[Cite as *In re Ryan G.*, 2002-Ohio-1520.]

IN THE COURT OF APPEALS OF ERIE COUNTY

In the matter of: Ryan G. **Court of Appeals No. E-01-027**

Trial Court No. 01-JF-077

DECISION AND JUDGMENT ENTRY

Decided: March 29, 2002

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Jeffrey J. Whitacre, Erie County Public Defender, and Allison A. Mittendorf, Assistant Public Defender, for appellant.

Kevin J. Baxter, Erie County Prosecuting Attorney, and Charles Bennett, Assistant Prosecuting Attorney, for appellee.

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PIETRYKOWSKI, P.J.

{¶1} This case is before the court on appeal from the Erie County Court of Common Pleas, Juvenile Division, which adjudicated appellant Ryan G. a delinquent for having committed a crime that would have constituted rape if committed by an adult. For the reasons that follow, we affirm.

{¶2} In May 2001, a complaint was filed in the Erie County Court of Common Pleas, Juvenile Division, alleging that appellant committed rape when, as a thirteen year old, he engaged in sexual intercourse with a twelve-year-old girl. Before the adjudication

hearing began, appellant moved to dismiss the complaint or, in the alternative, to amend the complaint to allege that he was unruly instead of delinquent. At the beginning of the hearing, the trial court denied this motion.

{¶3} At his adjudication hearing, appellant stipulated to the following facts: (1) that his date of birth is November 4, 1987, and the twelve-year-old girl's date of birth is June 10, 1988; (2) that he engaged in vaginal sexual intercourse with the girl in question, using a condom; (3) that at the time that the two engaged in sexual intercourse, he was thirteen years old and the girl was twelve; (4) that the intercourse was consensual and no force or coercion was used against the girl; (5) that sexual intercourse with the girl occurred only once and there was not an on-going sexual relationship between the two; (6) that the girl is not alleging any physical or emotional harm as a result of the intercourse; (7) that Ryan has been cooperative and truthful with the authorities; (8) that jurisdiction of the court had been established; and (9) that he and the girl are not married. Based on these stipulations, the trial court found that the elements of rape, a violation of R.C. 2907.02(A)(1)(b) and a first degree felony, had been met beyond a reasonable doubt. Therefore, the trial court adjudicated appellant a delinquent child. After referring appellant for various assessments, the trial court conducted the disposition phase of the case and fined appellant

$200, ordered him to pay court costs, ordered him to serve probation for an indefinite period, committed him to the legal custody of the Ohio Department of Youth Services ("ODYS") for a period of not less than one year nor more than until age twenty-one, ordered him to undergo drug and alcohol assessment, and ordered him to undergo sex offender treatment. The fine was suspended and appellant's commitment to ODYS was held in abeyance on the condition that appellant not violate his probation, the court's order, or the law. Appellant now appeals, setting forth the following assignments of error:

{¶4} "ASSIGNMENT OF ERROR #1: THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT BY DENYING HIS MOTION TO DISMISS AND FINDING HIM GUILTY OF RAPE, IN VIOLATION OF R.C. §2907.02(A)(1)(b), WHEN SUCH A FINDING WAS NOT IN DEFENDANT-APPELLANT'S BEST INTERESTS, DID NOT PROMOTE THE INTERESTS OF THE JUVENILE COURT SYSTEM, AND WAS NOT WITHIN THE INTENT OF R.C. §2907.02(A)(1)(b).

{¶5} "A. ADJUDICATING DEFENDANT-APPELLANT DELINQUENT FOR COMMITTING THE OFFENSE OF RAPE WAS NOT IN THE BEST INTERESTS OF DEFENDANT-APPELLANT AND DID NOT FURTHER THE PURPOSES OF THE JUVENILE COURT SYSTEM, THEREFORE, DEFENDANT-APPELLANT'S MOTION TO DISMISS SHOULD HAVE BEEN GRANTED.

{¶6} "B. DEFENDANT-APPELLANT'S MOTION TO DISMISS SHOULD HAVE BEEN GRANTED BECAUSE THE INTENT OF R.C. §2907.02 WAS NOT ADVANCED UNDER THE FACTS AT HAND, AND STRICT APPLICATION OF THE STATUTE UNDER THESE CIRCUMSTANCES PRODUCED AN UNJUST RESULT.

{¶7} "ASSIGNMENT OF ERROR #2: THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT BY DENYING HIS MOTION TO AMEND THE INSTANT CHARGE TO ONE OF UNRULINESS, UNDER R.C. §2151.022(D), AND FINDING HIM GUILTY OF RAPE, IN VIOLATION OF R.C. §2907.02(A)(1)(b), WHEN SUCH AN AMENDMENT WOULD HAVE BEEN IN DEFENDANT-APPELLANT'S BEST

INTERESTS, WOULD HAVE PROMOTED THE INTERESTS OF THE JUVENILE COURT SYSTEM, AND FURTHERED THE INTENT OF R.C. §2907.02(A)(1)(b).

{¶8} In his first assignment of error, appellant contends that the trial court should have dismissed the complaint because the charges did not further appellant's best interests or the community's best interests and because application of the rape statute, under these circumstances, produced unjust results. Since we are reviewing the trial court's decision on a legal question, we review this assignment of error using a de novo standard of review. See Castlebrook, Ltd. v. Dayton Properties Ltd. Partnership (1992), 78 Ohio App.3d 340, 346. We shall address both parts of appellant's first assignment of error together.

{¶9} It is a well-established rule of statutory construction that if words in a statute are unambiguous, a court must look no further than the face of the statute and simply apply its terms.

{¶10} See, e.g., State ex rel. Jones v. Conrad (2001), 92 Ohio St.3d 389, 392; State v. Coleman (March 27, 2001), Meigs App. No. 00CA010, unreported. However, courts are to presume that the legislature did not intend to enact statutes that produce absurd results. Id.

{¶11} R.C. 2907.02(A)(1)(b) provides:

{¶12} "(A)(1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

{¶13} "*.**

{¶14} "(b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person."

{¶15} Here, the language of R.C. 2907.02(A)(1)(b) is clear, and by entering the stipulations he did, appellant admitted that he committed rape. Nevertheless, appellant contends that this result is unjust because the legislature could not have intended that a juvenile is guilty of rape when he engages in consensual sex with another juvenile of roughly equal age but under the age of thirteen. However, the terms of the statute are clear, and the statute does not carve out an exception for consensual sex between parties of roughly equal age. Further, we cannot say as a matter of law that this result is unjust or absurd. As other courts have noted:

{¶16} "[I]t is well established that when the language of the statute is clear, 'the fact that its application * accomplishes a result not anticipated or desired should be taken cognizance of by the legislative body, for such consequence can be avoided only by a change in the law itself, which must be made by a legislative enactment and not by judicial construction.'" Serenity Recovery Homes, Inc. v. Somani (1998), 126 Ohio App.3d 494, 499-500, quoting Weibel v. Poda (1962), 116 Ohio App. 38, 40.**

{¶17} For the reasons stated above, we disagree with and find unpersuasive the reasoning of the Cuyahoga County Court of Common Pleas in In re Frederick (1993), 63 Ohio Misc.2d 229, a case with facts similar to the instant case.

{¶18} Because appellant clearly committed an act that would constitute rape if committed by an adult, a first degree felony, we do not agree with appellant that the complaint did not serve his or the community's best interests. We therefore find appellant's first assignment of error not well-taken.

{¶19} In his second assignment of error, appellant contends that the trial court erred in failing to amend the complaint to allege unruliness instead of delinquency. A trial court has discretion to determine whether to amend a complaint pursuant to Juv.R. 22(B). See In re Felton (1997), 124 Ohio App.3d 500, 503, discretionary appeal not allowed (1998), 81 Ohio St.3d 1497. See, also, State v. Aller (1992), 82 Ohio App.3d 9, 12. We will not reverse a trial court's decision on such a matter unless we find that the trial court abused its discretion. The Supreme Court of Ohio has stated that "[t]he term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." Blakemore v. Blakemore (1983), 5 Ohio St.3d 217, 219, quoting State v. Adams (1980), 62 Ohio St.2d 151, 157.

{¶20} Generally speaking, a child is defined as a "delinquent" child when that child commits an act constituting a violation of the law or is a chronic or habitual truant. See former R.C. 2151.02; Felton, 124 Ohio App.3d at 503. On the other hand, generally speaking, a child is defined as "unruly" when he is not

within the reasonable control of his parents or teachers, when he engages in situations "dangerous to life or limb" or injurious to the health or morals of himself or others, or when he violates a law applicable only to children. Id.; former R.C. 2151.022. Since appellant was accused of committing an act that would have constituted rape if committed by an adult, clearly a violation of the law, we cannot say that the trial court abused its discretion in denying appellant's request to amend the complaint to charge unruliness instead of delinquency.

{¶21} Upon consideration whereof, we find that appellant was not prejudiced or prevented from having a fair trial, and the decision of the Erie County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the court costs of this appeal.

JUDGMENT AFFIRMED.

Peter M. Handwork, J. _____
JUDGE

Melvin L. Resnick, J. _____
JUDGE

Mark L. Pietrykowski, P.J. _____
JUDGE

CONCUR.