

[Cite as *In re Anthony C.*, 2010-Ohio-1668.]

COURT OF APPEALS
PERRY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE: ANTHONY C.,
A MINOR CHILD

JUDGES:
Hon. Julie A. Edwards, P.J.
Hon. William B. Hoffman, J.
Hon. Sheila G. Farmer, J.

Case No. 09-CA-3

OPINION

CHARACTER OF PROCEEDING: Appeal from the Perry County Court of
Common Pleas, Juvenile Division, Case
2008 A 338

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: April 14, 2010

APPEARANCES:

For Appellant

For Appellee

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Hoffman, J.

{¶1} Appellant A.C., a minor, appeals the January 15, 2009 Judgment Entry of the Perry County Court of Common Pleas, Juvenile Division, accepting his admission to violation of the terms of his probation and ordering him committed to the Ohio Department of Youth Services.

STATEMENT OF THE CASE

{¶2} On January 12, 2009, the State of Ohio filed a complaint alleging Appellant was noncompliant with the terms of his probation. At a hearing on the same date, Appellant entered an admission to the violation. The hearing was recorded, but the recording did not commence recording at the beginning of the hearing. Accordingly, the record of the hearing is incomplete.

{¶3} On January 15, 2009, via Judgment Entry, the trial court accepted Appellant's admission, and ordered Appellant committed to DYS for a minimum of six months.

{¶4} On February 13, 2009, Appellant filed an appeal with this Court from the trial court's January 15, 2009 Judgment Entry. On March 25, 2009, the record, including the incomplete transcript of the hearing, was filed. The trial court attached two affidavits of probation officers present during the hearing.

{¶5} On May 15, 2009, Appellant moved this Court to strike the affidavits from the record. On June 12, 2009, this Court remanded the matter to the juvenile court to resolve the record as both parties agreed the affidavits should be stricken from the record and both agreed the missing portions of the transcript could not be recreated pursuant to Appellate Rule 9(C).

{¶16} The trial court has taken no further action to complete the record.

{¶17} Appellant now assigns as error:

{¶18} “I. THE JUVENILE COURT VIOLATED ANTHONY C.’S RIGHT TO COUNSEL AND TO DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION, OHIO REVISED CODE SECTION 2151.352, AND JUVENILE RULES 3, 4, AND 29.

{¶19} “II. THE JUVENILE COURT COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO PROPERLY RECORD ITS PROCEEDINGS. FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, SECTION 10 AND 16, ARTICLE I OF THE OHIO CONSTITUTION, AND JUV.R. 37(A).”

II.

{¶10} We proceed in addressing Appellant’s second assigned error as we find it dispositive of the first assignment of error.

{¶11} Appellant maintains the trial court erred in failing to properly record the proceedings for his appeal. Juvenile Rule 37(A) requires the juvenile court to make a record of adjudicatory and dispositional proceedings. The record shall be taken in shorthand, stenotype, or by any other adequate mechanical, electronic or video recording device.

{¶12} In *In re B.E.* the Ohio Supreme Court held:

{¶13} “In this case, appellee's counsel stated in a document filed in the court of appeals that he had attempted to comply with App.R. 9(C) but could not do so because neither trial counsel recollected the missing testimony; thus, appellee alleged that she

was unable to reconstruct the record. Under the facts of this case, we are unwilling to presume the validity of the juvenile court's proceedings in the absence of an App.R. 9(C) statement, as appellant urges us to do. In this situation, where it is alleged that the missing testimony cannot be recreated, we believe that justice dictates that the matter be remanded for a rehearing. Otherwise, we would be penalizing an appellant for the court's inability to comply with an established court rule in the first place. Therefore, we hold that when a juvenile court fails to comply with the recording requirements of Juv.R. 37(A) and an appellant attempts but is unable to submit an App.R. 9(C) statement to correct or supplement the record, the matter must be remanded to the juvenile court for a rehearing.

{¶14} “In reaching this holding, we admonish juvenile courts to take seriously their obligation to ensure that these types of proceedings are recorded properly. Far too often, we see incomplete records, frequently caused by malfunctioning audio-recording devices. Obviously, it is in the court's best interest to properly record its proceedings the first time around, preferably through the use of a court stenographer. As we cautioned the court and bar in the context of Crim.R. 22: ‘The minimal effort needed to comply with Crim.R. 22 is far outweighed by the expense, in time and taxpayer money, of retrying a complex criminal case.’ *State v. Brewer*, 48 Ohio St.3d at 61, 549 N.E.2d 491. The same holds true in juvenile court proceedings.”

{¶15} In the case sub judice, the beginning of the hearing was not transcribed; therefore, there is no record of whether the court complied with fully advising Appellant of his right to counsel and the entry of admission requirements found in Juvenile Rule 29(B) and (D). Both parties agree an App.R. 9(C) statement cannot be created from

memory. Pursuant to the holding in *In re B.E.* set forth above, we remand this matter to the trial court for rehearing.

{¶16} The second assignment of error is sustained.

I.

{¶17} In light of our analysis and disposition of Appellant's second assignment of error, we find Appellant's first assignment of error moot.

{¶18} The January 15, 2009 Judgment Entry of the Perry County Court of Common Pleas is reversed and the matter remanded for further proceedings in accordance with the law and this opinion.

By: Hoffman, J.

Edwards, P.J. and

Farmer, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

