2018 IL App (1st) 172122-U

SIXTH DIVISION
May 1, 2018

No. 1-17-2122

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re I.P., a Minor,	)	Appeal from the Circuit Court
	)	of Cook County.
Respondent-Appellant	)	
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 17 JD 00648
	)	
I.P.,	)	Honorable
	)	Kristal Royce Rivers,
Respondent-Appellant).	)	Judge Presiding

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Connors concurred in the judgment.

ORDER

¶ 1 ***Held:*** We dismiss this appeal for lack of jurisdiction. The supervision order entered after a finding of delinquency was not a final, appealable order.

¶ 2 Following a bench trial, the circuit court of Cook County adjudicated minor-respondent, I.P., delinquent of one count of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (3)(I) (West 2016)) and one count of unlawful possession of a firearm (UPF) (720

ILCS 5/24-3.1(a)(1) (West 2016)). At the sentencing hearing, the court ordered respondent to be placed under supervision for 18 months. The written sentencing order, however, included a checked box indicating that she was placed under supervision for a period of two years. The sentencing order also included checked boxes reflecting that respondent was adjudged a ward of the court and that no finding of guilty was entered. The State argues that we lack jurisdiction, while respondent contends we have jurisdiction to review her substantive claims challenging the underlying finding of guilt.

¶ 3 We agree with the State and conclude that the supervision order is not final and appealable and, therefore, we lack jurisdiction to consider this appeal.

¶ 4 BACKGROUND

¶ 5 The facts concerning the underlying offenses do not affect the resolution of the jurisdictional issue. Accordingly, we recite here only the procedural history of the case.

¶ 6 On March 26, 2017, the State filed a petition for adjudication of wardship, alleging that respondent was a delinquent minor because, on March 25, 2017, she possessed a firearm in violation of multiple statutes. Counts I and II of the petition charged respondent with AUUW, alleging that she knowingly carried on or about her person a firearm when she was not on her own land, or in her own abode, or fixed place of business. 720 ILCS 5/24-1.6(a)(1) (West 2016). As aggravating factors, counts I and II alleged that, at the time of possession, respondent had not been issued a currently valid Firearm Owner's Identification Card, was under the age of 21, and had not been engaged in lawful activities under the Wildlife Code. 720 ILCS 5/24-1.6(a)(3)(C), (I) (West 2016). In addition, count III charged respondent with the offense of UPF in that she, being a person under the age of 18, knowingly had in her possession a firearm of a size which may be concealed upon the person. 720 ILCS 5/24-3.1(a)(1) (West 2016).

¶ 7 After a bench trial, the circuit court adjudicated respondent delinquent of counts II and III of the petition.[1]

¶ 8 On August 22, 2017, the circuit court conducted a sentencing hearing. The State argued that respondent should be committed to the Department of Juvenile Justice based on the seriousness of the offense. Respondent's counsel concurred with the probation officer's recommendation of probation. The court then stated to respondent:

> "It appears to me from the trial that you were in possession of this gun for a short period of time, that you didn't start your day planning on carrying a gun. But you took a gun, you hid it in your purse. That was a real, real dumb thing to do, but it doesn't have to define you, and I'm not going to make it. So it has to be your choice not to make it define you -- meaning, from now on, everything you do -- everything you do while you are awake is a decision. Make sure you make ones that help your life and not ruin it.
>
> You heard her ask for you to go to prison. I'm not going to do that. You heard him ask me to give probation. I'm not going to do that either.
>
> What I'm going to do is put you on two years' supervision – I'm sorry -- 18 months' supervision, and give you a chance to not have that supervision converted into probation or converted into a prison sentence. You're leaving town. I don't know who these friends are you were hanging out with. Hopefully you don't talk to them ever again, because they're not bringing you anything good in your life."

[1] The trial court granted respondent's motion for directed finding on count I of the petition.

¶ 9 The circuit court also ordered respondent to serve 30 hours of community service and comply with mandatory school attendance and "no gangs, guns, or drugs" conditions. In addition, the court referred respondent to "Treatment Alternatives for Safe Communities" for counseling and treatment. Further, the court ordered a 30-day stay of mittimus and explained to respondent that a violation of supervision would result in detention for 30 days, "either here or in Georgia or in Alabama or wherever it is I say you can go."

¶ 10 In closing, the circuit court stated "[t]his is probably the last time we'll see each other again. Don't do anything that makes me have to change the supervision to a full guilty verdict." The court stated that it vacated counts I and III of the petition and applied the supervision sentence only to count II.

¶ 11 The circuit court then entered two pre-printed written orders. The sentencing order has checked boxes indicating that respondent "is adjudged a ward of the court" and that "[i]mmediate and urgent necessity does not exist to detain the minor." The order also has checked boxes reflecting that no finding of guilty was entered and that responded was placed in supervision for a period of two years, in contrast to the court's oral ruling sentencing respondent to 18 months' supervision. The court entered a separate written supervision order indicating a term of two years for supervision and continued the case for a progress report to September 5, 2017. Respondent filed her notice of appeal on August 29, 2017.

¶ 12 ANALYSIS

¶ 13 Respondent challenges her delinquency finding and sentence on appeal. The State argues that we should dismiss the appeal for lack of jurisdiction under our supreme court's decision in *In re Michael D.*, 2015 IL 119178, which held that a supervision order in a juvenile case, whether entered before or after a delinquency finding, is not a final order. Respondent contends

this case is distinguishable from *Michael D.* because, here, the trial court adjudged her a ward of the court, which allows her to appeal under Illinois Supreme Court Rule 662 (eff. Oct. 1, 1975).

¶ 14 "Appellate jurisdiction is limited to review of final judgments unless an order falls within a statutory or supreme court exception." *Cole v. Hoogendoorn, Talbot, Davids, Godfrey & Milligan*, 325 Ill. App. 3d 1152, 1153 (2001) (citing *Pekin Insurance Co. v. Benson*, 306 Ill. App. 3d 367, 375 (1999)). Illinois Supreme Court Rule 660(a) states that "[a]ppeals from final judgments in delinquent minor proceedings, except as otherwise specifically provided, shall be governed by the rules applicable to criminal cases." Ill. S. Ct. R. 660(a) (eff. Oct. 1, 2001). Normally, the perfection of appeals in juvenile court proceedings requires a notice of appeal to be filed with the clerk of the circuit court within 30 days after the entry of the final judgment from which the respondent appeals. Ill. S. Ct. R. 606 (eff. Dec. 11, 2014). Indeed, respondent cited Rules 660 and 606 in support of the jurisdictional statement in her opening brief. Illinois Supreme Court Rule 604(b) addresses appeals when a defendant is placed under supervision. Ill. S. Ct. R. 604(b) (eff. Mar. 8, 2016). Rule 604(b) states that a respondent who has been placed under supervision "may appeal from the judgment and may seek review of the conditions of supervision, or of the finding of guilt or the conditions of the sentence, or both." *Id*.

¶ 15 In her reply brief, respondent argues Illinois Supreme Court Rule 662(a) (eff. Oct. 1, 1975) provides an exception that allows jurisdictional review in this court. Rule 662(a) states that "[a]n appeal may be taken to the Appellate Court from an adjudication of wardship in the event that an order of disposition has not been entered within 90 days of the adjudication of wardship." Ill. S. Ct. R. 662(a) (eff. Oct. 1, 1975). Rule 662(c) states that the notice of appeal under this rule "shall be filed within 30 days after the expiration of the 90 days specified in this rule and not thereafter." Ill. S. Ct. R. 662(c) (eff. Oct. 1, 1975).

¶ 16 The committee comments to Rule 662 explain that:

> "In juvenile court proceedings, there is a two step procedure. First a hearing is held to adjudicate the subject juvenile a ward of the court; then there is a separate hearing resulting in a disposition. If the dispositional hearing and order follow closely the adjudicatory hearing and order, judicial efficiency dictates that an appeal should be taken after disposition. If there is a long delay in disposing of the case, however, Rule 662 provides that an appeal may be taken from the first order. The period set is 90 days to account for normal delay caused by administrative problems. After that period, if the dispositional hearing has not been held, the juvenile may appeal. In such a case he must file his notice of appeal within 30 days of the expiration of the period and not after. Thus the 6 months period for application for leave to appeal provided in Rule 605(c) has no application." Ill. S. Ct. R. 662, Committee Comments (adopted, Oct. 1, 1975).

¶ 17 Our supreme court has explained that a juvenile delinquency proceeding has three phases: the findings phase, the adjudicatory phase, and the dispositional phase. *In re Michael D.*, 2015 IL 119178, ¶ 13. The supreme court in *In re Michael D.* explained the procedures for each phase:

> "At the findings phase, the trial court conducts a trial and determines whether the minor is guilty. If the court finds the minor guilty, a delinquency finding is made and the court proceeds to the adjudicatory phase. At the adjudicatory phase, the court determines if the minor should be made a ward of the court. If the minor is made a ward of the court, the case then proceeds to the dispositional phase, at which the court fashions an appropriate sentence. The final judgment in a juvenile delinquency case is the dispositional order." (Citations omitted.) *Id.*

¶ 18 Next, the supreme court addressed section 5-615(1) of the Juvenile Court Act (Act) (705 ILCS 405/5-615(1) (West 2014)), which states:

> "§ 5-615. Continuance under supervision.
>
> (1) The court may enter an order of continuance under supervision for an offense other than first degree murder, a Class X felony or a forcible felony:
>
> (a) upon an admission or stipulation by the appropriate respondent or minor respondent of the facts supporting the petition and before the court makes a finding of delinquency, and in the absence of objection made in open court by the minor, his or her parent, guardian, or legal custodian, the minor's attorney or the State's Attorney; or
>
> (b) upon a finding of delinquency and after considering the circumstances of the offense and the history, character, and condition of the minor, if the court is of the opinion that:
>
> (i) the minor is not likely to commit further crimes;
>
> (ii) the minor and the public would be best served if the minor were not to receive a criminal record; and
>
> (iii) in the best interests of justice an order of continuance under supervision is more appropriate than a sentence otherwise permitted under this Act."

¶ 19 Subsection (b), which allows the court to place a minor under supervision after a finding of delinquency has been made, became effective on January 1, 2014. Before that, courts could place a minor under supervision only *before* a delinquency finding was made. *In re Veronica C.*, 239 Ill. 2d 134, 146-47 (2010).

¶ 20 In light of this revision, the supreme court found that the plain language of section 5-615 of the Act showed that "whether entered preguilt or postguilt, a continuance under supervision is not a final order." *In re Michael D.*, 2015 IL 119178, ¶ 14. "The court may enter the continuance under supervision either 'before the court makes a finding of delinquency' (720 ILCS 405/5-615(1)(a) (West 2014)) or 'upon a finding of delinquency' (720 ILCS 405/5-615(1)(b) (West 2014))." *Id*. "Thus, the continuance under supervision is made either before phase one or immediately after phase one," which is confirmed by the language in subsection (7) of section 5-615 of the Act: " 'If the court finds that a condition of supervision has not been fulfilled, the court may proceed to findings, adjudication, and disposition [preguilt] or adjudication and disposition [postguilt].' " *Id*. (quoting 720 ILCS 405/5-615(7) (West 2014)).

¶ 21 The supreme court further explained:

> "Whether the supervision order is entered preguilt or postguilt, it is still entered before the second and third phases. Further, when a case *has* proceeded through the second and third phases and the court must enter a dispositional order, supervision is not one of the sentencing alternatives." (Emphasis in orginal.) *Id*. (citing 720 ILCS 405/5-710(1) (West 2014)).

¶ 22 The supreme court also found that Rule 604(b) does not make *juvenile* supervision orders appealable because the rule applies only to supervision orders entered under the Unified Code of Corrections (730 ILCS 5/1-1-1 *et seq.* (West 2014)). *In re Michael D.*, 2015 IL 119178, ¶ 18. This is because Rule 660(a) incorporates the criminal appeals rules for use in delinquent minor cases, but does so only as to *final* judgments. *Id*. (citing *In re B.C.P.*, 2013 IL 113908, ¶ 5).

¶ 23 Respondent argues Rule 662 dictates that this court has jurisdiction to consider her appeal. Rule 662 is the only supreme court rule that grants appeals of interlocutory orders in

juvenile cases. *In re Michael D.*, 2015 IL 119178, ¶ 19. However, Rule 662 "specifies the interlocutory orders that it makes appealable, and an order continuing a delinquent minor proceeding under supervision is not one of them." *Id*. In light of this finding, the supreme court held that "no supreme court rule makes juvenile supervision orders appealable." *Id*.

¶ 24 Respondent counters that *Michael D.* is inapposite because here, unlike in *Michael D.*, the circuit court specifically checked a box on the written sentencing order indicating that "[t]he minor is adjudged a ward of the court." In other words, respondent argues the court entered the order of continuance under supervision *after* the case proceeded through the second phase, which required the court to enter a dispositional order for sentencing, thereby rendering the case final.

¶ 25 Respondent's argument fails for a number of reasons. First, respondent seeks the application of Rule 662(a), which is interlocutory in nature, yet she essentially contends that her case proceeded through the second and third phases of juvenile delinquency proceedings, which would have required the trial court to enter a final dispositional order. Clearly, the circuit court did not enter a final order because it placed respondent under supervision and continued the case for a progress report to September 5, 2017. Further, the court could not have entered an order of continuing supervision as a final disposition because supervision is not one of the sentencing alternatives under the Act. 720 ILCS 405/5-710(1) (West 2016). Moreover, "[i]t is difficult to see how anything referred to as a 'continuance' could be a final judgment." *In re Michael D.*, 2015 IL 119178, ¶ 14.

¶ 26 Second, the report of proceedings belies respondent's contention that this case proceeded to a final disposition because the circuit court never conducted a hearing to determine whether respondent should be made a ward of the court.

¶ 27 Section 5-705(1) of the Act states:

> "At the sentencing hearing, the court shall determine whether it is in the best interests of the minor or the public that he or she be made a ward of the court, and, if he or she is to be made a ward of the court, the court shall determine the proper disposition best serving the interest of the minor and the public. All evidence helpful in determining these questions, including oral and written reports, may be admitted and may be relied upon to the extent of its probative value. A record of a prior continuance under supervision under Section 5-615 whether successfully completed or not, is admissible at the sentencing hearing." 705 ILCS 405/5-705(1) (West 2016).

¶ 28 The report of proceedings in this case is completely silent on the issue of adjudication of wardship. In addition to the presentation of evidence as set forth in section 5-705(1), the Act requires the circuit court to "consider the permanency goal set for the minor, the nature of the service plan for the minor and the services delivered and to be delivered under the plan." 705 ILCS 405/2-22 (West 2016). In this case, neither the State nor respondent presented any evidence for an adjudication of wardship. The court also did not consider a permanency goal or service plan for respondent, as neither was presented by the parties during the August 22, 2017 sentencing hearing. Indeed, nowhere in the transcript does the court even mention that it was conducting a hearing to adjudicate respondent a ward of the court.

¶ 29 Respondent insists that the circuit court was only required to make either an oral *or* written finding with respect to wardship and the fact that the court checked the box on the sentencing order was sufficient to make I.P. a ward of the court. When a conflict exists between the common law record and the report of proceedings, however, a court must give the report of proceedings precedence. See *People v. Peeples*, 155 Ill. 2d 422, 496 (1993) ("Where the

sentence indicated in the common law record conflicts with the sentence imposed by the trial judge as indicated in the report of proceedings, the report of proceedings will prevail and the common law record must be corrected.").

¶ 30 Here, the checked box in the sentencing order is the only item in the entire appellate record concerning adjudication of wardship. The report of proceedings shows the circuit court only (1) adjudicated respondent delinquent and (2) placed her under supervision, and those oral findings prevail over the contradictory written order. *Peeples*, 155 Ill. 2d at 496. Indeed, nothing in the report of proceedings supports the finding of adjudication of wardship in the written sentencing order. We are left to presume that the checked box was the result of a scrivener's error. Accordingly, Rule 662(a) is inapplicable for purposes of asserting jurisdiction in this court.

¶ 31 Even assuming the circuit court meant to enter a written finding adjudicating respondent a ward of the court, respondent still failed to comply with the Rule 662 because she did not wait 90 days after the court entered the August 22 order to file her appeal. Under Rule 662(a), respondent was required to appeal "in the event that an order of disposition has not been entered within 90 days of the adjudication of wardship." Ill. S. Ct. R. 662(a) (eff. Oct. 1, 1975). Rule 662(c) provides that the notice of appeal under this rule "shall be filed within 30 days *after* the expiration of the 90 days specified in this rule and not thereafter." (Emphasis added.) Ill. S. Ct. R. 662(c) (eff. Oct. 1, 1975). Respondent seems to argue she did not need to wait for the expiration of the 90-day period because the "order of disposition" was the same August 22 order. However, as we already discussed, the August 22 order was not a final order of disposition because the circuit court continued the case under supervision. Respondent ignored the 90-day requirement and filed her notice of appeal on August 29, 2017. Her failure to comply with Rule 662 also prevents her from claiming appellate jurisdiction.

¶ 32 Furthermore, the supreme court specifically found "no supreme court rule makes juvenile supervision orders appealable," which additionally forecloses respondent's argument. *In re Michael D.*, 2015 IL 119178, ¶ 19.

¶ 33 The appellate record more accurately reflects that this case has the same procedural stance as the respondent in *Michael D.* Like *Michael D.*, the circuit court adjudged respondent delinquent and entered an order continuing the case under supervision. *In re Michael D.*, 2015 IL 119178, ¶ 4. We follow the holding in *Michael D.* and find that the supervision order entered after the delinquency finding was not a final order. *Id.* ¶ 21. Therefore, we lack jurisdiction to consider respondent's appeal.

¶ 34 Finally, respondent argues that we should order the circuit court to correct the supervision order to conform to the court's oral pronouncement of the judgment. The court orally ordered 18 months' supervision, but the written order reflects that respondent is to serve two years' supervision. Regardless, the supervision order is presumably still in force, expiring either in February or August of 2019. Because we lack jurisdiction, we cannot resolve this apparent conflict. Out of concern for the need to promptly resolve this issue and the other procedural deficiencies described above, we direct that the mandate issue *instanter* and recommend that the circuit court set the matter for status at the earliest practicable time.

¶ 35 CONCLUSION

¶ 36 This appeal is dismissed for lack of jurisdiction.

¶ 37 Appeal dismissed. Mandate to issue *instanter*.