

[Cite as *In re D.M.*, 2011-Ohio-123.]

IN THE COURT OF APPEALS OF CHAMPAIGN COUNTY, OHIO

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IN RE: D.M.	: C.A. CASE NO. 09CA48
	: T.C. CASE NO. 09JA51
	: (Civil Appeal from Common Pleas Court, Juvenile Division)
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O P I N I O N

Rendered on the 14th day of January, 2011.

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Addie J. King, Asst. Pros. Attorney, Atty. Reg. No.0073959, 200
North Main Street, Urbana, OH 43078
Attorney for Appellee

S. Todd Brecount, Atty. Reg. No.0065276, 108 ½ Miami Street, Urbana,
OH 43078
Attorney for Appellant

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GRADY, P.J.:

{¶ 1} On April 28, 2008, the Juvenile Court of Champaign County adjudicated Appellant, D.M., a delinquent child, and in a companion dispositional order returned D.M. to the Glenn Mills Schools, in Pennsylvania, for completion of its program. That disposition

was ordered in lieu of D.M.'s commitment to the Ohio Department of Youth Services.

{¶ 2} On June 25, 2008, the court ordered D.M. released from his placement at Glenn Mills Schools on a finding that the court lacked funds to pay for D.M.'s further commitment there. The court indicated that it would "have no alternative but to award custody of (D.M.) to the Champaign County Department of Job and Family Services. (CCDJFS)." (Dkt. 8).

{¶ 3} On July 2, 2008, the court entered a further order on D.M.'s placement, following a hearing. The order states that D.M.'s father, mother, and paternal grandparents were at the hearing and had "represented to the Court that they are willing to assume the cost of (D.M.'s) placement at Glenn Mills Schools.

CCDJFS will not, therefore, need to be involved." The order concludes:

{¶ 4} "Consequently, (D.M.'s) placement at Glenn Mills Schools is continued at the cost of (D.M.'s family members). The Court's Probation Department will coordinate the placement payments." (Dkt. 9).

{¶ 5} On February 2, 2009, the court found that D.M. had successfully completed his program at Glenn Mills Schools, and the court ordered D.M. released from that institution and returned home.

{¶ 6} The foregoing orders were entered by the Honorable John C. Newlin. Following Judge Newlin's retirement, one of his successors, the Honorable Lori L. Reisinger, journalized an order on July 13, 2009, sua sponte, requiring D.M.'s father to show cause why he should not be held in contempt for failing to pay unpaid costs of D.M.'s confinement at Glenn Mills Schools in the amount of \$12,080.70. The charges in contempt were subsequently reassigned to another judge of the same court, the Honorable Brett A. Gilbert, for hearing and disposition.

{¶ 7} A hearing was held on October 7, 2009. In an entry journalized on October 16, 2009, (Dkt. 24), the court declined to hold D.M.'s father in contempt, finding that D.M.'s family was unable to then pay the \$12,080.70 owed "due to the decline in the economy." The court rejected the family's contention that Judge Newlin, when that matter had been brought to his attention in an earlier private conversation, had agreed to relieve D.M.'s family of their obligation to pay the cost of D.M.'s commitment. The court found that Judge Newlin gave no such assurances to D.M.'s family, and that, in any event, "[n]o entry was filed relieving (D.M.'s family) of their obligation to pay." The court concluded:

{¶ 8} "For all of the foregoing reasons, the Court finds that (D.M.'s family) remain(s) obligated to pay the cost of (D.M.'s) placement at Glenn Mills Schools in the amount of \$12,080.70.

The court is willing to entertain any reasonable payment plan offered by (D.M.'s family). Said payment plan shall be established with the Court within sixty (60) days of this entry."

{¶ 9} On January 29, 2010, we granted D.M. leave to file a delayed appeal, pursuant to App.R. 5, from the trial court's final order of October 16, 2009. D.M. filed a notice of appeal on December 30, 2009.

ASSIGNMENT OF ERROR

{¶ 10} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN MAKING APPELLANT'S FATHER RESPONSIBLE FOR THE UNPAID TWELVE THOUSAND EIGHTY AND 70/100 DOLLARS (12,080.70) THAT IT COST TO HOUSE THE JUVENILE APPELLANT AT A RESIDENTIAL FACILITY IN PENNSYLVANIA."

{¶ 11} The Juvenile Court's order of April 28, 2008, committing D.M. to Glenn Mills Schools, was a dispositional order made pursuant to R.C. 2151.355 upon the adjudication of D.M.'s delinquency. The dispositional order was temporary in nature and continued until D.M.'s commitment was terminated by the court on February 2, 2009.

R.C. 2151.38. The interim order of July 2, 2008 modified the terms of the temporary dispositional order by requiring D.M.'s family to pay for his confinement. However, to the extent that the July 2, 2008 order imposing that duty on D.M.'s family was an order that affected a substantial right made in a special

proceeding, it was a final order. R.C. 2505.02(B)(2).

{¶ 12} Neither Appellant nor any member of his family filed a notice of appeal from the order of July 2, 2008, requiring his family to pay the costs of his commitment. Therefore, any error the court committed when it entered that order is beyond the scope of our review of the later order of October 16, 2009, from which this appeal was taken.

{¶ 13} The order of October 16, 2009 imposed no additional duty on Appellant or his family. It merely confirmed the duty of payment the order of July 2, 2008 had imposed on D.M.'s family. Appellant argues that the court nevertheless abused its discretion in so doing, because his family reasonably relied on assurances they received from Judge Newlin when they told him they were unable to pay, that the court "would try to work together to take care of the situation." As a result, the family stopped paying the costs of D.M.'s commitment at Glenn Mills Schools. (Brief, p. 10). That contention fails for two reasons.

{¶ 14} First, the Juvenile Court's order of October 16, 2009, found that Judge Newlin gave no assurances on which D.M.'s family could reasonably rely to believe they were relieved of their payment obligation. Appellant contests that finding, arguing that in that event "it is likely that they (his family) would have filed a Motion requesting that the juvenile be removed from Glenn Mills Schools

immediately due to the family's financial situation." (Brief, p. 10). Appellant's assertion concerning what his family might have done is speculative. More importantly, as the Juvenile Court noted, any oral statements Judge Newlin may have made have no legal force and effect because they were not journalized, and a court speaks only through its journal. In other words, Judge Newlin's oral statements, whatever was said, lacked any capacity to relieve D.M.'s family of the obligation imposed by the order of July 2, 2008 that the court had journalized.

{¶ 15} Second, Appellant's contention relies on the principle of estoppel. An "estoppel" arises where one is concerned in or does an act which in equity and good conscience will preclude him from averring anything to the contrary, as where another has been innocently misled into some injurious change of positions. *In re Basmajians's Estate* (1944), 142 Ohio St. 483. Appellant argues that we should find the Juvenile Court is estopped, because of Judge Newlin's alleged assurances, from enforcing the obligation imposed on D.M.'s family which the court confirmed in its October 16, 2009 order. However, "as a general rule, the principle of estoppel does not apply against a state or its agencies in the exercise of a governmental function." *Ohio State Bd. Of Pharmacy v. Frantz* (1990), 51 Ohio St.3d 143, 145-146. The Juvenile Court is an agency of the state, and it engaged in a governmental function

when it issued its October 16, 2009 order. Therefore, estoppel cannot apply.

{¶ 16} The assignment of error is overruled. The judgment from which this appeal is taken will be affirmed.

DONOVAN, J., And FROELICH, J., concur.

Copies mailed to:

Addie J. King, Esq.
S. Todd Brecount, Esq.
Hon. Brett A. Gilbert