

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

IN THE MATTER OF:	:	Case No. 15CA3510
	:	
J.C.,	:	
	:	
ADJUDICATED DELINQUENT	:	<u>DECISION AND</u>
CHILD.	:	<u>JUDGMENT ENTRY</u>
	:	
	:	<b>RELEASED 07/22/2016</b>

---

APPEARANCES:

Brooke M. Burns, Columbus, Ohio, for Appellant.

Matthew S. Schmidt and Pamela C. Wells, Chillicothe, Ohio, for Appellee.

---

Harsha, J.

{¶1} J.C. appeals from two separate trial court judgments that respectively (1) revoked his community control and imposed his suspended commitment to the Department of Youth Services (DYS), and (2) classified him a Tier I juvenile sex offender registrant. First J.C. asserts that because he was not 14 years of age or older at the time of the offense, the trial court could not classify him as a juvenile sex offender registrant. The Revised Code does not permit a trial court to classify a delinquent child as a juvenile sex offender registrant unless the child is 14 years of age or older. Because the state concedes that J.C. had not reached his 14th birthday at the time he committed the sex offense, the trial court erred by classifying him as a juvenile sex offender registrant. Accordingly, we sustain J.C.'s first assignment of error and vacate the trial court's judgment imposing that classification upon him.

{¶2} Next J.C. challenges the trial court's decision to revoke his community control and impose his suspended commitment to DHS. Because the trial court never

adopted the magistrate's decision to place J.C. on electronic monitoring, it lacked authority to enter a dispositional order addressing any purported violation of that sanction. Thus, the trial court's dispositional order imposing his suspended sentence is void. Because a void order is in effect a nullity, we vacate the order revoking J.C.'s community control and imposing his suspended commitment. Accordingly, we dismiss that part of the appeal for lack of final appealable order.

### I. FACTS

{¶3} Following his delinquency adjudication for committing fourth-degree felony gross sexual imposition, the court committed J.C. to DYS. However, the court suspended the commitment and placed J.C. on community control. Over the next year and one-half, J.C.'s probation officer filed several complaints alleging that J.C. violated the court's community control order. This eventually resulted in the magistrate issuing a decision to place J.C. on electronic monitoring. However, due to an apparent oversight, the trial court failed to adopt the magistrate's decision.

{¶4} Shortly after J.C. was in fact placed on electronic monitoring, his probation officer filed a complaint alleging that J.C. cut off the device and thus violated the monitoring requirement. The magistrate subsequently found that J.C. violated the terms of his community control.<sup>1</sup> However, it appears that the trial court never adopted this finding either.

---

<sup>1</sup> Although the magistrate and the trial court referred to the child's violation as a violation of his probation, R.C. 2152.19(A)(k) states that electronic monitoring is a form of community control. Probation may be separately imposed as a community control sanction. R.C. 2152.19(A)(4)(a) and (b). See *In re J.F.*, 121 Ohio St.3d 76, 2009-Ohio-318, 902 N.E.2d 19.

{¶15} Next, the magistrate issued a decision revoking J.C.'s probation and imposing the previously suspended commitment to DYS. On that same date the trial court entered a nearly identical order. The following day the trial court classified J.C. as a Tier I juvenile sex offender registrant.

## II. ASSIGNMENTS OF ERROR

{¶16} The child raises three assignments of error.

### FIRST ASSIGNMENT OF ERROR:

THE ROSS COUNTY JUVENILE COURT VIOLATED J.C.'S RIGHT TO DUE PROCESS WHEN IT CLASSIFIED HIM AS A JUVENILE SEX OFFENDER REGISTRANT BECAUSE THE RECORD ESTABLISHES THAT J.C. WAS NOT AGE ELIGIBLE FOR REGISTRATION AT THE TIME OF THE OFFENSE.

### SECOND ASSIGNMENT OF ERROR:

THE ROSS COUNTY JUVENILE COURT VIOLATED J.C.'S RIGHT TO DUE PROCESS WHEN IT ACCEPTED J.C.'S ADMISSION TO A PROBATION VIOLATION WITHOUT FIRST INFORMING HIM THAT HIS ADMISSION COULD RESULT IN THE INVOCATION OF HIS SUSPENDED COMMITMENT TO THE OHIO DEPARTMENT OF YOUTH SERVICES.

### THIRD ASSIGNMENT OF ERROR:

J.C. WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL FAILED TO OBJECT TO THE IMPOSITION OF AN UNLAWFUL CLASSIFICATION AND TO THE REVOCATION OF J.C.'S PROBATION.

## III. ANALYSIS

### A. JUVENILE SEX OFFENDER REGISTRANT CLASSIFICATION

{¶17} In his first assignment of error J.C. asserts that the trial court erred by classifying him as a Tier I juvenile sex offender registrant because he was not 14 years of age or older at the time of the offense. The child's notice of appeal did not specifically refer to the trial court's classification decision. However, we have liberally

construed the notice of appeal to include this decision. See, Baldwins *Ohio Appellate Practice*, Painter & Pollis (2015-2016 ed), § 3:12 indicating such an omission does not deprive us of jurisdiction, citing multiple sources of authority.

{¶8} The state concedes that J.C. did not meet the age threshold and that the trial court could not classify him as a juvenile sex offender registrant. Because the state concedes J.C.'s age at the time of the offense, we agree that the trial court could not classify him as a juvenile sex offender registrant. See *In re D.S.*, 2016-Ohio-1027, ¶13 (“[O]nly a child 14 years of age or older at the time of the offense is subject to classification and the corresponding registration requirements.”). R.C. 2152.191 clearly states that a child must be 14 years of age or older at the time of the offense before a trial court may conduct a sex offender classification hearing. *Id.* Thus, the trial court erred by classifying J.C. as a juvenile sex offender registrant.

{¶9} Although, we question the timing of the trial court's classification hearing, see R.C. 2152.83(B)(1), the parties have not raised this issue. Moreover, any error in the timing of the classification hearing would not appear to affect our jurisdiction. See *In re B.W.K.*, 11th Dist. Portage No. 2009-P-0058, 2010-Ohio-3050, ¶13, *In re Thrower*, 11th Dist. No.2008-G-2813, 2009-Ohio-1314, ¶28, and *State v. Dawson*, 2nd Dist. Montgomery No. 25448, 2013-Ohio-4074, ¶¶29-30 (explaining that juvenile court may hold classification hearing under R.C. 2152.83(B) at any time during dispositional phase so long as juvenile court otherwise has jurisdiction). Consequently, we need not address this issue.

{¶10} Accordingly, we sustain the child's first assignment of error and vacate the trial court's decision classifying him as a Tier I juvenile sex offender registrant.

## B. FINAL APPEALABLE ORDER

{¶11} The child’s second and third assignments of error challenge the trial court’s decision revoking his community control and imposing his suspended commitment. However, first we consider whether we have jurisdiction to review this decision.

{¶12} 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–Ohio5195, ¶6.

{¶13} 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).

{¶14} 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 because it emanates from a special proceeding and affects a substantial right.

{¶15} Nonetheless, we requested the parties to submit supplemental memoranda addressing whether we have jurisdiction. Both parties agree that based upon our decision in *In re G.S.*, 4th Dist. Pike No. 14CA852, 2015-Ohio-1285, the trial court’s decision is not a final appealable order.

{¶16} In *G.S.* we determined that the trial court’s order revoking the child’s community control and imposing his suspended commitment was void because the court had never adopted the magistrate’s underlying delinquency adjudication. We applied the following analysis:

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.

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 [adjudicatory] decision, the trial court lacks authority to consider matters relating to disposition. Thus, a dispositional order entered before the court adopts the magistrate’s \* \* \* 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).

“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.” *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).

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.

G.S. at ¶¶17-20.

{¶17} A similar analysis applies here. First, it is not clear that the trial court properly adopted the magistrate’s August 11, 2015 decision finding the child violated the terms of his community control by removing his electronic monitoring device. And more importantly, it is abundantly clear that the trial court never adopted the magistrate’s prior decision that imposed electronic monitoring as a community control sanction. Because the trial court never adopted the magistrate’s community control sanction, that sanction never became effective. In the absence of an effective sanction, the court could not address a violation of a nonexistent term of community control. Therefore, its subsequent dispositional order revoking J.C.’s community control and imposing the

suspended commitment is void.<sup>2</sup> Accordingly, we vacate the trial court's September 14, 2015 dispositional order.

{¶18} Finally, because the trial court's September 14, 2015 dispositional order is void, it cannot be a final appealable order.

#### IV. CONCLUSION

{¶19} Accordingly, we sustain J.C.'s first assignment of error and vacate the trial court's judgment classifying him a juvenile sex offender registrant. We vacate the trial court's decision revoking J.C.'s community control and imposing his suspended commitment, dismiss the part of this appeal that relates to the trial court's September 14, 2015 dispositional order for lack of jurisdiction, and remand to the trial court.

JUDGMENTS VACATED,  
APPEAL DISMISSED IN PART,  
AND CAUSE REMANDED.

---

<sup>2</sup> Because the trial court's judgment that classified the child a juvenile sex offender registrant is a separate and distinct document based upon the child's underlying delinquency adjudication for the sex offense—and not for the community control violation—the foregoing analysis does not apply to the court's classification judgment. Although the child's delinquency adjudication for the community control violation may have prompted the court's sex-offender classification decision, its classification decision is not dependent upon that adjudication. See ¶ 7, *supra*.



**JUDGMENT ENTRY**

It is ordered that the JUDGMENTS VACATED, APPEAL DISMISSED IN PART, AND CAUSE REMANDED and that Appellee shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

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

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Abele, J. & Hoover, 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.**