

IN THE SUPREME COURT OF OHIO

IN RE: DEMARCO RHYM
A delinquent child.

Case No. **09-0191**

On Appeal from the
Marion County Court of Appeals
Third Appellate District

C.A. Case No. 9-08-62

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF SHIRLETER BRYANT, MOTHER OF DEMARCO RHYM**

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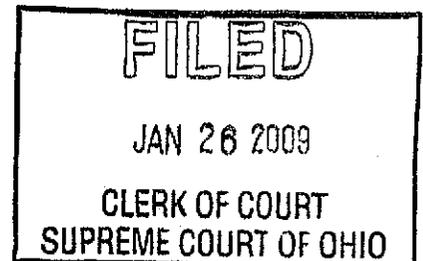


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EXPLANATION OF WHY THIS CASE IS ONE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case is one of public and great general interest because it presents an issue, the ultimate determination of which will establish whether a juvenile court may transfer a child's case to a court of common pleas without the knowledge of a parent who has not waived his or her right to notice and whose parental rights have not been terminated.

The Third District Court of Appeals' decision to dismiss all of Shirleter Bryant's appeals of her son's transfer from juvenile court to common pleas court has rendered Ms. Bryant without any remedy to challenge the juvenile court's failure to comply with R.C. 2152.12(G). Therefore, not only has she been denied her due process rights, but she has also been denied the ability to have that denial reviewed by a higher court. Thus, unless this Court sets aside the judgment of the Third District, parents throughout the state will likewise be left without recourse when their child is bound over to adult court, despite the juvenile court's failure to comply with the mandates in R.C. 2152.12(G). If permitted to stand, the Third District's holding would establish a dangerous precedent for all cases where a child may be transferred to adult court and prosecuted as an adult.

Further, this Court should accept jurisdiction of the present appeal because of its recent acceptance of *In the Matter of Meredith Poling*, pending as Case No. 2008-1562, which addresses the issue of whether a juvenile court's order denying a discretionary motion to transfer jurisdiction is a final appealable order.

STATEMENT OF THE CASE AND FACTS

Demarco Rhym was adjudicated delinquent for offenses committed in Cuyahoga County in 2006. He was committed to the Ohio Department of Youth Services (“DYS”), and housed at Marion Juvenile Correctional Facility (“Marion JCF”). In 2008, Demarco was charged with additional juvenile offenses, originating from incidents that occurred while he was incarcerated at Marion JCF. On July 25, 2008, the State of Ohio filed a “Motion to Bind Over.” The motion instructed the Clerk to serve a copy of the motion on Demarco’s mother, Shirleter Bryant. A notice to serve Ms. Bryant with the motion was issued by the Marion County Family Court on August 1, 2008, along with a summons issued on the complaint. Service was not perfected for either document. On August 14, 2008, an amended complaint was filed in the juvenile court, changing the language in one of the charges.

On August 15, 2008, a probable cause hearing was held in the juvenile court, wherein the court determined that probable cause “existed to believe that Demarco committed” the offenses charged in the amended complaint. An amenability hearing was held immediately thereafter, where the juvenile court relinquished jurisdiction and transferred Demarco's case for criminal prosecution in the Marion County Court of Common Pleas, General Division. Ms. Bryant was not present at the hearing.

Demarco was tried as an adult in case nos. 08 CR 331 and 08 CR 332, and convicted of four counts of assault, felonies of the fifth degree and violations of R.C. 2903.13; and one count of retaliation, a felony of the third degree and a violation of R.C. 2921.05. On August 21, 2008, two documents were filed showing that service of the previously filed complaint and “Motion to Bind Over” was never completed on Ms. Bryant, according to R.C. 2152.12(G). On August 22,

2008, after the final appealable order was entered in Demarco's case, Ms. Bryant was served with notice of the amended complaint.

Ms. Bryant attempted to appeal her son's transfer by filing an appeal of juvenile case no. 2008 DL 00602, under the authority of *In re Anderson* (2001), 92 Ohio St.3d 63. The Third District Court of Appeals dismissed Ms. Bryant's appeal on December 10, 2008, for the following reason:

Upon consideration of the same, the court finds that the judgment on appeal, granting a request for discretionary bind over, is not a final appealable order. *In re Becker* (1974), 39 Ohio St.2d 84; see, also, *In re Thompson*, 10th App. No. 05AP1092, 2006-Ohio-2437. Because the judgment is not final and subject to appeal, we need not address appellant's assumption that she has standing to appeal or assertion that the notice of appeal is timely filed under *In re Anderson* (2001), 92 Ohio St.3d 63. Accordingly, this court lacks jurisdiction to entertain the appeal.

Ms. Bryant also attempted to appeal her son's transfer and subsequent criminal conviction in the Third District by filing two, separate, delayed appeals from the entries filed in the Marion County Court of Common Pleas in her son's case. On December 10, 2008, the Third District dismissed both of those appeals, stating:

Upon consideration the court finds that Shirleter Bryant, mother of the Defendant, is not a party to the criminal proceeding held in the Marion County Court of Common Pleas, General Division, and she has no standing to file a notice of appeal. Accordingly, the motion for leave is not well taken.

By dismissing all three of Ms. Bryant's appeals, the Third District abrogated Ms. Bryant's right to be notified of the proceedings against her son in a transfer case. R.C. 2152.12(G). However, since she is not a party to the criminal proceedings against her son, she has also lost her right to appeal as a party to the juvenile court proceedings. Juv.R. 2(Y); App.R. 4(A).

On December 22, 2008, Ms. Bryant filed motions for reconsideration, requesting that the Third District reconsider its entries dismissing her appeals. Ms. Bryant's motions for

reconsideration were denied on January 20, 2009. It is from the Third District's denial of Ms. Bryant's appeal in Case No. 9-08-62 that she now appeals.

PROPOSITION OF LAW I

A juvenile court order transferring jurisdiction of a juvenile delinquency matter to a court of common pleas is a final appealable order such that the child's parent has the right to appellate review.

The Marion County Juvenile Court did not follow the mandates of R.C. 2152.12 when it transferred seventeen-year-old Demarco Rhym's case to the Marion County Court of Common Pleas. However, because the Third District Court of Appeals found that the juvenile court's order transferring Demarco to adult court was not final and appealable, and because Ms. Bryant is not a party to the criminal proceedings against her son—and therefore cannot file an appeal of the final judgment from that court—Ms. Bryant has no legal recourse to appeal the juvenile court's failure.

The principles of due process under both the United States and Ohio Constitution demand that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner where the state seeks to infringe upon a protected liberty interest. *State v. Hochhausler* (1996), 76 Ohio St.3d 455, 459. And in cases where the State seeks to have a juvenile court relinquish jurisdiction of a youth's case to adult court, the juvenile court must adhere to the steps of process proscribed by statute. *Kent v. United States* (1966), 383 U.S. 541.

According to the Ohio Rules of Juvenile Procedure, Shirleter Bryant was a party to the juvenile court proceedings against her son. Specifically, the Juvenile Rules defines "party" as,

[A] child who is subject of any juvenile court proceedings, the child's spouse, if any, the child's parent or parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child's custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court.

Juv.R. 2(Y). (Emphasis added). And according to R.C. 2152.12(G), a parent has a statutory right to be served with notice of any transfer proceedings involving their child:

The court shall give notice in writing of the time, place, and purpose of any hearing held pursuant to division (A) or (B) of this section to the child's parents, guardian, or other custodian and to the child's counsel at least three days prior to the hearing.

R.C. 2152.12(G). See, also, *State v. West*, 176 Ohio App. 3d 598, 2006-Ohio-3518. However, despite being a party to the case against her son, and despite the requirements of R.C. 2152.12, Ms. Bryant was not informed of any of the hearings that were held in her son's transfer case. The juvenile court did not perfect service on Ms. Bryant, either by hand delivery, mail, or by publication. She was not made aware of her son's transfer to adult court, or his conviction of adult felonies, until after her son had already been committed to the Ohio Department of Rehabilitation and Correction ("DRC").

Revised Code Section 2152.12(G) reflects a legislative intent to protect juveniles by informing their caregivers of any pending actions involving the juveniles so that the caregivers can offer assistance, guidance, and support to the juveniles. *State v. Reynolds*, Franklin App. No. 06AP-915, 2007-Ohio-4178, ¶12, citing *State v. Taylor* (1985), 26 Ohio App.3d 69, 71 (the purpose of the notice requirements in R.C. 2152.12(G) is to protect the juvenile). And Civ.R. 58(B) requires a court to endorse a "direction to the Clerk to serve all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal." Further, Civ.R. 5(B) requires that the served copy be accompanied by the proof of service required by Civ.R. 5(D). Civ.R. 5(D) mandates that the proof of service shall state "the date and manner of service" and shall be signed in accordance with Civ.R. 11. The juvenile court failed to comply with R.C. 2152.12(G) or Civ.R. 58(B) in Demarco's case.

Shirleter Bryant's right to due process was violated when the juvenile court failed to adhere to the requirements of the Civil Rules and R.C. 2152.12. Because she was not present at Demarco's transfer hearing, through not fault of her own, she was not permitted to present a case to the court as to why her son should have remained in the juvenile court system. This information would have been especially important in Demarco's case because he was being transferred to adult court from a juvenile court where he did not reside. Thus, there is no way of determining whether the Marion County Juvenile Court was given all of the information pertinent to making a decision as to whether Demarco was amenable to treatment in the juvenile system. R.C. 2152.12.

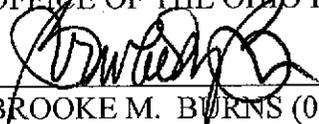
This Court has found in *State v. Wilson* (1995), 73 Ohio Stg.3d 40, 1995 Ohio 217, at 44, that absent a valid transfer, the juvenile court, not the criminal court, has jurisdiction over a juvenile's case. The transfer in the present case was not valid, however, Ms. Bryant is without a remedy at law as she has been denied the ability to appeal the juvenile court's decision. With the dismissal of all three of her appeals, Ms. Bryant no longer has the ability to challenge the juvenile court's failure of provide her with the notice required by R.C. 2152.12(G) or the service required by Civ.R. 58(B) and 5(D). And because her right to challenge her son's juvenile disposition has effectively disappeared, she has lost her right as a party to appeal the juvenile court's judgment in her son's case. Juv.R. 2(Y); App.R. 4(A).

CONCLUSION

For the reasons argued above, Shirleter Bryant respectfully requests this Court accept jurisdiction of her appeal in order to enforce the requirements of the Ohio Revised Code in transfer cases.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



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CERTIFICATE OF SERVICE

The undersigned counsel certifies that a copy of the foregoing MEMORANDUM IN SUPPORT OF JURISDICTION OF SHIRLETER BRYANT, MOTHER OF DEMARCO RHYM was served by ordinary U.S. Mail, to James Slagle, Marion County Prosecuting Attorney, at 134 E. Center St., Marion, OH 43302, this 26th day of January, 2009.



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Counsel of Record

COUNSEL FOR SHIRLETER BRYANT

IN THE SUPREME COURT OF OHIO

IN RE: DEMARCO RHYM
A DELINQUENT CHILD.

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: On Appeal from the
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APPENDIX TO

MEMORANDUM IN SUPPORT OF JURISDICTION
OF SHIRLETER BRYANT, MOTHER OF DEMARCO RHYM



IN THE COURT OF APPEALS OF THE THIRD APPELLATE JUDICIAL DISTRICT OF OHIO

MARION COUNTY

IN RE: DEMARCO RHYM

CASE NUMBER 9-08-62

ALLEGED DELINQUENT CHILD

J U D G M E N T

E N T R Y

[SHIRLETER BRYANT - APPELLANT].

This cause came before the court *sua sponte* to determine whether the appeal should be dismissed for lack of jurisdiction.

Appellate courts have jurisdiction to review the final orders or judgments of inferior courts in their district. Section 3(B)(2), Article IV, Ohio Constitution; and R.C. 2505.02. See, also, App.R. 4(A). In the event that a jurisdictional issue is not raised by the parties, then the Court of Appeals must raise it *sua sponte*. See *Davison v. Rini* (1996), 115 Ohio App.3d 688.

In the instant case, the August 18, 2008 judgment on appeal granted the State's motion pursuant to Juv.R. 30, relinquished jurisdiction, and transferred the matter to the general division for prosecution of the *minor*, Demarco Rhym, as an adult. On November 20, 2008, Appellant, mother of Demarco Rhym, filed the instant notice of appeal.

Upon consideration of same, the court finds that the judgment on appeal, granting a request for discretionary bind over, is not a final appealable order. *In re Becker* (1974), 39 Ohio St.2d 84; see, also, *In re Thompson*, 10th App.No.

05AP1082, 2006-Ohio-2437. Because the judgment is not final and subject to appeal, we need not address appellant's assumption that she has standing to appeal or assertion that the notice of appeal is timely under *In re Anderson* (2001), 92 Ohio St.3d 63. Accordingly, this court lacks jurisdiction to entertain the appeal.

It is therefore **ORDERED, ADJUDGED and DECREED** that the appeal be, and hereby is, dismissed at the costs of appellant for which judgment is hereby rendered and that the cause be, and hereby is, remanded to the trial court for execution of the judgment for costs.



Justice O'Flaherty



JUDGES

DATED: December 10, 2008