

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

In the Matter of: :
: :
K.H., : Case No. 09CA35
: :
An Adjudicated Delinquent Child. :
: **DECISION AND**
: **JUDGMENT ENTRY**
: :
: File-stamped date: 12-30-09

APPEARANCES:

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

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

Kline P.J.:

{¶1} Karenetta Hoover (hereinafter “Hoover”) appeals the judgment of the Juvenile Division of the Washington County Court of Common Pleas. The trial court extended an order of protective supervision for K.H., Hoover’s child. On appeal, Hoover contends that the trial court erred by extending the order of protective supervision beyond the time limit imposed by R.C. 2151.353(G). We agree. The time limit for protective supervision applies to adjudicated delinquent children as well as abused, neglected, and dependent children. And even though a juvenile court has broad discretion pursuant to R.C. 2152.19(A)(8), the juvenile court’s disposition must not directly contradict another statute of the Juvenile Code. As a result, the trial court below should not have extended the order of protective supervision beyond two years from the date the complaint was

filed. Accordingly, we reverse the judgment of the trial court and remand this cause to the trial court for further proceedings consistent with this opinion.

I.

{¶2} The record reveals the following facts pertinent to this appeal. On July 6, 2007, a complaint was filed in the juvenile court. The complaint alleged that K.H. “knowingly caused or attempted to cause physical harm to a family member, to wit: her Mother, Karenetta Hoover.” If an adult had committed the offense, “it would have been charged as Domestic Violence, a misdemeanor of the first degree in violation of [R.C.] 2919.25(A) & (D)(2).”

{¶3} On September 12, 2007, the trial court placed K.H. in the temporary custody of the Washington County Children Services Board (hereinafter “Children Services”).

{¶4} The trial court held a hearing on September 18, 2007. An agreement was reached before that hearing, and K.H. admitted to an amended count of disorderly conduct. As a result, the trial court (1) adjudicated K.H. to be a delinquent child, (2) made K.H. a temporary ward of the court, and (3) placed K.H. in shelter care pending the dispositional hearing.

{¶5} On September 25, 2007, the trial court committed K.H. to the temporary custody of the Washington County Juvenile Center. K.H. remained in that center until August 14, 2008.

{¶6} In its August 14, 2008 journal entry, the trial court placed K.H. on probation and returned K.H. to Hoover’s custody. The trial court further ordered protective supervision by Children Services.

{¶17} On February 2, 2009, the trial court renewed the order of protective supervision.

{¶18} On July 21, 2009, the trial court held an annual review hearing regarding the order of protective supervision. At the hearing, K.H.'s guardian ad litem recommended the continuation of protective supervision for K.H. That same day, Children Services also filed a request for the continuation of protective supervision. K.H. and Hoover did not attend the July 21, 2009 hearing, but their attorneys did. Hoover's attorney said, "I assume from the comments I heard from people who have seen her more recently * * * that [Hoover] objects to the continuation of protective supervision."

{¶19} In its July 29, 2009 Order Regarding Protective Supervision, the trial court stated the following: "This matter came before the Court for an annual review hearing regarding protective supervision on this, the 21st day of July, 2009. * * *

{¶10} Whereupon, [Hoover's attorney], on behalf of Karenetta Hoover, asked that protective supervision be discontinued.

{¶11} Whereupon, the Court noted receipt of the guardian ad litem report on July 8, 2009, and stated that the report has been reviewed.

{¶12} Whereupon, the Court HELD that reasonable efforts have been made, and that it is in the best interest of the child to continue under the protective supervision of Washington County Children Services.

{¶13} Whereupon, the Court ORDERED that protective supervision continue with Washington County Children Services."

{¶14} Hoover appeals the judgment, asserting the following two assignments of error: I. “THE JUVENILE COURT ERRED IN CONTINUING AN ORDER OF PROTECTIVE SUPERVISION MORE THAN TWO YEARS AFTER THE COMPLAINT WAS FILED IN THIS CASE.” And, II. “THE JUVENILE COURT ERRED IN CONTINUING AN ORDER GRANTING PROTECTIVE SUPERVISION TO CHILDREN SERVICES, WHERE THAT ORDER WAS NO LONGER NECESSARY[], OR IN THE CHILD’S BEST INTERESTS.”

II.

{¶15} In her first assignment of error, Hoover contends that the trial court erred in continuing the order of protective supervision for more than two years after the initial complaint was filed.

{¶16} To determine whether the trial court had the authority to continue the order of protective supervision, we must interpret various statutes in R.C. Chapters 2151 and 2152. These chapters “outline the juvenile court’s authority to make dispositions regarding abused, neglected, dependent, and delinquent children.” *In re J.D.*, 172 Ohio App.3d 288, 2007-Ohio-3279, at ¶9. Interpreting statutes is a question of law, and we review questions of law de novo. *Bishop v. Bishop*, Washington App. No. 08CA44, 2009-Ohio-4537, at ¶33; *State v. Elkins*, Hocking App. No. 07CA1, 2008-Ohio-674, at ¶12.

{¶17} On appeal, Hoover makes the following argument. Under R.C. 2151.353(G), a trial court may not order protective supervision for more than two years after the date the complaint in the case was filed. In the present case, the complaint was filed on July 6, 2007. For that reason, Hoover contends that the

trial court erred by extending the order of protective supervision beyond July 6, 2009. In contrast, the state points out that R.C. 2151.353 is titled “[d]isposition of abused, neglected, or dependent child[.]” And in the present case, the trial court adjudicated K.H. to be a delinquent child under R.C. Chapter 2152. As such, the state contends that the time limits in R.C. 2151.353(G) do not apply because K.H. “was never adjudicated abused, neglected or dependant [sic].” Brief of Plaintiff-Appellee at 3. According to the state, “[n]othing in [R.C. 2152], that Chapter of the Revised Code related to delinquency findings, places the same restriction upon any protective supervision imposed by a juvenile court.” Id.

{¶18} However, there is no direct provision for protective supervision based solely on R.C. Chapter 2152. Instead, the trial court had the authority to order protective supervision pursuant to R.C. 2152.19(A)(1) and R.C. 2151.353(A)(1). R.C. 2152.19(A)(1) provides: “If a child is adjudicated a delinquent child, the court may make any of the following orders of disposition, in addition to any other disposition authorized or required by this chapter: (1) Any order that is authorized by section 2151.353 of the Revised Code for the care and protection of an abused, neglected, or dependent child[.]” And under R.C. 2151.353(A)(1), “the court may make any of the following orders of disposition: * * * Place the child in protective supervision[.]”

A. The Time Limits in R.C. 2151.353(G)

{¶19} The plain language of R.C. 2151.353(G) limits protective supervision to two years from the date the complaint was filed. R.C. 2151.353(G) provides: “(1) No later than one year after the earlier of the date the

complaint in the case was filed or the child was first placed in shelter care, a party may ask the court to extend an order for protective supervision for six months or to terminate the order. * * * If no party requests extension or termination of the order, the court shall notify the parties that the court will extend the order for six months or terminate it and that it may do so without a hearing unless one of the parties requests a hearing. * * *

{¶20} (2) If the court grants an extension of the order for protective supervision pursuant to division (G)(1) of this section, a party may, prior to termination of the extension, file with the court a request for an additional extension of six months or for termination of the order. The court and the parties shall comply with division (G)(1) of this section with respect to extending or terminating the order.

{¶21} (3) If a court grants an extension pursuant to division (G)(2) of this section, the court shall terminate the order for protective supervision at the end of the extension.”

{¶22} The Twelfth District Court of Appeals interpreted R.C. 2151.353(G) in *In re M.J.*, Fayette App. No. CA2007-07-026, 2008-Ohio-3217. In *M.J.*, Fayette County Children Services filed a complaint alleging that four children were abused, dependent, and/or neglected. See *In re M.J.* at ¶2. The trial court adjudicated all four children as either neglected or abused and neglected. After the trial court extended protective supervision for three of the children, the children’s mother appealed. On appeal, the Twelfth District Court of Appeals stated that R.C. 2151.353(G) “permits an initial one-year period on a

protective supervision order (which commences upon the earlier of the date the complaint was filed or the date the child was first placed into shelter care) plus two additional six-month extensions, for a total of two years. Should a court grant both six-month extensions, the statute expressly indicates that the court must terminate the order for protective supervision at the end of the second six-month extension.” *In re M.J.* at ¶13. As a result, the *M.J.* court found that “the trial court was required to terminate the order for protective supervision as to all four children, at the very latest, at the conclusion of the second six-month extension, or September 7, 2006.” *Id.* at ¶14. Additionally, the court held “that the trial court abused its discretion in extending Children Services’ protective supervision beyond the two-year period permitted under R.C. 2151.353(G).” *Id.* at ¶15.

{¶23} Here, we agree with the *M.J.* court’s interpretation of R.C. 2151.353(G). Thus, the question is this: Do the time restrictions imposed by R.C. 2151.353(G) also apply to an adjudicated delinquent child?

B. R.C. 2151.353(G) and Adjudicated Delinquent Children

{¶24} Despite the state’s arguments, we believe that the time restrictions imposed by R.C. 2151.353(G) do apply to an adjudicated delinquent child. A 2003 Ohio Attorney General Opinion guides our interpretation of R.C. 2152.19(A)(1) and R.C. 2151.353(G). See 2003 Ohio Atty.Gen.Ops. No. 03-004. This Opinion addresses adjudicated delinquent children and the time limits imposed under another section of R.C. 2151.353. In the Opinion, the Attorney General stated the following: “If a juvenile court commits to the temporary

custody of a public children services agency a child who has been adjudicated to be unruly or delinquent pursuant to R.C. 2151.354(A)(1) or R.C. 2152.19(A)(1), respectively, the duration of the temporary custody order is subject to the time limitations set forth in R.C. 2151.353(F) and R.C. 2151.415.” Id. at Paragraph One of the Syllabus. The Attorney General “conclude[d] that, although R.C. 2151.353 and R.C. 2151.415 refer to orders of temporary custody issued pursuant to R.C. 2151.353, the statutes’ limitations on the duration of a temporary custody order apply, by virtue of the cross-reference to R.C. 2151.353 in R.C. 2151.354 and R.C. 2152.19, to orders governing children who have been adjudicated unruly or delinquent.” Id. Thus, according to this Opinion, at least some of the time limits imposed under R.C. 2151.353 apply to adjudicated delinquent children.

{¶25} We believe that the reasoning in 2003 Ohio Atty.Gen.Ops. No. 03-004 is equally relevant to the present case. The Attorney General determined that the time limits in R.C. 2151.353(F) apply to adjudicated delinquent children because of the cross-reference between R.C. 2151.353 and R.C. 2152.19. The same cross-reference exists in the present case, and we can find no logical reason why the cross-reference would apply to the time limits in R.C. 2151.353(F) but not in R.C. 2151.353(G). This is especially so because the same triggering events start the relevant time periods in both 2151.353(F) and R.C. 2151.353(G).

C. The Catchall Provision in R.C. 2152.19(A)(8)

{¶26} The state does not mention R.C. 2152.19(A)(8). But in our view, R.C. 2152.19(A)(8) would be the only basis for arguing why the time restrictions imposed by R.C. 2151.353(G) might not apply to an adjudicated delinquent child. R.C. 2152.19(A)(8) is a sort of “catchall” provision and allows a juvenile court to “[m]ake any further disposition that the court finds proper[.]”

{¶27} Despite the broad language of R.C. 2152.19(A)(8), many Ohio courts have noted that a juvenile court’s “authority to make ‘any further disposition’ has been ruled to be confined to a choice of dispositions provided for in other statutes contained in the Juvenile Code.” *In re Boss B.*, Lucas App. No. L-07-1343, 2008-Ohio-2995, at ¶14, citing *State v. Grady* (1981), 3 Ohio App.3d 174, 177. See, also, *In re J.D.* at ¶18; *Matter of Chinkin* (Apr. 27, 1992), Warren App. No. CA91-09-071; *In re Sanders* (1991), 72 Ohio App.3d 655, 657-58. But, see, *In re Jacobs*, 148 Ohio App.3d 173, 2002-Ohio-2844, at ¶16. “Not to so construe this provision would emasculate all the dispositional options specifically enumerated in the Juvenile Code.” *Grady* at 176. At a minimum, despite the discretion provided by R.C. 2152.19(A)(8), a juvenile court’s disposition must not directly contradict an existing statute in the Juvenile Code. See *In re Williams*, Washington App. No. 05CA56, 2006-Ohio-4657, at ¶11, fn. 4 (refusing to interpret prior analogous version of R.C. 2152.19(A)(8) in a manner that “directly contravenes” another statute); *In re Hennessey* (2001), 146 Ohio App.3d 743, 2001-Ohio-2267, at ¶18 (stating that, despite prior analogous version of R.C. 2152.19(A)(8), placing delinquent child in the county jail was inappropriate because of the plain language of the relevant statutes). Cf. *In re Lambert* (1989),

63 Ohio App.3d 121, 122-23 (applying prior analogous version of R.C. 2152.19(A)(8) to a disposition that did not directly contradict existing statutes).

{¶28} *Sanders* does not involve protective supervision or any of the dispositions provided for under R.C. 2151.353. However, as it relates to the catchall provision, we find *Sanders* to be analogous to the present case. In *Sanders*, the trial court committed an adjudicated delinquent child to the department of probation. See *In re Sanders* at 656-57. The trial court further ordered the child's probation officer to place the child at a private school in Pennsylvania. On appeal, the Eighth District Court of Appeals noted that an analogous prior version of R.C. 2152.19(A)(8) allowed the juvenile court to make any further disposition that the court found proper. *Id.* at 657. Nevertheless, the appellate court reversed, in part, because "the applicable statutes prohibit[ed] the juvenile court from placing a child in a specific school[.]" *Id.* at 659. Thus, in *Sanders*, the trial court could not enter a disposition that was specifically prohibited by another section of the Juvenile Code.

{¶29} We agree with the reasoning of *Sanders* and similar cases. That is, a disposition ordered pursuant to R.C. 2152.19(A)(8) may not contradict another statute in the Juvenile Code. Here, the catchall provision in R.C. 2152.19(A)(8) may not trump the plain language of R.C. 2151.353(G). R.C. 2151.353(G) limits protective supervision to a total of two years from "the date the complaint in the case was filed." In this case, the complaint was filed on July 6, 2007. As such, the trial court should not have extended protective supervision beyond July 6, 2009.

{¶30} For the foregoing reasons, we find that the trial court erred by extending the order of protective supervision. Pursuant to R.C. 2151.353(G), the trial court did not have the authority to extend the order past July 6, 2009. Accordingly, we sustain Hoover's first assignment of error.

III.

{¶31} In her second assignment of error, Hoover contends that the trial court abused its discretion by extending the order of protective supervision because protective supervision is no longer necessary. Based on our resolution of Hoover's first assignment of error, we find this assignment of error moot and decline to address it. See App.R. 12(A)(1)(c).

{¶32} Accordingly, we reverse the judgment of the trial court and remand this cause to the trial court for further proceedings consistent with this opinion.

**JUDGMENT REVERSED AND
CAUSE REMANDED.**

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE REVERSED and this cause BE REMANDED to the trial court for further proceedings consistent with this opinion. Appellee shall pay the costs herein taxed.

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.

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

Abele, J.: Concurs in Judgment and Opinion.
McFarland, J.: Dissents.

For the Court

BY: _____
Roger L. Kline, Presiding 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.