[Cite as *Chick v. Chick*, 2020-Ohio-4431.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

CARMEN A. CHICK,

Plaintiff-Appellee,

v.

LINDA CHICK,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 19 CO 0021

Civil Appeal from the
Court of Common Pleas of Columbiana County, Ohio
Case No. 2013 DR 275

BEFORE:
Carol Ann Robb, Cheryl L. Waite, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed.

Atty. C. Brooke Zellers, Zellers Law Offices, 166 North Union Avenue, Salem, Ohio 44460 for Plaintiff-Appellee and

Atty. Carl King, 115 West Lincoln Way, Lisbon, Ohio 44432 for Defendant-Appellant.

Dated: August 17, 2020

Robb, J.

{¶1} Appellant Linda Chick (the mother) appeals the decision of the Columbiana County Common Pleas Court denying her motion to reallocate parental rights and thereby maintaining Appellee Carmen Chick (the father) as the primary residential parent. The mother argues the court abused its discretion in finding she failed to present evidence of changed circumstances. She also contests the guardian ad litem's investigation. For the following reasons, the trial court's decision is affirmed.

STATEMENT OF THE CASE

{¶2} As background, the parties were divorced in 2013, and the mother was named the primary residential parent of their three children. In 2014, the father moved to change custody of the oldest child (who was about to turn eighteen years old), and the parties agreed the father would be that child's residential parent. In 2016, the father sought a reallocation of parental rights as to the other two children, and the mother moved for supervised or decreased parenting time for the father. In April 2016, they agreed the father would be named the residential parent of the fourteen-year-old and the mother would remain the residential parent of the ten-year-old. Soon thereafter, the father renewed his motion to be named the residential parent of the youngest child, alleging his first visit was denied. The mother then sought to suspend the father's parenting time.

{¶3} On December 22, 2016, the magistrate named the father the residential parent of the youngest child pending further proceedings on reallocation. On February 15, 2017, a magistrate's decision and a trial court's judgment entry were filed, which reallocated parental rights and named the father the primary residential parent of the youngest child. The mother was granted standard local companionship time. The mother did not object or appeal.

{¶4} On January 2, 2018, the mother moved to reallocate parental rights regarding the two minor children. At the November 28, 2018 trial, the court held an in camera interview of the middle child, who was seventeen years old. The mother acknowledged that child's preference and said it would be "disastrous" if she received custody of him, which seemed to limit her reallocation request to the youngest child, who

was twelve years old. (Tr. 183). Testimony was presented by the guardian ad litem, the mother, three of her friends, the father, and his girlfriend.

{¶5} The magistrate denied the mother's reallocation motion, and the court immediately adopted the magistrate's decision on December 10, 2018. The court reviewed the testimony of the witnesses at trial, set forth the law, and concluded: there was no change of circumstances; the harm likely to be caused by the change of environment was not outweighed by the advantages; and even if a change of circumstances existed, it was in the children's best interest for the father to remain the residential parent.

{¶6} The mother objected to the magistrate's decision. She argued there were changed circumstances with regards to the youngest child's schooling, neglected health needs, a denial of companionship time, and a deterioration of communication. She also suggested the court should not have considered whether the harm was outweighed by the advantage or whether a reallocation would be in the child's best interests. Lastly, she claimed the guardian ad litem did not function properly or objectively as he found the father's home was appropriate, failed to include any positive items about the mother in his report, and submitted the report prior to investigating the mother's home. The father responded to the objections.

{¶7} On May 21, 2019, the trial court overruled the objections and adopted the magistrate's decision. The court reiterated: the mother failed to show a change of circumstances, and even if she demonstrated a change in circumstances, the testimony supported the finding that it was in the children's best interest to remain with the father as the residential parent. The mother filed the within timely appeal.

ASSIGNMENTS OF ERROR 1 & 2: MODIFICATION TEST

{¶8} The mother addresses her first two assignments of error together, stating they are closely related. These assignments provide:

"The Trial Court[']s Decision finding no change of circumstances had occurred in overruling Appellant/Mother[']s Motion for Reallocation of Parental Rights and responsi[bil]ities was against the manifest weight of the evidence."

"Whether the Trial Court properly applied the evidence to the statutory factors set forth in O.R.C. §3109.04(E)(1)(a) when it found that no change of circumstances had occurred."

{¶9} A trial court's custody modification decision is reviewed for an abuse of discretion. *Davis v. Flickinger*, 77 Ohio St.3d 415, 416, 421, 674 N.E.2d 1159 (1997). If the modification decision is supported by a substantial amount of credible and competent evidence, it will not be reversed as being against the weight of the evidence. *Id.* at 418. The trial judge occupies the best position to weigh the demeanor, gestures, voice inflection, attitude, and general credibility of each witness. *Id.* at 418-419 (stating this is crucial in a custody case where there may be much in a party's demeanor that will not be evident in the written record). We do not substitute our judgment for that of the trial court in considering the weight to assign the evidence on the statutory factors for reallocation of parental rights contained in R.C. 3109.04(E)(1)(a). *Id.* at 417. Pursuant to this division:

> The court shall not modify a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child [or] the child's residential parent * * * and that the modification is necessary to serve the best interest of the child. In applying these standards, the court shall retain the residential parent designated by the prior decree * * *, unless a modification is in the best interest of the child and * * *
>
> (iii) The harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.

R.C. 3109.04(E)(1)(a) (with other options where the residential parent consents).

{¶10} The mother contends the trial court erred in finding she did not meet her burden of showing a change of circumstances. She generally mentions educational difficulties of the twelve-year-old child. This child had communication issues, mainly used a device to communicate, was on the mild side of the autism spectrum, and attended a special education program run by a county educational service center at a public school. However, these general facts did not arise since the prior decree. Moreover, the

testimony indicated the child was thriving educationally and progressing well. The mother disbelieved this, but set forth no evidence to show the information relayed by the father and the guardian ad litem on this topic was incorrect.

{¶11} More specifically, the mother points to the fact that the location of the child's school changed twice since the prior decree. At the time custody changed from the mother to the father (in February 2017), the child attended school in the Beaver Local School District. After that school year ended, the father changed the child's school district. For the next school year (2017-2018), the child attended fifth grade in the Lisbon Exempted Village School District, where he received services from the Columbiana County Educational Service Center (ESC). Technically, he was enrolled where his father lived (the part of Salem covered by the United Local School District); however, the ESC did not provide the required services at that district for his grade level, which is why he was enrolled in Lisbon.

{¶12} This school change was anticipated at the time of the prior decree as the court was changing custody to the father who did not live where the child was enrolled. In the February 15, 2017 order naming the father as the residential parent, the court reviewed the testimony from the guardian ad litem recommending that the child be permitted to finish the school year in Beaver Local if the father received custody, and the father testified he would maintain the child in the same school through the end of the school year. The custody order instructed the father to keep the child at Beaver Local but only for the remainder of the 2016-2017 school year. The father complied with this order. As the change from Beaver Local was expressly anticipated by the court, the child's change of schools to Lisbon at the beginning of the 2017-2018 school year was not a change of circumstances.

{¶13} For the next school year (2018-2019), the child attended sixth grade at the Salem City School District but was still enrolled at United. The child was also still part of the ESC program; the agency provided the services at both schools. There were various reasons for the child's location change from Lisbon to Salem, including the recommendation of the ESC director. By switching school locales, the child would spend only 15 minutes on the bus instead of one hour. (Tr. 301-302). In addition, the teacher at Salem had experience teaching at a renowned autism school in Youngstown. (Tr.

302). The new school also had a program where the students were accompanied on visits to various locations around the community to encourage vocalization and independence. (Tr. 304). The father noted there were only five children in the class at Lisbon, and the child was somewhat friendly with one of those children. The child made friends in the class of eight at Salem.

{¶14} Considering the totality of the circumstances existing in this case, this court concludes the trial court acted within its discretion to conclude that the school location was not a sufficient changed circumstance. A change of circumstances must be a "change of substance, not a slight or inconsequential change." *Davis*, 77 Ohio St.3d at 418 (although the change need not be substantial). Under the particular circumstances of the child and where there was no issue presented with regard to the quality, location, safety, or adjustment to the new public school, it was reasonable to find the mere change of school location was not a change of substance. Also, there was no evidence that the change had even the slightest adverse effect upon the child. In *Davis*, the Supreme Court took no issue with a requirement that the change be "substantiated, continuing, and have a materially adverse effect upon the child." *See id.* at 417 (noting the Tenth District did not say the change must be substantial), quoting *Wyss v. Wyss*, 3 Ohio App.3d 412, 416, 445 N.E.2d 1153 (10th Dist.1982). The reason the change cannot merely be a slight change is to provide stability to the child and to prevent a constant "tug of war" where the non-residential parent would otherwise file a reallocation motion whenever that parent believed their home was in the child's best interest and to prevent a court from being able to constantly change custody. *See Fisher v. Hasenjager*, 116 Ohio St.3d 53, 2007-Ohio-5589, 876 N.E.2d 546, ¶ 34, citing *Davis*, 77 Ohio St.3d at 418.

{¶15} The mother adds that the father did not inform her that the child switched schools and that their communication has deteriorated. It is noted that the father did not move and was not statutorily required to provide the mother with notice of the change. *Compare* R.C. 3109.051(G)(1) (requiring notice of intent to relocate). At the time the child changed schools, the mother was employed at a special needs school in Lisbon and worked for the ESC, the same agency providing educational services to her child. She worked there while the child attended school in Lisbon, and she still worked there at the time of trial, while the child was attending school in Salem. She previously told the father

by email that she was friends with the child's teachers and was in constant contact with them. At trial, she claimed there were confidentiality rules and believed the father could instruct the school not to tell her about the child's progress. As the father noted, the mother had the right to speak to the school and the ESC (her own employer) about her child's progress but failed to exercise her rights. *See* R.C. 3109.051(H) (the non-residential parent has the same right of access to the child's records).

{¶16} Finally, the testimony indicated the mother made unfounded accusations against the father before he received custody and communication between the parties was lacking at the time of the February 2017 order granting custody to the father. Therefore, the parties' communication issues were not new or unexpected. *See Depascale v. Finocchi*, 7th Dist. No. 08 MA 216, 2010-Ohio-4869, ¶ 63 (the trial court could reasonably find the relationship between the parents at the time of the last custody order included the same level of hostility and lack of communication).

{¶17} The mother also argues that she demonstrated a changed circumstance by alleging the father was neglecting the child's health care needs. Her brief says the father failed to take the child to the cardiologist for two years. However, the mother did not testify to this at trial (when she complained that the father did not respond to her text asking about the cardiologist). The father testified that he texted the mother after the visit to say the child was okay. (Tr. 374). The father's girlfriend testified that she attended this cardiologist appointment in Cleveland with the father and the child approximately a year before the hearing. (Tr. 128). The father's testimony pointed out that the child was to visit a cardiologist annually due to a past heart surgery and *the mother* failed to take the child to the cardiologist for two years when she had custody. (Tr. 362).

{¶18} As to another health issue, the mother's brief notes that she took the child to the emergency room for a fever. This was discussed at trial due to a dispute over responsibility for the September 2018 emergency room bill. Her testimony was merely that the child arrived for weekend visitation with her on Friday with a low grade fever which did not become concerning until the early morning hours on Sunday. (Tr. 243-244). When she brought the child to the hospital on Sunday, the emergency room visit was short. There may have been an unrelated indication that the child needed his ears cleaned (and the mother said this should have be performed regularly by a professional),

but the father was not informed of this. (Tr. 250). Moreover, in June 2018, the father brought the child for a well visit at his physician (who also treated the child when the mother had custody), and this physician had no concerns or instructions about ear canals. (Tr. 310). The father also brought the child to a clinic once for a sinus issue and received antibiotics. (Tr. 311).

{¶19} The mother complained the father did not timely bring the child to a dentist. She indicated the child's dentist was in Pittsburgh and did not indicate when she last brought the child while she had custody. The father said the mother went multiple years without bringing the child to the dentist when she had custody. (Tr. 359). The mother believed the child's teeth were rotting and said he needed to visit an orthodontist (saying he had a cleft palate). (Tr. 185). The father clarified that the child had a *repaired* cleft palate. (Tr. 361). He noted that the child's physician has "been in his throat and been in his mouth quite a few times, and he's never said anything about his teeth." (Tr. 312). The child never indicated he had tooth pain. (Tr. 358, 360). The father brought the child to a dentist in the summer of 2018 and learned the child had a small cavity. (Tr. 359-360). He was referred to a provider (in Hudson) to have some teeth extracted due to crowding. (Tr. 312, 360). There was no indication the orthodontic issues were an emergency, and he said he was arranging for a provider.

{¶20} Some of the mother's concerns with the timeliness of medical visits were not changes or were not substantiated; some were not continuing or were insignificant with no indication of a materially adverse effect upon the child. It was within the trial court's discretion to find the child's health or treatment did not constitute a change of circumstances.

{¶21} Lastly, the mother contends she showed a change in circumstances through her testimony on missed companionship time. The mother's brief says the father denied her spring break and occasional weekends. However, the mother testified that she was never denied a weekend visitation. (Tr. 220). As to spring break, the father said he worked over the school break, while the mother exercised her standard visitation and returned the child without asking for additional time; he said if she had asked for more time, he would have followed the court order. (Tr. 321, 357, 372). His credibility was a matter for the trial court. Additionally, the mother did not testify that she asked for spring

break in writing. Under Local Rule 9.4, extended time during spring break is only every other year and must be arranged in writing by February 15. We also note that although the mother originally complained about spring break, she later seemed to clarify that she was mistakenly saying "spring break" when she was referring to an issue she had with the father's week of vacation with the children in June. (Tr. 172, 273, 286).

{¶22} As to the summer, she complained to the guardian ad litem that the father did not tell her when he was going to take the children on vacation and denied her request for the time she was entitled to for the child's summer break. The father provided evidence of a text from June 11, 2017 regarding his vacation to Washington D.C. and her response showing no surprise with the news and asking for more precision on the date (which was fairly clear from the content and date of the text). (Tr. 53, 209-212, 344). The father also provided evidence of his June 11, 2018 text reminding her that he was taking the children to Niagara Falls; he said she was made aware of the vacation in January and he takes vacation the same week every year. (Tr. 53, 171, 208, 212). She denied receiving the information in January but noted he previously and regularly provided her with a physical copy of his vacation schedule in January. (Tr. 212, 290).

{¶23} The father pointed out that the mother returned the child to him after her first weekend of summer vacation without asking to keep the child for summer companionship. (Tr. 346, 351, 370). He assumed she did not desire to exercise her additional summer companionship time, which was to be the first half of the child's summer vacation. The mother admitted that she did not mention the additional summer companionship time until July 17, 2018. The father responded that her half had already passed. (Tr. 229-230). Under Local Rule 9.4, the non-residential parent gets the first half if there is no agreement, and this extended time must be arranged in writing by May 15. The mother said she provided the father a handwritten request in January (but did not ascertain whether he agreed with her request to switch her half of the summer). (Tr. 229). The father contested this, stating she did not make a request about her summer parenting time until July 17 (after her half was over). (Tr. 322). This is a matter of credibility.

{¶24} The mother also listed three Tuesday visits that she missed. First, in November 2017, she was late to the meeting point due to a train, and it seems her middle child was mad that she was late picking up the youngest child and decided to leave the

meeting site. (Tr. 166-168). She did not request to reschedule the visit. The next Tuesday she missed her visit because she said the roads were icy. Shortly before the exchange time, she called to cancel the visit because she did not want the child on the road. (Tr. 169). The father was on his way, did not think the roads were bad, and did not respond to her request to reschedule the visit for that Thursday. (Tr. 264, 326). Lastly, in April 2018, the father said he would bring the youngest child to the exchange point on time but he said he could not be back at the exchange point in Salem on time due to the middle child's music recital in Youngstown. He instructed the mother to leave the youngest child with him when she wanted to leave the recital because he assumed she would attend her child's performance and they had a similar arrangement in the past. She denied this request and said they would follow the court order. (Tr. 170, 224, 323). Because he could not make it back to the exchange at 8:00 p.m., the father said he would just bring the youngest child to the performance. He offered to reschedule the visit as the mother did not attend the performance, but she did not take advantage of his offer. (Tr. 325). These matters appear to be issues with the mother, rather than the child or the father, or are not changes of substance considering the circumstances elicited.

{¶25} The mother also complained at trial that she did not receive companionship time on Thursdays. She testified to her belief that the court order entitled her to time every Thursday. (Tr. 277). She claimed the father said she would not receive such time. Notably, the court's order provided standard companionship time under Local Rule 9.4, which refers to *every other* Thursday (in addition to every Tuesday or Wednesday and every other weekend). Still, from the February 2017 order granting the father custody through the trial in November 2018, the child did not visit the mother on any Thursday. The father testified that he never denied Thursday companionship. He assumed she did not wish to exercise her right to the alternating weekday because she did not show up for the Thursday exchanges in the beginning; he said he made purchases to show he was at the exchange site and video-recorded her absence (noting he began recording exchanges due to her unfounded accusations in the past). (Tr. 319-320). There is no indication the mother mentioned a complaint about Thursdays to the guardian ad litem when listing her grievances to him.

{¶26} Credibility is a question for the trier of fact who occupies the best position from which to judge the demeanor, voice inflection, gestures, eye movements, and nervousness as the witness is testifying. *Davis*, 77 Ohio St.3d at 418-419. Furthermore, the objections and the supplement to the objections filed after the transcript was prepared referred only to weekend and "spring break" when discussing the allegations of denied companionship time. The objections did not specifically raise an issue with the alleged denial of Thursday companionship. This limits what can be properly raised on appeal. *See* Civ.R. 53(D)(3)(a)(iii),(b)(iv). "An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection." Civ.R 53 (D)(3)(b)(ii).

{¶27} Finally, the trial court made alternative findings as well. For instance, in overruling the objections the trial court found that even if the mother's evidence showed a change of circumstances, the child's best interest would not be served by reallocation. The court also adopted a magistrate's decision which alternatively stated that the harm from the change would not be outweighed by the advantages. The mother says the trial court had to find a change of circumstances before it could proceed to address other issues and suggests she was not required to present evidence on the child's best interest or harm versus advantage until the court found a change of circumstances.

{¶28} However, bifurcation is not mandated, was not requested by any party, and should not be presumed by a party. The various factors relevant to the best interest test were discussed at trial. For example, the guardian ad litem (whose function it is to assist in determining the child's best interest) testified: the parents each wanted custody; it was not appropriate to inquire as to the wishes of the twelve-year-old due to the totality of his circumstances (and the older child's wishes were ascertained at an in camera interview); the child interacted well with the father and was well-adjusted to the father's house; the child was well-adjusted to his school; the medical concerns were adequately addressed by the father; the father was more likely to follow court orders and facilitate visitation; the mother was behind in child support and did not ensure an alleged payroll withholding issue was corrected after being informed of it; the father did not continuously or willfully deny parenting time; and there were no convictions. *See* R.C. 3109.04(F)(1)(a)-(j).

{¶29} Furthermore, the mother's attorney proceeded as though the case was being tried on all issues. For instance, her attorney asked her questions about why it

would be in the child's best interest to live with her. Clearly, the court did not bifurcate the hearing or indicate the change of circumstances prong of the test would be tried before the best interest prong or the harm versus advantage prong.

{¶30} On this topic, we note it is true that if the threshold test of changed circumstances is not met, then a court is prohibited from *granting* the non-residential parent's motion to reallocate parental rights (by finding a change of custody would be in the child's best interest). Yet, this does not mean a court cannot make alternative holdings in support of its *denial* of modification. This court has observed:

> The court merely provided legal support for its holdings on multiple grounds. * * * Trial courts regularly make multiple findings in applying a test with multiple elements, even if the court could have stopped after finding one missing element. This is not improper. It allows an appellate court to conduct a complete review if there is error on one finding, e.g., it avoids the potential scenario of multiple remands where a trial court answers a three-pronged test in stages.

Garrett-Long v. Garrett, 7th Dist. Mahoning No. 15 MA 0221, 2016-Ohio-7041, ¶ 40, citing *Sunseri v. Geraci*, 7th Dist. No. 10-MA-189, 2012-Ohio-1470, ¶ 49 (after holding the trial court erred by finding no changed circumstances, we upheld the alternative decision finding the benefits of a custody change would not outweigh the harm).

{¶31} Consequently, after finding a lack of changed circumstances, the trial court is permitted to make alternative holdings on the best interest test and the harm versus advantage test. After challenging the merits of the court's holding on a lack of changed circumstances, the mother's brief does not set forth an argument on the child's best interest or on the advantage versus the harm, except to contend that the trial court was not permitted to reach these issues. The mother's objections mentioned this theory below, stating (in the objections) that the court was not permitted to reach the harm versus the advantage test and stating (in the supplement to objections) that the court was not permitted to reach the best interest test. She did not specify an argument to the trial court on the merits of the two alternative holdings (except to the extent that she believes all holdings may be affected by the guardian ad litem's opinion as addressed in the next assignment of error).

{¶32} As there was no specific argument below and no specific argument on the merits of these alternative issues on appeal, we shall proceed no further on weighing best interest factors or ascertaining whether the court abused its broad discretion in coming to these alternative conclusions. *See* Civ.R. 53(D)(3)(a)(iii),(b)(ii),(b)(iv) (object with specificity or barred from raising issue on appeal); App.R. 16(A)(6) (statement of fact with reference to the record), citing (D) (references to the transcript), (A)(7) (brief must set forth argument and cite to the relevant authority and parts of the record). There is no indication the court abused its discretion on these alternative topics.

{¶33} For the various reasons expressed supra, the mother's first and second assignments of error are overruled.

ASSIGNMENT OF ERROR 3: GUARDIAN AD LITEM

{¶34} The mother's third assignment of error contends:

"The trial court erred in not recognizing that the Guardian Ad Litem failed to perform necessary due diligence and/or competent objectivity, resulting in a Guardian Ad Litem recommendation in stark contrast to the objective facts, all to the prejudice of Defendant-Appellant and/or the minor children and in violation of their fundamental rights to due process under the XIV Amendment of the U.S. and Ohio Constitution."

{¶35} A guardian ad litem is appointed to assist a court in determining a child's best interest and shall represent the best interest of the child, which may be different than the wishes of the child. Sup.R. 48(B)(1),(D)(1). "Whenever feasible, the same guardian ad litem shall be reappointed for a specific child in any subsequent case in any court relating to the best interest of the child." Sup.R. 48(C)(2). A guardian ad litem shall maintain independence, objectivity, and fairness and shall project the appearance of fairness in dealings with the parties. Sup.R. 48(D)(2). A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. Sup.R. 48(D)(13).

{¶36} "In order to provide the court with relevant information and an informed recommendation as to the child's best interest, a guardian ad litem shall, at a minimum, do the following, unless impracticable or inadvisable because of the age of the child or the specific circumstances of a particular case": (a) interview the child, observe the child with each parent, and conduct an interview with the child without the parents; (b) visit the

child at his residence; (c) ascertain the child's wishes; (d) interview the parties and significant individuals; (e) review relevant court documents in the case; (f) review criminal, civil, educational, and other records pertaining to the child and the case; (g) interview school personnel, medical and mental health providers, and child protection workers and obtain relevant records; (h) recommend evaluations; and (i) perform any other investigation necessary to make an informed recommendation regarding the best interest of the child. Sup.R. 48(D)(13).

{¶37} The mother argues the guardian ad litem demonstrated bias because his report contained no positive information about her. She says he did not perform his duties, noting the report was submitted without conducting an investigation of her home. She notes that the guardian ad litem should investigate the situation and advocate for the best interest of the child without being an advocate for a parent. She also points out the guardian ad litem's recommendation is only one aspect of the case to be considered with all other evidence presented to the court. She concludes that the issues she raises with regards to the guardian ad litem affected her due process right to custody of her child.

{¶38} As with other custody decisions, the trial court's decision on whether the guardian ad litem was biased is not reversible unless it was unreasonable unconscionable, or arbitrary. *See e.g.*, *King v. King*, 9th Dist. Medina No. 12CA0060-M, 2013-Ohio-3070, ¶ 7. Moreover, "the Rules of Superintendence are general guidelines for courts' conduct that do not create substantive rights in individuals or procedural law." *In re C.H.*, 7th Dist. Columbiana No. 14 CO 29, 2015-Ohio-2109, ¶ 51. Appellee points out that opinions of a guardian ad litem are not binding on the trial court, and the court considered the arguments presented against the guardian ad litem and the totality of the evidence. *See Garrett-Long v. Garrett*, 7th Dist. Mahoning No. 15 MA 0221, 2016-Ohio-7041, ¶ 71.

{¶39} The December 2018 judgment which explained the facts considered by the court shows the court did not deny the mother's reallocation motion merely because of the guardian ad litem's recommendation. The court considered all of the testimony presented, including that presented by the mother. As for the weight to be given to the guardian ad litem's opinion, the guardian ad litem testified and was examined by both

parties. As the mother also testified, she had the opportunity to explain some of his negative observations of her.

{¶40} Regarding his investigation, the guardian ad litem spoke to the child's school and obtained medical information. He was the child's guardian ad litem in the prior proceedings when the father gained custody. The guardian ad litem testified that he provided a questionnaire to the parties, but the mother did not fully complete it or provided answers that were unresponsive to the substance of the questions. (Tr. 8, 61-64). As for an investigation of the homes, he spent time at the father's house with the youngest child and interviewed the teenager. The mother would not allow the guardian ad litem to visit her house. (Tr. 8, 91). As he was to observe the child with each parent and interview the mother, they discussed having her attorney accompany her to the interview, but this was never scheduled by her or her attorney. (Tr. 8, 23, 91). He noted that the court proceeding was initiated on her motion, but she was uncooperative. (Tr. 9).

{¶41} Likewise, the mother was the party who had a list of complaints which she provided to the guardian ad litem. The guardian ad litem communicated those concerns to the father, providing him the opportunity to explain or dispute the allegations. (Tr. 71-74, 87). When asked why the mother was not provided a similar opportunity, the guardian ad litem noted that the father was not making complaints against her or asking the guardian ad litem to investigate any allegations. (Tr. 86). This explanation is valid and does not indicate bias. Lastly, the guardian ad litem could not specifically investigate any general claim of denied companionship time where a schedule of allegedly missed time was not provided. (Tr. 65-66).

{¶42} Considering the totality of the facts and circumstances presented in this case, the mother's issues with the guardian ad litem do not render the trial court's decision reversible. Therefore, this assignment of error is overruled.

{¶43} For the foregoing reasons, the trial court's judgment is affirmed.

Waite, P.J., concur.

D'Apolito, J., concur.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Columbiana County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.