

[Cite as *In re J. P.*, 2009-Ohio-3974.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: J. P.

C. A. No. 24538

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DL 08-05-001698

DECISION AND JOURNAL ENTRY

Dated: August 12, 2009

CARR, Judge.

{¶1} Appellant, J.P., appeals the judgment of the Summit County Court of Common Pleas, Juvenile Division. This Court affirms.

I.

{¶2} A complaint was filed in the juvenile court on May 15, 2008, charging J.P. with one count of felonious assault in violation of R.C. 2903.11, a felony of the second degree if committed by an adult. The charge arose out of an incident during which J.P. head-butted another youth, breaking the victim’s nose. The juvenile denied the charge at the preliminary hearing. The juvenile subsequently entered an admission to the charge and the juvenile court adjudicated J.P. delinquent.

{¶3} The juvenile filed a “sentencing” brief prior to disposition. J.P. admitted that the incident was “a direct result of [his] untreated emotional and psychological problems” stemming from long-term abuse prior to his removal from his parents. He requested that the juvenile court

place him on probation for the offense, and he appended documents from treating and other professionals, as well as from his adoptive mother, in support.

{¶4} The juvenile court conducted a dispositional hearing on October 31, 2008, and took the matter under advisement. On November 13, 2008, the juvenile court issued a dispositional order, committing J.P. to the custody of the Ohio Department of Youth Services (“DYS”) for a minimum term of one year to a maximum term to age twenty-one. The next day, the juvenile moved to stay execution of “sentence” pending the court’s ruling on a forthcoming motion for reconsideration or appeal. The juvenile court stayed disposition.

{¶5} On December 2, 2008, J.P. filed a motion to reconsider “sentence.” The juvenile court denied the motion for reconsideration on December 8, 2008. J.P. filed a timely appeal, raising one assignment of error for review.

II.

ASSIGNMENT OF ERROR

“THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED IT’S (sic) DISCRETION, AT THE DISPOSITION HEARING AND MOTION TO RECONSIDER SENTENCE, WHEN IT COMMITTED THE JUVENILE TO THE DEPARTMENT OF YOUTH SERVICES AFTER FINDING HIM DELINQUENT FOR COMMITTING THE CRIME OF FELONIOUS ASSAULT, A FELONY OF THE SECOND DEGREE IF COMMITTED BY AN ADULT, IN VIOLATION OF O.R.C. 2903.11(A)(1).”

{¶6} J.P. argues that the trial court erred, first, by committing him to DHS for felonious assault, and, second, by denying his motion to reconsider his disposition. This Court disagrees.

{¶7} The juvenile court’s dispositional order following an adjudication of delinquency is a final judgment. *In re Sekulich* (1981), 65 Ohio St.2d 13, 15. The Ohio Rules of Juvenile Procedure offer no authority for a motion for reconsideration after a final judgment in a delinquency case. This Court, within the context of juvenile cases, has recognized that “a motion

for reconsideration following a final judgment in the trial court is a nullity.” *Mullins v. Murdock* (May 27, 1998), 9th Dist. No. 18687, citing *Pitts v. Ohio Dept. of Transp.* (1981), 67 Ohio St.2d 378, 380. Furthermore, any judgment entered upon a motion for reconsideration after final judgment is likewise a nullity. *Kauder v. Kauder* (1974), 38 Ohio St.2d 265, 267. Accordingly, the juvenile court’s December 8, 2008 order denying J.P.’s motion for reconsideration is a nullity and we decline to address any assigned error in regard to it.

{¶8} The Ohio Supreme Court has recognized that “a juvenile court has broad discretion to craft an appropriate disposition for a child adjudicated delinquent.” *In re D.S.*, 111 Ohio St.3d 361, 2006-Ohio-5851, at ¶6. R.C. 2152.16 provides that the juvenile court “may” commit a delinquent child to the custody of DYS for an indefinite term of a minimum of one year and a maximum period not to exceed the child’s attainment of the age of twenty-one for an offense which would be a felony of the second degree if committed by an adult. R.C. 2152.19 enumerates other dispositional orders which the juvenile court “may” impose in addition to any other disposition authorized by R.C. Chapter 2152. The juvenile court, however, must impose dispositions which 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 providing for the care, protection, and mental and physical development of the delinquent child; holding the offender accountable for his actions; restoring the victim; and 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.*

{¶9} The juvenile court’s order of disposition will not be reversed absent an abuse of discretion. *In re D.S.* at ¶6. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. 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. When applying the abuse of discretion standard, this Court may not substitute its judgment for that of the trial court. *Id.*

{¶10} In this case, the juvenile court committed J.P. to DYS after finding that, despite extensive involvement in the court’s Crossroads program, the juvenile’s behavior had escalated to the point where he now posed a danger to the community. The juvenile court acknowledged the juvenile’s need for on-going treatment for mental health issues, but recognized that such services would be available during a commitment to DYS. The juvenile court further noted the violence of the offense and serious injury to the victim. In addition to a commitment to DYS, the court ordered that J.P. pay restitution to the victim.

{¶11} The therapy notes appended to the juvenile’s dispositional brief indicated that J.P. had been involved in prior criminal activities, including physical assaults on authority figures, vandalism and breaking and entering. School suspensions and expulsions for fighting were noted. In addition, three months before the instant assault, J.P.’s counselor at Child Guidance & Family Solutions reported recent regression by the juvenile in the absence of structure by the juvenile court. The notes indicated no, to partial, progress by the juvenile in increasing self-responsibility and decreasing inappropriate social behavior.

{¶12} At the dispositional hearing, the State recommended J.P.’s commitment to DYS based on the juvenile’s prior acts of violence and out of concern for the safety of the community.

The victim's parents described the serious injuries suffered by their son as a result of the head-butting incident. The juvenile court requested the juvenile's unofficial file from court staff and further noted that it had already received a staffing report and recommendation. The juvenile court did not comment on those documents during the hearing; however, the juvenile appended a copy of the staffing report to his motion for stay of execution of the disposition. In the staffing report, the probation officer recommended probation and a suspended commitment to DYS notwithstanding the juvenile's "history of assaults and destructive behavior." The probation officer further opined without clarification that a commitment to DYS "would be detrimental to his future behavior."

{¶13} The juvenile court had already imposed less restrictive sanctions and services on J.P. for prior incidents. Nevertheless, J.P. displayed an inability to control violent outbursts, evidenced by on-going acts of violence against others. He will be able to continue to receive necessary counseling addressing his mental health issues during a commitment to DYS. Commitment will hold the juvenile accountable for the serious physical harm he inflicted on the victim. Under the circumstances, this Court cannot say that the juvenile court abused its discretion by committing J.P. to the custody of DYS in lieu of imposing a less restrictive disposition. The juvenile's sole assignment of error is overruled.

III.

{¶14} J.P.'s assignment of error is overruled. The judgment of the Summit County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

PAUL M. GRANT, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.