

No. 2021-0533

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE JH ET AL A MINOR CHILD
(APPEAL BY A.H., MOTHER) PETITIONER
(Your Name)

VS.

S.W. — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☐ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

Cuyahoga County Juvenile Court 8th District
Court of Appeals, Ohio Supreme Court

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____, or

☐ a copy of the order of appointment is appended

April L. Morris
(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, April L. Harris, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Self-employment	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Interest and dividends	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Gifts	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Alimony	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Child Support	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Disability (such as social security, insurance payments)	\$ <u>914.00</u>	\$ <u>0</u>	\$ <u>914.00</u>	\$ <u>0</u>
Unemployment payments	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Public-assistance (such as welfare)	\$ <u>208.00</u>	\$ <u>0</u>	\$ <u>208.00</u>	\$ <u>0</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Total monthly income:	\$ <u>1,122</u>	\$ <u>0</u>	\$ <u>1,122</u>	\$ <u>0</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NA	NA	NA	\$ 0

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NA	NA	NA	\$ 0

4. How much cash do you and your spouse have? \$ _____
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Checking	\$ 23.66	\$ 0
Savings	\$ 40.00	\$ 0
NA	\$ 0	\$ 0

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home Value NA

☐ Other real estate Value NA

☐ Motor Vehicle #1
Year, make & model NA
Value NA

☐ Motor Vehicle #2
Year, make & model NA
Value NA

☐ Other assets
Description NA
Value NA

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money

NA

Amount owed to you

\$ 0
\$ 0
\$ 0

Amount owed to your spouse

\$ 0
\$ 0
\$ 0

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name

NA

Relationship

NA

Age

NA

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

You

Your spouse

Rent or home-mortgage payment
(include lot rented for mobile home)

\$ 417.00

\$ 0

Are real estate taxes included? ☐ Yes ☐ No

Is property insurance included? ☐ Yes ☐ No

NA

Utilities (electricity, heating fuel, water, sewer, and telephone)

\$ 75.00

\$ 0

Home maintenance (repairs and upkeep)

\$ 0

\$ 0

Food

\$ 208.00

\$ 0

Clothing

\$ 56.00

\$ 0

Laundry and dry-cleaning

\$ 50.00

\$ 0

Medical and dental expenses

\$ 0

\$ 0

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>50.00</u>	\$ <u>0</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u>0</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>0</u>	\$ <u>0</u>
Life	\$ <u>28.90</u>	\$ <u>0</u>
Health	\$ <u>0</u>	\$ <u>0</u>
Motor Vehicle	\$ <u>0</u>	\$ <u>0</u>
Other: <u>NA</u>	\$ <u>0</u>	\$ <u>0</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): <u>NA</u>	\$ <u>0</u>	\$ <u>0</u>
Installment payments		
Motor Vehicle	\$ <u>0</u>	\$ <u>0</u>
Credit card(s)	\$ <u>70.00</u>	\$ <u>0</u>
Department store(s)	\$ <u>0</u>	\$ <u>0</u>
Other: <u>NA</u>	\$ <u>0</u>	\$ <u>0</u>
Alimony, maintenance, and support paid to others	\$ <u>0</u>	\$ <u>0</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ <u>0</u>
Other (specify): <u>NA</u>	\$ <u>0</u>	\$ <u>0</u>
Total monthly expenses:	\$ <u>948.90</u>	\$ <u>0</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet. NA

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? NA

If yes, state the attorney's name, address, and telephone number:

NA

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☒ Yes ☐ No

If yes, how much? 1,750

If yes, state the person's name, address, and telephone number:

Amro Elansari Michael Davie
484-280-9028 216-854-3820
11811 Shaker Blvd #314

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 26, , 2023

April J. Hannis
(Signature)

No. 2021-0533

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE J.H. ET AL A MINOR CHILD
(APPEAL BY A.H., MOTHER — PETITIONER
(Your Name)

vs.

SW. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF OHIO
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

April L. Harris
(Your Name)

P.O. Box 141047
(Address)

Cleveland, Ohio, 44114
(City, State, Zip Code)

216-278-3766
(Phone Number)

QUESTION(S) PRESENTED

QUESTION(S) PRESENTED

1. Whether the Appellant Mother was deprived of their right to counsel in juvenile Court in reunification proceedings?

(Suggested Answer: Yes)

2. Whether the court failed to properly inquire into her waiver of that right?

(Suggested Answer: Yes)

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Cuyahoga County Juvenile Court
8th District Court of Appeals
Ohio Supreme Court

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

Mother has two children: K.M. and J.H. Although K.M. previously lived with Mother, J.H. has never lived with her, nor have the brothers ever lived together. Both children have lived with other relatives for most of their lives. In 2015, Mother filed a motion requesting the juvenile court to place the children in her custody or, alternatively, be granted additional visitation rights. Mother requested an attorney but was instead appointed a guardian ad litem ("GAL"). That initial GAL withdrew citing conflicts of interest, and a new GAL was appointed. The court again did not appoint independent counsel, either for Mother or the children. For four years, Mother's claims were heard before a magistrate of the juvenile court. Throughout this process, Mother's rights as to her children were continuously litigated, denied, and/or modified. Relevant to this appeal is an October 2019 hearing before the magistrate. In her pro se request for the October 2019 hearing, Mother did not request an attorney as she had on other occasions. Mother and her GAL were both present at the hearing, and the magistrate did not appoint her counsel. After this hearing, the magistrate further amended Mother's visitation rights and obligations as to child J.H.

In a 2-1 decision, the Eighth District Court of Appeals affirmed the lower courts' decisions. The majority opinion was authored by Larry A. Jones, Sr. and joined by Judge Lisa B. Forbes. Judge Mary Eileen Kilbane dissented. In dissent, Judge Kilbane argued that the record reflected Mother's request for trial counsel and she would reverse and remand for the appointment of counsel. Mother appealed.

The key constitutional and statutory provisions relevant and applicable to the instant matter include

Ohio Constitution, Article I, Section 16 ("All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.")

Ohio Juvenile Rule 4 ("Every party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding. This rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.")

R.C. 2151.352 (A child or the child's parents [. . .] is entitled to representation by legal counsel at all stages of the proceedings [. . .] and if, as an indigent person, any such person is unable to employ counsel, to have counsel provided for the person pursuant to Chapter 120 of the Revised Code. If a party appears without counsel, the court shall ascertain whether the party knows of the party's right to counsel and of the party's right to be provided with counsel if the party is an indigent person. The court may continue the case to enable a party to obtain counsel or to be represented by the county public defender or the joint county public defender and shall provide counsel upon request pursuant to Chapter 120. of the Revised Code.)

Mathews v. Eldridge, 424 U.S. 319 (1976) (procedural due process is satisfied when: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.)

State ex rel. Heller v. Miller, 61 Ohio St.2d 6 (1980) ("In actions instituted by the state to force the permanent, involuntary termination of parental rights, the United States and Ohio Constitutions' guarantees of due process and equal protection of the law require that indigent parents be provided with counsel and a transcript at public expense for appeals as of right.")

Tibbitts v. Tibbitts, 2011-Ohio-5280 (8th Dist.) ("It is the appellant's duty to file a transcript for appellate review. In the absence of a transcript, we must presume regularity at the trial court proceedings.")

In re M. Children, 2019-Ohio-484 (1st Dist.) (reversing juvenile court decision because magistrate failed to adequately determine if mother was competent to waive right to counsel.)

REASONS FOR GRANTING THE PETITION

1. The instant matter presents substantial issues with regards to the due process rights of a parent and parental rights.
2. This Court is already aware that An Appellate Court errs when it fails to find the trial court committed plain errors, and omissions in failing to secure a waiver in open court showing that the parent's right to counsel was knowingly, voluntarily and intelligently entered, as well as ensuring the parent received due process of law and a fair and adequate hearing.
3. The Appellant presents substantial arguments which warrant reversal on appeal and, at the least, adjudication by this Court on the merits.
4. First, although Mother was appointed a GAL, simply appointing a GAL is not enough. What is even more concerning is that Mother's repeated requests for appointed counsel were ignored. Instead, the juvenile court required her to proceed pro se and assumed she had waived her right to counsel. However, there is a high bar to waiving counsel, it needs to be done knowingly and intelligently. The juvenile court never made that inquiry in this case. Thus, the juvenile court failed to fulfill its mandatory duties under Ohio law. Moreover, this Court has long noted that the Ohio and Federal Constitutions require that indigent parents be provided counsel and a transcript at public expense. This right attaches in the initial proceedings and continues on appeal. And the record is clear that Mother was not afforded this right either. In sum, the juvenile court improperly assumed that Mother knew of her rights and never engaged in the required discussion with her about whether her waiver was done knowingly and voluntarily.
5. Second, because the magistrate failed to engage Mother in these crucial processes, her due process rights were violated. At a minimum, due process requires procedural safeguards to ensure the proceeding is fundamentally fair. And Mother has a significant private interest at stake in this case—the care and control of her children. In fact, this is one of the most fundamental liberty interests. If Mother would have had the representation of effective counsel that she requested, many, if not all, of the procedural errors made in this case would not have occurred. The plain error standard is satisfied because Mother was not engaged about her right to counsel, it is unclear that she understood she was waiving that right and was deprived due process and a fair hearing.
6. Mother has come a long way in improving herself and is ready to be more involved with her children's lives. Had Mother been appointed counsel, she would have been much further along in the reunification process. To remedy these errors, this Court should reverse and remand the case.
7. Failure to consider the merits of this appeal con

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

April L. Harris

Date: January 26, 2023

The Supreme Court of Ohio

In Re J.H., et al.

A Minor Child

(Appeal by A.H., Mother)

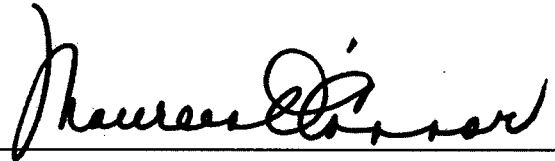
Case No. 2021-0533

RECONSIDERATION ENTRY

Cuyahoga County

It is ordered by the court that the motion for reconsideration in this case is denied.

(Cuyahoga County Court of Appeals; No. 109332)

A handwritten signature in black ink, appearing to read 'Maureen O'Connor', is written over a horizontal line.

Maureen O'Connor
Chief Justice

[Cite as *In re J.H.*, 168 Ohio St.3d 87, 2022-Ohio-1767.]

IN RE J.H. ET AL.

[Cite as *In re J.H.*, 168 Ohio St.3d 87, 2022-Ohio-1767.]

Appeal dismissed as having been improvidently accepted.

(No. 2021-0533—Submitted May 11, 2022—Decided May 31, 2022.)

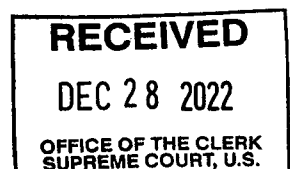
APPEAL from the Court of Appeals for Cuyahoga County,

No. 109332, 2021-Ohio-700.

{¶ 1} The cause is dismissed as having been improvidently accepted.

O'CONNOR, C.J., and KENNEDY, FISCHER, DEWINE, DONNELLY, STEWART,
and BRUNNER, JJ., concur.

A.H., pro se, appellant.



The Supreme Court of Ohio

In Re J.H., et al.

A Minor Child

(Appeal by A.H., Mother)

Case No. 2021-0533

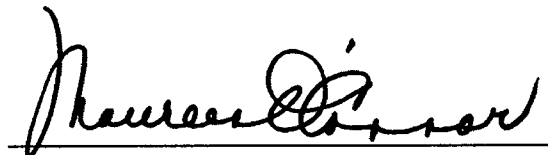
JUDGMENT ENTRY

APPEAL FROM THE
COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Cuyahoga County, was considered in the manner prescribed by law. On consideration thereof, this cause is dismissed as having been improvidently accepted.

It is further ordered that mandates be sent to and filed with the clerks of the Court of Appeals for Cuyahoga County and the Court of Common Pleas for Cuyahoga County.

(Cuyahoga County Court of Appeals; No. 109332)

A handwritten signature in black ink, appearing to read 'Maureen O'Connor', written over a horizontal line.

Maureen O'Connor
Chief Justice

COURT OF APPEALS OF OHIO

MAR 11 2021

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

IN RE J.H., ET AL.

A Minor Child

[Appeal by A.H., Mother]

:
:
:
:
:
:

No. 109332

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: March 11, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD-12920956 and AD-12920957

Appearances:

A.H., *pro se*.

LARRY A. JONES, SR., P.J.:

{¶ 1} This appeal arises from a decision after remand from this court with regard to Mother-appellant's motion to modify custody and visitation. For the reasons that follow, we affirm.

{¶ 2} Mother has two children: K.M., date of birth, March 25, 2003, and J.H., date of birth, August 27, 2012. At all times relevant to the issues presented in this appeal, the children were not living with Mother or their alleged fathers. The children have also been living separate and apart from one another; since 2014,



K.M. was in the care and custody of an uncle, and since 2013, J.H. was in the care and custody of an aunt. Although K.M. has previously lived with Mother, J.H. has never lived with her.

{¶ 3} In 2015, Mother filed a pro se motion to “modify custody and visitation and set visitation,” asking the court to place the children in her custody or, alternatively, that she be granted additional visitation with them.

{¶ 4} A guardian ad litem (“GAL”) was appointed for the children. Mother requested an attorney; she had a GAL who had been representing her. Mother’s GAL subsequently filed a motion to withdraw and a new GAL was appointed. The court held a hearing on Mother’s motion and issued a decision on each child. Relative to J.H., the younger child, the magistrate denied Mother’s requests to modify custody and for visitation, determining that it was in the best interest of J.H. if his custodian retained sole legal custody of him, and Mother had no visitation with him.

{¶ 5} Relative to K.M., the magistrate decided that the evidence was insufficient to warrant a change in custody and that no modification was necessary. The magistrate granted visitation and ordered that Mother’s visitation with K.M. occur on Saturdays.

{¶ 6} Mother filed objections to the magistrate’s decisions regarding both children. The juvenile court affirmed, approved, and adopted the magistrate’s decisions. The trial court failed, however, to rule on Mother’s objections. Mother

appealed, but this court dismissed the appeal for lack of a final, appealable order. *In re J.H.*, 8th Dist. Cuyahoga No. 106658, 2018-Ohio-4026.

{¶ 7} After dismissal of her appeal, Mother requested, and was granted, a ruling from the trial court on her objections. The juvenile court overruled Mother's objections to the magistrate's decisions relating to J.H. and K.M., and affirmed, approved, and adopted the magistrate's decisions. Mother thereafter requested that her appeal be reinstated; this court granted her request.¹

{¶ 8} On appeal, Mother argued that the trial court abused its discretion in removing her GAL, in limiting visitation between her and the children, and that the trial court's decisions were against the manifest weight of the decision. In a reconsidered opinion, this court found that the trial court did not violate her due process rights by removing her GAL and that the trial court correctly determined that there was insufficient evidence to warrant a change in custody. *In re J.H.*, 8th Dist. Cuyahoga No. 106658, 2019-Ohio-696, ¶ 26, 35. This court further found, however, that the trial court abused its discretion in deciding that Mother should not have supervised visits with J.H. and by not allowing visitation between J.H. and K.M. to occur. *Id.* at ¶ 54. The case was remanded with instructions to the trial court to: 1) establish a supervised visitation schedule for Mother and J.H., and 2) "fashion a schedule that would allow the two brothers to have time together."

¹In a separate appeal, Mother appealed an order from juvenile court requiring her to pay child support for J.H. A panel of this court found that its review was limited to plain error because Mother had failed to file timely objections to the magistrate's decision. This court noted that Mother failed to file a transcript of the hearing in question and declined to find plain error. *In re J.H.*, 8th Dist. Cuyahoga No. 108565, 2020-Ohio-576, ¶ 18.

{¶ 9} The case was remanded to juvenile court. Mother filed a pro se motion for a hearing. In the motion she requested a hearing, but did not request an attorney. The magistrate held a hearing on October 29, 2019, and issued an order the same day. Present at the hearing were Mother, her GAL, and other pertinent parties (neither of the children's fathers were present and are not parties to this appeal). A transcript of the hearing was not made part of the record on appeal.

{¶ 10} In its October 29, 2019 order, the magistrate noted that Mother had not visited J.H. or attended his medical appointments. The magistrate determined that: (1) J.H. and K.M. would have sibling visitation every other weekend; (2) Mother was ordered to attend J.H.'s medical appointments with the legal custodian providing Mother notice of the appointments; and (3) Mother would have supervised visitation with J.H. during therapy appointments. As to visitation between Mother and J.H., the magistrate stated that "reunification counseling is appropriate once per month. The court further finds that the mother shall have supervised visitation through a therapist as she arranges and at her expense. Mother shall provide notice of the appointments to the legal custodian."

{¶ 11} Additionally, the magistrate decided Mother was allowed phone contact with J.H. and could call him once a week between the hours of 5:00 p.m. and 8:00 p.m.

{¶ 12} Relative to visitation between Mother and K.M., the court modified visitation to every Sunday, instead of every Saturday as previously ordered, due to

K.M.'s extracurricular activities. The magistrate specified that the children's legal guardians were responsible for transportation to and from the visits.

{¶ 13} Mother filed lengthy objections to the magistrate's decision. In her objections, she claimed that J.H. was not safe under the custody of his current guardian, the court should pay for reunification counseling, the doctor's office should inform her of J.H.'s appointments because she could not trust J.H.'s guardian, visitation with J.H. should be unsupervised, visitation time with K.M. should be increased, and K.M. should be in her care and custody. The trial court overruled Mother's objections in their entirety.

{¶ 14} On November 14, 2019, the juvenile court affirmed, approved, and adopted the magistrate's decisions.

{¶ 15} It is from this decision Mother appeals, pro se, raising the following assignment of error for our review:

I. Trial court committed plain errors and omissions in failing to secure a waiver in open court showing that the parent's right to counsel was knowingly, voluntarily and intelligently entered, as well as ensuring the parent received due process of law and a fair and adequate hearing.

{¶ 16} As an initial matter, we note that Mother contests the entirety of the trial court proceedings from the time she filed her May 2015 motion to modify custody and for visitation. But the only journal entry on appeal, and the only journal entry Mother attached to her notice of appeal, is the juvenile court's November 14, 2019 judgment entry. That judgment entry was limited in scope and

concerns only what was on remand from this court — establishing Mother's visitation schedule with J.H. and visitation between the brothers.

{¶ 17} In her sole assignment of error, Mother claims that the trial court abused its discretion when Mother appeared for the October 29, 2019 hearing and the magistrate did not appoint her counsel or ensure that Mother waived her right to counsel.

{¶ 18} Juv.R. 4 provides that "[e]very party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent * * *." However, the rule further states that it does not create a "right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute."

{¶ 19} As mentioned, Mother filed objections to the magistrate's decision. In her objections, Mother does not raise the issue of the trial court's alleged error in failing to appoint her an attorney for her hearing or ensuring that she waived her right to counsel. Civ.R. 53(D)(3)(b)(iv) provides that

[e]xcept 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, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b).

{¶ 20} Thus, because Mother raises issues on appeal that she did not raise in her objections to the magistrate's decision, our review is for plain error.

{¶ 21} We are further constrained in our review, however, because Mother failed to file a transcript of the proceedings below.

{¶ 22} After this court's decision in *In re J.H.*, 8th Dist. Cuyahoga No. 106658, 2019-Ohio-696, Mother filed a motion for a hearing. In her motion, Mother requested a hearing to determine visitation and asked that the matter be set for hearing "as soon as possible." Mother did not, however, ask for an attorney in her motion. On appeal, Mother claims that she expressly stated during the October 29, 2019 hearing that she needed an attorney. She also claims that she thought her GAL would serve as her attorney and the magistrate failed to inquire into Mother's competency.

{¶ 23} Mother failed to file a transcript of the October 29, 2019 hearing with this court and both the magistrate and trial court's decisions are limited in their findings. It is incumbent upon an appellant to file a transcript for this court to review. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980); *see also* App.R. 9(B).

{¶ 24} Because we have no transcript of the proceedings, we do not know if Mother asked for counsel pursuant to Juv.R. 4, if Mother waived her right to counsel as she has done in prior proceedings, or if Mother was under the impression that her GAL would serve as her attorney. This court also cannot determine any issues as to competency, although we do note that Mother had a GAL with her at the hearing and Mother's discussion relative to competency centers solely around whether she was competent to waive her right to an attorney.

Without a transcript to see what was discussed as to these matters, we must presume regularity of the proceedings in the juvenile court and affirm. *See In re J.H.*, 8th Dist. Cuyahoga No. 108565, 2020-Ohio-576, ¶ 18; *Tibbitts v. Tibbitts*, 8th Dist. Cuyahoga No. 96746, 2011-Ohio-5280, ¶ 5.

{¶ 25} Mother failed to raise in her objections to the magistrate's decision those issues that she raises on appeal. In addition, because Mother failed to file a transcript of the October 29, 2019 magistrate's hearing, we presume regularity of the trial court proceedings.

{¶ 26} In light of the above, the sole assignment of error is overruled.

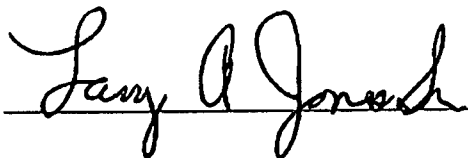
{¶ 27} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



LARRY A. JONES, SR., PRESIDING JUDGE

LISA B. FORBES, J., CONCURS;
MARY EILEEN KILBANE, J., DISSENTS
WITH SEPARATE OPINION

FILED AND JOURNALIZED
PER APP. 22(C)

MAR 11 2021

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By Gaea Hecik Deputy

MARY EILEEN KILBANE, J., DISSENTING:

{¶ 28} I respectfully dissent and would reverse and remand for the appointment of trial counsel. Mother was appointed a G.A.L. not once but twice by the trial court. The record reflects that mother requested trial counsel.