[Cite as *In re T.W.*, 2011-Ohio-6855.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

IN THE MATTER OF:	**:**	**O P I N I O N**
T.W., DELINQUENT CHILD	**:**	**CASE NO. 2011-A-0035**

Civil Appeal from the Ashtabula County Court of Common Pleas, Juvenile Division, Case No. 2010 JA 606.

Judgment: Reversed and remanded.

Anita B. Staley, Barthol & Staley, L.P.A., 7327 Center Street, Mentor, OH 44060 (For Appellant).

Thomas L. Sartini, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Appellee).

MARY JANE TRAPP, J.

{¶1} T.W. appeals from a judgment of the Ashtabula County Court of Common Pleas, Juvenile Division, which accepted his plea of "true" to a violation of probation, and committed him to the Ohio Department of Youth Services ("ODYS"). After a careful review of the record and pertinent law, we conclude that, although the trial court substantially complied with Juv.R. 29, it failed to comply with Juv.R. 35(B), substantially or otherwise. Therefore, we reverse the trial court's judgment and remand the case for further proceedings consistent with this opinion.

{¶2} **Substantive Facts and Procedural History**

{¶3} T.W., 14 years old, was found delinquent by reason of aggravated assault, aggravated disorderly conduct, violation of probation, and criminal trespass, after he pled "true" to these charges in a prior proceeding. He was committed to ODYS for a minimum period of six months, or until he reaches 21 years of age. The commitment was suspended, however, on the condition that he "follow all terms of intensive probation, court orders, and laws of the State of Ohio." The trial court's judgment entry also stated that "[t]he juvenile is to be placed on intensive probation." In separate paragraphs, the judgment entry stated: "The juvenile [will] attend school as prescribed by the school district with no [un-]excused absences and disciplinary action," and "[t]he Juvenile will have NO CONTACT with Alexander Robertson."

{¶4} Ten days after the trial court's judgment entry was journalized, a written statement entitled, "Terms of Juvenile Court Probation," apparently signed by J.W. and his grandmother and apparently witnessed by a probation officer was filed and the following docket entry made, "Placed on Probation."

{¶5} Three weeks later, T.W.'s probation officer filed a complaint alleging T.W. violated his probation, in that he received a 3-day out-of-school suspension from his school for "refusing to follow reasonable and repeated request of the school administrators."

{¶6} A juvenile court magistrate held a hearing to adjudicate the charge of probation violation, as well as a charge of aggravated disorderly conduct brought in a separate case. T.W.'s maternal grandparents, with whom he has been residing since he was one year old, and his probation officer testified at the hearing.

{¶7} The transcript of the hearing reflects the following colloquy between the magistrate and T.W. before the magistrate accepted his admission to probation violation:

{¶8} "THE COURT: Mr. [T.W.] you would be admitting to the Violation of Probation; specifically, you were given a three day out of school suspension for refusing to follow reasonable and repeated requests of administrators. Is that correct, sir?

{¶9} "[T.W.]: Yes, ma'am.

{¶10} "THE COURT: By entering a True plea today to that charge, all the rights we went over with you at the initial hearing, the right to trial, question witnesses during your trial, subpoena witnesses and the right to remain silent, those rights are gone with this admission. Knowing all that, do you still want to admit, sir?

{¶11} "[T.W.]: Yes, ma'am.

{¶12} "THE COURT: And you're doing this knowingly, willingly and voluntarily?

{¶13} "[T.W.]: Yes, ma'am.

{¶14} "THE COURT: And you understand you have a suspended six months max age 21 at Ohio Department of Youth Services, that could be imposed today if you admit? Do you understand that, sir, and do you still want to admit?

{¶15} "[T.W.]: Yes, ma'am."

{¶16} The magistrate then asked T.W. to describe what happened. T.W. stated the following:

{¶17} "I -- I, like, I twisted my foot the night before this happened, like, and then I went to school the next day and it still was hurting me really bad and I could barely walk. So I went to the nurse's office and they told me just to sit in there. And then they told me to go back to class but I could barely walk and I didn't want to go back to class

'cause I couldn't barely walk. And then they called my PO and then my PO couldn't -- wanted me to go back to class, and then they called the police."

{¶18} After confirming with T.W.'s counsel that T.W. did indeed receive a three-day suspension based on this incident, the magistrate immediately accepted his plea of "true." She found him delinquent by reason of violation of probation, and committed him to ODYS for a minimum period of six months, or until his 21st birthday. The magistrate, in addition, remarked that T.W. was "spoiled" by his grandparents, who failed repeatedly to hold him accountable for his actions and to discipline him for his misbehaviors. As a result, the magistrate ordered that T.W. not return to his grandparents' home after release from ODYS.

{¶19} T.W.'s counsel objected to the magistrate's decision, and those objections were overruled by the trial court. T.W. now appeals, assigning four errors for our review:

{¶20} "[1.] The trial court failed to ensure that the appellant understood the consequences of admitting that he had violated the terms of his probation and as such the appellant's admission was not knowing, intelligent, and voluntary in accordance with Juv.R. 29.

{¶21} "[2.] The trial court violated appellant's due process rights when it failed to inquire of the appellant whether he had received a written statement regarding his probation violations.

{¶22} "[3.] The trial court abused its discretion in committing appellant to the Ohio Department of Youth Services and further ordered that appellant not be returned to the grandparents['] home after release from ODYS because this decision was unreasonable and arbitrary.

{¶23} "[4.] The trial court failed to properly obtain sworn testimony from the hearing participants regarding appellant prior to making a determination to commit the appellant to ODYS."

{¶24} **Whether the Admission was Voluntary Pursuant to Juv.R. 29**

{¶25} Under the first assignment of error, T.W. claims the juvenile court failed to comply with the requirements of Juv.R. 29 when accepting his admission.

{¶26} Juv.R. 29(D) provides:

{¶27} "The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:

{¶28} "(1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;

{¶29} "(2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing."

{¶30} "Juvenile delinquency proceedings must comport with the requirements of due process." *In re Jordan*, 11th Dist. No. 2001-T-0067, 2002-Ohio-2820, ¶10, citing *In re Gault* (1967), 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527. "Ohio codified the due process requirement in Juv.R. 29. Juv.R. 29(D) provides *** that a court shall not accept an admission without first addressing the juvenile personally and determining that he or she is making the admission voluntarily, with understanding of the nature of the allegations and the consequences of entering the admission. A rote recitation of the language contained in Juv.R. 29(D) is not necessary. However, the trial court must determine that the juvenile understands the allegations contained in the complaint and

the consequences of the admission." Id., citing *In re Clark* (2001), 141 Ohio App.3d 55, 59-60.

{¶31} "The analysis employed in determining whether a juvenile's admission complies with Juv.R. 29 is similar to that used in determining whether a criminal defendant's guilty plea complies with Crim.R. 11. In other words, the trial court must determine whether the juvenile adequately understood his or her rights and the effect of the admission." Id., citing *In re West* (1998), 128 Ohio App.3d 356, 359. "The court is not required to give a detailed explanation of each element of the offense brought against a juvenile but must ensure the juvenile has some basic understanding of the charge." Id., citing *In re Flynn* (1995), 101 Ohio App.3d 778, 782.

{¶32} The courts have also established that the applicable standard for the trial court's acceptance of an admission is substantial compliance. "For purposes of juvenile delinquency proceedings, substantial compliance means that in the totality of the circumstances, the juvenile subjectively understood the implications of his plea." *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, ¶113.

{¶33} The instant appeal involves a juvenile probation revocation hearing. As the Supreme Court of Ohio recently held, in *In re L.A.B.*, 121 Ohio St.3d 112, 2009-Ohio-354, syllabus, Juv.R. 29 applies to juvenile probation revocation hearings.

{¶34} Finally, the juvenile court's compliance with Juv.R. 29 is reviewed de novo. *In re R.A.*, 11th Dist. No. 2009-P-0063, 2010-Ohio-3687, ¶15, citing *In re Beckert* (Aug. 8, 1996), 8th Dist. No. 68893, 1996 Ohio App. LEXIS 3319.

{¶35} Our review of the colloquy between the magistrate and T.W. reflects that the magistrate did ensure that T.W. was making the admission voluntarily with an understanding of the charge against him and the consequences of his admission. The

magistrate also explained the rights enumerated in Juv.R. 29(D)(2) that T.W. would give up by his admission. Although the magistrate did not recite those rights verbatim, such a rote recitation is not required. The magistrate appears to have made efforts to speak about the rights in language intelligible to a 14-year-old, and to ensure that T.W. understood the implications of his admission. Having reviewed the record, we are satisfied that the juvenile court substantially complied with Juv.R. 29, and that T.W.'s admission to a probation violation was voluntarily and knowingly made pursuant to Juv.R. 29. The first assignment of error is without error.

{¶36} **Whether the Trial Court Must Inquire of the Juvenile Regarding the Notice of Probation Conditions**

{¶37} Although we determine that the trial court substantially complied with Juv.R. 29, and T.W.'s admission was voluntary and knowing, we agree with T.W., however, that the trial court failed to comply with Juv.R. 35(B).

{¶38} Juv.R. 35(B) governs revocation of probation. It states:

{¶39} "The court shall not revoke probation except after a hearing at which the child shall be present and apprised of the grounds on which revocation is proposed. The parties shall have the right to counsel and the right to appointed counsel where entitled pursuant to Juv.R. 4(A). *Probation shall not be revoked except upon a finding that the child has violated a condition of probation of which the child had, pursuant to Juv.R. 34(C), been notified.*" (Emphasis added.)

{¶40} Juv.R. 34(C), in turn, provides, in pertinent part:

{¶41} "After the conclusion of the hearing, the court shall enter an appropriate judgment within seven days. A copy of the judgment shall be given to any party requesting a copy. *In all cases where a child is placed on probation, the child shall receive a written statement of the conditions of probation."* (Emphasis added.)

{¶42} T.W. claims that the trial court erred by failing to inquire of him whether he had received a written statement regarding his probation conditions, as required by Juv.R. 35(B). We find this claim to be meritorious.

{¶43} As noted above, juvenile delinquency proceedings must comport with the requirements of due process. "Juv.R. 35(B) recognizes a juvenile's due process rights through its requirements." *In re Royal* (1999), 132 Ohio App.3d 496, 507. As part of a juvenile's due process rights, Juv.R. 35(B) requires that the trial court find, prior to revoking a child's probation, that the child violated a condition of probation and that the child had been notified in the manner prescribed by Juv.R. 34(C). Juv.R. 34(C) requires, in turn, that the child "shall receive a written statement of the conditions of probation."

{¶44} Here, the judgment entry finding T.W. delinquent imposed a commitment to ODYS, "suspended on the condition that "the juvenile follow all terms of intensive probation, court orders, and laws of the State of Ohio." The trial court's judgment entry also stated that "[t]he juvenile is to be placed on intensive probation as result of his TRUE Plea ***." The entry then stated, two paragraphs below, "[t]he juvenile [will] attend school as prescribed by the school district with no [un-]excused absences and disciplinary action," and, in a separate paragraph, "[t]he Juvenile will have NO CONTACT with Alexander Robertson."

{¶45} It is unclear whether Juv.R. 34(C) requires a separate "written statement of the conditions of probation," apart from the judgment entry, or, for that matter, proscribes the use of a separate written statement detailing the precise terms and conditions of probation, as employed in this case. Even assuming the judgment entry in this case suffices as "a written statement of the conditions of probation" for purposes of

Juv.R. 34 (C), what is clear from the rule, however, is probation cannot be revoked without two distinct findings being made on the record by the trial court. The first finding described in Juv.R. 35(B) is that the "child has violated a condition of probation;" the second is a finding that the child had previously been notified of that condition, pursuant to Juv.R. 34(C), mandating that the child "receive a written statement of the conditions of probation" "after the conclusion of the [dispositional] hearing."

{¶46} Our review of the hearing transcript shows that the magistrate failed to engage T.W. in any colloquy to ascertain that he had indeed received a written statement, be it the judgment entry or a separate document or both, notifying him of the precise conditions of his probation. Nor are there any findings to that effect in the magistrate's decision or the trial court's judgment entry adopting the decision. Because the trial court did not comply with a key component of Juv.R. 35(B), substantially or otherwise, its revocation of T.W.'s probation must be reversed.

{¶47} The Eighth District reached the same conclusion in *In re T.B.*, 8th Dist. Nos. 93422 and 93423, 2010-Ohio-523. There, the trial court similarly did not inquire whether the juvenile had received a written statement of his probation conditions. The Eighth District reversed, stating that the trial court "must comply with Juv.R. 35 and inquire whether the juvenile has been notified of the rules of probation pursuant to Juv.R. 34(C)." Id. at ¶15. See, also, *Royal* at 507 (the appellate court reversed the judgment revoking probation and remanded, because the juvenile court did not comply with the required procedures specified in Juv.R. 35(B)).

{¶48} While the dissent correctly notes that language employed in Juv.R . 35(B) does include the word "inquire," the question is begged – how may the trial court make the dual findings required of the rule that: one, the child has violated a condition of

probation and two, that the child had been given a written statement of probation conditions *unless* the child *is actually asked* whether he or she did, in fact, receive the written statement after the earlier dispositional hearing?

{¶49} This step is not form over substance. The purpose of this requirement is to not only assure that the juvenile was on notice of the conditions so he would know how to comport himself while on probation, but to assure the court before it revokes probation that the child actually received a copy of the terms and conditions of probation. Due process requires nothing less when the child is facing a loss of liberty, and the juvenile rules require those specific findings to be made. We may not presume compliance merely from finding a signed document in the court's file.

{¶50} T.W.'s second assignment is well taken, and its resolution renders the third and fourth assignments of error moot.

{¶51} We therefore reverse the judgment and remand this matter to the juvenile court. Upon remand, the juvenile court is to hold a new hearing adjudicating the charge of probation violation against T.W. in compliance with the requirements of Juv.R. 35(B) and Juv.R. 34(C).

{¶52} The judgment of the Ashtabula County Court of Common Pleas, Juvenile Division, is reversed, and case is remanded for further proceedings consistent with this opinion.

THOMAS R. WRIGHT, J., concurs,

TIMOTHY P. CANNON, P.J., dissents with Dissenting Opinion.

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TIMOTHY P. CANNON, P.J., dissenting.

{¶53} I respectfully dissent.

{¶54} In the second assignment of error, T.W. asserts the trial court had a duty to *inquire* whether or not he had previously received a written statement of the conditions of probation and, therefore, the trial court failed to comply with Juv.R. 35(B). There is no requirement, however, in Juv.R. 35(B) that such an *inquiry* be made. Juv.R. 35(B) requires only "a finding that the child has violated a condition of probation of which the child had, pursuant to Juv.R. 34(C), been notified."

{¶55} Juv.R. 34(B) sets forth a procedure that should be employed *at a hearing* if the court seeks to revoke probation. In this case, I believe a *hearing*, as contemplated by the statute, did not occur. Instead, the record indicates that T.W., with the assistance of counsel, entered a plea of "true" to the claimed violation. T.W. acknowledged that he did, in fact, violate a condition of his probation. Further, T.W. had no questions regarding what the probation conditions were. The trial court and T.W. engaged in a colloquy whereby T.W. was advised of his rights and the consequence of admitting to the probation violation. The record reveals that there was *never* an assertion by T.W. that he had not received the written statement of the conditions of probation. The trial court then accepted T.W's plea, eliminating the *need* for a hearing.

{¶56} The Eighth District Court of Appeals case cited to by the majority is distinguishable from the instant matter. See *In re T.B.*, 8th Dist. Nos. 93422 & 93423, 2010-Ohio-523. The Eighth District found, contrary to the finding here, that the *plea* was not properly entered. Id. at ¶13. It also found that the juvenile had not been notified of a violation at all with respect to one of the charges. Id. at ¶15. The Eighth District commented that the trial court should inquire whether the juvenile was made

aware of the conditions of probation but did not specifically find that this must be done where there was an admission of the probation violation.

{¶57} I find the instant matter similar to those circumstances presented in *In re J.G.*, 12th Dist. No. CA2007-10-250, 2008-Ohio-2260. Like J.G., T.W. entered an admission to the probation violation, was represented by counsel, and was advised of his rights and the consequences of admitting to the violation. Id. at ¶41-42. Further, like J.G., the record indicates that T.W. had been notified of the rules concerning his probation, as he signed a document outlining his probation terms. The Twelfth District found that, under these circumstances, "the juvenile court complied with Juv.R. 35(B) in revoking J.G.'s probation." Id. at ¶43.

{¶58} I would hold there has been no violation of Juv.R. 35(B) because of the following: (1) T.W., after being fully advised of the violation charge, admitted it to be true; (2) there was no hearing necessary to determine whether T.W. violated the terms and conditions of his probation due to his acknowledgement, admissions, and plea; and (3) the record reflects T.W. signed, at the time of his disposition hearing, an acknowledgement of the terms and conditions of his probation as required by Juv.R. 34(C).