

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
WASHINGTON COUNTY

In the Matter of:

C.M.C.

Adjudicated Unruly Child.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Case No. 09CA15

DECISION AND JUDGMENT ENTRY

**Released 8/17/09**

---

APPEARANCES:

Teresa D. Schnittke, Lowell, Ohio, for Appellant.

James E. Schneider, Washington County Prosecuting Attorney, and Raymond E. Dugger, Assistant Washington County Prosecuting Attorney, Marietta, Ohio, for Appellee.

---

Harsha, J.

{¶1} C.M.C., an adjudicated unruly child for habitual truancy, appeals the trial court's decision that found he violated the terms of his community control and probation and committed him to the temporary custody of the Washington County Children Services Board ("CSB"). He contends that the trial court's probation violation finding was unreasonable and arbitrary under the circumstances because his school attendance was no longer an issue and because his behavior improved dramatically after the filing of the probation violation. Thus, he argues that the only issue that remained as of the adjudicatory hearing was that he was a "heavily-medicated teenage boy" who kept falling asleep in class. However, the proper focus at that hearing was the child's conduct at the time of his alleged probation violation, not his subsequent behavior. The child's probation officer testified about several problems the child continued to have at school as of the

filing of the motion that were unrelated to school attendance. She also testified about various theft incidents reported to her by his parents and the child's refusal to "mind" at home and in the community. Finally, she testified that at the time she filed the motion there was an issue concerning his refusal to take his psychotropic medications. Thus, we conclude that her testimony constitutes competent, credible evidence to support the court's probation violation finding.

{¶2} Furthermore, we reject C.M.C.'s assertion that the court's finding was unreasonable because his medications may have contributed to his problems at school, i.e., falling asleep in class. Although the circumstances or reasons behind a "technical" violation may be relevant for determining whether a probation violation finding is unreasonable, there was no evidence to support his claim that his medications affected his ability to stay awake. And his problems at school went beyond mere drowsiness in class. Thus, we cannot say that the trial court's finding was unreasonable or arbitrary based on the facts presented to it.

{¶3} Next, C.M.C. contends that the trial court failed to make the reasonable efforts finding required under R.C. 2151.419. In its dispositional order, the trial court checked a box that indicated that reasonable efforts had been made to prevent his removal from his home and that they were unsuccessful. However, the court failed to make any findings of fact setting forth the reasons supporting its reasonable efforts determination and failed to briefly describe the relevant services provided by CSB to the child's family and why those services did not prevent the removal of the child from his home. But because the court's dispositional order did not occur in an abuse, dependency

or neglect context, no reasonable efforts determination and supporting findings were necessary. The court's boilerplate reference to reasonable efforts was mere surplusage.

{¶4} Finally, C.M.C. contends that the trial court's decision to remove him from his home on a probation violation and place him in the temporary custody of CSB was unreasonable under the facts of the case. Again, he argues that his attendance at school was no longer an issue and that some of his other problems had been resolved by the time of the adjudicatory hearing. However, the evidence indicates C.M.C. also engaged in theft, threatened harm to others and failed to follow the instructions of his parents and teachers. We see nothing unreasonable in the court's decision in light of these facts.

#### I. Procedural History

{¶5} In June 2008, C.M.C. was adjudicated an unruly child due to truancy from school, in violation of R.C. 2151.022(B). The trial court placed the child on community control including supervised probation. In October 2008, the child's probation officer filed a motion to make further dispositional orders because the child allegedly violated several terms and conditions of his probation, i.e.:

**TERM 1** I will obey the instructions of my parent(s) and custodian(s).

**TERM 2** I will attend school every day it is in session. I will obey the rules and regulations of my school and follow the instructions of teachers and other school officials.

**TERM 6** I will obey all federal, state, and city laws. I will be of good behavior generally . . .

**TERM 26** I will obey the rules and regulations of the probation department and I will follow the instructions of my probation officer.

{¶6} The motion alleged that the child had violated the terms of his community control and probation by engaging in the following conduct:

This child is not following the directions of his parents, school officials and probation officer. This child is not being of good behavior generally.

This child has stolen various items since being placed on community control including supervised probation – a hat from Ollies on June 4, 2008, a toy from Rite Aid on June 9, 2008, dad's pocket knife on June 11, 2008, dad's knife and lighter collection on June 30, 2008, dad's cigars on or about the week of September 21 through 28, 2008, and a pack of Yughio cards from WalMart [sic] October 6, 2008.

The child has allowed other youth into the family home without permission. He has participated with other youth of the neighborhood to set a field on fire close to the barn on the family's property on or about June 30, 2008. This child does not like to be told "no" by his parents and displays an attitude when he does not get his way.

This child has shut down at school. He continually tries to sleep in class and refuses to do any work in class. This child refused to leave the school office and attend class on October 9 and 10, 2008 and stated he wanted to drown, stab, and cut people.

This child is not taking his medications properly. This child admitted to spitting out his medications during the month of September 2008.

{¶7} The court held an adjudicatory hearing on the probation violation in February 2009. Melody Zimmerman, the child's probation officer with the Washington County Juvenile Court, testified on behalf of the State. According to Zimmerman, the child failed to comply with the first term of his probation because he "has issues at school and also issues with stealing items in the community which his parents do not approve of." She testified that he violated the second term because he continues to have problems completing his school work. She testified that at the time she filed the probation violation motion, school officials described the child as "totally shutting down." She stated that he tries to sleep in class and refuses to do work and that on one occasion when he was sent to the school office, he refused to leave and said he wanted to drown, stab, and cut people. She testified that the sixth term related to the theft incidents that his parents

reported to her, i.e., where he stole a hat from Ollie's; a toy from Rite-Aid; his dad's pocketknife, knife and lighter collections, and cigars; and a pack of Yugioh cards from Walmart. She testified that the twenty-sixth term related to his "problems at school, not following my instructions to mind at home, mind in the community, mind when it comes to taking his medications." She indicated that at the time she filed the motion, there was an issue of him not taking his psychotropic medications; he admitted to spitting them out and not taking them property. Finally, she testified that she had spoken with the child about the violations and that he had admitted all of them.

{¶8} On cross-examination, Zimmerman testified that some of the child's behaviors had improved since she filed the probation violation motion. She testified that he was never formally charged with theft and that she had not received any additional reports of him stealing. She further testified that "as far as she could tell" he had been taking his medications. She also stated that while some of his grades were better, he was still flunking math and reading and that it was a "consistent problem" trying to get him to do school work. She stated that he was "usually cooperative when he does sit down and does do the work, if he doesn't go to sleep." When asked if his medication affects his ability to stay awake, she responded, "Not that I understand, of his medication."

{¶9} In its decision on the adjudicatory hearing, the court found that the State proved beyond a reasonable doubt that the child had violated the terms and conditions of community control and probation and therefore, a former court order.

{¶10} At the dispositional hearing in March 2009, Zimmerman gave a detailed report concerning the child's family situation. Zimmerman testified that the child's mother, Trish Blake, is cognitively impaired, functions on an approximate third grade level, and

suffers from mental health issues, namely paranoid schizophrenia and a gambling addiction. She at times refuses to take her medications, and at the time of the hearing had stopped taking them because she did not complete the necessary paperwork to renew her medical card. According to Zimmerman, Ms. Blake threatened to kill her children, CSB workers, and school officials if her children were removed from her home. Zimmerman stated that Ms. Blake and the child's step father, Paul Blake, both suffer from "poor decision making skills, money management skills, social and relationship skills and extremely poor parenting skills" as well as "no distress tolerance." Ms. Blake has "no ability to model appropriate social and emotional skills," while Mr. Blake's parenting style includes varying from "extreme anger, aggression and agitation" to pacification because the children get on his nerves.

{¶11} Zimmerman summarized her report as follows:

[C.M.C.] lives with constant trauma and chaos. His parents fail to take responsibility for their actions.

They fail to work with professionals that try to help model appropriate social skills and parent this child and his siblings appropriately and effectively.

These parents lie to manipulate situations with professionals.

They have a history of not keeping important appointments with doctors, lawyers and mental health professionals.

Since this officer started working with the child in June of '08, there have been issues with the family being in severe financial crisis due to mom's gambling addiction, and the parents' overall lack of ability to manage money and food that come into the home.

Throughout this past summer, there were consistent issues with this child and his siblings reporting to professionals that they were hungry and that there was no food in the home.

It was reported this week that at least one time weekly [C.M.C.'s] youngest brother comes to school with only crackers for lunch.

The absence of food and the fear of the absence of food have contributed to this child's trauma and ultimate acting out behaviors.

{¶12} Based on her findings, Zimmerman's recommendations to the court included that the child continue to be on probation and that he be placed in the temporary custody of the CSB. The assistant prosecutor and the CSB representative agreed with Zimmerman's recommendations and noted that the child's temporary custody with CSB was in the child's best interest.

{¶13} The child's attorney requested that the court not place the child in the temporary custody of the CSB. She argued that according to Zimmerman's report, the child's behavior at school had improved drastically since October 2008. She noted that the child had not stolen anything since that time. She also noted that while the child had previously expressed an interest in "stabbing people to death, holding them under water, burning things," that behavior had been "turned around." She also noted that the child, who suffers from ODD Asperger's, had been taking his medication and was "minding his parents." Finally, she denied the fact that the child's brother had been going to school with just crackers. Ms. Blake also requested that the child not be removed from the home and argued that his behavior had improved tremendously.

{¶14} After hearing the parties' arguments, the court stated:

Well, this is a difficult decision for the Court. On the one hand, [C.M.C.] is doing better from what I understand. At home, his behavior is better. His behavior at school appears to be better.

Still, homework is not getting done. School work is not getting done. His grades are not good.

There are still a lot of issues in the home, with both mother and step-father, and their ability to manage money and to properly provide for these children, specifically the son before me, [C.M.C.].

So on the one hand, some things are better and the other things haven't improved.

The Court in this matter, having heard everybody here today, reviewed the dispositional report presented by Ms. Zimmerman, and based on everything it knows about the child and his home situation, is going to find that at this time it would be in the best interests of [C.M.C.] to be placed in the temporary custody of the Washington County Children Services Board, with the goal of reunification at some point back to the family.

It appears there is still a lot of progress to be made in this home, so that this child can return and be raised by the mother and step-father.

The Court is going to find that reasonable efforts have been made in this case to prevent removal of the child from the home, but at this time, due to all the issues surrounding the child's home environment, and issues with the parents, this Court is going to find that it is in the best interests to place the child outside the home at this time.

{¶15} In its dispositional order, the court committed the child to the temporary custody of the CSB. On the judgment entry, the court checked a box that stated: "Reasonable efforts have been made to prevent the removal of the child from his/her home, but those efforts have not been successful and the continued residence of the child in his/her current home will be contrary to his/her best interest and welfare." C.M.C. now appeals.

## II. Assignments of Error

{¶16} The child presents three assignments of error for our review:

I. THE TRIAL COURT ERRED IN FINDING THAT APPELLANT HAD VIOLATED HIS PROBATION.

II. THE TRIAL COURT ERRED IN REMOVING APPELLANT FROM HIS HOME, AND PLACING HIM IN THE TEMPORARY CUSTODY OF THE WASHINGTON COUNTY CHILDREN SERVICES BOARD, WITHOUT MAKING SPECIFIC FINDINGS REGARDING THE REASONABLE EFFORTS MADE TO PREVENT HIS REMOVAL.



III. THE TRIAL COURT ERRED IN REMOVING APPELLANT FROM HIS HOME, AND PLACING HIM IN THE TEMPORARY CUSTODY OF THE WASHINGTON COUNTY CHILDREN SERVICES BOARD.

III. Community Control /Probation Violation

{¶17} Because a community control revocation hearing is not a criminal trial, the State does not have to establish a violation with proof beyond a reasonable doubt. *State v. Wolfson*, Lawrence App. No. 03CA25, 2004-Ohio-2750, ¶7, citing *State v. Payne*, Warren App. No. CA2001-09-081, 2002-Ohio-1916, in turn citing *State v. Hylton* (1991), 75 Ohio App.3d 778, 782, 600 N.E.2d 821. Instead, the prosecution must present “substantial” proof that a defendant violated the terms of his community control sanctions. *Wolfson*, citing *Hylton* at 782. Accordingly, we apply the “some competent, credible evidence” standard set forth in *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, to determine whether a court’s finding that a defendant violated the terms of his community control sanction is supported by the evidence. *Wolfson* at ¶7, citing *State v. Umphries* (July 9, 1998), Pickaway App. No. 97CA45; *State v. Puckett* (Nov. 12, 1996), Athens App. No. 96CA1712. This highly deferential standard is akin to a preponderance of the evidence burden of proof. *Wolfson*, citing *State v. Kehoe* (May 18, 1994), Medina App. No. 2284-M. We also apply it in the context of this juvenile proceeding. See Juv.R. 35(B)<sup>1</sup>; see, also, *In re Justin F.*, Sandusky App. No. S-07-016, 2007-Ohio-6885, at ¶¶14-15 (applying abuse of discretion standard of review to a juvenile court’s decision to revoke juvenile’s probation and noting that the evidentiary burden is to prove “evidence of a substantial nature showing that revocation is justified.”); *In re Kiser*,

---

<sup>1</sup> Juv.R. 35(B), which controls probation revocation hearings, requires the court to hold a hearing and states that “[p]robation shall not be revoked except upon a finding that the child has violated a condition of probation of which the child had, pursuant to Juv.R. 34(C) been notified.”

Seneca App. No. 12-06-13, 2006-Ohio-5970, at ¶7. Thus, we conclude the appropriate review in this matter is twofold. First, we review the record to determine whether there is substantial evidence to support the court's finding that C.M.C. violated the terms of probation or community control. If it does, then we review the court's ultimate decision to revoke probation, i.e., the sanction, under the more deferential abuse of discretion standard.

{¶18} In his first assignment of error, C.M.C. contends that the trial court erred in finding a probation violation under the circumstances of the case. He argues that many of the issues that lead to the original unruly filing, i.e., habitual truancy, and the problems that lead to the probation violation motion had been resolved as of the adjudication hearing. Specifically, he argues that his truancy problem had been resolved and notes that Zimmerman did not even address this issue at the adjudication hearing. He also argues that the evidence showed that he was taking his medication properly and that there had been no further incidents of theft reported. Thus, he contends that it was unreasonable and arbitrary for the court to find a probation violation simply because "a heavily-medicated teenage boy keeps falling asleep in class."

{¶19} The State contends that the trial court did not err in finding that C.M.C. violated his probation because the child, while represented by counsel and with his parents present, admitted to the probation violations at the adjudicatory hearing. It also argues that C.M.C.'s school attendance was not alleged to be one of the violations. And, while some of the child's behaviors may have improved, his conduct after the filing of the probation violation motion was not relevant to whether he in fact violated the terms of his probation.

{¶20} Initially, we reject the State's contention that C.M.C. admitted to the probation violations. Based on our review of the record, including the transcript from the February 2009 adjudicatory hearing, we find nothing which supports the State's assertions. Zimmerman testified that C.M.C. "essentially" admitted the violations to her, but the child did not formally admit the allegations at the hearing. Nonetheless, we agree with the State that the trial court did not err in finding that C.M.C. violated his probation.

{¶21} Zimmerman testified about the child's conduct that led her to file the probation violation motion and why she believed that conduct violated the terms and conditions of his community control and probation. According to her testimony, at the time she filed the motion, he continued to have problems at school. She specifically stated that these issues did not relate to school attendance, but rather the child not following the instructions of teachers and school officials. She also stated that school officials had reported that the child "totally shut down" at school, tried to sleep in class, and refused to do his school work. She described one incident when he was sent to the school office, later refused to leave the office, and said he wanted to drown, stab, and cut people. She also described various theft incidents that his parents had reported to her. She testified he refused to follow her instructions to "mind" at home and in the community. Finally, she indicated that at the time she filed the motion, there was an issue of him not taking his psychotropic medications. We conclude that this testimony constitutes "some competent, credible evidence" to support the trial court's finding that C.M.C. violated the conditions of his community control and probation as alleged in the probation violation motion.

{¶22} Even if we assume that C.M.C.'s behavior improved dramatically as he contends, the relevant time period for determining whether there was a probation violation is the time frame in which the alleged conduct occurred, rather than the period after filing the motion. In other words, the proper focus in this case was the child's conduct as alleged in the probation violation motion. His subsequent improved behavior is irrelevant for purposes of determining whether a violation actually occurred, although it may have some value for dispositional purposes.

{¶23} C.M.C. also suggests that his medications may have contributed to his problems at school, i.e., falling asleep in class, and that the trial court's finding that he violated his probation was therefore unreasonable and arbitrary under the circumstances. While the circumstances or reasons behind the violation may be relevant for determining whether a probation violation finding for a "technical" violation is unreasonable, see *State v. Jones* (1990), 49 Ohio St.3d 51, 55, 550 N.E.2d 469, there was simply no evidence presented which supported C.M.C.'s claim that he was "heavily medicated" or that his medications affected his ability to stay awake at school. While Zimmerman was asked on cross-examination whether the child's medications affect his ability to stay awake, she responded that that was not her understanding of his medication. And C.M.C. offered no evidence to the contrary. Furthermore, his problems at school stemmed beyond mere drowsiness in class. According to Zimmerman, the child was not following the instructions of teachers and school officials, he "totally shut down" at school, and refused to do his school work; and on one occasion he refused to leave the school office and threatened to physically harm people. Thus, we reject C.M.C.'s claim that the trial court's finding of a probation violation was unreasonable under the circumstances.

{¶24} Accordingly, we overrule C.M.C.'s first assignment of error.

#### IV. Temporary Custody to the CSB

##### A. Reasonable Efforts Determination

{¶25} In his second assignment of error, C.M.C. contends that the trial court erred in placing him in the temporary custody of the CSB without making the requisite findings of fact regarding the reasonable efforts made to prevent his removal from his home.

{¶26} Under R.C. 2151.354(A)(1), if a child is adjudicated an unruly child, the court may make any of the dispositions authorized under R.C. 2151.353, which governs the disposition of an adjudicated abused, neglected, or dependent child. R.C. 2151.353(A)(2) allows a court to commit the child to the temporary custody of a public children services agency. R.C. 2151.353(H) provides, however, that a court may not issue a dispositional order "pursuant to division (A) of this section" that removes the child from the child's home "unless the court complies with section 2151.419 of the Revised Code and includes in the dispositional order the findings of fact required by that section."

{¶27} Under R.C. 2151.419(A)(1), a court that removes a child from the child's home must determine "whether the public children services agency \* \* \* that will be given custody of the child has made reasonable efforts to prevent the removal of the child from the child's home \* \* \* [.]". R.C. 2151.419(B)(1) requires a court to issue written findings of fact setting forth the reasons supporting its determination under (A)(1). In so doing, the court must "briefly describe in the findings of fact the relevant services provided by the agency to the family of the child and why those services did not prevent the removal of the child from his home \* \* \* [.]". *Id.*

{¶28} The State contends that these requirements do not apply in the context of a dispositional hearing where the issue of abuse, neglect or dependency is not part of the case. After carefully reviewing the language in R.C. 2151.354 and R.C. 2151.353, we agree with the State. R.C. 2151.354 authorizes the juvenile court in an unruly proceeding to “make any of the dispositions” available to the court in an abuse, neglect or dependency proceeding under R.C. 2151.353. It does not require the court in an unruly dispositional hearing to adopt all the procedures that are necessary in an abuse, neglect, dependency proceeding. R.C. 2151.354(A)(1) simply permits the court to make any disposition authorized under R.C. 2151.353; it does not require the court to make any additional findings prior to making any of the available dispositions. *In re Kidd*, Lake App. No. 2001-L-039, 2002-Ohio-7264, at ¶40 (dealing with proceeding to adjudicate a child as unruly). The language in R.C. 2151.353(H) bolsters this conclusion in stating a court “shall not issue a dispositional order pursuant to division (A) of this section that removes a child from the child’s home” without complying with R.C. 2151.419 and making the factual findings required there. Here, the court is not issuing a dispositional order under division (A) of R.C. 2151.353. Its disposition arises under R.C. 2151.354, dealing with an unruly child. In other words, R.C. 2151.354 incorporates the dispositional alternatives found in R.C. 2151.353(A) but not the requirements of the remainder of that statute. A reading to the contrary is in direct conflict with the plain language of the statutes themselves. *Kidd*, supra, at ¶40.

{¶29} One treatise agrees with this construction: Giannelli & Salvador, Ohio Juvenile Law, (Ed. 2008) 520, Section 43:13, states:

Although this requirement is intended to apply mainly to abuse, neglect, or dependency proceedings where such public and private agencies are

involved, by the wording of the statute its applicability is extended to other cases under certain circumstances. Thus, the requirement applies in any proceeding \* \* \* where the removal order is made at an adjudicatory hearing. However, if the removal order is made at a dispositional hearing, the reasonable efforts determination is required only if the dispositional hearing was held following an adjudication of abuse, neglect, or dependency. (footnote omitted.)

We agree. Thus, we conclude the trial court did not err in failing to support a reasonable efforts determination.<sup>2</sup> The court's boilerplate reference to reasonable efforts was mere surplusage.

#### B. Reasonableness of Removal

{¶30} In his third assignment of error, C.M.C. contends that the trial court's decision to remove him from his home on a probation violation and place him in the temporary custody of CSB was unreasonable under the circumstances. Again, he argues that his attendance at school was no longer an issue and that "he had made significant [improvement] in resolving his problems, prior to the hearings \* \* \* (.)"

{¶31} We agree with the proposition that a child's improved behavior after the act of violating the court's prior order may have some bearing on deciding what sanction is appropriate to impose for the violation. However, there is evidence that C.M.C. violated community control and probation by engaging in theft, threatening harm to others and failing to follow the instructions of teachers and parents. His misconduct does not relate solely to truancy. And, given the evidence that his parents either cannot or will not manage their own lives or properly care for their children, we see nothing unreasonable

---

<sup>2</sup> However, had the court made the order at the adjudicatory stage of the proceedings, our decision might be otherwise. See R.C. 2151.419(A)(1), which is subject to certain statutory exceptions, requires a reasonable efforts determination "at any hearing held pursuant to section 2151.28" (adjudicatory hearings) and other specified proceedings (including abuse, neglect, dependency). See, also, our immediately preceding citation to *Giannelli & Salvador*.

about a temporary placement with the county children's services agency, e.g., a foster home. The third assignment of error is meritless.

JUDGMENT AFFIRMED.



**JUDGMENT ENTRY**

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Court of Common Pleas, Juvenile Division, to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

Abele, J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: \_\_\_\_\_  
William H. Harsha, Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**