[Cite as *In re S.H.*, 2015-Ohio-1763.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

IN RE:	:	
		CASE NOS. CA2014-12-259
S.H.	:	CA2015-01-008
	:	O P I N I O N
		5/11/2015
	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. JN2013-0032

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S. POWELL, P.J.

{¶ 1} Appellants, the biological parents of S.H., hereinafter referred to individually as Mother and Father, appeal from a decision of the Butler County Court of Common Pleas, Juvenile Division, granting permanent custody of their daughter to appellee, the Butler County Department of Job and Family Services, Children Services Division (BCDJFS). For the reasons outlined below, we affirm.

{¶ 2} On January 14, 2013, BCDJFS filed a complaint alleging S.H., who was then just three years old, was a dependent child. Approximately two weeks later, on January 31, 2013, BCDJFS filed an amended complaint alleging S.H. was also an abused and neglected child. As part of the amended complaint, BCDJFS claimed it had met with Mother's then live-in boyfriend, M.V., who acknowledged he and Mother had a drug problem and had used heroin in the presence of S.H. It is undisputed that at the time the amended complaint was filed, Mother was living in a motel with S.H. and S.H.'s half-sister, S.V., as well as M.V. and M.V.'s two other children. After holding an emergency ex parte hearing on the matter, S.H. was placed in the temporary custody of BCDJFS and a guardian ad litem was appointed on her behalf.

{¶ 3} On March 5, 2013, the juvenile court held a settlement conference, wherein Mother stipulated to S.H. being adjudicated a dependent child. It is undisputed that Father did not appear at this settlement conference, or any of the other hearings before the juvenile court, thus prompting the juvenile court to find him in default. The juvenile court then held a dispositional hearing on April 12, 2013. During this time, the juvenile court adopted a case plan relative to Mother that required her to undergo random drug testing, obtain stable housing and employment, and attend substance abuse treatment, as well as individual and family counseling. Mother was also ordered to undergo a psychiatric evaluation. Mother, however, did not complete a number of the required case plan services, including her substance abuse and mental health treatments.

{¶ 4} On February 27, 2014, over a year after S.H. was originally placed in foster care, BCDJFS filed a motion requesting permanent custody of the child. A two-day permanent custody hearing was then conducted before a juvenile court magistrate on July 11 and August 21, 2014, respectively. As part of this two-day hearing, the magistrate heard

testimony from both Mother and Father.[1] The magistrate also heard testimony from the child's guardian ad litem, a case worker, as well as S.H.'s paternal grandmother, J.A., and S.H.'s foster mother. Following this two-day hearing, the magistrate issued its decision finding it was in S.H.'s best interest to grant permanent custody of the child to BCDJFS. Mother and Father both filed objections to the magistrate's decision, arguing the magistrate's decision was not in S.H.'s best interest as it was not supported by sufficient evidence and was against the manifest weight of the evidence. After holding a hearing on the matter, the juvenile court denied both Mother's and Father's objections in their entirety, thereby affirming and adopting the magistrate's decision in full.

{¶ 5} Mother and Father now appeal from the juvenile court's decision granting permanent custody of their daughter to BCDJFS, collectively raising three assignments of error for review. For ease of discussion, Father's two assignments of error will be addressed together.

{¶ 6} Father's Assignment of Error No. 1:

{¶ 7} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY GRANTING [BCDJFS'S] MOTION FOR PERMANENT CUSTODY.

{¶ 8} Father's Assignment of Error No. 2:

{¶ 9} THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT BY GRANTING THE STATE'S MOTION FOR PERMANENT CUSTODY.

{¶ 10} In his two assignments of error, Father argues the juvenile court's decision granting permanent custody of S.H. to BCDJFS was not in his daughter's best interest when

1. It should be noted, Father, who acknowledged that he received notice of the permanent custody hearing scheduled for July 11, 2014 while incarcerated in the Butler County jail, appeared pro se approximately two hours after the hearing began and after BCDJFS had already rested its case-in-chief. The juvenile court subsequently appointed counsel for Father on July 14, 2014. Father, through counsel, then filed a motion requesting legal custody of S.H. on August 7, 2014. Father later appeared with counsel and testified regarding BCDJFS's motion for permanent custody at the continued permanent custody hearing held on August 21, 2014.

considering the factors provided under R.C. 2151.414(D)(1). In support of this claim, Father argues the juvenile court's decision was not supported by clear and convincing evidence and was otherwise against the manifest weight of the evidence. In her brief, Mother states that she agrees with the arguments raised in Father's two assignments of error, also noting her belief that the juvenile court erred by granting permanent custody to BCDJFS. After a thorough review of the record, we find no merit to these claims.

{¶ 11} Before a natural parent's constitutionally protected liberty interest in the care and custody of his or 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. *In re A.W.*, 12th Dist. Fayette No. CA2014-03-005, 2014-Ohio-3188, ¶ 11, citing *Santosky v. Kramer*, 455 U.S. 745, 759, 102 S.Ct. 1388 (1982). 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 M.B.*, 12th Dist. Butler Nos. CA2014-06-130 and CA2014-06-131, 2014-Ohio-5009, ¶ 6; *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, ¶ 16 (7th Dist.). Thus, 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 S.U.*, 12th Dist. Clermont No. CA2014-07-055, 2014-Ohio-5748, ¶ 10. Clear and convincing evidence is "'that measure or degree of proof which is more than a mere "preponderance of the evidence," but not to the extent of such certainty as is required "beyond a reasonable doubt" in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.'" *In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, ¶ 42, quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶ 12} 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. *In re G.F.*, 12th Dist. Butler No. CA2013-12-248, 2014-Ohio-2580, ¶ 9. Initially, 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 provided under R.C. 2151.414(D). *In re D.K.W.*, 12th Dist. Clinton No. CA2014-02-001, 2014-Ohio-2896, ¶ 21. Next, 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. *In re I.B.*, 12th Dist. Butler No. CA2014-12-244, 20215-Ohio-1344, ¶ 12, citing R.C. 2151.414(B)(1)(a), (b), (c) and (d). Only one of those findings must be met for the second prong of the permanent custody test to be satisfied. *In re T.D.*, 12th Dist. Preble No. CA2009-01-002, 2009-Ohio-4680, ¶ 15.

{¶ 13} In this case, the juvenile court found by clear and convincing evidence that Father had abandoned his daughter given his testimony that he had not had any contact with the child in over two years, his last visit occurring sometime in 2012. The juvenile court also found by clear and convincing evidence that S.H. could not be placed with either Mother or Father within a reasonable time, nor should S.H. be placed with either Mother or Father. In reaching this decision, the juvenile court noted Mother's repeated failures to complete or participate in a number of her required case plan services, including substance abuse treatment to combat her admitted heroin addiction. Neither Mother nor Father disputes these findings. Rather, as noted above, Mother and Father merely dispute the juvenile court's decision finding it was in S.H.'s best interest to grant permanent custody to BCDJFS when considering the factors provided under R.C. 2151.414(D)(1).

{¶ 14} R.C. 2151.414(D)(1) provides that in considering the best interest of a child in a permanent custody hearing:

> [T]he court shall 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.

{¶ 15} With respect to R.C. 2151.414(D)(1)(a), the juvenile court found Father had not had any contact with S.H. for a number of years, having last seen his daughter sometime in 2012. However, even then, it is undisputed that S.H., who would have been approximately two-and-a-half years old, had speech delays and spoke very few words. As Father testified regarding his last visits with S.H., "I mean I would watch her while [Mother] had to work or whatever." The juvenile court further found Father's claim that he had no knowledge that S.H. was in foster care was simply not credible given the fact that he knew his mother, J.A., the child's paternal grandmother, had requested a home study and had received visitation time.

{¶ 16} As it relates to Mother, the juvenile court found Mother's attendance during her

visitation time with S.H. had been sporadic, particularly over the summer of 2013, and again in December 2013, something which the juvenile court found severely impacted S.H.'s behavior in her foster home. The juvenile court further found Mother had given preferential treatment to S.H. over her other children during her visits, sneaking her extra toys and sending her home with toys that were only intended to be played with during visitation, thus prompting her foster family to have S.H. bring the toys back and apologize for taking them without permission. The juvenile court also found Mother had made promises to bring Christmas gifts to S.H., which she then did not do.

{¶ 17} Due to these issues, as well as reported concerns regarding Mother's inappropriate discussions with S.H. about her current foster care placement, Mother's level of supervision during her visitation time increased to the highest level of supervision possible. Since that time Mother only attended half of her scheduled supervised visits with S.H. The juvenile court also found that, although S.H. looked forward to her visits with Mother, S.H. would oftentimes suffer from nightmares after visiting with Mother. The juvenile court further noted the fact that S.H. did not express any desire to spend more time with Mother.

{¶ 18} The juvenile court also found S.H. had limited supervised contact with her paternal grandmother, J.A. However, after Mother upset S.H. by telling her she would be placed in her grandmother's custody, J.A.'s visits with S.H. were reduced to only one time per month. The juvenile court further found that prior to S.H. being removed from Mother's care, J.A. had not had any contact with S.H. for approximately eight months. As a result, the juvenile court found a "significant period of time has passed since the two have had any significant time together."

{¶ 19} In regards to her foster placement, the juvenile court found S.H. had struggled in her initial foster placement, acting out after her visits with Mother. However, once her

placement changed, wherein she was placed in a new foster home with her half-sister, S.V., the juvenile court found S.H. had "made tremendous progress in her behaviors." The juvenile court further found S.H. had bonded to her foster parents, who she refers to as mom and dad, as well as her foster siblings. The juvenile court also noted S.H.'s foster parents' expressed desire to adopt both S.H. and S.V. should permanent custody be awarded. In fact, when asked if she and her husband would be interested in adopting both girls, S.H.'s foster mother testified "absolutely."

{¶ 20} In consideration of R.C. 2151.414(D)(1)(b), the juvenile court stated that it did not conduct an in camera interview with S.H. However, the juvenile court did note that the guardian ad litem's report and recommendations indicated that S.H.'s young age and significant speech delays "makes it difficult to communicate with her, or to have any meaningful discussion with her about her wishes." Specifically, as the guardian ad litem's report and recommendations states:

> [S.H.] just turned five years old. She was placed in foster care at the age of three. She has spent nearly half of her life outside the care of her parents. Through much of this case [S.H.'s] speech made it very difficult to communicate with her. And while her speech has improved, she has been placed on an IEP and will delay kindergarten a year to continue improving in this area. Due to her age and these limitations it has been difficult to have any meaningful conversation with [S.H.] regarding these proceedings. At most [S.H.] will report that she likes living with [her foster parents] and that visits with [Mother] are good.

The juvenile court further noted it had considered the guardian ad litem's report and recommendation that it was in S.H.'s best interest to be placed in the permanent custody of BCDJFS.

{¶ 21} With regard to R.C. 2151.414(D)(1)(c), the juvenile court found S.H. had been in the temporary custody of BCDJFS since January 30, 2013, during which time S.H. was adjudicated a dependent child on March 5, 2013. BCDJFS then filed its complaint for

permanent custody on February 27, 2014. Pursuant to R.C. 2151.413(D)(1) and R.C. 2151.414(B)(1)(d), "a child is considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to R.C. 2151.28 or the date that is 60 days after the removal of the child from home." *In re D.D.*, 12th Dist. Clinton Nos. CA2007-04-024 and CA2007-04-026, 2007-Ohio-4534, ¶ 11. Therefore, as the juvenile court found, although S.H. had been in the temporary custody of BCDJFS for a total of 17 months by the time the permanent custody hearing commended, S.H. had not been in the temporary custody of BCDJFS for 12 or more months of a consecutive 22-month period prior to BCDJFS filing its motion for permanent custody. Rather, S.H. had been in the temporary custody of BCDJFS for only 11 months and 22 days.

{¶ 22} In addition, in consideration of R.C. 2151.414(D)(1)(d), the juvenile court found S.H. was in need of a legally secure permanent placement. In so holding, the juvenile court reiterated the fact that S.H. had been residing in foster care under the temporary custody of BCDJFS for over 17 months. The juvenile court further found that while Father had filed for legal custody of his daughter, Father had not had any contact with S.H. since sometime in 2012. Moreover, as it relates to S.H.'s paternal grandmother, J.A., the juvenile court noted that her initial home study failed, in part, due to concerns relating to "[J.A.'s] husband who had previously attempted suicide by shooting himself in the stomach, which resulted in nerve damage to his left leg." The juvenile court further found J.A.'s claims that she had since separated from her husband in order to obtain custody of S.H. was "self-serving and entirely questionable as to its legitimacy[.]"

{¶ 23} Continuing, the juvenile court found Mother had repeatedly failed her case plan services, including multiple failed attempts at substance abuse treatment, individual counseling, and family therapy. In fact, when asked if she was still struggling with her heroin

addition, Mother testified "I'm an addict. I mean yeah." The juvenile court also found Mother had not obtained stable housing or income, both requirements of her case plan. The record also reveals that Mother does not even have her driver's license, instead relying on transportation from M.V.'s aunt and uncle. Therefore, based on these findings, the juvenile court determined "it is clear that a legally secure permanent placement for the child cannot be achieved without a grant of permanent custody to the agency."

{¶ 24} After carefully reviewing the record in this case, we find the juvenile court's findings are supported by sufficient, credible evidence and are otherwise not against the manifest weight of the evidence. Nevertheless, Father argues the juvenile court's decision was not in S.H.'s best interest when considering the strong bond and love shared between S.H., Mother, and S.H.'s paternal grandmother, J.A. However, although a strong bond may very well exist, this is but one factor to be considered when determining the best interest of a child in a permanent custody proceeding. *In re I.B.*, 2015-Ohio-1344 at ¶ 20. Moreover, it is well-established that "R.C. 2151.414(D) does not give one factor 'greater weight than the others.'" *In re C.G.*, 10th Dist. Franklin Nos. 13AP-632 and 13AP-653, 2014-Ohio-279, ¶ 37, quoting *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, ¶ 56; *In re D.R.*, 12th Dist. Butler No. CA2009-01-018, 2009-Ohio-2805, ¶ 14. Father's claim to the contrary is therefore without merit.

{¶ 25} Father also argues the juvenile court's decision was not in S.H.'s best interest as there was "not clear and convincing evidence that [Mother] failed at her attempts to remedy her situation." Father, however, fails to take into account the undisputed and uncontroverted testimony indicating Mother had repeatedly failed to complete her substance abuse and mental health treatments, as well as issues regarding stable housing and income. The record also reveals Mother had relapsed several times and started using heroin while

this case was pending. Father's claims are without merit.

{¶ 26} Father further argues that Mother should not lose custody of S.H. because she is a "fantastic" mother. Yet, based on his own testimony, Father has not even been in the same state as Mother for the past several years, let alone been given the opportunity to observe her parenting skills. Moreover, as the juvenile court found, and with which we certainly agree, "[Mother] has clearly not remedied any of the conditions which led to the removal of this child, nor based on her past history and quality of participation in services, does not bode well for her future." These conditions include her admitted heroin addiction, potential untreated mental health issues, lack of stable housing and driver's license, as well as her limited income and employment opportunities. Father's claims to the contrary are once again without merit.

{¶ 27} Finally, Father argues the juvenile court's decision was not in S.H.'s best interest because "both he and his mother, [J.A.], were also viable options that the Court could have and should have considered for placement." However, as it relates to Father, the juvenile court found he had effectively abandoned his daughter given the fact that he had not had any contact with S.H. since 2012. Furthermore, as it relates to J.A., the juvenile court found she was not a viable option considering her home study failed, in part, due to concerns regarding her husband's attempted suicide. Although J.A. claimed she separated from her husband in order to obtain custody of S.H., as noted above, the juvenile court found J.A.'s claims were "self-serving and entirely questionable as to its legitimacy[.]" Father's final claim is therefore without merit.

{¶ 28} In light of the foregoing, and after a thorough review of the record, we find the juvenile court properly considered the appropriate factors under R.C. 2151.414(D)(1) and acted in S.H.'s best interest by granting permanent custody to BCDJFS. Therefore, although

Mother and paternal grandmother, J.A., may have a strong bond with S.H., having found no merit to any of the arguments advanced herein, Father's two assignments of error are overruled.

{¶ 29} Mother's Assignment of Error No. 1:

{¶ 30} THE TRIAL COURT VIOLATED S.H.'S DUE PROCESS RIGHTS BY FAILING TO DETERMINE IF S.H. NEEDED INDEPENDENT COUNSEL.

{¶ 31} In her single assignment of error, Mother argues the juvenile court erred by failing to inquire as to whether S.H.'s wishes differed from that of the guardian ad litem, thereby requiring the appointment of independent counsel for her. Neither Mother nor Father, however, raised this issue as part of their objections to the magistrate's decision.

{¶ 32} As this court has stated previously, pursuant to Juv.R. 40(D)(3)(b)(ii), objections to a magistrate's decision must be "specific" and "state with particularity all grounds for objection." The failure to file specific objections is treated the same as the failure to file any objections. *In re D.R.*, 12th Dist. Butler No. CA2009-01-018, 2009-Ohio-2805, ¶ 29. If a party has not objected to a factual finding or legal conclusion in accordance with Juv.R. 40(D)(3)(b), except for a claim of plain error, "a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion[.]" Juv.R. 40(D)(3)(b)(iv). The waiver under this rule embodies the well-established principle that the failure to draw the trial court's attention to possible error, by objection or otherwise, when the error could have been corrected, results in a waiver of the issue for purposes of appeal. *In re C.Y.*, 12th Dist. Butler Nos. CA2014-11-231 and CA2014-11-236 thru CA2014-11-238, 2015-Ohio-1343, ¶ 18. Yet, even then, "unless the appellant argues a 'claim of plain error,' the appellant has waived the claimed errors not objected to below." *In re K.R.P.*, 197 Ohio App.3d 1993, 2011-Ohio-6114, ¶ 10 (12th Dist.).

{¶ 33} Although Mother and Father did file objections to the magistrate's decision, neither raised any objection regarding the need to inquire as to whether S.H.'s wishes differed from that of the guardian ad litem, thereby requiring the appointment of independent counsel. Mother also never argued a claim of plain error within her single assignment of error. Again, "unless the appellant argues a 'claim of plain error,' the appellant has waived the claimed errors not objected to below." *Id*.; *see, e.g., In re C.P.*, 12th Dist. Brown No. CA2010-12-025, 2011-Ohio-4563, ¶ 35 (finding a mother was precluded from raising new issues on appeal regarding a magistrate's legal custody determination where she failed to raise specific objections to the magistrate's decision and did not argue a claim of plain error in her appellate brief) and *In re L.K.*, 12th Dist. Butler No. CA2014-06-145, 2015-Ohio-1091, ¶ 17 (same). Therefore, because Mother did not argue a claim of plain error in her appellate brief, we find Mother has waived this issue on appeal.

{¶ 34} Furthermore, as BCDJFS accurately states in its brief, the record is devoid of any evidence that either Mother or Father ever challenged the ability of the guardian ad litem to serve in her dual capacity as attorney and guardian ad litem for S.H. As stated by the Ninth District Court of Appeals in *In re K.H.*, 9th Dist. Summit No. 22765, 2005-Ohio-6323, at ¶ 41,"where no request was made in the trial court for counsel to be appointed for the children, the issue will not be addressed for the first time on appeal." Other courts have held the same. *See In re Yates*, 11th Dist. Geauga No. 2008-G-2836, 2008-Ohio-6775, ¶ 48; *In re Graham*, 4th Dist. Athens No. 01CA57, 2002-Ohio-4411, ¶ 31-33; *In re Brittany T.*, 6th Dist. Lucas No. L-01-1369, 2001 WL 1636402, *6 (Dec. 21, 2001). Just as the Ninth District before us, this court is also "not inclined to reward a parent for sitting idly on her rights by addressing an alleged error that should have been raised, and potentially rectified, in the trial court in a much more timely fashion." *In re T.E.*, 9th Dist. Summit No. 22835, 2006-Ohio-

254, ¶ 9.

{¶ 35} Regardless, even if this issue was not waived, we would still find no error, let alone plain error, in regards to Mother's claim. Generally, when an attorney is appointed as guardian ad litem, such as the case here, that attorney may also act as counsel for the child, absent a conflict of interest. *In re C.E.J.*, 12th Dist. Butler No. CA2013-04-059, 2014-Ohio-2713, ¶ 19. The role of a guardian ad litem is to investigate the child's situation and then ask the juvenile 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. *In re Baby Girl Baxter*, 17 Ohio St.3d 229, 232 (1985). In turn, because the guardian ad litem is permitted to maintain dual roles, a juvenile court is not required to appoint separate counsel unless the guardian ad litem's recommendations regarding best interest conflict with the children's wishes. *In re B.K.*, 12th Dist. Butler No. CA2010-12-324, 2011-Ohio-4470, ¶ 19; *In re Williams*, 101 Ohio St.3d 398, 2004-Ohio-1500. This occurs only when the child has "consistently and repeatedly expressed a strong desire that is inconsistent with the guardian ad litem's recommendations." *In re M.H.*, 12th Dist. Fayette No. CA2012-11-035, 2013-Ohio-1063, ¶ 34.

{¶ 36} Here, Mother argues the juvenile should have inquired as to whether S.H.'s wishes differed from that of the guardian ad litem given her strong bond with Mother and "[t]he fact that S.H. consistently asked to return home with Mother during visitation[.]" Yet, in making this claim, Mother ignores the testimony from S.H.'s foster mother who explicitly stated S.H. had not expressed a desire to be with or spend more time with Mother. Furthermore, as the record makes clear, due to her young age and speech delays, S.H. was unable to have any meaningful conversation wherein she could effectively express her wishes. Again, as the guardian ad litem stated in her report and recommendations:

> [S.H.] just turned five years old. She was placed in foster care at the age of three. She has spent nearly half of her life outside the care of her parents. Through much of this case [S.H.'s] speech made it very difficult to communicate with her. And while her speech has improved, she has been placed on an IEP and will delay kindergarten a year to continue improving in this area. Due to her age and these limitations it has been difficult to have any meaningful conversation with [S.H.] regarding these proceedings. At most [S.H.] will report that she likes living with [her foster parents] and that visits with [Mother] are good.

{¶ 37} Furthermore, contrary to Mother's claim otherwise, the law does not require a juvenile court to inquire whether a child's wishes differ from that of the guardian ad litem's recommendations where there was nothing to indicate such a conflict exists. Again, as stated by the Ninth District in *In re N.G.*, 9th Dist. Lorain No. 12CA010143, 2012-Ohio-2825, "we will not speculate that there may have been a conflict between the wishes of the child and the recommendation of guardian ad litem absent an affirmative demonstration of such a conflict on the record." *Id.* at ¶ 18, citing *In re D.H.*, 177 Ohio App.3d 246, 2008-Ohio-3686 ¶ 42 (8th Dist.). This is further heightened by the fact that a dually appointed attorney acting as guardian ad litem has an affirmative duty to report the existence of a conflict of interest between his or her role as attorney and guardian ad litem to the juvenile court. *In re Baby Girl Baxter*, 17 Ohio St.3d at 232. Therefore, Mother's single assignment of error is overruled.

{¶ 38} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.