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2012 IL App (3d) 110212-U

Order filed August 23, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

<i>In re</i> J.M.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois,
)	
(The People of the State)	
of Illinois,)	
)	Appeal No. 3-11-0212
Petitioner-Appellee,)	Circuit No. 10-JD-252
)	
v.)	
)	
J.M.,)	Honorable
)	Chris L. Fredericksen,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Schmidt and Justice Carter concurred in the judgment.

ORDER

- ¶ 1 *Held:* Respondent forfeited his appellate argument that challenged the lack of notice to his father in a juvenile delinquency proceeding where respondent failed to raise the issue in the trial court.
- ¶ 2 Respondent, J.M., was adjudicated delinquent upon a finding that he committed unlawful use

of a weapon and battery. The trial court sentenced him to a 15-month term of probation. On appeal, respondent argues that the trial court erred in conducting the delinquency hearing because the State failed to notify his father of the juvenile court proceedings. We affirm.

¶ 3 The State filed a delinquency petition against respondent, alleging that he committed the offense of unlawful use of a weapon (720 ILCS 5/24-1(A)(2) (West 2010) and battery (720 ILCS 5/12-3 (West 2010)) in that he knowingly possessed a dangerous knife with the intent to use it against the victim, Josie M. The petition stated that respondent was 16 years old and lived at the same address as his mother, Angela Vaughn, in Elmwood, Illinois. Respondent's father was identified as Daniel Morefield, and his street address was listed as "DOC."

¶ 4 Respondent and his mother appeared in court on July 8, 2010. Respondent was arraigned and released on home detention, and counsel was appointed to represent him. The arraignment order signed by the trial court made no mention of respondent's father. Respondent stated that his father had been in the Department of Corrections "ever since I've been a little kid." The social history report indicated that respondent's parents had been married from 1990 to 1995, and that they were remarried in September of 2010.

¶ 5 At the adjudicatory hearing, the victim, Josie M., testified that she and her friend Dakota S. went to respondent's house to confront Amber W. When respondent answered the door, Josie told him and his sister, Rachel, that she wanted to talk to Amber. As respondent walked away, Amber and Dakota started yelling at one another. Josie testified that when respondent returned, he pushed her against the wall, put a knife up to her neck and warned her that "if you touch my sister, I'll kill you or something like that." He then pushed her off the porch and punched her on the chin.

¶ 6 Dakota testified that respondent opened the door and immediately yelled, "Grab me a knife."

Once he had the knife, respondent pushed Josie against the porch window, pressed the knife up to her throat and told her to "leave his sister alone or else he'd kill her." He pushed Josie to the ground and hit her in the face. Josie and Dakota walked to a friend's apartment and called the police.

¶ 7 Elmwood's chief of police, Aaron Bean, went to respondent home to investigate the incident. Bean testified that, after being advised of his rights, respondent invoked his *Miranda* rights. However, Amber, without being asked, found the knife and gave it to Bean.

¶ 8 The State tendered four pictures that were admitted into evidence. The pictures depicted Josie with a cut lip and bruising on her chin and on the side of her face.

¶ 9 Respondent's sister, Rachel, testified that respondent had been using a knife to whittle on the television stand. When she heard a knock at the door, she took the knife from him and threw it on the bed. Respondent opened the door, and Josie said that she wanted to "beat Amber's ass." Josie tried to push her way into the apartment. Rachel and respondent kept telling Josie to go home, but she refused to leave. Then Rachel pretended that she was calling the police, and Josie and Dakota left. Rachel denied that respondent pushed Josie or put a knife to her neck.

¶ 10 Amber also testified on respondent's behalf. Her testimony was similar to Rachel's, but she stated that it was Rachel who gave the knife to Bean, not her.

¶ 11 Respondent testified that he never pushed, threatened or punched Josie. Respondent's mother stated that she was present when Bean questioned Rachel, Amber and respondent. She stated that Bean asked Rachel about the knife and that it was Rachel who gave the knife to him.

¶ 12 The trial court noted that conflicts existed in the witnesses' testimony, but found that the photos "clearly show[ed]" bruising to Josie's face. The court concluded that the charges had been proven beyond a reasonable doubt. Prior to sentencing, respondent moved for a new trial, claiming

that the testimony from the witnesses was full of inconsistencies. The trial court denied the motion.

¶ 13 Respondent was declared a ward of the court and sentenced to 15 months' probation.

¶ 14 ANALYSIS

¶ 15 Respondent argues that he and his father were denied due process because the State failed to provide his father with notice of the juvenile proceeding.

¶ 16 Although a juvenile proceeding is not criminal in nature, certain constitutional due process safeguards normally associated with criminal proceedings have been extended for the protection of juveniles to accord to them fundamental fairness. *In re C.R.H.*, 251 Ill. App. 3d 102 (1993). Due process in a juvenile proceeding requires adequate notice to a minor and his parents. *In re Gault*, 387 U.S. 1, 33-34 (1967); *In re C.R.H.*, 251 Ill. App. 3d at 108.

¶ 17 To satisfy the requirements of due process, the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2010)) states that the parents' names and addresses must be set forth in a delinquency petition. 705 ILCS 405/5-520(2) (West 2010). The State must also serve the minor and his parents with a summons and a copy of the petition (705 ILCS 405/5-525(1)(a) (West 2010)) and must use diligence in notifying the minor's parents of pending proceedings (*In re R.P.*, 97 Ill. App. 3d 889 (1981)). Service of summons on a parent is excused if the parent does not reside with the minor, does not make regular support payments, and has not communicated with the minor on a regular basis. 705 ILCS 405/5-525 (1)(a)(ii) (West 2010).

¶ 18 In *In re M.W.*, 232 Ill. 2d 408 (2009), our supreme court held that personal service or notice to a parent or legal guardian is not a prerequisite to the trial court's authority to act. *In re M.W.*, 232 Ill. 2d at 426. In that case, the court determined that the lower court had "incorrectly concluded that compliance with the notice requirements of the Act was an unwaivable condition precedent to the

circuit court's exercise of subject matter jurisdiction over the justiciable matter before it." *Id.* The court held that a minor forfeits the lack of notice to a non-custodial parent unless the minor brings the issue before the trial court. *In re M.W.*, 232 Ill. 2d at 426; see also *In re C.L.*, 392 Ill. App. 3d 1106; *In re D.L.*, 299 Ill. App. 3d 269 (1998).

¶ 19 Here, the record demonstrates that respondent's father was not served with summons or otherwise notified of the delinquency petition, nor is there any indication that the State made an attempt during the proceedings to serve the father despite knowing that respondent's father was incarcerated in the Department of Corrections. Without the notice to the natural father, who was a necessary party to the proceedings, the trial court erred in conducting the delinquency hearing before determining whether service was excused under the Act. See 705 ILCS 405/5-525 (1)(a)(ii) (West 2010).

¶ 20 However, neither respondent nor respondent's mother raised the issue of service upon the father before the trial court. By failing to object, respondent has forfeited consideration of this error on appeal unless he can demonstrate plain error. See *In re M. W.*, 232 Ill. 2d at 430-31 (plain error doctrine also applies in proceedings under the Juvenile Court Act).

¶ 21 Under the plain error doctrine, an unpreserved error cannot be addressed on appeal unless it is "clear or obvious." Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999); *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). If such an error is found, a reviewing court will grant relief if (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, or (2) the error is "so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *Piatkowski*, 225 Ill. 2d at 565. The defendant has the burden of persuasion on both the threshold question of error and

whether he is entitled to relief as a result of the unpreserved error. *People v. Herron*, 215 Ill. 2d 167 (2005).

¶ 22 As we have found, the failure to provide respondent's father with notice was clear error. We must now determine whether the evidence was so closely balanced or whether the error so affected the fairness of the juvenile proceeding that a new hearing is warranted.

¶ 23 Respondent claims that the evidence was closely balanced in this case by arguing that the testimony of the witnesses as trial was conflicting. Whether evidence is conflicting, standing alone, does not make for a closely balanced case for plain error purposes. *In re M.W.*, 232 Ill. 2d at 437-39. In this case, the photographic evidence demonstrated that the victim had been hit in the face and that evidence was supported by the trial testimony. The exhibits showed bruising on the victim's chin and cheek, which was consistent with the attack as described by both the victim and Dakota. The trial court used this evidence to support his finding that the State's witnesses were credible. Although some of the witnesses' testimony contained discrepancies, the inconsistencies were minor and did not impact the essential testimony necessary to prove the elements of the crime. In addition, respondent fails to demonstrate how the failure to serve his father would have affected the balance of the evidence or the trial court's evaluation of the witnesses' testimony. See *In re M.W.*, 232 Ill. 2d at 438-39 (failure to serve summons on father did not result in plain error because it did not affect balance of evidence at delinquency hearing).

¶ 24 Alternatively, respondent argues that plain error applies under the second prong of plain error analysis. The second prong is designed to allow a reviewing court to act in those rare cases where systemic, structural errors serve to undermine the assumptions of fairness that normally attach to criminal trial. *People v. Thompson*, 238 Ill. 2d 598 (2010); *People v. Allen*, 222 Ill. 2d 340 (2006).

The error in this case does not rise to the level of a structural error.

¶ 25 A juvenile can forfeit the lack of service of summons on a non-custodial parent by failing to raise the issue in the trial court. *In re M.W.*, 232 Ill. 2d at 426. Here, respondent's mother was present at the trial and respondent was represented by counsel throughout the proceedings. Respondent does not argue that, had his father been present, the juvenile proceeding would have been conducted differently, nor does he suggest how the fairness of the hearing was undermined by his absence. We therefore conclude that respondent is not entitled to a new delinquency proceeding on the basis of plain error.

¶ 26

CONCLUSION

¶ 27 The judgment of the circuit court of Peoria County is affirmed.

¶ 28 Affirmed.