

[Cite as *In re N.C.*, 2009-Ohio-4603.]

IN THE COURT OF APPEALS OF CLARK COUNTY, OHIO

IN RE: N.C., :
A MINOR CHILD :
: C.A. CASE NO. 09CA0023
: T.C. CASE NO. 2008-1803
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O P I N I O N

Rendered on the 4th day of September, 2009.

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GRADY, J.:

{¶ 1} This is an appeal from a January 26, 2009, judgment
of the juvenile court that adjudicated N.C. a delinquent child
and ordered him committed to the custody of the Department of
Youth Services.

{¶ 2} On October 24, 2008, a complaint was filed in juvenile
court alleging that N.C. and his brother had engaged in conduct

constituting an offense of felonious assault by causing serious physical harm to another, R.C. 2903.11(A)(1), a second degree felony. (Dkt. 1). The matter was referred to a magistrate.

Following a hearing, the magistrate filed a written decision on January 20, 2009 (Dkt. 28), adjudicating N.C. delinquent for having violated a law that would be an offense if committed by an adult. R.C. 2152.02(F)(1). The magistrate also ordered a dispositional hearing for the following day.

{¶3} On January 21, 2009, the court adjudicated N.C. delinquent and ordered him committed to the custody of the Department of Youth Services. (Dkt. 29). On January 26, 2009, the court entered a second adjudicatory and dispositional judgment making the same findings and imposing the same requirements. (Dkt. 30).

{¶4} Neither the judgment filed on January 21, 2009, nor the judgment filed on January 26, 2009, expressly adopted the magistrate's decision. However, the magistrate's decision bears the court's endorsement stating that the decision would become the final order of the court unless timely objections were filed. For that reason, and because the court's adjudication of delinquency and dispositional order necessarily relied on evidence the magistrate had heard and the findings and conclusions in the magistrate's decision, the court's

judgment of January 26, 2009, constitutes adoption by the court of the magistrate's decision of January 20, 2009. Juv.R. 40(D)(4)(a), (b).

{¶ 5} Juv.R. 40(D)(3)(b)(i) provides that objections to a magistrate's decision may be filed within fourteen days of that decision. Juv.R. 40(D)(4)(e)(i), however, authorizes the court to enter a judgment on the magistrate's decision during the fourteen days. That rule further provides that timely objections that are filed "shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously ordered." *Id.* (Emphasis supplied).

{¶ 6} The juvenile court's judgment of January 26, 2009 (Dkt. 30), was journalized six days after the magistrate's decision was filed. On January 27, 2009, the court issued a warrant to convey N.C. to the Department of Youth Services, and the Sheriff's return indicates that the warrant was executed on that same date. (Dkt. 31). On February 3, 2009, fourteen days after the magistrate's decision, N.C. filed timely objections to that decision. (Dkt. 32).

{¶ 7} Juv.R. 40(D)(3)(a)(iii) provides that objections to a magistrate's factual finding "shall be supported by a transcript of all the evidence submitted to the magistrate

relevant to that finding or an affidavit of that evidence if a transcript is not available." The objecting party must file the transcript within thirty days after filing objections, unless the court extends the time. The rule further provides: "If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections."

{¶ 8} The objection that N.C. filed alleged that the magistrate's determination of delinquency was not based on sufficient evidence. N.C. further requested a transcript of the proceedings before the magistrate, adding that "it will likely be necessary for Petitioner to supplement this objection based upon counsel's review of the manuscript." (Dkt. 32).

{¶ 9} On February 25, 2009, the juvenile court's not having ordered the transcript N.C. requested to support his objections, N.C. filed a notice of appeal from the juvenile court's judgment of January 26, 2009. (Dkt. 33). On the following day, the juvenile court granted N.C.'s request for preparation of a transcript at public expense, and ordered the transcript filed within forty days after N.C.'s notice of appeal. (Dkt. 41). A transcript was filed on March 6, 2009.

{¶ 10} Juv.R. 40(D)(4)(c) states: "If one or more objections are timely filed, the court shall rule on those objections."

However, the notice of appeal that N.C. filed on February 25, 2009, deprived the court of jurisdiction to rule on the objections that N.C. had filed on February 3, 2009. The notice likewise foreclosed N.C.'s opportunity to file supplemental objections that N.C. had indicated he would likely file after the transcript he requested was prepared and filed.¹

{¶ 11} Section 3 (B) (2), Article IV of the Ohio Constitution provides that "[c]ourts of appeal shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of courts of record inferior to the court of appeals within the district." Pursuant to that authority, the General Assembly adopted R.C. 2505.02, which defines "final orders."

{¶ 12} The adjudication of delinquency and sentence of confinement the court ordered on January 26, 2009, from which N.C. appeals, affected his substantial rights. Therefore, it may be a final order pursuant to R.C. 2505.02 (B) (2) from which an appeal may be taken if it was made in a special proceeding.

"'Special proceeding' means an action or proceeding that is specially created by statute and that prior to 1853 was not

¹Two of the three errors N.C. assigns on appeal would be proper as objections. The third, a claim of ineffective assistance of counsel, would be avoided should the court sustain one or both of the other objections.

denoted as an action in law or suit in equity.” R.C. 2505.02(A)(2).

{¶ 13} Delinquency proceedings are created by statute. R.C. Chapter 2152. However, whether an action or proceeding is one that prior to 1853 was denoted as an action in law or equity is not solely determined by the fact of its statutory authorization. Rather, “[i]n making the determination, the courts need look only at the underlying action.” *Stevens v. Ackman* (2001), 91 Ohio St.3d 182, 187.

{¶ 14} In *Ackman*, the Supreme Court held that a wrongful death action, though created by R.C. Chapter 2125, is nevertheless not a special proceeding for purposes of R.C. 2505.02(A)(2) and (B)(2), because it is an ordinary civil action for damages that was recognized at common law. Likewise, a delinquency proceeding alleging conduct that would be a felony if committed by an adult, the action brought against N.C. concerning the offense of felonious assault, R.C. 2903.11(A)(1), is at its core a criminal action for assault for which the statutory delinquency proceeding “merely supplies details within the structure of an ordinary action.” *Id.*, at 188. Because criminal actions for assault were recognized at common law, an R.C. Chapter 2152 delinquency action is not a “special proceeding” for purposes of R.C. 2505.02(A)(2) and

(B) (2) .

{¶ 15} The definition of a final judgment or order that applies to the juvenile court's judgment of January 26, 2009, from which N.C. took this appeal, is that in R.C. 2505.02(B) (1): "An order that affects a substantial right in an action that in effect determines the action and prevents a judgment."

{¶ 16} As we noted, the adjudication of delinquency and the sentence of confinement imposed on N.C. by the judgment of January 26, 2009, affected N.C.'s substantial rights. When such a judgment adopts a magistrate's decision, the court is required by Juv.R. 40(D) (4) (a) to rule on any timely objections to the decision that are filed, which may yet be filed following a judgment entered during the fourteen day period allowed for objections. In so ruling, the court may vacate the judgment the court previously entered. Juv.R. 40(D) (4) (c) (i). Therefore, a judgment or order that adopts a magistrate's decision when timely objections to the decision are thereafter filed does not prevent a judgment for purpose of R.C. 2505.02(B) (1), because the judgment may yet be vacated and a contrary judgment thereafter entered in the action. The same would apply to timely objections filed prior to the judgment which the judgment does not decide. The judgment in either case is interlocutory unless and until the court rules on the

objections, and is not therefore a final order or judgment from which an appeal may be taken until and unless the court so rules.

{¶ 17} In the present case, N.C. filed timely objections to the magistrate's decision following the judgment of January 21, 2009, that adopted the magistrate's decision.² The court had not ruled on those objections when N.C. filed his notice of appeal from that judgment. Because that judgment was then not final pursuant to R.C. 2505.02(B)(1), but merely interlocutory, we lack jurisdiction to review the error assigned, and the appeal must be dismissed.

FAIN, J. And FROELICH, J. concur.

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²The timely objection that N.C. filed automatically stayed execution of the court's judgment of delinquency. Juv.R. 40(D)(4)(e)(i). Therefore, the court was without authority to order N.C. conveyed to the custody of the Department of Youth Services on January 27, 2009. (Dkt. 31).