

matter and jurisdiction over her person, because neither she nor her representative was present for the scheduled adjudicatory hearing in October 2007.

{¶ 3} We conclude that we lack jurisdiction over the appeal, because the trial court failed to rule on F.D.M.'s objections to the magistrate's report. Accordingly, the appeal is dismissed for lack of a final, appealable order. We are including a somewhat lengthy discussion of the procedural history of the case, due to numerous procedural issues in proceedings held in the Clark and Montgomery County Juvenile Courts.

I

{¶ 4} In April 2007, a complaint was filed in Clark County Juvenile Court, alleging that F.D.M., a thirteen-year-old juvenile, was delinquent, because she had struck a staff member of Visions for Youth in the shoulder. A specification was included, which elevated the charge to a fifth degree felony, in that the victim of the offense was an employee of a "private child placing agency," and the offense related to the employee's official duties.

{¶ 5} No transcript of the arraignment is in the record, but an entry filed in May 2007, states that F.D.M. admitted the facts in the complaint. The record does not indicate that an attorney or guardian ad litem was appointed for F.D.M. before her admission. F.D.M.'s case was then transferred to Montgomery County Juvenile Court, where a guardian ad litem and attorney were appointed. Montgomery County transferred the case back to Clark County, due to procedural defects regarding the admission. Clark County then vacated the admission and appointed

counsel for F.D.M.

{¶ 6} An adjudicatory hearing was scheduled for October 31, 2007, at 10:30 a.m. There is no transcript of this hearing in the record. The record does contain a transcript of a hearing that was held in a different case earlier the same day. F.D.M.'s attorney represented another juvenile, D.W., at that hearing.¹ During the hearing, F.D.M.'s attorney discussed stipulating to the facts stated in D.W.'s complaint. The attorney's intent was to challenge the issue of whether Visions for Youth is a "private child placing agency" for purposes of elevating the offense in question to a felony. F.D.M.'s attorney indicated that the same testimony about Vision's status would apply to F.D.M.'s case. However, the attorney stated that he would have to talk to F.D.M. before committing to the other issues. The attorney also said that he had not yet discussed this issue with F.D.M.

{¶ 7} Testimony was then presented from the executive director of Visions for Youth, which is a non-profit agency that operates group homes and also has a license for independent living placements. Visions does not, however, place children in foster homes, nor does it place children for adoption.

{¶ 8} At the end of the hearing, the magistrate stated that she would issue a written decision. The magistrate asked F.D.M.'s attorney if he wanted F.D.M.'s case reassigned so that he could talk to F.D.M. The attorneys and the court also discussed the fact that F.D.M.'s trial was set for 10:30 that day, and whether the

¹In its brief, the State characterizes D.W. as a "co-defendant" of F.D.M., but there is no evidence in the record that the cases are related. In fact, the police report clearly indicates that the incident in question involved only F.D.M. and a staff member of Visions for Youth, which is a residential group home.

matter could be resolved. After this discussion, the magistrate stated that she would wait. There is no indication of what happened thereafter, other than a “journal entry/court record” that is contained in the docket materials submitted to this court. The journal entry has no time-stamp and is not noted on the docket, at least as far as this court can ascertain. The entry is a form document that allows the court to check the type of proceeding, such as “arraignment,” “motion hearing,” “pre-trial,” “adjudicatory hearing,” and so forth. Nothing is checked regarding the designation of the hearing. Furthermore, the only notation on the page is under the section entitled “The Court Finds.” In Subsection D. of that section, a hand-written notation states “admit facts, submitted on licensing issue.”²

{¶ 9} The next document in the file is a Magistrate’s Decision that was apparently filed about four months after the hearing date. The decision, although not time-stamped, is docketed as having been filed on February 26, 2008. It is also incomplete, consisting of only one page, with one paragraph entitled “Findings of Fact.” There are no findings of law, no signature of the magistrate, and none of the cautionary statements required by Juv.R. 40(D)(3)(a)(iii).³ The trial court filed a judgment entry the same day, finding that F.D.M. had been adjudicated delinquent of

²We should note that none of Clark County’s documents are numbered, and the docket summary provided by the Clark County Juvenile Court does not use a numbering system for documents. Therefore, when a particular document is not time-stamped (and many are not), it is difficult to ascertain when the document may have been filed.

³This court has consulted with the office of the Clerk for Clark County Juvenile Court, which indicates that only one page of the Magistrate’s Decision can be found in the original Juvenile Court record. The Clerk’s office has no explanation for the missing information, and has been unable to locate a copy of other pages of the decision.

assault. The trial court then indicated that the matter should be transferred to Montgomery County Juvenile Court for disposition, since Montgomery County is the county of F.D.M.'s residence.

{¶ 10} Presumably, the magistrate concluded that Visions for Youth is a private child placing agency, because F.D.M. subsequently objected to the magistrate's decision on this basis. In July 2008, the Clark County Juvenile Court filed an amended judgment entry, overruling F.D.M.'s objection. The court noted that the matter was before the court upon stipulation by the parties that F.D.M. had committed the act described in the complaint. The court also noted that the State had presented evidence that Visions for Youth is a private child placing agency in the State of Ohio. The court concluded that the phrase "private child placing agency" is not defined in Revised Code Chapter 29, and that the court was therefore left to follow the rules of construction in the Rules of Juvenile Procedure, which require the court to insure a fair hearing to parties in the recognition and enforcement of constitutional and other legal rights. The court then applied the "common, fair, and normal definition of the phrase," and held that Vision for Youth is a private child placing agency, because it accepts children temporarily from courts and organizations and places the children in appropriate residential settings to meet their needs.

{¶ 11} The court found F.D.M. delinquent, and formally transferred her to Montgomery County Juvenile Court for disposition. Montgomery County then conducted further proceedings, again appointing an attorney and guardian ad litem for F.D.M.

{¶ 12} In August 2008, a magistrate in Montgomery County Juvenile Court held a dispositional hearing. F.D.M. was present at this hearing, along with her father, and with appointed counsel and the guardian ad litem. No testimony or evidence was presented, although the magistrate did consult with F.D.M.'s probation officer, F.D.M.'s attorney, F.D.M.'s guardian ad litem, and briefly, with F.D.M.'s father.

The magistrate did not discuss F.D.M.'s rights, and F.D.M.'s participation in the hearing was minimal. At one point, the magistrate asked F.D.M. if she had anything she wanted to share with the court, and F.D.M. said, "No." Transcript of August 6, 2008 hearing, p.10. At the end of the hearing, the magistrate advised F.D.M. of her right to object to the magistrate's decision and subsequent right to appeal, and asked F.D.M. if she had any questions. F.D.M. again responded, "No." Id. at p. 12.

{¶ 13} The magistrate filed a decision on August 11, 2008, stating that F.D.M.'s rights were explained, including the right to counsel, and the possible consequences of the hearing, whereupon F.D.M. acknowledged that she understood what had been explained to her.⁴ The magistrate imposed a suspended sentence to the Ohio Department of Youth Services (ODYS), not to extend beyond F.D.M.'s twenty-first birthday. The magistrate then placed F.D.M. at the Center for Adolescent Services, which is known as "CAS." The entry indicated that F.D.M.'s participation and cooperation at CAS was a condition of the suspension of the commitment to ODYS. The trial court immediately adopted the magistrate's decision.

{¶ 14} F.D.M. filed an objection to the magistrate's decision on August 19,

⁴No such discussion appears in the record of the hearing.

2008, and asked that the hearing transcript be prepared. F.D.M. also asked for a stay of the order committing F.D.M. to CAS. The transcript was filed on September 11, 2008, and F.D.M. subsequently supplemented her objections on September 23, 2008. The objections again challenged the elevation of the charge to a felony based on the finding that Visions for Youth is a private child placing agency. F.D.M. also raised the issue of irregularities that had resulted in investigations at Visions subsequent to the last time F.D.M. had appeared in court.

{¶ 15} On September 25, 2008, the trial court filed an entry granting F.D.M.'s request for a transcript, even though the transcript had already been filed. The trial court granted F.D.M. fourteen days after the filing of the entry, in order to supplement her objections. The court then indicated that all other parties would have ten days thereafter to file a response to the objections. Finally, the trial court denied the motion for stay, and stated that F.D.M. would remain in the placement of CAS, as ordered by the Magistrate's Decision, until further order of the court.

{¶ 16} F.D.M. filed a notice of appeal on October 16, 2008, prior to a ruling from the trial court on her objections to the magistrate's decision.

II

{¶ 17} F.D.M.'s sole assignment of error is as follows:

{¶ 18} "THE TRIAL COURT ERRED WHEN THE JUDGMENT OF JULY 2, 2008, WAS RENDERED PREDICATED UPON THE FACT THAT THE COURT LACKED THE REQUISITE JURISDICTION OF THE SUBJECT MATTER AND OF THE PERSON OF THE APPELLANT."

{¶ 19} Under this assignment of error, F.D.M. contends that the Clark County Juvenile Court lacked subject-matter jurisdiction, as well as personal jurisdiction over her person, because the transcript of proceedings for the adjudicatory hearing in October 2007, indicate that no testimony was adduced regarding F.D.M.'s case.

{¶ 20} Before we address this assignment of error, we must consider the issue of our own subject-matter jurisdiction, which “may not be waived or bestowed upon a court by the parties to the case.” *State ex rel. White v. Cuyahoga Metro. Hous. Auth.*, 79 Ohio St.3d 543, 544, 1997-Ohio-366. Appellate courts may also raise the issue on their own motion. *Id.*

{¶ 21} Our review of the record indicates that the trial court never ruled on F.D.M.'s objections to the magistrate's decision. Instead, the court simply granted F.D.M.'s request for a transcript, and denied F.D.M.'s motion for a stay pending a ruling on the objections. The issue is whether this ruling constitutes a final order for purposes of our jurisdiction.

{¶ 22} Section 3(B)(2), Article IV, of the Ohio Constitution gives courts of appeals “such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district * * *.” R.C. 2501.02 also provides courts of appeals with jurisdiction “upon an appeal upon questions of law to review, affirm, modify, set aside, or reverse judgments or final orders of courts of record inferior to the court of appeals within the district, including the finding, order, or judgment of a juvenile court that a child is delinquent, neglected, abused, or dependent, for prejudicial error committed by such lower court.” Juvenile court adjudicatory and dispositional orders

are considered part of a single hearing, and these orders, combined, result in a final appealable order. *In re Fennell*, Athens App. No. 01CA45, 2002-Ohio-521, 2002 WL 194221,*3, n. 5, citing *In re Sekulich* (1981), 65 Ohio St.2d 13. However, court orders are final and appealable “only if the requirements of both Civ.R. 54(B), if applicable, and R.C. 2505.02 are met.” *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, syllabus. Accord *State ex rel. Scruggs v. Sadler*, 97 Ohio St.3d 78, 2002-Ohio-5315, at ¶5.

{¶ 23} Final orders are defined by R.C. 2505.02(B), which states, as pertinent to this case, that:

{¶ 24} “An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

{¶ 25} “(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶ 26} “(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment * * *.”

{¶ 27} We recently concluded that delinquency proceedings are not “special proceedings” for purposes of R.C. 2505.02(A)(2) and (B)(2). *In re N.C.*, Clark App. No. 09CA0023, 2009-Ohio-4603, at ¶14. Therefore, in *N.C.*, we considered only whether the trial court order had determined the action and prevented a judgment in the juvenile’s favor. *Id.* at ¶15. We found that the adjudication of delinquency and order of confinement had affected the juvenile’s substantial rights. *Id.* at ¶12. Nonetheless, we concluded that we lacked jurisdiction over the appeal, because the juvenile filed a notice of appeal prior to the trial court’s ruling on the juvenile’s

objections to the magistrate's report. *Id.* at ¶16. In this regard, we noted that:

{¶ 28} “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.” *Id.*

{¶ 29} As in *N.C.*, the trial court in the case before us immediately entered judgment on the magistrate's report. F.D.M. filed timely objections to the report, and the trial court's order did not prevent a judgment under R.C. 2505.02(B)(1), because the court could, thereafter, have vacated the judgment and entered a contrary order.

{¶ 30} We also noted in *N.C.* that the juvenile's timely objection automatically stayed execution of the trial court's judgment of delinquency under Juv.R. 40(D)(4)(e)(i), and that the trial court lacked authority to order the juvenile conveyed

to the custody of DYS. Id. at ¶17, n.2. The same situation exists in the case before us. The trial court lacked authority to order F.D.M. transferred to the custody of CAS. The stay was automatic upon the timely filing of objections, unless the court elected to enter an interim order under Juv.R.40(D)(e)(ii). Such interim orders may be granted where immediate relief is justified, and shall not extend more than twenty-eight days from the date of entry, subject to extensions in twenty-eight day increments, for good cause shown. Id. The trial court failed to comply with this rule.

{¶ 31} This appeal is Dismissed for lack of a final appealable order.

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FROELICH and WOLFF, JJ., concur.

(Hon. William H. Wolff, Jr., retired judge from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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