[Cite as *In re E. L.*, 2010-Ohio-1413.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 90848

IN RE: E.L.
A Minor Child

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. 05107998

BEFORE: Jones, J., Stewart, P.J., and Celebrezze, J.

RELEASED: April 1, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

LARRY A. JONES, J.:

{¶ 1} This cause is before this court on remand from the Ohio Supreme Court. In *In re E.L.*, Cuyahoga App. No. 90848, 2008-Ohio-5094 ("*E.L. I*"), we affirmed the trial court's committment of E.L. to the legal custody of the Ohio

Department of Youth Services ("DYS") and found, in part, that Juv.R. 29 does not apply to juvenile probation revocation hearings held pursuant to Juv.R. 35. As a result of our holding, we declined to address whether the trial court complied with Juv.R. 29.

{¶ 2} E.L. appealed our decision to the Ohio Supreme Court. The Court accepted the appeal and remanded the case to our court for consideration of whether our judgment should be modified in view of its holding in *In re L.A.B.*, 121 Ohio St.3d 112, 2009-Ohio-354, 902 N.E.2d 471. *In re E.L.*, 121 Ohio St.3d 407, 2009-Ohio-1514, 904 N.E.2d 897.

{¶ 3} In *In re L.A.B.*, the Court held: "[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."

{¶ 4} Id. at syllabus.[1]

{¶ 5} Upon remand, we ordered additional briefing and held additional oral arguments on the matter. For the following reasons, we find merit in E.L.'s third assignment of error.

{¶ 6} In 2005, the juvenile court found E.L. delinquent relating to a gross sexual imposition offense, committed him to DYS, suspended his

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[1] *In re L.A.B.* dealt with a 13-year-old's waiver of counsel during his probation revocation hearing.

sentence, and placed him on probation. At a subsequent dispositional hearing in 2007, and as part of his probation, the court placed E.L. at Kokomo Academy, a residential treatment facility in Indiana. Later that year, E.L.'s probation officer filed a "motion for violation of court order," arguing that the child failed to follow the rules at Kokomo, and the academy was asking for his removal from the treatment center. The juvenile court adjudicated E.L. to be in violation of his probation order and committed him to DYS for a minimum of six months and a maximum to his 21st birthday.[2]

{¶ 7} In his original appeal, E.L. argued: 1) there was a "statutory interruption" in the juvenile court's jurisdiction over delinquent minors and, as such, there existed no statutory authority for the juvenile court to conduct a probation revocation hearing; 2) the court failed to follow the requirements of Juv.R. 35(B) by failing to notify him of the specific terms of his probation and therefore erred when it revoked his probation; and 3) the trial court failed to comply with the mandates of Juv.R. 29 in accepting his admission. Id. We overruled his assignments of error, finding that there was no statutory interruption in the court's jurisdiction, the court complied with Juv.R. 35(B), and as mentioned above, Juv.R. 29 did not apply to probation revocation hearings. Id.

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[2] Further underlying facts are set forth in *E.L. I*.

{¶ 8} First, as we have already determined in *E.L. I,* there was no statutory interruption in the juvenile court's jurisdiction and the court complied with Juv.R. 35(B); therefore, upon remand, we need consider only whether the trial court complied with Juv.R. 29 when it conducted the hearing in which E.L. admitted to the violation of the terms of his probation.

{¶ 9} In the third assignment of error, E.L. specifically argued that his admission to his probation violation was not knowingly, intelligently, and voluntarily made because the juvenile court failed to comply with the requirements of Juv.R. 29. Upon reconsideration after remand and for the following reasons, we agree that the trial court did not comply with Juv.R. 29 in accepting E.L.'s admission to a probation violation.

{¶ 10} Juv.R. 29 provides in pertinent part:

"(B) Advisement and findings at the commencement of the hearing

> At the beginning of the hearing, the court shall do all of the following:
>
> (1) Ascertain whether notice requirements have been complied with and, if not, whether the affected parties waive compliance;
>
> (2) Inform the parties of the substance of the complaint, the purpose of the hearing, and possible consequences of the hearing, * * *;
>
> (3) Inform unrepresented parties of their right to counsel and determine if those parties are waiving their right to counsel;
>
> (4) Appoint counsel for any unrepresented party under Juv.R. 4(A) who does not waive the right to counsel;
>
> (5) Inform any unrepresented party who waives the right to counsel of the right: to obtain counsel at any stage of the proceedings, to remain

> silent, to offer evidence, to cross-examine witnesses, and, upon request, to have a record of all proceedings made, at public expense if indigent.

" * * *

"(D) Initial procedure upon entry of an admission

> The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:
>
> (1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;
>
> (2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing. * * *."

{¶ 11} The Ohio Supreme Court has stated that "[a]n admission in a juvenile proceeding, pursuant to Juv.R. 29, is analogous to a guilty plea made by an adult pursuant to Crim.R. 11 in that both require that a trial court personally address the defendant on the record with respect to the issues set forth in the rules." *In re C.S.*, 115 Ohio St.3d 267, 285, 2007-Ohio-4919, 874 N.E.2d 1177, quoting *In re Smith*, Union App. No. 14-05-33, 2006-Ohio-2788. In determining whether a trial court complied with the requirements of Crim.R. 11, only substantial compliance is required. See *State v. Nero* (1990), 56 Ohio St.3d 106, 108, 564 N.E.2d 474. The same is true for juvenile proceedings pursuant to Juv.R. 29; however, strict compliance is the preferred practice. *In re C.S.* at 285. But if the trial court substantially complies with

Juv.R. 29 in accepting an admission by a juvenile, the plea will be deemed voluntary absent a showing of prejudice by the juvenile or a showing that the totality of the circumstances does not support a finding of a valid waiver. Id. In juvenile proceedings, "substantial compliance means that in the totality of the circumstances, the juvenile subjectively understood the implications of his plea." Id.; *In re L.A.B.*, at 113.

{¶ 12} We employ a de novo standard of review in determining the juvenile court's degree of compliance with Juv.R. 29. See *In re Beckert* (Aug. 8, 1996), Cuyahoga App. No. 68893.

{¶ 13} In this case, the probation revocation hearing began on November 13, 2007. E.L. was present with his mother, father, stepmother, and two representatives from Kokomo. The trial court informed E.L. that "witnesses will be called to testify. You or your attorney could cross-examine them. You can bring in your own witnesses. You can testify yourself if you want. * * * If you admit this is true you give up your right to a hearing. I'll find you in violation [and] we go on to the disposition or the sentencing." The court then proceeded to explain the options for disposition and that, if the court determined that E.L. should be placed at DYS, the institution could keep him until he reached 21 years of age. The court also notified E.L. that he had the right to appeal the court's decision. It was then that the court asked E.L. if he wanted an attorney, and the child responded that he did. The court

rescheduled the hearing to another date for a "pretrial, and if we can work it out then, fine. If we can't then we'll pick our date for trial."

{¶ 14} When the parties reconvened a week later on November 20, E.L. was represented by counsel. The court discussed with E.L.'s attorney the amended complaint against E.L. and the possibilities regarding disposition.

{¶ 15} It was at the November 20 hearing that E.L. agreed to admit his violation. We find, however, that the trial court completely failed to explain E.L.'s rights pursuant to Juv.R. 29 at this hearing. First, the trial court failed to comply with Juv.R. 29(D)(1), which requires the trial court to confirm that E.L. understood the nature of the allegations to which he was admitting as well as the consequences of his admission. The trial court did inform E.L. of the consequences of his admission, but nowhere in the transcript of the November 20 hearing does the trial court explain the charge to E.L. or ask him if he understands the nature of that charge. Although the trial court was not required to give a detailed explanation of each allegation in the amended complaint, the court was required to ensure that E.L. had some basic understanding of the charges brought against him. See *In re Flynn* (1995), 101 Ohio App.3d 778, 656 N.E.2d 737; *State v. Rainey* (1982), 3 Ohio App.3d 441, 446 N.E.2d 188. Therefore, we conclude that the trial court did not substantially comply with the provisions of Juv.R. 29(D)(1).

{¶ 16} The court also declined to inform E.L. that by entering an admission he would be waiving the right to challenge the witnesses and evidence against him, he had a right to remain silent, and he had a right to introduce evidence at the adjudicatory hearing. See Juv.R. 29(D)(2). We further find no evidence that the trial court complied with Juv.R. 29(B)(1) in making sure the parties received proper notice of the hearing.

{¶ 17} Even though the court may have discussed some of E.L.'s rights at the hearing on November 13, we cannot find that the court complied with Juv.R. 29, especially in a case such as this where the juvenile never waived his right to counsel at the first hearing. It is clear from the transcript that the hearing on November 13 cannot be considered part and parcel of the probation revocation hearing.

{¶ 18} Although the State urges us to refrain from equating a probation revocation hearing to a full adjudication, the Ohio Supreme Court specifically noted in *In re L.A.B.* that a probation hearing qualifies as an adjudicatory hearing because a probation revocation hearing may result, as it did in the case at bar, in a finding that the juvenile has violated a court order and is delinquent. Id. at 118.

{¶ 19} Therefore, we find that E.L.'s admission was not knowingly, intelligently, or voluntarily made as the court failed to comply with Juv.R. 29. The third assignment of error is sustained.

{¶ 20} Accordingly, this cause is reversed and remanded to the lower court for proceedings consistent with this opinion.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court 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.

LARRY A. JONES, JUDGE

MELODY J. STEWART, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR