

IN THE SUPREME COURT OF OHIO

Case No.: 09-0191

IN RE: DEMARCO RHYM
A delinquent Child

On appeal from the
Third District Court
of Appeals

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

**STATE'S MEMORANDUM IN OPPOSITION OF JURISDICTION FILED BY
SHIRLETER BRYANT, MOTHER OF DEMARCO RHYM**

BRENT W. YAGER #0033906
Marion County Prosecutor
DAVID J. STAMOLIS #0075337
Assistant Marion County Prosecutor

134 E. Center Street
Marion, Ohio 43302
740/223-4190
740/223-4299 fax

COUNSEL FOR THE STATE OF OHIO

OFFICE OF THE OHIO
PUBLIC DEFENDER

BROOKE M. BURNS #0080256

8 E. Long Street – 11th Floor
Columbus, Ohio 43215
614/466-5394
614/752-5167 fax

COUNSEL FOR
SHIRLETER BRYANT

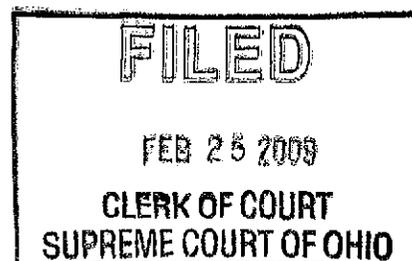


TABLE OF CONTENTS

| | Page No.: |
|---|-----------|
| STATEMENT OF CASE AND FACTS | ii |
| ARGUMENT AGAINST PROPOSITION OF LAW | 1 |
| <p>A juvenile court order transferring jurisdiction of a juvenile delinquency matter to a court of common pleas is not a final appealable order such that a child's parent right to appellate review.</p> | |
| CONCLUSION | 3 |
| CERTIFICATE OF SERVICE | 4 |

PROPOSITION OF LAW I

A juvenile court order transferring jurisdiction of a juvenile delinquency matter to a court of common pleas is not a final appealable order such that a child's parent right to appellate review.

1. In Re Becker

The petitioner in this case wishes the Court grant her request for jurisdiction, in order for the Court to determine whether or not orders to transfer cases from the Juvenile Division of the Common Pleas Court to the General Division pursuant to a juvenile rule 30 motion, are in fact final appealable orders. However this Court held in the case of In Re Becker, 39 Ohio St.2d 84, 314 N.E.2d 158 (1974);

We hold that a transfer order, pursuant to R.C. 2151.26, absent a finding of delinquency, is not a final, appealable order, and that any error complained of must be raised in an appeal from the judgment of the Court of Common Pleas.

Further the Court in Becker went on to state, "Specifically, absent a finding that a child is delinquent, neglected, or dependant, no appeal is available."

Based on the Courts decision in Becker the Petitioners motion should be overruled.

2. R.C 2505.02

Also, the language of R.C. 2505.02(B) which defines what a final appealable order is does not include or contemplate a Juvenile Courts determination to bind-over a

Juvenile to the adult system. Therefore the Petitioners motion should be overruled.

3. Standing.

At the time of the bind-over proceeding in this case the Juvenile was incarcerated in the Department of Youth Services (DYS) Marion, Ohio facility. The reason for the proceedings in the Marion County Juvenile Court were for acts committed while in DHS in Marion.

Pursuant to R.C. 2152.16 which states in pertinent part; "If a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court may commit the child to the legal custody of the department of youth services for secure confinement ..."

Legal custody for DHS purposes is defined in R.C. 5139.01(A)(3) as:

"Legal custody," insofar as it pertains to the status that is created when a child is permanently committed to the department of youth services, means a legal status in which the department has the following rights and responsibilities: the right to have physical possession of the child; the right and duty to train, protect, and control the child; the responsibility to provide the child with food, clothing, shelter, education, and medical care; and the right to determine where and with whom the child shall live, subject to the minimum periods of, or periods of, institutional care prescribed in sections 2152.13 to 2152.18 of the Revised Code; provided, that these rights and

responsibilities are exercised subject to the powers, rights, duties, and responsibilities of the guardian of the person of the child, and subject to any residual parental rights and responsibilities.

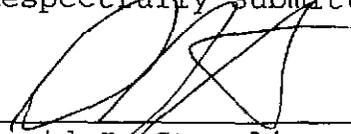
The Petitioner in her Motion cites R.C. 2152.12(G) claiming that she should have received notice for the bind-over proceedings. However, R.C. 2152.12(G) appears to contemplate that when a parent is not the custodian of the child, as in this case, and state's that, "The court shall give notice in writing 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." In this instance the Juvenile had been place in the legal custody of DYS.

Based on the fact that the Juvenile was in the 'Legal Custody' of the Department of Youth Services it does not appear that the Petitioner has standing to challenge the bind-over proceedings.

CONCLUSION

Based on the State's foregoing arguments the State respectfully requests that the Court overrule the Petitioners Motion for Jurisdiction.

Respectfully Submitted,



David J. Stamolis
Assistant Prosecutor
Marion County
134 East Center Street
Marion, Ohio 43302
740/223-4290
740/223-4299 fax

CERTIFICATE OF SERVICE

The undersigned counsel certifies that a copy of the foregoing Memorandum Contra was served by ordinary U.S. Mail service, to the Office of the Ohio Public Defender, c/o Brooke Burns, Assistant State Public Defender at 8 East Long Street-11th Floor, Columbus, Ohio 43215 on the 25th day of February, 2009.



David J. Stamolis
Assitant Prosecutor