

[Cite as *In re J.B.*, 2011-Ohio-6134.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In re: :
J.B., : 11AP-243
(State of Ohio, : (C.P.C. No. 07JU-11-16858)
Appellant). : (REGULAR CALENDAR)

NUNC PRO TUNC
D E C I S I O N

Rendered on November 29, 2011¹

Timothy Young, Ohio Public Defender, and *Brooke M. Burns*, for appellee.

Ron O'Brien, Prosecuting Attorney, and *Katherine J. Press*, for appellant.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch.

FRENCH, J.

{¶1} Plaintiff-appellant, state of Ohio ("the state"), appeals the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, which held that it lacked jurisdiction to classify defendant-appellee, "J.B.," as a

¹ This Nunc Pro Tunc Decision rendered on January 24, 2012, replaces our previous decision, which had a typographical error in that the date read 2010, instead of 2011.

sex offender under R.C. Chapter 2950 and order him to comply with statutory registration requirements because it failed to meet time requirements for doing so under R.C. 2152.83(A). We reverse.

I. BACKGROUND

{¶2} On November 26, 2007, a juvenile-delinquency complaint was filed concerning J.B., who was 17 years old at the time. The complaint alleged that J.B. had committed rape and gross sexual imposition ("GSI") by engaging in sexual activity with a four-year-old boy.

{¶3} Following a hearing on August 11, 2008, a magistrate of the trial court issued a decision. The magistrate found that the state had dismissed the rape count, and J.B. had entered a no-contest plea to the GSI count. The magistrate found J.B. to be a delinquent minor, having committed the offense of GSI, a third-degree felony, in violation of R.C. 2907.05(A)(4). The magistrate ordered a pre-sentence investigation ("PSI") and a sex-offender assessment prior to disposition. The magistrate also ordered J.B. not to have unsupervised contact with any child under age 13. She set the matter for final disposition at a later hearing. On August 20, 2008, the trial court issued a judgment entry adopting the magistrate's decision.

{¶4} The magistrate held the disposition hearing on October 28, 2008. The state asked that J.B. be committed to the Ohio Department of Youth Services ("DYS"). The state argued that J.B. could not live in his mother's home because she ran a day care there, and that is where the incident occurred. The state also stated that J.B. had been working, without direct supervisors present, in a day care at a fitness facility,

despite the court's prior order concerning unsupervised contact with children. The state also contended that J.B. and his mother had been dishonest about his employment during the PSI.

{¶5} J.B.'s attorney admitted that J.B. had been dishonest during the PSI, but argued that J.B. should not be committed. In making his argument, J.B.'s attorney noted that J.B. "has to register for the next 15 years of his life, in every county he works in, county he resides. He has to register his car, his emails, anytime he travels, Your Honor, anytime he moves in any of those directions." (Oct. 28, 2008 Tr. 17.)

{¶6} At the conclusion of the hearing, the magistrate noted the seriousness of the offense, J.B.'s violation of the prior order, and his dishonesty during the PSI. She stated that she would impose a minimum commitment of six months, but would consider an early release. She also stated that she would "reserve the registration hearing for the release from DYS." (Oct. 28, 2008 Tr. 23.)

{¶7} The magistrate issued a decision on November 5, 2008. The magistrate ordered that J.B. be committed to the custody of DYS for a minimum period of six months and a maximum period not to exceed J.B.'s attainment of age 21 (July 20, 2011). On November 5, 2008, the court issued a judgment entry, which adopted the magistrate's decision. Neither the magistrate's decision nor the court's entry addressed sex-offender registration or a registration hearing. No objections were filed.

{¶8} On January 16, 2009, J.B. moved for early release from DYS. After a hearing, the magistrate denied J.B.'s motion for early release. The trial court adopted the magistrate's decision on February 17, 2009.

{¶9} On December 17, 2009, a parole officer with DYS sent a memorandum to the trial court and requested that J.B. be released on parole. The memo stated that J.B. was scheduled to be released on December 17, but DYS had been unable to get the release packet to the court within the 30-day requirement.² The memo asked the court to waive the 30-day requirement and inform DYS as soon as possible whether DYS could consider J.B. for release.

{¶10} DYS's request for J.B.'s release included information concerning his charges and detention at DYS and a case plan. Within the case plan, J.B.'s "Supervision Level" was identified as "Low." A "No" response was checked next to the question, "Required Sex Offender Registrant?"

{¶11} The section entitled "Release Authority/Court requirements" stated the following: "Youth will need to complete his Sex Offender program requirements, work on completing educational requirements. Release Review is required, Region will need to explore alternative placement if mother continue[s] to run a day care business." In order to meet the goal of addressing J.B.'s sex offender treatment needs, the following were identified as J.B.'s "Short-Term Youth Responsibilities: [J.B.] will participate in a Sex Offender Asses[s]ment through SEMH and follow all recommendations given to him by the provider. If he is recommended for programming he will attend all scheduled appointments and apply himself in programming. [J.B.] will have no contact with his victim and/or any potential victims."

² R.C. 5139.51(B)(1) requires DYS to send a release plan to the juvenile court at least 30 days before a child's release.

{¶12} J.B. signed and agreed to a 14-item list of parole rules and an 8-item list of special conditions, none of which required him to register as a sex offender. J.B. also agreed to the following as a discharge condition: "My tentative discharge is on 9 months from my release [sic]."

{¶13} On December 18, 2009, the trial court issued a journal entry that approved the terms and conditions of J.B.'s release and parole contained within the DYS case plan. The court expressly adopted those terms and conditions, incorporated them into the entry, and authorized DYS to enforce them. The court's entry did not address sex-offender registration or a registration hearing.

{¶14} On July 26, 2010, the trial court held a review hearing at which J.B. appeared. Unidentified, handwritten notes entitled "JUVENILE CASE NOTES," indicate that the prosecutor informed the court that the state was never served with DYS's request to release J.B. from DYS and that there was no order for J.B. to register. The court granted a continuance, at the parties' request, until August 30, 2010, in order to obtain additional information. On August 6, 2010, a magistrate appointed counsel for J.B. On August 30, 2010, the court granted a continuance, at the parties' request, until September 9, 2010. The order includes the following notation: "NO CONTINUANCES." On September 9, 2010, the court granted a continuance, upon its own request, until October 18, 2010, because the magistrate was "not on [the] bench."

{¶15} On September 13, 2010, the state filed a motion to exercise continuing jurisdiction. The motion stated that the case plan for J.B.'s release did not require J.B.

to register as a sex offender. The state asked the court to hold a registration hearing and to order J.B. to register as a sex offender.

{¶16} The magistrate held a hearing on October 18, 2010, and the parties appeared. The state noted that the magistrate had ordered a registration hearing at the October 28, 2008 disposition hearing, but that the subsequent written orders had not addressed registration. The state did not receive notice of J.B.'s release and only became aware that J.B. was not registering when it received notice that his parole was being terminated. The state asked that J.B. be classified as a Tier I offender and be required to register for ten years. Finally, the state argued that the plea negotiations with J.B. had included discussion of the registration requirement and that, as a result of the plea agreement, the state dismissed the rape charge, which could have required lifetime registration.

{¶17} J.B.'s attorney argued that Ohio law precluded a registration hearing at any time other than disposition or upon release from a secure facility and, therefore, precluded J.B.'s classification as a sex offender. He also noted that J.B.'s parole had terminated on September 14, 2010.

{¶18} The magistrate found that this "was a mandatory registration offense in which a no contest plea was entered with the understanding that the registration hearing would * * * occur upon his release from The Department of Youth Services." (Oct. 18, 2010 Tr. 9.) She concluded that she had jurisdiction to hold the hearing and require J.B. to meet statutory registration requirements. She found J.B. to be a Tier I offender and ordered him to register for ten years.

{¶19} On October 26, 2010, the magistrate issued an order that granted the state's motion for continuing jurisdiction. The order classified J.B. as a Tier I sex offender, as defined in R.C. 2950.01(E)(1)(c) and ordered him to meet applicable statutory requirements. On October 26, 2010, the trial court issued a judgment entry that adopted the magistrate's decision.

{¶20} On October 28, 2010, J.B. filed an objection to the magistrate's decision. J.B. argued that the court had not held a registration hearing at the time of his release from DYS on December 18, 2009, despite the requirement for a hearing contained in R.C. 2152.83(A)(1). J.B. argued that the court's jurisdiction to impose a registration requirement on J.B. had expired.

{¶21} The trial court held a hearing on January 25, 2011. J.B.'s counsel confirmed that J.B.'s parole had terminated and argued that the court no longer had jurisdiction. The state noted that the motion for continuing jurisdiction was filed while J.B. was still on parole and that J.B. was aware of the registration requirement. J.B.'s counsel agreed that there was no "dispute that [J.B.] was told" of the registration requirement, but argued it was the state's responsibility to ensure compliance within statutory time restrictions. (Jan. 25, 2011 Tr. 8.)

{¶22} On February 11, 2011, the court issued a judgment entry, which sustained J.B.'s objection. The court held that the magistrate did not have jurisdiction to hold a registration hearing on October 18, 2010, which was ten months after his December 18, 2009 release from DYS and one month after his September 14, 2010 release from parole. This exercise of jurisdiction, the court held, was contrary to R.C. 2152.83(A)(1),

which requires the court to determine a sex offender's registration requirements at the initial dispositional hearing or at the time of the juvenile's release from DYS.

II. ASSIGNMENT OF ERROR

{¶23} The state appealed and raises the following assignment of error:

THE TRIAL COURT ERRED BY GRANTING J.B.'S
OBJECTION TO THE MAGISTRATE'S DECISION
CLASSIFYING HIM AS A TIER I OFFENDER.

III. DISCUSSION

{¶24} In its assignment, the state contends that the trial court erred by concluding that the time frame contained in R.C. 2152.83(A) is jurisdictional. But even if the statutory time frame is jurisdictional, the state continues, jurisdiction had not expired when the magistrate held the hearing and imposed the sex-offender classification. To address the state's arguments, we begin with the applicable statutes.

{¶25} R.C. Chapter 2950 defines certain offenses as "[s]exually oriented offense[s]" and defines persons who commit them as "[s]ex offender[s]." See R.C. 2950.01(A) and (B)(1). The law classifies these offenders into tiers—Tier I, Tier II, and Tier III—and imposes graduated registration and notification requirements upon offenders according to their classification. See R.C. 2950.07(B).

{¶26} J.B. was adjudicated as a delinquent child for committing the offense of GSI, in violation of R.C. 2907.05(A)(4). R.C. 2950.01 defines that offense as a sexually-oriented offense and defines J.B., because he was adjudicated a delinquent child for committing the offense, as a sex offender. See 2950.01(A)(1) and (B)(1).

{¶27} R.C. 2950.01(F)(1)(c) classifies an offender *convicted of* violating R.C. 2907.05(A)(4) as an offender under Tier II. For a child *adjudicated delinquent for*

committing a sexually-oriented offense, however, R.C. 2950.01 defines Tier I, Tier II, and Tier III sex offenders to include a child who is (1) adjudicated delinquent for committing a sexually-oriented offense and (2) classified as an offender under Tier I, II or III pursuant to provisions within R.C. Chapter 2152. See R.C. 2950.01(E)(3), (F)(3), and (G)(3). R.C. 2950.01(M) also defines " '[j]uvenile offender registrant' " as a child who is (1) adjudicated a delinquent child for committing a sexually-oriented offense and (2) classified by the juvenile court as a Tier I, Tier II or Tier III offender pursuant to provisions within R.C. Chapter 2152. In this way, the General Assembly gave to a juvenile court the discretion to determine which tier should apply, subject to relevant provisions in R.C. Chapter 2152. We turn, then, to R.C. Chapter 2152.

{¶28} R.C. 2152.191 grants to the juvenile court the jurisdiction over a child adjudicated delinquent for committing a sexually-oriented offense and provides that R.C. 2152.82 to 2152.86 and Chapter 2950 apply to the child and the child's adjudication. R.C. 2152.82 to 2152.86 impose requirements for adjudications and orders, depending on the age of the child and the circumstances of the offense. Because J.B. was a first-time offender and 17 years old at the time of the offense, the parties agree that R.C. 2152.83 applies here.

{¶29} R.C. 2152.83(A)(1) provides that "[t]he court that adjudicates a child a delinquent shall issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, shall issue at the time of the child's release from the secure facility, an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with" statutory

registration requirements, if all of the following apply to that child: (1) the act for which the child was adjudicated delinquent is a sexually-oriented offense or a child-victim offense committed on or after January 1, 2002; (2) the child was 16 or 17 years of age at the time he committed the offense; and (3) the court was not required to classify the child as a juvenile-offender registrant under other statutes. Prior to issuing the classification order, the court must conduct a hearing to determine whether the child is an offender under Tier I, Tier II or Tier III under R.C. Chapter 2950. R.C. 2152.83(A)(2).

{¶30} R.C. 2152.84 requires a juvenile court that has held the hearing and made the determinations required by R.C. 2152.83(A) to hold a second hearing "upon completion of the disposition of that child." R.C. 2152.84(A)(1). The purpose of this second hearing is "to review the effectiveness of the disposition and of any treatment provided for the child, to determine the risks that the child might re-offend, to determine whether the prior classification of the child as a juvenile offender registrant should be continued or terminated," and to determine whether the court's prior determination as to whether to classify the child under Tier I, Tier II or Tier III "should be continued or modified." R.C. 2152.84(A)(1).

{¶31} Finally, R.C. 2152.85 provides certain time periods after which a child adjudicated delinquent for committing a sexually-oriented offense and ordered to comply with statutory requirements may ask the juvenile court to re-examine his classification.

{¶32} Applying these provisions here, the trial court was required, "at the time of" J.B.'s release from DYS custody on December 18, 2009, to hold a hearing,

determine whether he is an offender under Tier I, Tier II or Tier III, and issue an order that classified J.B. and ordered him to comply with the applicable registration requirements. The trial court was also required, "upon completion of the disposition," to review its prior classification and orders. No matter how broadly we may interpret the phrase "at the time of the child's release" in R.C. 2152.83(A)(1), a first hearing held after completion of a child's disposition—as occurred here—could not possibly comply with the statutory time frames. The question becomes, however, whether a trial court's noncompliance with those time frames relieves it of jurisdiction to hold a hearing and comply with the remaining requirements of R.C. 2152.83(A). We hold that it does not.

{¶33} In sustaining J.B.'s objection to the magistrate's exercise of jurisdiction, and construing R.C. 2152.83, the trial court stated "that the use of the word 'may' in the statute provides a trial court with discretion on whether to classify a juvenile and at what times to classify the juvenile. Once the two cited time frames have lapsed, the trial court's jurisdiction as to classification is terminated." We disagree with the trial court's interpretation of R.C. 2152.83.

{¶34} First, we conclude that the requirement to hold a hearing and make certain orders, pursuant to R.C. 2152.83(A), is mandatory. R.C. 2152.83(A)(1) states that the juvenile court "shall issue * * * an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply" with the registration requirements contained within R.C. Chapter 2950. R.C. 2152.83(A)(2) provides that the court "shall conduct a hearing" to determine whether the child should be classified as an offender under Tier I, Tier II or Tier III.

{¶35} We also conclude, however, that the time period within which to hold the hearing required by R.C. 2152.83(A)—i.e., at the time of the child's release—is directory. By failing to hold a hearing at the time of the child's release and to meet the remaining requirements of R.C. 2152.83(A), a juvenile court does not lose the jurisdiction to do so.

{¶36} Generally, we will construe a statute providing a time for the performance of an official duty " 'as directory so far as time for performance is concerned, especially where the statute fixes the time simply for convenience or orderly procedure.' " *State v. Bellman*, 86 Ohio St.3d 208, 210, 1999-Ohio-95, quoting *State ex rel. Jones v. Farrar* (1946), 146 Ohio St. 467, paragraph three of the syllabus. Rather, we will only consider the requirement as jurisdictional "where a statutory time requirement evinces an object or purpose to limit a court's authority." *Bellman* at 210.

{¶37} R.C. 2941.401, for example, evinces an intent to limit a court's jurisdiction by providing that if an action is not brought within speedy-trial time limitations, "no court any longer has jurisdiction thereof, the indictment * * * is void, and the court shall enter an order dismissing the action with prejudice." That is not the case with R.C. 2152.83(A), which states that the juvenile court must hold a hearing at the time of the child's release, but does not state that a court's failure to do so precludes jurisdiction or voids imposition of classification for purposes of R.C. Chapter 2950. Therefore, we conclude that the requirement to hold a hearing at the time of the child's release is directory and not jurisdictional.

{¶38} The Supreme Court of Ohio reached the same conclusion under similar circumstances. In *Bellman*, the court considered whether a trial court lost jurisdiction to adjudicate an adult defendant as a sexual predator by failing to hold the hearing prior to sentencing as R.C. 2950.09(B)(1) requires. Relying on the principles articulated in *Farrar*, the court concluded that the time requirement was not jurisdictional because it was directory. Therefore, the defendant could waive the time requirement. Appellate courts have relied on *Bellman* to reach the same conclusion concerning jurisdiction, even where there was no waiver. See, e.g., *State v. Webb*, 9th Dist. No. 06CA008875, 2006-Ohio-5476; *State v. Echols* (May 5, 2000), 2d Dist. No. 99CA60.

{¶39} We acknowledge that, while juvenile-delinquency proceedings may be characterized as civil in nature, the Supreme Court of Ohio has "noted that 'there are criminal aspects to juvenile court proceedings' and that 'the United States Supreme Court has carefully imposed basic due process requirements on [the juvenile justice system].'" *In re Cross*, 96 Ohio St.3d 328, 332, 2002-Ohio-4183, ¶21, quoting *In re Anderson*, 92 Ohio St.3d 63, 66, 2001-Ohio-131. While we do not condone the mistakes that occurred in this case, we discern no violation of due process here.

{¶40} Before the trial court, J.B. objected to the court's exercise of jurisdiction because, in his view, it conflicted with statutory requirements. He did not, however, object based on any prejudice to him beyond the classification order itself. The record shows that J.B. had notice of the registration requirements from the beginning of the process. At the October 28, 2008 disposition hearing, J.B.'s attorney noted that registration requirements would apply, and the magistrate reserved the registration

hearing for J.B.'s release from DYS. At the October 18, 2010 hearing, the magistrate found that J.B.'s August 2008 plea agreement, which included the state's agreement to dismiss the rape charge, included discussion of registration requirements. And, before the trial court in January 2011, J.B.'s counsel agreed that J.B. had been told of the requirements.

{¶41} R.C. 2152.83(A) offers no discretion for a juvenile court to decide not to impose a classification. The court may only give a child the opportunity to pursue rehabilitation and treatment before imposing that classification. Although an adult convicted of violating R.C. 2907.05(A)(4) would be classified as an offender under Tier II, the state requested, and the magistrate agreed, that J.B. should be classified as an offender under Tier I. The delay in the proceedings was not prejudicial to J.B.

{¶42} The appellate court opinions interpreting R.C. 2152.83(B) do not compel a different conclusion. See, e.g., *In re McAllister*, 5th Dist. No. 2006CA00073, 2006-Ohio-5554 (holding that R.C. 2152.83(B)(1) grants to the juvenile court jurisdiction to classify an offender at the time of disposition or at the time of release; failure to classify a child within one of these two time frames precludes jurisdiction thereafter). R.C. 2152.83(A) requires the court to classify the child as a juvenile-offender registrant, order the child to comply with the requirements of R.C. Chapter 2950, and hold a hearing to determine the appropriate classification. In contrast, R.C. 2152.83(B) allows, but does not require, the court to hold a hearing and issue an order that classifies the child. Accordingly, opinions construing and applying R.C. 2152.83(B) are inapposite.

{¶43} Finally, J.B. contends that, at the very latest, the court lost jurisdiction once he was released from parole on September 14, 2010. We disagree. Although the record is less than clear on this point, it appears that the state raised these issues to the court on July 26, 2010, while J.B. was still on parole. J.B. personally signed the continuance issued on that date, and the continuance called for obtaining additional information. J.B. and his counsel signed the continuance on August 30, 2010, and J.B.'s counsel signed again on September 9, 2010, when the hearing was scheduled for October 18, 2010. While J.B. blames the court and the state for the delay that occurred in this case, there is nothing in the record to suggest that J.B. objected to the continuances. In any event, the state moved for continuing jurisdiction, pursuant to Juv.R. 35, on September 13, 2010, one day before J.B.'s parole terminated.

{¶44} J.B. relies on *In re Cross*, in which the Supreme Court of Ohio concluded that a juvenile court did not have jurisdiction to re-impose a suspended commitment to DYS after the child has been released from probation. Rather, "the completion of probation signals the end of a court's jurisdiction over a delinquent juvenile." *In re Cross* at ¶28. *In re Cross* is readily distinguishable.

{¶45} The juvenile court's jurisdiction in a sex-offender adjudication is different from its jurisdiction with respect to other adjudications. While a juvenile court ordinarily "relinquishes control" over a child committed to DYS, the court does not relinquish control over a child adjudicated delinquent for committing a sexually-oriented offense. R.C. 2152.22(A). And, while a child may only be held at DYS until the age of 21, R.C. 2152.83(E) provides that an order issued under R.C. 2152.83(A) "and any

determinations included in the order shall remain in effect for the period of time specified in" R.C. Chapter 2950. Compare R.C. 2152.16 (provisions precluding juvenile court from committing a child to DYS for a period exceeding age 21). The child's attainment of age 18 or 21 "does not affect or terminate the order, and the order remains in effect for the period of time described in this division." R.C. 2152.83(E).

{¶46} More helpful to our analysis is *State ex rel. N.A. v. Cross*, 125 Ohio St.3d 6, 2010-Ohio-1471, in which the Supreme Court of Ohio considered whether a juvenile court had jurisdiction to proceed with an adjudicatory hearing in a juvenile-delinquency case after the child, "N.A.," had turned 21. While recognizing that Ohio law prohibited the juvenile court from committing an individual over 21 to DYS, the court held that the juvenile court had jurisdiction to proceed with the adjudication. Important for our purposes here, the court recognized that, even though N.A. was over 21, "the delinquency proceeding is still important because if he is adjudicated a delinquent child based on the rape offenses, N.A. would still be subject to the juvenile-offender-registration provisions." *Id.* at ¶13, citing R.C. 2152.82(C) and R.C. 2151.23(A)(15). See also *State ex rel. Jean-Baptiste v. Kirsch*, 4th Dist. No. 10CA3338, 2010-Ohio-3368, appeal as of right pending, Ohio Supreme Court No. 2011-0934 (holding, in prohibition, that juvenile court retained jurisdiction to hold hearing to classify offender who was over 21 and had been released from DYS custody).

{¶47} Based on the applicable precedent and statutes, we similarly conclude that the court's failure to hold a hearing until ten months after J.B.'s release did not preclude jurisdiction to hold a hearing, classify J.B. as an offender under R.C. Chapter

2950, and order him to comply with applicable registration requirements. Because the trial court concluded otherwise, we sustain the state's assignment of error.

IV. CONCLUSION

{¶48} In summary, we sustain the state's assignment of error. We reverse the decision of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, and remand the matter for further proceedings consistent with this decision and applicable law.

*Judgment reversed;
cause remanded.*

KLATT and CONNOR, JJ., concur.
