[Cite as *In re B.H.*, 2015-Ohio-2296.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

In re B.H.

Court of Appeals No. E-14-096

Trial Court No. 2014 JF 028

DECISION AND JUDGMENT

Decided: June 12, 2015

* * * * *

Timothy Young, State Public Defender, and Brooke M. Burns, Assistant State Public Defender, for appellant.

Kevin J. Baxter, Erie County Prosecuting Attorney, Mary Ann Barylski and Ashley Thomas, Assistant Prosecuting Attorneys, for appellee.

* * * * *

SINGER, J.

{¶ 1} Appellant, B.H., a minor, appeals from the June 4, 2014 judgment of the Erie County Court of Common Pleas, Juvenile Division, which committed B.H. to the legal custody of the Department of Youth Services for a six-month minimum

commitment to run consecutive to a six-month commitment ordered in case number "2014 JF 028 (FB)." For the reasons which follow, we find that the trial court did not err as a matter of law by imposing the suspended sentences.

{¶ 2} On appeal, appellant asserts the following assignments of error:

ASSIGNMENT OF ERROR I

The Erie County Juvenile Court erred when it adjudicated B.H. delinquent of a probation violation, because it did not comply with the requirements of Juv.R. 35.

ASSIGNMENT OF ERROR II

The Erie County Juvenile Court erred when it adjudicated B.H. delinquent of a probation violation, because it did not substantially comply with the requirements of Juv.R. 29.

{¶ 3} Appellant was charged in Allen County with being a delinquent child based on allegations he committed three offenses: burglary, a violation of R.C. 2911.12(B) and improperly handling a firearm in a motor vehicle, a violation of R.C. 2923.16(B), (hereinafter the weapon violation), [both felonies of the fourth degree if committed by an adult] and possession of marijuana, a violation of R.C. 2925.11(A) and (C)(3)(a) [a minor misdemeanor if committed by an adult].

{¶ 4} On March 19, 2014, the Allen County Court of Common Pleas, Juvenile Division, accepted appellant's admissions to the offenses and found appellant to be a delinquent child. The case was transferred to Erie County, where appellant resided, for

disposition. In Erie County, the cases were assigned numbers 2014 JF 028 (A, B, and C). The A case is hereafter referenced as the burglary violation, the B case as the weapon violation, and the C case as the possession violation. These cases and additional cases were consolidated for a dispositional hearing on May 2, 2014.

{¶ 5} With respect to the felony offenses (the burglary and weapon offenses), the trial court imposed in its May 2, 2014 judgments two six-month-to-age 21 commitments to the Ohio Department of Youth Services ("DYS"). The commitment for the weapon violation was held in abeyance and appellant was placed on indefinite probation. The commitment for the burglary violation was suspended on the condition that appellant comply with and complete indefinite probation. Appellant was ordered to be placed into the care and control/custody of the Northern Ohio Juvenile Community Corrections Facility (CCF), a facility operated by the ODYS as a dispositional alternative which provides a juvenile with treatment, in order for appellant to receive treatment for anger management and aggression counseling, as well as drug and alcohol counseling. The trial court admonished appellant for the misdemeanor possession violation.

{¶ 6} Four days later, on May 6, 2014, a complaint was filed (case No. 2014 VP 038) alleging that appellant had violated his probation. This trial court record was not made part of the record on appeal. The prosecution asserts that the complaint alleged appellant violated his probation in the weapon case by failing to follow the rules and comply with the reasonable demands and controls of all authority including his probation officer and the staff at the CCF. Appellant asserts that this additional delinquency action

was unrelated to the weapon case. The prosecutor also alleges that appellant admitted to the violation and the case was set for disposition on June 6, 2014, but the hearing was consolidated with the disposition review hearing in the underlying weapon and burglary cases, which was held on June 4, 2014. On May 7, 2014, appellant requested to advance the disposition review hearing in the weapon case to speak to the court about the treatment program.

{¶ 7} A dispositional review hearing was advanced to June 4, 2014, and involved several consolidated cases: the weapon and burglary cases, case No. 2013 JF 124 (a vandalism violation), 2014 B 238 (clarified by a November 24, 2014 judgment to be case No. 2014 VP 038, the probation violation case,); and case No. "2014-D or JF-50" (which appears to be a felony assault case). All parties had notice of the hearing, were present, and presented argument.

{¶ 8} The probation department recommended a six-month sentence in the weapon and burglary cases and a DYS commitment held in abeyance for six months with respect to the pending felony assault case. The prosecution recommended that the court lift the abeyance commitments for the weapon and burglary cases and vandalism case and impose a six-month commitment to DYS on the felony assault case, with the two commitments to be served consecutively for a minimum 12-month commitment up to his 21st birthday in order to protect the public. Appellant specifically requested to be removed from the treatment program and be committed to the DYS for the minimum

term. Appellant did not raise any challenge to the court's jurisdiction to order the commitment.

{¶ 9} The court found appellant was unable to correct his behavior, refused to participate in treatment, and desired to serve his ODYS commitments. The court terminated appellant's probation and lifted the abeyance of the commitment in both the weapon and burglary cases and committed appellant to the ODYS for the minimum term. The court ordered the two commitments to be served consecutive to each other for a total commitment of 12 months to age 21. The court also disposed of the other offenses: vandalism—continued probation with the intent to terminate it later so that appellant would not be placed on probation and parole at the same time; violation of probation—noted admonishment; and the felonious assault charge—commitment to the ODYS for six months, held in abeyance, and appellant placed on continued probation contingent on appellant's good behavior.

{¶ 10} The court issued separate judgments for case nos. 2014 JF 028A (burglary case), 2014 JF 028B (weapon case), and also allegedly in 2014 VP 038 (probation violation delinquency action). Appellant appealed from the June 4, 2014 judgment with respect to burglary and weapon cases (discussed further below). Appellant did not appeal from case No. 2014 VP 038 (probation violation delinquency action). Therefore, the record from the probation violation case is not before us.

{¶ 11} In his first assignment of error, appellant argues that the trial court erred as a matter of law when it adjudicated B.H. delinquent of a probation violation because it

did not have jurisdiction to do so since no party had filed a motion to invoke the court's jurisdiction pursuant to Juv.R. 35(A) and (B). Therefore, he argues, the order is void and must be vacated. Secondly, appellant argues that the court did not make a finding pursuant to Juv.R. 35(B) that appellant had violated a condition of his probation and that appellant had been notified of the allegation pursuant to Juv.R. 34(C). Finally, appellant argues that by filing a complaint for a probation violation under a different case number, the prosecution had elected to initiate a new delinquency charge (a violation of a court order) rather than a probation violation in the underlying burglary case.

{¶ 12} In his second assignment of error, appellant argues that the trial court erred when it adjudicated B.H. delinquent of a probation violation because it did not comply with due process requirements protected by Juv.R. 29(B), (C), and (D)(1) and (2). He argues the court did not clarify in the dispositional review hearing that the probation violation adjudication was based on the probation conditions imposed in the burglary and weapons cases; failed to obtain an admission of a probation violation; failed to inform appellant of the consequences of admitting to a probation violation, including the waiver of certain constitutional rights, and that his commitment to the ODYS could be invoked. Furthermore, appellant argues the trial court did not have authority under Juv.R. 29 to terminate probation based on a probation violation adjudicated in another delinquency action.

{¶ 13} Because of the incomplete record before us, the determination of the pertinent facts of this case was problematic. Appellant did not include the second

delinquency action (alleging a probation violation) in the record, even though the disposition of that case was part of the dispositional review hearing at issue. Therefore, the record of that case was not made part of this appeal and we cannot review whether it involved the weapon case probation, as alleged by the prosecution, and whether the court properly adjudicated the issue of the probation violation. We agree with appellant that there is a question of what probation violation was involved in the separate delinquency action because at the dispositional review hearing the court referenced a probation violation after discussing the vandalism violation. However, when appellee asserted in its reply brief that the probation violation arose out of the weapon case, we find that it was appellant's duty to file a supplemental record to include the probation violation delinquency action as part of the record before us because the inclusion of that record was necessary for us to resolve the appeal. App.R. 9 and 6th Dist.Loc.App.R. 3(A)(1). We also note that appellant filed an appeal indicating only the burglary case number, but attached the judgments from both the burglary and weapon cases. While the two records are consolidated, separate judgments were entered under their respective case numbers. However, we will consider the appeal as covering both judgments.

{¶ 14} Beyond the need to sort out of the facts of this case, we also face the issue of the juvenile court failing to abide by the current juvenile procedures. Therefore, we begin by reviewing the relevant juvenile procedure.

{¶ 15} Because juvenile courts were created by statute, juvenile proceedings are special statutory proceedings, neither civil nor criminal, and are governed entirely by

statutes and rules. *Linger v. Weiss*, 57 Ohio St.2d 97, 99-100, 386 N.E.2d 1354 (1979). The juvenile court continues to have jurisdiction over a child who has been adjudicated a delinquent child prior to attaining 18 years of age until the child attains 21 years of age. R.C. 2152.02(6). Once a court has jurisdiction over the action and the person, it possesses the power it needs to resolve every question which arises thereafter in that case. *Rowell v. Smith*, 133 Ohio St.3d 288, 2012-Ohio-4313, 978 N.E.2d 146, ¶ 13. The Juvenile Rules, enacted by the Ohio Supreme Court pursuant to the Ohio Constitution, Article IV, Section 5(B) govern the procedure that a juvenile court shall follow to establish uniform procedures. *Linger* at 100.

{¶ 16} After a child is adjudicated a delinquent, the juvenile court must hold a dispositional hearing pursuant to Juv.R. 29(F)(2)(a) and "determine what action shall be taken concerning a child who is within the jurisdiction of the court." Juv.R. 2(M). The juvenile court has the discretion to implement any order "'necessary to fully and completely implement the rehabilitative disposition of a juvenile.'" *In re Caldwell*, 76 Ohio St.3d 156, 159, 666 N.E.2d 1367 (1996) (applying R.C. 2151.355 before R.C. Chapter 2152 was enacted to govern delinquent proceedings), quoting *In re Bremmer*, 8th Dist. Cuyahoga No. 62088, 1993 WL 95556, *4 (Apr. 1, 1993). The rationale behind such discretion is that the court "has the opportunity to see and hear the delinquent child, to assess the consequences of the child's delinquent behavior, and to evaluate all the circumstances involved." *Caldwell* at 160-161. *See also* R.C. 2152.01(B).

{¶ 17} "The protections and rehabilitative aims of the juvenile process must remain paramount; we must recognize that juvenile offenders are less culpable and more amenable to reform than adult offenders." *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 84. "The principle underlying the juvenile justice system is to 'combine flexible decision-making with individualized intervention to treat and rehabilitate offenders rather than to punish offenses.' *In re Anderson*, 92 Ohio St.3d 63, 65, 748 N.E.2d 67 (2001), quoting Rossum, *Holding Juveniles Accountable: Reforming America's 'Juvenile Injustice System'* (1995), 22 Pepperdine L.Rev. 907, 912." *In re W.Z.*, 194 Ohio App.3d 610, 2011-Ohio-3238, 957 N.E.2d 367, ¶ 36 (6th Dist.).

{¶ 18} Therefore, disposition orders must be:

> reasonably calculated to achieve the overriding purposes of providing for the care, protection and mental and physical development of the delinquent child, holding the delinquent child accountable for his actions, restoring the victim, and rehabilitating the delinquent child. The court's disposition must be commensurate with, and not demeaning to, the seriousness of the child's conduct and its impact on the victim, and must be consistent with dispositions for similar acts committed by similar delinquent children. The court does so through a graduated system and sanctions and services. *In re R.G.*, 5th Dist. Stark No. 2009-CA-00218, 2010-Ohio-138, ¶ 17, citing R.C. 2151.01.

{¶ 19} The trial court may impose any dispositional order permitted by R.C. 2152.16 and 2152.19. Under former R.C. 2151.355, which governed delinquent dispositions, the trial court could impose probation. Under the revised statute, R.C. 2152.19(A)(4), the court may impose community control with a period of probation supervision. R.C. 2152.19(A)(4)(a) and (b), and *In re J.F.*, 121 Ohio St.3d 76, 2009-Ohio-318, 902 N.E.2d 19, ¶ 9-12.

{¶ 20} The court may commit a juvenile to the custody of the ODYS for an indefinite term of a minimum of one year and a maximum period not to exceed the child's attainment of age 21 for a felony of the first degree if committed by an adult. R.C. 2152.16(A)(1). In addition to an ODYS commitment, the court could also order the juvenile to be confined to the temporary custody of a multicounty juvenile detention facility created under R.C. 2151.65 (which includes the CCF). R.C. 2152.19(A)(2). The court could also place the child on community control under the supervision of the local probation agency and for purposes of participation in an "alcohol or drug treatment program with a level of security for the child as determined necessary by the court." R.C. 2152.19(A)(4)(g). This is a "court-ordered and court-supervised" program that may include probation supervision, which is subject to court supervision for as long as the conditions of the order continue. *In re J.F*. at ¶ 11. The court's discretion is not unlimited however. *See In re V.B.*, 12th Dist. Fayette No. CA2014-05-008, 2014-Ohio-5492, ¶ 9. All dispositional orders made under R.C. Chapters 2152 are temporary and

can be terminated or modified by the court until the juvenile attains age 21. R.C. 2152.22(A).

{¶ 21} Under adult criminal law, community control is viewed as a sanction in lieu of a prison term. *State v. Hart*, 4th Dist. Athens No. 13CA8, 2014-Ohio-3733, ¶ 31. It is not probation or a "contract for good behavior." *State v. Carlton*, 2d Dist. Montgomery No. 26086, 2014-Ohio-3835, ¶ 24-25 (Froelich, J. concurring), quoting *State v. Lewis*, 2d Dist. Montgomery No. 23505, 2010-Ohio-3652, ¶ 14-15. "The right to continue on community control depends on compliance with community control conditions and 'is a matter resting within the sound discretion of the court.'" *State v. White*, 2d Dist. Montgomery No. 23906, 2011-Ohio-497, ¶ 8, citing *State v. Schlecht*, 2d Dist. Champaign No. 2003-CA-3, 2003-Ohio-5336, ¶ 7. (Additional citation omitted.)

{¶ 22} Under the prior system of probation, the juvenile court retained jurisdiction to ensure that the imposed conditions for probation in lieu of commitment to the ODYS were fulfilled. *In re Walker*, 10th Dist. Franklin No. 02AP-421, 2003-Ohio-2137, ¶ 20; *In re J.F.*, 2d Dist. Green No. 06-CA-123, 2007-Ohio-5652, ¶ 52, *aff'd on appeal and remanded*, 121 Ohio St.3d 76, 2009-Ohio-318, 902 N.E.2d 19; and *In re Bracewell*, 126 Ohio App.3d 133, 136-37, 709 N.E.2d 938 (1st Dist.1998). If there was a violation, the prosecution could file a new delinquency complaint alleging delinquency for violating the terms of probation R.C. 2152.02(F)(2) (defining delinquency to include a child who violates a lawful order of the court made under R.C. Chapter 2152). Alternatively, the prosecution could file a motion to revoke probation. Juv.R. 35(B).

{¶ 23} Either procedure required an adjudication hearing to determine whether a child violated the court's order and also required the juvenile's presence and advance notice of the alleged violation. *In re C.E.S.*, 11th Dist. Lake No. 2013-L-118, 2014-Ohio-4296, ¶ 22; Juv.R. 29 and 35(B). The initial disposition of probation was deemed to be conditional and if the conditions were violated, the court could revoke the order and modify the disposition to impose either the disposition imposed but held in abeyance or suspended or, if no other disposition had been made, any sentence the court could have originally imposed. *In re J.O.*, 12th Dist. Butler No. CA2011-08-157, 2012-Ohio-3126, ¶ 16; *In re Von Stein*, 3d Dist. Hancock Nos. 5-08-22, 5-08-31, 2009-Ohio-913, ¶ 35; *In the Matter of Cordale R.*, 6th Dist. Erie No. E-96-019, 1997 WL 13022, *2 (Jan. 10, 1997); and *In re Guy*, 12th Dist. Butler No. CA96-10-196, 1997 WL 133527, *2 (Mar. 24, 1997).

{¶ 24} Community control is not probation. As stated in *State v. Beverly*, 4th Dist. Ross No. 01CA2603, 2002 WL 59643, *3 (Jan. 11, 2002):

> It appears that the court may have confused violation of community control sanctions with probation revocation. * * * In a probation revocation proceeding, the court may indeed reimpose the original sentence if it finds a violation. Probation is seen as a contract for good behavior. Under probation, a court imposes but suspends the proper punishment for the underlying crime. A violation of probation is a breach of contract, for which the sentencing judge may reimpose the original (proper) sentence.

> Community control is not a contract for good behavior. The community control sanction is deemed the appropriate sentence to both punish the offender and protect the public. Community control is not "a break;" it is the punishment that fits the crime. Thus, when the defendant violates community control, the court imposes an appropriate sanction for that misconduct, but not for the original or underlying crime. See *State v. Gilliam* (June 10, 1999), Lawrence App. No. 98CA30, unreported and Griffin & Katz, *Ohio Felony Sentencing Law* (2001 Ed.), 580 et seq., § 5.35 et seq.

{¶ 25} Under adult criminal law statutes, R.C. 2929.15(B), a trial court has three options if an offender violates a condition or conditions of community control. *State v. Belcher*, 4th Dist. Lawrence No. 06CA32, 2007-Ohio-4256, ¶ 20, and *State v. Palacio*, 6th Dist. Ottawa No. OT-07-015, 2008-Ohio-2374, ¶ 8. These options are to: (1) extend the terms of the community control sanction, (2) impose a prison term that does not exceed that prison term specified by the court at the offender's sentencing hearing; or (3) impose a stricter community control sanction. R.C. 2929.15(B). The court's sanction is a sanction for violating community control, not a sanction for the original or underlying crime. *State v. Hart*, 4th Dist. Athens No. 13CA8, 2014-Ohio-3733, ¶ 23, citing *Beverly* at *3; and *State v. Lewis*, 2d Dist. Montgomery No. 23505, 2010-Ohio-3652, ¶ 16.

{¶ 26} The juvenile court's options for disposition after a juvenile is adjudicated to be a delinquent based on a violation of a court order is limited: The court cannot order commitment to the ODYS. R.C. 2152.19. R.C. 2152.16, which authorizes commitment to the ODYS, applies only to an act which would be a felony if committed by an adult. *In re J.O.*, 12th Dist. Butler No. CA2011-08-157, 2012-Ohio-3126, ¶ 9. However, if the prosecution moved to have probation revoked, rather than filing an additional delinquency adjudication based on a probation violation, the court can reimpose the original sentence. *In re J.O.* at ¶ 16.

{¶ 27} Under the current statutory provisions and juvenile rules, it is unclear as to what procedure is appropriate before the juvenile court can modify or terminate a prior disposition order, which committed the child to the ODYS but held the commitment in abeyance in order to place the juvenile in the temporary custody of the CCF for purposes of treatment. Since the commitment to the ODYS was held in abeyance or suspended pending successful completion of the treatment program, we find the court retained jurisdiction to ensure that the conditions of community control were fulfilled or to reimpose the suspended commitment if the juvenile failed to complete the treatment. *In re J.F.*, 121 Ohio St.3d 76, 2009-Ohio-318, 902 N.E.2d 19, at ¶ 13-14.

{¶ 28} All dispositional orders are temporary orders and "continue for a period that is designated by the court in its order, until terminated or modified by the court or

until the child attains twenty-one years of age." R.C. 2152.22(A).[1] *See also* R.C. 2151.38 (which is applicable to delinquency orders pursuant to R.C. 2152.01(C)). Therefore, this court has found that a juvenile court may, sua sponte, initiate hearings to resolve issues relating to its orders. *In re A.T.*, 6th Dist. Ottawa Nos. OT-12-023, OT-12-030, 2014-Ohio-1761, ¶ 69-79.

{¶ 29} If the juvenile allegedly fails to complete the treatment, we find that the prosecution may proceed in the same manner for a community control violation as provided for a probation violation. Because the disposition of treatment was an order of the court, any action by the juvenile to fail to complete treatment is a violation of the court's order. Therefore, R.C. 2152.02(F)(2) is applicable. The prosecution can also move to terminate the suspended commitment to the ODYS for failure to fulfill the condition of suspension (community control). We also find that the due process requirements imposed for a proceeding alleging a probation violation, Juv.R. 29 and 35, should apply to a proceeding alleging a community control violation.

{¶ 30} Because the juvenile court's disposition order in the case before us states that appellant's ODYS commitment was held in abeyance and appellant was placed on

[1] "When a child is committed to the legal custody of the department of youth services under this chapter, the juvenile court relinquishes control * * * Subject to divisions (B), (C), and (D) of this section, sections 2151.353 and 2151.412 to 2151.421 of the Revised Code, sections 2152.82 to 2152.86 of the Revised Code, and any other provision of law that specifies a different duration for a dispositional order, all other dispositional orders made by the court under this chapter shall be temporary and shall continue for a period that is designated by the court in its order, until terminated or modified by the court or until the child attains twenty-one years of age."

"probation" for the burglary offense, it is difficult to determine what disposition was actually made. At the time, probation was no longer a separate dispositional option; instead, probation was an option for the court to impose within the requirements or conditions of community control. *In re J.F.,* 121 Ohio St.3d 76, 79, 2009-Ohio-318, 902 N.E.2d 19, at ¶ 9-11. The juvenile court was limited to a disposition committing the juvenile to the CCF under R.C. 2152.19(A)(2) or (4). However, appellant never appealed this disposition order and, therefore, we do not address that issue.

{¶ 31} After appellant violated the terms of his "probation," the prosecution alleges that it filed a new delinquency complaint (case No. 2014 VP 038), alleging appellant was delinquent for violating his probation. Since we do not have the record of that case before us, we presume that the court properly adjudicated the case in its May 30, 2014 judgment and the admonishment of appellant at the dispositional review hearing in the present case was proper. If we presume, as the prosecution has argued, that this probation violation related to the weapon case, the court found appellant delinquent and admonished him for it. Thereafter, in the weapon and burglary cases, the trial court terminated B.H.'s "probation," removed him from the treatment program, and reimposed the suspended sentences of ODYS commitment. The issue is whether the trial court had the authority to both admonish appellant for his probation violation and reimpose the original sentence.

{¶ 32} Appellant challenges on appeal that the trial court could not reimpose a commitment to the ODYS based on a probation violation adjudicated in a separate

delinquency action. However, appellant forfeited the right, absent plain error, to assign the issue as error by failing to raise it in the trial court. *In re A.T.*, 6th Dist. Nos. OT-12-023, OT-12-030, 2014-Ohio-1761, at ¶ 77. We do not address the application of the plain error doctrine because appellant in fact requested that the court remove him from the treatment program and allow him to serve his ODYS commitment. Therefore, we find any error that did occur was invited error. "Under the invited error doctrine, '[a] party will not be permitted to take advantage of an error which he himself invited or induced the trial court to make.'" *Brock-Hadland v. Weeks*, 7th Dist. Mahoning No. 13 MA 170, 2015-Ohio-834, ¶ 6, quoting *Center Ridge Ganley, Inc. v. Stinn*, 31 Ohio St.3d 310, 313, 511 N.E.2d 106 (1987).

{¶ 33} Appellant also argues the trial court did not have authority to hold a dispositional review hearing because Juv.R. 36(A) specifically states it is limited to dispositional orders in abuse, neglect, and dependency cases. First, appellant failed to raise this issue at the hearing and, therefore, forfeited his right to assert it on appeal absent plain error. *In re A.T., supra*. Second, we do not find that the prescheduled hearing was error. While Juv.R. 36 is limited to abuse, neglect, and dependency cases, the underlying purpose of the rule is to mandate the court's review of the temporary orders issued in those cases. All dispositional orders of the juvenile court under Chapters 2151 and 2152 are temporary and continue for a period designated by the court in its order until terminated, modified, or the child attains age 21. R.C. 2151.417, 2152.01(C), and 2152.22(A). For that reason, we have already held that the trial court can sua sponte

initiate a hearing to review or resolve issues relating to its orders. *See In re A.T., supra.* While Juv.R. 36 is not applicable to a delinquency dispositional review hearing, nothing prohibits such a hearing.

{¶ 34} Accordingly, we find appellant's first and second assignments of error not well-taken.

{¶ 35} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Erie County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE