

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

IN RE: :  
A.D. : CASE NO. CA2011-06-100  
: OPINION  
: 11/18/2011  
:  
:

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
JUVENILE DIVISION  
Case No. JN2008-0174

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**RINGLAND, J.**

{¶1} Appellant, the biological mother of A.D., appeals a decision of the Juvenile Division of the Butler County Court of Common Pleas granting permanent custody of her

daughter to the Butler County Department of Job and Family Services, Children Services Division.<sup>1</sup>

{¶2} In 2008, Butler County Children Services received referrals regarding A.D., who was four years old at the time. The agency had previous involvement with appellant, and appellant's two older children were in placements with relatives. Although the allegations were unsubstantiated, through their involvement, the agency discovered that appellant had a drug abuse problem and a history of suicide attempts.

{¶3} On May 5, 2008, the agency filed a complaint alleging that A.D. was neglected and dependent. The complaint was filed after domestic violence issues occurred in the home between appellant and a boyfriend, and appellant tested positive for cocaine, attempted suicide and was hospitalized with a self-inflicted stab wound. The child was placed in the temporary custody of her paternal grandmother, who she was living with at the time.

{¶4} The court found A.D. was dependent on May 7, 2008 and a case plan with reunification as the goal was developed. The case plan required the mother to obtain stable housing, financial stability, a psychological evaluation, therapy and substance abuse treatment.

{¶5} On June 6, the court granted temporary custody to the agency based on concerns with the placement in the grandmother's home. The agency received reports that the grandmother had problems with drugs, the child's father was living in the home and was using drugs, and there were concerns regarding supervision of the child. A.D. was placed in a foster home.

{¶6} At an annual review on May 13, 2009, the case plan indicated that neither

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1. A.D.'s biological father initially was part of the case, but decided to terminate his involvement in the case and with A.D. when an attempt at drug treatment failed. He failed to appear at the permanent custody hearing and is not a party to this appeal.

parent was stable enough to parent and that the mother tested positive for illegal drugs on several occasions. Around mid-July of 2009, appellant again tested positive for drugs and attempted suicide with an overdose of prescription drugs. The agency filed a motion for permanent custody of A.D. on July 22, 2009.

{¶7} In September 2009, A.D. was placed in a new foster home. At this point, some of the child's relatives came forward as a potential placement option. The court granted the agency's request for a continuance of the permanent custody hearings, which were set to begin on January 11, 2010, in order for the agency to determine if relative placement was a viable option. The agency investigated three sets of relatives during the case, but two families were determined not appropriate for placement and the third family indicated that it was no longer interested in obtaining custody.

{¶8} A hearing on the permanent custody motion began in September 2010. At that time, appellant testified that she was living in a homeless shelter. She testified that she wanted A.D. back, but admitted that she was unable to take care of her at that time.

{¶9} An agency worker testified that A.D. had been in agency custody for 838 days and her foster parents were meeting the child's needs. She testified that relative placements had been investigated but were not appropriate or did not work out, and that all other placement options had been exhausted. The agency worker testified that appellant had recently completed substance abuse treatment and her drug screens have been negative since July 2009. Appellant's therapy and psychological services were ongoing.

{¶10} The worker testified that currently the primary issues with appellant were a lack of stable housing and income. She stated that the mother has always lived with friends during the agency's case, and had to move out of her most recent housing when her friend was evicted. The worker explained that appellant could not take the next step towards reunification with A.D. until she gets housing as it requires intensive in-home parenting work.

She stated that there were some concerns with visitations earlier in the case, but visits improved. However, she stated that appellant's visits remained at "Level 1" which is the most restrictive visitation level, until a few weeks prior to the hearing.

{¶11} A Family Preservation worker testified that he works at reunifying children back into the home and that he met appellant in June 2010. At that time, he observed visitation and determined there were no obvious concerns regarding appellant's parenting during the visit. He testified that he spoke with appellant about the importance of obtaining housing and employment for reunification purposes and that the lack of stable housing was a definite barrier to reunification.

{¶12} The permanent custody hearing continued on September 23, 2010. At that time, Holly Anneken, a Therapeutic Preschool Therapist, testified that she worked with A.D. from September 2009 to July 2010. The therapist diagnosed adjustment disorder and explained that A.D. has symptoms of guardedness and does not talk about her feelings easily. She ended her therapy with A.D. so that the child would work with an expert in reactive adjustment disorder.

{¶13} Melanie Grosser, a professional therapist with Serenity Counseling, testified that she diagnosed A.D. with reactive attachment disorder in June 2010 and has been working with the child since that time. She explained that A.D. has trouble with attachments to the point she will attach to everyone. The therapist explained that the child is working on expressing her emotions in an appropriate manner instead of avoiding the subject by stating that "everything's fine." The therapist testified that A.D. stated she wanted to live with her foster parents and "play with" her biological mother.

{¶14} Grosser explained that in order to manage her reactive attachment disorder, A.D. needs a permanent, stable life and that moving homes is not good, as stability of the environment is important. The therapist stated that the lack of stability is a barrier to the

child's therapy as she is "in limbo" now because a permanent placement is necessary to continue treatment. She stated that the next step for A.D. is to continue her therapy with the person who she will be "attaching to" permanently as her primary caregiver, and that the therapy will include them both. She stated that she was aware that A.D. had been out of appellant's home for 839 days, and stated that the child cannot continue in "hold mode" much longer.

{¶15} As the hearing continued on September 27, 2010, Jennifer Crail, the agency caseworker from April 2008 to September 2008 testified that at that time, the agency's main concerns with appellant were her substance abuse, mental health and instability. Peggy Woods, a family resource specialist, testified that she observed appellant's visitations with A.D. from the beginning of the case until recently. She stated that in May or June of 2008, there were concerns with how sedated appellant appeared, which appeared to be due to the effects of the prescription medication she was taking. Initially, Woods observed the child was very whiny and needy with appellant, which was different from how the child acted with the foster parents. Woods stated that although there was some concern regarding conversation topics, visits have generally been good and appellant has done better at recent visits.

{¶16} The child's foster mother testified that A.D. has been in her home for 13 months and is doing well. She testified that A.D. is bonded with both foster parents and foster siblings. The foster mother explained that A.D. has lung issues which are monitored and has ambiguous genitalia which required a lot of visits initially, but is now being monitored until puberty when more medical care will be required. The foster mother testified that the family would like to adopt A.D. and that she would allow visits with appellant as long as appellant remains healthy and there are no signs of drug abuse.

{¶17} At hearings on September 28 and October 4, 2009 witnesses, including appellant's pastor and friends, testified that appellant is doing well in her substance abuse

recovery process. These witnesses testified that she is attending group meetings and following recommendations for remaining sober.

{¶18} At the continuation of the hearing on October 7, 2010, Eckart Wallisch, a psychology assistant, testified that he evaluated A.D. on November 30, 2009. He diagnosed reactive attachment disorder, which he described as occurring when an attachment does not develop sufficiently with primary caregivers and as a result, the child does not develop normal bonds. Wallisch testified that the stability of placement for A.D. is important to her long-term psychological outlook and that the primary caregiver must be someone who has an understanding of the child's symptoms and treats them accordingly.

{¶19} Dr. Joseph Lipari, a psychologist, testified that he evaluated appellant in 2008. At that time, he determined that appellant could succeed at parenting if she does certain things. He explained that appellant's drug use was interfering with her parenting and that appellant reported abusing drugs when stressed, including stresses involving her children. He recommended substance abuse treatment, psychotherapy and psychiatric treatment, a support group, relapse issue planning, program monitoring and random drug screens. Lipari stated that his opinion regarding parenting does not take into account any variables regarding the child's needs.

{¶20} The permanent custody hearing continued on November 22, 2010 when Andrew Ellington, a counselor at the Hamilton Counseling Center, testified that he has been working with appellant since February 2008. He diagnosed bipolar disorder and stated that appellant is on medication. Ellington testified that appellant has made significant progress, much of it over the last year. He stated she is working on her goals, and is close to achieving them and that she has made significant progress in attitude, but housing is still a concern. He indicated that treatment included a focus on appellant's lack of independence, in not having stable housing and income, which he stated places her in a position where she is not

considered capable of taking care of her children.

{¶21} Ellington testified that there is a focus on stability in counseling and he had received information that appellant had found housing and was using student loans to pay her rent. Ellington testified that if A.D. were returned, appellant would need counseling during the transition, as a child back in the home would bring stressors.

{¶22} At the final hearing on the permanent custody motion in January 22, 2011, appellant testified that she is in school to become a medical assistant, which is a two-year program. She has Pell grants and student loans of \$15,000 a year to help with her schooling. Appellant testified she has been in her current residence two-and-one-half months and is paying rent with her student loan checks and she cuts hair on the side to meet her needs. On cross-examination, her testimony showed an inconsistency/shortage of \$400-\$500 a month. Appellant also testified that she does not completely agree with the reactive attachment disorder diagnosis, as she does not see an attachment problem since A.D. "goes to everyone" and "has never met a stranger." She stated that she would get a third or fourth opinion on the diagnosis.

{¶23} After considering the evidence, the magistrate granted permanent custody of A.D. to the agency. Appellant filed objections to the magistrate's decision and after a hearing, the trial court overruled the objections. Appellant now appeals the trial court's decision to grant permanent custody of the child to BCCS and raises the following three assignments of error for our review:

{¶24} "THE JUVENILE COURT'S DECISION TO GRANT PERMANENT CUSTODY TO BUTLER COUNTY CHILDREN SERVICES WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AN ABUSE OF DISCRETION, CONTRARY TO LAW AND NOT SUPPORTED BY SUFFICIENT CLEAR AND CONVINCING EVIDENCE, AND WAS CONTRARY TO THE BEST INTEREST OF THE CHILD."

{¶25} "THE JUVENILE COURT ERRED BY FAILING TO DISQUALIFY THE CHILD'S ATTORNEY AND APPOINT A NEW ATTORNEY FOR THE CHILD WHEN HIS SUPPORT OF PERMANENT CUSTODY TO THE AGENCY WAS CONTRARY TO THE CHILD'S WISHES."

{¶26} "THE JUVENILE COURT ERRED BY FAILING TO REPLACE THE GUARDIAN AD LITEM WHO DID NOT FULFILL HER DUTIES TO THE CHILD AS REQUIRED BY LAW."

{¶27} In her first assignment of error, appellant argues that the trial court's decision to grant permanent custody is against the manifest weight of the evidence, an abuse of discretion, contrary to law and not supported by sufficient clear and convincing evidence.

{¶28} Before a natural parent's constitutionally protected liberty interest in the care and custody of her child may be terminated, the state is required to prove by clear and convincing evidence that the statutory standards for permanent custody have been met. *Santosky v. Kramer* (1982), 455 U.S. 745, 759, 102 S.Ct. 1388. An appellate court's review of a juvenile court's decision granting permanent custody is limited to whether sufficient credible evidence exists to support the juvenile court's determination. *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, ¶16. A reviewing court will reverse a finding by the juvenile court that the evidence was clear and convincing only if there is a sufficient conflict in the evidence presented. *In re Rodgers* (2000), 138 Ohio App.3d 510, 520.

{¶29} Pursuant to R.C. 2151.414(B)(1), a court may terminate parental rights and award permanent custody to a children services agency if it makes findings pursuant to a two-part test. First, the court must find that the grant of permanent custody to the agency is in the best interest of the child, utilizing, in part, the factors of R.C. 2151.414(D). Second, the court must find that any of the following apply: the child is abandoned; the child is orphaned; the child has been in the temporary custody of the agency for at least 12 months of a

consecutive 22-month period; or where the preceding three factors do not apply, the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. R.C. 2151.414(B)(1)(a), (b), (c) and (d); *In re E.B.*, Warren App. Nos. CA2009-10-139; CA2009-11-146, 2010-Ohio-1122, ¶22.

{¶30} The juvenile court found by clear and convincing evidence, and appellant does not dispute, that A.D. has been in the temporary custody of BCDJFS for more than 12 months of a consecutive 22-month period as of the date the agency filed the permanent custody motion. However, appellant does dispute the juvenile court's finding that granting permanent custody of A.D. was in the child's best interest.

{¶31} R.C. 2151.414(D)(1) provides that in considering the best interest of a child in a permanent custody hearing, "the court shall consider all relevant factors, including, but not limited to the following:

{¶32} "(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;

{¶33} "(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;

{¶34} "(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 \* \* \*;

{¶35} "(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;

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

{¶37} With respect to R.C. 2151.414 (D)(1)(a), the juvenile court found that appellant

has always regularly visited A.D. and that over time, her visits have become more nurturing and goal-directed. The court found there is an apparent bond of affection between the child and her mother. The court also found that the child is bonded to her foster parents and since being placed with them has benefitted from some additional medical and behavioral interventions that appear to be helping with her health and behavior. The court found A.D. is doing well in the foster home and the foster parents would like to adopt her, and would allow A.D. to have continuing contact with appellant as appropriate.

{¶38} With respect to R.C. 2151.414(D)(1)(b), the juvenile court indicated that the court did not meet with the child. The GAL recommended granting permanent custody to the agency. The court indicated that child's attorney notified the court after the hearing was concluded that the child had expressed a desire to live with her mother. The court further noted that during the hearing the court was advised that the child expressed a desire to remain in her foster home and to continue to see her mother.

{¶39} With respect to R.C. 2151.414(D)(1)(c), the juvenile court found that A.D. had been in the custody of the agency for more than 12 of 22 months when the permanent custody motion was filed.

{¶40} With respect to R.C. 2151.414 (D)(1)(d), the juvenile court found that several relative placements were offered for A.D., but two of the homes were determined not appropriate and a third family dropped out of consideration voluntarily. The court found placement in these homes was not legally possible.

{¶41} The court also found that A.D. has been diagnosed with reactive attachment disorder and has a special need for permanency and stability by someone who understands her needs. The court expressed concern regarding appellant's ability to follow through with A.D.'s therapy and to meet her needs given appellant's expressed doubts about the accuracy of the child's diagnosis.

{¶42} The court further found that appellant has achieved a significant level of stability over the past few months as she is participating in substance abuse treatment, going to school and has surrounded herself by appropriate persons. But, at the same time, the court found that although appellant recently obtained a residence, she is barely getting by and there was some concern about how appellant would maintain a home with the child and be able to provide for the services the child needs. The court also noted that appellant's history shows appellant has experienced periods of sobriety in the past only to fall back into substance abuse and self-destructive behaviors when confronted with stressful events or situations.

{¶43} The court concluded that given the needs of the child, it is unlikely that the mother will have means or ongoing stability necessary to provide the child with a legally secure placement. However, the court indicated that it is "possible" that mother can provide a legally secure placement.

{¶44} In conclusion, considering all of the factors, the court determined that A.D. has been in agency custody for over two years. The child has a significant mental health diagnosis that requires stability and predictability in order for the child to learn to protect herself from harm. The court found appellant has made notable strides, but despite this progress, her stability is tenuous and a possible relapse would be devastating to the emotional and psychological stability of the child. The court found the child is receiving the stability that she needs in her foster home and the foster parents are committed to the child's care.

{¶45} After carefully considering the record before us, we find no error in the trial court's determination that granting permanent custody is in A.D.'s best interest. The court carefully weighed the factors and while appellant's progress is commendable, appellant's progress only began after the child had been in agency custody for over a year. In addition,

although appellant has made significant progress in dealing with her substance abuse, she has not yet obtained a measure of stability in terms of a home or employment, although she is making progress. Only time will determine her ability to remain sober and to obtain stability in all areas of her life. Given this child's particular need for stability for her mental health, the child cannot wait any longer for permanency. Although appellant appears to have turned her life around, this change came late in the case. The court was without other options for placement and given the unknown regarding appellant's future stability, these late changes were balanced with the two years the child has already been in foster care, waiting for permanency. Accordingly, appellant's first assignment of error is overruled.

{¶46} In her second assignment of error, appellant argues that the court erred in failing to disqualify the attorney for the child and to appoint a new attorney because the attorney's support of granting permanent custody was contrary to the child's wishes. Within this assignment of error, appellant contends that the child was denied effective assistance of counsel, the child's attorney's representation was prejudicial, the child's right to counsel was violated, the court failed to determine the child's wishes by holding an in camera interview and the court erred in failing to disqualify the child's attorney and appoint new counsel for the child.

{¶47} In September 2008, the court appointed Adolf Olivas, a licensed attorney, as both attorney for the child and as guardian ad litem (GAL). A Court Appointed Special Advocate for the child (CASA) was also appointed on July 17, 2008, to represent the child's best interests. On September 22, 2010, the first day of hearings on the permanent custody motion, appellant's counsel indicated she believed there was a conflict issue regarding Olivas' dual role as both GAL and attorney for the child.

{¶48} The basis of appellant's argument regarding the conflict in roles was that appellant told her attorney that A.D. was repeatedly asking appellant when she was coming

home to live and telling appellant that she wanted to go home with her. Appellant's counsel argued that even though the child had told Olivas that she wanted to stay with her foster parents and visit her mother, an "inherent conflict" existed based on appellant's statement that the child told appellant she wanted to live with her. Appellant's attorney asked the court to hold an in camera hearing with the child to determine the child's wishes. While the court indicated it did not see a conflict based on case law and denied the immediate request for an in camera hearing, the court suggested that since the CASA had been appointed since early in the case, perhaps the CASA could be appointed as the GAL, and Olivas remain solely as attorney for the child and asked the parties to consider this option. The court deferred the issue of a later in camera hearing, stating it wanted to wait and see what the mental health professionals had to say about the issue first.

{¶49} At the start of the second day of hearings, Olivas stated that although he did not believe a conflict existed in his dual role as both attorney and GAL for the child, in acting in the child's best interest, he requested the court split the roles as suggested the previous day, and as solely attorney for the child, he would advocate for the child's wishes. The CASA was thereafter appointed as the GAL for the child and Olivas remained as attorney for the child.

{¶50} At the close of the case, the parties filed written closing arguments. Olivas, as attorney for the child, stated in his closing that A.D. has always expressed to him that she wants to stay with the foster parents and to "play" with her mom. He indicated the child has never indicated any feelings that she misses her mother, nor has the child expressed any desire to be in a more parent/child-like relationship with her biological mother. The closing argument advocated for the court to grant permanent custody.

{¶51} Appellant filed a motion to disqualify Olivas as counsel for the child. Appellant argued that Olivas was not representing his client's wishes as the child has "indicated a

consistent desire to return to Mother's care and/or maintain a relationship with her mother." Appellant requested the court to appoint new counsel to represent the child's wishes. The trial court overruled appellant's motion.

{¶52} A juvenile who is the subject of a permanent custody proceeding is a party to the proceeding and therefore entitled to counsel. *In re Williams*, 101 Ohio St.3d 398, 2004-Ohio-1500. In some situations, a guardian ad litem can serve a dual role as both GAL and attorney for the child. See *id* at paragraph 18. However, the roles of GAL and attorney are not always compatible as they serve different functions. *In re Baby Girl Baxter* (1985), 17 Ohio St.3d 229, 232. The role of a GAL is to investigate the child's situation and then ask the court to do what is in the child's best interest, while the role of an attorney is to zealously represent his client within the bounds of the law. *Id.* Generally, the appointment of independent counsel is necessary when the child has "repeatedly expressed a strong desire that differs and is otherwise inconsistent with the guardian ad litem's recommendations." *In re B.K.*, Butler App. No. CA2010-12-324, 2011-Ohio-4470, ¶19.

{¶53} In this case, although initially acting in a dual capacity, Olivas agreed to act as attorney for the child and the CASA agreed to act as guardian ad litem on the second day of the permanent custody hearing. At that time, Olivas stated that he did not believe there was a conflict in his roles, but that he would agree to acting solely as attorney, and the CASA acting as GAL in order to best serve his client. However, appellant argues that Olivas' representation as attorney for the child was ineffective and prejudicial because he failed to argue on behalf of the child's wishes.

{¶54} The basis of appellant's argument in this assignment of error is her assertion that the child wanted to return to her mother. However, the only support for this argument within the record is appellant's counsel's statement that appellant told her A.D. said she wanted to live with appellant. At the time appellant requested a separation of the roles of

attorney for the child and GAL, Olivas stated that he did not believe there was a conflict in the dual roles because the child had consistently indicated to him she wished to stay with her foster family. A review of the record in the permanent custody proceeding indicates that every time the child expressed an opinion to someone regarding where she wanted to live, she stated that she wanted to live with her foster family. The only indication to the contrary was appellant's testimony. She stated that on a visit, A.D. asked if she got to live with appellant again, and when told it was up to the judge, A.D. stomped her foot and said, "darn." Appellant testified that this statement "makes her feel as if she remembers living with me or either she would like to live with me."

{¶55} In written closing argument, Olivas argued in favor of granting permanent custody. After appellant filed the motion to disqualify the child's counsel, Olivas responded that during the proceedings the child had never indicated to him that she wished to return to her mother, and typically avoided the subject of where she wished to live, but indicated she wanted to stay with her foster family and "play with" her mother. Olivas stated that after the hearings and after his closing argument was filed, he met with his client and at that point, the child stated that she thought her mother could take care of her and she wanted to live with her mother. Olivas therefore indicated that a grant of permanent custody was not the child's wish.<sup>2</sup> The trial court specifically stated that it took this statement into consideration when deciding the child's best interest.

{¶56} Based on our review of the above facts, we find that A.D. was not denied effective assistance of counsel, was not prejudiced, her right to counsel was not violated and the trial court did not err in failing to disqualify the child's counsel. During the permanent

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2. In his appellate brief, Olivas states that when he most recently met with the child in August 2011, she did not say anything about her mother, but expressed happiness in her placement with her foster family. However, this statement was not considered by the trial court and is not in the record before this court on appeal.

custody hearing, Olivas indicated that the child had not expressed a desire to live with her biological mother, but instead wanted to stay with her foster parents. Olivas represented his client's wishes to stay with her foster family in pursuing permanent custody. This same statement was made by the child to several other witnesses who testified at the hearings. The only indication of any desire by A.D. to live with her mother came from appellant and her attorney, who stated that her client told her A.D. wanted to return to her mother's home. As the evidence indicates A.D.'s counsel was representing his client's wishes, we find no deficiency in his representation.<sup>3</sup>

{¶57} Within this assignment of error, appellant also argues that the trial court erred in failing to hold an in camera hearing to determine the child's wishes. As mentioned above, appellant requested an in camera hearing in conjunction with her argument that there was a conflict in Olivas' dual roles as attorney for the child and guardian ad litem. The court indicated it wanted to hear from the mental health professionals in the case regarding the child's reactive attachment disorder diagnosis and how this condition might impact an in camera interview. The next day of the hearing, the parties agreed to separate Olivas' roles. No further request for an in camera inspection was made at this point. During the course of the hearing, the mental health professionals were questioned regarding their opinion on an in camera hearing. Appellant again raised the issue of an in camera hearing in her motion to disqualify Olivas as attorney for the child.

{¶58} A court's decision whether to hold an in camera hearing with a child in a permanent custody case is reviewed for an abuse of discretion. *In re C.F.*, 113 Ohio St.3d

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3. We note that appellant also appears to argue that Olivas was not representing his client's interest by arguing for permanent custody when the child indicated a desire to remain in contact with her mother. Olivas responded to this argument in his motion in response to the motion to disqualify by stating that he argued in favor of permanent custody because, the child first of all indicated a desire to stay with her foster parents, and then to visit with her mother. Although not legally enforceable, the foster parents have maintained that they would allow visitation with the mother and Olivas found that permanent custody was the best option available to meet the desire of the child to stay with her foster parents and visit with her mother.

73, 2007-Ohio-1104, ¶56. In this case, the parties agreed to a separation of Olivas' dual roles and there was therefore no need for an in camera hearing on this issue. Appellant requested an in camera hearing with her motion to disqualify Olivas after the hearings were concluded on the basis that Olivas was not advocating for the child's wishes. Olivas stated that throughout the time he was appointed to act in the case, the child had consistently said she wanted to stay with her foster parents and play with her mom, and he advocated this desire with the best possible alternative by arguing for permanent custody, taking the first part of the child's statement as most important: that she wanted to stay where she was.

{¶59} The court heard testimony from the mental health experts that an in camera hearing may not be helpful. Holly Anneken, A.D.'s preschool therapist, questioned how A.D. would react in coming in and speaking to the court. She was concerned that the child would think that because of expressing her feelings it will sway the court, and Anneken questioned how the child would react if the decision did not go her way. Melanie Grosser, the child's therapist, testified that an in camera hearing may not be of benefit because A.D. may not say anything. Grosser stated that the child often says things are "fine," but her play indicates helplessness. Grosser explained that the child used this response as a way of coping and not having to discuss feelings.

{¶60} Given the facts before us, we find that the court did not abuse its discretion in failing to hold an in camera hearing to question the child regarding her wishes. Except for appellant, the testimony from witnesses was that the child wanted to stay with her foster parents but visit with her mom. The expert witnesses questioned whether an in camera hearing would be of benefit due to the child's reactive attachment disorder. Accordingly, we find no merit to appellant's argument that the trial court erred in failing to hold an in camera hearing. Appellant's second assignment of error is overruled

{¶61} In her third assignment of error, appellant argues that the trial court erred in

failing to replace the GAL because she failed to fulfill her duties to the child. Specifically, she argues that the GAL failed to submit a report as required by Rule 48(F) of the Rules of Superintendence for the courts of Ohio, that the court erred in failing to exclude this report and in failing to appoint a new GAL.

{¶62} As mentioned above, a CASA was assigned at the start of this case and agreed to act as GAL for the child on the second day of the permanent custody hearing. At this time, the court also appointed an attorney to represent the GAL. After the conclusion of the permanent custody hearing, the court issued post-hearing orders which included a time for submission of the GAL's report. A report, written by the attorney for the GAL was submitted to the court. Appellant argues that this report did not meet the requirements of Rule 48 of the Rules of Superintendence or Juv.R. 41 because the report was written by counsel for the GAL and not the GAL personally.

{¶63} An attorney was appointed to represent the GAL pursuant to Juv.R.4(C)(3), which states: "[i]f a court appoints a person who is not an attorney admitted to the practice in this state to be a guardian ad litem, the court may appoint an attorney admitted to the practice in this state to serve as attorney for the guardian ad litem." This rule contemplates that an attorney may advocate for the GAL's position. *Edwards v. Edwards*, Fairfield App. No. 07CA52, 2008-Ohio-4118, ¶37-38; *In re Jonathan Nibert*, Gallia App. No. 05CA13, 2006-Ohio-1559, ¶19.

{¶64} The post-hearing report begins with the statement "[c]omes now [ ], the CASA/Guardian ad Litem for A.D., **by and through counsel** \* \* \*" (emphasis added) and therefore indicates that although it is written by counsel, it is the report of the GAL through her representation. The report tracks the language of the Revised Code, listing the factors for determining best interest of the child, and summarizes the evidence presented at the hearing. Within a discussion of the best interest factors, the report also includes statements

of the GAL regarding her personal observations and interactions with the child. While more in the form of a closing argument and not the ideal format for the report of the guardian ad litem, we find the report sufficiently meets the requirements for a GAL report and that there was no error in the court's decision not to strike this report.

{¶65} Moreover, R.C. 2151.414(C), which discusses the filing of the report of a GAL in a permanent custody case, states that "[a] written report of the guardian ad litem of the child shall be submitted to the court prior to or at the time of the hearing held pursuant to division (A) of this section or section 2151.35 of the Revised Code \* \* \*." The purpose of the guardian ad litem's report is to assist the court in making sound custody placements. *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, ¶13. In addition, the parties are entitled to cross-examine the GAL regarding his/her recommendation and the contents of the report. *Id.* at syllabus. The purpose for requiring the submission of the GAL's report prior to the hearing is to give the parties an opportunity to rebut any assertion contained in the report. *In re James*, Franklin App. No 03AP-33, 2003-Ohio-5208; *In re Salsgiver*, Geauga App. No 2002-G-2478, 2003-Ohio-1203, ¶22.

{¶66} On September 15, 2010, a few days prior to the start of the permanent custody hearing, the CASA filed a written report which contains a statement of her visits, observations, and a summary of the case to the present. The report also contains a recommendation that the court grant permanent custody to the agency. In addition, throughout the course of this case, the CASA filed at least six additional reports, again documenting her interactions, observations and recommendations in this case. Although the CASA did not become the GAL until the second day of trial, the parties all agreed to this change in designation, and were aware of the CASA/GAL's involvement and recommendations in this case. Therefore, given the numerous reports, including the report filed immediately prior to the hearing, appellant cannot show any prejudice due to the format

of the GAL's report which was filed after the hearing. Appellant's third assignment of error is overruled.

{¶67} Judgment affirmed.

HENDRICKSON, P.J., and PIPER, J., concur.