

IN THE SUPREME COURT OF OHIO

IN RE: MEREDITH POLING,
a minor child

:
:
:
:
:
:
:
:
:
:
:

Case No. 2008-1562

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

C.A. Case No. 60809

MEMORANDUM IN OPPOSITION OF JURISDICTION
OF MEREDITH POLING

OFFICE OF THE OHIO PUBLIC DEFENDER

COLLEEN LIMERICK #0061157
Assistant Hardin County Prosecutor
(COUNSEL OF RECORD)

Hardin County Courthouse
One Courthouse Square, Room 50
Kenton, Ohio 43326
(419) 674-2284
(419) 674-4767 – Fax

COUNSEL FOR STATE OF OHIO

ELIZABETH R. MILLER #0077362
Assistant State Public Defender
(COUNSEL OF RECORD)

250 E. Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 – Fax
E-mail: elizabeth.miller@opd.ohio.gov

COUNSEL FOR MEREDITH POLING



TABLE OF CONTENTS

	<u>Page No.</u>
EXPLANATION OF WHY THIS IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST	1
STATEMENT OF THE CASE AND FACTS	2
RESPONSE TO STATE'S PROPOSITION OF LAW I.....	4
RESPONSE TO STATE'S PROPOSITIONS OF LAW II THROUGH VII.....	6
CONCLUSION.....	8
CERTIFICATE OF SERVICE	9

**EXPLANATION OF WHY THIS IS NOT A CASE
OF PUBLIC OR GREAT GENERAL INTEREST**

The State's appeal fails to present any issues worthy of this Court's time or review. In its memorandum in support of jurisdiction, the State does not present an issue that this Court has not previously addressed; rather, the State mischaracterizes the lower court's sound application of this Court's legal precedent in an attempt to undo a result it finds displeasing.

The crux of the State's propositions of law is that the juvenile court abused its discretion when it denied its discretionary motion for bindover. But, careful review of the Third District's opinion reveals that it merely applied the standard of review outlined by this Court in *State v. Golphin*, 81 Ohio St.3d 543, 546, 1998-Ohio-336; *State v. Watson*, (1989), 47 Ohio St. 3d 93, 96, 547 N.E. 2d 1181; *State v. Douglas* (1985), 20 Ohio St.3d 34, 36, 485 N.E.2d 711, and properly determined that the juvenile court did not abuse its discretion.

It is clear that the State is dissatisfied with the juvenile court's decision, but a State's displeasure with a court's decision that will not affect future cases or litigants, is not worthy of this Court's review. If this Court were to accept the State's appeal and adopt the relevant portions of the State's Propositions of Law, the juvenile court's decision would be left undisturbed, and the standard of review for discretionary bindover decisions would remain unchanged. Thus, because this Court requires more than a State's displeasure with the outcome of a case to grant jurisdiction, this Court should decline jurisdiction and enter an order dismissing the State's appeal.

STATEMENT OF THE CASE AND FACTS

On March 30, 2007, a complaint was filed in the Hardin County Juvenile Court alleging that Meredith Poling, aged 15, was a delinquent child for murder, in violation of R.C. 2903.02(A), enhanced with a firearm specification, in violation of R.C. 2941.145. The State also filed a motion for discretionary bindover, pursuant to Juv.R. 30, R.C. 2152.10(B) and R.C. 2152.12(B), requesting that the juvenile court transfer the case to the General Division of the Court of Common Pleas so Meredith could be prosecuted as an adult.

On September 26 and 27, 2007, the juvenile court conducted the first part of its bifurcated discretionary bindover hearing. At the conclusion of the hearing, the juvenile court found probable cause to believe that Meredith committed the acts charged in the complaint. Then, pursuant to Juv.R. 30 and R.C. 2152.12(B)(3), it ordered a mental examination to determine whether there was sufficient time, and reason to believe, that Meredith was amenable to the care, treatment, and rehabilitation of the juvenile system. On February 11, 2008, the juvenile court held the amenability hearing. During the hearing, the court received over seven-hundred pages of documents and heard testimony from two witnesses—Dr. David Tennenbaum and Ms. Brenda Boecher, Meredith's Diversion Officer. At the conclusion of the hearing, the court took the matter under advisement so it could properly review all of the evidence presented, as well as analyze the statutory factors outlined in R.C. 2152.12(B)(3) and Juv.R. 30, weighing in favor of, and against, transfer.

On March 19, 2008, the juvenile court issued an eighteen-page decision outlining the reasons it found that Meredith had "ample time for successful rehabilitation" in the juvenile justice system, and concluded that the State's motion for discretionary bindover was not well-

taken. Five pages of the decision were devoted to the court's application and analysis of the statutory factors in favor of, and against, transfer. R.C. 2152.12(D).

On April 17, 2008, the State filed a motion for leave to appeal the juvenile court's decision to deny its motion for discretionary bindover, accompanied by a memorandum in support of its motion for leave to appeal. On June 25, 2008, after due consideration, the Third District Court of Appeals overruled the State's motion. *In re Poling*, 3rd Dist. No. 06-08-09, at 3. On August 8, 2008, the State filed a Notice of Appeal and a Memorandum in Support of Jurisdiction but failed to serve the Ohio Public Defender's Office as is required by S.Ct.Prac.R. XIV(2)(A). On December 21, 2008, this Court accepted the State's appeal.

On January 30, 2009, undersigned counsel filed a Motion to Strike Appellant's Notice of Appeal. Alternatively, counsel requested thirty days to file a memorandum in opposition to jurisdiction. On February 24, 2009, this Court overruled counsel's motion to strike but granted her thirty days to file a response. Meredith now submits this motion in opposition.

RESPONSE TO STATE'S PROPOSITION OF LAW I

For the first time, the State argues that it has an appeal of right of the juvenile court's order denying its motion for discretionary bindover. State's Memorandum in Support of Jurisdiction, at 7. Now, and instead of filing an appeal as of right in the court of appeals, the State asks this Court "to correct the error in this case," and find that the Third District Court of Appeals erred when it overruled its motion for leave to appeal. State's Memorandum in Support of Jurisdiction, p. 8. But, this Court does not review issues that were not, yet could have been, raised in the court of appeals, and which are only being raised for the first time in this Court. *State v. Martello* (2002), 1998 Ohio St.3d 398, 2002-Ohio-6661, ¶41, fn 2; *Sherman v. Haines*, (1995), 73 Ohio St.3d 125, 126, 1995-Ohio-222, fn 1 ("Appellees also argue the applicability of the doctrines of promissory estoppel and part performance. These issues, however, having been raised for the first time before this [C]ourt, will not be considered."). Because the State did not file an appeal as of right, or even argue that it had an appeal as of right through its direct or a delayed appeal, this issue is not properly before this Court. Accordingly, this Court should decline to grant jurisdiction.

The State filed an eleven-page motion for leave to appeal the juvenile court's judgment pursuant to App. R. 5(C), accompanied by a fifty-page memorandum in support of its motion for leave in the court of appeals. The State never asserted in either document that it had an appeal as of right under R.C.2945.67.

And, it is well-established, that a "decision to grant or deny a motion for leave to appeal [* * *] rests solely within the discretion of the court of appeals." *State v. Fisher* (1988), 35 Ohio St.3d 22, 25, 117 N.E.2d, 911. Therefore, the Third District was justified when it exercised its

discretion and denied the State's motion for leave to appeal. Accordingly, its decision should not be disturbed.

If the State had originally filed an appeal as of right pursuant to R.C. 2945.67(A), rather than a motion for leave to appeal pursuant to App.R. 5(C), and the court of appeals denied the State's appeal, this issue would properly be before this Court. *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307. In *A.J.S.*, the juvenile court denied the State's motion for mandatory bindover and the State filed an appeal as of right pursuant to R.C. 2945.67. *Id.* at ¶10. The State did not file a motion seeking leave to appeal pursuant to App.R. 5(C). *Id.* The Tenth District Court of Appeals heard the State's appeal, and overruled the juvenile court's decision denying the mandatory bindover.

On appeal to this Court, *A.J.S.* argued that the State was required to file a motion for leave to appeal. *Id.* at 29. But this Court found that the State was entitled to an appeal as of right. *Id.* at ¶33. Specifically, this Court held that "[b]ecause a juvenile court order denying a motion for mandatory bindover terminates the state's ability to secure an indictment for the acts charged, its denial of a mandatory transfer is the functional equivalent of the dismissal of an indictment. Thus, the state properly appealed as of right." *Id.*

Here, unlike *A.J.S.*, the State did not file an appeal as of right; instead, it filed a motion for leave to appeal pursuant to App.R. 5(C). Because the State did not follow the procedures necessary to perfect its appeal, the Third District was justified in overruling its motion. Because the State did not follow the correct appellate procedure to appeal, it should not be rewarded with review by this Court.

Alternatively, in light of this Court's decision in *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, this Court may find that the State was entitled to an appeal as of right pursuant to

R.C. 2945.67(A), and reverse and remand the matter to the Third District Court of Appeals to conduct a review on the merits. *State v. Bistricky* (1990), 51 Ohio St.3d 157, 555 N.E.2d 644 (“We, therefore, reverse the judgment of the court of appeals to the extent that it found no authority, pursuant to R.C. 2945.67(A), to consider the state’s appeal and remand the cause to that court to exercise its discretion [* * *].”).

RESPONSE TO STATE’S PROPOSITIONS OF LAW II THROUGH VII

In the State’s eleven-page motion for leave to appeal and its fifty-page memorandum in support of leave, the State argued that the juvenile court abused its discretion when it denied its motion for discretionary bindover. Having lost its motion in the court of appeals, the State now seeks review of the same issue—whether the juvenile court abused its discretion in denying its motion for discretionary bindover—in its remaining propositions of law. But this Court is not a court of error correction. *Baughman v. State Farm Mut. Auto. Ins. Co.*, 88 Ohio St.3d 480, 492, 2000-Ohio-397, (Cook J., concurring and citing Oh. Const. Art. IV Sec. 2). This Court “sits to settle the law, not to settle cases,” and its function is not to engage in “‘error correction’ regarding the application of settled law” to the facts of a particular case. *Id.*

This Court has repeatedly held that the standard of review to be applied to discretionary bindover decisions is an abuse of discretion. See *State v. Golphin*, 81 Ohio St.3d 543, 546, 1998-Ohio-336; *State v. Watson*, (1989), 47 Ohio St. 3d 93, 96, 547 N.E. 2d 1181; *State v. Douglas* (1985), 20 Ohio St.3d 34, 36, 485 N.E.2d 711. Applying that standard here, the Third District properly determined that the juvenile court did not abuse its discretion when it denied the State’s motion because its “eighteen[-]page decision extensively analyze[d] and applie[d] the factors in favor of and against transfer, as set forth in R.C. 2152.12(D) and (E).” *Poling*, at 2. Moreover, it is well established that in making a determination pursuant to Juv.R. 30, “the

juvenile court enjoys wide latitude to retain or relinquish jurisdiction, and the ultimate decision lies within its sound discretion.” *State v. Watson* (1989), 47 Ohio St.3d 93, 95, 547 N.E.2d, 1181.

Now, dissatisfied with the juvenile court’s and court of appeals’ decisions, the State asks this Court to issue a third and different opinion regarding its motion for discretionary bindover. But, as one commentator noted, “[t]ime and resources are too limited for th[is] Court to micromanage the law in every case of error correction. Instead, th[is] Court must pick and choose, so that resolving one ‘good’ cause will provide the resolution for numerous other cases.” Shawn Judge, *Convince the Court to Hear Your Case: A Pragmatic Approach to Jurisdictional Memorandum*, LITIGATION NEWS, Vol. 11, Issue 1, Spring 2005, at 4. Accepting this case, regardless of the ultimate result, would provide a resolution for this case, and for these parties alone. Beyond that, it would have no impact upon Ohio appellate practice. For that reason, this Court should decline to grant jurisdiction.

Further, because the State failed to raise any issues of law, and instead, only complains about the court of appeals and the juvenile court’s exercise of discretion, this Court should decline review. This Court has held that, “when there is not a case in controversy or any ruling by an appellate court that would result in an advisory opinion, there will be no appellate review unless the underlying legal question is capable of repetition yet evading review. *Bistricky*, at 158. But, as argued above, the underlying legal question here—the standard of review to be applied to a juvenile court’s decision denying discretionary bindover—has been resolved. Moreover, the substantive issues raised in the remaining propositions of law were not addressed by the court of appeals; thus, they are not ripe for review by this Court.

CONCLUSION

The Third District Court of Appeals properly exercised its discretion and analyzed the juvenile court's decision to retain jurisdiction over Appellee for an abuse of discretion in accordance with *State v. Golphin*, 81 Ohio St.3d 543, 546, 1998-Ohio-336; *State v. Watson*, (1989), 47 Ohio St. 3d 93, 96, 547 N.E. 2d 1181; *State v. Douglas* (1985), 20 Ohio St.3d 34, 36, 485 N.E.2d 711. Thus, this Court should decline to accept jurisdiction in this case and allow the decision of the Hardin County Court of Appeals to stand. In the alternative, this Court should reverse the matter to the court of appeals to resolve the State's appeal.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

By: 

ELIZABETH R. MILLER #0077362
Assistant State Public Defender
Counsel of Record

Office of the Ohio Public Defender
250 E. Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 (Fax)
elizabeth.miller@opd.ohio.gov

COUNSEL FOR MEREDITH POLING

CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Opposition of Jurisdiction has been sent by regular U.S. mail to Colleen Limerick, Assistant Hardin County Prosecutor, Hardin County Courthouse, One Courthouse Square, Room 50, Kenton, Ohio 43326, this 26th day of March, 2009.



ELIZABETH R. MILLER #0077362
Assistant State Public Defender

COUNSEL FOR MEREDITH POLING