[Cite as *In re M.J.*, 2011-Ohio-2714.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

IN THE MATTER OF:	**:**	**O P I N I O N**
M.J., B.J., AND N.J.	**:**	**CASE NO. 2011-A-0007**

Civil Appeal from the Court of Common Pleas, Juvenile Division, Case No. 09 JC 55.

Judgment: Affirmed.

Anita B. Staley, Barthol & Staley, L.P.A., 7327 Center Street, Mentor, OH 44060 (For Appellant William Johnson).

Ariana E. Tarighati, Law Offices of Ariana E. Tarighati, L.P.A., 34 South Chestnut Street, Suite 100, Jefferson, OH 44047-1092 (For Appellee Ashtabula County Children Services Board).

Jodi M. Blankenship, 302 South Broadway, Geneva, OH 44041 (Guardian ad litem).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, William Johnson, seeks review of the judgment of the Ashtabula County Court of Common Pleas, Juvenile Division, terminating his parental rights and granting permanent custody of his three children to appellee, Ashtabula County Children Services Board ("ACCSB"). For the following reasons, we affirm the decision of the trial court.

{¶2} Mr. Johnson is the father of three children: N.J., born February 4, 2005; B.J., born March 2, 2006; and M.J., born June 12, 2008. All three children are mothered by Stacey Schreiber.

{¶3} On August 10, 2009, ACCSB obtained an ex parte emergency telephone order granting ACCSB custody of the three children. The juvenile court determined there was probable cause to believe the children were suffering from illness or injury and were not receiving proper care, and the removal of the children was necessary to prevent immediate or threatened physical or emotional harm.

{¶4} On August 11, 2009, ACCSB filed a complaint alleging all three children to be dependent children as defined in R.C. 2151.04(C). The complaint alleged the parents had been unable to obtain and maintain stable housing; neither parent had a valid driver's license or transportation; neither parent was employed; and the medical needs of the children were not being met.

{¶5} An emergency shelter care hearing was held and probable cause was found to remove all three children from their parents. Temporary custody remained with ACCSB.

{¶6} ACCSB filed an amended case plan with the juvenile court and, on October 9, 2009, an adjudicatory hearing was held. The parties stipulated to a finding of dependency.

{¶7} On November 30, 2009, a dispositional hearing was held, and it was ordered that the children remain in the temporary custody of ACCSB.

{¶8} On January 6, 2010, ACCSB filed a motion for modification of temporary custody to permanent custody. Testimony relating to said motion was taken over a period of three days.

{¶9} At the hearing, ACCSB presented the testimony of Lori Merkel, an intake worker; Andre Miller, the ongoing case worker; Karla Vazquez, a case manager at Signature Health; David Carpenter, a case worker; Rick Armstrong, the supervisor of David Carpenter; Stacy Schreiber, the children's biological mother; Judith Catron, a worker with Help Me Grow; Elaine Hunt, a case aid; Kelly Benoit, the foster mother; and Attorney Jodi Blankenship, the children's guardian ad litem.

{¶10} To comply with the case plan, Ms. Schreiber and Mr. Johnson were required to obtain/maintain housing and utilities that can accommodate the children, provide verification of housing, keep their rent and utility bills current, and cooperate with Help Me Grow services with regard to budgeting and household maintenance issues. Case management services were offered to the family.

{¶11} At the hearing, Ms. Merkel stated that she received this case in September 2008 due to the following concerns: the family's electricity was being turned off, the condition of the family's home, and possible domestic violence. During the testimony of Ms. Merkel, she stated that when she first met the family, they were living in an apartment with electrical issues, a broken window, and mold on the walls. Ms. Merkel learned that the children's father's unemployment benefits had lapsed, and the family was without transportation. The family was referred to Help Me Grow and PRC, a program to assist with security deposits, utilities, and transportation. Ms. Merkel further stated that she referred Ms. Schreiber to an agency that provides homemaker

services and that she provided transportation to Ms. Schreiber so that she may complete her psychological evaluation.

{¶12} Mr. Miller, the ongoing case worker, testified that this case was transferred to him by the intake unit and he managed the case for approximately two months. Mr. Miller stated that the family's living conditions were a concern—the utilities were not on, water was leaking through the roof, and the family was in the process of being evicted. It was a goal for the family to achieve stable housing. In addition to the aforementioned services, Mr. Miller stated that ACCSB was working with the family to obtain public housing through Ashtabula Metropolitan Housing Authority. Due to his caseload, the case was transferred to David Carpenter, a new ongoing case worker.

{¶13} Mr. Carpenter testified that one of the goals of the case plan was to maintain the children in the home. Mr. Carpenter stated ACCSB worked with the family for approximately six months prior to the agency receiving emergency temporary custody of the children. During those six months, ACCSB provided the following services: case management, transportation for the family, temporary housing for the family, food vouchers, and paid for a two-week stay at a hotel to allow the parents the ability to look for stable housing. Further, Mr. Carpenter noted that during this six-month period, the family lived in six different residences, none of which was independent, stable housing. Mr. Carpenter testified it was difficult to stay in contact with the family given the fact that they frequently moved and their cell phone was shut off. The lack of contact was a concern because Mr. Carpenter was unable to determine the location of the children.

{¶14} On May 11, 2009, ACCSB required court involvement. ACCSB was concerned for the safety and well-being of the children, in addition to the aforementioned concerns. At this time, the youngest child, M.J., was sick and the parents had not provided her with the proper antibiotics. The children were placed in a licensed foster home and supervised, weekly visits were arranged with the biological parents at Rooms to Grow.

{¶15} Although the parents were notified of the first visit, they failed to attend. The parents attended the next visit, scheduled June 25, 2009. ACCSB addressed transportation issues with the parents, explaining bus access and offering them reimbursement in the form of gas cards for any ride the parents were able to receive to attend the visits. ACCSB also explained to the parents that they were to call the night before or the morning of the visit to confirm the visit. This policy was to ensure that the children were not unnecessarily picked up at the foster family's house and transported to Rooms to Grow, as there was limited space at the facility.

{¶16} The parents did not call or attend the following visits: July 2, July 9, and July 16, 2009. Mr. Carpenter testified that if parents fail to call or fail to attend two consecutive visits, the visits are canceled and rescheduled upon the parents' request. However, in this case, ACCSB wanted to ensure the parents visited with their children regardless of their limitations and thereby extended the no call/no show policy to three visits. On July 23 and July 30, 2009, the visits were canceled due to the children having lice. Therefore, the parents were required to provide documentation that they were free of lice; this documentation could be provided through the health department. The parents failed to obtain such documentation. Further, as the parents failed to call/attend

three consecutive visits, they were required to schedule further visits. As the parents failed to request visitation and failed to keep in touch with Mr. Carpenter, the next visit was not scheduled until December 10, 2009. At this visit, it was observed the parents had lice. Consequently, the visit was canceled. Ms. Schreiber indicated that lice were present in her step-father's home, where she was residing.

{¶17} The parents did not call or attend the following scheduled visits: December 17, December 24, December 31, and January 7. On March 15, 2010, the parents did not call; however, they appeared one hour late for a scheduled visit. The parents came to the March 26, 2010 visit, but it was canceled due to the fact that they still had not provided documentation that they were free of lice. On April 1, 2010, the parents attended a make-up visit. And, on April 12, 2010, the parents attended their scheduled visit. Overall, the agency scheduled 16 visits; two visits were canceled by the agency, and the parents attended three visits scheduled on June 25, 2009, April 1, 2010, and April 12, 2010. Therefore, the parents did not have any contact with their children from June 25, 2009, until April 1, 2010.

{¶18} Mr. Carpenter testified that visits were not scheduled in the summer or fall of 2009 due to the parents' inability to provide verification that they were free of lice, and the parents had not kept in contact with him or requested visitation.

{¶19} Judith Catron, Help Me Grow coordinator, testified that she has been involved with the family for nearly two years. She outlined the developmental delays of M.J., the youngest child, and described her progress while in the care of the foster family. Further, she noted that all three children have bonded with their foster family.

{¶20} Elaine Hunt testified that she provided transportation to the children for their scheduled visits at Rooms to Grow. Ms. Hunt stated that when she arrived at the foster parents' home to transport the children to their visit, they were reluctant, often clinging to their foster mother and crying on the way to the visits; also, the children were happy to arrive at the foster parents' home at the conclusion of the visit.

{¶21} Attorney Jodi Blankenship and Mr. Carpenter both testified that permanent custody was in the best interest of the children.

{¶22} Thereafter, the magistrate issued her decision granting ACCSB permanent custody of all three children and terminated the parental rights of Ms. Schreiber and Mr. Johnson. Objections were filed by the parents, which were overruled by the trial court. The trial court adopted the magistrate's decision granting permanent custody to ACCSB.

{¶23} Mr. Johnson has timely appealed the judgment of the trial court. In addition, Ms. Schreiber has appealed the trial court's judgment to this court. Our decision in Ms. Schreiber's appeal is also released today. *In re M.J., B.J., and N.J.*, 11th Dist. No. 2011-A-0014.

{¶24} Mr. Johnson's first assignment of error states:

{¶25} "The trial court erred in granting the motion for permanent custody as such decision was against the manifest weight of the evidence and resulted in a manifest miscarriage of justice."

{¶26} We recognize that the termination of parental rights is "*** the family law equivalent of the death penalty ***." *In re Phillips*, 11th Dist. No. 2005-A-0020, 2005-Ohio-3774, at ¶22, citing *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, at ¶14.

This court has stated that a parent is entitled to "fundamentally fair procedures in accordance with the due process provisions under the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution." *In re Sheffey*, 167 Ohio App.3d 141, 2006-Ohio-619, at ¶21.

{¶27} "R.C. 2151.414 sets forth the guidelines to be followed by a juvenile court in adjudicating a motion for permanent custody. R.C. 2151.414(B) outlines a two-prong analysis. It authorizes the juvenile court to grant permanent custody of a child to the public agency if, after a hearing, the court determines, by clear and convincing evidence, that it is in the best interests of the child to grant permanent custody to the agency, *and* that any of the four factors apply:

{¶28} "'(a) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, *** and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

{¶29} "'(b) The child is abandoned.

{¶30} "'(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

{¶31} "'(d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period ***.'" *In re N.T.*, 11th Dist. No. 2010-A-0053, 2011-Ohio-650, at ¶51-55. (Citation omitted.)

{¶32} "Therefore, R.C. 2151.414(B) establishes a two-pronged analysis that the juvenile court must apply when ruling on a motion for permanent custody. In practice, the juvenile court will usually determine whether one of the four circumstances delineated in R.C. 2151.414(B)(1)(a) through (d) is present before proceeding to a determination regarding the best interest of the child.

{¶33} "If the child is not abandoned or orphaned [or has not been in the temporary custody of a public children services agency for 12 of 22 months], then the focus turns to whether the child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents. Under R.C. 2151.414(E), the juvenile court must consider all relevant evidence before making this determination. The juvenile court is required to enter such a finding if it determines, by clear and convincing evidence, that one or more of the conditions enumerated in R.C. 2151.414(E)(1) through (16) exist with respect to each of the child's parents.

{¶34} "Assuming the juvenile court ascertains that one of the four circumstances listed in R.C. 2151.414(B)(1)(a) through (d) is present, then the court proceeds to an analysis of the child's best interest. In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D) mandates that the juvenile court must consider all relevant factors, including, but not limited to, the following: (1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child; (2) 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; (3) the custodial history of the child; and (4) the child's need for a legally secure permanent

placement and whether that type of placement can be achieved without a grant of permanent custody.

{¶35} "The juvenile court may terminate the rights of a natural parent and grant permanent custody of the child to the moving party only if it determines, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody to the agency that filed the motion, and that one of the four circumstances delineated in R.C. 2151.414(B)(1)(a) through (d) is present. Clear and convincing evidence is more than a mere preponderance of the evidence; it is evidence sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. ***." (Internal citation omitted.) *In re Krems*, 11th Dist. No. 2003-G-2535, 2004-Ohio-2449, at ¶33-36.

{¶36} "'[W]e will not reverse a juvenile court's termination of parental rights and award of permanent custody to an agency if the judgment is supported by clear and convincing evidence.'" *In re J.S.E.*, *J.V.E.*, 11th Dist. Nos. 2009-P-0091 & 2009-P-0094, 2010-Ohio-2412, at ¶25. (Citations omitted.)

{¶37} We note that the trial court's judgment entry made a dual finding that the children had been abandoned and that the children could not be placed with appellant within a reasonable time frame or should not be placed with appellant.

{¶38} If the child is *not abandoned* or orphaned, then the focus turns to whether the child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents. Under R.C. 2151.414(E), the juvenile court must consider all relevant evidence before making this determination. The juvenile court is required to enter such a finding if it determines, by clear and convincing evidence, that

one or more of the conditions enumerated in R.C. 2151.414(E)(1) through (16) exist with respect to each of the child's parents. "The existence of a single factor will support a finding that a child cannot be placed with either parent within [a] reasonable period of time." *In re J.S.E., J.V.E.*, supra, at ¶40. (Citations omitted.)

{¶39} Under his first assignment of error, Mr. Johnson presents seven issues for our review. For ease of discussion, we address Mr. Johnson's issues out of numerical order.

{¶40} Mr. Johnson maintains that the trial court erred in determining there was clear and convincing evidence that the children were abandoned.

{¶41} "Abandonment," as defined in R.C. 2151.011(C), means "the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days." See, also, *In re Cravens*, 3rd Dist. No. 4-03-48, 2004-Ohio-2356, at ¶21.

{¶42} During her testimony, Ms. Schreiber acknowledged that after the June 25, 2009 visit, she and Mr. Johnson failed to attend the next three scheduled visits. Further, she testified that visitation was not requested with the children in August, September, October, or November, nor did she or Mr. Johnson keep in contact with Mr. Carpenter. Upon Ms. Schreiber's own admission at the hearing, neither she nor Mr. Johnson contacted or visited their children from June 25, 2009, until April 1, 2010, which represents approximately a nine-month period. Ms. Schreiber's testimony was verified through the testimony of Mr. Carpenter.

{¶43} Mr. Johnson notes that issues with lice prevented him from visiting his children. The record is clear that Mr. Johnson failed to provide documentation that he

was free of lice and, therefore, he was unable to visit the children. Although the problem with head lice may have contributed to Mr. Johnson's lack of contact and attendance, he cannot solely rely upon this reason as a justification for his children's abandonment. See *In re Phillips*, supra, at ¶35-36. This argument is without merit.

{¶44} Next, Mr. Johnson alleges that the trial court erred in its determination that he failed continuously and repeatedly to remedy the conditions causing the children to be placed outside the home. R.C. 2151.414(E)(1). Mr. Johnson argues that the evidence presented at the hearing demonstrates the condition causing removal had been remedied.

{¶45} At the outset, we note the record establishes clear and convincing evidence that Mr. Johnson had abandoned his three children. However, in the interest of justice, we will consider whether the trial court erred in its determination that the children cannot or should not be placed with either parent within a reasonable time. R.C. 2151.414(E).

{¶46} The testimony indicates that Ms. Schreiber and Mr. Johnson have been renting a three-bedroom apartment since March 2010. At the time of the hearing, rent was $350 per month. Mr. Johnson was receiving approximately $400 every two weeks in unemployment compensation, of which $200 goes toward child support. However, there was evidence in the record that Mr. Johnson's unemployment was to be terminated in September 2010, and he has expressed difficulty in obtaining future employment. At the time of the hearing, Ms. Schreiber was earning approximately $80 per month for her babysitting services. Further, although the parents receive $200 in food stamps, Ms. Schreiber testified that they are still having difficulty and must

supplement their monthly food supply with trips to the local food pantry. The guardian ad litem expressed her concern over the current situation, noting that while the parents may be living in stable housing, they are struggling to meet the needs of two people, let alone three additional children. Therefore, although it is evident that Mr. Johnson has made attempts at compliance with the case plan, these attempts are insufficient grounds upon which to rest a finding that he can be reunified with his children within a reasonable period of time. *In re J.S.E.*, supra, at ¶46. (Citation omitted.)

{¶47} Based on the record, we determine there was clear and convincing evidence that one or more of the factors enumerated in R.C. 2151.414(E)(1) through (16) exist, and, therefore, it was not error for the trial court to enter such a finding.

{¶48} Mr. Johnson further maintains that the trial court erred in making a finding under R.C. 2151.414(E)(4); however, a review of the trial court's January 13, 2011 judgment entry reveals that the trial court did not make such a finding. Consequently, we decline to address this argument.

{¶49} Next, Mr. Johnson contends that ACCSB had a duty to use reasonable efforts to assist the parents but failed to do so. Specifically, Mr. Johnson notes that ACCSB did not assist them with the issue of lice.

{¶50} "'R.C. 2151.419(A) directs the trial court at any hearing where the child is committed to the permanent custody of an agency to determine whether the agency has made reasonable efforts to return the child home.' ***. However, the statute further requires a trial court to make a determination that the agency is not required to make reasonable efforts under certain circumstances, one of those circumstances being that

the parent has abandoned the child. R.C. 2151.419(A)(2)(d)." (Internal citation omitted.) *In re Perry*, 4th Dist. Nos. 06CA648 & 06CA649, 2006-Ohio-6128, at ¶44.

{¶51} Again, we note the record establishes clear and convincing evidence that Mr. Johnson had abandoned his three children. Yet, the record indicates numerous services provided to the family by ACCSB. For example, ACCSB provided the following services: case management, transportation for the family, temporary housing for the family, food vouchers, gas vouchers, applications for housing, and paid for a two-week stay at a hotel to allow the parents the ability to look for stable housing. Further, the record reveals that ACCSB granted the family leniency with respect to the scheduled visitation policy. Yet, the parents still did not attend or keep in contact with the children or Mr. Carpenter.

{¶52} With regard to the issue of lice, Mr. Carpenter testified that he informed the parents that they could not visit the children if they had lice. He referred them to the Health Department; however, the parents failed to comply. Mr. Johnson's argument that abandonment was justified due to the lice problem is without merit.

{¶53} Mr. Johnson further alleges the trial court erred in finding, by clear and convincing evidence, that the award of permanent custody to ACCSB was in the children's best interest. We disagree.

{¶54} As previously stated, R.C. 2151.414(D) requires a trial court to consider specific factors to determine whether a child's best interests would be served by granting a children services agency permanent custody. R.C. 2151.414(D)(1) states, in pertinent part:

{¶55} "In determining the best interest of a child at a hearing ***, the court shall consider all relevant factors, including, but not limited to, the following:

{¶56} "(a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

{¶57} "(b) 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;

{¶58} "(c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 [2151.41.3] of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

{¶59} "(d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

{¶60} "(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child."

{¶61} In its judgment entry, the trial court states that it considered "all of the criteria in Revised Code Section 2151.414(D)" and then concluded that "the best interest of M.J. ***, B.J. *** and N.J. will be served by a grant of permanent custody."

{¶62} All three children are currently placed together in a foster home. Further, the foster mother expressed her willingness to adopt all three children. The evidence reveals that the children are thriving in their foster home, especially M.J., the youngest child. The record reveals M.J., who was one-year old at the time of removal, could not sit-up, crawl, or make age appropriate sounds. Judith Catron, service coordinator for Help Me Grow, testified that M.J. did not receive any services because the family was frequently moving. Since being placed in their current foster home, M.J. has received consistent services and now is crawling, walking, and talking. In fact, M.J. was re-assessed in January 2010 and is no longer in need of services, as she is developing appropriately. There is also testimony in the record that reveals all three children have bonded with their foster family. Attorney Jodi Blankenship, the guardian ad litem, and Mr. Carpenter, the case worker, also testified that permanent custody was in the best interest of the children. This argument is without merit.

{¶63} Mr. Johnson argues the trial court failed to consider the wishes of the children, particularly N.J., who was approximately five and one-half years old at the time of the hearing.

{¶64} This court has held that children involved in a case where a children services agency is seeking to terminate their parents' parental rights are "parties" and, therefore, are entitled to representation by counsel pursuant to Juv.R. 4(A), Juv.R. 2(Y), and R.C. 2151.352. *In re Williams*, 11th Dist. No. 2003-G-2498 & 2003-G-2499, 2003-Ohio-3550. This holding was affirmed by the Supreme Court of Ohio in *In re Williams*, 101 Ohio St.3d 398, 2004-Ohio-1500, syllabus. The Supreme Court stated that trial courts "should make a determination, on a case-by-case basis, whether the child

actually needs independent counsel, taking into account the maturity of the child and the possibility of the child's guardian ad litem being appointed to represent the child." Id. at ¶17.

{¶65} To support his argument on appeal, Mr. Johnson cites to this court's opinion in *In re Allen*, 11th Dist. No. 2008-T-0010, 2008-Ohio-3389. See, also, *In re Allen*, 11th Dist. No. 2008-T-0008, 2008-Ohio-3390. In *Allen*, the trial court made a dual appointment of an attorney to serve as both guardian ad litem and counsel for the children, ages five and six; however, it was not apparent from the record whether the trial court conducted an analysis to determine whether this dual appointment was appropriate. Id. at ¶4. Therefore, this court reversed the trial court's decision granting permanent custody to the Trumbull County Children Services Board and remanded the matter for the trial court to conduct a new hearing on the motion for permanent custody. Id. at ¶18-19. Further, this court held that it was reversible error to grant the motion for permanent custody as the trial court did not properly consider the children's wishes under R.C. 2151.414(D)(2). Id. We stated:

{¶66} "Pursuant to R.C. 2151.414(D)(2), the juvenile court is required to consider the children's wishes, as conveyed directly to the court or expressed through the guardian ad litem. *In re Williams*, 11th Dist. Nos. 2003-G-2498 & 2003-G-2499, 2003-Ohio-3550, at ¶30. A judgment that fails to consider the children's wishes is subject to reversal. Id., citing *In re Salsgiver*, 11th Dist. No. 2002-G-2411, 2002-Ohio-3712, at ¶26. While the children in this matter were young [ages five and six], we do not agree with the guardian ad litem's conclusion that they were per se unable to express their interests due to their ages. We believe the better practice is for the guardian ad

litem to interview the children and report their interests to the court. If relevant, the guardian ad litem may address the children's level of maturity to explain the context of the children's wishes. See *In re Miller*, 5th Dist. No. 04 CA 32, 2005-Ohio-856, at ¶38. Moreover, if, after interviewing the children, the guardian ad litem determines that one or both of the children are unable to express their interests, that determination should be reported to the court and entered into the record. Id. at 37. Further, if a dual appointment has been made and the guardian ad litem later determines that there is a conflict between the children's wishes and his or her anticipated recommendation to the court, the guardian ad litem should report the conflict to the trial court, to permit the trial court to appoint separate counsel for the children. See, e.g., *State v. Williams*, 101 Ohio St.3d 398, 2004-Ohio-1500, at ¶18. (Citations omitted.)" *In re Allen*, 2008-Ohio-3390, at ¶15.

{¶67} In this matter, the guardian ad litem testified at the hearing that she attempted to meet with the oldest child, N.J., but she was "very reluctant," "very isolated," and "would not talk." The guardian ad litem further testified that N.J. was "non-responsive" to her questions. Further, in her guardian ad litem's report, she stated that "the subject children in this proceeding are of tender years. The children are unable to articulate any preference as to whether adoption or reunification is appropriate due to their age." Here, the guardian ad litem followed our directives as outlined in *Allen*, supra. That is, she attempted to interview the child, determined that N.J. was unable to express her interests, and then reported her findings to the trial court. Therefore, based on the record before us, we cannot say the trial court erred in failing to appoint N.J. counsel.

{¶68} Based on the foregoing, Mr. Johnson's first assignment of error is without merit.

{¶69} Mr. Johnson's second assignment of error alleges:

{¶70} "The trial court erred in considering testimony obtained in violation of Appellant Mother's Fifth Amendment right against self-incrimination."

{¶71} Mr. Johnson contends the juvenile court committed reversible error by allowing ACCSB to call the children's mother, Ms. Schreiber, to testify upon cross-examination. Mr. Johnson maintains that compelling Ms. Schreiber to take the stand to testify against herself was a violation of her Fifth Amendment right against self-incrimination. Mr. Johnson relies on *In re Billman* (1993), 92 Ohio App.3d 279, 280, holding that "the [Fifth Amendment] right to refrain from testifying against oneself attaches to a dependency action in juvenile court."

{¶72} Upon a review of the transcript, this court notes that Mr. Johnson was not called to testify at the adjudicatory hearing. Only the children's mother, Ms. Schreiber, was called upon to testify. Therefore, he has no standing to assert an argument based upon Ms. Schreiber's Fifth Amendment right against self-incrimination.

{¶73} Mr. Johnson's second assignment of error is without merit.

{¶74} Based on the opinion of this court, the judgment of the Ashtabula County Court of Common Pleas, Juvenile Division, is hereby affirmed.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.