

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PIKE COUNTY

IN RE:	:	RELEASED: 02/19/2015
	:	
G.S.,	:	Case No. 14CA852
	:	
A MINOR CHILD.	:	<u>DECISION AND JUDGMENT ENTRY</u>
	:	

APPEARANCES:

Timothy Young, Ohio State Public Defender, and Brooke M. Burns, Ohio State Assistant Public Defender, Columbus, Ohio, for Appellant.

Robert Junk, Pike County Prosecuting Attorney, Waverly, Ohio, for Appellee.

Harsha, J.

{¶1} G.S. assigns four assignments of error in his appeal from the trial court's judgment revoking his community control and imposing his suspended commitment to the Department of Youth Services (DYS). However, G.S. subsequently has moved to dismiss this appeal on the ground that the issues pending before the Court are moot because the trial courts have vacated their entries adjudicating him a delinquent child, and revoking his community control and committing him to DHS. Because the trial courts did not have jurisdiction to vacate their prior entries while this appeal was pending, we deny the motion for voluntary dismissal.

{¶2} But because the trial court never adopted the magistrate's delinquency adjudication, G.S. was never properly adjudicated delinquent, so the trial court also lacked authority to enter its disposition in the first instance. Because the court's dispositional order is void, the judgment revoking G.S.'s community control and imposing his suspended commitment is also void. And because a void order is in effect

a nullity, we dismiss this appeal for lack of a final appealable order, vacate the trial court's judgments, and remand this matter to the Ross County Juvenile Court for further proceedings.

I. FACTS

{¶3} In 2011, Ross County officials filed a complaint that alleged G.S., who was 12 years old, was a delinquent child for committing rape, in violation of R.C. 2907.02. In 2012, the Ross County Juvenile Court magistrate entered a decision that declared the child delinquent for committing rape. However, there is no indication in the record that the Juvenile Court judge adopted the magistrate's decision. Nonetheless, the magistrate subsequently transferred the case to Pike County for disposition.

{¶4} In mid-2012, the Pike County Juvenile Court entered a dispositional order that imposed a suspended one-year commitment to DYS, five years of community control, and ninety days in the juvenile detention center.

{¶5} Approximately two years later, G.S.'s probation officer filed a motion to revoke community control. The trial court subsequently found that G.S. violated community control and invoked his suspended DYS commitment.

{¶6} G.S. filed a timely appeal to this Court in July 2014. During oral argument, we inquired whether a judgment entry adopting the magistrate's decision on the adjudication of G.S. was ever journalized and, if it was not, the impact on this appeal. G.S. also filed a supplemental brief on this issue.

{¶7} In December 2014, G.S. filed a "notice of decisions and motion for voluntary dismissal" asking this Court to dismiss the appeal. In support of the motion, G.S. stated that, on December 15, 2014, the Ross County Juvenile Court vacated its

February 12, 2012 judgment adjudicating G.S. a delinquent child. And, on December 17, 2014, the Pike County Juvenile Court vacated its May 2012 order placing G.S. on community control and its June 23, 2014 order adjudicating G.S. delinquent of a community control violation and committing him to DYS. Both courts cited *In re D.B.*, 129 Ohio St.3d 104, 2011-Ohio-2671, which held that children under age 13 may not be charged with or found delinquent for violating R.C. 2907.02(A)(1)(b), as the basis for vacating the entries. In his motion for voluntarily dismissal, G.S. argues that the issues pending on appeal before this Court are now moot.

II. ASSIGNMENTS OF ERROR

{¶8} G.S. raises four assignments of error:

First Assignment of Error:

“The Pike County Juvenile Court violated G.S.’s right to due process when it committed him to the Department of Youth Services based on an unconstitutional adjudication.”

Second Assignment of Error:

“The Pike County Juvenile Court committed plain error when it failed to grant G.S. credit for the total amount of time he was confined for his offense.”

Third Assignment of Error:

“The Pike County Juvenile Court erred when it adjudicated G.S. delinquent of a probation violation because it did not substantially comply with Juv.R. 29.”

Fourth Assignment of Error:

“G.S. was denied the effective assistance of counsel when counsel failed to object to multiple violations of G.S.’s right to due process.”

III. MOTION FOR VOLUNTARY DISMISSAL

{¶9} It is well-settled that “once an appeal is perfected, the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court’s jurisdiction to reverse, modify, or affirm the judgment.” *State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty.*, 129 Ohio St.3d 30, 2011-Ohio-626, at ¶ 13, citing *State ex rel. Rock v. School Emp. Retirement Bd.*, 96 Ohio St.3d 206, 2002-Ohio-3957. Even when an appeal is taken from an order that the court of appeals ultimately determines is not a final appealable order, the filing of the notice of appeal divests the trial court of jurisdiction to proceed on claims that could be affected by the appeal. *State ex rel. Electronic Classroom of Tomorrow*, supra, at ¶ 16.

{¶10} In his first assignment of error G.S. argues that his due process rights were violated when he was committed to DYS based on an unconstitutional adjudication in violation of *In re D.B.*, supra. The trial courts cited this exact argument to support their entries vacating their earlier decisions; therefore, their attempts to exercise jurisdiction were clearly in conflict with the jurisdiction of the Court of Appeals to reverse, modify, or affirm the judgment. Because the trial courts lacked jurisdiction to enter these judgments, we vacate the Ross County Juvenile Court entry of December 15, 2014 and the Pike County Juvenile Court entry of December 17, 2014. Having vacated these orders, the issues pending before this Court are no longer moot, so we deny the motion for voluntary dismissal.

IV. ANALYSIS

{¶11} Before we consider G.S.’s assignments of error, we address another jurisdictional matter. At oral argument we pointed out that it did not appear that the Ross County juvenile judge had adopted the magistrate’s decision adjudicating G.S. a

delinquent child. We subsequently requested the parties to submit supplemental memoranda addressing this issue and how it impacted this appeal. G.S. filed a supplemental memorandum, but the state did not.

{¶12} In his supplemental memorandum G.S. asserts that the trial court did not adopt the magistrate's decision adjudicating G.S. a delinquent child, which means that his underlying adjudication is not a final, appealable order. G.S. argues that even though his underlying adjudication is not a final, appealable order, the Pike County Juvenile Court's judgment revoking G.S.'s community control and imposing his suspended commitment is a final, appealable order. G.S. then contends that because the trial court never adopted the magistrate's decision adjudicating G.S. a delinquent child, G.S. was never properly adjudicated delinquent and all subsequent orders are void.

A. FINAL, APPEALABLE ORDER

{¶13} Appellate courts "have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district[.]" Ohio Constitution, Article IV, Section 3(B)(2). If a court's order is not final and appealable, we have no jurisdiction to review the matter and must dismiss the appeal. *E.g., State v. Ogle*, 4th Dist. Hocking No. 14CA17, 2014–Ohio–4868, ¶4. If the parties do not raise the jurisdictional issue, we must raise it *sua sponte*. *E.g., In re B.J.G.*, 4th Dist. Adams. No. 10CA894, 2011–Ohio–5195, ¶6.

{¶14} R.C. 2505.02(B)(2) provides that an order is final and appealable if it "affects a substantial right made in a special proceeding or upon a summary application

in an action after judgment.” “Substantial right” means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect. R.C. 2505.02(A)(1). A “special proceeding” is “an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.” R.C. 2505.02(A)(2).

{¶15} Juvenile court proceedings are special proceedings. *State ex rel. Fowler v. Smith*, 68 Ohio St.3d 357, 360, 626 N.E.2d 950 (1994). Additionally, “[a]n order revoking probation and imposing sentence is a final, appealable order from which an appeal is routinely taken.” *State ex rel. Tucker v. Rogers*, 66 Ohio St.3d 36, 607 N.E.2d 461, 462 (1993). Likewise, an order revoking a juvenile delinquent’s community control and imposing a suspended commitment is a final, appealable order. *See In re Williams*, 4th Dist. Washington No. 05CA56, 2006-Ohio-4657, fn. 1 (observing that juvenile court actions are special proceedings and that order to pay support affects a substantial right).

{¶16} On its face, the trial court’s order revoking G.S.’s community control and imposing his suspended commitment appears, to be a final, appealable order. The court’s order was made in a special proceeding, *i.e.*, a juvenile proceeding, and it affects G.S.’s substantial rights. *See generally State v. Speaks*, 17 Ohio App.2d 129, 130, 244 N.E.2d 799, 800 (4th Dist.1969) (noting that community control revocation and imposition of sentence involves an accused’s substantial rights). However, further examination of the proceedings that led to the court’s judgment revoking G.S.’s community control and imposing his suspended commitment shows that the court’s judgment is void and, hence, not appealable because it is a nullity. In other words the

entry revoking community control and imposing the suspended commitment is not a final appealable order, so we must dismiss the appeal.

B. VOID JUDGMENTS

{¶17} Under Juv.R. 40(D)(4)(a) a magistrate's decision is not effective unless the trial court adopts it. Thus, a magistrate's delinquency adjudication is of no effect unless and until the trial court adopts it. *In re C.B.*, 2nd Dist. Montgomery No. 23615, 2010-Ohio-2129, ¶34. "[M]agistrate's decisions * * * have no adjudicative force or effect, regardless of the findings or conclusions contained therein, unless and until the court adopts them." *Roe ex rel. Roe v. Heap*, 10th Dist. Franklin No. 03AP-586, 2004-Ohio-2504, ¶36; accord *In re P.S.*, 10th Dist. Franklin No. 07AP-516, 2007-Ohio-6644.

{¶18} A court cannot "consider matters relating to disposition" until "there has been an adjudication." Giannelli and Salvador, *Ohio Juvenile Law*, Section 19.1 (2014). This means that until a trial court adopts a magistrate's delinquency decision, the trial court lacks authority to consider matters relating to disposition. Thus, a dispositional order entered before the court adopts the magistrate's delinquency adjudication is void, as being contrary to law. See *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, ¶ 22, 23; *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, ¶27 ("A void [judgment] is one that a court imposes despite lacking * * * the authority to act."); *In re C.W.*, --- Ohio App.3d ---, 2013-Ohio-2483, 991 N.E.2d 1167, (4th Dist.) ("If a juvenile court imposes a sanction that is unauthorized by law, then that sanction is void."), citing *State v. Billiter*, 134 Ohio St.3d 103, 2012-Ohio-5144, ¶ 10. See, also *In re Brown*, 9th Dist. Medina App. No. 3096-M (Feb. 28, 2001), 2001 WL 196578 (stating that trial court dispositional order is invalid until court entered adjudication order).

{¶19} “The effect of determining that a judgment is void is well established. It is as though such proceedings had never occurred; the judgment is a mere nullity and the parties are in the same position as if there had been no judgment.” *Billiter* at ¶10, quoting *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, ¶12, quoting *Romito v. Maxwell*, 10 Ohio St.2d 266, 267–268, 227 N.E.2d 223 (1967). When a trial court issues a judgment without authority to do so, the court of appeals may vacate the order and dismiss an appeal from that order. *Painter & Pollis*, Ohio Appellate Practice (2014-2015 ed.), § 2:1 and fn. 7. See also, *Fifth Third Mtge., Co. v. Rankin*, 4th Dist. Pickaway No. 11CA18, 2012-Ohio-2804, ¶ 9; *State v. Clay*, 4th Dist. Lawrence No. 11CA23, 2013-Ohio-4649, ¶ 76 (noting that an appellate court has inherent authority to vacate a void judgment); *Infinite Sec. Solutions, L.L.C. v. Karam Properties I, Ltd.*, 6th Dist. Lucas No. L-12-1313, 2013-Ohio-4415, ¶ 24 (stating that void judgment is not a final, appealable order); *State v. Bedford*, 184 Ohio App.3d 588, 2009-Ohio-3972, 921 N.E.2d 1085 ¶11 (9th Dist.) (observing that void judgment is not a final, appealable order). “A court has inherent power to vacate a void judgment because such an order simply recognizes the fact that the judgment was always a nullity.” See *Cincinnati School Dist. Bd. of Ed. V. Hamilton Co. Bd. of Revision*, 87 Ohio St.3d 363, 368, (2000), citing *Van DeRyt v. Van DeRyt*, 6 Ohio St.2d 31, 36, 35 O.O.2d 42, 215 N.E.2d 698 (1966). However, a trial court may not exercise that inherent power where it conflicts with an appellate court’s exercise of jurisdiction. A trial court cannot rectify the very issue on appeal when it realizes the appellant’s argument is correct. *Painter & Pollis*, supra at § 1:17, citing *State v. Triplett*, 4th Dist. Lawrence No. 11CA3, 2011-Ohio-5431 at ¶ 7.

{¶20} Here, the Ross County trial court never adopted the magistrate's delinquency adjudication. Thus, G.S.'s delinquency adjudication is not effective. Because the Pike County trial court was not authorized to consider matters relating to disposition, its subsequent dispositional order imposing community control is void. Obviously, G.S. cannot be in violation of any void orders, including the disposition of the community control violation.

C. CONCLUSION

{¶21} Because the Ross County Juvenile Court never adopted the magistrate's decision, there has not been an effective adjudication. Without that, there is no final appealable order. Nonetheless, because the trial courts lacked jurisdiction to act inconsistently with our jurisdiction during the pendency of the appeal, we vacate the Ross County Juvenile Court's entry of December 15, 2014 and the Pike County Juvenile Court's entry of December 17, 2014. Furthermore, because there was no adjudication, there could be no disposition. Therefore, we also vacate all the trial courts' judgment entries subsequent to the unadopted Ross County magistrate's decision, and remand to the Ross County Juvenile Court so that it can now exercise its jurisdiction as it sees fit. We dismiss the appeal for lack of a final appealable order.

JUDGMENT VACATED AND REMANDED; APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS VACATED AND REMANDED; APPEAL DISMISSED. Costs shall be waived.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pike County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

Abele, J. & McFarland, A.J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.