

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: E.R.

C.A. No. 27608

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DL 14-09-1651

DECISION AND JOURNAL ENTRY

Dated: June 30, 2015

WHITMORE, Judge.

{¶1} Appellant, E.R., appeals from the judgment of the Summit County Court of Common Pleas, Juvenile Division. This Court dismisses the appeal.

I

{¶2} The juvenile court adjudicated E.R. delinquent for committing felonious assault, defacing identification marks of a firearm, theft, possessing criminal tools, and criminal damaging. The court also found E.R. to be an unruly child by reason of a curfew violation. The court committed E.R. to the custody of the Ohio Department of Youth Services for a minimum term of 1 year to a maximum term of age 21 on the felonious assault count.

{¶3} E.R. appeals raising two assignments of error for our review.

II

Assignment of Error Number One

THE TRIAL COURT’S JUDGMENT IS AGAINST THE MANIFEST WEIGHT
OF THE EVIDENCE AND IS NOT SUPPORTED BY THE EVIDENCE.

Assignment of Error Number Two

THE TRIAL COURT ERRED IN DENYING THE CRIMINAL RULE 29
MOTION FOR ACQUITTAL.

{¶4} Preliminarily, this Court must determine whether it has jurisdiction over this matter. *See Whitaker-Merrell Co. v. Geupel Const. Co.*, 29 Ohio St.2d 184, 186 (1972) (an appellate court should, sua sponte, dismiss an attempted appeal from an order which is not final and appealable). “It is rudimentary that a finding of delinquency by a juvenile court, unaccompanied by any disposition thereof, is not a final appealable order.” *In re Sekulich*, 65 Ohio St.2d 13, 14 (1981). When an order adjudicates a child delinquent on multiple counts, but does not contain a disposition for all of the counts, it is not a final and appealable order. *In re S.S.*, 9th Dist. Summit No. 24565, 2009-Ohio-4515, ¶ 5.

{¶5} In the instant matter, E.R. was adjudicated delinquent on five counts. A disposition, however, was only entered on the felonious assault count. The order appealed from is not a final, appealable order because it does not dispose of all the counts. *See id.* at ¶ 5. Consequently, this Court is without jurisdiction and must dismiss this appeal.

III

{¶6} Because this Court lacks jurisdiction, E.R.’s assignments of error are not addressed. This appeal is dismissed.

Appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

MOORE, J.
CONCURS.

CARR, P. J.
DISSENTING.

{¶7} I respectfully dissent from the majority's opinion dismissing this appeal for lack of a final appealable order. I would address the merits of the appeal as they relate to the offense which was fully disposed by the juvenile court. *See State v. Goodwin*, 9th Dist. Summit No. 23337, 2007-Ohio-2343 (Carr, J., dissenting).

APPEARANCES:

JASON D. WALLACE, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.