

TYACK, J.

{¶1} J.T. and A.H. are appealing the judgment of the trial court which granted permanent court commitment ("PCC") of A.T. to Franklin County Children Services ("FCCS").

{¶2} J.T. assigns a single error for our consideration:

The trial court erred to the prejudice of Appellant-Father by failing to appoint counsel for Child, as required under Juv. R. 4(A) and R.C. 2151.352, when he was sufficiently mature to express his wishes and there was a conflict between his wishes and the best-interest recommendation of the guardian ad litem.

{¶3} A.H. assigns two errors for our review:

I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED APPELLANT'S MOTION TO APPOINT HERSELF A GUARDIAN AD LITEM.

II. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DID NOT APPOINT THE MINOR CHILD AN ATTORNEY BECAUSE THE MINOR CHILD'S WISHES WERE AT ODDS WITH THE GUARDIAN AD LITEM'S RECOMMENDATION.

{¶4} A.T. was born in February 2001 and lived with his mother for the first five and one-half years of life. He was in foster care for approximately eight months and then was returned to his mother. He remained with her for approximately five and one-half months and then was removed once again.

{¶5} A reunification plan was pursued, but FCCS deemed the process to be progressing too slowly and filed a motion requesting PCC on July 6, 2009. The motion was heard beginning January 10, 2010. By then A.T. was almost 9 years old.

{¶6} Testimony at the hearing on the motion includes the testimony of a psychologist that A.H., the mother, had a full-scale I.Q. of 72. As a result, months later, a motion for new trial was filed on A.H.'s behalf requesting the appointment of a guardian ad litem for A.H.

{¶7} A.T., the child, testified at the hearing on the PCC motion that he wished to return to his mother. His desire for the PCC motion to be overruled did not correspond with the recommendation of his own guardian ad litem that PCC be granted.

{¶8} On the other hand, A.T. apparently had told his guardian ad litem that he would like to continue to visit with his mother. The guardian ad litem also testified that A.T. adamantly expressed a desire to continue living with his foster mother.

{¶9} The trial judge, upon talking with A.T., concluded that A.T. worried about his mother and is conflicted about his relationship. The trial judge also viewed A.T.'s statements as "somewhat parroted" on the issue of whether he wanted to live with his mother and noted that they followed a visit with his mother A.H. The judge's interview with the child occurred on March 4, 2010. By then, the hearing on the motion had been conducted on five separate days and was in its sixth day. Also, by then, A.T. was 9 years old.

{¶10} No one requested of the trial judge that a lawyer be appointed to represent A.T. independently. As a result, arguably this issue was waived in the trial court.

{¶11} Based upon the evidence before her, the trial judge concluded that A.T. was not sure what he wanted. Thus, the trial judge was not in a situation such that she should have sua sponte started the evidentiary proceedings all over with a lawyer for the

child A.T. fully participating. Cross-examination had already occurred by attorneys for J.T. (father) and A.H. (mother). Additional cross-examination was unlikely to develop additional facts.

{¶12} Under the circumstances, the trial judge did not commit prejudicial error by failing to appoint a separate attorney for the child A.T. mid-trial.

{¶13} The assignment of error on behalf of J.T. and second assignment of error on behalf of A.H. are overruled.

{¶14} After the trial court had issued a written decision granting PCC, counsel for A.H. filed a motion asking for a new trial on a theory that A.H. needed a guardian ad litem herself due to her low intelligence.

{¶15} A.H. did not request a guardian ad litem before trial. Despite her I.Q., she had received an associates degree. A.H. testified at trial and did not in any way put the trial judge on notice that a guardian ad litem was needed.

{¶16} Further, A.H. was represented by competent counsel, whose duties to A.H. closely paralleled those of a guardian ad litem. The attorney had to investigate the case, prepare a defense and fully participate in the evidentiary proceedings. Under the circumstances, A.H. cannot be shown to have been prejudiced by the ruling of the trial court that no guardian ad litem be appointed for A.H. after the evidentiary proceedings were concluded.

{¶17} The first assignment of error on behalf of A.H. is overruled.

{¶18} All three assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is affirmed.

Judgment affirmed.

CONNOR, J., concurs.
BRYANT, P.J., concurs separately.

BRYANT, P.J., concurring separately.

{¶19} I agree with the majority's disposition of the assigned errors but write separately to clarify the resolution of J.T.'s sole assignment of error and A.H.'s second assignment of error. Although the trial judge discounted as a coached response A.T.'s statements that he wanted to live with his mother, A.T. also expressed a desire to continue to visit with his mother. The issue is whether A.T.'s desire to continue visiting his mother creates a conflict with the child's guardian ad litem such that the trial court should have appointed independent counsel for A.T.

{¶20} In certain circumstances, "a child who is the subject of a juvenile court proceeding to terminate parental rights * * * is entitled to independent counsel." *In re Williams*, 101 Ohio St.3d 398, 2004-Ohio-1500, syllabus. As the majority notes, no one requested that the trial court appoint independent counsel for A.T. Appellants A.H. and J.T. thus waived all but plain error. *In re Johnson*, 10th Dist. No. 03AP-1264, 2004-Ohio-3886, ¶14, citing *Stores Realty Co. v. City of Cleveland, Bd. of Bldg. Standards and Bldg. Appeals* (1975), 41 Ohio St.2d 41, 43. See also *In re S.B.*, 183 Ohio App.3d 300, 2009-Ohio-3619, ¶22 (noting that, in the context of permanent custody proceedings, courts

apply the plain error doctrine only "to prevent a miscarriage of justice"), quoting *In re Johnson* at ¶17.

{¶21} In *In re A.T.*, 9th Dist. No. 23065, 2006-Ohio-3919, ¶61-64, the court addressed the issue of independent counsel for a child desiring to continue to visit with his or her mother. The court determined the trial court there did not commit plain error in failing to appoint independent counsel for the children at issue, as "[t]he desire to see one's parent does not equate to a desire to remain in the parent's household." *Id.* at ¶61. The court explained that because " 'the presence of parent/child bonding is not the same thing as making a knowing choice to remain with one parent,'" such statements are not "in conflict with a recommendation for permanent custody by a guardian ad litem." *Id.* (Citations omitted.) See also *In re K.K. & D.C.*, 5th Dist. No. 09-CA-93, 2009-Ohio-5887 (finding no conflict requiring the appointment of independent counsel for the child where "the child did not consistently express a desire to return to" the mother).

{¶22} Moreover, the overwhelming evidence in the record supports the trial court's determination that terminating parental rights would serve A.T.'s best interests. As a result, even if the trial court's failure to appoint independent counsel for A.T. based on A.T.'s inconsistent statements and desire to continue to visit with his mother could be considered error, it, in light of the evidence, does not rise to the level of plain error. Accordingly, I concur in the majority's decision overruling the assigned errors.
