[Cite as *In re C.S.*, 2010-Ohio-867.]

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

IN THE MATTER OF:	)	
	)	
C.S., A DELINQUENT CHILD	)	
	)	
	)	CASE NO. 09-CO-7
	)	
	)	OPINION
	)	
	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Court of Common Pleas, Juvenile Division, of Columbiana County, Ohio Case No. J20080176-3-4-5-6
JUDGMENT:	Reversed and Remanded
APPEARANCES: For Appellee	Attorney Denise H. Weingart Assistant Prosecuting Attorney 260 West Lincoln Way Lisbon, Ohio 44432
For Appellant	Attorney Brooke M. Burns Assistant State Public Defender 250 E. Broad St. Suite 1400 Columbus, Ohio 43215

JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: March 2, 2010

[Cite as *In re C.S.*, 2010-Ohio-867.]
DONOFRIO, J.

{¶1} Appellant, Ciara S., appeals from a Columbiana County Common Pleas Court, Juvenile Division decision adjudicating her a delinquent child, revoking her probation, and imposing two previously-suspended commitments to the Department of Youth Services (DYS), the first commitment for one year and the second commitment for six-months, to run concurrently.

{¶2} Appellant has an extensive history with the juvenile court system beginning in Stark County.

{¶3} Of particular note, in October 2006, the Stark County Juvenile Court found appellant was a delinquent child because of felonious assault, a second-degree felony. This case was assigned case number 2006JCR03246. Additional complaints were filed against appellant in Stark County alleging that she was delinquent for violating a court order, delinquent for obstructing official business, and unruly twice for violating curfew.[1] For the offense of felonious assault, the court ordered a one-year commitment to DYS. It stayed the commitment based on the conditions that appellant abide by all laws, maintain good behavior, and abide by the terms of probation and court orders.

{¶4} In November 2006, the Stark County Juvenile Court found appellant was a delinquent child because of possession of a deadly weapon or dangerous ordnance in a school safety zone, a fifth-degree felony. This case was assigned case number 2006JCR03540. For this offense, the court ordered a six-month commitment to DYS. It stayed this commitment on the same conditions as the previous stayed commitment.

{¶5} In July 2007, additional complaints were filed in the Stark County Juvenile Court alleging that appellant was delinquent for violating a prior court order, petty theft, assault, resisting arrest, two counts of assault, drug paraphernalia, and underage consumption.[2] Appellant was also alleged to be unruly twice for running

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[1] Case numbers 2006JCR03106 (violating a court order), 2006JCR03013 (obstructing official business), 2006JCR03014 (violating curfew), and 2006JCR03247 (violating curfew).

[2] Case numbers 2007JCR01573 (violating a court order), 2007JCR01856 (petty theft), and 2007JCR02328 (two assaults, drug offense, underage consumption, resisting arrest).

away from home.[3] The court found appellant to be a delinquent child and ordered her to two separate DYS commitments for six months each, both suspended, and ordered her to perform 100 hours of community service. It also continued her probation in case numbers 2006JCR03540 and 2006JCR03246, the possession of a deadly weapon and felonious assault cases.

{¶6} On August 25, 2008, the Stark County Juvenile Court ordered 90 days of probation on appellant's 2007 case numbers. The Stark County Juvenile Court also continued appellant's probation and suspended commitments in case numbers 2006JCR03540 and 2006JCR03246. Four days later, the Stark County Juvenile Court certified appellant's probation/aftercare to Columbiana County. Appellant was 16 years old when the cases transferred to Columbiana County.

{¶7} On September 18, 2008, appellant's father filed a complaint in Columbiana County Juvenile Court alleging that appellant was an unruly child because she ran away from home. This case was assigned case number J2008-0176-2. Appellant entered an admission to this complaint and the court found her to be an unruly child. For disposition on November 10, 2008, the court placed appellant in a residential treatment program and placed her on probation with Sonya Stalker as her probation officer.

{¶8} On November 19, 2008, a complaint was filed in the Stark County Juvenile Court alleging that appellant was delinquent for violating a prior court order by failing to comply with the rules and standards of her residential treatment center. This case was assigned Stark County case number 2008JCR03402. The case was transferred to Columbiana County for adjudication and disposition. It was then assigned Columbiana County case number J2008-0176-4.

{¶9} On December 4, 2008, Stalker filed a complaint alleging that appellant was delinquent for violating terms two and three of her probation (general good behavior and obey all laws; obey parents and custodians) in case number J2008-0176-2, running away from home. Specifically, Stalker alleged that appellant was

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[3] Case numbers 2007JCR02327 and 2007JCR01857 (both for violating curfew).

transported to Salem Hospital for evaluation and, while there, slipped out of her handcuffs and ran from the hospital. This case was assigned case number J2008-0176-3.

{¶10} On December 22, 2008, the magistrate held a detention hearing in cases J2008-0176-3 (violating probation) and -4 (violating a prior court order). It stated that these matters would later come for arraignment.

{¶11} On December 30, 2008, the magistrate held an arraignment on case number J2008-0176-3 (violating probation). Appellant stated that she waived her right to counsel at this hearing and entered an admission. The court found her to be a delinquent child because she "violated Terms 1 and 3 of her terms of release, in violation of ORC Section 2152.02F." (January 6, 2009 Judgment Entry). It then set the matter for disposition.

{¶12} On January 7, 2009, a complaint was filed in Columbiana County against appellant alleging that she was a delinquent child because she resisted arrest when Salem police officers apprehended her on an active warrant. This case was assigned case number J2008-0176-5.

{¶13} On January 14, 2009, the magistrate held an arraignment on cases J2008-076-4 (violating a prior court order) and -5 (resisting arrest). Appellant waived her right to counsel and entered admissions to both complaints. The court then found appellant to be a delinquent child because (1) she resisted arrest in Columbiana County and (2) violated a court order in Stark County when she refused to comply with the rules and standards of B-wing at her placement.

{¶14} On March 6, 2009, a complaint was filed against appellant alleging that she was a delinquent child because she engaged in turbulent behavior while detained at the Louis Tobin Attention Center. This case was assigned case number J2008-0176-6.

{¶15} On March 18, 2009, the magistrate held a disposition hearing for cases J2008-0176-3, -4, and -5, and an arraignment for case J2008-0176-6. On the state's motion, the magistrate dismissed case J2008-0176-6. He then moved on to

disposition in the other three cases. The magistrate imposed on appellant her previous commitments to DYS that were stayed by the Stark County Juvenile Court in case numbers 2006 JCR 03246 (felonious assault) and 2006 JCR 03540 (possession of a deadly weapon in a school zone), which were for a minimum of one year and a minimum of six months, to run concurrently.

{¶16} The trial court approved the magistrate's decision. In doing so, the court simply signed off on the magistrate's decision.

{¶17} Appellant filed a timely notice of appeal on April 17, 2009. Upon reviewing the court's "judgment entry," this court sent the matter back to the trial court to put on a final judgment entry that defined the rights and obligations of the parties, in this case to specifically state the commitments imposed on appellant. The trial court complied, and on June 3, 2009, it entered a final judgment imposing the commitments set out in the magistrate's decision.

{¶18} Appellant raises three assignments of error, the first of which states:

{¶19} "THE TRIAL COURT VIOLATED CIARA S.'S RIGHT TO COUNSEL AND TO DUE PROCESS UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION, R.C. 2151.352, AND JUVENILE RULES 3, 4, AND 29."

{¶20} Appellant argues that she was denied her right to counsel. She contends that her waiver of counsel at the January 14, 2009 adjudicatory hearing was not knowing, intelligent, and voluntary. She argues that the magistrate should have conducted an exploration into whether she fully understood the right she was waiving. Appellant acknowledges that she appeared in court numerous times prior to her adjudicatory hearing without counsel. And while she notes that these waivers are not at issue in this appeal, she contends that none of her waivers complied with case law and Juv.R. 29. Additionally, appellant contends that her waiver was made without counsel and advice from her parent or guardian.

{¶21} Appellant further contends that at no point during her March 18 disposition hearing did the magistrate inform her that she had the right to counsel, which she alleges was also error.

{¶22} We must first address a preliminary matter. Appellee, the State of Ohio, notes that appellant failed to file objections to the magistrate's decision and, therefore, has waived all but plain error. Plain error is one in which but for the error, the outcome of the trial would have been different. *State v. Long* (1978), 53 Ohio St.2d 91, 97.

{¶23} Appellee is correct that appellant failed to file objections to the magistrate's decision. Except for plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion unless the party has properly filed an objection in the juvenile court. Juv.R. 40(D)(3)(b)(iv). And though the Juvenile Rules of Procedure make no specific provision for recognition of plain error, as in adult criminal cases, the same principle applies. *In re A.M.*, 4th Dist. No. 09CA07, 2009-Ohio-7066, at ¶8, fn. 3, citing *In re J.F.,* 178 Ohio App.3d 702, 2008-Ohio-4325, at ¶84.

{¶24} In this case, appellant alleges that the trial court violated her right to counsel. As discussed in detail below, the magistrate erred in failing to inform appellant of her right to counsel. This was plain error. Appellant's Sixth Amendment right to counsel was violated.

{¶25} Juveniles have the right to the assistance of counsel in juvenile court proceedings. This right has been recognized by both the United States Supreme Court and the Ohio Supreme Court. *In re Gault* (1967), 387 U.S. 1, 31-57; *In re Anderson* (2001), 92 Ohio St.3d 63, 66. It is also set out in the Juvenile Court Rules: "Every party shall have the right to be represented by counsel and every child * * * the right to appointed counsel if indigent." Juv.R. 4(A). And it has been codified: "A child * * * is entitled to representation by legal counsel at all stages of the proceedings under this chapter or Chapter 2152. of the Revised Code." R.C. 2151.352.

{¶26} A juvenile's right to counsel exists at every step of the proceedings. *Gault*, 387 U.S. at 36. But a juvenile, like an adult in a criminal case, may waive his or her right to counsel, subject to certain standards. *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, at paragraph two of the syllabus.

{¶27} A juvenile's waiver of her right to counsel must be knowingly, voluntarily, and intelligently made. Id. at ¶106, citing *State v. Gibson* (1976), 45 Ohio St.2d 366. The court "must scrupulously ensure that the juvenile fully understands, and intentionally and intelligently relinquishes, the right to counsel." Id. In so doing, the court "is to engage in a meaningful dialogue with the juvenile." Id. at ¶107.

{¶28} In evaluating whether a juvenile's waiver is valid, the court must apply a totality-of-the-circumstances analysis. Id. at ¶108. In applying this analysis, the court must consider: "the age, intelligence, and education of the juvenile; the juvenile's background and experience generally and in the court system specifically; the presence or absence of the juvenile's parent, guardian, or custodian; the language used by the court in describing the juvenile's rights; the juvenile's conduct; the juvenile's emotional stability; and the complexity of the proceedings." Id., citing *In re Dalton S.* (2007), 273 Neb. 504, 515.

{¶29} Although there were many hearings dealing with many case numbers here, appellant specifically takes issue with two hearings: the January 14, 2009 hearing and the March 18, 2009 hearing. She contends that at the January 14 adjudicatory hearing, dealing with cases J2008-0176-4 (violating a prior court order) and -5 (resisting arrest), her waiver of her right to counsel was not knowing, intelligent, and voluntary. She further contends that at the March 18, 2009 disposition hearing, dealing with cases J2008-0176-3 (violating probation), -4, and -5, the magistrate failed to inform her at all of her right to counsel.

{¶30} The January 14, 2009 hearing was appellant's arraignment on the charges in cases J2008-0176-4 and -5. The magistrate informed appellant: "You do have the right to consult with an attorney. You have the right to be represented by an attorney. Uh, if you are unable to afford an attorney one would be appointed to

represent you at no costs." (Jan. 14 Tr. 4). The magistrate then explained appellant's other rights. (Jan. 14 Tr. 4-5). Appellant indicated that she understood her rights. (Jan. 14 Tr. 5).

{¶31} The magistrate went on to explain to appellant the penalties she faced and the pleas she could enter. The following colloquy then took place:

{¶32} "THE COURT: Ok, now before I ask you for your plea, I do have a waiver of counsel that you have signed today, it looks like a faxed virgin [sic.], but before you signed the waiver Ciara, did you review and did you understand it?

{¶33} "CIARA * * *: Yes.

{¶34} "THE COURT: Alright. Do you understand that if you had an attorney represent you, the attorney would be of a benefit to you and would help you in presenting your case to this Court?

{¶35} "CIARA * * *: Yes.

{¶36} "THE COURT: Alright, did you sign the waiver voluntarily?

{¶37} "CIARA * * *: Yes.

{¶38} "THE COURT: Meaning of your own free will?

{¶39} "CIARA * * *: Yes.

{¶40} "THE COURT: Alright. So you are telling me Ciara through your waiver, that you do not want to have an attorney, is that correct?

{¶41} "CIARA * * *: Yes.

{¶42} "THE COURT: Alright. I will accept your waiver. I will find that it is knowingly, intelligently and voluntarily made.* * *." (Jan. 14 Tr. 6-7).

{¶43} The magistrate then accepted appellant's admissions to the complaints in cases J2008-0176-4 and -5. (Jan. 14 Tr. 7-8).

{¶44} "In a delinquency proceeding, a juvenile may waive his constitutional right to counsel, subject to certain standards, if he is counseled and advised by his parent, custodian, or guardian. If the juvenile is not counseled by his parent, guardian, or custodian and has not consulted with an attorney, he may not waive his right to counsel." *In re C.S.*, 115 Ohio St.3d at paragraph two of the syllabus.

{¶45} The Second District, in *J.F.*, 178 Ohio App.3d 702, reversed a juvenile's delinquency adjudication and resulting commitment, in part because it found that J.F. did not validly waive his right to counsel. J.F. argued on appeal that the trial court violated his right to counsel because it failed to obtain a valid waiver of counsel. The appellate court agreed stating:

{¶46} "In the present case, J.F.'s mother was present at the hearing, but she simply requested continued treatment and asked that J.F. not be detained long before being transported to DYS. There is no indication that J.F.'s mother counseled him about waiving his right to counsel. In fact, unlike the parent in the case of *In re E.H.*[, 2d Dist. No. 22259, 2007-Ohio-6263]*,* J.F.'s mother was not even asked whether she believed that J.F. understood his constitutional rights." Id. at ¶93.

{¶47} The court went on to conclude that the error was not harmless, as the state had alleged. It pointed out that J.F. was not advised of, nor did he consider possible defenses to the alleged violations or circumstances that might mitigate his potential punishment as was required for him to make a valid waiver of counsel. Id. at ¶94.

{¶48} In this case, at the January 14 hearing, the magistrate never made any determination if appellant was counseled or advised by her parent. Appellant's father was present at the hearing. The only time he spoke was after appellant waived her constitutional rights and entered her admissions. The magistrate then asked him whether he consented to appellant entering admissions to the complaints to which he simply responded, "Yes." (Jan. 14 Tr. 8).

{¶49} In addition, while appellant's father was physically present at the hearing, appellant appeared via video conference from the facility at which she was being held. (Jan. 14 Tr. 2). Consequently, appellant did not even have the opportunity to meet with her father in person at the hearing to discuss whether or not to waive her right to counsel.

{¶50} As was the case in *J.F.*, there is no indication that appellant's father counseled her about waiving her right to counsel. Nor was appellant's father asked

whether he believed appellant understood her constitutional rights. And appellant was never advised of possible defenses to the alleged violations or circumstances that might mitigate her potential punishment. There is also no indication that appellant consulted with an attorney or a guardian ad litem about waiving her right to counsel. Thus, like in *J.F.*, appellant did not enter a valid waiver of her right to counsel in cases J2008-0176-4 (violating a prior court order) and -5 (resisting arrest). Consequently, appellant's delinquency adjudications in cases J2008-0176-4 and -5 must be reversed.

{¶51} The next issue raised by appellant concerns the March 18, 2009 disposition hearing for cases J2008-0176-3 (violating probation), -4 (violating a prior court order), and -5 (resisting arrest). The magistrate did not advise appellant of her right to counsel at any time during this hearing. He simply heard the state's recommendation, asked appellant and her father if they had anything to say, and imposed the previously suspended one-year and six-month commitments on appellant.

{¶52} At least three appellate districts have held that a trial court must reiterate a juvenile's right to counsel at the disposition hearing even if the juvenile entered a valid waiver of counsel at the adjudicatory hearing. *In re S.J.,* 9th Dist. No. 23058, 2006-Ohio-4467, *In re M.T.*, 12th Dist. No. CA2006-04-018, 2007-Ohio-2446; *In re Haggard*, 3d Dist. Nos. 2-08-20, 2-08-21, 2-08-22, 2-08-23, 2009-Ohio-3821. In reluctantly reaching this conclusion, the Third District stated:

{¶53} "[I]t is our conclusion that the majority opinion of *In re L.A.B.* [121 Ohio St.3d 112, 2009-Ohio-354] unequivocally espouses the position of the Ninth District Court of Appeals in *In re S.J.* regarding the reiteration of the right to counsel and/or the waiver thereof, at any juvenile disposition regardless of any prior waivers or admonitions at adjudication, even though this was not the precise issue before the court in that case." *Haggard*, at ¶48.

{¶54} As stated above, in this case, the magistrate never informed appellant of her right to counsel at her disposition hearing in cases J2008-0176-3, -4, and -5.

This hearing occurred two months after appellant's adjudicatory hearing in cases J2008-0176-4 and -5 and two-and-a-half months after appellant's adjudicatory hearing in case J2008-0176-3. The magistrate should have informed appellant of her right to counsel once again.

{¶55} "Other Ohio courts have previously found that a juvenile's waiver of counsel at one stage of the proceedings does not preclude him from 'asserting his right to counsel at a later stage.' See *In re M.T.,* 12th Dist. No.2006-04-018, 2007-Ohio-2446 quoting *In re S.J.,* Summit App. No. 23058, 2006-Ohio-4467, ¶ 6, citing Juv.R. 29(B)(5). 'Once a juvenile validly waives counsel during the adjudication hearing,' which is governed by Juv.R. 29(B), 'he does not lose the right to request counsel for the disposition hearing, which is governed by Juv.R. 34.' *Id.*" *Haggard*, at ¶45.

{¶56} Because the magistrate should have re-informed appellant of her right to counsel at her disposition hearing, her dispositions in cases J2008-0176-3 (violating probation), J2008-0176-4 (violating a prior court order), and -5 (resisting arrest) are reversed. Since we have already found that appellant's adjudications in cases J2008-0176-4 and -5 must be reversed, her dispositions are likewise reversed on this basis.

{¶57} Accordingly, appellant's first assignment of error has merit.

{¶58} Due to our conclusion in appellant's first assignment of error, her remaining assignments of error are now moot. They state:

{¶59} "THE JUVENILE COURT COMMITTED PLAIN ERROR AND VIOLATED CIARA S.'S RIGHT TO DUE PROCESS WHEN IT ACCEPTED CIARA'S ADMISSION TO A PROBATION VIOLATION WITHOUT COMPLYING WITH THE REQUIREMENTS OF JUV.R. 29(D)."

{¶60} "THE TRIAL COURT COMMITTED PLAIN ERROR AND VIOLATED CIARA S.'S RIGHT TO DUE PROCESS WHEN IT REVOKED CIARA'S PROBATION WITHOUT FOLLOWING THE REQUIREMENTS OF JUV.R. 35(B) AND 34(C)."

{¶61} For the reasons stated above, appellant's delinquency adjudications and dispositions in cases J2008-0176-4 (violating a prior court order) and -5 (resisting arrest) are hereby reversed. Appellant's disposition in case J2008-0176-3 (violating probation) is likewise reversed. This matter is remanded to the trial court for further proceedings pursuant to law and consistent with this opinion.

Waite, J., concurs.

DeGenaro, J., concurs.