



## **Motion for Reconsideration Submitted Pursuant to S. Ct. R. P. XI, §2**

J.F., a minor child, respectfully asks this Court to reconsider its decision released in this case on February 4, 2009, *In re J.F.*, Slip Opinion No. 2009-Ohio-318. Specifically, this Court held in a 4-3 decision that a suspended commitment may be imposed after successful completion of probation if another condition, here monitored time, is set out for the child to complete. J.F. submits that the majority opinion in this case is based upon a 2004 entry that was never appealed in this case. Additionally, concerns about the lack of any mention of monitored time in the trial court's 2006 order and the fact that J.F. did not have counsel at his hearing causes grave concern about the effect of this ruling. Thus, J.F. and its *amici* seek redress of an issue that was not directly addressed in the case but discussed in the majority opinion: whether or not an entry that was not appealed by the defendant, or cross-appealed by the state, can be used as a basis to deny relief, especially when it was not a continuing entry and was later superseded by an entry terminating community control. The second issue raised is whether appellate courts may now read language into entries, here "monitored time," when in the past the duty rested upon the trial court to ensure that the entry accurately reflected the resolution and the parties were encouraged to object or seek clarification when appropriate.

J.F. respectfully submits that this Honorable Court's decision encourages vague and inconclusive entries and will leave youth without any clear idea of what orders or conditions are still in place. Even where counsel is appointed, counsel will need to request entire files, transcripts of all hearings held in the case, and set clarification hearings to determine what conditions are still in force and effect.

As more fully explained below, J.F. submits that the majority opinion in this case warrants reconsideration because:

. The *In re J.F.* decision drastically changes well-settled Ohio law, which states that a Court speaks through its entry and that the parties are entitled to rely on the Court's entry;

. *In re J.F.* puts unrepresented youth and their parents at a distinct disadvantage as provisions or conditions that appeared to be terminated or resolved may not be and the youth may not know what he needs to defend against. Thus, *In re J.F.* conflicts with this Court's recent decision in *In re L.A.B.*, Slip Opinion No. 2009-Ohio-354 and *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919;

. *In re J.F.* contradicts this Court's prior decision of *In re Cross*, 96 Ohio St.3d 328, 2002-Ohio-4183, 774 N.E.2d 258;

. *In re J.F.* means additional work for an already overburdened judicial system in tough economic times as additional litigation will be required to determine the true intent of the Court. While in the past counsel could rely on the Court's final order as a resolution to the case, he can no longer as it may not be an accurate representation of the child's status, as evidenced in *J.F.*. Counsel will need to verify the Court's representations through additional pleadings and hearings.

**I. The decision in *In re J.F.* drastically changes well-settled Ohio law that states a court speaks through its entry.**

Since 1857, Ohio law has provided that a court speaks through its journal and that it is imperative that the journal reflect the truth. *Hollister v. Judges of Dist. Court* (1857), 9 Ohio St.201, 70 Am. Dec. 100. Parties to the case rely on court orders to resolve issues and to provide clarity and finality.

Now, in 2009, the ability to rely on court orders has been thrown into doubt. After *J.F.*, it is unclear if a court order can really dispose of all issues in a case and if the order can ever truly be relied upon by the parties.

When J.F. appealed his case to the Second District Court of Appeals, he attached the order that he understood terminated his community control on March 1, 2006 because that is what the order said.<sup>1</sup> Indeed, the order made no mention of "monitored time" or stated that court

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<sup>1</sup> The juvenile court uses the terms probation and community control interchangeably throughout the case. Both terms meant the same thing to the court – continuing jurisdiction over the child.

supervision was to continue. At no point did the state object to the March 1, 2006 order or did the court amend or clarify that order. J.F., a sixteen year-old child, was not represented by counsel.

Regardless, in August 2006, when J.F. was arrested for possessing marijuana, the juvenile court used “monitored time” to send J.F. to DYS for a minimum period of six months to a maximum of his twenty-first birthday. To do this, the juvenile court retrieved a 2004 order, which was the last time the term “monitored time” was mentioned by the court. As most litigants would do, J.F. relied upon the 2006 order, not the 2004 order, as fully addressing the issues in his case and terminating his community control.

All courts have a clear legal duty to have their journals reflect the truth. *Hollister* at 119. And all litigants have a clear legal right to have the proceedings they are involved in correctly journalized. *Id.* (Emphasis added). The March 1, 2006 order, which both J.F. and his mother relied upon, terminated community control and made no mention of monitored time. Both J.F. and his mother relied upon the order as “speaking the truth.” If the court intended to maintain jurisdiction over J.F. it could have stated so. It did not.

## **II. The decision in *J.F.* conflicts with this Court’s decisions issued in *In re L.A.B.* and *In re C.S.***

This Court recognized that “the General Assembly’s general intent in enacting R.C. 2151.352 was to ensure the juvenile’s constitutional right to representation by an attorney - - not represented by a parent, custodian or guardian.” *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, at ¶82. Thus, while *C.S.* held that a juvenile may waive his right to counsel, it nevertheless clearly stated that there is “a strong presumption against waiver of the constitutional right to counsel.” *Id.* at ¶ 105 (quoting *Johnson v. Zerbst* (1938), 304 U.S. 458, 464, 58 S.Ct. 1019). The Court then explained that before allowing a child to waive his right to counsel, “the

judge is to engage in a meaningful dialogue with the juvenile.” Id at ¶107. Recently, in the case of *In re L.A.B.*, Slip Opinion No. 2009-Ohio-354, this Court stated that this meaningful colloquy regarding counsel also extended to probation violation hearings.

Given the strong presumption against waiver and the trial court’s obligation to engage in a meaningful dialogue with the minor, it is clear that J.F. did not waive his right to counsel. The transcript of the August 2006 adjudication for possession of marijuana reveals that the juvenile court did not engage in a meaningful dialogue with J.F. This is troubling especially in light of the fact that J.F.’s admission resulted in the imposition of a suspended sentence *that had been imposed more than two and a half years earlier*. Further, there was absolutely no explanation to the unrepresented youth or his mother that the 2006 order terminating community control was not to be relied upon but that the 2004 order would be used to commit J.F. to DYS.

J.F., as well as his *amici*, respectfully submit that the majority’s decision in his case is troubling in light of *In re C.S.* and *In re L.A.B.* Here, seven justices and two attorneys have briefed and debated the March, 1, 2006 entry. Yet, J.F., an unrepresented teenage boy, is expected to understand that his supervision with the juvenile court continued when the court informed him that he had successfully completed probation and made no mention of “monitored time” since 2004.

Despite the fact that this Court admonished juvenile courts to remember that not all parents will “sufficiently counsel and advise, that is ‘represent,’ their child in a delinquency proceeding,” the trial court in *J.F.* proceeded to disposition without ensuring the minor validly waived his right to counsel. *C.S.* at ¶ 93 and *L.A.B.* at ¶64. This waiver quickly resulted in J.F.’s loss of liberty when the juvenile court imposed his commitment, a devastating consequence for misdemeanor marijuana possession. There is simply no justification for imposing such a

punishment on J.F. or any child without rigorous application of the due process procedures this Court carefully enumerated in *C.S.* and *L.A.B.*

**III. The *J.F.* decision marks a retreat from precedent that consistently held that children are entitled to finality in the judgments rendered against them.**

The *J.F.* decision is an abrupt departure from this Court's well-established holding that once a juvenile's probation is terminated there is no statutory basis for the court's continuing jurisdiction. *In re Cross*, 96 Ohio St.3d 328, 2002-Ohio-4183, 774 N.E.2d 258. Indeed, the youth, their parents, the Court and the state all have an interest in finality and bringing cases to a resolution. And, all parties need to be able to clearly understand what that resolution is. With *J.F.* that certainty and finality is lost. Now, orders that state they are "Final Orders" may not really be final orders. As in this case, an order over two and a half years old was held to trump a later "Final Order," which clearly states that community control was terminated. Thus, an order which purports to terminate community control, may not.

Despite the clarity of the record, this Court concluded that J.F. was still on community control. Yet, the juvenile court never explicitly provided that community control was to continue and, in fact, in its original 2004 entry which mentioned monitored time, the court cited an erroneous statutory provision unrelated to monitored time. 3/24/2004 Disposition order; see also R.C. 2152.19(A)(3); 2152.19(A)(4)(i). J.F. was reasonably left to conclude that his community control terminated on March 1, 2006, a view that the juvenile court seemed to share by virtue of its compliments to J.F. and repeated statements that he successfully completed probation. Moreover, given the obvious need to be very clear with children, at least one appellate court has held that if probation is to continue, the court needs to ensure that the extended term is understood. See *In re Walker*, Franklin App. No. 02AP-421, 2003-Ohio-2137, at ¶14 (The lower court must explicitly provide that "probation [would] not terminate, but continue until

further court hearing.”). Notice, due process and fundamental fairness require that children be informed in entries that their community control is to continue. Indeed, clarity and finality can be promoted with very little effort on the part of the court.

With *J.F.*, however, the juvenile court and the state are permitted to engage the juvenile in a game of “Gotcha” as both the child and his parents must wonder at what the “Final Entry” means. *Cross* held that juveniles deserve finality in the judgments rendered against them. Now, with *J.F.*, a probation officer’s comments may supersede a judgment entry. To suggest that it is the probation officer rather than the juvenile court judge who has authority to determine whether probation is to continue is unconscionable.

Neither the U.S. Constitution nor the Ohio Constitution can allow a deprivation of liberty grounded in what a court probably meant or how a witness, not trained in the law, described her understanding of a legal situation. Furthermore, it is unreasonable to conclude that any juvenile, especially one unrepresented by counsel, understood himself to be at risk of his suspended sentence after having been explicitly told that he successfully completed probation. *J.F.* respectfully asks this Court to find that due process demands more than a single statement as to the existence of monitored time more than two years and several court hearings prior to a suspended sentence being imposed and liberty so blatantly infringed.

#### **IV. The *J.F.* decision greatly burdens the already strained Ohio juvenile courts.**

Without doubt, it is in the best interest of the juvenile court to avoid piecemeal litigation and promote the interest of judicial economy wherever possible. It is not in the court’s best interest to have to cover the costs of lingering cases, numerous review hearings, probation officers, lawyers, and requests for transcripts after community control was successfully terminated. With *J.F.*, however, a child who successfully met the terms of probation may

nevertheless be tethered to the juvenile court for years preventing the court from closing its cases.

The *J.F.* decision teaches that an entry that purports to terminate community control and dispose of issues in the case may not actually do so. If counsel is appointed for a subsequent delinquency hearing, additional consequences may exist in another case as the “final entry” may not actually dispose of all issues. Thus, to provide effective assistance, defense attorneys will need to request all “closed cases,” order transcripts from all hearings at state expense and compare all entries from the files to see if there are any lingering conditions outside of the entry terminating community control. If a defense attorney does not question the validity of the court’s order, he may be providing misinformation to his client regarding the client’s “true status” with the juvenile court and inviting a claim of ineffective assistance of counsel.

Certainly fairness and judicial economy requires this Court to reconsider its decision in *J.F.* and reaffirm its holding in *Cross*. *J.F.* does not encourage an end to litigation but rather places the court’s word in doubt. In the past, this Court placed a very high value on accuracy, truth, and finality:

There are times when an end has its own value, with justice delivered, and not further delayed. A final judgment brings closure, certainty, and possibly a commitment to changed future behavior. These are societal benefits as well as benefits to the parties. Wrongs are righted through judgments. Our justice system does not work without finality. Until then, the system’s great value is in limbo. We take little from it, but we continually feed it with our energies, intellect and emotions.

*Wightman et al. v. Consolidated Rail Corp.* (1999), 86 Ohio St.3d 431, 556, 715 N.E.2d 546.

With *J.F.*, additional time, energy and cost will be required as the value of the Court’s word, its entry, is lost. Parties must be able to rely upon the statements contained in the court’s entry or there is no value to our justice system.

**V. Conclusion**

For the foregoing reasons, J.F. and his *amicus* respectfully ask that this Court reconsider its *J.F.* opinion, and reaffirm the holding from *Cross* that juveniles, like adults, are entitled to finality in the judgments rendered against them.

Respectfully submitted,

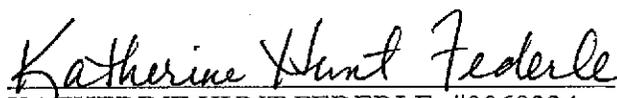
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**Certificate of Service**

I certify a copy of the foregoing MOTION FOR RECONSIDERATION OF APPELLANT J.F. has been sent, by regular U.S. mail, postage-prepaid, to Stephen Haller, Greene County Prosecutor and Elizabeth Ellis, Assistant Greene County Prosecutor, Greene County Courthouse, 61 Greene Street, 2<sup>nd</sup> Floor, Xenia, Ohio 45385, this 13<sup>th</sup> day of February, 2009.



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