

[Cite as *In re P.G.*, 2012-Ohio-469.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In the Matter of:	:	
	:	No. 11AP-574
P.G.,	:	(C.P.C. No. 09JU-02-02352)
(A.B.,	:	(REGULAR CALENDAR)
Appellant).	:	
In the Matter of:	:	
	:	No. 11AP-575
W.G., Jr.,	:	(C.P.C. No. 09JU-02-02404)
(A.B.,	:	(REGULAR CALENDAR)
Appellant).	:	
In the Matter of:	:	
	:	No. 11AP-576
E.G.,	:	(C.P.C. No. 11JU-03-03105)
(A.B.,	:	(REGULAR CALENDAR)
Appellant).	:	

D E C I S I O N

Rendered on February 9, 2012

Robert J. McClaren, for Franklin County Children Services.

L. Leah Reibel, Guardian ad Litem for the minor children.

Reynard & Rice, llp, and *Jeff Reynard*, for appellant.

APPEALS from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch.

FRENCH, J.

{¶ 1} Appellant, A.B. ("Mother"), appeals judgments of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, which granted permanent custody of Mother's three minor children, P.G., W.G., and E.G., to appellee, Franklin County Children Services ("FCCS"). The father of the children ("Father") does not appeal. For the following reasons, we affirm.

I. BACKGROUND

{¶ 2} On February 23, 2009, FCCS filed a complaint alleging that two-week-old P.G. was a neglected and dependent child. The complaint stated that a professional source referred the matter to FCCS after P.G. "presented as purple in color, with extremely cold hands and feet, his fontanel was sunken," and he weighed less than his birth weight. He was hospitalized and diagnosed with failure to thrive. The complaint alleged that Mother and Father were feeding P.G. by propping up a bottle, rather than holding and feeding him. FCCS later amended the complaint to allege that Mother and Father were giving P.G. two ounces of formula, three times per day. A magistrate granted an emergency care order, which allowed FCCS to place P.G. in another home.

{¶ 3} Also on February 23, 2009, FCCS filed a complaint alleging that P.G.'s older brother, one-year-old W.G., was a neglected and dependent child. The complaint alleged that W.G. had been ill for one week, and Mother and Father were leaving W.G. in a playpen all day long. A magistrate granted an emergency care order, which allowed FCCS to place W.G. in another home.

{¶ 4} Following a hearing on March 24, 2009, a magistrate issued a decision, which the trial court thereafter adopted, finding W.G. and P.G. to be dependent minors. At FCCS's request, the court dismissed the cause of action for neglect. On December 16, 2009, FCCS filed motions for permanent custody of W.G. (then two years old) and P.G. (then ten months old).

{¶ 5} E.G., an older sibling of W.G. and P.G., was born in November 2005. She was in and out of foster care beginning in 2006. A temporary order issued in 2009

allowed FCCS to place her in the same foster home as W.G. and P.G. On March 9, 2011, FCCS filed a complaint for permanent custody of E.G. and noted that this was a third refiling. FCCS alleged that E.G. (then five years old) was a neglected and dependent child.

{¶ 6} A trial was held on April 19 and May 12, 2011, concerning all three children. At that time, E.G. was five years old, W.G. was three-and-one-half years old, and P.G. was two years old. All three children had been in FCCS custody for more than 24 months.

{¶ 7} Mother is deaf. Through an interpreter, Mother initially testified as on cross-examination. She said that she has six children, the oldest three of whom had been the subject of permanent custody proceedings in another county. Her parental rights as to those children were terminated.

{¶ 8} As to P.G., W.G., and E.G., they were living with Mother until February 2009. She "was a good mother" and "took care of them." (Apr. 19, 2011, Tr. 23-24.) She had "no idea" why the children were removed. (Apr. 19, 2011, Tr. 24.) Mother blamed Father for not feeding P.G. She also blamed Father for putting a lock on the outside of E.G.'s bedroom. She did not know whether E.G. spent most of her time in that locked room. She agreed that W.G. spent most of his time in a playpen.

{¶ 9} On direct examination, Mother explained that she was feeding P.G. every four hours and mixing the infant formula properly. Father is no longer living with her, so he would not be caring for the children if they were returned to her. As for E.G., she said that Father put the lock on her bedroom when Mother was away. Mother removed it when she returned, but Father kept putting it back. She said that she would "[n]ever" lock E.G. in her room if E.G. were returned. (May 12, 2011, Tr. 181.)

{¶ 10} Mother said that she had lived in five different apartments in the past two years and none of them had more than one bedroom. On direct examination, Mother said that she has lived in the same apartment complex for four years. She changed apartments frequently because of problems with lice and ticks. She said there are no

bugs in her current apartment. She will have a larger apartment as soon as one becomes available.

{¶ 11} Mother denied ever being behind on rent or utility payments. She receives Social Security income of \$674 per month. When she and Father lived together, they had an income of \$1,200 per month. She can go to a food pantry once per month. She relies on her mother and a friend to help her obtain food, and she receives about \$200 per month in food stamps.

{¶ 12} Mother admitted that she missed scheduled visits with the children, but gave medical and other reasons for doing so. She denied wearing dirty clothes or arriving at the visits with dirty hands. She denied ever leaving early from a visit, except when the foster mother asked her to leave early.

{¶ 13} On direct examination, Mother said that she is "very eager" to see the children at visits. (May 12, 2011, Tr. 183.) She plays and draws with them. Recently, she drew a picture with the children, but the foster mother became upset and threw it away. (Later, when asked whether the foster mother might have been upset because P.G. needed a diaper change, Mother was not sure.) When asked how the presence of the foster parents in the visits affects her, Mother said that their presence "messes it up," and she does not want them there. (May 12, 2011, Tr. 187.) When the foster parents are there, the children tend to focus on them, rather than Mother.

{¶ 14} Mother believes that the children love her, and they tell her so. Mother admitted to having scabies multiple times and missing visits because of it, but denied that she failed to fill prescriptions or follow instructions to get rid of it.

{¶ 15} Mother attended a parenting class, as required by the case plan. She "really enjoyed" the class and learned from it. (May 12, 2011, Tr. 190.) When asked whether she could care for the children, Mother said that it is her "responsibility to take care of the children, yes; until they're adults." (May 12, 2011, Tr. 191.) She believes she has completed the case plan. She has stable housing, and she is able to pay her monthly bills. She can provide food, clothing, shelter, love, and education to the children.

{¶ 16} Randal Large and Traci Triplette, both service coordinators for the Franklin County Board of Developmental Disabilities ("FCDD"), testified concerning attempts by FCDD to arrange services for Mother after referrals by FCCS. Between 2006 and 2010, Mother's case was opened and closed three times because FCDD was not able to maintain contact with her. Triplette had a two-hour meeting with Mother in January 2011. They discussed Mother's FCDD service plan and considered the possibility of Mother working part-time. Triplette's last meeting with Mother was at a visit with the children in February 2011.

{¶ 17} Dan Mix, a caseworker with FCCS, testified with the aid of an interpreter. As compared to Mother's testimony, Mix presented a very different picture of Mother's ability and willingness to care for the children.

{¶ 18} Mix was assigned to Mother's case in February 2009. FCCS had received a report in January 2009 "of open sores from head lice and other issues." (Apr. 19, 2011, Tr. 164.) When P.G. was born in mid-February, "their home was not ready for the baby. They had no crib, no diapers, no infant related material. There were issues of Scabies and lice as well." (Apr. 19, 2011, Tr. 164.) Shortly after P.G. was born, he was failing to thrive and underfed. He was blue in color and very thin. The children have lived with the current foster family since March 2009. No relatives are available to take the children.

{¶ 19} Mix developed a case plan for reunification of the children with Mother and Father, and he reviewed the plan with them quarterly. FCCS referred Mother and Father to several programs for assistance, including parenting classes Mix thought would address their specific needs. Mother and Father did not complete two classes in which they were enrolled, but eventually completed a class at Directions for Youth. When Mother did not function well in the classroom setting, she received one-on-one sessions with an interpreter present. Mix also assisted Mother and Father with getting food from food pantries and made three referrals to FCDD for services.

{¶ 20} Mix testified that Mother and Father have moved seven times since January 2009, and he visited each residence. During his visits, he noted serious issues with cleanliness, disrepair, and lack of food.

{¶ 21} Mother began living with another man recently, and this man has a criminal record. FCCS policy would preclude placement of the children in this man's household. In later testimony, Mix clarified that he had obtained information about the man only recently and had not had an opportunity to speak with Mother about the background issues and FCCS policy.

{¶ 22} Mix described P.G.'s malnourished condition when he came into FCCS' care. Mother and Father had been feeding him an insufficient amount of formula. E.G. was kept locked in a bedroom, even though an FCCS worker had asked Father more than once to remove the lock. W.G. was kept in a playpen with limited interaction. The children had head lice, scabies, and diaper rash. W.G. and E.G. had "[v]ery flat affect, devoid of emotion, hardly no language." (May 12, 2011, Tr. 40.) Once W.G. and E.G. were in foster care, however, "they were thriving. They gained weight and they were showing more animated features and they were picking up on some of the language * * * by pointing, gesturing." (May 12, 2011, Tr. 40.) The lice, scabies, and diaper rash were gone. Although W.G. and E.G. were initially behind in their language development, both were improving rapidly. On cross-examination, Mix agreed that some of their improvement was natural and age-related.

{¶ 23} Mix testified that Mother and Father do not understand the developmental needs of the children. After the children were removed, Mother and Father were given transportation and invited to attend, but did not attend, meetings and appointments related to the children. Mix admitted, however, that the foster parents stopped inviting Mother and Father to the appointments sometime in 2010 because they had not attended earlier appointments.

{¶ 24} Mother has had recurring problems with scabies. Because scabies is contagious, visits with the children were suspended until Mother completed treatment.

Mother also delayed treatment for urgent medical needs relating to her teeth, all of which were eventually removed.

{¶ 25} Mix observed nearly all of the visits between the children and Mother and Father. Mother and Father only interacted or played with the children if prompted, and Mix or the foster parents had to model parenting behavior for them. At one visit, Mother and Father each held P.G. for a few minutes and then returned him to the foster parents.

{¶ 26} Mix testified that, between February 2009 and January 2011, 94 visits had been scheduled. Father attended 16 of these visits; Mother attended 36 visits. Since February 2011, Father had not visited at all; Mother had attended only 4 out of 14 visits. Mother and Father were often late for visits and often left early.

{¶ 27} On cross-examination, Mix agreed that the presence of the foster parents at the visits with Mother and Father could appear to present a conflict of interest since they want to adopt the children. He stated, however, that foster parents understand that reunification is the primary goal. With respect to Mother and Father, the foster parents helped model good behavior and helped Mother and Father interact more effectively with the children. Although Mother had expressed her discomfort with having the foster parents at visits, Mix thought their presence was helpful to the children. Mix said that Mother was more assertive in the visits if Father was not present. He also said that Mother was more self-conscious when the foster parents were present.

{¶ 28} Mix testified that Mother and Father "love the kids." (May 12, 2011, Tr. 92.) However, the parents "get antsy when the kids are acting up or when the hour is coming to an end." (May 12, 2011, Tr. 92.) They require assistance or prompting in order to manage the children's behavior. Mix does not believe there is a strong bond between the children and Mother and Father.

{¶ 29} When seeking assistance, the children prefer the foster parents. The children are bonded with the foster parents, and their physical needs are met at the foster home. The children "look towards the foster parents for guidance, direction, comfort." (May 12, 2011, Tr. 94.) The foster parents want to adopt them.

{¶ 30} Mix offered his opinion that the children are in need of permanent placement. They have been living with the foster parents for two years, and it would be traumatic for them to be removed. He recommended permanent custody so that the foster parents can adopt them.

{¶ 31} L. Leah Reibel testified as guardian ad litem ("GAL") for the children. She was first appointed in June 2010. She testified that the children have "very positive interaction" with the foster parents and "appear to be very bonded." (May 12, 2011, Tr. 160.) E.G. is doing well in school and only receives extra help with speech therapy.

{¶ 32} In Reibel's view, the children are not bonded with Mother and Father. E.G. is "emphatic" that she wants to stay with the foster parents. (May 12, 2011, Tr. 164.) W.G. was also "very strong in his preference that he wanted to stay where he is with the foster parents." (May 12, 2011, Tr. 164.) P.G. was too young to express his views. Reibel's recommendation was for FCCS to obtain permanent custody.

{¶ 33} On cross-examination, Reibel stated that she had observed the children with Mother on one occasion prior to submitting her report, and she had attended a second visit with Mother more recently. She said that she met privately with Mother on three other occasions.

{¶ 34} Following closing briefs by the parties, the court issued decisions that granted permanent custody of each child to FCCS.

II. ASSIGNMENTS OF ERROR

{¶ 35} Mother filed a timely appeal, and she raises the following assignments of error:

[I.] THERE IS INSUFFICIENT CREDIBLE EVIDENCE TO SUPPORT THE JUDGMENT OF THE TRIAL COURT WHICH IS OTHERWISE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

[II.] THE TRIAL COURT ERRED IN GRANTING PERMANENT CUSTODY WHEN NO RELIABLE EVIDENCE WAS PRESENTED AS TO THE CHILDREN'S WISHES.

[III.] THE GUARDIAN AD LITEM HAS A CONFLICT OF INTEREST IN THIS CASE THAT REQUIRES REVERSAL AND REMAND FOR A NEW TRIAL.

III. DISCUSSION

A. First Assignment of Error: Sufficiency of the Evidence

{¶ 36} In her first assignment of error, Mother contends that insufficient evidence supports the trial court's decision, which is against the manifest weight of the evidence. We disagree.

{¶ 37} In considering the trial court's decision to grant permanent custody to FCCS, this court must determine from the record whether the trial court had sufficient evidence before it. We must make every reasonable presumption in favor of the judgment and the trial court's findings of facts. *In re Brooks*, 10th Dist. No. 04AP-164, 2004-Ohio-3887, ¶ 59. If the evidence is susceptible to more than one construction, we must give it an interpretation that is consistent with the verdict and judgment. *In re Brooks* at ¶ 59. In short, we must afford the utmost respect to the discretion the trial court enjoys in determining whether an order of permanent custody is in the best interest of a child, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties. *In re Hogle*, 10th Dist. No. 99AP-944 (June 27, 2000).

{¶ 38} We must also recognize, however, that "the right to raise one's children is an 'essential' and 'basic civil right.'" *In re Murray*, 52 Ohio St.3d 155, 157 (1990), quoting *Stanley v. Ill.*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). "Permanent termination of parental rights has been described as 'the family law equivalent of the death penalty in a criminal case.'" *In re Hayes*, 79 Ohio St.3d 46, 48, (1997), quoting *In re Smith*, 77 Ohio App.3d 1, 16 (6th Dist.1991). Accordingly, parents must receive every procedural and substantive protection the law permits. *Id.* "Because an award of permanent custody is the most drastic disposition available under the law, it is an alternative of last resort and is only justified when it is necessary for the welfare of

the children." *In re Swisher*, 10th Dist. No. 02AP-1408, 2003-Ohio-5446, ¶ 26, citing *In re Cunningham*, 59 Ohio St.2d 100, 105 (1979).

{¶ 39} Pursuant to R.C. 2151.414(B)(1), the court, after a hearing, may grant permanent custody of a child to FCCS if the court determines, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency and that one of following applies: (a) if the child is not abandoned or orphaned and has not been in temporary custody for 12 or more months out of a consecutive 22-month period, the child cannot or should not be placed with the parents; (b) the child is abandoned; (c) the child is orphaned; or (d) the child has been in temporary custody for 12 or more months of a consecutive 22-month period.

{¶ 40} Here, E.G., W.G., and P.G. had been in temporary FCCS custody for 12 or more months of a consecutive 22-month period. Therefore, the issue before the court was whether permanent FCCS placement was in each child's best interest. R.C. 2151.414(D)(1) requires that, in determining the best interest of a child, the court must consider all relevant factors, including, but not limited to the following:

- (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;
- (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;
- (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 * * *;
- (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;

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

{¶ 41} FCCS has the burden to prove "best interest" by clear and convincing evidence.

Clear and convincing evidence is the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.

In re Estate of Haynes, 25 Ohio St.3d 101 (1986). Here, the court determined that FCCS had met its burden to show that it is in the best interest of E.G., W.G., and P.G. to grant permanent custody to FCCS, and the court terminated Mother and Father's parental rights.

{¶ 42} Mother contends that she completed many of the technical requirements of the case plan. For example, she always maintained housing, she has a stable monthly income, she has access to food and food stamps, she completed a parenting class, and she is eligible for services through FCDD. She also notes that she loves the children and had productive visits with them when she was able to attend.

{¶ 43} In addition, and primarily, Mother contends that she was not given a fair opportunity to reunify with the children. While Mother is deaf, there is no evidence that the children were being taught sign language. Mother's inability to communicate with the children, combined with the foster parents' ability to communicate with them by speaking, gave an obvious advantage to the foster parents for purposes of bonding with the children. The foster parents also did not always inform Mother of appointments relating to the children, even though Mother's attendance at such appointments was part of the case plan.

{¶ 44} Mother also argues that she was "subject[ed] to the evaluation and direction of the foster parents in completing her case plan; the same foster parents that intend to adopt the children." (Appellant's brief at 2.) According to Mother, the foster

parents attended about half of the visits between Mother and the children, and they sometimes supervised the visits.

{¶ 45} Finally, Mother argues that FCCS did not provide her with appropriate services. She contends that a hands-on parenting course would have been helpful to her, but none was offered.

{¶ 46} Contrary to Mother's contention, the record shows that FCCS provided her many opportunities for appropriate services. In fact, the testimony of the caseworker, Mr. Mix, shows that he went beyond normal efforts to provide additional assistance to Mother because of her difficulty with communication. He explored many options and considered her specific needs when choosing possible parenting classes. Mother and Father attended and completed a parenting class only after two failed attempts and significant prodding by Mix. When Mother did not respond well to classroom instruction, she received personal instruction. A hands-on course—that is, a course that allowed Mother and the children to attend together—was not possible because Mother did not have custody of the children; such programs are typically offered when reunification is imminent, and Mother never reached that stage. She was, however, given the opportunity at visits to apply what she had learned to interact more effectively with the children, but she and Father needed repeated prompting and modeling of good parenting behavior. As we have stated previously, " '[t]he issue is not whether there was anything more that [the agency] could have done, but whether the agency's case planning and efforts were reasonable and diligent under the circumstances of this case.' " *In re Ratliff*, 10th Dist. No. 04AP-803, 2005-Ohio-1301, ¶ 36, quoting *In re Leveck*, 3d Dist. No. 5-02-52, 2003-Ohio-1269, ¶ 10. The evidence shows that the agency's efforts were reasonable and diligent in this case.

{¶ 47} Undoubtedly, Mother would have felt more comfortable in the visits if the foster parents had not been present, and we agree with Mother that having the foster parents actually supervise visits provided a less than ideal situation for her. As Mix testified, however, the children transitioned more easily from the foster parents to

Mother and Father if the foster parents were there for awhile or remained close. According to Mix, the foster parents stayed for the whole visit only once in awhile.

{¶ 48} More importantly, Mother's arguments about the efforts of FCCS do not address the best interest of the children. Just like her testimony before the trial court, Mother's arguments here overlook the serious deficiencies relating to her care of the children when she had custody of them, including their malnourishment, mistreatment, and exposure to dangerous conditions, and similarly ignore her inability to care for them now.

{¶ 49} Mother has not had stable housing and, as of trial, was still living in a one-bedroom apartment. While Mother may have moved within the same apartment complex, she did so because of constant infestations of lice and ticks, and she had recurring problems with scabies. She has had difficulty meeting her own personal and medical needs and has shown no ability to meet those of three small children.

{¶ 50} Mother has not shown that she can parent effectively. While she undoubtedly loves the children and expressed her desire to spend time with them, she missed more than half of the 94 visits offered with the children and missed most of the more recent visits. When Mother did attend, she was unable to apply what she had learned in parenting classes in order to interact appropriately with the children and unable to manage their behavior. After two years of efforts by FCCS and FCDD to provide services to address Mother's specific needs and extraordinary efforts by the caseworker to assist her, Mother has demonstrated an inability or unwillingness to make the changes necessary (in both her behavior and her physical surroundings) to provide a stable home for the children.

{¶ 51} In the meantime, the children have been thriving in another home. In contrast to their condition while in the care of Mother and Father, they are healthy. The evidence shows that they are bonded with the foster parents and look to them for care and support. Both E.G. and W.G. expressed their "emphatic" and "very strong" desire to stay where they are. (May 12, 2011, Tr. 164.)

{¶ 52} In short, there is competent, credible evidence to support the trial court's conclusion that FCCS had met its burden to show that permanent custody is in the best interest of P.G., W.G., and E.G., and that decision is not against the manifest weight of the evidence. Therefore, we overrule Mother's first assignment of error.

B. Second Assignment of Error: The Children's Wishes

{¶ 53} In her second assignment of error, Mother contends that there was a lack of reliable evidence concerning the wishes of the children. As Mother notes, this court has held that a trial court commits reversible error by granting permanent custody where the record lacks reliable evidence of the child's wishes. *In re Swisher*, 2003-Ohio-5446, ¶ 41; *In re Williams*, 10th Dist. No. 00AP-973 (Mar. 20, 2001).

{¶ 54} Here, as required by *Williams* and *Swisher*, the GAL's reports stated that she had met with each child to determine his or her wishes regarding placement. The GAL reported that she met with E.G. in February 2011, and E.G. "stated that she would like to continue to reside with the foster parents." The GAL also met privately with W.G., and W.G. "stated that he would like to continue to reside with the foster parents." Although the GAL attempted to talk with P.G. about placement, her attempt failed due to his young age. Despite these efforts by the GAL, Mother contends that the GAL's limited contact with the children was not sufficient to understand their wishes. We disagree.

{¶ 55} The record shows that the GAL's performance was more than adequate. She reviewed "hundreds of pages of discovery," including case plan documents and medical records. (May 12, 2011, Tr. 160.) She met with the children, the foster parents, and Mother and Father, and she attended visits. She spoke to other relatives for potential placement. She reviewed the case file and attended and participated in hearings. She met privately to ask and understand the wishes of the children. Although P.G. was too young to express his wishes, the GAL conveyed to the court (in both her reports and her testimony) the definite desire of E.G. and W.G. to stay with the foster parents.

{¶ 56} Given her attention to the case, the GAL's testimony was reliable. That testimony, as well as Mix's testimony about the visits and the interaction of the children with Mother and the foster parents, was competent, credible evidence on which the trial court could base a finding concerning the wishes of the children. Therefore, we overrule Mother's second assignment of error.

C. Third Assignment of Error: Conflict of Interest

{¶ 57} In her third assignment of error, Mother contends that the GAL had a conflict of interest and should have withdrawn. At a minimum, she contends, the court should have granted time to investigate the conflict, and this court should remand the case for further proceedings. We disagree.

{¶ 58} On the first day of trial, counsel for Mother brought to the court's attention the fact that the GAL serves on the board of FCDD. She also noted that witnesses from FCDD (Large and Triplette) would be testifying. Counsel was "concerned about a potential conflict of interest or at least * * * a sense of impropriety." (Apr. 19, 2011, Tr. 87.) The GAL stated that she brought the matter to the attention of Mother's counsel four to six months before trial. As a member of the FCDD board, she meets with other board members once per month, performs budgetary review, and takes no part in day-to-day operations of FCDD.

{¶ 59} Because none of the counsel had researched the issue, the court asked how much time might be needed to determine whether the GAL's service on the FCDD board would present a conflict sufficient to lead to reversal on appeal. Mother's counsel suggested "[a]n hour maybe until I get to the library and do the research and get back." (Apr. 19, 2011, Tr. 90.) Counsel for FCCS agreed and the court recessed.

{¶ 60} Upon reconvening, the court asked for detail about the testimony that would be provided by FCDD witnesses. Counsel for Mother contended that, given her role as a member of the FCDD board, the GAL would "put more weight on whatever their position is because she's more familiar with their operation. She sits on the board. She's inherently linked to them. That creates the apparent conflict and puts both her clients [the children] in jeopardy as well as my client [Mother]." (Apr. 19, 2011, Tr. 93.)

{¶ 61} Counsel for FCCS disagreed, noting that the GAL is not in a position to make any determination about services provided to Mother, she had not communicated with the witnesses from FCDD, and she would receive no benefit whether she made a recommendation for or against Mother's wishes. The GAL told the court that she had had no contact with any FCDD employees concerning the case and did not even know FCDD employees would be witnesses until she saw them in the hallway on the first day of trial, which occurred after she made her recommendation about permanent custody. Counsel for Mother responded that, while there may not be an actual conflict, there was an apparent conflict that required the GAL to get a waiver from her clients, and such a waiver would likely not be possible in this matter. Counsel for Mother made an oral motion to remove the GAL, and the court denied the motion.

{¶ 62} On appeal, Mother does not contend directly that the trial court erred by denying her motion to replace the GAL. Rather, she contends that the GAL's participation requires new proceedings. We disagree.

{¶ 63} The rules for the superintendence of Ohio courts provide that a GAL "shall avoid any actual or apparent conflict of interest arising from any relationship or activity including, but not limited to, those of employment or business or from professional or personal contacts with parties or others involved in the case." Sup.R. 49(D)(9). The rules also require a GAL, "[u]pon becoming aware of any actual or apparent conflict of interest," to "immediately take action to resolve the conflict" and advise the court and the parties of the action taken. Sup.R. 48(D)(10).

{¶ 64} Here, counsel for Mother argued that an appearance of impropriety arose from the GAL's service on the FCDD board and her allegedly conflicting representation of children in a permanent custody matter where FCDD employees would be testifying about services offered or provided to Mother. The evidence before the court showed that the GAL had disclosed her board membership to counsel months prior to trial. She was unaware that the FCDD employees would be testifying until she saw them on the first day of trial, which occurred after she filed her report with the court. As a board member, she held no responsibility for FCDD's provision of services. She stated that she

had never spoken to either employee about the case, and each employee confirmed this lack of contact in testimony before the court. We discern no conflict under these circumstances, nor do we discern prejudice from the GAL's participation. While Mother complains that she had inadequate time to investigate the matter, the trial court asked how much time was necessary and gave Mother's counsel the time she requested. The GAL did not testify until the second day of trial three weeks later, an interval that surely provided enough time to investigate further.

{¶ 65} Finally, we reject Mother's contention that the GAL's handling of the case demonstrates some sort of bias against Mother, a bias Mother suggests may arise from the GAL's service on the FCDD board. We have already determined that the GAL's actions in this case were more than adequate, and there is nothing in this record suggesting that different or additional efforts by this or another GAL would have lead to a different recommendation on behalf of the children or a different outcome.

{¶ 66} For all these reasons, we overrule Mother's third assignment of error.

IV. CONCLUSION

{¶ 67} In conclusion, we overrule Mother's first, second, and third assignments of error. We affirm the judgments of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

Judgments affirmed.

KLATT and TYACK, JJ., concur.
