

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

IN RE: J.M.E.	:	APPEAL NO. C-180312 TRIAL NO. F15-870X
	:	<i>JUDGMENT ENTRY.</i>

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Appellant father appeals a decision of the Hamilton County Juvenile Court granting permanent custody of his child to the Hamilton County Department of Job and Family Services (“HCJFS”). We find no merit in his three assignments of error, and we affirm the trial court’s judgment.

In his first assignment of error, father contends that the trial court erred in granting HCJFS’s motion for permanent custody of the child. He argues that the trial court’s decision was against the manifest weight of the evidence. This assignment of error is not well taken.

R.C. 2151.414(B) provides that the juvenile court may grant permanent custody of a child to a public children services agency if it finds by clear and convincing evidence that (1) permanent custody is in the child’s best interest and (2) that one of the conditions in R.C. 2151.414(B)(1) through (e) applies. *In re M., R., & H. Children*, 1st Dist. Hamilton No. C-170008, 2017-Ohio-1431, ¶ 17. The record

shows by clear and convincing evidence that the child had been in the custody of HCJFS for more than 12 of a consecutive 22-month period. Therefore, the condition in R.C. 2151.414(B)(1)(d) was met.

Clear and convincing evidence also supported the trial court's determination that granting permanent custody was in the child's best interest. Therefore, the evidence was sufficient to support an award of permanent custody to HCJFS. *See In re M., R., & H. Children* at ¶ 17 and 27; *In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150210, 2015-Ohio-3247, ¶ 15; *In re C.E.1*, 1st Dist. Hamilton No. C-140674, 2015-Ohio-5710, ¶ 11-12. We overrule father's first assignment of error.

In his second assignment of error, father contends that the trial court erred in allowing father to represent himself. He argues that father's waiver of counsel was not knowingly, voluntarily and intelligently made. This assignment of error is not well taken.

When the state seeks to terminate a parent's parental rights, the parent has a right to counsel. The parent cannot be deprived of that right unless the court finds that the parent has knowingly, voluntarily and intelligently waived the right to counsel. *In re R.K.*, 152 Ohio St.3d 316, 2018-Ohio-23, 95 N.E.3d 394, syllabus.

The record shows that the magistrate made a thorough inquiry into father's request to represent himself and correctly determined that he had knowingly, voluntarily and intelligently waived his right to counsel. *See In re J.B.*, 9th Dist. Summit No. 28717, 2018-Ohio-1814, ¶ 11-17; *In re K.R.*, 9th Dist. Wayne No. 17AP0037, 2018-Ohio-1316, ¶ 10-11. We cannot hold that the trial court erred in allowing father to represent himself. Therefore, we overrule father's second assignment of error.

In his third assignment of error, father contends that he trial court erred by not appointing an independent attorney to represent the child's interests. He argues that the child's guardian ad litem ("GAL") recommended that the court grant permanent custody to HCJFS when the child had stated that he wished to live with his father. Therefore, under *In re Williams*, 101 Ohio St.3d 398, 2004-Ohio-1500, 805 N.E.2d 1110, the trial court was required to appoint an independent attorney for the child. This assignment of error is not well taken.

In *Williams*, the Ohio Supreme Court held that a child who is the subject of a juvenile court proceeding to terminate parental rights is a party to the proceeding and is entitled to independent counsel in certain circumstances. *Id.* at syllabus. Those circumstances include when the child's wishes conflict with the GAL's recommendation. *W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, at ¶ 33; *In re Walling*, 1st Dist. Hamilton No. C-050646, 2006-Ohio-810, ¶ 24.

Father failed to specifically object on that basis. Therefore, we can reverse only upon a finding of plain error. *Saqr v. Naji*, 1st Dist. Hamilton No. C-160850, 2017-Ohio-8142, ¶ 15; *In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, ¶ 37.

This court has stated that an independent attorney is not required when the child did not consistently express a desire contrary to the GAL's recommendation. *See W.W.* at ¶ 35-38; *In re Graham*, 167 Ohio App.3d 284, 2006-Ohio-3170, 854 N.E.2d 1126, ¶ 33-38 (1st Dist.). The record shows that although the child had expressed a desire to live with his father, he had also said that he wished to live with his foster mother and his biological mother. Consequently, we cannot hold that the

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trial court erred in concluding that independent counsel was necessary, much less that it committed plain error. *See Graham* at ¶ 38. We overrule father's third assignment of error and affirm the trial court's judgment.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., MYERS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on August 29, 2018
per order of the court _____.
Presiding Judge