

[Cite as *In re K. E.*, 2009-Ohio-2672.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: K. E.

C. A. No. 24571

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DN 07-07-0726

DECISION AND JOURNAL ENTRY

Dated: June 10, 2009

Per Curiam.

{¶1} Shannon F. (“Mother”) appeals from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that terminated her parental rights to her minor child, K.E., and placed him in the permanent custody of Summit County Children Services Board (“CSB”). This Court affirms.

I.

{¶2} K.E. was born on September 26, 2001, and was almost six years old when this case was initiated. Mother has three other children, who are all in the custody of her ex-husband, Damon F. K.E.’s biological father, Ronald E., was incarcerated during most of these proceedings and has not appealed from the judgment of the trial court.

{¶3} K.E. initially came into CSB’s care when the child was brought to a Cuyahoga Falls police station by 79-year-old Maude Dodrill, who was attempting to report a theft. According to the police, Ms. Dodrill appeared to be suffering from dementia and had a history of

making false accusations. When the police questioned who the child was, Ms. Dodrill claimed that the child's mother and grandmother had left him with her. The police felt the child was not safe with Ms. Dodrill, and they could not locate a parent or relative of the child. Detective Kurt Dirker later explained that the child knew his name, but did not know his address, telephone number, grandmother's name, or when he had last seen his parents. He said he lived with his mother, grandmother, and two adult males. The police notified CSB, who subsequently initiated this action.

{¶4} CSB filed a complaint in the juvenile court on July 24, 2007, alleging that K.E. was neglected and dependent, and sought temporary custody of the child. At the shelter care hearing, Mother stated that she had left the child with a babysitter. At the adjudicatory hearing, CSB employee Diana Meyers testified that the child told her he had three fathers, and that Mother and others in their home liked to smoke "weed," which process he was able to explain in great detail. Ms. Meyers also stated that Mother told her she had no address. Mother accused the maternal grandmother of having a history of drug abuse, but nevertheless left the child in her care. Robert Hager, also of CSB, testified that Mother indicated she had not had stable housing since December 2006. Mother denied any drug abuse, but refused requests to submit to a drug test. At the conclusion of the adjudicatory hearing, the trial court found K.E. to be a neglected and dependent child.

{¶5} After the October 2007 dispositional hearing, the trial court awarded temporary custody of K.E. to CSB and adopted the case plan submitted by the agency. The case plan required Mother to: (1) complete a chemical dependency assessment and participate in recommended treatment, including random drug screens; (2) obtain safe, independent housing;

and (3) complete a parenting class. The trial court also ordered a psychological evaluation of the child to determine any emotional needs he may have.

{¶6} In the summer of 2008, CSB sought a six-month extension based on Mother's progress on her case plan and the child's express desire to return home. Mother had a part-time job and was saving for housing. Mother completed a drug and alcohol assessment at Urban Ounce of Prevention and also completed an intensive out-patient treatment program which included parenting and anger management education. Visitation was liberal and unsupervised. Concerns, however, were raised about Mother's failure to engage in a recommended 12-week aftercare program and her failure to submit to drug testing for four months. An additional concern was expressed that Mother had been advising her son about what to say in his counseling sessions. Based upon these concerns, the trial court granted the extension, but also ordered Mother not to discuss counseling with K.E., to submit a sample for drug testing following the hearing, and to conduct visits under supervision at the agency until she had three negative drug test results.

{¶7} On October 1, 2008, CSB moved for permanent custody. Mother then moved for a six-month extension of temporary custody. Following a hearing, the trial court granted CSB's motion for permanent custody, finding that K.E. had been in the temporary custody of CSB for more than 12 of the prior 22 months and also finding that permanent custody was in the best interest of the child. Mother timely appeals and assigns one error for review.

II.

ASSIGNMENT OF ERROR

“THE TRIAL COURT ERRED IN FINDING THAT PERMANENT CUSTODY WAS SUPPORTED BY CLEAR AND CONVINCING EVIDENCE, AND THAT THE GRANT OF PERMANENT CUSTODY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶8} Mother argues that the evidence did not support the trial court’s finding that permanent custody was in the best interests of the child. 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. Clear and convincing evidence is that which will “produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 368, quoting *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus.

{¶9} Mother concedes that K.E. was in the custody of CSB for more than 12 of the prior 22 months and that the only question before this Court is whether 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).

The child's personal relationships

{¶10} Sabrina Walker, the CSB caseworker assigned to this case, testified that K.E. is intelligent and very aware of himself and of what is happening around him. She testified that Mother is very bonded to K.E. They have great interaction and love each other. The caseworker expressed concern, however, for the child's safety and stability because of Mother's repeated criminal involvement and unresolved substance abuse issues.

{¶11} Karen Bassett, an outpatient therapist at Child Guidance and Family Solutions, testified similarly that K.E. loves Mother very much and knows she cares about him. Through her biweekly sessions with K.E., she found him to be a smart, funny, insightful, sociable, and developmentally advanced six-year-old. She said talking to K.E. "was like talking to a little adult." He is an excellent student and did very well in school. No medical issues were found. Following a November 2007 assessment, K.E. was diagnosed with an adjustment disorder with anxiety and depressed mood. The counselor explained that K.E. missed his mother and was sad being away from her. He was worried about when he could next see her. During their counseling sessions, Ms. Bassett encouraged K.E. to express his feelings and offered him options for coping with his feelings.

{¶12} Ms. Bassett stated that he appeared to be happy and smiling while in his first foster home, yet, at his request, his placement was changed after 15 months. Ms. Bassett believes K.E. requested the change because he was tired of his uncertain status and decided that he was going to help create some movement. She observed K.E. with his new caregivers and described K.E. as being close to that foster mother. K.E. knew that this family wanted to adopt him and, according to Ms. Bassett, K.E. wanted to be adopted by them. K.E. told her he cared about Mother, but she made "wrong choices" and so he has to live with another family. Ms.

Bassett believes that K.E. figured out that he would not be returning to Mother because he always asked whether she had housing, and she always said no.

{¶13} Ms. Bassett invited Mother to participate in K.E.'s therapy sessions, but she only attended once. Mother later testified that she was unable to attend because of transportation problems. According to the witness, the inconsistency of Mother's visits affected K.E. She explained that the child is tired of the unknown and wants some finality in his situation. She stated that he needs a stable and permanent home. He needs to feel safe and to know what will happen to him. Uncertainty makes him upset and unsure.

{¶14} By all accounts, K.E. had a positive relationship with Mother. They clearly love each other, and during much of the case, K.E. expressed a desire to be reunited with Mother. The caseworker stated that Mother was fairly consistent with her visitation, though she missed several due to her incarcerations. During a typical visit, K.E. would read to her, and they occasionally did crafts or played games. Mother sometimes brought snacks. The guardian ad litem expressed no concerns with the conduct of the visits. However, because Mother lost her housing and because of Mother's failure to comply with requests for weekly drug screens, the trial court ordered the visits to be changed from unsupervised visits at Mother's home or in the community to supervised visits at the visitation center.

{¶15} There is no evidence of a positive relationship between K.E. and Father. Father was convicted of rape, possession of cocaine, and carrying a weapon under a disability in November 2004. He was also found to be a sexually oriented offender, and, in August 2007, was convicted of failing to register in accordance with that status. He was incarcerated throughout most of this case and there is no evidence of any contact between Father and K.E.

{¶16} In addition, there is little evidence of a relationship between K.E. and his half-siblings or any other relatives. K.E. had not seen his half siblings since May 2008 when there were three visits at Mother's home. According to Therapist Bassett, K.E. was very close Maude Dodrill. She described Ms. Dodrill as a grandmotherly-figure with whom the child spent a lot of time, watching television and playing games.

{¶17} Caseworker Walker testified to Mother's progress on her case plan. She indicated that Mother always expressed appreciation for the community resources she was given and the support of the case worker. She said they helped her and she obtained good information from those sources. Ms. Walker also testified that Mother usually maintained regular contact with her. The case plan required Mother to complete a parenting class, and Caseworker Walker testified that Mother completed a parenting course at the Urban League.

{¶18} Housing represented another objective of the case plan. Mother testified that K.E. lived with her his entire life until his removal. At the time of his removal, she said that she was living in Ms. Dodrill's home and that she left K.E. with the maternal grandmother while she went to visit a friend. She claims she was only gone a couple hours. Sometime after that, she moved from Ms. Dodrill's home and began residing with a friend. In December 2007, Mother was incarcerated following an arrest on charges of theft and aggravated assault. Following a plea of guilty, she was given a suspended sentence and placed on two years of community control. According to Caseworker Walker, Mother obtained a home and resided there during March and April 2008 until the home was found to not meet the inspection requirements of an agency that was assisting Mother with housing. K.E. had three daytime visits at that home, but CSB would not approve overnight stays until certain problems were corrected. Then, Mother stayed with a friend for four or five months and with the maternal grandmother briefly. In October 2008,

Mother was convicted of forgery for passing a counterfeit \$100 bill, which she claimed a friend gave her. Her one-year sentence was suspended in return for completion of community control. She was at Oriana House at the time of the permanent custody hearing. According to Ms. Walker, it was “possible” that Mother would obtain housing, but she did not believe reunification would be likely to occur within six months.

{¶19} In regard to the objective related to substance abuse, Caseworker Walker testified that Mother missed her initial appointment for an assessment at Community Health Center on October 16, 2007, and has had only sporadic compliance with the requirement for weekly drug screens. According to this witness, Mother submitted only 17 or 18 drug screens out of 64 that were requested, and five of those tested positive for illegal substances. The caseworker pointed out that Mother completed substance abuse treatment at Urban Ounce of Prevention, but she submitted positive drug screens after completing that program. Mother tested positive for cocaine, benzodiazepines, and marijuana on October 28, 2008; positive for cocaine and marijuana on November 1, 2008, and positive for marijuana on November 14, 2008. There was evidence in the record that since marijuana may remain in the system for 30 or more days, the repeat positives for marijuana could represent a residual presence of the drug, but that could not be said to be certain. She stated that Mother did not do the recommended aftercare program until she was required to do so in Oriana House. Caseworker Walker also testified that at the time of the permanent custody hearing, Mother was attending individual counseling. She does not believe that Mother has complied with this case plan objective.

{¶20} The caseworker further testified that Mother was removed from the visitation schedule in December 2007 for missing three visits in a row while she was incarcerated. She

was returned to the schedule on January 19, 2008 and was reported to be fairly consistent since that time.

{¶21} Caseworker Walker concluded by saying that she did not believe Mother could provide stability and permanency for K.E. now or within the next six months because there has been instability in Mother's housing, fairly continuous substance abuse, several criminal charges, and multiple incarcerations. Mother had been employed at several different jobs during the course of the proceedings, but had not held any job for more than a month. She was unemployed from July until November 2008, when she found a part-time job at a pizza restaurant.

{¶22} Bridget Weidenborner, Mother's counselor at Community Health Center, testified that she had been working with Mother for about five or six weeks. She was attempting to help Mother work on problem solving and decision making so that she could maintain sobriety. Ms. Weidenborner stated that Mother seemed motivated to work towards regaining custody of her son. She recommended that Mother continue with weekly counseling, do 12-step meetings, and drug screens.

{¶23} Heather Moore, a caseworker at the Oriana House Residential Correction Center, testified that Mother is in that program as a condition of her probation and has been working towards her goals of obtaining housing, a GED, and chemical dependency treatment. She had not yet started the educational portion of these goals. She stated that Mother was compliant with rules and goals of the program.

{¶24} Mother then testified on her own behalf. She stated that on the day K.E. was taken into custody she was at a friend's house and had left the child with the maternal grandmother, who, in turn, left the child with Ms. Dodrill. She testified that she completed parenting classes, anger management classes, and a drug and alcohol assessment. She stated that

she was currently in aftercare at Oriana House, but admits that she made no efforts to engage in an aftercare program from early July 2008 until October 2008. Mother also admitted to using marijuana during that period and had no excuse for not doing the requested drug screens. She said she was unable to attend joint counseling sessions with her son because of a lack of transportation. She does not currently have housing, but has applied to the housing program at Community Health Center. She is hoping to obtain a full-time job and to have enough money to get her own home by February. She stated that it was in the best interest of K.E. to be with his family, but that she was not in a position to take custody of the child at the time of the permanent custody hearing. She said that being at Oriana House has helped her step back from life and look at what she was doing. It has given her time to talk to someone and try to do things the right way. She believes that Oriana House has given her the support she needed, in addition to the tools she obtained earlier. She explained that she now understands that no one is going to do anything for her, but herself. She testified that she has attended visitation consistently, except for four times when she was incarcerated, two times when CSB did not pick up her son from school, and once when she was ill. Mother stated that she is able to see her other children only at the discretion of their father and has not seen them since May 2008.

{¶25} Despite the fact that Mother may have recently applied for housing, she admits that she still does not have housing. Furthermore, Mother had no family or other support system. Her own mother had long-standing drug and alcohol problems. She has no friends or relatives that are able to help her with housing or transportation in a meaningful way. In addition, she has not fully addressed her substance abuse problems. After outpatient treatment, she continued to have positive drug test results. At the time of the permanent custody hearing, she was engaged in aftercare, but has not been able to demonstrate an ability to maintain sobriety.

The wishes of the child

{¶26} The guardian ad litem recommended that CSB's motion for permanent custody should be granted. She stated that the child had initially wanted to return to his mother's care, but more recently, when he saw that his mother was not obtaining housing, he told the guardian ad litem that he wanted to remain with his foster family. During an in camera interview with the trial judge, K.E. stated that he wanted to return to his mother "[if] he could." He also stated that living with his foster family was "[g]ood."

{¶27} According to the guardian ad litem, it had been several months since K.E. indicated that he wanted to return to Mother, and as recently as November 2008, he told the guardian ad litem to tell the judge that he wanted to stay with his foster family. The guardian ad litem explained that this was a very difficult decision because Mother and K.E. have a good bond, but that things have gone backward since the case started. Given Mother's criminal convictions and her current residency in Oriana House, the guardian ad litem found it necessary to recommend permanent custody. She does not believe reunification is likely to occur within six months because she has not seen any significant progress.

{¶28} According to Therapist Bassett, the things that K.E. has expressed as being important to him if he were to return home are a safe home, a bed frame, an X-box 360, some toys, and a bedtime. He does not want any weapon games, nails in the floor, or anything hard on the floor.

The custodial history of the child

{¶29} Although K.E. was technically in the custody of Mother prior to his removal, it is unclear from the record with whom he actually resided and who provided the bulk of his care. Mother admitted that she left K.E. with the maternal grandmother on the day K.E. was removed.

She also admitted that the maternal grandmother was not a proper caregiver and had a long-standing problem with drugs and alcohol. Mother testified that the maternal grandmother used to sign Mother out of school to go to bars with her. Mother stated that she left K.E. with the maternal grandmother because she had no other options. Caseworker Walker testified that, at the time of the child's removal, K.E. lived with the maternal grandmother and Maude Dodrill, and that Mother would pick up K.E. for weekend visits.

{¶30} Upon his removal from Mother's care in July 2007, K.E. was placed in a foster home that offered the structure and security the caseworker believed he needed. In August 2008, K.E. requested a change in his placement. Several pre-placement visits were made to a new foster home and the child completed the move to that home in October 2008. The new foster home includes two parents, two foster sisters, two foster brothers, and an infant girl.

{¶31} The caseworker stated that K.E. appears to be more relaxed and more communicative in this new home. He is very bonded to the foster father and interacts a great deal with the foster brothers. According to the caseworker, K.E. has adjusted to the new home, is doing well in school, and appears to be happy and bonded to the family. He reportedly asks questions of the caseworker during her visits, shares expectations of upcoming holidays, does his chores, and gets help from a big brother in putting dishes away. The family members attend the foster brother's football games together, watch movies and play games together, and watch football games on television.

{¶32} The guardian ad litem testified that K.E. was always very serious, prim, proper, and quiet in his previous foster home. In the current foster home, he behaves more like a normal seven-year-old boy, is very active, wrestles with his brothers, giggles, laughs, and runs. He is more at ease, yet still does very well in school. He was only recently placed in this home, but

had several pre-placement visits. The family is meeting his basic needs and would like to adopt him.

The child's need for a permanent placement

{¶33} Caseworker Walker stated that she believed permanent custody is in the best interest of K.E. She believes that adoption would provide him with stability, safety, and a secure life so that he can continue to prosper.

{¶34} Therapist Karen Bassett testified that K.E. needs a stable and permanent home. She stated that the uncertainty of his situation has made him upset and unsure. No relatives were ever identified for possible placement.

{¶35} Sonya Cole, the guardian ad litem during this case, testified that K.E. is doing very well in his current placement. He is happy and doing wonderfully in school. The family is meeting his needs and would like to adopt him.

{¶36} Ms. Cole also testified that Mother has a positive relationship with her son, but she had several concerns with the possibility of reuniting Mother and child. First, she was concerned that Mother has not had housing for over a year. Mother's longest period of living in one place was with a friend for five months and Ms. Cole did not believe that constituted stable housing. In addition, Mother has had several jobs, but was unemployed during most of this proceeding. Ms. Cole was concerned with Mother's ability to provide for the needs of K.E. without having any income. Her biggest concern, however, was with Mother's drug and alcohol use. She does not believe that Mother completed treatment. She had not complied with the request for weekly testing and there were several positives among the tests that she did perform. Finally, she expressed concern with Mother's decision-making ability as demonstrated by

leaving the child with the maternal grandmother. She believes that the best interest of the child is to be placed in the permanent custody of the agency so that he could be adopted.

{¶37} Upon careful review of the record, this Court concludes that Mother's unresolved problems with substance abuse, repeated criminal involvement, and lack of stable housing create insurmountable barriers to reunification, particularly in view of the fact that she has no significant support system and has regressed in many aspects of her case plan. We are fully persuaded that permanent custody was supported by clear and convincing evidence in this case. At the same time, this Court has several concerns about how this case was presented at trial and on appeal. We note some of those concerns here in the interest of avoiding their repetition in other cases in which they might contribute to prejudicial error.

{¶38} First, the record suggests that K.E. was not permitted to have overnight visits in a home Mother acquired with the help of a social service agency because it had a boarded-up window and because the bed did not have a frame. It is certainly true that the home later failed an inspection and that Mother was forced to leave – albeit “through no fault of her own,” according to CSB witnesses. We fail to understand the significance of the lack of a bed frame, however. We occasionally see questions raised about the cleanliness of bed mattresses in cases such as this. That concern may have relevance to the health and welfare of a child. In considering the best interest of a child, however, we should be concerned with more vital questions than whether a mattress is placed on a frame. The fact that the lack of a bed frame was consequential to CSB's case is reinforced by this seven-year-old child's request for a “bed frame” when he returned home, according to his therapist's testimony. When a public children services agency is attempting to preserve a family unit, it is critical that its goals be well-conceived, accurately conveyed, and thoroughly implemented. It is likewise critical that a case

for the termination of a parent-child relationship must be based upon evidence fundamentally relevant to the best interest of the child.

{¶39} Second, the record in this case contains many discrepancies and inconsistencies. For example, the caseworker testified that Mother submitted to 17 or 18 drug screens, while the guardian ad litem testified that she submitted to 22. The caseworker testified that Mother had five positive drug test results, while the guardian ad litem testified to nine. This is objective evidence that is easily verifiable. The fact that there is discrepancy on such black-and-white facts distracts from the witnesses' credibility on more subjective evaluations. For instance, the caseworker testified that Mother's attendance at visitation had become fairly consistent and K.E.'s therapist testified, in effect, that it was inconsistent. For her part, Mother testified to a precise number of visits that she missed and detailed them. While the interpretations of numbers may be subjective and may properly vary, the numbers themselves are verifiable. Documents regarding Mother's attendance at the visitation center are available – or should be available – and can be offered into evidence. If documentary or direct evidence of facts is available, it should be used. The trial court should not be asked to make critical decisions on the basis of incomplete or inaccurate information.

{¶40} Third, this Court is concerned about inappropriate information that may have been given to the child. It is clear that this seven-year-old child understood a great deal about what was going on. CSB has suggested that Mother conveyed inappropriate information to her son, but did not present any evidence of that. When asked, Mother testified that she offered only an appropriate caution to her son that he should be serious about the things he says to his counselor because people will act upon what he says. At the same time, it is clear to this Court that this child did have inappropriate information regarding his situation, and it appears this information

likely came from sources other than Mother. According to the CSB caseworker, K.E. knew that his current caregivers wanted to adopt him. Also, it is apparent from the evidence that K.E. had been informed – intentionally or not, but nevertheless inappropriately – of matters that would form the basis of the ultimate decision to be made by the trial court. This is clear from the questions that he repeatedly asked Mother at visits (Do you have housing yet? Do you have a job yet?); from his statement that because Mother made “wrong choices” he had to live with another family; and from items that he said he would like to have when he returned home (a bed frame). The fact that this seven-year-old child asked for a bed frame says much more about the manner in which CSB conducted this case than it says about the desires of the child.

{¶41} Finally, this Court cannot overlook the testimony of the guardian ad litem regarding the degree of her involvement with this child. Often, guardians ad litem give far more time and attention to their duties than may be required. That may, in fact, be the case here. When this guardian ad litem was asked how often she met with K.E., however, she said that she typically tries to visit children monthly, “but there were times with our schedules that we’d go months without, but it’s usually at least every other month, if not monthly.” Although no error is assigned as to the actions of this guardian ad litem and this Court has not discerned prejudicial error in her conduct, it is also clear to this Court that the guardian ad litem of a child in temporary custody should not “go months without [visiting]” that child. The guardian ad litem’s report indicates that she visited the child at his placement eight times over the course of 16 months and three times at CSB. The same report also indicates that the guardian ad litem met with Mother three times. The first meeting was a full year after the start of the case, and the other two meetings occurred after the motion for permanent custody had already been filed. The

independent and personal assessment of a guardian ad litem can carry great weight with the trial court and should be based upon as thorough and comprehensive an investigation as possible.

{¶42} In conclusion, this Court reiterates that there was ample evidence before the trial court from which it could conclude that permanent custody was in this child's best interest. Consequently, the trial court did not err in terminating Mother's parental rights and placing K.E. in the permanent custody of CSB. Mother's assignment of error is overruled.

III.

{¶43} Mother'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.

CLAIR E. DICKINSON
FOR THE COURT

MOORE, P. J.
DICKINSON, J.
CONCUR

CARR, J.
DISSENTS, SAYING:

{¶44} Respectfully, and not without some regret, I must dissent from this decision. Based in large part upon the same concerns expressed by the majority, I am persuaded that the evidence presented on behalf of CSB in this case does not clearly and convincingly establish that this Mother's parental rights should be permanently terminated.

{¶45} The parent-child relationship is unquestionably one of the most fundamental rights protected by our constitutional and statutory laws. In accordance with those principles, such relationships shall not be abridged by the state absent a presentation of evidence meeting that high standard of proof. This burden properly falls to the Children Services Board. Because I believe that the Children Services Board has not met its burden in this case, I would reverse the decision of the trial court.

APPEARANCES:

SHUBHRA N. AGARWAL, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.