

[Cite as *In re C.H.*, 2016-Ohio-4965.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 103945

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**IN RE: C.H.-M.**  
**Minor Child**

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**JUDGMENT:**  
**REVERSED AND REMANDED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case No. DL 15103463

**BEFORE:** Keough, J., Jones, A.J., and E.T. Gallagher, J.

**RELEASED AND JOURNALIZED:** July 14, 2016

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KATHLEEN ANN KEOUGH, J.:

{¶1} Defendant-appellant, C.H.-M., appeals the judgment of the juvenile court that committed him to the legal custody of the Ohio Department of Youth Services (“ODYS”) for a minimum period of one-year and a maximum period not to exceed his 21st birthday. For the reasons that follow, we reverse and remand. I. Background

{¶2} On June 1, 2015, C.H.-M. admitted as part of a plea agreement to one count of aggravated burglary in violation of R.C. 2911.11(A)(2), a first-degree felony if committed by an adult, and to the accompanying one-year firearm specification under R.C. 2941.141. The juvenile court adjudicated C.H.-M. delinquent.

{¶3} At the dispositional hearing, the juvenile court sentenced C.H.-M. to a minimum one-year commitment to ODYS on the aggravated burglary charge, and a maximum period not to exceed his 21st birthday. The court also sentenced him to a one-year commitment to ODYS on the firearm specification, to be served consecutively to the one-year term on the aggravated burglary charge.

{¶4} The juvenile court stayed the commitment to ODYS, however, and placed C.H.-M. on community control, with orders that he attend anger management classes, participate in various court programs, abstain from using drugs or alcohol, and complete 75 hours of community service in lieu of court costs. The court told C.H.-M. that it would conduct review hearings every 30 to 45 days for six months to check on his

progress, and it set the case for a review hearing on August 25, 2015. The dispositional journal entry stated that “the community control officer shall immediately file a violation should the youth not comply with the court’s orders.”

{¶5} On August 25, 2015, C.H.-M. appeared before the juvenile court for the previously scheduled review hearing. No notice of community control violation had been filed prior to the hearing. Nevertheless, at the hearing, C.H.-M.’s community control officer informed the court that C.H.-M. had tested positive multiple times for marijuana and opiates, had not engaged in the court’s cognitive behavioral therapy program, and had not completed any community service. In light of that information, the court stated, “All right. I’m going to impose the sentence,” and ordered C.H.-M. to serve the previously stayed commitment to ODYS.

{¶6} C.H.-M. subsequently filed a motion to vacate the court’s judgment that revoked the community control conditions and imposed the commitment to ODYS, arguing that the court’s judgment was void. C.H.-M. contended that the juvenile court lacked jurisdiction to impose the suspended commitment to ODYS because Juv.R. 35, regarding proceedings after judgment, provides that the continuing jurisdiction of the juvenile court “shall be invoked by motion,” and no such motion had been filed prior to the review hearing. The juvenile court denied the motion to vacate, reasoning that it had not “suspended” the commitment but merely “stayed” it on the condition that C.H.-M. comply with the court’s orders. The juvenile court found that in light of the stay, it did

not lose jurisdiction to invoke the commitment to ODYS upon C.H.-M.'s noncompliance with its orders and, therefore, Juv.R. 35 was not applicable. This appeal followed.

## II. Law and Analysis

{¶7} In his single assignment of error, C.H.-M. asserts that the trial court erred in denying his motion to vacate because the juvenile court's order that imposed the suspended commitment to ODYS was void. He argues that the juvenile court had no authority to conduct a dispositional "review" hearing in his delinquency case because Juv.R. 36(A), which provides for court review of dispositional orders, specifically states that it is limited to dispositional orders in abuse, neglect, and dependency cases.<sup>1</sup> He further contends that the juvenile court's jurisdiction over his community control violation could only be invoked by motion filed under Juv.R. 35, or by the filing of a notice of violation of court order pursuant to R.C. 2152.02(F)(2).<sup>2</sup> He asserts that because no motion was filed under Juv.R. 35, and he was not charged with the violation of a court order under R.C. 2152.02(F)(2), the juvenile court had no jurisdiction to impose the suspended commitment to ODYS, the court's judgment was therefore void, and the court should have vacated it.

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<sup>1</sup>Juv.R. 36(A) states "Court Review. A court that issues a dispositional order in an abuse, neglect, or dependency case may review the child's placement or custody arrangement, the case plan, and the actions of the public or private agency implementing that plan at any time. \* \* \*."

<sup>2</sup>Under R.C. 2152.02(F)(2), a delinquent child is "any child who violates any lawful order of the court made under this chapter \* \* \*."

{¶8} Initially, we disagree with C.H.-M.’s assertion that the juvenile court does not have the authority to conduct dispositional review hearings in delinquency cases. As the Sixth District stated in *In re B.H.*, 6th Dist. Erie No. E-14-096, 2015-Ohio-2296:

[w]hile 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, \* \* \* the trial court can sua sponte initiate a hearing to review or resolve issues relating to its orders. *See In re A.T.*, 6th Dist. Ottawa Nos. OT-12-023, OT-12-030, 2014-Ohio-1761. While Juv.R. 36 is not applicable to a delinquency dispositional review hearing, nothing prohibits such a hearing.

*Id.* at ¶ 33. Accordingly, the juvenile court may initiate and conduct hearings to review the status of compliance with its dispositional orders in a delinquency case.

{¶9} Furthermore, “as long as community control sanctions remain in effect, the juvenile remains subject to the court’s supervision.” *In re J.F.*, 121 Ohio St.3d 76, 2009-Ohio-318, 902 N.E.2d 19, ¶ 11. In *In re J.F.*, the Ohio Supreme Court noted that in January 2002, the General Assembly replaced “probation” in juvenile dispositions with new dispositional options under the heading “community control.”<sup>3</sup> The Supreme Court found that the broad authority granted to juvenile courts under former R.C. 2151.355 to

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<sup>3</sup>The terms are still used interchangeably, however, when referring to the terms of juvenile supervision. For example, Juv.R. 35(B), regarding “revocation of probation,” has not been changed since 2002. And in this case, although the juvenile court ordered community control conditions, its journal entry revoking those conditions found that C.H.-M. “has not complied with the terms of probation.”

place a juvenile on probation subject to conditions that the court prescribed survives in R.C. 2152.19, but the term “probation” is replaced by “community control.” The court noted that once imposed, those conditions provide a “tether” that allows the court to maintain a connection with the juvenile through ongoing judicial oversight, and that “[t]his jurisdiction over a delinquent juvenile, which was attendant to an order of probation under former R.C. 2151.355, now accompanies an order of community control under R.C. 2152.19.” *Id.* at ¶ 12. Therefore, as long as the order imposing community control remains in effect, the juvenile court has continuing jurisdiction over the juvenile to ensure that the conditions of community control are fulfilled, and to reimpose the previously suspended commitment if the juvenile fails to adhere to the conditions. *In re B.H.* at ¶ 27, citing *In re J.F.* at ¶ 13-14.<sup>4</sup>

{¶10} Nevertheless, although the juvenile court has continuing jurisdiction over a delinquent juvenile upon whom it has imposed community control conditions, and although the juvenile court may initiate and hold review hearings to monitor the juvenile’s compliance with its orders, it may not transform a review hearing into a community control violation hearing unless the requirements of due process have been met. Those requirements are notice of the alleged violation, as well as compliance with Juv.R. 29 and 35. *In re L.A.B.*, 121 Ohio St.3d 112, 2009-Ohio-354, 902 N.E.2d 471,

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<sup>4</sup>We find no distinction in this context between whether the commitment is “stayed” or “suspended.” Regardless of the term, the commitment is held in abeyance pending successful completion of community control conditions.

¶ 51; *In re T.B.*, 8th Dist. Cuyahoga Nos. 93422 and 93423, 2010-Ohio-523, ¶ 14; *In re B.H.*, at ¶ 29; *In re J.O.*, 12th Dist. Butler No. CA2011-08-157, 2012-Ohio-3126, ¶ 12.

{¶11} Notice of the juvenile's alleged violation is accomplished through either (1) the prosecutor's filing of a motion to terminate the suspended commitment to ODYS for the juvenile's failure to fulfill the conditions of the suspension (i.e., the community control conditions), or (2) a new complaint charging the juvenile as a delinquent child under R.C. 2152.02(F)(2) for violation of the court's order. *In re B.H.* at *id.*

{¶12} The record in this case reflects that prior to the review hearing, no one filed a motion alleging that C.H.-M. had violated the terms of his community control conditions, nor a complaint charging him as a delinquent for violating the court's order. Accordingly, neither C.H.-M. nor his attorney had the requisite notice of his alleged violation. Instead, C.H.-M. appeared before the court for the review hearing, and then was informed that his community control conditions were revoked and his commitment to ODYS was invoked.

{¶13} Although the juvenile court had jurisdiction to conduct the review hearing to ascertain C.H.-M.'s compliance with its orders, it violated C.H.-M.'s due process rights when it revoked the community control conditions without any advance notice that he had violated the conditions. *In re T.B.*, 2010-Ohio-523, at ¶ 15. Furthermore, the record does not reflect that the juvenile court complied at the hearing with Juv.R. 35, which requires that the court ascertain prior to revoking community control conditions that the



juvenile was advised of the conditions pursuant to Juv.R. 34(C), or with Juv.R. 29, which sets forth the procedures for adjudicatory hearings. *In re L.A.B.*, 121 Ohio St.3d 112, 2009-Ohio-354, 902 N.E.2d 471, at ¶ 51-52 (probation revocation hearings are akin to adjudicatory hearings; thus both Juv.R. 29 and 35 apply).

{¶14} The assignment of error is sustained. The court's judgment revoking the community control conditions and invoking commitment to ODYS is reversed, and the matter is remanded for further proceedings consistent with this opinion.

{¶15} Judgment reversed and remanded.

It is, therefore, ordered that appellant recover from appellee its costs herein.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

KATHLEEN ANN KEOUGH, JUDGE

LARRY A. JONES, SR., A.J., and  
EILEEN T. GALLAGHER, J., CONCUR