[Cite as *In re J.G.*, 2024-Ohio-2122.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

IN THE MATTER OF:	:	
	:	
H.G., M.B.,	:	Case Nos. 23CA27
Z.W., and L.W.[1]	:	23CA28
	:	23CA29
	:	23CA30
	:	
	:	
	:	
	:	DECISION AND JUDGMENT ENTRY
	:	
	:	

APPEARANCES:

William B. Summers, Parkersburg, West Virginia, for Appellant.

Kelsey R. Riffle, Washington County Assistant Prosecuting Attorney, Marietta, Ohio, for Appellee.

Smith, J.

{¶1} In this consolidated appeal, Appellant, Jessica Ball, appeals the trial court's decisions that adjudicated H.G. abused and dependent and that adjudicated M.B., Z.W., and L.W. dependent. For the reasons that follow, we do not find any

[1] The trial court's judgment entries list the children's complete names with middle initials, and some of the children have multiple middle initials. For the sake of clarity, we have used the initials for the first and last names of the children and have omitted any middle initials.

merit to Appellant's assignment of error. Therefore, we overrule Appellant's assignment of error and affirm the trial court's judgment.

FACTS

{¶2} On May 15, 2023, the trial court issued ex parte emergency removal orders that placed the children in the agency's temporary custody. The next day, the agency filed complaints that alleged, (1) H.G. is an abused child and dependent child, and (2) the remaining children are dependent children. The agency requested temporary custody.

{¶3} The statement of facts attached to the complaint indicated that in May 2022, the family became involved with West Virginia Child Protective Services (WVCPS) due to sexual abuse allegations involving H.G., Appellant's oldest daughter. Jonathan Wharton, Appellant's live-in boyfriend and the biological father of the three younger children, was the alleged perpetrator. The children were removed from the home and placed in WVCPS's custody. In April 2023, the Washington County Juvenile Court accepted jurisdiction over the case. On May 11, 2023, the agency "screened in a dependency report after being notified that the court case would be transferred to Washington County." The agency asked the court to continue the children in its temporary custody while it continued to investigate.

{¶4} On September 25, 2023, the court held an adjudicatory hearing. Sixteen-year-old H.G. testified, outside the presence of Appellant, as follows. Wharton started sexually abusing her when she was around nine years of age. The abuse increased when she turned 14 years of age. H.G. and Wharton exchanged text messages, and she sent him nude photographs of herself. H.G.'s mother found some other text messages that indicated Wharton was having sexual contact with H.G. and "got mad about it."

{¶5} Wharton subsequently talked to Appellant, and Appellant then talked to H.G. about the messages. H.G. told Appellant that she "was the one who created those messages, because [she] did not want [Appellant] to be mad, and [she] also did not want [Wharton] to be upset with [her]." H.G. eventually told her biological father about the abuse, and he reported the allegations to the appropriate authorities.

{¶6} After H.G.'s testimony, the court noted that Wharton's counsel had asked the court to excuse counsel and Wharton from the proceedings, which the court did. The court then stated that the court had learned that Appellant did "not wish to come into the courtroom." Appellant's counsel confirmed that he informed Appellant about H.G.'s testimony, and he indicated that "she's visibly a different color." Counsel explained that Appellant did not want to enter the courtroom and wished "to admit to [H.G.] being abused and the other children being dependent."

He stated that Appellant "is just begging [counsel] to do whatever [he] can to hopefully help get her children back eventually."

{¶7} The court asked counsel whether he was "okay with [Appellant] not being brought into Court," and counsel responded affirmatively. He elaborated: "[I]t's exactly what she told me to do. She said I don't want to be in there." Counsel stated that Appellant "is emotional" and "[s]hell-shocked."

{¶8} Next, caseworker Heather Demetro testified. She stated that the agency became involved with the family in May 2023, after it received a request from West Virginia authorities. At the time, H.G. was placed with her biological father, L.W. was placed with Appellant, and M.B. and Z.W. were placed in foster care. Demetro testified that Wharton has pending felony charges relating to the sexual abuse.

{¶9} After Demetro's testimony, none of the parties presented any additional evidence. The agency made a closing statement and asked the court to find H.G. abused based upon her testimony that Wharton sexually abused her, as well as upon Appellant's admission. The agency asserted that the three younger children are dependent because Wharton's conduct raises questions about the safety of the home environment.

{¶10} The court asked Appellant's counsel whether Appellant is willing to admit that the three younger children are dependent. Counsel responded

affirmatively. The court also asked counsel whether he was "waiving [Appellant's] right to be present" and whether Appellant had "authorized [him] to admit." Appellant's counsel responded: "That's correct, Your Honor. She's authorized me to do that." Appellant's counsel further indicated that Appellant wished to admit the abuse and dependency allegations in H.G.'s case.

{¶11} On October 5, 2023, the trial court adjudicated H.G. an abused and dependent child and the three younger children dependent children. The court noted that Appellant, through counsel, admitted the allegations. The court additionally found that the evidence presented at the hearing supported the adjudications. The court also entered a dispositional order that placed the four children in the agency's temporary custody. This appeal followed.

ASSIGNMENT OF ERROR

I. THE APPELLANT-RESPONDENT-MOTHER, J.B., CONTENDS THAT THE TRIAL COURT ERRED BY ACCEPTING HER ADMISSIONS UNDER CONDITIONS THAT RENDERED THEM INVOLUNTARY DUE TO DURESS.

{¶12} In her sole assignment of error, Appellant asserts that the trial court erred by adjudicating H.G. abused and dependent, and the remaining children dependent, based upon her admission without first ensuring that she voluntarily admitted the allegations. Appellant argues that at the time she made the admission, she was "in shell shock" after hearing H.G.'s testimony. Appellant contends that

the trial court had a duty to inquire once it became aware that she "was in a state of shock."

{¶13} Appellee counters that Appellant's counsel entered the admission on Appellant's behalf and that counsel also waived Appellant's further appearance from the hearing. Appellee thus claims that Appellant invited any error. Appellee additionally contends that any error is harmless error. Appellee argues that the record contains ample evidence to support the trial court's adjudications and additionally observes that Appellant has not challenged the sufficiency of the evidence to support the trial court's adjudications.

{¶14} Juv.R. 29 outlines the procedure that juvenile courts must follow when a party admits the allegations of a complaint. Juv.R. 29(D) prohibits a trial court from accepting an admission "without addressing the party personally and determining" that (1) "[t]he party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission"; and (2) "[t]he party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing."

{¶15} "The best way for a juvenile court to ensure that it complies with Juv.R. 29(D) is for the court to use the language of the rule." *In re D.A.G.*, 4th Dist. Ross No. 13CA3366, 2013-Ohio-3414, ¶ 22, quoting *In re Miller*, 119 Ohio

App.3d 52, 58, 694 N.E.2d 500 (2nd Dist.1997), citing *State v. Ballard*, 66 Ohio St.2d 473, 423 N.E.2d 115 (1981). Although the Ohio Supreme Court prefers that juvenile courts strictly comply with Juv.R. 29(D), a reviewing court may uphold an admission as voluntary as long as the juvenile court substantially complies with the rule and as long as no prejudice occurs. *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 113. "[S]ubstantial compliance means that in the totality of the circumstances, the juvenile subjectively understood the implications of his plea." *Id.*; *D.A.G.* at ¶ 22. A juvenile court's failure to substantially comply with Juv.R. 29(D) constitutes prejudicial error that warrants a reversal of the judgment. *C.S.* at ¶ 113; *D.A.G.* at ¶ 22. "Determining whether a court has substantially complied with Juv.R. 29(D) presents us with a legal issue, which we review de novo." *In re Aldridge*, 4th Dist. Ross No. 02CA2661, 2002-Ohio-5988, ¶ 19.

{¶16} Absent a valid Juv.R. 29(D) admission, a juvenile court may adjudicate a child abused, neglected, or dependent only if the evidence clearly and convincingly shows that the child is abused, neglected, or dependent. *In re Smith*, 77 Ohio App.3d 1, 16, 601 N.E.2d 45 (6th Dist.1991), citing Juv.R. 29(E)(4), and *Elmer v. Lucas Cnty. Children Services Bd.*, 36 Ohio App.3d 241, 244, 523 N.E.2d 540 (6th Dist.1987).

{¶17} In the case at bar, Appellant did not personally appear before the court and enter her admission. However, Appellant's counsel waived her appearance and did not object to the court accepting her admission without her presence. Generally, we will not consider issues that an appellant failed to first raise in the trial court or invited the court to commit. *In re E.A.G.*, 4th Dist. Washington No. 23CA7, 2024-Ohio-315, ¶ 81 (by failing to raise issue during trial court proceeding, party forfeits all but plain error on appeal); *In re A.S.*, 4th Dist. Pike No. 16CA878, 2017-Ohio-1166, ¶ 41, quoting *State v. Jackson*, 149 Ohio St.3d 55, 2016-Ohio-5488, 73 N.E.3d 414, ¶ 108, quoting *State ex rel. Kline v. Carroll,* 96 Ohio St.3d 404, 2002-Ohio-4849, 775 N.E.2d 517, ¶ 27, citing *Lester v. Leuck,* 142 Ohio St. 91, 50 N.E.2d 145 (1943), paragraph one of the syllabus (" 'Under the invited-error doctrine, "a party is not entitled to take advantage of an error that he himself invited or induced the court to make." ' "); *Jackson* at ¶ 122 (noting that invited error doctrine applies "when a party * * * affirmatively consented to a procedure that the trial court proposed").

{¶18} The plain error doctrine is applicable in civil cases only in the extremely rare case where the error "seriously affects the basic fairness, integrity, or public reputation of the judicial process." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122-123, 1997-Ohio-401, 679 N.E.2d 1099. We previously have found that in a proceeding involving the termination of parental rights, a trial court's failure to

comply with Juv.R. 29(D) demands application of the plain error doctrine. *Aldridge* at ¶ 16.

{¶19} In the case before us, even if Appellant's admission was invalid due to the court's failure to substantially comply with Juv.R. 29(D), the trial court did not rely solely upon her admission when it adjudicated H.G. abused and dependent and the three younger children dependent. Instead, the trial court stated that it also found H.G. abused and dependent and the three younger children dependent based upon the evidence presented at the adjudicatory hearing.

{¶20} Appellant has not argued that the evidence presented at the adjudicatory hearing does not contain sufficient clear and convincing evidence to support the trial court's findings. We nevertheless believe that the agency presented sufficient clear and convincing evidence to support the trial court's adjudications.

{¶21} H.G. testified that Wharton sexually abused her while living in the home with Appellant and the three younger children. Wharton currently has pending felony charges relating to the sexual abuse. H.G.'s testimony constitutes clear and convincing evidence that she is an abused and dependent child. R.C. 2151.031(A) (an " 'abused child' includes any child who * * * [i]s the victim of 'sexual activity' "); R.C. 2151.04(C) (a "dependent child" includes a child

"[w]hose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship").

{¶22} Additionally, H.G.'s testimony constitutes clear and convincing evidence that the three younger children are dependent children. *In re A.K.*, 4th Dist. Hocking No. 21CA2, 2021-Ohio-4513, ¶ 62 (abuse of one child sufficient to establish siblings' dependency); *In re S Children*, 1st Dist. Hamilton No. C-170624, 2018-Ohio-2961, ¶ 36 (evidence that parent caused one child's death sufficient to find surviving children dependent); *In re M.E.G.*, 10th Dist. Franklin No. 06AP-1256, 2007-Ohio-4308, ¶ 62 (evidence that father sexually abused one child supported finding that other children residing in household were dependent children).

{¶23} Consequently, even if the trial court erred by not substantially complying with Juv.R. 29(D) when it accepted Appellant's admission, the record otherwise contains clear and convincing evidence to support the trial court's adjudications.

{¶24} Accordingly, based upon the foregoing reasons, we overrule Appellant's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hess, J. and Wilkin, J., concur in Judgment and Opinion.

For the Court,

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Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.