[Cite as *In re M. C.*, 2009-Ohio-5544.]

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

IN RE: M. C.	C. A. No. 24797
	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. DN 06-12-1216

DECISION AND JOURNAL ENTRY

Dated: October 21, 2009

MOORE, Presiding Judge.

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

I.

{¶2} M.C. was born on July 22, 1998 to Saidrika M. ("Mother") and Mark C. ("Father"). There is no evidence that the parents were ever married to each other or that they ever jointly cared for M.C. Mother was M.C.'s custodian early in his life and Father obtained legal custody in December 2003. Father was the child's custodian at the time this case began. Father participated in the trial court proceedings and has appealed from the decision of the trial court. Mother did not participate in the proceedings below and is not a party to the present appeal.

{¶3} The present matter was initiated by a complaint filed on December 13, 2006, alleging that M.C. was abused, neglected, and dependent. In the complaint, CSB claimed that a school employee contacted Father when M.C. was having behavioral issues at school (poking himself and another student with an opened paper clip). The employee told Father that M.C. was out of medication for Attention Deficit Hyperactivity Disorder ("ADHD"). Father responded that he would get the prescription refilled. When M.C. returned to school the next day, school officials discovered bruises on his left arm, thigh, and hip. School officials then contacted CSB and the child was removed from Father's home.

{¶4} M.C. was adjudicated to be an abused and dependent child and was placed in the temporary custody of the agency on March 7, 2007. Father appealed that judgment, and the decision of the trial court was affirmed by this Court. See *In re M.C.*, 9th Dist. No. 23788, 2008-Ohio-116. In so doing, this Court upheld the trial court determination that hitting M.C. 10-20 times with a rolled up belt was excessive corporal punishment which subjected M.C. to a substantial risk of physical harm. Id. at ¶19-20.

{¶5} The trial court adopted a case plan which required Father to: (1) support M.C. in obtaining a mental health evaluation for his emotional and behavioral problems and participate with him in recommended treatment; (2) maintain stable housing and employment in order to provide for M.C.'s basic needs; (3) complete a parenting assessment and comply with all recommendations, including anger management; and (4) complete his own mental health assessment and comply with all recommendations, including anger management and coping skills.

{¶6} On November 19, 2008, CSB moved for permanent custody. Father's motion for legal custody and M.C.'s motion seeking an award of legal custody to the mother of his half-

brother were also before the trial court. Following a hearing, the court granted CSB's motion for permanent custody and denied all other dispositive motions. The trial court found that Mother had abandoned M.C., that the child had been in the custody of the agency for 12 or more months of a consecutive 22-month period, and that permanent custody was in the best interest of M.C. Father has timely appealed and has assigned one error for review.

II.

ASSIGNMENT OF ERROR

> "THE JUVENILE COURT ERRED BY GRANTING THE CHILDREN SERVICES BOARD PERMANENT CUSTODY OF M.C. BECAUSE THE ORDER WAS NOT SHOWN BY CLEAR AND CONVINCING EVIDENCE TO BE IN M.C.'S BEST INTEREST AND WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶7} Father contends that the trial court finding that permanent custody is in the best interest of the child is against the manifest weight of the evidence. We are asked by both parties in this case, Father and CSB, to utilize the standard of review typically applied in criminal matters in considering this assigned error. Father also contends that the judgment of the trial court should be reversed because he fully complied with his case plan objectives.

{¶8} The Ohio Supreme Court recently discussed two distinct manifest weight of the evidence standards of review. See, generally, *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202. According to *Wilson*, one standard has traditionally been applied in criminal cases. Id. at ¶25. That standard of review was explained in *State v. Thompkins* (1997), 78 Ohio St.3d 380, and includes the following:

> "The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and create such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered."

Id. at 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. The court explained that sufficiency of the evidence is a test of adequacy regarding whether the evidence is legally sufficient to support a verdict as a matter of law, whereas weight of the evidence addresses the evidence's effect of inducing belief. Id. at 386-387.

{¶9} The other standard, according to *Wilson*, has been applied in civil cases. *Wilson*, 2007-Ohio-2202, at ¶24. That standard was explained in *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, syllabus. In that case, the court wrote:

> "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence."

Under this standard, the reviewing court presumes that the findings of the trier of fact are correct. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80-81. This presumption arises because the trial court had an opportunity "to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." Id. at 80.

{¶10} This Court has recently applied the criminal standard in reviewing the manifest weight of the evidence in juvenile delinquency proceedings, although such proceedings are nominally civil, because of their inherently criminal aspects and because of the constitutional safeguards that apply to children who are alleged to be delinquent. *In re R.D.U.*, 9th Dist. No. 24225, 2008-Ohio-6131, at ¶6. See, also, *Huntington National Bank v. Chappell*, 9th Dist. No. 06CA008979, 2007-Ohio-4344, at ¶17-75, Dickinson, J., concurring (expressing concern with the application of the civil standard of review for weight of the evidence).

{¶11} Similarly, in proceedings for the termination of parental rights, courts have often looked beyond the civil label attached to such proceedings in requiring various safeguards not

typically present in civil cases. See, e.g., *M.L.B. v. S.L.J* (1996), 519 U.S. 102, 120 (constitutional right of indigent parent to appeal, including transcript prepared at state expense); *Santosky v. Kramer* (1982), 455 U.S. 745, 747-748 (constitutional right to elevation of the burden of proof to "at least" clear and convincing); *Stanley v. Illinois* (1972), 405 U.S. 645, 649 (constitutional right of unmarried father to a hearing). *State ex rel. Asberry v. Payne* (1998), 82 Ohio St.3d 44, 48 (statutory right of indigent parent to appointed counsel at state expense).

{¶12} The question of the standard of review in permanent custody cases is worthy of consideration since the interests at stake in such cases have been said to set them apart from the "broad array of civil cases." *M.L.B.*, 519 U.S. at 116. Of course, in Ohio, such actions have been notoriously referred to as "the family law equivalent of the death penalty in a criminal case." *In re Hayes* (1997), 79 Ohio St.3d 46, 48, quoting *In re Smith* (1991), 77 Ohio App.3d 1, 16.

{¶13} The United States Supreme Court has consistently recognized the very unique significance of the "familial bonds" of parents and children. *Little v. Streater* (1981), 452 U.S. 1, 13. As such, the court has acknowledged that "[f]ew consequences of judicial action are so grave as the severance of natural family ties." *Santosky*, 455 U.S. at 787. In recognizing that few decisions are so "final and irrevocable[,]" *Santosky*, 455 U.S. at 759, the court has described parental termination decrees as "among the most severe forms of state action [and observed that they] have not served as precedent in other areas." *M.L.B.*, 519 U.S. at 128. Significantly, the court explicitly declined to follow "the label 'civil'" in deciding *M.L.B.* Id. At least one Ohio Court has described permanent custody cases as quasi-criminal. *In re J.S.*, 6th Dist. No. WM-09-005, 2009-Ohio-5189, at ¶15.

{¶14} While courts have held that consideration of a best interest analysis in permanent custody cases does not focus upon the impact upon the parents, it is also clear that both "the child and his parents share a vital interest in preventing erroneous termination of their natural relationship." *Santosky*, 455 U.S. at 760. Significantly, the United States Supreme Court has recognized that, in these cases, "the risk of error * * * is considerable." *M.L.B.*, 519 U.S. at 121, and has, therefore, seen fit to grant safeguards to the parties in permanent custody cases not typically observed in civil proceedings.

{¶15} Other Ohio districts have used various standards of review when considering the manifest weight of the evidence in permanent custody cases. See, e.g., *In re M.S.*, 2d Dist. No. 2008, 2009-Ohio-3123, at ¶15 (review for competent, credible evidence and also for an abuse of discretion); *In re A.R.*, 3d Dist. Nos. 13-09-06, 13-09-07, 13-09-03, 2009-Ohio-3536, at ¶23 (if there is clear and convincing evidence, the trial court decision will not be against the manifest weight of the evidence or demonstrate an abuse of discretion); *In re S.G.*, 7th Dist. No. 08-BE-42, 2009-Ohio-4815, at ¶19 (review for an abuse of discretion); *In re T.J.*, 12th Dist. No. CA2008-10-019, 2009-Ohio-1844, at ¶12 (review for competent credible evidence, and reverse only if there is sufficient conflict in the evidence presented).

{¶16} Several districts utilize the *Thompkins* standard of review for the weight of the evidence in permanent custody cases, at least in part. See, e.g., *In re Kessinger*, 3d Dist. No. 4-07-17, 4-07-18, 2008-Ohio-158, at ¶15 (whether the finder of fact clearly lost its way and created a manifest miscarriage of justice); *In re A.D.*, 8th Dist. Nos. 92415 and 92418, 2009-Ohio-3087, at ¶34 (review whether the trier of fact clearly lost its way, but also whether there is some competent, credible evidence going to all the essential elements); *In re C.P.*, 10th Dist No. 08AP1128, 2009-Ohio-2760, at ¶8-9 (whether there is some competent, credible evidence going

to all essential elements, but also whether trier of fact clearly lost its way and created a manifest miscarriage of justice); *In re Spicuzza,* 11th Dist. Nos. 2007-L-121, 2007-L-126, 2007-L-145, and 2007-L-146, 2008-Ohio-527, at ¶23 and 29 (whether trial court clearly lost its way and created a manifest miscarriage of justice and also whether it abused its discretion).

{¶17} The unique importance of the parent-child relationship and the risk of error in such decisions suggest merit in utilizing the *Thompkins* standard of review in permanent custody cases. In addition, we believe that standard may well have more utility for decisions based upon a weighing of all relevant best interest factors where no one factor may be given greater weight than the others. See *In re Schaefer*, 111 Ohio St.3d 498, 505, 2006-Ohio-5513, at ¶56. Accordingly, for all the above stated reasons, we proceed to review this question under the *Thompkins* standard.

{¶18} 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.

{¶19} Father concedes that M.C. was in the custody of CSB for more than 12 of the prior 22 months and the only question before this Court is whether the evidence supports the finding that permanent custody is in the best interest of the child. When determining whether a

grant of permanent custody is in the child's best interest, the juvenile court must consider all relevant factors, including: (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).

CASE PLAN COMPLIANCE

{¶20} Father argues that his efforts on the case plan objectives resulted in substantial compliance with those goals and support returning M.C. to his care. We consider this argument in the context of its possible relevance to a best interest determination, but reiterate that case plan compliance alone is not dispositive of such a determination. See, e.g., *In re A.A.*, 9th Dist. No. 22196, 2004-Ohio-5955, at ¶9; *In re Atkins* (Nov. 18, 1998), 9th Dist. No. 19037, at *6. Rather, the termination of parental rights is governed by R.C. 2151.414 and the proper focus of a best interest determination is the specific factors listed in R.C. 2151.414(D). Moreover, we conclude that the record does not support Father's claim that he substantially complied with his case plan goals.

{¶21} As to the first case plan goal, Father claims that it only required M.C. to receive a mental health assessment and individual counseling, but that the objective had "little to nothing to do with [Father]" because M.C. was not in his custody at the time. Father has misinterpreted this case plan objective. This objective requires that Father "will support" M.C. in having his emotional and behavioral issues addressed within a therapeutic setting. It further states that "[a]ll treatment recommendations will be complied with by the child and [Father]" and that "[Father] will participate in [M.C.'s] treatment at whatever level recommended by these professionals." Those recommendations included family counseling with Father and son.

Caseworker Schumacher testified that he encouraged Father to comply with this recommendation for joint counseling at every opportunity and also discussed transportation arrangements with him.

{¶22} Counselor Hensley stated that M.C. was currently doing very well on his individual goals, i.e., getting along better with his peers and in his foster home, and applying himself in school. However, as to the goals that involved Father, the counselor explained that Father attended only four sessions and those sessions were directed towards discipline procedures and basic parenting strategy. When asked whether those issues were adequately addressed in four sessions, Mr. Hensley responded that they were not. Mr. Hensley specifically recommended that M.C. should continue in counseling regardless of the outcome of this proceeding. Furthermore, the counselor refused to agree with Father's attorney that the additional family appointments would be directed towards managing only M.C.'s behavior, but instead insisted that those appointments would focus on "parent strategies" and a "discipline plan." Admittedly, Father had transportation and scheduling difficulties, but this testimony is in direct contrast to Father's assertion that he went "above and beyond" this case plan obligation by attending four family sessions with M.C.

{¶23} Next, the case plan required Father to have stable housing and employment in order to provide for M.C.'s basic needs. In his appellate brief, Father argues that these objectives have been fully satisfied. The caseworker stated that Father had eight different addresses in two and one-half years, and that he did not have a current address or phone number for Father. Father testified that he had rented a two-bedroom home from his uncle for the last six to seven months. The caseworker was unable to address the suitability of this residence because he had

not seen this residence after recommended repairs had allegedly been made. According to the caseworker, this is due to Father's failure to contact him.

{¶24} Father also claims that he is financially stable based on an expected payment for an out-of-town roofing job and in anticipation of a full-time job with Damon's. There is no evidence of how much money Father would receive for the out-of-town roofing job and or that Damon's has offered Father anything more than an interview. The caseworker testified that Father changed jobs frequently. Whatever stability Father currently has is largely due to his uncle's benevolence and his willingness to accept Father doing chores in return for the $400 monthly rent when Father is unable to pay cash. Father's uncle did not testify at the hearing, so there was no way for the trial court to know how long this largesse might continue. The caseworker expressed concern with the lack of information provided by Father on his housing and employment, and also stated that he believes that Father is not able to provide for M.C.'s basic needs.

{¶25} As to the case plan objective addressing parenting skills, Father began attending parenting classes in early 2007 and completed his eighth and final session a year later. Regarding the events that led to M.C.'s removal, Father admitted that he had used a belt to strike his son three or four times, whereas M.C. reportedly told the caseworker that he was struck 20 to 30 times by Father. Father testified that through his parenting class, he learned to be a better parent and cope with situations, rather than act irrationally. Father said he learned not to use a belt for discipline, but, instead, to talk to the child, use time-outs, or withhold privileges.

{¶26} Nevertheless, Caseworker Schumacher testified that he does not believe Father has demonstrated that he benefitted from his parenting classes. The caseworker's primary concern is that Father would not implement safe, age-appropriate discipline when his son

demonstrates challenging behaviors. Mr. Schumacher testified to a discussion he had with Father after he completed his parenting classes. According to Mr. Schumacher, Father said that "if we would just let him discipline the child the way that he wanted to discipline him, then it wouldn't be a problem." When asked to explain what he meant, Father declined to reply. Father also told Mr. Schumacher that if M.C. were to be reunified with him and gave him any behavioral problems, he would just drop the child off at CSB or with the foster mother as opposed to addressing the situation himself. Mr. Schumacher believes that Father does not understand the particular needs and limitations of his child. As stated above, this Court had previously affirmed the trial court determination that M.C. was an abused child, specifically upholding the finding that Father's actions represented excessive corporal punishment and subjected his child to a substantial risk of physical harm. *In re M.C.*, 9th Dist. No. 23788, 2008-Ohio-116, at ¶19-20. See, also R.C. 2151.031(C).

{¶27} Father visited with his son fairly regularly. The visits progressed from closely supervised to minimally supervised, but remained at supervised status throughout the case. It is unfortunate that the current caseworker did not observe any of the visits between Father and his son, and also that a visitation case aide was not called as a witness to testify before the trial court. In a closer case, such factual omissions could be decisive.

{¶28} Father also failed to complete the mental health objective – a critical item among the case planning objectives in this case. Father was referred to Catholic Social Services to address the physical abuse of his son. Father attended three sessions in 2007 and then stopped attending. Father claimed that he was focused on obtaining housing and a job instead. Wanda Hively, Father's mental health therapist, testified that Father attended only enough sessions to provide a history and complete an assessment, but that he failed to engage in any treatment

sessions. Ms. Hively explained that, as a result, she was not able to formulate goals or address the important problem of child discipline with Father.

{¶29} The caseworker concluded that Father did not successfully complete his case plan objectives. The record supports that conclusion.

BEST INTEREST OF THE CHILD

{¶30} The first best interest factor requires consideration of the relevant personal interactions and interrelationships of M.C. At the time of the hearing, M.C. was nearly 11 years old. He had had no contact with his mother for six years. By all accounts, Father and M.C. are well bonded and love each other. Adam Schumacher, the CSB caseworker, testified that M.C. values the time he spends with Father, but he also expressed concern with Father's welfare, including whether he had enough food and a place to live. Regis Hensley, M.C.'s counselor, corroborated the fact that M.C. was concerned about Father's well-being. M.C. had a good relationship with his half-brother, as well as with that child's mother. He had little regular contact with any other relatives.

{¶31} At the same time, M.C. had a very good relationship with his foster mother and enjoyed being with his two foster brothers. Although the foster family is not in a position to offer M.C. a permanent home, the foster mother indicated that she is willing to offer continuing support to M.C even after he leaves her home.

{¶32} The second best interest factor requires consideration of the child's wishes. Evidence on this factor came through the testimony of the child's counselor, the CSB caseworker, the guardian ad litem, and Father. Regis Hensley, M.C.'s counselor, testified that M.C. enjoys visits with Father and cares about him, but worries about his welfare. M.C. told the

caseworker that he would like to have continuing contact with Father, but repeatedly expressed concerns about living with Father and whether there would be enough food in Father's home.

{¶33} Caseworker Schumacher expanded on his several conversations with M.C. about where the child would like to live. According to Mr. Schumacher, M.C. would like to stay with the mother of his half-brother or with his current foster mother, but neither of them was able to offer him a permanent home. Mr. Schumacher reported that M.C. never said he was opposed to being adopted, and told him that if he were to be adopted, he would like a brother like his foster brother and an adoptive mother like his foster mother – someone who is kind, can cook well, will buy him clothes, praise him, and encourage him. Chariti Armstead, the guardian ad litem, concluded that it would be in the best interest of M.C. to be placed in the permanent custody of CSB.

{¶34} On appeal, Father has argued that CSB failed to introduce credible evidence on this factor. Apparently, his complaint is that M.C. did not testify to his wishes for placement, and that such evidence came through the child's counselor, the caseworker, and the guardian ad litem instead. For his part, Father did not offer any direct statements by his son representing his wishes for placement. Instead, Father testified that his son shied away from any conversation about adoption, and Father interpreted that to mean that his son preferred to return home to live with him. There could, however, be any number of reasons for M.C.'s decision not to discuss adoption with Father, and it does not necessarily mean that he preferred to return home to live with Father.

{¶35} When determining the wishes of the child, a court is required to consider the wishes of the child, "as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child." R.C. 2151.414(D). The Ohio Supreme Court has

indicated that this statutory requirement "unambiguously gives the trial court the choice of considering the child's wishes directly from the child or through the guardian ad litem." *In re C.F.*, 113 Ohio St.3d 73, 83, 2007-Ohio-1104, at ¶55. As further explained by the high court: "The trial court has discretion to accept the testimony of the guardian ad litem on the child's wishes rather than hearing a direct expression of those wishes made by the child." Id. at ¶56. In *In re C.F.*, the court cited, with apparent approval, trial court consideration of testimony from both the guardian ad litem and a child psychologist as to the wishes of the children. Id.

{¶36} Significantly, Father did not request that his child testify at the hearing, nor did he ask the trial judge to conduct an in camera interview of the child. Because of this failure, Father's argument that the trial court failed to hear from the child directly, lacks merit. See *In re A.C.*, 9th Dist. No. 23627, 2007-Ohio-5525, at ¶9 (recognizing Father's failure to request testimony from a child or that the trial court conduct an in camera interview, and concluding that the trial court did not abuse its discretion in accepting the guardian ad litem's opinion instead). Father has not demonstrated that CSB failed to introduce credible evidence on this best interest factor.

{¶37} The third best interest factor requires consideration of the custodial history of the child. The full record of M.C.'s custodial history, as reported by the caseworker, includes many placements that stretched over years of involvement by CSB. M.C. was in Mother's custody from his birth in July 1998, until he came into the temporary custody of the agency on June 1, 1999, approximately one year later. For the next three months, M.C. had two different placements, one with a paternal relative and another in a foster home. On October 22, 1999, he was returned to Mother, where he remained for seventeen months. On March 25, 2001, he was again removed from Mother's care with adjudications of neglect and dependency. Over the

course of the next two and three-quarters years, M.C. was placed in a series of four foster homes and again with the same paternal relative he stayed with earlier.

{¶38} Father testified that he had been living in Norfolk, Virginia until 2003, and claimed that he had unsuccessfully attempted to wrest custody from Mother during that entire period. Father submitted no documentary evidence in support of this assertion. On December 23, 2003, however, Father was granted legal custody. M.C. resided with Father for approximately three years until the current case was initiated in December 2006. M.C. has now been with the same foster family for two and one-half years.

{¶39} In his appellate brief, Father has argued that the trial court "improperly analyzed M.C.'s custodial history." He argues that most of the various placements took place before Father obtained legal custody of his son in December 2003, and that, therefore, M.C.'s lengthy custodial history should not weigh against him.

{¶40} R.C. 2151.414(D) requires that the trial court consider the child's custodial history, including whether the child has been in temporary custody of a public or private agency for 12 or more months of a consecutive 22-month period. To this point, the trial court found as follows:

> "[M.C.] was in his Mother's custody from his birth through June 1, 1999, when he came into Summit County Children Services' custody. He was placed in Father's legal custody on December 23, 2003. He was returned to Summit County Children Services' custody on December 14, 2006, where he remains to date. [M.C.] is nearly eleven years old and has been in agency custody for nearly seven years."

These factual findings are supported by the evidence in the record. The focus of R.C. 2151.414(D), representing the second prong of the permanent custody test, is the best interest of the child. The fact that Father was absent and not directly involved in the child's care for the

first five and one-half years of his life while M.C. was being moved from place to place, hardly inures to Father's favor. Father's argument on this best interest factor is unpersuasive.

{¶41} As to the fourth best interest factor, there was evidence before the trial court that this nearly eleven-year-old child was in need of a legally secure placement. Father has not demonstrated that he can care for himself or his child on a permanent basis. There were no suitable friends or relatives willing to provide a home for M.C. Permanent custody was the only way to achieve permanency. The caseworker recited the names of a dozen relatives he attempted to investigate as potential custodians, but none was found to be suitable and willing to accept the responsibility.

CONCLUSION

{¶42} M.C. has been shuttled around to various placements for most of his 11 years. Mother abandoned him, and Father is unable to provide a legally secure permanent placement for him. The current case was over two years old at the time of the hearing. M.C. was removed from Father's home upon significant concerns for his safety and welfare, and Father has not made any meaningful progress on the case plan objectives that were designed to address those concerns. The record demonstrates that there was clear and convincing evidence before the trial court from which it could conclude that permanent custody was in the child's best interest. This Court concludes that the trial court did not clearly lose its way and create a manifest miscarriage of justice. Consequently, the trial court did not err in terminating the parental rights of Father and Mother, and in placing M.C. in the permanent custody of CSB. Father's assignment of error is overruled.

III.

{¶43} Father's sole assignment of error is overruled. The judgment of the Summit County Court of Common Pleas, Juvenile Division, 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.

CARLA MOORE
FOR THE COURT

BELFANCE, J.
CONCURS

DICKINSON, J.
CONCURS, SAYING:

{¶44} I concur in the majority's judgment and opinion. I write separately for the sole purpose of reiterating the hope I expressed in my concurring opinion in *Huntington Nat'l Bank v. Chappell*, 9th Dist. No. 06CA008979, 2007-Ohio-4344, at ¶74 (Dickinson, J., concurring) that the Ohio Supreme Court will reexamine the issue of an appellate court's role when it is asked to reverse a trial court's judgment in a civil case as against the manifest weight of the evidence.

APPEARANCES:

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JULIE SCHAFER, Attorney at Law, for Appellee.

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

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