

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
WARREN COUNTY

IN THE MATTER OF:

J.M., et al.

:

:

:

:

:

CASE NO. CA2008-12-148

O P I N I O N  
9/14/2009

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS  
JUVENILE DIVISION  
Case No. 04-C-00345

Donald E. Oda, 4 South Broadway, P.O. Box 268, Lebanon, Ohio 45036, for appellant, C.M.

Taft, Stetinius & Hollister, Thomas E. Grossman, 425 Walnut Street, Suite 1800, Cincinnati, Ohio 45202-3957, guardian ad litem

**RINGLAND, J.**

{¶1} Appellant, Charles M., appeals the decision of the Warren County Court of Common Pleas, Juvenile Division, denying his motion for custody of his two minor children. We affirm the decision of the juvenile court.

{¶2} This court has considered four previous appeals surrounding Charles' request for custody. The fifth issue for review is specific to the juvenile court's decision granting custody of J.M. and L.M. to their maternal aunt. While the factual and procedural history of this case is intricate and set forth in detail in previous opinions, the following facts are

pertinent to the appeal currently before this court.

{¶3} Before Charles and his ex-wife, Ann Marie, were divorced, the juvenile court became involved with the family when allegations arose that the couple's six children were abused and dependent. The two oldest children are Charles and Ann Marie's biological children, but the remaining four children are adopted. Charles and Ann Marie adopted J.M., Ann Marie's nephew, as an infant in 1993 when Ann Marie's sister, Michelle Pickett, could not care for him. Charles and Ann Marie also adopted L.M., a girl from China, and then entered into their second international adoption when they adopted two sisters from Africa.

{¶4} Once all the children were adopted, the family lived as a cohesive unit for a few years until Ann Marie developed terminal cancer and the marriage began to deteriorate. Eventually, Charles moved out of the home and allegations soon surfaced that he sexually abused his children and physically abused Ann Marie and his sons. After Ann Marie's health continued to decline, she informed the court of her desire to rescind her adoption of the African children, stating that she failed to bond with them and was unable to provide for their special health and emotional needs.

{¶5} After further investigation, the court found that some of the children were dependent but found the allegation that Charles abused any of the children unsubstantiated. During one hearing in particular, one of the African children recanted her prior allegations of sexual abuse and claimed that she made up the story because Ann Marie threatened to send her back to Africa if she did not go along with the story of abuse. The older children, however, continue to maintain their original allegations that Charles was abusive.

{¶6} In 2003, Charles and Ann Marie agreed to an order for the disposition and allocation of parental rights and responsibilities, based primarily on the recommendations of a court-ordered psychologist. The goal was to have one therapist coordinate treatment for the entire family. The agreement also provided that Charles would have custody of the two

African children, with Warren County Children Services having active participation. Ann Marie took custody of the four other children and agreed to follow the therapist's recommendations leading to the gradual rebuilding of a positive relationship between the four children and their father.

{¶17} Sometime after the agreed entry, Ann Marie filed a notice to relocate the children to Florida because she needed help from her family due to her declining health. After a two-day hearing on the issue, a magistrate approved the relocation, and the juvenile court agreed over Charles' objections. While Ann Marie remained in Ohio, three of the children eventually moved to Florida, taking up residence with Pickett, J.M.'s biological mother.<sup>1</sup> The oldest child moved into the home of an Ohio family with whom Charles and Ann Marie were friends. Charles appealed the decision to allow the children to relocate, and this court reversed and remanded the issue because Charles and Ann Marie agreed in 2003 to a reunification plan, and a relocation without considering all pertinent issues was contrary to achieve that end.

{¶18} While the case was on remand, Anne Marie passed away. The juvenile court granted emergency custody of the oldest daughter, J.M., and L.M. to Pickett, and custody of the oldest son to the family friend in Ohio. Charles appealed the decision, and this court reversed and remanded again so that the juvenile court could hold a full hearing on the matter before determining custody and support of the children.

{¶19} Throughout the years represented by these appeals and remands, the juvenile court ordered that the children receive therapy for the turmoil and upheaval the divorce, allegations of abuse, and custody battle had caused. Specifically, Charles continues to assert that the children are suffering from Parental Alienation Syndrome ("PAS"), brought on

---

1. Although Pickett was unable to care for J.M. at the time of his birth, she has since married, became a successful real estate agent, and built a healthy and happy environment for the children.

by Ann Marie implanting and encouraging false memories of abuse, and other conduct that eventually turned the children against their father. The therapy reports submitted to the court early in the proceedings make reference to Ann Marie's great anger towards Charles, and that the children may have felt the need to vilify their father in an attempt to secure their mother's approval and love.

{¶10} In order to properly identify the existence of PAS and whether or not the children needed specific treatment before they could be reunified with their father, Charles, Ann Marie, and the court initially agreed that therapy was necessary. Ann Marie took the children to a few sessions with Dr. Gene Colina who was primarily in charge of the family's therapy. Throughout the course of his involvement, Dr. Colina has asserted his belief that the children's negative feelings toward their father are due in part to Ann Marie's behavior and that an eventual unification with Charles is in their best interest. Once the children relocated to Florida, they continued their therapy with Dr. Gina Early. However, Dr. Early's reports indicate a very real possibility that the children's negative perception of their father is due to actual abuse, and not false memories implanted by their mother.

{¶11} When Charles became aware that Dr. Early was conducting individual sessions as opposed to family therapy, and that she entertained the possibility that the abuse may have actually occurred, he expressed his adamant displeasure over Dr. Early's involvement with the children. In order to justify his lack of cooperation with the children's therapy, Charles asserted that Dr. Early was not properly identifying the effects of PAS, was fostering the children's "false memories" of sexual abuse by discussing the issue in sessions, and was not readying the children for reunification.

{¶12} Throughout the years briefly summarized in this statement of facts, the two oldest children have turned 18 and have been emancipated. Charles has since renewed his motion for custody of J.M. and L.M. who are currently 16 and 15 years old respectively. The

magistrate held an extensive hearing on the custody issue, as directed by this court in our remand instructions, and granted custody of the two children to Pickett, finding that Charles was an unsuitable parent for J.M. and L.M. Charles objected to the magistrate's decision but the juvenile court overruled the objections and adopted the magistrate's grant of custody to Pickett. Charles now appeals the decision of the juvenile court, raising four assignments of error.<sup>2</sup>

{¶13} Assignment of Error No. 1:

{¶14} "THE TRIAL COURT APPLIED THE INCORRECT LEGAL STANDARD IN DENYING THE MOTION FOR CUSTODY AND GRANTING LEGAL CUSTODY TO MICHELLE PICKETT THEREBY CREATING A DUAL STANDARD OF SUITABILITY FOR FATHER."

{¶15} In Charles' first assignment of error, he argues that the juvenile court erred in finding that he was an unsuitable parent, thereby granting custody to Pickett, a nonparent. This argument lacks merit.

{¶16} We begin our discussion by first noting our agreement with Charles' assertion that a parent has a fundamental right to raise his child. As stated by the Ohio Supreme Court, "the United States Supreme Court has stated that the right to raise one's children is an essential and basic civil right. Parents have a fundamental liberty interest in the care, custody, and management of the child. Further, it has been deemed cardinal that the custody, care and nurture of the child reside, first, in the parents. Similarly, this court has long stated that parents who are suitable persons have a paramount right to the custody of their minor children." *In re Murray* (1990), 52 Ohio St.3d 155, 157. (Internal citations

---

2. In his brief, Charles also states that he is appealing the juvenile court's decision ordering deposition fees to be charged as costs. However, Charles neither sets forth the argument in a separate assignment of error nor addresses the issue at any time. Therefore, according to App.R. 12(A)(2), we will disregard Charles' reference to the deposition costs.

omitted.) Even so, we recognize that the right to rear one's child is not absolute. Instead, a parent loses the right to make decisions regarding the care, custody, and control of his children should he be deemed an unsuitable custodian. *In re Perales* (1977), 52 Ohio St.2d 89.

{¶17} Before a court can grant custody to a nonparent, it must first make a finding that the "preponderance of the evidence indicates abandonment, contractual relinquishment of custody, total inability to provide care or support, or that the parent is otherwise unsuitable -- that is, that an award of custody would be detrimental to the child." *Id.* at 98. When reviewing custody issues, a juvenile court's decision is granted great deference and will not be disturbed absent an abuse of discretion. *Smith v. Smith*, Butler App. No. CA2005-04-091, 2006-Ohio-2136. More than mere error of judgment, an abuse of discretion requires that the court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. "The discretion which a trial court enjoys in custody matters should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned." *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74.

{¶18} The juvenile court's decision sets forth the evidence it considered before finding Charles unsuitable. Specifically, the juvenile court noted that Charles has not had contact with J.M. or L.M. since before the summer of 2005, despite being given the opportunity to write them cards and begin the process of telephone communication. Even though Charles asserts that he sent the children letters that were not accepted, Pickett testified that Charles had not sent any letters and that she had done nothing to impede any communication Charles may have sent. Dr. Early also stated that she asked Charles to send cards or letters to her so that she could present them to J.M. and L.M. According to Dr. Early, she received no such communication from Charles. After considering this conflicting testimony, the

juvenile court found that despite the suggestion that he send the children cards and letters to gradually open communication lines, Charles failed to do so.

**{¶19}** The court also found that the children are estranged from their father and have continually expressed their desire to live their lives without interference from him. Since moving to Florida, J.M. and L.M. are fully integrated into the Pickett home and have made close bonds with their cousins who also live in the house. The children are thriving at school and are active members of their close-knit community. They have built positive relationships and a strong support system of family and friends. They have also developed a sense of pride and independence through their hobbies and part-time jobs in the Pickett's family business.

**{¶20}** According to Dr. Early's report, as well as a report by the guardian ad litem ("GAL") who has been involved in the case for approximately five years, both J.M. and L.M. have shown noticeable improvements since living with Pickett. J.M., who had anger problems before going to Florida, has shown great development in his ability to control his anger, and has improved in his school work. L.M., before a shy and reserved girl, has flourished in Florida and now is a talkative, bright, and popular member of the community. These changes demonstrate the positive impact the move to Florida has had on the children and why Pickett's custodianship has been a marked improvement in their lives.

**{¶21}** Dr. Early also noted the closeness between J.M. and L.M. and how strong a bond the two share given the struggles and hardships they have faced together. Because Pickett is J.M.'s biological mother, Charles initially agreed that he should remain with Pickett in Florida. Dr. Early noted how devastating a separation would be to J.M. and L.M., and that the children were emphatically opposed to a separation. Since Dr. Early's report, Charles now asserts that he has always wanted J.M. to come back to his home and to reinstitute the father-son relationship the two shared before the divorce and resulting custody battle.

{¶22} The court also noted that even Dr. Colina, who Charles consistently champions and asserts has the family's best interests at heart, has indicated that reunification at this time is not plausible and that long-term therapy and reintegration would be necessary before the family could be reunited, if at all. However, the court noted that any sort of reunification would require the children to become acquainted with a stepmother they have never known. Since the divorce, Charles married Dr. Mary Chambers, a pediatrician who lives in Kentucky. According to her own testimony, she has never had any contact with Charles' four oldest children, but has since adopted the youngest African child.<sup>3</sup> Charles now resides with Chambers and their daughter in Kentucky, away from any family and friends the children knew in Ohio.

{¶23} Charles recognizes that instant reunification with the children is not possible. Instead, he submitted a plan to the court in which the children would leave the Pickett home, move back to Ohio to live with family friends, and engage in family therapy. According to Charles, this process would allow the children to rebuild trust with him, recognize that Ann Marie implanted false memories, and understand that PAS is responsible for their anger towards him. At that point, the children would join Charles and his family. Charles expressed that a similar plan worked well with the younger African child after she was removed from the home and eventually reunified with Charles. However, the juvenile court expressed no confidence in Charles' plan for J.M. and L.M. given Charles' unwillingness to cooperate with Dr. Early and her attempts to aid the children and help them build a more positive relationship with their father. Instead, the court found that Charles' "conduct evidences a motivation to manipulate and control the situation to such an extent that the Court fears that once he has custody he would not act in the children's best interest if he was of the opinion

---

3. The oldest African child suffers from post-traumatic syndrome, reactive attachment disorder, and oppositional defiance disorder and lives at Cincinnati Children's Hospital Psychiatric Unit.



that the matter was not progressing in accordance with his own plan and timeframe."

{¶24} After making the above findings, the juvenile court noted that the magistrate found Charles unsuitable to raise J.M. and L.M. and agreed that "the evidence detailed above establishes by a preponderance of the evidence that an award of custody to Father would be detrimental for [J.M. and L.M.]." There is no error in this conclusion.

{¶25} Charles now asserts that the juvenile court abused its discretion by using the wrong standard for determining suitability because it focused on the children's best interests instead of his fitness as a parent. However, we disagree. Instead, the juvenile court reviewed the facts and circumstances, not to determine the children's best interests, but rather to determine whether granting custody to Charles would be detrimental to them. Given that a child's welfare is inextricably related to his or her interests, it is understandable that Charles views the juvenile court's decision as having been predicated on a determination of the children's best interests. However, in the context of a parent's suitability, it is impossible to consider whether placing custody with a parent would be detrimental without considering the specific child in question and how giving custody to the parent would affect that child's welfare.

{¶26} The *Perales* court made clear that a parent is unsuitable where a custody award would be detrimental to the child, and noted that "if courts dealing with the general concept of suitability measure it in terms of the harmful effect of the custody on the child, rather than in terms of society's judgment of the parent, the welfare of the child should be given the priority \*\*\*." *Perales*, 52 Ohio St.2d at 98. The court went on to state that "it is becoming increasingly common for courts to weigh the emotional and psychological (as well as the physical and mental) effects which a custody award may have on the child." *Id.* at fn.11.

{¶27} This statement by the Ohio Supreme Court also negates Charles' contention

that "evidence that the Children are doing well and their integration into their school and community have no place in a suitability analysis." Instead, the fact that the children have flourished in Florida, have found a stable, supportive, and loving home with the Picketts, and have shown an improvement in their attitude and demeanor, demonstrates that removing them from the home and security they have built would be harmful and detrimental to their overall welfare. Beyond their obvious estrangement from their father, the children have expressed their great desire to have no further intrusion in their lives from him, and have stated how the custody dispute has impeded them from truly moving forward in life and putting a history of pain, upheaval, and turmoil behind them.

{¶28} We note that when reviewing decisions of lower courts finding parents unsuitable, appellate courts rely on evidence similar to that offered in the case at bar. See *In re Medure*, Columbiana App. No. 01 CO 3, 2002-Ohio-5035 (finding lower court did not abuse its discretion by declaring appellant unsuitable where he was not generally a part of the children's lives, verbally and physically abused the children, failed to keep adequate food supplies in the home, and the children stated that they were afraid of him and did not want to be in his custody); and *In re J.D.*, Butler App. No. CA2005-09-375, 2006-Ohio-3468, (affirming decision to grant custody to maternal grandmother based on testimony from the child's therapist, past abuse by parents, child's wishes not to have communication with his mother, child's fear of parents, as well as evidence of use of profanity, drinking, and drugs in parents' home). The juvenile court was therefore correct to focus on the children's welfare and possible harmful effect on the children when determining whether granting custody to Charles would be detrimental to them.

{¶29} Charles next asserts that because he was a suitable parent for the African children, as evidenced by him obtaining custody of the girls and eventually reunifying himself with the youngest, the juvenile court erred by finding him an unsuitable parent for J.M. and

L.M. However, the *Perales* test for determining a parent's suitability lacks the blanket effect Charles asserts that it should have. Instead, the focus of any custody decision must be on the individual child in question.

{¶30} Here, the juvenile court was not charged with reaffirming Charles' suitability to parent the African children. Instead, it had the task to determine if placing J.M. and L.M. in Charles' custody would be detrimental to those two specific children. While Charles may be a suitable parent for one child, the juvenile court found by a preponderance of the evidence that he was not a suitable parent for J.M. and L.M. because of the circumstances surrounding those specific children. Specifically, the juvenile court considered the reports from the GAL and both Drs. Early and Colina, as well as an in camera interview with the children themselves. After doing so, the court applied the facts of the case to the legal precedent of *Perales*.

{¶31} Focusing on how the custody question specifically affected J.M. and L.M. is in compliance with the precedent set forth in *Perales*. The law set forth in that case therefore negates Charles' general claim that a trial court errs by not finding dispositive a parent's past determination of suitability. Because the court applied the proper standard in doing so, it did not err in finding Charles an unsuitable parent even though he was suitable to parent a different child.

{¶32} Charles also asserts that the juvenile court erred by not considering all of the evidence of his suitability, including testimony from Dr. Chambers and his daughter regarding his parenting abilities. However, the court did consider the testimony and noted that Charles' current wife has never met Charles' four older children and has no contact with them. During her testimony, Dr. Chambers testified that she has never observed any interaction between Charles and the children, and her only first-hand knowledge of the custody battle and fallout was what Charles told her.

{¶33} The younger African child living with Charles testified that Charles is a good father to her. However, she also testified that while she has a good memory of J.M. and L.M., she has had no contact with her older siblings since they moved to Florida. When asked if she understood the allegations her brother and sister made against their father, she responded that she knows what her father and Dr. Colina have told her regarding J.M. and L.M., but was unable to state any first-hand knowledge of the situation.

{¶34} While the trial court was free to consider this testimony when determining Charles' suitability, there was very little the court could glean from the testimony because of the witnesses' lack of understanding or knowledge regarding the effect on either child should Charles have custody. Therefore, the court did not err in not giving the testimony of Charles' witnesses more weight than it did.

{¶35} Having found that the juvenile court applied the proper standard, its decision finding Charles an unsuitable parent and granting custody of J.M. and L.M. to Pickett was not an abuse of discretion. Charles' first assignment of error is overruled.

{¶36} Assignment of Error No. 2:

{¶37} "THE TRIAL COURT FAILED TO PROPERLY CONSIDER THE EFFECTS OF PARENTAL ALIENATION SYNDROME IN DETERMINING FATHER WAS AN UNSUITABLE CUSTODIAN FOR THE CHILDREN."

{¶38} In his second assignment of error, Charles contends that the juvenile court failed to consider the effects of PAS in making its decision on his suitability. There is no merit to this argument.

{¶39} Charles contends that despite the reports of Dr. Early and the GAL, the children are not flourishing and doing well in Florida. Instead, Charles asserts that the juvenile court placed unwarranted weight on the children's apparent happiness and welfare because the effects of PAS are ongoing and do not always manifest themselves until much later in life.

Essentially, Charles argues that the children cannot be doing well because they have yet to come to terms with the PAS inflicted on them by their mother. However, a review of the record indicates the juvenile court properly considered PAS when making the custody determination.

{¶40} According to reports from therapists engaged over five years ago, Ann Marie had great anger towards Charles. The reports suggest that this anger could have caused the children to turn on their father as a way to solidify their mother's favor. After Ann Marie's death, Dr. Colina opined that the children may have continued to have negative feelings toward Charles out of loyalty or to honor their mother's memory. While he could not state to a certainty that the children's negative attitude toward Charles was due to PAS, Dr. Colina did testify regarding the possible effect PAS could have on the children in the long-run. However, the juvenile court also considered Dr. Early's report regarding PAS, and whether Ann Marie was the source of the children's negative relationship with Charles.

{¶41} In her report to the court, Dr. Early sets forth her findings after noting that the purpose of the children's therapy was to "assess the degree to which the effects, if any, of parental alienation have influenced the relationship between the children and their father, Charles [M]. The hoped for outcome would be to heal and reduce such effects, if any, and prepare the children for the long-term process of re-engagement and reunification with their father, should that be deemed in their best interest." Dr. Early goes on to state that the custody proceedings had been extraordinarily difficult on the children, but that since moving to Florida, the children were flourishing.

{¶42} However, Dr. Early noted that the overarching and conflicting issue in the children's relationship with Charles remains the abuse allegations. While Dr. Early was aware that the court deemed the allegations unsubstantiated, she reports that the children continue to assert that Charles molested them during prayer time, before going to sleep, and

when Charles would check to see if the children wet the bed. According to Dr. Early, it is virtually impossible to determine whether Ann Marie implanted these memories in the children because she has died and cannot shed light on Charles' allegation that she is responsible for the children's belief that he molested them. Regardless of the current inability to prove or disprove PAS, the children have "held steadfast in their assertions" that Charles physically and sexually abused them.

{¶43} According to the children, once Charles left the home, they felt comfortable and safe enough to come forward and inform their mother of the abuse. Dr. Early noted that this revelation to Ann Marie would certainly cause the great anger toward Charles mentioned in the early psychological reports. Dr. Early also found that the children staunchly assert that they were not coached or coerced by their mother to tell an abuse story or to lie. Instead, the children recall how angered their mother was after they finally told her of the abuse and that Ann Marie did not hide her disdain for Charles after that point.

{¶44} Dr. Early considered whether the children manufactured their story out of loyalty to their deceased mother, but found that the children recognized her flaws as a parent and did not aggrandize their mother's goodness. While the children are very clear in the details of their own abuse, Dr. Early found that they are unclear in what happened to their siblings and do not discuss the abuse amongst themselves. Based on this, Dr. Early found that it was unlikely that coaching, collaboration, or forced corroboration occurred. Dr. Early also noted that Ann Marie took drastic measures to protect the children before her death by asking her sister to take them, and by stating in her will that she wanted the family friend in Ohio to have custody of the oldest boy and for Pickett to maintain custody of the three younger children after her death. According to Dr. Early, "her decision to fracture her family at such a vulnerable time indicates powerfully motivating beliefs and emotions that compelled action to protect the children."

**{¶45}** The juvenile court was presented with contrasting reports from therapists. While no court has the ability to definitively state whether the abuse occurred or the ability to know if the children's allegations are the result of PAS, the juvenile court did what it could by considering the possibility of PAS and the potential effects on the children. After doing so, the court stated that if the children are affected by PAS, then Charles was partly responsible because he bore a fair share of the responsibility for the family's break up. Also, Charles took no efforts to combat the effects of PAS by re-opening communication with the children after he was given the opportunity to do so. Whether or not he agreed with her approach, Charles failed to work with Dr. Early to reestablish communication with the children and further acted as an obstacle to the children receiving needed therapy after their move to Florida and their mother's death.

**{¶46}** Specifically, when Dr. Early requested the early psychological reports that mentioned PAS, Charles chose to provide only certain pages that contained conclusions supportive of the PAS theory. However, Charles never provided the full reports, and Dr. Early found the truncated sections unhelpful when trying to understand the children's past experiences with therapy. Charles also gave Dr. Early false information regarding insurance requirements by stating that the insurance company required a copy of her treatment plan and a signed consent form from the children. When Dr. Early called to confirm the insurance company's request, the company informed her that they needed only her tax identification number and verification of her licensure, which she promptly provided. However, Charles refused to pay for the therapy services and was found in contempt for disobeying the juvenile court's order to do so. Therefore, Charles' actions continued to frustrate any chance that Dr. Early could address PAS with the children or help them heal.

**{¶47}** Contrary to Charles' assertion, the juvenile court did consider PAS and weighed the possible effects the syndrome may have had on the children. However, given that PAS

was never definitively established and that Charles had his own role in prolonging the alienation, the juvenile court did not abuse its discretion by not finding PAS a dispositive issue in Charles' custody motion. Charles' second assignment of error is overruled.

**{¶48}** Assignment of Error No. 3:

**{¶49}** "THE TRIAL COURT ERRED IN FAILING TO SEPARATE THE ROLES OF GUARDIAN AD LITEM AND ATTORNEY FOR THE CHILDREN, WHO DID NOT PERFORM HIS DUTIES AND ACTED TO THE DETRIMENT OF THE CHILDREN."

**{¶50}** In his third assignment of error, Charles asserts that the juvenile court erred by not appointing a new GAL. This argument lacks merit.

**{¶51}** According to Juv.R. 4(C)(1), "when the guardian ad litem is an attorney admitted to practice in this state, the guardian may also serve as counsel to the ward providing no conflict between the roles exist." R.C. 2151.281(I) sets forth the GAL's role and states that "the guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child shall perform whatever functions are necessary to protect the best interest of the child \*\*\*." As stated by the Ohio Supreme Court, "the role of the attorney is to zealously represent his client within the bounds of the law: *In re Baby Girl Baxter* (1985), 17 Ohio St.3d 229, 232.

**{¶52}** Because the GAL is permitted to have a dual role by also representing the children in a custody dispute, a court is not required to appoint separate counsel unless the GAL's recommendations regarding their best interest conflict with the children's wishes. *In re Williams*, 101 Ohio St. 3d 398, 2004-Ohio-1500. See, also, *In re Bowens* (June 30, 1999), Ashtabula App. Nos. 97-A-0051, 97-A-0052, 97-A-0050 (finding no abuse of discretion where the trial court allowed the GAL to represent the children because the GAL's recommendation regarding the children's best interest matched the children's wishes).

**{¶53}** Here, the juvenile court noted that each time Charles moved the court to



dismiss the GAL, the motion was overruled because no conflict of interest existed between the GAL's role as an attorney for the children and his capacity as a GAL. The juvenile court then concluded, "the Children do not want to be in Father's custody. It is not in the Children's best interest to be in Father's custody. Therefore, what the Children want and their best interests are consistent. There is no conflict of interest in the same person serving as guardian ad litem and attorney for the Children in this case." We find no error in this conclusion.

**{¶54}** Putting it mildly, Charles did not approve of the GAL and his participation in this case. Instead, Charles continually asserted throughout motions, correspondence, and his hearing testimony that the GAL was biased and only agreed to represent the children in order to curry favor with the church congregation Anne Marie and the GAL attended. Since the GAL agreed to represent the children approximately five years ago, the relationship between he and Charles has been contentious. The record is replete with Charles' disdain for the GAL's stance on issues, and filled with examples of Charles going beyond the GAL's official duties and attacking the GAL in his personal capacity. On several occasions, Charles sent letters regarding J.M. and L.M. to the GAL in his role as chairmen of his local political party at the headquarters' physical address. Charles would also copy case-related communications to the partners in the GAL's law firm that contained accusations that the GAL was biased and disingenuous.

**{¶55}** The exchanges between Charles and the GAL during the hearings also demonstrate Charles' contempt for the GAL. Throughout Charles' testimony, he questions the GAL's integrity, openly admits that he refused to cooperate with the GAL, and accused the GAL of putting political ambitions above the best interests of the children. However, contentious relationships between the GAL/attorney and the parent seeking custody do not require the court to appoint a separate GAL to represent the children's interests.

{¶56} Instead, J.M. and L.M. continually expressed their fervent desire to remain with the Picketts in Florida and to have no further contact with Charles. The GAL recommended that it was in the children's best interests for the Picketts to have custody. Because the GAL acted in accordance with his clients' wishes at all times throughout the proceedings, requiring a separate GAL was unnecessary. As the trial court did not err in allowing the GAL to act as the children's attorney throughout the pendency of the custody case, Charles' third assignment of error is overruled.

{¶57} Assignment of Error No. 4:

{¶58} "THE TRIAL COURT FAILED TO FOLLOW ITS OWN RULINGS AND PROCEDURES WHICH PRODUCED IRREGULARITIES AT THE TRIAL LEVEL DEPRIVING FATHER OF DUE PROCESS AND FURTHERING THE DETRIMENT OF THE CHILDREN."

{¶59} In his final assignment of error, Charles asserts that he was denied due process because of the cumulative effect of several decisions by the juvenile court. There is no merit to this argument.

{¶60} Due process requirements in the Ohio and Federal Constitutions guarantee the right to notice and an opportunity to be heard. *Braden v Braden*, Portage App. No. 2006-P-0028, 2006-Ohio-6878.

{¶61} Charles asserts several decisions by the juvenile court that denied him due process. First, Charles asserts that the court's failure to follow the 2003 agreed entry somehow denied him due process. However, the 2003 entry was filed at a time when Ann Marie was still alive and set forth the process whereby she would have custody of the four older children and Charles would have custody of the African girls. While Charles claims that the goal of this case has been his reunification with the four older children, now specific to J.M. and L.M., the agreement merely stated that the parties would follow the

recommendations of the therapist "to normalize parenting time and establish healthy relationships with both parents \*\*\*."

{¶62} Although the outcome of this case may be contrary to the original goal of establishing parenting time and healthy relationships, we note Charles' own contribution to his children's estrangement. As previously noted, Charles failed to open communication lines with his children and instead, did not follow through with the magistrate and therapists' recommendations regarding establishing positive communication with the children. We also fail to see how deviating from a six-year-old agreed entry between Charles and a now-deceased party has denied Charles notice or an opportunity to be heard on this issue.

{¶63} Charles next asserts that he was denied due process because the juvenile court failed to adhere to the mandates from this court the two times the case was remanded for further proceedings on the custody issue. In those opinions, we directed the juvenile court to hold full hearings on the issue of custody and to determine whether Charles was a suitable parent before giving custody to Pickett. In considering Charles' first assignment of error, we established that the juvenile court properly determined that Charles was an unsuitable parent for J.M. and L.M. after a full hearing on the merits. We are satisfied that our concerns raised in the two previous reversals have been addressed by the juvenile court and that it has adhered to the mandate we set forth in the past remands. The hearing specific to the remand instructions occurred after Charles had full notice and was an active participant in the proceedings so that his due process rights were not violated.

{¶64} Charles also claims that his due process rights were violated because the magistrate failed to admit certain evidence. Mainly, Charles asserts that the magistrate erred in excluding reports of Dr. Colina and two previous therapists. However, Charles failed to object to the magistrate's treatment of these reports. In his ninth objection to the magistrate's decision, Charles states that the "Magistrate erred in not admitting certain exhibits offered by

Father." As the juvenile court noted, Charles failed to specifically state which exhibits he was referring to. Without knowing which exhibits Charles complained of, the juvenile court refused to speculate, and overruled the objection.

{¶65} According to Civ.R. 53(D)(3)(b)(iv), "a party shall not assign as error on appeal the court's adoption of any factual findings or legal conclusion \*\*\* unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)." Civ.R. 53(D)(3)(b)(ii) states that "an objection to a magistrate's decision shall be specific and state with particularity all grounds for objection." Specific objections were especially necessary given that the juvenile court's written decision references Dr. Colina's reports, testimony, and opinions, as well as a therapist's report from early in the case that discussed PAS. Therefore, which exhibits Charles claims were excluded remain unclear. Consequently, we will not speculate that the reports Charles now complains of fall under his ninth objection, so that Charles waived his right to argue the magistrate's error on appeal.

{¶66} Charles next asserts that his due process rights were violated when the juvenile court refused to implement the order requiring a PAS evaluation. We initially note that in February 2007, Charles moved the court to order the PAS evaluation in accordance with a previous ruling. However, in April 2007, Charles filed a notice of withdrawal of all pending motions. The court journalized its order that all pending motions would be withdrawn as of May 2007. At no time after the juvenile court granted Charles' motion to withdrawal did Charles move the court to order a PAS evaluation.

{¶67} We also note that the original order stated that Ann Marie was to participate in the evaluation given the importance of determining whether or not she implanted false memories or otherwise turned the children against their father. However, before the report could be completed, Ann Marie passed away and establishing her role in PAS is impossible. However, Dr. Colina and Dr. Early did consider PAS through the eyes of the children and

according to discussions with Charles. Because of their reports, the juvenile court had before it credible, though conflicting, theories regarding PAS and its possible effects on the children. Further, Charles was permitted to offer testimony and arguments regarding PAS during the custody hearing. Therefore, his due process rights were not violated by never having a separate PAS evaluation performed.

{¶68} Charles lastly asserts that he was denied due process because he was not permitted to depose the GAL or to cross-examine him.<sup>4</sup> Charles filed a motion to depose the GAL. However, this motion to compel was specific to Charles' motion to adjudicate the children dependent once they moved to Florida. However, the magistrate found that the proper venue for determining the children's dependency was in Florida since they had lived there for a few years at the time of Charles' motion. Therefore, according to Juv.R. 25, there was no good cause to depose the GAL because the juvenile court was not going to consider or rule on the dependency motion.

{¶69} Charles argues that the cumulative effect of these denials, as well as motions still pending but rendered moot by the juvenile court's custody determination, denied him due process. However, after a review of the record, it is clear that Charles received ample notice of the hearings, participated in the proceedings, called witnesses on his behalf, cross-examined adverse witnesses, submitted multiple motions and memorandums to the court in support of his assertions, and was permitted to argue his suitability before the juvenile court granted custody to Pickett. As such, Charles was not denied due process, and his fourth assignment of error is overruled.

{¶70} Judgment affirmed.

---

4. While Charles asserts that he was denied due process by not having the opportunity to cross-examine the GAL, the record indicates that Charles never attempted to call the GAL as a witness at the custody hearing and was therefore not denied the right to do so.

POWELL, P.J., and YOUNG, J., concur.

[Cite as *In re J.M.*, 2009-Ohio-4824.]