

NOTICE
Decision filed 09/27/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 170078-U

NO. 5-17-0078

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> M.N., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Madison County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 12-JD-455
)	
M.N.,)	Honorable
)	Martin J. Mengarelli,
Respondent-Appellant).)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Moore and Justice Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* The juvenile court properly denied the minor's "motion to vacate all previous orders for lack of personal jurisdiction over minor's father," and any argument to the contrary would lack merit, and therefore the minor's appointed appellate counsel is granted leave to withdraw, and the judgment of the juvenile court is affirmed.

¶ 2 The minor in this juvenile delinquency case, M.N., appeals from a juvenile court's order denying his "motion to vacate all previous orders for lack of personal jurisdiction over minor's father." M.N.'s appointed attorney on appeal, the Office of the State Appellate Defender (OSAD), has concluded that this appeal lacks merit. On that basis,

and pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), OSAD has filed a motion to withdraw as counsel. This court granted M.N. an opportunity to file a *pro se* brief, memorandum, or other document showing cause why this appeal should not be dismissed or the judgment affirmed for a lack of substantial merit and why OSAD should not be allowed to withdraw as counsel. At M.N.'s request, this court granted him additional time in which to file such a brief. M.N. has not filed anything. This court has considered OSAD's motion to withdraw and the entire record on appeal. This court has concluded that the juvenile court did not err in dismissing M.N.'s motion to vacate all previous orders, and any argument to the contrary would lack merit. Accordingly, OSAD is granted leave to withdraw as counsel, and the judgment of the juvenile court is affirmed.

¶ 3

BACKGROUND

¶ 4 M.N. was born on September 20, 1998. In November 2012, the State filed a petition for adjudication of wardship (see 705 ILCS 405/5-520 (West 2012)) in Madison County No. 12-JD-455, alleging that M.N., age 14, was delinquent because he had committed first-degree murder, attempt armed robbery, and residential burglary. The petition set forth the name and address of M.N.'s mother, who was the custodial parent. The petition also set forth the name of M.N.'s father but stated that his address was unknown. Days after filing the delinquency petition, the State filed a motion for a discretionary transfer of M.N. from the jurisdiction of the juvenile court to that of the criminal court, where M.N. could be prosecuted as an adult under the criminal laws. See 705 ILCS 405/5-805(3) (West 2012).

¶ 5 In March 2013, the juvenile court held a hearing on the State's motion for a discretionary transfer to criminal court. Both the State and M.N. presented evidence and arguments. The juvenile court took the matter under advisement.

¶ 6 In May 2013, the juvenile court entered a written order permitting prosecution of M.N. under the criminal laws. See 705 ILCS 405/5-805(3)(a) (West 2012). The State promptly filed an information in Madison County No. 13-CF-1012, charging M.N. with first-degree murder, attempt armed robbery, and residential burglary. A superseding indictment soon followed.

¶ 7 In May 2014, approximately one year after the criminal case began, M.N. filed in the delinquency case a "motion to vacate all previous orders for lack of personal jurisdiction over minor's father." In this motion to vacate all previous orders, M.N. averred that during the delinquency proceedings, his father was an inmate in the federal prison in Terre Haute, Indiana. He further averred that the State should have discovered his father's whereabouts and should have served him with a summons and a copy of the delinquency petition, but it failed to do so. M.N. argued that due to this lack of service upon his father, the juvenile court never acquired personal jurisdiction over the father, and this lack of personal jurisdiction voided *ab initio* all orders entered by the juvenile court, including the transfer order. M.N. sought vacatur of all of the juvenile court's orders.

¶ 8 At the same time M.N. filed the motion to vacate all previous orders in the delinquency case, he also filed in the criminal case (*i.e.*, in No. 13-CF-1012) a "motion to dismiss charges for lack of jurisdiction." This motion to dismiss charges was essentially

identical to the motion to vacate all previous orders, except that it had an additional averment that the criminal court lacked subject-matter jurisdiction over the criminal case due to the voidness of the juvenile court's transfer order.

¶ 9 The State filed in the criminal case a motion to strike or deny M.N.'s motion to dismiss charges. The State argued, *inter alia*, that service on M.N.'s father was not required under the circumstances of the case; that even if service upon the father was required, the juvenile court nevertheless had jurisdiction to order the transfer to criminal court; that the criminal court had jurisdiction over the case by virtue of the juvenile court's transfer order; and that M.N. forfeited the lack-of-service issue by failing to raise it during the pendency of the delinquency case in juvenile court.

¶ 10 On June 25, 2014, the criminal court called a hearing on M.N.'s motion to dismiss charges. The State presented evidence of M.N.'s father's history of incarcerations and of the probation department's efforts to locate M.N.'s father at the start of the delinquency case. At the end of the hearing, the criminal court noted that M.N.'s mother, who always had been M.N.'s custodial parent, had been present for all of the delinquency proceedings in juvenile court, and that neither M.N. nor his attorney ever had mentioned the absence of M.N.'s father at those proceedings. The criminal court took the matter under advisement.

¶ 11 On September 19, 2016, the criminal court entered a written order denying M.N.'s motion to dismiss charges. (The record on appeal does not include any explanation for the 27-month delay between the June 25, 2014, hearing on M.N.'s motion and the September 19, 2016, order denying the motion.) The criminal court's order also

announced the denial of the motion to vacate all previous orders, filed by M.N. in the delinquency case, even though this latter motion was not mentioned by anyone during the June 25, 2014, hearing on the motion to dismiss charges.

¶ 12 In its denial order, the criminal court noted that the motion to dismiss charges and the motion to vacate all previous orders, both filed by M.N. in May 2014, represented the first time that M.N. had raised the issue of a lack of notice to M.N.'s father, and the first time that he had accused the State of failing to exercise due diligence in locating his father. This circumstance led the court to suspect that M.N. had held the lack-of-notice issue "in reserve," perhaps to obtain a second hearing on the issue of transfer and a second chance at remaining in juvenile court. The court concluded that M.N., by failing to raise the lack-of-notice issue during the pendency of the delinquency case, had forfeited the issue. Even if M.N. had not forfeited the issue, the court added, the lack of notice to M.N.'s father did not deprive M.N. of due process or vitiate the juvenile court's subject-matter jurisdiction, for service upon the father was not required given that M.N.'s mother was the custodial parent, and she was served with a summons and was present for all delinquency proceedings, while the father had been imprisoned for most of M.N.'s life, did not pay child support, and had not communicated with M.N. on a regular basis. The court also doubted that M.N. had standing to object to a lack of notice to his father, but stated that even if M.N. did have such standing, failure to provide service to a noncustodial parent whose whereabouts were unknown did not deprive the juvenile court of subject-matter jurisdiction or render its orders void *ab initio*.

¶ 13 In December 2016, M.N. filed in the delinquency case a motion asking the juvenile court to rule upon his motion to vacate all previous orders, which he had filed in the juvenile case in May 2014. The State promptly responded with a motion to dismiss the motion to vacate all previous orders. According to the State, the motion to vacate all previous orders had become "moot" because the criminal court in No. 13-CF-1012 already had considered the issues raised therein and had ruled that the juvenile court did indeed acquire all of the jurisdiction necessary to enter the orders that M.N. sought to vacate.

¶ 14 On January 31, 2017, the juvenile court entered an order denying M.N.'s motion to vacate all previous orders. The juvenile court noted that the motion to vacate all previous orders was essentially identical to M.N.'s motion to dismiss charges, which he had filed in the criminal case. The juvenile court further noted that on June 25, 2014, the criminal court held a hearing on M.N.'s motion to dismiss charges, and that the criminal court subsequently denied that motion. Based on that procedural history, the juvenile court concluded that the doctrine of *res judicata* barred consideration of the issues presented in the motion to vacate all previous orders. M.N. timely filed a notice of appeal from the juvenile court's denial order, thus perfecting the instant appeal.

¶ 15 The record on appeal does not indicate what transpired in the criminal case (*i.e.*, No. 13-CF-1012). According to the website maintained by the Illinois Department of Corrections, M.N., age 19 as of September 20, 2017, is currently serving a 30-year sentence of imprisonment for first-degree murder in the case. No appeal from a judgment of conviction is pending in this court.

¶ 17 This appeal is from the juvenile court's order denying M.N.'s motion to vacate all previous orders for lack of personal jurisdiction over M.N.'s father. As previously mentioned, OSAD has filed a motion for leave to withdraw as M.N.'s attorney in this appeal, on the ground that the appeal lacks merit. In a legal memorandum in support of its motion, OSAD has identified three potential issues on appeal: (1) whether M.N. may raise, in the instant appeal, errors allegedly committed by the juvenile court during the delinquency proceedings, such as the denial of a motion to suppress statements or the discretionary transfer from juvenile court to criminal court; (2) whether M.N. was entitled to litigate in the juvenile court the issue of juvenile-court jurisdiction, even though the criminal court already had considered and ruled upon that very issue; and (3) whether the juvenile court's orders entered in the delinquency case were void due to a lack of personal jurisdiction over M.N.'s father.

¶ 18 As to the first potential issue on appeal, OSAD has noted that an appeal from an order transferring a cause from juvenile court to criminal court is not ripe until a judgment of conviction has been entered in the criminal court. See *People v. Jiles*, 43 Ill. 2d 145, 147-48 (1969). Due process is not violated by requiring a minor to wait until his direct appeal from a criminal conviction in order to raise alleged errors in the delinquency proceedings. See *People v. Taylor*, 76 Ill. 2d 289, 307 (1979). From these authorities, OSAD has concluded that M.N. cannot raise, in this appeal, errors that allegedly occurred during the delinquency proceedings; he must wait until a direct appeal from a judgment

of conviction. This reasoning is correct. The instant appeal is not the time to raise errors allegedly committed by the juvenile court during the delinquency proceedings.

¶ 19 As to the second potential issue, OSAD has concluded that the juvenile court was correct in stating that principles of *res judicata* barred M.N. from relitigating in the juvenile court the issue of whether the juvenile court had all of the jurisdiction necessary to make rulings and to enter orders in the delinquency case. *Res judicata* principles apply to the issue of jurisdiction when the issue is, in fact, litigated. *Morey Fish Co. v. Rymer Foods, Inc.*, 158 Ill. 2d 179, 186 (1994); *Brownlee v. Western Chain Co.*, 49 Ill. App. 3d 247, 250-51 (1977). Here, the criminal court held a hearing on M.N.'s "motion to dismiss charges for lack of jurisdiction." M.N. and the State participated in that hearing. Evidence and arguments were presented. Afterward, the criminal court entered a written order wherein it denied M.N.'s motion to dismiss charges and explained why it disagreed with M.N.'s jurisdictional arguments, as detailed *supra*. In short, the jurisdictional issue was fully adjudicated in the criminal court. M.N. was barred from relitigating the selfsame issue in the juvenile court.

¶ 20 As to the third potential issue, OSAD has concluded that even if another court were to consider M.N.'s jurisdictional issue, M.N. could not credibly argue that the juvenile court's orders in the delinquency case were void due to a lack of personal jurisdiction over M.N.'s father. A minor lacks standing to object to the validity of an order entered by a juvenile court where the objection is based upon an alleged lack of personal jurisdiction over someone other than the minor. *In re M.W.*, 232 Ill. 2d 408, 427 (2009) (minor had argued that adjudication of delinquency was void due to juvenile

court's lack of personal jurisdiction over minor's father). See also *People v. Matthews*, 2016 IL 118114, ¶ 19 (discussing *In re M.W.*). Like the two other potential arguments on appeal, this one would lack merit.

¶ 21 For the foregoing reasons, this appeal lacks arguable merit. Accordingly, OSAD is hereby allowed to withdraw as M.N.'s attorney on appeal, and the judgment of the circuit court of Madison County is affirmed.

¶ 22 Motion granted; judgment affirmed.