

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

IN RE: :
D.T.L.M. : CASE NOS. CA2014-06-142
 : CA2014-07-160
 : OPINION
 : 5/11/2015
 :
 :

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case Nos. JV2014-0607, JV2014-0608, JV2014-0609, JV2014-0615, JV2014-0494, &
JV2014-1003

Bradley D. Bolinger, 16 North Main Street, Middletown, Ohio 45042, for appellant, D.T.L.M.

Amy Ashcraft, 240 East State Street, Trenton, Ohio 45067, guardian ad litem

Michael T. Gmoser, Butler County Prosecuting Attorney, Lina N. Alkamdawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for appellee, state of Ohio

RINGLAND, J.

{¶ 1} Defendant-appellant, D.T.L.M., as well as D.T.L.M.'s guardian ad litem (GAL), appeal from a judgment of the Butler County Court of Common Pleas, Juvenile Division, finding D.T.L.M. delinquent.

{¶ 2} At age 17, D.T.L.M. was charged with violation of a court order after missing a hearing, and theft, a felony of the fifth degree if he were an adult, after taking a car without

the consent of the owner. While those charges were pending, D.T.L.M. was charged with numerous additional offenses, including escape and multiple counts of assault on a corrections officer.

{¶ 3} The trial court ordered competency and psychological evaluations. At a hearing on May 5, 2014, the competency evaluation was entered into the record without objection and D.T.L.M was found competent to stand trial.¹ Following that hearing, D.T.L.M. filed a motion seeking an additional psychological evaluation to determine his mental state at the time the offenses were committed. The trial court denied that motion.

{¶ 4} At the plea hearing, D.T.L.M. admitted as true the charges of theft, escape and three counts of assault on a corrections officer. At the disposition hearing, he was committed to the Department of Youth Services to serve consecutive terms of six months on each of the five counts.

{¶ 5} D.T.L.M. and GAL now separately appeal, collectively raising three assignments of error for review. For ease of discussion, we will address D.T.M.L.'s single assignment or error and GAL's second assignment of error together.

{¶ 6} GAL's Assignment of Error No. 1:

{¶ 7} THE TRIAL COURT ERRED TO THE PREJUDICE OF D.T.L.M. WHEN IT FAILED TO MAKE A FINDING OF COMPETENCY BASED ON THE EVALUATION ADMITTED INTO EVIDENCE AND VIOLATED HIS DUE PROCESS RIGHTS.

{¶ 8} The conviction of an accused not legally competent to stand trial is a violation of due process. *State v. Berry*, 72 Ohio St.3d 354 (1995). Ohio Juv.R. 32(A)(4) provides that a

1. The trial court admitted the competency evaluation into evidence without objection on May 5, 2014, and the psychological evaluation on June 13, 2014, also without objection. It is apparent from the record that a clerical error resulted in the psychological evaluation being placed in the record twice rather than each evaluation being recorded separately. Neither party contests that both evaluations were before the court and admitted into the record.

court may order a mental or physical examination where a party's competence to participate in the proceedings is at issue. Prior to September 30, 2011, the Revised Code did not contain any provisions for determining a juvenile's competence to stand trial. *In re McWhorter*, 12th Dist. Butler App. No. CA94-02-047, 1994 WL 673098 (Dec. 5, 1994). However, with the enactment of 2011 H.B. 86 (effective September 30, 2011), the juvenile code now contains statutory provisions that govern juvenile competency determinations. R.C. 2152.51-2152.59.

{¶ 9} In the present case, the trial court asked, "is there any objection to the court admitting [the competency evaluation] into evidence and finding that he's competent to stand trial?" No objections were made, and the court admitted the competency evaluation into evidence.

{¶ 10} The GAL argues the trial court's query was not a finding of competence, and therefore, D.T.L.M.'s due process rights were violated. We disagree. While the trial court's finding was couched in a question, the finding was made nonetheless. The court asked if there was an objection to its finding that D.T.L.M. is competent to stand trial. While the finding would have been clearer if it were stated independent of the question, it is readily ascertained that the court both made the finding and asked if there was an objection. Finally, the judgment entry for the same date states that, "[t]he Court finds said child competent to stand trial." Therefore, we do not find that the trial court failed to make a finding as to D.T.L.M.'s competency to stand trial.

{¶ 11} In light of the foregoing, having found that the trial court made a finding of competency, GAL's first assignment of error is overruled.

{¶ 12} D.T.L.M.'s Assignment of Error No. 1:

{¶ 13} THE TRIAL COURT ERRED BY DENYING MOTION FOR A PSYCHOLOGICAL EVALUATION TO DETERMINE WHETHER JUVENILE WAS LEGALLY

RESPONSIBLE FOR THE ACTS INVOLVED IN THESE CASES.

{¶ 14} GAL's Assignment of Error No. 2:

{¶ 15} THE TRIAL COURT ERRED TO THE PREJUDICE OF D.T.L.M. WHEN IT FAILED TO CONSIDER THE MENTAL EVALUATION REGARDING HIS MENTAL STATE AT THE TIME OF THE OFFENSES UNDER JUVENILE RULE 32 AND VIOLATED HIS DUE PROCESS RIGHTS.

{¶ 16} At the May 5, 2014 hearing, D.T.L.M.'s counsel attempted to change his plea to "not delinquent by reason of insanity," and requested an additional psychological evaluation. The trial court advised D.T.L.M. to file a written motion on the issue. Counsel for D.T.L.M. raised the issue once more at the May 29, 2014 hearing, stating: "we would ask for the psychiatric evaluation again." The trial court asked if D.T.L.M. was asking the court to "make the equivalency of a finding in a juvenile matter * * * of [not guilty by reason of insanity]." D.T.L.M.'s counsel responded in the affirmative. The trial court denied the request.

{¶ 17} Juv.R. 32(A)(4) states: "The Court may order and utilize a social history or physical or mental examination at any time after the filing of a complaint under any of the following circumstances: * * * (4) Where a party's legal responsibility for the party's acts or the party's competence to participate in the proceedings is an issue[.]"

{¶ 18} The plea of not guilty by reason of insanity is a feature of criminal cases pursuant to Crim.R. 11(A). While juvenile-delinquency laws feature inherently criminal aspects, the Ohio Supreme Court has recognized that the purpose of the juvenile system is not to mete out punishment, but "to provide for the care, protection, and mental and physical development of children, to protect the public from the wrongful acts committed by juvenile delinquents, and to rehabilitate errant children and bring them back to productive citizenship, or, as the statute states, to supervise, care for and rehabilitate those children." *In re Caldwell*, 76 Ohio St.3d 156, 157 (1996), citing R.C. 2151.01. Accordingly, no such provision

for an insanity plea exists in Juv.R. 29 such as exists in Crim.R. 11.

{¶ 19} However, sanity is a factor for a court to consider in determining delinquency. *In re Chambers*, 116 Ohio App.3d (3d Dist.1996). In the present case, the record reflects that the trial court considered D.T.L.M.'s sanity. The trial court already ordered two evaluations, a competency evaluation and a psychological evaluation, prior to counsel for D.T.L.M. requesting a third evaluation. Juv.R. 32(A)(4) states that a court "may" order an examination, placing the decision within the court's discretion. We do not find the court's refusal to order a third evaluation to be an abuse of that discretion.

{¶ 20} In light of the foregoing, having found that the trial court did not abuse its discretion in declining to order another psychological evaluation where a competency evaluation and psychological evaluation were previously administered, D.T.L.M.'s single assignment of error and GAL's second assignment of error are overruled.

{¶ 21} Judgment affirmed.

S. POWELL, P.J., and HENDRICKSON, J., concur.