[Cite as *In re I.S.P.*, 2010-Ohio-410.]

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

IN THE MATTER OF:	:	
	:	
I.S.P.	:	Case No. 09CA37
	:	
Adjudicated Delinquent Child.	:	**Released: January 28, 2010**
	:	
	:	DECISION AND JUDGMENT
	:	ENTRY

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 Plaintiff/Appellee.

McFarland, P. J.:

{¶1} Appellant, I.S.P., appeals from both his adjudication as delinquent, and from his disposition, which committed him to the temporary custody of the Washington County Juvenile Center for completion of a rehabilitation program. On appeal, Appellant raises two assignments of error, contending that the trial court 1) violated his right to counsel and to due process in accepting an invalid, uncounseled waiver of that right; and 2) abused its discretion in committing him to the Washington County Juvenile Center for a minimum of six months when he had not committed any new

criminal offense. Because we find that Appellant knowingly, intelligently and voluntarily waived his right to counsel, we overrule his first assignment of error. Further, because we find no abuse of discretion by the trial court in committing Appellant to the Washington County Juvenile Center, we overrule Appellant's second assignment of error. Accordingly, we affirm the decision of the trial court.

FACTS

{¶2} Appellant, I.S.P. was initially brought before the Washington County Juvenile Court after a complaint was filed on November 17, 2006, when Appellant was only thirteen years old. The complaint alleged Appellant had committed a theft offense, in connection with his taking items valued at $5.99 from his school book fair. As a result, an adjudication hearing was held, and with both his mother and father present at the hearing, Appellant waived his right to counsel, both verbally and in writing, and entered an admission to the charge. After holding a separate dispositional hearing where Appellant again was notified of, and waived his right to counsel, Appellant was placed on probation.

{¶3} On October 10, 2007, when Appellant was fourteen years old, the juvenile court held a hearing regarding alleged probation violations. The alleged probation violations were as follows: 1) failure to obey parents; 2)

failure to attend school; 3) failure to obey all laws and be on good behavior; and 4) failure to obey all rules of the probation department. Specifically, Appellant was alleged to have threatened to bring a gun to school to shoot another student. At the adjudication hearing, Appellant, with his mother present, waived his right to counsel, both verbally and in writing, and entered an admission to the probation violation. After holding a separate dispositional hearing, where Appellant again waived his right to counsel, the court continued Appellant on probation.

{¶4} On October 28, 2008, when Appellant was fifteen years old, the court held another hearing in response to additional alleged probation violations, which now included 1) failure to obey parents; 2) failure to attend school; 3) failure to report absences to the probation officer; 4) failure to obey all laws; and 5) failure to obey all rules of the probation department. Appellant's probation officer testified that Appellant had three unexcused absences, eleven tardies, nine days in an alternative suspension program, and had recently been questioned by the Marietta police regarding alleged inappropriate touching of a female classmate. At the adjudication hearing, Appellant, with his mother present, waived, both orally and in writing, his right to counsel and entered an admission to the probation violation. The trial court ordered a psychological evaluation to be completed on Appellant

pending disposition. A subsequent dispositional hearing was held, where Appellant again waived his right to counsel, with his mother present. The trial court committed Appellant to the temporary custody of the Washington County Juvenile Center, but suspended the sentence upon the condition that Appellant be on good behavior and have no further probation violations. As part of his continued probation, Appellant was also ordered to continue to take his medication as prescribed, and to continue counseling until terminated by the counselor.

{¶5} On July 13, 2009, when Appellant was fifteen years old, additional probation violations were alleged, which included 1) failure to obey parents; 2) failure to obey all laws; 3) failure to attend counseling; and 4) failure to obey all rules of the probation department. Specifically it was alleged that Appellant had quit his summer employment, had lied to his probation officer about his whereabouts one occasion, had been being disrespectful at home, had stopped taking his medication and had been canceling his counseling appointments. At the adjudication hearing, Appellant, with his mother present, waived, both orally and in writing, his right to counsel and entered an admission to the probation violation. The

trial court ordered a YLS assessment[1] to be completed and continued the case pending disposition.

{¶6} At the dispositional hearing, Appellant again waived his right to counsel, with his mother present. After reviewing the results of the YLS, which rated Appellant as high risk, as well as considering the recommendations of Appellant's probation officer and mother, the trial court committed Appellant to the temporary custody of the Washington County Juvenile Center for completion of a rehabilitation program, explaining that the program could take anywhere from six to eighteen months to complete. It is from this most recent adjudication and disposition that Appellant now appeals, assigning the following errors for our review:

ASSIGNMENTS OF ERROR

"I. THE TRIAL COURT VIOLATED APPELLANT'S RIGHT TO COUNSEL AND TO DUE PROCESS, IN ACCEPTING AN INVALID, UNCOUNSELED WAIVER OF THAT RIGHT.

II. THE TRIAL COURT ABUSED ITS DISCRETION IN COMMITTING APPELLANT TO THE WASHINGTON COUNTY JUVENILE CENTER FOR A MINIMUM OF SIX MONTHS, WHERE APPELLANT HAD NOT COMMITTED ANY NEW CRIMINAL OFFENSE."

[1] The YLS/CMI is a quantitative screening survey of attributes of juvenile offenders and their situations relevant to decisions regarding level of service, supervision, and programming.

ASSIGNMENT OF ERROR I

{¶7} In his first assignment of error, Appellant contends that the trial court violated his right to counsel and due process in accepting what he describes as "an invalid, uncounseled waiver of that right." Specifically, Appellant argues that there was no evidence in the record that Appellant's mother had even discussed the issue of representation with her son, and that Appellant and his mother's interests conflicted, requiring appointment of counsel. Appellant cites *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, in support of his reasoning under this assignment of error.

{¶8} In *C.S.*, the Supreme Court of Ohio held that in a juvenile delinquency proceeding a "totality of the circumstances analysis is the proper test to be used in ascertaining whether there has been a valid waiver of counsel by a juvenile." *In re C.S.* at ¶3 of the syllabus. Further, in *In re L.A.B.* 121 Ohio St.3d 112, 2009-Ohio-354, 902 N.E.2d 471, the Supreme Court of Ohio held that "[a] probation revocation hearing is an adjudicatory hearing, which is held to determine whether a child is delinquent as defined by R.C. 2152.02(F)(2); therefore, both Juv.R. 29, setting forth the procedure for adjudicatory hearings, and Juv.R. 35(B), setting forth the procedure for the revocation of probation, are applicable to the hearing." *In re L.A.B.* at syllabus. Additionally, the court held that "the totality-of-the-circumstances

test established in *In re C.S.* [citation omitted] applies to determine whether a valid waiver of counsel has been made by a juvenile" in a probation revocation hearing. *In re L.A.B.* at ¶1.

{¶9} As set forth verbatim in *L.A.B.*:

"Because probation revocation hearings are subject to Juv.R. 29, the totality-of-the-circumstances test established in *In re C.S.* must be used to ascertain whether the child has validly waived the right to counsel. According to this test, if the court substantially complies with Juv.R. 29(D) in accepting an admission, the plea will be deemed voluntary unless there is a showing of prejudice or a showing that the totality of the circumstances does not support a finding of valid waiver of the juvenile's rights. *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, at ¶ 113. To determine whether a child's waiver of counsel is valid under the totality of the circumstances, judges must consider a variety of factors and circumstances. Id. at ¶ 108. These include the juvenile's age, intelligence, and education; the juvenile's general background and experience; the juvenile's background and experience in the court system; the presence or absence of the juvenile's parent or guardian; the language used by the court in describing the

juvenile's rights; the juvenile's conduct; and the complexity of the proceedings. Id."[2]

{¶10} Additionally, as discussed in *In re C.S.* "[t]hough it is not dispositive, a key factor in the totality of the circumstances is the degree to which the juvenile's parent is capable of assisting and willing to assist the juvenile in the waiver analysis." *In re. C.S* at ¶110, citing *Huff v. K.P.* (N.D. 1981), 302 N.W.2d 779, 782. Further, "[i]n juvenile proceedings, 'substantial compliance means that in the totality of the circumstances, the juvenile subjectively understood the implications of his plea.' " *In re L.A.B.* at ¶ 58. Finally, "the waiver of the right must be made in open court, recorded, and in writing." *In re C.S.* at ¶109.

{¶11} When Appellant's probation was revoked, he was sixteen years old. Although there is some mention in the record that Appellant was, at one point, in special education classes and had an Individual Education Plan, there is no evidence or claim that Appellant was unable to comprehend the court proceedings. He had been involved with the juvenile court system for three years and had consistently been brought back before the court for probation violations. At his original adjudication and each time he was before the court, at the adjudication hearings and the separate dispositional

[2] Juv.R. 29 contains the procedures for scheduling and conducting adjudicatory hearings in juvenile cases.

hearings, Appellant was informed of his right to counsel, asked if he understood the charges against him. He also had a parent present and waived his right to counsel both orally and in writing. Each time, the court used understandable language, engaging Appellant as to his understanding of his rights and the charges against him. Further, the written waiver contained understandable language.

{¶12} As part of the probation revocation currently at issue, the following exchange took place during the adjudication hearing:

THE COURT: "* * * You would have the right to remain silent and the right to be represented by an attorney. You and your mother do have the right to have a lawyer or attorney represent you here today. If you would like an attorney and you could not afford to hire one, I would appoint one for you if you so requested and you qualified financially. * * * [I.S.P.], do you wish to have a lawyer in this case?

THE JUVENILE: No.

THE COURT: And how about you, ma'am?

THE JUVENILE'S MOTHER: No.

THE COURT: Now your son has waived his right to have a lawyer. Are you okay with that or do you believe that he needs a lawyer?

THE JUVENILE'S MOTHER: No. I'm okay with that.

THE COURT: Okay. Mr. Seckman is going to hand each of you a waiver of counsel form. By signing that, you're waiving your right to have an attorney.

THE COURT: Note for the record that both mother and child did sign a waiver of counsel form."

{¶13} After Appellant's probation officer read the probation violations into the record the court had the following exchange with Appellant:

THE COURT: "Do you understand what Mr. Seckman is alleging?

THE JUVENILE: Yes.

THE COURT: And with respect to the violations, do you admit violating your terms of probation?

THE JUVENILE: Yes.

THE COURT: Is there anything you'd like to say?

THE JUVENILE: Could you read number – I think it's no. 6 again?

THE COURT: I will obey all federal, state and city laws. I will be of good behavior generally.

THE JUVENILE: What did I do?

THE COURT: Not being of good behavior generally, probably would be lying to him . . .

MR SECKMAN: Quitting your job. Doing things along those lines. Losing your job. Not showing up for work.

THE COURT: Yeah. Okay. So do you still wish to admit?

THE JUVENILE: Yes.

THE COURT: Anything else you'd like to say?

THE JUVENILE: I apologize for lying to you.

THE COURT: How about mother, anything that you have to say?

THE JUVENILE'S MOTHER: Not that it really counts, but on his work days, on Fridays, he didn't have to work. I mean, not that it counts, but . . .

THE COURT: That's fine. Might as well have the record cleared up."

{¶14} After this exchange, the court found Appellant had violated his probation and a court order and continued the matter for a separate dispositional hearing. The court also ordered that Appellant and his mother both complete a YLS assessment before disposition. At the dispositional hearing, Appellant was again informed of his right to counsel as follows:

THE COURT: "* * * Now, as I have explained at the last hearing, you and your mother have the right to have lawyers. If either of you would like a lawyer and you could not afford to hire one, I would appoint one for you if you so requested and you qualified financially. [I.S.P.], do you wish to have a lawyer?

THE JUVENILE: No.

THE COURT: And ma'am, how about you?

THE JUVENILE'S MOTHER: No, sir.

THE COURT: And your son has waived his right to have a lawyer. Are you okay with him doing that or do you believe he should have a lawyer?

THE JUVENILE'S MOTHER: No. I'm fine with that.

THE COURT: Okay. Mr. Seckman is going to hand both of you then a waiver of counsel form. By signing that form, you're waiving your right to have a lawyer here today and I will proceed.

THE COURT: Note for the record both mother and child did sign the written waiver of counsel form."

{¶15} Thus, a review of the record reveals that both Appellant and his mother were advised of their right to counsel and of their right to court appointed counsel at both the adjudication and also at the dispositional hearings. Appellant was informed of and offered this right, separate and apart from his mother. Both Appellant and his mother waived that right, orally and in writing, on the record and in open court.

{¶16} Additionally, with regard to the issue raised by Appellant as to whether his mother was able to "represent" him in accordance with the holding of *In re C.S.*, we find that she was. *In re C.S.* held that "[t]he word 'represent' in the fifth sentence of R.C. 2151.352 means to counsel or advise the juvenile in a delinquency proceeding." *In re C.S.* at ¶1 of the syllabus (finding mother did not "represent" child where she had had no contact with him since arrest, had not read the police report and was preoccupied with getting the child placed in the same DYS facility as her other son in order to facilitate her transportation for visitation). Here, Appellant lived with his mother at the time the parole violations were occurring and his mother had been involved in the process since his original violation.

{¶17} Further, the record reflects that Appellant's mother was the source of the information for some of the alleged probation violations, including Appellant's behavior at home his failure to take his medication

and attend counseling. In response to this fact, Appellant questions whether there was sufficient conflict between the two to have automatically required appointment of counsel. However, after reviewing the record, we find no conflict between Appellant and his mother which would have required appointment of counsel. As set forth above, Appellant's mother did speak up on Appellant's behalf at the adjudication hearing, setting the record straight regarding Appellant's work schedule on Fridays. Additionally, at the dispositional hearing, when questioned by the court about her recommendations for Appellant, the following was said:

THE COURT: [I.S.P.], what would you like to say?

THE JUVENILE: Nothing.

THE COURT: Nothing? How about you ma'am?

THE JUVENILE'S MOTHER: I'm just you know, to the point that I don't know what else to do. He needs more discipline. I haven't put my foot down enough, and . . . Yeah. I hope this will help.

THE COURT: Okay.

THE JUVENILE'S MOTHER: Will help both of us."

{¶18} Although Appellant's mother agreed with a detention placement, it appears that she did so in order that Appellant could receive the help he needed, and recognizing that she had been unable to provide the discipline needed by Appellant. We do not believe that such a statement,

although arguably against the child's penal interests, leads to the conclusion that Appellant's mother was acting in anything other than the child's best interest at the hearing. See, *In re Howard* (1997), 119 Ohio App.3d 201, 695 N.E.2d 1 (reasoning that "[p]arents are not compelled to advocate what the child wants if they believe such a result would not be in the child's best interest.").

{¶19} Based on the totality of the circumstances in this case, we hold that I.S.P. knowingly, intelligently and voluntarily waived his right to counsel. As such, we overrule his first assignment of error and affirm the decision of the trial court.

ASSIGNMENT OF ERROR II

{¶20} In his second assignment of error, Appellant contends that the trial court abused its discretion in committing him to the Washington County Juvenile Center for a minimum of six months, when Appellant had not committed any new criminal offenses. Juvenile courts have broad discretion to craft dispositions for delinquent children. *In re D.S.*, 111 Ohio St.3d 361, 2006-Ohio-5851, 856 N.E.2d 921, at ¶ 6. Thus, an appellate court generally will not disturb a trial court's dispositional choice absent an abuse of discretion. *In re B.C.*, Lawrence App. No. 06CA43, 2007-Ohio-6477, at ¶ 11; *In re T.S.*, Franklin App. No. 06AP-1163, 2007-Ohio-5085, at ¶ 28; *In re*

T.H., Clermont App. Nos. CA2006-02-021 & CA2006-02-022, 2007-Ohio-352, at ¶ 10. An abuse of discretion is more than an error of judgment; rather, it means that the trial court's ruling is unreasonable, arbitrary, or unconscionable. See, e.g., *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140. An abuse of discretion demonstrates "perversity of will, passion, prejudice, partiality, or moral delinquency." *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621, 614 N.E.2d 748. Furthermore, when reviewing for an abuse of discretion, an appellate court must not substitute its judgment for that of the trial court. *State ex rel. Duncan v. Chippewa Twp. Trustees* (1995), 73 Ohio St.3d 728, 732, 1995-Ohio-272, 654 N.E.2d 1254; *In re Jane Doe 1* (1991). 57 Ohio St.3d 135, 137-138, 566 N.E.2d 1181.

{¶21} Appellant was committed to the temporary custody of the Washington County Juvenile Center for completion of a rehabilitation program. R.C. 2152.19 enumerates dispositional orders that a juvenile court may impose in on adjudicated delinquent children in addition to any other disposition authorized by R.C. Chapter 2152. In particular, R.C. 2152.19(A)(2) permitted the trial court to commit Appellant to the temporary custody of the juvenile center. A juvenile court, however, must impose dispositions that are "reasonably calculated to achieve the overriding

purposes set forth in this section, commensurate with and not demeaning to the seriousness of the delinquent child's * * * conduct and its impact on the victim, and consistent with dispositions for similar acts committed by similar delinquent children* * *." R.C. 2152.01(B). The "overriding purposes for dispositions" include: (1) providing for the care, protection, and mental and physical development of the delinquent child; (2) protecting the public interest and safety; (3) holding the offender accountable for his actions; (4) restoring the victim; and (5) rehabilitating the offender. R.C. 2152.01(A). The statute mandates that the juvenile court achieve those purposes through "a system of graduated sanctions and services." Id.

{¶22} Appellant concedes under this assignment of error that the trial court has a great deal of discretion in this area, but claims that it was unreasonable to "lock a child up for six months" for the type of behavior at issue, which did not include a new criminal offense. Appellant cites no case law to support his argument that he was required to commit a new criminal offense before the trial court could impose his previously suspended commitment to a juvenile detention center. A review of the record indicates that Appellant was originally placed on probation three years prior for the commission of a theft offense. Subsequently, the trial court ordered a suspended commitment to the Washington County Juvenile Detention

Center after Appellant admitted to a probation violation which involved his threatening to bring a gun to school and to shoot a student, as well as a subsequent violation involving his attendance at school and being questioned by the Marietta police for inappropriate touching of a female classmate.

{¶23} At the time the suspended commitment was ordered, Appellant was warned by both his probation officer and the court that any further violations of his probation would result in him being committed to the detention center. Thus, Appellant was fully aware of the consequences of any further violations of his probation. The probation violation at issue was pursued in light of Appellant's violating four different terms of his probation, which included 1) failure to obey his parents; 2) failure to obey all laws and be on good behavior generally; 3) failure to attend counseling until released by the court in writing; and 4) failure to obey all rules and regulations of the probation department.

{¶24} During the course of the adjudication hearing, Appellant's probation officer testified that Appellant's mother provided information that Appellant was disrespectful to her at home, would not help around the house, yelled and cussed at her, had stopped taking his medication and had been canceling his counseling appointments. Appellant's probation officer also testified that Appellant had lied to him about his whereabouts on one

occasion. Appellant's probation officer further testified regarding Appellant's problems with his summer employment, which included failing to show up for work and eventually quitting his job. After offering this testimony, at the dispositional hearing the probation officer recommended to the court that he believed it was in Appellant's best interest to go to the Washington County Juvenile Detention Center. Appellant's mother agreed with the recommendation, stating that she hoped "this will help" Appellant.

{¶25} After hearing these recommendations and also reviewing the results of the YLS assessment, which scored Appellant as high risk, the trial court committed Appellant to the Washington County Juvenile Detention Center for completion of a rehabilitation program. Based upon Appellant's history and the information contained within the record, we find no abuse of discretion. Thus, based upon the foregoing reasons, we find Appellant's second assignment of error to be without merit. Accordingly, we affirm the decision of the trial court.

JUDGMENT AFFIRMED

Kline, J., dissenting.

{¶26} I respectfully dissent. I would sustain appellant's first assignment of error; find his second assignment of error moot; reverse the

judgment of the trial court; and remand this cause to the trial court for further proceedings.

{¶27} The basis for my dissent is *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919. In that case, the Supreme Court of Ohio held that, "[i]n a delinquency proceeding, a juvenile may waive his constitutional right to counsel, subject to certain standards, *if he is counseled and advised by his parent, custodian, or guardian*. If the juvenile is not counseled by his parent, guardian, or custodian and has not consulted with an attorney, *he may not waive his right to counsel*." Id. at paragraph two of the syllabus (emphasis added). See, also, *In re J.F.*, 178 Ohio App.3d 702, 2008-Ohio-4325, at ¶93 ("There is no indication that J.F.'s mother counseled him about waiving his right to counsel."); *In re T.B.*, Greene App. No. 2008CA83, 2009-Ohio-2551, at ¶33 ("Although T.B.'s parents and his guardian ad litem were present at the August 12, 2008 hearing and they agreed with T.B.'s desire to waive his right to counsel, there is no evidence in this record that either T.B.'s parents or the guardian ad litem counseled T.B. or rendered any meaningful advice to him regarding his decision to waive his right to counsel."); *In re Brandon M.*, Clark App. No. 2009 CA 48, 2009-Ohio-6579, at ¶39 (stating that "there is no suggestion that Brandon's parents counseled

him about waiving his right to an attorney"). In this case, I do not believe that I.S.P.'s mother provided the type of counseling required by *In re C.S.*

{¶28} Here, I.S.P. has waived his right to counsel at seven different hearings; that is, at every appearance he made before the Juvenile Court. After reviewing the transcripts for each hearing, I can find just one indication that I.S.P.'s mother may have provided the type of counseling required by *In re C.S.* This happened during the fourth hearing, where I.S.P. admitted to an earlier (and different) probation violation. That hearing included the following exchange:

"THE COURT: [I.S.P.], do you want a lawyer in this case?

THE JUVENILE: No.

THE COURT: Does mother want a lawyer?

THE JUVENILE'S MOTHER: No.

THE COURT: Ma'am, have you had an opportunity to discuss this probation violation complaint with your son prior to today's hearing?

THE JUVENILE'S MOTHER: Yes.

THE COURT: And do you agree with his decision then to waive his right to counsel?

THE JUVENILE'S MOTHER: Yes."

{¶29} Arguably, this exchange demonstrates that I.S.P.'s mother may have counseled I.S.P. about waiving his right to an attorney before I.S.P.'s fourth hearing. However, the fourth hearing involved a different probation violation, not the violation at issue here. This appeal concerns (1) a subsequent probation violation and (2) matters that transpired during I.S.P.'s sixth and seventh hearings. These later hearings did not include any exchanges like the above-quoted dialogue. Moreover, based on the entire transcript, there is no indication that I.S.P.'s mother may have provided the necessary counsel or advice before the relevant adjudicatory hearing. See Juv.R. 29(B)(3) ("At the beginning of [an adjudicatory] hearing, the court shall * * * [i]nform unrepresented parties of their right to counsel and determine if those parties are waiving their right to counsel[.]").

{¶30} Based on *In re C.S.*, the word "'represent' * * * means to counsel or advise the juvenile in a delinquency proceeding." *In re C.S.* at ¶98. Further, the Supreme Court of Ohio stated that "a juvenile may waive his constitutional right to counsel * * * if he *is* counseled and advised by his parent[.]" Id (emphasis added). Thus, in my view, the issue is not whether I.S.P.'s mother was *able* to counsel or advise I.S.P. Instead, the issue is whether I.S.P.'s mother *actually did* provide the required counsel or advice. And regardless of whether I.S.P.'s mother was able to do so, there is no

indication that she actually counseled or advised I.S.P. about waiving his right to an attorney.

{¶31} Finally, I do not believe that we can infer that I.S.P.'s mother provided the necessary representation because she "had been involved in the process since [I.S.P.'s] original violation." Here, I agree with the Second District Court of Appeals, which rejected a similar argument. See *In re T.B.* at ¶33 ("Neither that fact, nor the fact that T.B.'s family may have been familiar with the process in which T.B. was engaged because of T.B.'s extensive past experience with the juvenile court, is sufficient to demonstrate that either T.B.'s parents or the guardian ad litem counseled T.B. or rendered any meaningful advice to him on the issue of waiving his right to counsel.").

{¶32} Accordingly, for the foregoing reasons, I respectfully dissent.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that the Appellee recover of Appellant 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 Common Pleas Court, Probate-Juvenile Division, to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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.
Kline, J.: Dissents with Dissenting Opinion.

For the Court,

BY: _____
Judge Matthew W. McFarland
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.