

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	CASE No. 2015-0924
	:	
PLAINTIFF-APPELLEE	:	
	:	ON APPEAL FROM THE FRANKLIN
V.	:	COUNTY COURT OF APPEALS
	:	TENTH APPELLATE DISTRICT
RAYMOND MORGAN,	:	
	:	
DEFENDANT-APPELLANT.	:	C.A. CASE NO. 13AP-620

APPELLANT RAYMOND MORGAN'S MOTION FOR RECONSIDERATION

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Appellant Raymond Morgan's Motion for Reconsideration

Raymond Morgan requests that this Court reconsider its December 2, 2015 decision declining jurisdiction of Raymond's discretionary appeal. S.Ct.Prac.R. 18.02(B)(1). Raymond presents the following memorandum in support of his request that this Court accept the following propositions of law for consideration:

Proposition of Law I

A child does not need to request a GAL in the absence of his parents, guardian, or legal custodian at a juvenile court hearing.

Proposition of Law II

A child does not need to show prejudice to support a reversal on appeal when the juvenile court fails to appoint a GAL when required by law.

I. Introduction

When he was 16 years old, Raymond was haled into court without a mother, father, or guardian. Raymond appeared for his bindover hearing, shackled, wearing an oversized detention jumpsuit, without his mother, father, or other protective figure to look to for comfort and advice.

This was commonplace prior to 1967. But, in *In re Gault*, the U.S. Supreme Court rebuked the idea that a child could be taken into custody without his parents receiving notice of court proceedings. *In re Gault*, 387 U.S. 1, 33, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967) (finding that children are entitled to due process and fair treatment). In Ohio, that protective foundation of due process and fair treatment is found in the juvenile rules, and parents are a party in all juvenile court proceedings. Juv.R. 2(Y) ("Party means a child who is subject of a juvenile court proceeding *** [and] the child's parent or parents ***."); *see also* Juv.R. 4(B)(1) (providing that if a child does not have parents, the

juvenile court must appoint a guardian ad litem). As a party, parents must receive notice of all juvenile court proceedings. *See, e.g.*, Juv.R. 7; Juv.R. 13; Juv.R. 29; Juv.R. 30; *see also* Juv.R. 4(E) (“The guardian ad litem shall be given notice of all proceedings in the same manner as notice is given to other parties to the action.”). And, in *In re C.S.*, this Court emphasized the importance of the parental role. *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 94 (“The General Assembly was also aware of the Supreme Court’s recognition of the importance of parental involvement in delinquency cases.”).

Raymond’s father passed away in January 2012 after battling cancer for three years. Raymond and his mother, Mrs. Morgan, who was ill with renal failure, cared for Raymond’s father “at the end, when he died at home.” And, Mrs. Morgan passed away just before Raymond’s amenability hearing. Raymond had an attorney, but not a parent or guardian ad litem to protect his best interests or give him advice. Raymond, an orphaned child, still reeling from grief, sat in a courtroom facing transfer to the adult system without his family. Should we expect a child in that situation to request that a protective figure be appointed for him? That is what happened in this case, nearly 50 years after *Gault*.

II. This Court should not require a child to request the juvenile court to fulfill its mandatory duty.

In many instances where the law places a requirement on a court, a child or adult defendant is not expected to request that the court fulfill its mandatory duty. For instance, a juvenile court must ensure that a child’s admission to an offense is knowing,

intelligent, and voluntary. Juv.R. 29(D); *see also* C.S. at ¶ 112-113. And, a child is not required to request that the juvenile court follow its mandatory duty to find that the admission is knowing, intelligently, and voluntarily made. *See* C.S. at ¶ 112. Similarly, as required by statute, a sentencing court must make certain findings prior to imposing consecutive sentences. R.C. 2929.01(C)(4). But, an adult defendant is not required to request that the trial court follow its mandatory duty to make certain findings before imposing consecutive sentences. *See* R.C. 2929.14(C)(4); *State v. Morgan*, 10th Dist. Franklin No. 13AP-620, 2014-Ohio-5661, ¶ 50-53.

Revised Code Section 2151.281(A)(1) and Juv.R. 4(B)(1) are plainly written: the mandatory duty lies with the juvenile court. When a child is without parents, there is no calculus that must be undertaken and no facts to be analyzed; rather, the court must appoint a guardian ad litem to represent the child's best interests. R.C. 2151.281; Juv.R. 4(B)(1); *see e.g., In re Faubus*, 498 S.W.2d 21, 23 (Tex.Civ.App.1973) ("It is now well established [by rule of civil procedure] that failure of a juvenile court to appoint a guardian ad litem in juvenile delinquency proceedings is reversible error even though no request for such appointment was made ***."). A child should not be required to request that the juvenile court fulfill its mandatory duty. And, a child should not be required to request that the juvenile court ensure that his or her best interests are represented. Therefore, Raymond asks this Court to reconsider its decision and accept review of this case to hold that a child is not required to request that the juvenile court fulfill its mandatory duty to appoint a guardian ad litem when required by statute.

III. Since Raymond asked this Court to accept this case, some courts have held that the juvenile court must fulfill its mandatory duty to appoint a guardian ad litem when the statute requires.

In August 2015, just eight months after the Tenth District's decision in this case, the Eighth District Court of Appeals disagreed, reasoning, "We do not agree that an objection to the failure to appoint a [guardian ad litem] is required to constitute reversible error." *In re D.R.B.*, 8th Dist. Cuyahoga No. 102252, 2015-Ohio-3346, ¶ 26. The Eighth District noted that the use of the word "shall" in the statute and rule is significant. *Id.* at ¶ 31, 34 ("It is a cardinal rule of statutory construction that a statute should not be interpreted to yield an absurd result."). Therefore, the Court held that because the 17-year-old child's parents were not present for the juvenile court adjudication and disposition hearings, the juvenile court was required to appoint a guardian ad litem to represent the child's best interests. *Id.* at ¶ 32, 34.

And, three months after that, in November 2015, the Fifth District Court of Appeals held that a guardian ad litem should have been appointed to represent a child's best interests, noting that because "statutes are mandatory, the failure of a court to appoint a guardian ad litem when these provisions require such an appointment constitutes reversible error[; and, f]urther, the absence of an objection does not preclude a reversal due to the Juvenile Court's failure to appoint a guardian when required." *In re J.C.*, 5th Dist. Knox Nos. 14CA23, 14CA24, 2015-Ohio-4664, ¶ 26. These cases, as well as those cited in the Memorandum in Support of Jurisdiction not only stand in stark contrast to the Tenth District's analysis, but also highlight the need for this Court's guidance. Therefore, Raymond asks this Court to reconsider its decision and accept

review of this case to hold that a juvenile court must fulfill its mandatory duty to appoint a guardian ad litem when required by statute.

IV. Under the decision below, children are continuing to appear without a guardian ad litem in bindover matters.

Raymond's case is not an isolated incident. Recently, following the decision below, the Tenth District affirmed in a bindover appeal, noting that "Simmonds does not articulate specifically how the juvenile court's failure to appoint a guardian ad litem prejudiced him." *State v. Simmonds*, 10th Dist. Franklin No. 14AP-1065, 2015-Ohio-4460, ¶ 12, citing *Morgan*, 2014-Ohio-5661, at ¶ 25. While the facts of *Simmonds* differ from Raymond's case, the trend is troublesome. Under *Morgan*, and now *Simmonds*, children in the Tenth District not only must request that the juvenile court fulfill its mandatory duty to appoint a guardian ad litem, but also must demonstrate how a guardian ad litem would have protected their best interests. Therefore, Raymond asks this Court to reconsider its decision and accept review of this case to put a stop to this trend.

V. Because the error here affects the fairness and integrity of juvenile court proceedings, the prejudice must be presumed.

The Tenth District's utilization of the plain-error standard in Crim.R. 52(B) to require that prejudice must be demonstrated when a juvenile court fails to fulfill its mandatory duty to ensure that a child's best interests are protected, creates an impossible standard. A child is "an easy victim of the law." *Haley v. Ohio*, 332 U.S. 596, 599, 68 S.Ct. 302, 92 L.Ed. 224 (1948). This notion is highlighted in this case where Raymond was in court for his amenability hearing right after his mother died, just nine months after his father died, and with no one to protect his best interests. Recognizing

that children are not aware that they have the right to a guardian ad litem when their parents are absent from juvenile court proceedings, the legislature placed the burden on the juvenile court to ensure that an interested adult represents the child's best interests, especially when a parent is not available to fulfill that role. But, the Tenth District's standard in cases like Raymond's, violates long-held standards in Ohio regarding the important role of a parent or guardian ad litem, fails to fulfill *Gault's* promise of due process and fair treatment, and makes a child even more vulnerable. See *Gault*, 387 U.S. at 33, 87 S.Ct. 1428, 18 L.Ed.2d 527.

Instead, an interpretation of the plain error doctrine with a focus towards fairness is more appropriate here: "The error must be obvious on the records, palpable, and fundamental, and in addition it must occur in exceptional circumstances where the appellate court acts in the public interest because the error affects 'the fairness, integrity or public reputation of judicial proceedings.'" *State v. Lily*, 87 Ohio St.3d 97, 104, 717 N.E.2d 322 (1999). In circumstances like Raymond's, a juvenile court must act in the public interest to protect the fairness, integrity, and public reputation of judicial proceedings. Therefore, Raymond asks this Court to reconsider its decision and accept review of this case to hold that when the error affects the fairness and integrity of juvenile court proceedings, prejudice must be presumed.

Conclusion

This Court has never issued a decision regarding the appointment of guardians ad litem in delinquency cases. Now is the time. As we approach the 50th anniversary of *Gault*, this case provides this Court with an opportunity to reinforce the promise of due

process and fair treatment in juvenile court. Accordingly, Raymond Morgan requests that this Court reconsider its December 2, 2014 decision declining jurisdiction of Raymond's discretionary appeal. S.Ct.Prac.R. 18.02(B)(1).

Respectfully submitted,

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Certificate of Service

The undersigned counsel certifies that a copy of the foregoing **Appellant Raymond Morgan's Motion for Reconsideration** was served by ordinary U.S. Mail this 14th day of December, 2015 to Seth L. Gilbert, Franklin County Prosecuting Attorney, Franklin County Prosecutor's Office, 373 South High Street, Columbus, Ohio 43215.

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