

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE: AUSTIN L., A MINOR CHILD : JUDGES:
: Hon. W. Scott Gwin, P.J.
: Hon. Sheila G. Farmer, J.
: Hon. John W. Wise, J.
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: Case No. 2009-CA-00101
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:
: OPINION

CHARACTER OF PROCEEDING: Civil appeal from the Licking County Court of Common Pleas, Juvenile Division, Case No. A2009-381

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: January 27, 2010

APPEARANCES:

For State of Ohio

For Austin L.

KENNETH OSWALT
Licking County Prosecutor
20 South Second Street
Newark, OH 43058

ELIZABETH R. MILLER
Assistant State Public Defender
250 E. Broad Street, Suite 1400
Columbus, OH 43215

Gwin, P.J.

{¶1} Austin L., a minor child, appeals a judgment of the Court of Common Pleas, Juvenile Division, of Licking County, Ohio, which imposed two previously suspended six month commitments and a previously suspended one year commitment to the Department of Youth Services, for a total minimum period of two years, and a maximum of the date of the child's 21st birthday. The court also ordered appellant to serve 67 days in the Licking County Detention Center, with credit for time served. The Hocking County Juvenile Court had conducted the adjudicatory phase of the case, finding appellant had violated the terms of his probation, and had committed an act which would have been assault if committed by an adult. The matter was then transferred to the Licking County Juvenile Court, as the county of residence, pursuant to Juv. R. 11. The Licking County Juvenile Court conducted the dispositional phase of the case. Appellant assigns two errors to the trial court:

{¶2} "I. THE TRIAL COURT VIOLATED AUSTIN L.'S RIGHT TO COUNSEL AND TO DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION, OHIO REVISED CODE SECTION 2151.352, AND JUVENILE RULES 3, 4, 29 AND 35.

{¶3} "II. AUSTIN L.'S ADMISSION WAS NOT KNOWING, INTELLIGENT, AND VOLUNTARY IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; SECTIONS 10 AND 16, ARTICLE I OF THE Ohio CONSTITUTION; AND JUVENILE RULE 29."

I & II

{¶14} Appellant cites us to *In Re: Gault* (1967), 37 U.S. 1, 87 S. Ct. 148. In *Gault*, the United States Supreme Court held courts must afford juveniles the protections of the Due Process Clause of the Fourteenth Amendment, including notice of the charges, trial rights, and the effective assistance of counsel. Ohio has codified a juvenile's right to appointed counsel in R.C. 2151.352.

{¶15} Appellant argues essentially the Hocking County Juvenile Court did not conduct a Juv. R. 29 colloquy with appellant before accepting his plea of true to the probation violations. The court did not advise appellant of his right to counsel, and did not discuss the consequences of the admission appellant made in the probation violation hearing. The State agrees with the appellant the court did not comply with Juv. R. 29, and requests the case be remanded to the Hocking County court.

{¶16} The transcript of the hearing on the change of plea is extremely brief and does not demonstrate compliance with the requirements of Juv. R. 29 and 35.

{¶17} Dispositional orders cannot be entered where the adjudicatory phase is erroneous or incomplete. We find the Licking County Juvenile Court should not have proceeded to the dispositional hearing in this matter because the adjudicatory phase was flawed.

{¶18} Both of appellant's assignments of error are sustained.

{¶19} Pursuant to Juv. R. 11, if a proceeding involving a juvenile is transferred to another county, the county to which the case was transferred shall proceed as if the original complaint had originally been filed there. If the interests of justice require, the adjudicatory hearing may be held in the county where the complaint was filed, but the

transfer can occur at any time after the filing of the complaint. The issue of transfer is one of venue or convenient forum, not jurisdiction. *In re: Stacy* (November 7, 1983), Butler App. No. CA-83-073. We conclude the Licking County court has jurisdiction to correct the errors in the adjudicatory phase of the case.

{¶10} For the foregoing reasons, the judgment of the Court of Common Pleas, Juvenile Division, of Licking County, Ohio, is vacated, and the cause is remanded to the court to conduct new adjudicatory and dispositional hearings.

By Gwin, P. J.,
Farmer, J., and
Wise, J., concur

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. JOHN W. WISE

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