

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF: M.H.

A MINOR CHILD

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JUDGES:

Hon. William B. Hoffman, P.J.

Hon. W. Scott Gwin, J.

Hon. Sheila G. Farmer, J.

Case No. 14-CA-9

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Juvenile Division, Case No.
A2013-0465

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT:

December 18, 2014

APPEARANCES:

For Appellant

CHARLYN BOHLAND
Assistant Public Defender
250 East Broad Street
Suite 1400
Columbus, OH 43215

For Appellee

KENNETH W. OSWALT
Licking County Prosecutor

By: JUSTIN T. RADIC
20 South Second Street
Fourth Floor
Newark, OH 43055

Hoffman, P.J.

{¶1} On June 24, 2013, a complaint was filed in Wayne County Juvenile Court alleging Appellant, M.H., a thirteen year old, to be delinquent for committing one count of assault while residing in Boy's Village Network in violation of R.C. 2903.13, a misdemeanor of the first degree if committed by an adult.

{¶2} An adjudicatory hearing before a magistrate was held on July 3, 2013. Appellant made an admission and was adjudicated delinquent. By Judgment Entry filed July 8, 2013, the Wayne County Juvenile Court found Appellant to be delinquent, determined he was a resident of Licking County, and certified the matter to Licking County for disposition.

{¶3} Appellant was already before the Licking County Juvenile Court for allegedly committing two counts of assault, Case No. A2013-0083. Per a judgment entry filed in that case on May 8, 2013, Appellant was undergoing residential competency attainment services to be restored to competency in order to stand trial for those two assault counts. Appellant had been placed in Boy's Village Network wherein the Wayne County assault occurred.

{¶4} Follow-up hearings on Appellant's competency, both oral and non-oral, were held on August 19, and September 30, 2013, with services being continued. Another hearing was held on November 19, 2013, wherein Appellant was found to be competent. By Judgment Entry filed November 20, 2013, the trial court approved and adopted the magistrate's November 19, 2013 decision, finding Appellant to be competent to stand trial on the two assault counts and ordering a dispositional hearing date for the Wayne County case.

{¶5} A dispositional hearing before a magistrate was held on January 10, 2014. By Judgment Entry filed January 13, 2014, the trial court approved and adopted the magistrate's January 10, 2014 decision, waiving fines and court costs and closing the Wayne County case without further action.

{¶6} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶7} "M.H. WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION; AND, ARTICLE I, SECTION 10, OHIO CONSTITUTION."

II

{¶8} "M.H. WAS DENIED HIS RIGHT TO DUE PROCESS OF LAW WHEN HE WAS ADJUDICATED DELINQUENT WHILE HE WAS INCOMPETENT, IN VIOLATION OF R.C. 2152.51; THE FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION; AND, ARTICLE I, SECTION 16, OHIO CONSTITUTION."

II

{¶9} We begin our analysis with this assignment of error as we find it dispositive of the appeal.

{¶10} Appellant claims he was denied due process at the adjudication hearing as he was incompetent at the time, and the Licking County Juvenile Court erred in accepting jurisdiction for disposition. We agree.

{¶11} R.C. 2151.271 governs transfer to juvenile court of another county and states the following in pertinent part:

Except in a case in which the child is alleged to be a serious youthful offender under section 2152.13 of the Revised Code, if the child resides in a county of the state and the proceeding is commenced in a juvenile court of another county, that court, on its own motion or a motion of a party, may transfer the proceeding to the county of the child's residence upon the filing of the complaint or after the adjudicatory, or dispositional hearing, for such further proceeding as required. The court of the child's residence shall then proceed as if the original complaint had been filed in that court. Transfer may also be made if the residence of the child changes. The proceeding shall be so transferred if other proceedings involving the child are pending in the juvenile court of the county of the child's residence.

{¶12} Appellant resided in Licking County, and other proceedings were pending in the Licking County Juvenile Court. The Wayne County case was properly transferred to Licking County pursuant to R.C. 2151.271.

{¶13} During the three month hearing review on the competency issue held on August 19, 2013, the magistrate acknowledged competency had not been raised in the Wayne County case. August 19, 2013 T. at 3. The matter was continued until November to see if Appellant would be restored to competency. *Id.* at 4.

{¶14} A hearing was held on November 19, 2013. A report by clinical psychologist, Cecil Miller, Ph.D., finding Appellant competent to stand trial was

stipulated to by the parties. November 19, 2013 T. at 5-6. An adjudicatory hearing before a magistrate was held on December 10, 2013 on the two Licking County assault counts. By Judgment Entry filed December 11, 2013, the trial court approved and adopted the magistrate's December 10, 2013 decision, adjudicating Appellant delinquent for committing the two counts. A dispositional hearing on both adjudications, Wayne County and Licking County, was held on January 10, 2014.

{¶15} By judgment entry filed January 13, 2014, the trial court approved and adopted the magistrate's January 10, 2014 decision on the Wayne County case, waiving fines and court costs and closing the case without further action.¹

{¶16} Appellant did not file objections on the competency issue pursuant to Juv.R. 40(D)(3); therefore, this court will rely on the plain error standard of review per Juv.R. 40(D)(3)(b)(iv). In order to prevail under a plain error analysis, Appellant bears the burden of demonstrating the outcome clearly would have been different but for the error. *State v. Long*, 53 Ohio St.2d 91 (1978). Notice of plain error "is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *Id.* at paragraph three of the syllabus.

{¶17} Upon review, we find the record establishes plain error.

{¶18} The state stipulated, in May of 2013, in the Licking County Juvenile Court case Appellant was incompetent and six months was needed to possibly restore him to competency. Follow-up hearings reviewing Appellant's competency were held on August 19, 2013, and September 30, 2013, resulting in services to attempt to restore

¹We note appellate counsel failed to prepare a legible magistrate's decision per Loc.R. 9(A)(1)(a) of the Fifth Appellate Judicial District.

him to competency to continue. It was not until November, 2013, it was determined Appellant's competency had been restored.

{¶19} We find the state is estopped from arguing Appellant was incompetent in the Licking County case from May 8, 2013, through [at the earliest] September 30, 2013, yet assert he was competent to admit the charge in the Wayne County Juvenile Court on July 3, 2013.

{¶20} Appellant's second assignment of error is sustained.

I

{¶21} In light of our disposition of Appellant's second assignment of error we find discussion of Appellant's first assignment of error to be moot.

{¶22} The judgment of the Court of Common Pleas of Licking County, Ohio, Juvenile Division is reversed and the case remanded to that court for further proceedings.

Hoffman, P.J.

Gwin, J. concurs,

Farmer, J. dissents

Farmer, J., dissents

{¶23} I respectfully dissent from the majority's analysis of plain error in Assignment of Error II.

{¶24} The Wayne County complaint filed June 24, 2013, states appellant was a resident of Village Network, 2803 Akron Road, Wooster, and alleges appellant assaulted Desiree Harris.

{¶25} Appellant waived his right to counsel for the detention hearing on June 24, 2013. Thereafter, defense counsel was appointed and on June 27, 2013, defense counsel requested specific discovery including "[a]ll evidence known to the prosecuting attorney, favorable to the child and material either to guilt or punishment."

{¶26} In response, on July 2, 2013, the state provided six files via web portal, wayne-oh.matrixdiscovery.com: (1) Victim Statement - Desiree Harris written statement; (2) 1st Police Report - Incident report; (3) 1st Police Report - Local police record; (4) 1st Police Report – Narrative; (5) 1st Police Report - Suspect sheet; and (6) 1st Police Report - Village Network information sheet.

{¶27} The adjudicatory hearing before a magistrate was held the next day on July 3, 2013. Appellant argues the following exchange between him and the magistrate demonstrates an issue regarding competency (July 3, 2013 T. at 6-8):

THE COURT: Anyone promise you anything?

M.H.: Yes, Your Honor, later, yes ma'am.

THE COURT: Ok, who is promising you something?

M.H.: If I admit that, they said that they'd, they'd promised me I would not go back to detention.

THE COURT: So is that why you are admitting this charge or are you admitting it because you did it?

M.H.: I suppose I'm admitting, I'm just gonna, the ends.

THE COURT: You're admitting it because you did it?

M.H.: Um, just, they said if I admit, you know, I wouldn't have to go back to a floor, that a couple, a couple more weeks that's why I am admitting, said I wouldn't have to go back to (inaudible) and there's a place.

MS. BROWN [Defense Counsel]: Your Honor for the record, I explained to him that if he entered a denial today that it would be set for an adjudicatory and that could take a couple of weeks and that he would remain in our detention center pending that hearing and that my understanding was that after going through the police report with him, that he was going to admit to the complaint in which case he would return to our detention center until later this afternoon.

THE COURT: Ok.

MS. BROWN: When Osterlen would come and pick him up.

THE COURT: Ok, so [M.] are you admitting this charge because you did it, your attorney went over the police report with you, so did you commit this assault on Desiree Harris or not?

M.H.: Yes ma'am. Yes ma'am.

THE COURT: Ok, ma'am. Ok, did you hit Desiree Harris?

M.H.: Um, yes Your Honor, I'm admitting Your Honor.

THE COURT: Ok, so you are admitting this because, so no one promised you anything, you are admitting this charge because you did it?

M.H.: Um.

MS. H. [Mother]: Stand your ground.

MS. BROWN: Your Honor at this time, I would ask that we just set this for the contested adjudicatory and then. I don't feel comfortable at this point.

THE COURT: Ok, then this case will be set for adjudication, and [M.] will be held in our detention center until the adjudication. Attorney Brown?

MS. BROWN: Your Honor apparently one of the issues here is that [M.] apparently felt that he was being improperly restrained and that is why he struck out. But in regard to the actual assault, I believe he is indicating that he did hit Ms. Desiree, um, Ms. Harris and wants to admit to that today and proceed.

{¶23} During allocution, appellant stated the following (*Id.* at 10):

M.H.: She [Desiree Harris] was, I was trying to get in my own room from um, I asked and I go back in to the cottage and she say no and then that's when I started like standing, that's when I started like standing like beside like the bushes and then that's when I tried to like stand beside the

bushes and coming, into like, into like I'd trying to get in so I can go to my room.

{¶29} I would find this dialogue and the accompanying record of discovery does not support that appellant was incompetent. The issue of why appellant was in Boy's Village Network was obviously known and rejected as a viable defense.

{¶30} During the Licking County dispositional hearing on both adjudications, Wayne County and Licking County, the magistrate stated the following (January 10, 2014 T. at 24-25):

THE COURT: And what I'm going to do is, [M.], I've got three cases I could lock you up on a lot of time on all this. I'm not going to do that. What I'm going to do is I'm going to - - I am going to send you to DYS, but only on one count. You'll actually be closer to your mom. I'm going to send him for six months. The way I'm going to do this is - -

MS. SCOTT [Mother]: Oh, my gosh.

THE COURT: - - I'm going to give you credit for on one of the counts entirely and suspend it for time served on one count. You'll be sent to DYS on the other count with no credit. [M.], you're going to be actually closer to your mom this way, and you'll be transported there as soon as possible.

MS. SCOTT: Six months?

THE COURT: Now, if you behave yourself, this can be over by the time warmer weather rolls around, but this is the best I can do for you. On the - - the case transferred from Wayne County, I'm going to close that

out. I'm not even going to do anything additional to you on that case. So of three cases I'm trying to - - two of them are going completely away, so I'm being as kind as I possibly can.

{¶31} By judgment entry filed January 13, 2014, the trial court approved and adopted the magistrate's January 10, 2014 decision on the Wayne County case, waiving fines and court costs and closing the case without further action.

{¶32} I would find no plain error and I would affirm the adjudication by the Wayne County Juvenile Court and the dispositional order of the Licking County Juvenile Court.

[Cite as *In re M.H.*, 2014-Ohio-5653.]