

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).

2013 IL App (4th) 120599-U  
NO. 4-12-0599  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
September 17, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: DILLON C., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermillion County
and	)	No. 12JD64
DILLON C.,	)	
Respondent-Appellant.	)	Honorable
	)	Michael D. Clary,
	)	Judge Presiding.

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PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Appleton and Knecht concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court reversed and remanded, concluding that the respondent-minor was entitled to a new hearing because the State failed to exercise due diligence in attempting to serve the respondent minor's biological father with notice of the juvenile proceedings.
- ¶ 2 In April, 2012, the State filed a petition for adjudication of wardship, alleging that respondent minor, Dillon C. (born June 15, 1995), was delinquent for his role in a (1) home invasion (720 ILCS 5/12-11(a)(1) (West 2010)) and (2) criminal trespass (720 ILCS 5/19-4(a)(2) (West 2010)). The State's petition listed respondent-minor's natural parents, Missy H. and Dillon C., Sr. The petition further listed his mother's specific address in Bismark, Illinois, and his father's town of residence as Ludlow, Illinois. The State thereafter served respondent minor and his mother with summons and notice of the proceedings against respondent minor. The State did not, however, serve respondent minor's father with summons or notice of the proceedings.

¶ 3 Following a hearing, the trial court adjudicated respondent minor delinquent. (Neither of respondent minor's natural parents attended the hearing; respondent minor's stepfather, Michael H., appeared to support respondent minor.) The court thereafter sentenced respondent minor, who was 16 years old at the time, to an indeterminate term in the Illinois Department of Juvenile Justice (DJJ).

¶ 4 Respondent minor appeals, arguing that (1) the State violated his statutory and due process rights to parental notice, (2) the State failed to prove him guilty beyond a reasonable doubt, and (3) the trial court erred by sentencing him to DJJ. We reverse and remand.

¶ 5 I. BACKGROUND

¶ 6 Because the parties are familiar with the details of this case—namely, the details of the alleged crimes—we outline only those facts necessary to resolve the issue that we view as dispositive.

¶ 7 In April 2012, the State filed a petition for adjudication of wardship, alleging that respondent minor was delinquent for his role in a (1) home invasion (720 ILCS 5/12-11(a)(1) (West 2010)) and (2) criminal trespass (720 ILCS 5/19-4(a)(2) (West 2010)). The State's petition listed respondent minor's natural parents and their respective addresses, as follows:

"2. That the names and residences of the minor's parents

are:

Father: Dillion [C.] Sr., Ludlow, IL

Mother: Missy [H.], 109 N. St. Bismark, IL 61814

Guardian: Unknown

Other: Unknown"

¶ 8 The State thereafter served respondent minor and his mother with summons and notice of the proceedings against respondent minor. The State did not, however, serve respondent minor's father with summons or notice of the proceedings.

¶ 9 Following a hearing, the trial court adjudicated respondent minor delinquent. Although neither of respondent minor's natural parents attended the hearing, respondent minor's stepfather appeared in support of respondent. (The record shows that respondent minor's mother had a medical condition that prevented her from attending.)

¶ 10 Respondent minor's stepfather testified at the sentencing phase of the proceedings that over the last eight years, respondent minor lived with his father from time to time, and with his mother from time to time when respondent minor was not in DJJ. Respondent minor's stepfather added that respondent minor's father owed his wife child support. On cross-examination, respondent minor's stepfather explained that "[t]wo-and-a-half, three years" ago, respondent minor "moved in with his girlfriend a block away from his dad in Ludlow, Illinois." Following the sentencing hearing, the trial court sentenced respondent minor to an indeterminate term in the DJJ.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Respondent minor argues that (1) the State violated his statutory and due process rights to parental notice, (2) the State failed to prove him guilty beyond a reasonable doubt, and (3) the trial court erred by sentencing him to DJJ. We agree that the State violated respondent minor's right to parental notice.

¶ 14 We begin our analysis in this case by quoting what we recently emphasized in *In*

*re Marcus W.*, 389 Ill. App. 3d 1113, 1128, 907 N.E.2d 949, 960 (2009), regarding the apparent all-too-frequent disregard for the Juvenile Court Act of 1987's notice requirements:

"Unfortunately, the procedural requirements of the Act are frequently ignored. For over 20 years, Illinois appellate courts have recognized a lack of attention to the procedural requirements of the Act by trial courts (see *In re T.A.*, 181 Ill. App. 3d 1034, 1039, 537 N.E.2d 1118, 1121 (1989) ('we also note the lax attention by the trial court to the procedural requirements of the Juvenile Court Act')) and the State (see *In re L.C.C.*, 167 Ill. App. 3d 670, 673, 521 N.E.2d 652, 654 (1988) ('An increasing number of cases suggest the State is inattentive to the notice requirements of the [Juvenile Court] Act')). In this case, the trial court, the State, and the respondent minor's counsel all ignored the Act's notice requirements. To allow a minor to be committed to DJJ, in part because no adult supervision appears available, where no attempt is made to provide notice to any adult in the minor's life, violated the fundamental due-process rights of this minor."

¶ 15 In this case, the State concedes that respondent minor's father was not provided notice of the proceedings. Nevertheless, the State posits that the father's address was not known to the State and therefore, the State was unable to contact his father. The State continues that because respondent minor failed to object to the State's failure to provide notice, he has forfeited the issue. We agree that respondent minor has forfeited this issue. However, because (1) the

State had a duty to make a good faith attempt to provide notice to the father—which it did not—and (2) the State's failure to provide notice to the father affected the fundamental fairness of the proceedings against him, respondent minor is entitled to a new hearing.

¶ 16           The Act requires that the State list all the names and addresses of the corespondent parents in a juvenile delinquency petition. 705 ILCS 405/5-520(2) (West 2010). The Act further requires that the State provide notice to "each person named as a respondent in the petition" unless one of those named is a parent who "does not reside with the minor, does not make regular child support payments \*\*\*, and who has not communicated with the minor on a regular basis." 705 ILCS 405/5-525(a) (West 2012). The State is required to exercise at least some degree of due diligence in attempting to secure service under the Act. See *Marcus W.*, 389 Ill. App. 3d at 1123, 907 N.E.2d at 956-57 (concluding that plain error occurred when the State failed to provide notice and summons, noting as follows: "[t]his is not a case where we can assume the State diligently tried to locate respondent-minor's mother").

¶ 17           Here, the record shows that although respondent minor's father was not current with his child support payments, he had been communicating with respondent minor on a regular basis. The record further reveals that the State made no attempt at all to locate respondent minor's father even though the State knew he resided in Ludlow, Illinois, which is, as respondent minor points out, a tiny hamlet in the neighboring county with a population of 371 residents. Given that the State was required to provide the father notice of the proceedings against his son and that the State failed to exercise any due diligence in procuring the father's address—which, if undertaken, would have been a simple endeavor—we conclude that the State's failure to notify the father of the proceedings constitutes error. Having concluded that error occurred, we turn to

whether that error amounts to plain error.

¶ 18 Plain-error review allows a court to rule on an issue not properly preserved, and otherwise forfeited, in either of two circumstances: (1) where it may have affected the outcome of a closely balanced case or (2) where the error was so serious it threatened the fairness of the outcome and the very integrity of the trial process. *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010). Under the second prong of plain-error review, the party asserting plain error must prove "there was plain error and that the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Herron*, 215 Ill. 2d 167, 187, 830 N.E.2d 467, 479-80 (2005).

¶ 19 The circumstances of this case fall squarely into the second prong of the plain-error doctrine. As this court explained in *Marcus W.*, a minor has a due process right to have his parent provided notice of the juvenile proceedings against him, even if the minor has had "little or no relationship with that individual." *Marcus W.*, 389 Ill. App. 3d at 1127, 907 N.E.2d at 960. When, as here, no attempt at all is made to provide notice to the minor's parent, the fairness of the proceedings and the integrity of the judicial process are rendered suspect. This is particularly true given that respondent minor's other biological parent was unable to attend the juvenile proceedings. See *Marcus W.*, 389 Ill. App. 3d at 1127, 907 N.E.2d at 960 (recognizing the supreme court's emphasis on having a parent present during the juvenile proceedings whose only loyalty and concern is for the minor).

¶ 20 Because we have concluded that respondent minor is entitled to a new hearing, we need not address respondent minor's remaining claims of error.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 23 Reversed and remanded.