE COURT

CARR, J.
BELFANCE, P. J.
CONCUR

APPEARANCES:

BRENDON J. KOHRS, Attorney at Law, for Appellant.

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

JOSEPH KERNAN, Attorney at Law, for GAL.