

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLINTON COUNTY

IN RE: :
T.D. : CASE NO. CA2010-01-002
: OPINION
: ON RECONSIDERATION
: 2/14/2011
:
:

APPEAL FROM CLINTON COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. 20062264

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HENDRICKSON, J.

{¶1} This matter is before the court on a timely motion for reconsideration filed by appellant, T.D., pursuant to App.R. 26(A). Appellant requests that we reconsider a December 13, 2010 decision affirming the juvenile court's denial of his motion to vacate his Tier III juvenile sex offender classification. *In re T.D.*, Clinton App. No. CA2010-01-002, 2010-Ohio-6081 ("*T.D.*"). For the reasons that follow, we deny appellant's motion.

{¶2} The facts relevant to our decision in *T.D.* are as follows. In August 2006,

appellant was adjudicated delinquent for rape and committed to the Ohio Department of Youth Services ("DYS") for a minimum term of one year and a maximum term not to exceed his 21st birthday. In December 2006, appellant was transferred from DHS to Lighthouse Youth Center at Paint Creek (PCYC), a staff-secure residential treatment facility.

{¶13} The juvenile court conducted appellant's sex offender classification hearing in January 2008, one week prior to a review hearing scheduled for the purpose of considering appellant's release. In a February 2008 entry, the court classified appellant a Tier III juvenile sex offender registrant.

{¶14} Appellant was transferred from PCYC back to DHS in August 2008. Approximately one year later, he moved the juvenile court to vacate his Tier III classification. The motion was denied.

{¶15} On appeal, appellant argued that his Tier III sex offender classification was void because the juvenile court lacked jurisdiction to classify him due to its failure to follow the procedure outlined in R.C. 2152.83(A)(1). The statute states that a child who is adjudicated delinquent for committing a sexual offense shall be classified at one of two times: (1) as part of the dispositional order, or (2) if the child is committed to a secure facility, at the time he is released from the facility.

{¶16} In disposing of the appeal, we acknowledged that the juvenile court classified appellant too early. We found that appellant's sex offender classification hearing was conducted approximately 19 months before he was released from DHS on his 21st birthday. Appellant's motion for reconsideration does not invite us to revisit this ruling. Rather, appellant asks us to reassess whether his transfer to PCYC in December 2006 constituted a "release from a secure facility" within the meaning of R.C. 2152.83(A)(1). If so, the juvenile court was statutorily required to classify him when he

was transferred to PCYC. It would follow that appellant's classification in February 2008 occurred too late.

{¶7} When reviewing a motion to reconsider, an appellate court determines "whether the motion calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by [this] court when it should have been." *Grabill v. Worthington Industries, Inc.* (1993), 91 Ohio App.3d 469, 471, quoting *Columbus v. Hodge* (1987), 37 Ohio App.3d 68, paragraph one of the syllabus. We are mindful of this standard in addressing appellant's arguments on reconsideration.

{¶8} In support of his position, appellant contends that the Ohio Revised Code distinguishes between *legal custody* of a child versus *placement* of a child who is in the legal custody of DYS into a staff-secure facility. Appellant cites R.C. 5139.01(A)(1), which defines "commitment" as "the transfer of the physical custody of a child or youth from the court to [DYS]." Appellant also cites R.C. 5139.01(A)(6), which defines "placement" as "the conditional release of a child under the terms and conditions that are specified by [DYS]." The statute further provides that "[DYS] shall retain legal custody of a child released pursuant to division (C) of section 2152.22 of the Revised Code or division (C) of section 5139.06 of the Revised Code until the time that it discharges the child or until the legal custody is terminated as otherwise provided by law."

{¶9} Although appellant remained in the legal custody of DYS until his 21st birthday, he emphasizes that he was placed in the physical custody of PCYC from December 28, 2006 until August 29, 2008. Even the juvenile court, he notes, referred to PCYC as his "placement" in a January 10, 2008 transport order. Appellant deems this "placement" at PCYC a "conditional release" under R.C. 5139.01(A)(6). In accordance

with R.C. 2152.83(A)(1), he insists that his juvenile sex offender classification should have taken place upon his "conditional release" to PCYC and that his classification on his 21st birthday was belated.

{¶10} As stated, a delinquent child who is committed to a secure facility must be classified at the time he is released from the facility under R.C. 2152.83(A)(1). Appellant was committed to a DYS, a secure facility, so the statute dictated that he be classified upon his release from the facility. The focal point of this case thus concerns precisely when this "release" occurred. According to appellant, it occurred when he was transferred to PCYC.

{¶11} In our *T.D. I* opinion, we found that DYS did not "release" appellant from its custody upon his admission to PCYC. Instead, we described this as "a temporary transfer to a rehabilitation facility where [appellant] received substance abuse and sex offender treatment." *T.D. I*, 2010-Ohio-6081 at ¶19. In support, we observed that DYS found appellant eligible for the programs at PCYC and assented to his transfer. Notably, in early January 2008, it was DYS that sent the juvenile court notice of appellant's potential release *from DYS* in contemplation of scheduling a review hearing. Moreover, appellant was transferred back to DYS in August 2008 and was not ultimately released from DYS until his 21st birthday in September 2009. Finally, pursuant to testimony given by appellant at the hearing on his motion to vacate, it was clear that appellant understood he was not released from DYS until he reached the age of 21. From these circumstances, we concluded that DYS intended to retain custody of appellant for the duration of his treatment at PCYC.

{¶12} We first observe that appellant's brief on appeal failed to argue that DYS retained legal custody of him under R.C. 5139.01(A)(6) while simultaneously "releasing" him from the facility upon his conveyance to PCYC. We were not put on notice of this

contention until the present motion for reconsideration. Typically, a motion for reconsideration is not a proper vehicle for raising new arguments. *Waller v. Waller*, Jefferson App. No. 04 JE 27, 2005-Ohio-5632, ¶3. Nonetheless, we choose to address a retrospective concern that has arisen in the wake of appellant's motion for reconsideration.

{¶13} Our opinion in *T.D. I* declared as follows:

{¶14} "Contrary to appellant's argument, the record supports that DYS did not 'release' him from its *custody* upon his admission to PCYC on December 28, 2006. Rather, appellant's conveyance to PCYC was merely a temporary transfer to a rehabilitation facility where he received substance abuse and sex offender treatment. * * * If DYS had intended to relinquish *custody* of appellant upon his transfer to PCYC, it would not have sent the court notification of appellant's potential release from DYS." *Id.* at ¶19-20. (Emphasis added and original emphasis omitted.)

{¶15} To be sure, R.C. 5139.01(A)(6) denotes that DYS *retains legal custody* of a juvenile delinquent who is released under certain other sections of the code until the time that DYS discharges the child or until the legal custody is otherwise terminated by law. This includes release to a group care facility for treatment of juvenile sex offenders. See R.C. 5139.06(C)(4). Thus, our opinion was correct in that the facts and circumstances of the case did not evince an intent on the part of DYS to release appellant from its legal custody.

{¶16} However, in conjunction with the applicable statutes, DYS may very well have intended to "conditionally release" appellant from its physical custody while simultaneously retaining legal custody over him when he was "placed" at PCYC. The record is unclear on the matter. Moreover, we are unable to locate any case law directly addressing whether "placement" of a juvenile offender into a staff-secure facility within

the meaning of R.C. 5139.01(A)(6) is equivalent to a "release" from a secure facility as contemplated by R.C. 2152.83(A)(1). If this inquiry is answered in the affirmative, then appellant's argument that he was classified too late may have been meritorious. Even so, our disposition of the case would remain unchanged.

{¶17} Assuming, arguendo, that we had found appellant was conditionally released from DYS when he was transferred to PCYC and should have been classified at that time, the end result in the case is still the same. That is, the juvenile court's failure to follow the procedure outlined in R.C. 2152.83(A)(1) would still constitute an improper *exercise* of the court's subject matter jurisdiction versus a lack thereof. See *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶24; *State v. Filiaggi*, 86 Ohio St.3d 230, 240, 1999-Ohio-99; *State ex rel. Pizza v. Rayford* (1992), 62 Ohio St.3d 382, 384. In accordance with case law pronounced by the Ohio Supreme Court, such an error rendered the judgment classifying appellant voidable but not amenable to collateral attack. *Filiaggi* at 240.

{¶18} As stated in *T.D. I*, appellant failed to timely appeal the February 2008 entry classifying him as a Tier III juvenile sex offender registrant. Regardless of which defect in the exercise of the juvenile court's subject matter jurisdiction we rely upon, appellant's motion to vacate the classification still amounts to an impermissible collateral attack on a voidable judgment, which we cannot entertain. *Id.*

{¶19} For the foregoing reasons, we find that appellant's arguments on reconsideration do not require reversal of our prior judgment affirming the juvenile court's decision denying appellant's motion to vacate his Tier III juvenile sex offender classification. Therefore, appellant's motion for reconsideration is denied.

{¶20} Judgment affirmed.

BRESSLER, P.J., and RINGLAND, J., concur.