

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

IN RE C.M. :  
 : Nos. 108158, 108159,  
A Minor Child : 108160, 108161 and  
 : 108162

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: REVERSED AND REMANDED**  
**RELEASED AND JOURNALIZED: June 20, 2019**

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case Nos. DL1120031, DL11121856, DL11118577, DL13118746, and DL12100217

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***Appearances:***

Timothy Young, Ohio Public Defender, and Lauren Hammersmith, Assistant Ohio Public Defender, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and John F. Hirschauer, Assistant Prosecuting Attorney, *for appellee.*

RAYMOND C. HEADEN, J.:

{¶ 1} Defendant-appellant, C.M., appeals from a judgment of the juvenile court that denied C.M.'s application to seal his records without holding a hearing after the state filed an objection to the application. C.M. raises the following assignment of error for our review: "The juvenile court erred as a matter of law when

it denied C.M.'s sealing application without holding a hearing after the prosecutor filed an objection to C.M.'s application, in violation of R.C. 2152.356(C)(2)(d)(iii)."

{¶ 2} After review of the record and relevant case law, we reverse and remand to the trial court for further proceedings consistent with this opinion.

### **Procedural and Factual History**

{¶ 3} This appeal is based upon C.M.'s application to seal his juvenile records in case numbers DL11118577, DL11120031, DL11121856, DL12100217, and DL13118746 filed on December 4, 2018. Within the application, C.M. requested a hearing pursuant to R.C. 2151.356 to present additional evidence if the state opposed sealing his records. The state filed an objection to C.M.'s application for case number DL11118577. The state did not oppose C.M.'s application to seal juvenile records in the other four cases. The juvenile court denied C.M.'s application without holding a hearing.

{¶ 4} C.M. now appeals the juvenile court's judgment.

### **Law and Analysis**

{¶ 5} In his sole assignment of error, C.M. argues the trial court erred when it did not hold a hearing after the state objected to C.M.'s application to seal his juvenile records.

{¶ 6} R.C. 2152.356 authorizes the procedure for sealing records in a juvenile case. C.M. filed his application in accordance with R.C. 2152.356, specifically under 2152.356(C)(1). When a court considers an application to seal juvenile records that has been submitted to it pursuant to 2152.356(C)(1), the court

will follow the requirements identified under R.C. 2152.356(C)(2)(a)-(e). R.C. 2152.356(C)(2)(d)(iii) states the court shall hold a hearing within 30 days after the prosecuting attorney objects to the sealing of the records:

(iii) If the prosecuting attorney files a response with the court that indicates that the prosecuting attorney objects to the sealing of the records, the court shall conduct a hearing on the motion or application within thirty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration.

{¶ 7} This court has held the word “shall” is mandatory when used in a statute. *In re D.R.B.*, 8th Dist. Cuyahoga No. 102252, 2015-Ohio-3346. R.C. 2152.356(C)(2)(d)(iii) has been interpreted as requiring a hearing when the state objects to the sealing of juvenile records. *In re M.C.H.*, 994 N.E.2d 47, 2013-Ohio-2649, ¶ 25 (5th Dist.). Here, the state objected to C.M.’s application to seal his records in case number DL11118577, but no hearing was held.

{¶ 8} In this case, the state concedes that the trial court failed to comply with the mandatory language of R.C. 2152.356(C)(2)(d)(iii) by ruling on the application without a hearing.<sup>1</sup>

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<sup>1</sup> Loc.App.R. 16(B) provides: Notice of Conceded Error. When a party concedes an error that is dispositive of the entire appeal, the party conceding the error shall file a separate notice of conceded error either in lieu of or in addition to their responsive brief. Once all briefing is completed, the appeal will be randomly assigned to a merit panel for review. The appeal will be considered submitted on the briefs unless the assigned panel sets an oral argument date.

**{¶ 9}** Accordingly, C.M.'s sole assignment of error is sustained. The judgment of the juvenile court is reversed and this case is remanded to the juvenile court for a hearing pursuant to R.C. 2152.356(C)(2)(d)(iii).

**{¶ 10}** Judgment reversed and remanded to the trial court for further 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 issue out of this court directing the common pleas court, 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.

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RAYMOND C. HEADEN, JUDGE

MARY EILEEN KILBANE, A.J., and  
PATRICIA ANN BLACKMON, J., CONCUR