

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

IN THE MATTER OF K.M., ALLEGED DELINQUENT CHILD.	:	O P I N I O N
	:	
	:	CASE NO. 2011-L-167
	:	

Appeal from the Lake County Court of Common Pleas, Juvenile Division, Case No. 2011 DL 0642.

Judgment: Reversed and vacated.

Edward M. Heindel, 450 Standard Building, 1370 Ontario Street, Cleveland, OH 44113
(For Appellant-Amanda Victor).

Charles E. Coulson, Lake County Prosecutor, and *Alana A. Rezaee*, Assistant
Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Appellee-
State of Ohio).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Amanda Victor, mother of juvenile, K.M., appeals from the judgment of the Lake County Court of Common Pleas that adopted the magistrate's decision to dismiss the delinquency proceeding against K.M., but held appellant responsible for court costs related to that proceeding. For the reasons below, the judgment is reversed and vacated.

{¶2} On April 22, 2011, a complaint was filed against K.M. alleging he was a delinquent child by reason of possession of drug paraphernalia, in violation of R.C. 2925.13, a misdemeanor of the fourth degree if committed by an adult. The matter

came on for trial in October 2011. Appellant was a “key witness,” for the state, but failed to appear on the scheduled trial date despite being properly subpoenaed. The state sought a continuance to which defense counsel duly objected. The magistrate denied the state’s motion, reasoning the matter had been “pending since April and there is no indication that [appellant] will be anymore cooperative in the future.” In light of this ruling, the state orally moved to dismiss the matter for “lack of cooperation with a critical witness.” The magistrate granted the motion, dismissed the case, but taxed court costs against appellant.

{¶3} Appellant filed pro se objections challenging, among other things, the magistrate’s decision assessing her with court costs in a matter that was dismissed. The trial court overruled appellant’s objections noting, “the magistrate acted correctly in dismissing the matter due to the lack of cooperation of [appellant.]” And, the court determined the magistrate did not err in requiring appellant to pay court costs because “[her] behavior resulted in the dismissal.”

{¶4} Appellant now appeals and assigns the following error for this court’s consideration:

{¶5} “The trial court erred when it assessed court costs against the mother in a dismissed juvenile case.”

{¶6} Appellant contends that the court erred as a matter of law in adopting the magistrate’s decision because, pursuant to R.C. 2152.20, a court may assess court costs against a juvenile who is adjudicated delinquent. That statute provides, in relevant part:

{¶7} “(A) If a child is adjudicated a delinquent child or a juvenile traffic offender, the court may order any of the following dispositions *** :

{¶8} “(2) Require the child to pay costs[.]”

{¶9} Given this authority, appellant argues the trial court is only empowered to assess costs against a child where that child is adjudicated delinquent. As she is not the subject child and there was no adjudication of delinquency, appellant concludes the trial court lacked authority to impose court costs on her. In support, appellant cites the Seventh Appellate District's opinion in *In re Graham*, 7th Dist. No. 02 CA 67, 2002-Ohio-6615.

{¶10} In *Graham*, the prosecutor moved the court to dismiss a delinquency complaint against a juvenile. The court entered a judgment of dismissal, but ordered the juvenile to pay \$72 in court costs. On appeal, the juvenile asserted that R.C. 2152.20(A)(2) permits a court to assess costs if and only if a child is actually adjudicated delinquent. The court observed that the juvenile's interpretation was consistent with similar statutes involving adult criminal cases where court costs can be assessed on a defendant only where he or she is convicted and assuming no agreement to the contrary was entered. *Graham*, at ¶12. The court further noted that R.C. 2151.54 empowers a juvenile court to assess fees and costs, but concluded that statute did not give the juvenile court any additional authority to assess costs against a juvenile not adjudicated a delinquent. *Graham*, at ¶15.

{¶11} Although *Graham* stands for the principle that a juvenile not adjudicated a delinquent may not be assessed costs, the facts of this case are slightly different than those faced by the Seventh District. Here, the court did not require the juvenile to pay

costs after dismissing the case; instead, the court, due to appellant's absence and apparent general lack of cooperation, assessed costs against her, the juvenile's mother. We consequently agree with appellant that the trial court did not have authority under R.C. 2152.20(A)(2) to assess her with court costs.

{¶12} Despite this conclusion, the state asserts that this court should nevertheless affirm the underlying judgment based upon the operation of R.C. 2151.54. That statute provides, in relevant part:

{¶13} The juvenile court shall tax and collect the same fees and costs as are allowed the clerk of the court of common pleas for similar services. No fees or costs shall be taxed in cases of delinquent, unruly, dependent, abused, or neglected children except as required by section 2743.70 or 2949.091 of the Revised Code or when specifically ordered by the court.

{¶14} The state points out that the foregoing statute permits the assessment of costs as set forth in R.C. 2743.70 and 2949.091, which are inapplicable to this case, as well as circumstances *specifically ordered by the court*. In the state's view, the statute does not preclude the assessment of costs when a juvenile court specifically enters such an order, even if the case is dismissed or there is no delinquency adjudication. We do not agree.

{¶15} While the statute appears to authorize a juvenile court to assess court costs in delinquency cases simply by entering a specific order, such a conclusion is possible only by disregarding the statute's first sentence. The first sentence of the statute functions to limit the juvenile court's authority in assessing costs to that "allowed the clerk of the court of common pleas for similar services." *Graham, supra*, at ¶15. It

is well settled that a court of common pleas is not allowed to assess court costs against a defendant unless that defendant is actually convicted. See *e.g. Willoughby v. Sapina*, 11th Dist. No. 2000-L-138 and 2000-L-139, 2001 Ohio App. LEXIS 5652, *6 (Dec. 14, 2001), citing *State v. Posey*, 135 Ohio App.3d 751, 755 (9th Dist.1999) and R.C. 2947.23. Because a court of common pleas may not tax court costs in a criminal case without a conviction, it follows, by operation of R.C. 2151.54, that a juvenile court may not assess costs without a finding of delinquency. As the instant delinquency proceeding was dismissed, there was no finding of delinquency. We therefore hold the juvenile court lacked authority to assess court costs against appellant as a matter of law. The judgment of the juvenile court adopting the magistrate's order is accordingly vacated.

{¶16} Appellant's assignment of error has merit.

{¶17} For the reasons discussed above, the judgment of the Lake County Court of Common Pleas, Juvenile Division, is reversed and vacated.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT, J.,

concur.