2015 IL App (4th) 140829-U

NO. 4-14-0829

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 4, 2015
Carla Bender
4th District Appellate
Court, IL

In re: D'ANGELO F., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 14JD144
D'ANGELO F.,	)	
Respondent-Appellant.	)	Honorable
	)	Robert C. Bollinger,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Respondent, a minor in a delinquency proceeding, failed to establish that the lack of notice to his noncustodial father was plain error.

¶ 2 The trial court adjudicated respondent, D'Angelo F., to be a delinquent minor, made him a ward of the court, and sentenced him to confinement in the Illinois Department of Juvenile Justice. Respondent appeals on the sole ground that the State never sent notice of the delinquency proceeding to his noncustodial father, Michael Miller.

¶ 3 We hold that because respondent never objected, in the proceedings below, to the lack of notice to Miller, he has forfeited this contention of error. Although respondent invokes the doctrine of plain error, he has failed to demonstrate, from the record, that the lack of notice to Miller actually was erroneous under section 5-525(1)(a)(ii) of the Juvenile Court Act of 1987

(705 ILCS 405/5-525(1)(a)(ii) (West 2012)). Finding no error at all, let alone plain error, we affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 In the delinquency petition, the State alleged that respondent, born on June 11, 1997, committed an aggravated robbery of Antonio M.C. on July 20, 2014.

¶ 6 The petition listed respondent's mother, Tameka F., but stated "Not Given" under the heading of "Father."

¶ 7 Tameka F., who was the custodial parent, attended all the hearings, including the bench trial in August 2014 and the posttrial and sentencing hearings in September 2014. Throughout the proceedings below, respondent was represented by an assistant public defender, Brian Finney. The noncustodial parent, Miller, never was served, and he attended none of the hearings.

¶ 8 In the bench trial, the trial court found the charge of aggravated robbery to be unproved, but the court found the lesser-included offense of robbery to be proved. In preparation for sentencing, the court ordered a social-investigation report.

¶ 9 The social-investigation report, filed on September 15, 2014, says only this regarding Miller:

> "FATHER: Michael Miller
>
> DOB: 03-29-77 (37 years of age) BORN: Jacksonville, TX
>
> SSN: Unknown DL: Unknown
>
> MILITARY: None EDUCATION: GED
>
> LKA: 1915 Grove Ave, Berwyn, IL 60402, may currently be residing in the Chicago area.

The minor does not have any further information on his biological father as he does not have contact."

¶ 10 In the hearing in September 2014, the trial court denied Finney's posttrial motions. Then, after hearing evidence in mitigation and aggravation, arguments by counsel, and a statement in allocution, the court adjudicated respondent to be a delinquent minor, made him a ward of the court, and sentenced him to confinement in the Illinois Department of Juvenile Justice for an indeterminate term of up to 7 years, with credit for 59 days served.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Respondent criticizes the State for failing to "engage in any inquiry as to his relationship with his father" and for failing to "determine his [father's] location" or even "provide [his father] minimal notice [by] publication." In respondent's view, these omissions violated his own constitutional right to due process (see U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2; *In re Nathan A.C.*, 385 Ill. App. 3d 1063, 1073 (2008)) and his statutory right to parental notice (see 705 ILCS 405/5-520(2), 5-525(1)(a), 5-530 (West 2012)).

¶ 14 As respondent admits, however, he has forfeited this argument by failing to make the argument earlier. In the proceedings below, he never objected to the lack of notice to his father. See *In re M.W.*, 232 Ill. 2d 408, 430 (2009). Nevertheless, respondent invokes the doctrine of plain error because, in his view, the error was so serious that it compromised the fairness of the delinquency proceeding and threatened the integrity of the judicial process. See *id.* at 431.

¶ 15 Before assessing the inherent seriousness of this reputed error, we must be sure there actually was an error. See *id.* To that end, we turn to section 5-525(1)(a)(ii) of the Juvenile Court Act of 1987, which provides:

> "(1) Service by summons.
>
> (a) Upon the commencement of a delinquency prosecution, the clerk of the court shall issue a summons with a copy of the petition attached. The summons shall be directed to the minor's parent, guardian or legal custodian and to each person named as a respondent in the petition, except that the summons need not be directed *** (ii) to a parent who does not reside with the minor, does not make regular child support payments to the minor, to the minor's other parent, or to the minor's legal guardian or custodian pursuant to a support order, and has not communicated with the minor on a regular basis." 705 ILCS 405/5-525(1)(a)(ii) (West 2012).

Thus, the conjunction of three circumstances would excuse the State from serving notice on a parent: the parent (1) does not reside with the minor, (2) does not regularly pay court-ordered child support, and (3) has not been regularly communicating with the child. *Id.*

¶ 16 Respondent does not challenge the constitutionality of section 5-525(1)(a)(ii). He does not contend that dispensing with notice to a noncustodial parent in the circumstances listed

in that statute would offend due process. See *In re L.C.C.*, 167 Ill. App. 3d 670, 673 (1988) ("Inadequate notice to a father does not deprive a minor of due process where they did not have a significant relationship.").

¶ 17 The record affirmatively indicates two of the three circumstances in section 5-525(1)(a)(ii): Miller does not reside with respondent, and he does not regularly communicate with respondent. As for the remaining circumstance, the record does not affirmatively prove the nonpayment or irregular payment of court-ordered child support—although common sense would suggest that if Miller has no contact with respondent and if respondent and his mother are unclear where Miller lives, he probably does not pay child support. Even so, the record does not absolutely negate the theoretical possibility that, although Miller is an aloof and elusive father, he regularly mails child-support checks to respondent's mother.

¶ 18 The question, then, is which party should bear the consequences of this ambiguity in the record. The answer is respondent. As the party invoking the doctrine of plain error, respondent has the burden of proving that an obvious error was made. See *People v. Hillier*, 237 Ill. 2d 539, 545 (2010) ("To obtain relief under [the plain-error] rule, a defendant must first show that a clear or obvious error occurred.") To prove that the failure to serve notice on Miller was indeed an error, respondent must prove the nonexistence of at least one of the three circumstances in section 5-525(1)(a)(ii). See *People v. Taylor*, 101 Ill. 2d 377, 384 (1984) ("[N]otice was properly provided to the custodial parent, the mother. *** There is no indication in the record that [the minor's] natural father had shown any interest in his care or well being for many years preceding the transfer hearing."); *In re Darren M.*, 368 Ill. App. 3d 24, 34 (2006) ("The record fails to establish that the respondent had regular contact with or a significant relationship with his noncustodial father that would require notice to him."). Allowing

respondent to exploit the silence of the record would invite gamesmanship. A minor could "keep the issue in reserve and, if an appeal prove[d] necessary, *** raise it then, when the record [was] barren." *In re J.P.J.*, 109 Ill. 2d 129, 140 (1985).

¶ 19 In sum, we find no plain error because respondent has failed to carry his burden of proving that the lack of notice to his noncustodial father was erroneous under section 5-525(1)(a)(ii) (705 ILCS 405/5-525(1)(a)(ii) (West 2012)).

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, we affirm the trial court's judgment.

¶ 22 Affirmed.