

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: J. S.

C.A. No. 25659

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DN 09-04-0276

DECISION AND JOURNAL ENTRY

Dated: March 9, 2011

DICKINSON, Judge.

INTRODUCTION

{¶1} This case involves the permanent custody of a minor. The juvenile court removed the child from the custody of her mother shortly after her premature birth. The child was born with symptoms of drug withdrawal and later exhibited developmental delays because of the mother's drug use during pregnancy. Appellate counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and has suggested that there are no meritorious grounds to support reversal of the trial court's judgment. This Court affirms because the mother has no plausible arguments to challenge the termination of her parental rights. The record demonstrates that the mother failed to make any effort to remedy her long-term drug addiction and other parenting problems.

BACKGROUND

{¶2} Janice Beall is the mother of J.S., born March 20, 2009. J.S. was born at 34 weeks gestation, experiencing symptoms of drug withdrawal. The mother admitted to Summit County Children Services Board that she had used heroin, cocaine, and benzodiazene during her pregnancy and that she had been abusing “hard drugs” for over a decade. Children Services learned that the mother had several other problems that impeded her ability to provide a suitable home for the child. In addition to the mother’s drug problem, the agency was also concerned about her significant criminal history, that she suffered from bipolar disorder but was not receiving treatment, and that she had been the repeated victim of domestic violence by her long-time boyfriend, who is the father of J.S. Although the father participated in the proceedings below, he is not a party to this appeal.

{¶3} The juvenile court placed J.S. in the custody of Children Services before she was released from the hospital. She has resided in the home of the mother’s cousin since she was one month old. Although the initial goal of this case was to return J.S. to the mother’s custody, the mother did not comply with any of the reunification requirements of the case plan. She did not address her drug addiction, mental illness, or any of her other parenting problems.

{¶4} Children Services eventually moved for permanent custody of J.S. Following a hearing on the motion, the trial court found that J.S. had been in the temporary custody of Children Services for 12 or more months of a 22-month period and that permanent custody was in her best interest. Consequently, it terminated the mother’s parental rights and placed J.S. in the permanent custody of Children Services.

BEST INTEREST OF THE CHILD

{¶5} The mother's counsel has presented one potential issue for review: whether the evidence supported the trial court's finding that permanent custody was in the best interest of the child. The mother's counsel has concluded that this issue has no merit.

{¶6} Before a juvenile court may 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 Section 2151.41.4(E) of the Ohio Revised Code; and (2) 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 (2); see also *In re William S.*, 75 Ohio St. 3d 95, 99 (1996).

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

{¶8} When determining whether a grant of permanent custody is in the child's best interest, the juvenile court must consider all the relevant factors, including those enumerated in Section 2151.41.4(D): the interaction and interrelationships of the child, the wishes of the child, the child's custodial history, and the child's need for permanence in her life. See *In re S.N.*, 9th Dist. No. 23571, 2007-Ohio-2196, at ¶27.

{¶9} Throughout the short lifetime of J.S., the mother's interaction with her has been limited to weekly visits that were either supervised or monitored by Children Services personnel. The agency did not expand visitation because the mother did not begin to address her long-standing drug addiction, as required by the case plan. She did not obtain a substance abuse assessment, did not participate in drug treatment, and did not regularly submit urine samples for drug screening. In fact, the mother never submitted any drug screens throughout this case, leading the agency to conclude that she was still abusing drugs, as she had been doing for the past decade. The mother further failed to comply with the requirements of the case plan that she attend parenting classes and address her mental health and domestic violence problems.

{¶10} Aside from failing to work on her own problems, the mother did not develop a strong bond with J.S. because she did not visit her on a regular basis. Because the mother was incarcerated from August 2009 until February 2010 for a community control violation, she had no interaction with J.S. for those six months. Even before her incarceration, she attended less than 25 percent of the scheduled visits and, when she did attend, she often arrived late or left early. Following her release from prison, despite her claims to the caseworker that she wanted to be reunited with J.S., she continued to miss most of the scheduled visits. The mother eventually told the caseworker that she realized that J.S. was "better off" in the cousin's home.

{¶11} J.S. had been living with the mother's cousin since she was about one month old. According to the guardian ad litem, J.S. was thriving in the cousin's home. The caseworker testified that the cousin was meeting all of J.S.'s needs and that her home was "very child friendly." She described the loving relationship between J.S. and the cousin's family and testified that J.S. appeared to be happy in their home. The cousin and her husband completed training to be qualified as foster parents and had expressed an interest in adopting J.S.

{¶12} Because J.S. was less than two years old at the time of the permanent custody hearing, the guardian ad litem spoke on her behalf. He opined that permanent custody was in her best interest. The guardian noted that, although the father initially had made some progress working toward reunification, the mother had never done so. The mother could not care for J.S. at that time or any time in the foreseeable future because she had done nothing to address her long criminal or drug abuse histories, nor had she developed a close relationship with J.S.

{¶13} At the time of the permanent custody hearing, J.S. was almost 18 months old and had never lived with the mother. She had spent most of her life in the temporary custody of Children Services. As this Court emphasized in *In re Smith*, 9th Dist. No. 20711, 2002 WL 5178 (Jan. 2, 2002), however, “the time period in and of itself cannot be held against the parent without considering the reasons for it and the implications that it had on this child.” *Id.* at *5. Unlike the situation at issue in *In re Smith*, however, this case did not involve a mother who was making substantial progress toward reunification with her child. J.S. was removed from the mother’s custody because of the mother’s drug abuse. The trial court extended the placement of J.S. in the temporary custody of Children Services to allow the mother more time to address her drug addiction and other parenting problems, but she never did so. At the time of the permanent custody hearing, the mother had taken no steps to work toward reunification with her child.

{¶14} During the same period, J.S. was thriving in her out-of-home placement. She had spent most of her life in the home of the mother’s cousin, who was helping her recover from the effects of the mother’s drug use during pregnancy. When J.S. was placed with the cousin, she was taking medication to prevent seizures and other physical symptoms of drug withdrawal. It was later discovered that J.S. also suffered from developmental delays. When J.S. was six months old, the cousin and outside service providers began working with her to improve her

vocabulary and her fine and gross motor skills. By the time of the permanent custody hearing, J.S. had overcome her drug withdrawal symptoms and was developmentally on track.

{¶15} J.S. had spent her entire 18-month life in a temporary placement and was in need of a legally secure permanent home, which could only be achieved through a grant of permanent custody to Children Services. The cousin and her husband had been providing a stable and loving temporary home for J.S. and were willing to provide her a permanent home through adoption. That placement could not be realized unless the trial court first granted permanent custody to Children Services. The cousin was the only relative that Children Services had been able to find who was willing and able to provide a permanent placement for J.S.

{¶16} Although the cousin and her husband had expressed interest in adopting J.S., they were not willing to take legal custody of her because the mother would retain residual parental rights, including a right to visit J.S. Because the mother continued to abuse drugs and did not regularly visit J.S., the cousin did not believe that a continued relationship with the mother would be positive for J.S. She feared that the mother's lack of commitment would continue and that, as J.S. grew older, she would be heartbroken by the mother's frequent "no-show[s]."

{¶17} The trial court had clear and convincing evidence before it to support its conclusion that permanent custody was in J.S.'s best interest. The possible issue for review presented by the mother's counsel lacks merit. Moreover, this Court's independent review of the record did not reveal any issues that would support a reversal of the trial court's judgment.

CONCLUSION

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

granted. The judgment of the Summit County Common Pleas Court, 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.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, P. J.
MOORE, J.
CONCUR

APPEARANCES:

HOLLY L. BEDNARSKI, Attorney at Law, for Appellant.

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