

IN THE
SUPREME COURT OF OHIO

IN RE R.B.,

A Minor Child, Appellee-Cross-Appellant

Case No. 2019-1325

Appellate Case No.: C-170622, C-170623

ON APPEAL FROM THE HAMILTON COUNTY COURT OF APPEALS,
FIRST APPELLATE DISTRICT COURT OF APPEALS

REPLY BRIEF OF APPELLEE AND CROSS-APPELLANT R.B.

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INTRODUCTION

On May 21, 2020, this Court found that it was constitutional to permit a juvenile adjudication to form the basis of an adult felony failure to register. *State v. Buttery*, Slip Opinion No. 2020-Ohio-2998 at ¶ 32. In so holding, this Court found “juveniles have notice of their duty to register and have multiple opportunities to lift their duty to register through a judicial process.” *Buttery* at ¶ 32. Yet, R.B.’s case provides a harrowing example of the juvenile court’s attempt to block R.B.’s opportunities to lift his duty to register. The so-called “process” provided by the Hamilton County Juvenile Court was anything but fair. It also failed to comply in any way with the statutory requirements in R.C. 2152.84. While the legislature has promised juvenile’s due process by way of the review of the necessity of this penalty after the child has received the benefits of the juvenile court’s rehabilitative efforts, this is a promise unrealized for R.B. and children like him. To ensure due process and the promise of the legislature is provided for youth of this State, this Court must adopt R.B.’s third proposition of law.

Further, this Court must reject the State’s proposition and make clear to the juvenile courts of this state that if a classification order is to continue beyond the child’s disposition and beyond the age 21, it must act, and it must act in accordance with the requirements set forth in R.C. 2152.84.

ARGUMENT

I. The case should be dismissed, and the First District’s decision affirmed.

In response to R.B.’s assertion that the State abandoned the argument of permanent jurisdiction as it was not argued before the First District, the State seemingly suggests that it did not have to raise the issue below. (State’s Reply p. 1). Rather, it “merely responded to R.B.’s four assignments of error by arguing that the juvenile court was never without jurisdiction to

classify him.” (*Id.*). Yet, this argument misses the point. It was clear that R.B. was challenging the juvenile court’s subject-matter jurisdiction to classify him. Yet, the State never argued, as it does now, that the juvenile court is “permanently vested” with jurisdiction to review the classification.” Rather, the State simply argued that the juvenile court complied with the timing requirements of R.C. 2152.84 and therefore had jurisdiction. (State’s Brief, *In re R.B.*, 1st Dist. Hamilton No. C-170622, 170623). The State certainly could have argued that the juvenile court’s decision should be affirmed because in its view, the court maintains permanent jurisdiction. Yet, it did not. This argument has been abandoned by the State. This case should therefore be dismissed.

II. To comply with due process, the juvenile court must comply with the statutory requirements of R.C. 2152.84.

R.B. asserted two separate arguments within his proposition of law: (1) his due process rights were violated as the juvenile court failed to comply with the statutory requirements of R.C. 2152.84, or (2) in the alternative, if technical compliance with R.C. 2152.84 is found, his due process rights were violated as he did not receive a meaningful hearing and was prejudiced by the juvenile court’s delay in holding the hearing.

A. Juvenile court’s do have ability to order registration beyond age 21, but to be valid, the court must follow the statutory requirements.

There is no question the legislature expanded the juvenile court’s jurisdiction to permit orders requiring certain youth to register as sex offenders to extend beyond the age of 21. However, the legislature expanded the jurisdiction in a very precise and prescriptive way. Contrary to the State’s arguments, R.B. is not, and has never asserted that the juvenile court does not have the statutory ability to require registration beyond the age of 21. (State’s Reply p. 1).

Rather, in this case, because the juvenile court did not follow the precise process outlined by the legislature, it did not have the authority to order R.B. to continue to register.

The State seemingly confuses the juvenile court's *abilty* to act versus the *authority* to act. There is no question a juvenile court, pursuant to R.C. 2151.23(A), *may* issue classification orders that extend into a child's adulthood. Further, it is also clear, as set forth in R.C. 2152.83(E) and R.C. 2152.84(D) that *valid* classification orders extend beyond the age of 21. Yet, simply because a juvenile court classification order *can* survive into adulthood, does not mean that such order may automatically continue in adulthood without review from the juvenile court. Rather, in order for the court to obtain the benefit of the legislature's extension of its jurisdiction and the extension of the orders beyond the age of 21, the court must follow the statutory requirements set forth in R.C. 2152.84. R.B. submits that R.C. 2151.23 only grants the authority to the juvenile court to act *as authorized* by R.C. 2152.84. Therefore, the juvenile court's failure to comply with the statutory requirements was fatal in this case.

B. The goal of the juvenile system was not not preserved.

The State asserts: "while under the jurisdiction of the juvenile court, R.B. was provided treatment, supervision, and guidance in how to deal with issues in his life without offending against others." (State's Reply p. 4). While that statement is partially true, it is only true up until July 29, 2013. The record reveals that from December 2, 2011 through July 29, 2013, R.B. engaged in a number of services, including in-patient treatment, out-patient treatment, and was supervised by a probation officer up until July 29, 2013. (*See* Brief of R.B. p. 2-4). During this period, he had regular check-ins with his probation officer who was supervising him. May 8, 2018, T.p. 40-68. However, those services and supervision were terminated on July 29, 2013. (S-

14, 15). After that time, the court neither supervised R.B. nor provided him with any rehabilitative services.¹

The goal of juvenile court and the purpose of disposition is to provide for the care, protection, development, and rehabilitation of the juvenile. R.C. 2152.01. Accordingly, it is clear that the purpose of juvenile court and dispositions were met up until June 29, 2013. However, after that time, the juvenile court's actions did nothing to further the goal of the juvenile system.

C. *Jean-Baptiste* makes clear that the requirements set forth in R.C. 2152.83 and R.C. 2152.84 are jurisdictional.

The State certainly takes issue with the First District's use and extension of this Court's decision in *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St3.d 421, 2012-Ohio-5697, ¶ 32, 983 N.E.2d 302 to find in favor of R.B. However, beyond recognizing that *Jean-Baptiste* involved an initial hearing and not a completion of disposition hearing, the State fails to specifically explain why it is inapplicable to this case. Moreover, it is clear from the decision in *Jean-Baptiste* that this Court was considering the juvenile court's jurisdiction to hold sex offender classification hearings and therefore *Jean-Baptiste* is applicable and provides guidance for the instant case. *Jean-Baptiste* ¶ 27 ("The statute relating to the juvenile court's jurisdiction to conduct a classification hearing for juvenile sex offenders is R.C. 2152.83(A)(1)"). This decision makes clear that R.C. 2152.83 through R.C. 2152.86 sets forth the court's jurisdiction to hold sex offender classification hearings. There, because the offender was at the initial classification stage, this Court noted R.C. 2152.83 provided for the juvenile court's jurisdiction. However, in this case, because the relevant hearing is a completion of disposition hearing under R.C. 2152.84, R.C. 2152.84 provides the juvenile court's jurisdiction.

¹ This fact is further illustrated by the testimony at the completion of disposition hearing by the supervisor for R.B.'s probation officer. This testimony made clear that probation was unsure what is meant by monitored time and had no process for supervising a child who was on monitored time. (S-41-50).

Finally, the State suggests that R.B.'s classification would be effective until 2022 because of the initial classification. (State's Reply p. 6-7). However, such an interpretation would render the classification automatic and violate the precedent set forth in *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729. That is simply not permitted by R.C. 2152.84. Again, the initial hearing is subject to R.C. 2152.84. R.C. 2152.84 cannot be ignored as requested by the State.

III. Due process requires a meaningful hearing.

Due process protections are paramount, and it was the review provided in R.C. 2152.84 which rendered the juvenile sex offender scheme constitutional such that classifications may continue into adulthood. *In re D.S.*, 146 Ohio St.3d 182, 2016-Ohio-1027, 54 N.E.3d 1184. If these protections are not adhered to as suggested by the State, the rights of juveniles across Ohio will be trampled. R.B. respectfully requests this Court to adopt his third proposition of law.²

A. As applied to R.B., "treatment" included residential treatment, out-patient treatment, and community supervision.

In its response, the State misconstrues R.B.'s constitutional claim. The State argues R.B. is asking this Court for a very narrow interpretation of the phrase "upon the completion of disposition" such that the R.C. 2152.84 hearing must occur "immediately after treatment." (State's Reply p. 9). However, what R.B. is really asking for is compliance with the statute, or at the very least, a meaningful hearing under R.C. 2152.84. In this case, R.B. received neither of these.

Contrary to the State's characterization, R.B. is not requesting this Court to find that to comply with due process, his R.C. 2152.84 hearing must have occurred after he completed only the Altercrest program. (State's Reply p. 9). While R.B. certainly was provided treatment at

² In its brief, the State asserts "a juvenile's classification is always discretionary." (State's Reply p. 8). This is false. Classifications under R.C. 2152.82, R.C. 2152.83(A), and R.C. 2152.84(A)(2)(a) are all mandatory.

Altercrest, he also received a number of other services. R.B. is not asking this Court to ignore those services. Rather, R.B. submits that as applied to him, “treatment” included those affirmative actions by the juvenile court which were meant to aid R.B. in changing his delinquent behavior. Essentially, this is the time in which the juvenile court supervised him. Specifically, R.B.’s “treatment” included the following: (1) residential placement and treatment at Altercrest; (2) out-patient treatment through Altercrest; (3) probation supervision in placement and in the community; (4) aftercare requirements; and (5) community treatment through Child Focus. It was these dispositional orders of the juvenile court which were meant to address and modify R.B.’s behavior. During this time, the juvenile court supervised R.B.

Once the juvenile court was satisfied that R.B. had completed the foregoing, it was duty-bound to conduct a review of his classification status as mandated by R.C. 2152.84. In fact, the juvenile court did indeed consider his success in treatment as well as his success in the community. (S-1). It was unreasonable and a violation of due process for the juvenile court to not also review his classification at that time.

The State places great weight on R.B.’s placement on “non-reporting probation” with monitored time. Yet, the State fails to respond in any way to the claim that these “dispositional” orders were invalid. (R.B.’s Merit Brief p. 26-30, 34-35). Further, R.B. was not notified of the juvenile court’s decision to place him on “non-reporting probation with monitored time.” (*See* T.D. C-170622, 623). It’s difficult to discern how “non-reporting probation” was going to aid in R.B.’s rehabilitation when he was unaware that he was on this status. And, even probation was unaware what was meant by this statute and took no action to supervise R.B. during this time.

In order to comply with fundamental fairness and due process, the juvenile court must provide youth adjudicated of sexually oriented offenses and initially classified as sex offenders

the process that is due to them. R.C. 2152.84 is that process. And, it requires the juvenile court to review the effectiveness of treatment to determine the child's risk to reoffend. Treatment includes those programs the court decides will be beneficial to the child and their rehabilitation. *See* R.C. 2152.01. Treatment may include a number of aspects including supervision by the juvenile court, residential treatment, out-patient treatment, and community-based programming. The time to review the effectiveness of that treatment and determine the child's risk level is when the child completes that treatment, not after, and certainly not *years* after as argued by the State.

B. R.C. 2152.84 provides for individualized dispositions and individualized review.

The State speculates that permitting the juvenile court to “see how a juvenile is able to apply what was learned in treatment while under less intense form of supervision such as non-reporting probation with monitored time before reviewing the classification” is more in line with the purpose of R.C. 2152.84. This argument fails.

As an initial matter, in some circumstances, the juvenile court may determine that the juvenile needs additional time to ensure the child has internalized the treatment they have received and truly reduced their risk to reoffend. That is the precise purpose of R.C. 2152.84. After a review of the child's progress, the court determines the child has not been rehabilitated and requires additional time on the registry. *See* R.C. 2152.84. Alternatively, the juvenile court could modify the child's disposition to provide for additional time and conditions of supervision. Either way, the child receives due process and the juvenile court's determination would serve the juvenile court's purpose.

Again, dispositions are intended to be individualized to meet the specific needs of the child. *See e.g.* R.C. 2152.01; R.C. 2152.19. And, the legislature's use of the completion of

disposition as the triggering event for the hearing under R.C. 2152.84 is logical and intentional. The juvenile court controls when the disposition is terminated. Accordingly, if the court found it was necessary to prolong the period for the child to be in the community before it makes a determination as to the child's risk to reoffend, it would have the option to do so. However, the child would be afforded notice by way of Juv.R. 35, and an opportunity to be heard by way of Juv.R. 29 and Juv.R. 34. This simply did not occur in R.B.'s case. The juvenile court cannot arbitrarily and artificially extend the dispositional period to simply just "wait and see" if the child re-offends. Rather, the court is duty-bound to discern whether its rehabilitative efforts have been successful or not. This Court must act to ensure that the due process rights of these children are preserved and the law is followed.

R.B.'s due process claims boil down to two main points: (1) was it fundamentally unfair for the juvenile court to extend the period of disposition and thereby the period of review for the juvenile's classification without giving the child notice and an opportunity to be heard; and (2) is it fundamentally unfair for the juvenile court to delay the statutorily-required review of a child's treatment such that the ability to present evidence is prejudiced, and the hearing is no longer meaningful. The answer to both questions is yes. R.B.'s proposition of law should be adopted.

C. The State blames R.B., a child, for the juvenile court's failure to follow the law.

In its response, the State asserts the delay in the hearing under R.C. 2152.84 was attributable to him as a result of his jurisdictional challenges and requests for continuances. (State's Reply p. 4, 10). This argument is unsupported by the record and lacks any merit.

The juvenile court is statutorily required to hold this hearing under R.C. 2152.84. It is not the responsibility of the children that come before it to ensure the court complies with the law and its duties to effectively discharge that law. Moreover, the juvenile court terminated its

“tether” to R.B. on July 29, 2013. After that time, the juvenile court no longer had any supervision or contact with him. (*See* S-50-51). From July 29, 2013 through October 24, 2016 when the State requested the hearing under R.C. 2152.84 and R.B. first mounted his jurisdictional challenge, three years and two months had elapsed. Accordingly, at the time R.B. challenged the court’s jurisdiction, there had already been a significant delay in this case. A delay that is not and cannot be attributed to R.B.

R.B. properly challenged the court’s jurisdiction. Further, R.B. was at the mercy of the juvenile court’s schedule and release of its decisions on his motions. For instance, while the completion of disposition hearing was held in May 2017, a decision from the juvenile court was not entered until five months later in October 2017. The delay in the proceedings cannot be attributed to R.B. Further, while R.B. did indeed request a continuance in February 2017 of the completion of disposition hearing, it was clear at that time that the juvenile court had rejected his jurisdictional claims. It was therefore incumbent that he present a case in support of his declassification. And yet again, this continuance request further illustrates the problem with the court waiting so long to hold this required hearing. Specifically, due to the passage of time, R.B. was having difficulty locating treatment records and therefore needed additional time to locate records and witnesses. Ultimately, R.B. was unable to procure a number of witnesses on his behalf. R.B. acted appropriately, reasonably, and within the confines of the law when he challenged the court’s jurisdiction, and when he requested continuances.

It is interesting that the State chose not to “belabor” each of the instances it believed R.B. acted in a way which delayed the proceedings. Upon review of the citations provided by the

State, only one request can actually be attributed to R.B. and that is 170622-T.d. 66³, which is the February 2017 continuance in order to obtain treatment records. As set forth above, this continuance request was necessary and not for the purpose of delay. As to the remaining citations (C-170622-T.d. 31, 33, 37), it is speculation at best to ascribe the delay to R.B. Rather, the court continued that matter for a new evaluation. It does not state if the request was by the Court, the State, or R.B. Further, the State cites to R.B.'s written memorandum in support of his argument challenging jurisdiction as an example of R.B.'s attempt to delay. Providing further support and case law for the oral arguments the court receives on the record does not delay proceedings, but rather acts to facilitate the court's ruling on the matter.

Finally, the State seems to assert that simply because R.B. received notice and was represented by counsel at these later proceedings in the fall of 2016 and spring of 2017, this somehow remedies the lack of due process, lack of notice, lack of opportunity to be heard and, lack of counsel on July 29, 2013 when the juvenile court modified his disposition. It does not. Further, simply because R.B. was able to present *some* evidence at the May 8, 2017 hearing does not remedy the fact that he was precluded from presenting the very type of evidence the court was statutorily required to consider. The proceedings in this matter were not fair. The injustice becomes even more apparent when it is considered that it is this review that acts as a gatekeeper as to whether this classification penalty is to continue into adulthood. *See In re D.S.* at ¶ 35.

R.B.'s proposition of law should be adopted.

³ R.B. notes that due to the case numbering system in Hamilton County Juvenile Court, while there are two citations provided, one for each case number, the filings are each the same. For example C-10622-T.d 66 and C-170623-T.d.66, both refer to R.B.'s February 24, 2017 continuance

IV. Response to the Amicus: Juvenile registration is punitive.⁴

While it is true that “juvenile court proceedings are civil, rather than criminal, in nature” delinquency laws feature inherently criminal aspects, and “the state’s goals in prosecuting a criminal action and in adjudicating a juvenile delinquency case are the same: ‘to vindicate a vital interest in the enforcement of *criminal laws*.’” *In re Anderson*, 92 Ohio St.3d 63, 65, 2001-Ohio-131, 748 N.E.2d 67. *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 76, quoting *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, 775 N.E.2d 829, ¶ 26, citing *Breed v. Jones*, 421 U.S. 519, 531, 95 S.Ct. 1779, 44 L.Ed.2d 346 (1975).

Contrary to the State and the State’s Amici’s claims, it is well established that Senate Bill 10 is punitive. *See, e.g., State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶ 16. This is a departure from this Court’s rulings on the previous versions of Ohio’s sex offender registration and notification statutes. *See, e.g., State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570; *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264; *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110. And that determination has been applied equally to juveniles and adults alike. *In re D.J.S.*, 130 Ohio St.3d 257, 2011-Ohio-5342, 957 N.E.2d 291, and *In re Cases held for the decision in In re D.J.S.*, 130 Ohio St.3d 253, 2011-Ohio-5349, 957 N.E.2d 288, (applying *State v. Williams* to juvenile cases).

Further, since *Williams* and *DJS*, this Court reiterated these holdings in *In re C.P.*, finding that because the requirements in R.C. 2950 are punitive, R.C. 2152.86 is unconstitutional for violating the Eighth Amendment’s prohibition against cruel and unusual punishments. *C.P.*, 131 Ohio St. 3d 513, 2012 Ohio 1446, 967 N.E.2d 729, ¶ 11, 86.

⁴ R.B. also notes that the State’s Amici cites *In re J.B.*, 10th Dist. Franklin No. 11AP-243, 2011-Ohio-6134 in support of its position. Yet, this decision was reversed by this Court and the Tenth District was to apply the decision in *Jean-Baptiste*. *See In re J.B.*, 134 Ohio St.3d 538, 2012-Ohio-5675, 983 N.E.2d 1295

CONCLUSION

While the State has asserted this Court should reverse the decision of the First District, it has failed to provide this Court with a specific basis for doing so. Furthermore, the State has failed to provide this Court with any guidance as to how juvenile courts of this State would apply its proposition of law. Does it mean that the juvenile courts can conduct the R.C. 2152.84 hearing at any time it chooses? Or not at all? If the timing of the completion of disposition hearing is ignored, classification orders are permitted to enter into adulthood without appropriate review of the necessity of the penalty. Such a result does not comport with the intent of the legislature or due process.

Based on the foregoing and as set forth in his merit brief, R.B. respectfully requests this Court to affirm the decision of the First District and adopt his proposition of law and reject the State's proposition of law.

Respectfully submitted,

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