

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

In re J.Z.

Court of Appeals No. H-11-003

Trial Court No. JUV 2007 00779

DECISION AND JUDGMENT

Decided: March 16, 2012

* * * * *

Benjamin M. Chapman, for appellant.

Russell Leffler, Huron County Prosecuting Attorney, and
Jennifer L. DeLand, Assistant Prosecuting Attorney, for appellee.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from a judgment of the Huron County Court of Common Pleas, Juvenile Division, which denied the motion of appellant J.Z. to vacate a scheduled review of sanctions hearing and ordered him to report to the Huron County Jail to begin

-serving a 30-day jail sentence previously imposed as a sanction for appellant's contempt of court. From that judgment, appellant raises the following assignments of error:

Assignment of Error No. 1

Juvenile Court had no jurisdiction to issue a court order after [J.Z.'s] 21st birthday which ordered him to report to jail for failure to comply with previously-imposed purge conditions.

Assignment of Error No. 2

It was error for the trial court to order [J.Z.] to jail for violating a dispositional order which had been terminated by operation of law on his twenty-first birthday.

Assignment of Error No. 3

It was error for the court to order [J.Z.] to jail for non-payment of restitution and costs.

Assignment of Error No. 4

It was error to order [J.Z.] to jail for 30 days for non-payment of a five dollar fine.

{¶ 2} On November 28, 2007, appellant, then 17 years old, was adjudicated a delinquent child in the Erie County Court of Common Pleas, Juvenile Division, for committing an offense which, if committed by an adult, would be a fourth degree felony theft offense. The Erie County court then transferred the case to the Huron County Court of Common Pleas, Juvenile Division, for disposition. On March 31, 2008, appellant and

the state filed a stipulation with the court that the amount of restitution owed by appellant, jointly and severally with his co-defendants, was \$22,110. The lower court then filed an order of disposition which, in relevant part, ordered appellant to pay restitution in the amount of \$22,110, jointly and severally with his co-defendants, plus court costs of \$114 and a \$5 fine. All payments were ordered to be paid within ten days of the date of the order and the clerk was then ordered to disburse the restitution funds to Meadow Green Memorial Park, the victim of the theft offense.

{¶ 3} On September 8, 2008, the lower court sua sponte filed a writ for a contempt of court citation, which alleged that appellant was in contempt of court for failure to pay fines and other costs as ordered. In that citation, the court set forth the restitution amount due as \$22,110 and the costs of the writ as \$43, for a total amount due of \$22,153. The court made no mention of its prior \$5 fine. Thereafter, appellant entered a plea of no contest to the charge and in an order of September 22, 2008, the court found him guilty of contempt of court. The court then sentenced appellant to 30 days incarceration in the Huron County Jail, but suspended the sentence on the condition that he pay \$50 per month until the court costs, fines and restitution were paid in full.

{¶ 4} The lower court regularly conducted review of sanctions hearings to follow appellant's compliance with the payment schedule. On August 27, 2009, the court filed a judgment which, although finding appellant to be in compliance with the payment plan, further ordered that the 30-day jail sentence previously suspended be imposed, and ordered appellant to report to the Huron County Jail on January 1, 2010. Thereafter, the

jail term was stayed four times, on appellant's motion, with the fourth stay being granted by the court in a judgment dated December 6, 2010, and staying imposition of the term until March 4, 2011.

{¶ 5} On February 4, 2011, the lower court notified appellant that another review of sanctions hearing was set for February 16, 2011, which required his appearance. Appellant responded by filing a motion for an order vacating the hearing. Appellant argued that because he had turned 21 years of age in December 2010, the lower court no longer had jurisdiction over the matter. On February 18, 2011, the court filed a judgment entry denying appellant's motion and finding that the court continued to have jurisdiction to enforce its orders regarding appellant's payment of restitution through contempt proceedings. The court then ordered appellant to appear for a review of sanctions hearing on a date and time to be determined, ordered appellant to continue to pay a minimum of \$50 per month as previously ordered, and ordered appellant to report to the Huron County Jail on March 4, 2011, to begin serving his 30-day jail sentence. It is from that judgment that appellant appeals.

{¶ 6} Initially we must address an issue raised by appellee in its brief. Appellee asserts that we do not have jurisdiction to review this appeal because the judgment of the trial court, from which appellant filed his notice of appeal, is not a final appealable order. Appellee contends that because the lower court has continuously stayed the jail term, allowing appellant to purge himself of the contempt, the order is not final and appealable.

{¶ 7} As a court of appeals, this court has jurisdiction to review final, appealable orders. *See* Ohio Constitution, Article IV, Section 3(B)(2); R.C. 2505.02. With regard to a contempt citation, this court follows the line of cases that hold that an order is final and appealable if it includes both a finding of contempt and the imposition of a penalty or sanction, even though the order contains purge conditions. *Strong v. Strong*, 6th Dist. No. L-01-1464, 2002 WL 91291 (Jan. 23, 2002); *Peterson v. Peterson*, 5th Dist. No. CT2003-0049, 2004-Ohio-4714, ¶ 8. We recognize, however, that we are in conflict with the Eleventh District Court of Appeals in this state, which follows the proposition that where a contemnor still has an opportunity to purge the contempt by performing the required act, a contempt judgment is not a final appealable order. *See Cooke v. Cooke*, 11th Dist. No. 2005-G-2631, 2005-Ohio-2262, ¶ 4; *Davis v. Davis*, 11th Dist. No. 2004-G-2572, 2004-Ohio-4390, ¶ 2. Given this conflict, we find it appropriate to certify the record of this case to the Supreme Court of Ohio pursuant to R.C. 2501.12. Our certification order is set forth below.

{¶ 8} In the proceedings below, the court filed its judgment finding appellant guilty of contempt of court and imposing a 30-day jail sentence, on September 22, 2008. Pursuant to *Peterson* and *Strong*, that was the final appealable order of contempt. Because appellant never filed a notice of appeal from that judgment, he is now foreclosed from challenging the contempt finding, sentence or purge conditions on appeal. *Abernethy v. Abernethy*, 8th Dist. No. 92708, 2010-Ohio-435, ¶ 35. Rather, appellant filed a notice of appeal from the trial court's order of February 18, 2011, which executed

the previously suspended sentence. Accordingly, the only issue he can now raise before us on appeal is whether the trial court abused its discretion in its February 18, 2011 judgment executing the previously suspended sentence. *See Peterson* at ¶ 8. That is, the only issues now before us on appeal are whether the lower court had jurisdiction to execute on the sentence and whether the purge conditions had been met. *See Baker v. Mague*, 8th Dist. No. 82792, 2004-Ohio-1259, ¶ 16.

{¶ 9} Appellant asserts that because he turned 21 years old in December 2010, the lower court no longer had jurisdiction to order him to serve a jail term for failing to comply with previously imposed contempt purge conditions, or for nonpayment of restitution, court costs and a fine. Appellee counters, and the lower court held, that the lower court did have jurisdiction to enforce its prior order of contempt beyond appellant's 21st birthday pursuant to R.C. 2151.21.

{¶ 10} We start with the well-settled premise that "[j]uvenile courts are courts of limited jurisdiction whose powers are created solely by statute." *In re J.D.*, 172 Ohio App.3d 288, 2007-Ohio-3279, 874 N.E.2d 858, ¶ 8 (10th Dist.), citing *Carnes v. Kemp*, 104 Ohio St.3d 629, 2004-Ohio-7107, 821 N.E.2d 180, ¶ 25. R.C. Chapters 2151 and 2152 set forth the general and criminal provisions, respectively, of the Ohio Revised Code that apply to juvenile court proceedings, and the provisions of Chapter 2151 apply equally to the proceedings under Chapter 2152, to the extent that they do not conflict. *See* R.C. 2152.01(C). Relevant to the issues in this appeal, R.C. 2152.02(C)(6) defines the jurisdiction of the juvenile court as follows:

The juvenile court has jurisdiction over a person who is adjudicated a delinquent child * * * prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, except as otherwise provided in this division, a person who is so adjudicated a delinquent child * * * shall be deemed a "child" until the person attains twenty-one years of age.

{¶ 11} When a child has been adjudicated a delinquent child, R.C. 2152.19 and R.C. 2152.20 set forth the numerous orders of disposition that the court can make, including an order requiring "the child to make restitution to the victim of the child's delinquent act * * *." R.C. 2152.20(A)(3). Both R.C. 2151.38 and R.C. 2152.22(A), however, state in relevant part that all dispositional orders made by the court under R.C. Chapters 2151 and 2152 "shall be temporary and shall continue for a period that is designated by the court in its order, until terminated or modified by the court or until the child attains twenty-one years of age." These provisions, together with R.C. 2152.02(C)(6), make it clear that when a juvenile has been adjudicated delinquent prior to his 18th birthday, any dispositional order that the juvenile court makes, including an order of restitution, terminates by operation of law on the juvenile's 21st birthday.

{¶ 12} The lower court determined that it had the authority to enforce its prior order of restitution through contempt pursuant to R.C. 2151.21. That statute states that "[t]he juvenile court has the same jurisdiction in contempt as courts of common pleas." The lower court also looked to our decision in *In re Buffington*, 89 Ohio App.3d 814, 627

N.E.2d 1013 (6th Dist.1993), to support its finding that it continued to have jurisdiction in this matter. In *Buffington*, we addressed the issue of whether the trial court erred in finding a juvenile delinquent guilty of contempt of court for failing to pay court costs. The appellant had argued both that the juvenile court lacked jurisdiction to collect court costs by means of a contempt citation and that the juvenile court no longer had jurisdiction over her because she was then 21 years old. Although we did not rule on the appellant's second argument, we noted that generally trial courts have the authority pursuant to R.C. 2705.02 to enforce their orders through contempt proceedings. We find this statement equally applicable to the present case, particularly given that the juvenile court obtained jurisdiction over appellant in the contempt action prior to appellant's 21st birthday. That the court stayed imposition of its order until after appellant's 21st birthday did not extinguish the court's jurisdiction where it was proceeding under the authority of R.C. 2705.02. That is, the court's contempt finding and sentence were imposed before appellant turned 21 years old and were not an adjudication and disposition entered pursuant to R.C. Chapters 2151 and 2152.

{¶ 13} Appellant further asserts that the lower court erred in ordering him to serve a jail sentence on a contempt finding where that contempt finding was based on his failure to pay restitution, court costs and a fine. There is nothing in the record to indicate that the court found him in contempt for failure to pay a fine. In *Buffington*, we concluded that because a judgment for costs is a civil, not criminal, obligation, "the creditor, i.e., the court, can collect only the money it is due by the methods provided for

the collection of civil judgments." *Id.* at 816. Because a contempt proceeding is not a proper method for the collection of a civil judgment, we reversed the judgment of the trial court. The issues raised in appellant's third and fourth assignments of error, however, go to the validity of the contempt judgment itself. That is, ultimately they challenge the validity of the court's judgment of September 22, 2008. As we discussed above, because appellant did not appeal that judgment, he can no longer challenge the validity of it. Nevertheless, because appellant's brief encompasses a challenge to the validity of the court's execution of the sentence, we will address that issue.

{¶ 14} In the proceedings below, after finding appellant in contempt of court, imposing sentence and setting forth purge conditions, the lower court held review of sanctions hearings and consistently held that appellant was in compliance with his payment plan. Then, on August 27, 2009, the court filed a judgment which, although again finding appellant to be in compliance with his payment plan, further ordered that the 30-day jail sentence previously suspended be imposed. The court never found that appellant had failed to comply with his purge conditions. That judgment was stayed several times until February 18, 2011, when the court finally ordered appellant to report to jail to begin serving his sentence. Again, the court in that order did not find that appellant failed to comply with his purge conditions. Rather, the court determined that it continued to have jurisdiction to enforce its restitution order through contempt proceedings despite the fact that J.Z. was then 21 years old. Although the court then ordered J.Z. to continue to pay a minimum of \$50 per month and to become compliant

with his current payment plan, there is nothing in the record to support a finding that J.Z. had failed to comply with his purge conditions. Accordingly, we must find that the lower court erred in executing the sentence for appellant's contempt where there is no evidence in the record that appellant failed to comply with his purge conditions. *See Peterson*, ¶ 9-10.

{¶ 15} We therefore conclude that the lower court erred in ordering appellant to serve a jail term for his failure to comply with the court's prior order of restitution. The first and second assignments of error are not well-taken. The third and fourth assignments of error are well-taken in part and not well-taken in part. Appellant's 30-day jail sentence is reversed.

{¶ 16} The Ohio Constitution, Article IV, Section 3(B)(4) states:

Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of this state, the judges shall certify the record of the case to the supreme court for review and final determination.

{¶ 17} In order to qualify for certification to the Supreme Court of Ohio pursuant to the Ohio Constitution, Article IV, Section 3(B)(4), a case must meet the following three conditions:

First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted

conflict must be "upon the same question." Second, the alleged conflict must be on a rule of law – not facts. Third, the journal entry or opinion of the certifying court must clearly set forth the rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals. *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 596, 613 N.E.2d 1032 (1993).

{¶ 18} We find that our holding today is in conflict with the Eleventh District Court of Appeals' decision in *Davis v. Davis*, 11th Dist. No. 2004-G-2572, 2004-Ohio-4390. Accordingly, we certify the record in this case for review and final determination to the Supreme Court of Ohio on the following issue: In a contempt of court action, is the trial court's judgment finding a party in contempt and imposing a sentence final and appealable when the sentence is imposed, albeit with purge conditions, or when the defendant has failed to purge his contempt and the sentence is executed?

{¶ 19} On consideration whereof, the court finds that substantial justice has not been done the party complaining and the judgment of the Huron County Court of Common Pleas, Juvenile Division, is reversed. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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