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Evidence in Cuyahoga County Juvenile Court

*Elaine J. Columbro**

MOST PERSONS ARE AWARE that Juvenile Court proceedings are informal in character. The accused often appears without counsel, and often admits to participation in the violation. In spite of this, however, the Court must still operate on well laid principles of law. The Court must adhere to rules of evidence applicable to the type of case being heard, and the allegations must be proved. The Court handles various types of cases and therefore much confusion arises over what rules of evidence are applicable in each instance.

Cuyahoga County (Ohio) Juvenile Court came into being through the efforts of the late Newton D. Baker in 1901. He was keenly aware of the need for a specialized Court dealing with children. Mr. Baker was the City Solicitor at that time, and investigated the conditions under which children were tried in Police Courts and held in jail with adult offenders. In 1901, when his survey was made, he found the conditions shocking. Little consideration was given to the youthfulness of the offender. The detention of young boys together with hardened criminals, and young girls together with prostitutes, caused much concern to him. He brought his findings to a group of progressive young men, among them business men and lawyers, who formed a committee to bring about reforms. The committee studied the Chicago Juvenile Court, which had been established in 1898. Using this study as its point of departure, the committee sponsored legislation in Ohio to establish a juvenile court for Cuyahoga County.

In June 1902 the Court was opened as part of the Insolvency Court. This was the second Court of its kind in the United States. The Cuyahoga County Juvenile Court is now separate from and independent of any other Court.¹ This is the only such Court in Ohio, as other Ohio counties have their Juvenile Courts combined with other courts, or as part of other courts—such as within the Common Pleas Court² or within the Probate Court³ of a particular locale.

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¹ Ohio Rev. Code, Sec. 2153.01.

² Hamilton County Juvenile Court is also a separate and independent

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The legal principles underlying the establishment of this Court stemmed from the English common law of Chancery, where the king, in his capacity *parens patriae*, assumed the general protection of all infants in his kingdom, through his Chancellor.

The basic Juvenile Court philosophy is to assume a protective and fatherly attitude toward the child, and at the same time to endeavor to help the child and to protect him from evil influences. The State becomes *parens patriae* of the child, theorizing that the child needs protection, care and training as a substitute for parental authority which has broken down.

The purpose of the Court, also, is to secure for each child such care, guidance and control, preferably in his own home, as will serve the child's best welfare and the best interests of the State. Children under the jurisdiction of the Court are wards of the State, subject to the discipline and entitled to protection of the State, which may intervene to safeguard them from neglect or injury, and also to enforce legal obligations due to and from them. To achieve this end the Code must be liberally construed.⁴

The Juvenile Court has exclusive jurisdiction over all cases of neglected, dependent and delinquent children. It also has original jurisdiction over adults who have been charged with contributing to, or tending to cause, neglect, dependency or delinquency. The Juvenile Court has original and absolute jurisdiction over all children charged with crimes, whether misdemeanors or felonies. If the Common Pleas Court proceeds against an offender and learns that the offender is a juvenile, under the age of eighteen, the proceedings must cease and the child must be taken immediately before the Juvenile Court. The Juvenile Court has complete jurisdiction even over a person who has attained the age of eighteen subsequent to the commission of the delinquent act or during the pendency of the case.

(Continued from preceding page)

Juvenile Court, however, it is established within the Common Pleas Court (Ohio Rev. Code Secs. 2151.08 and 2301.03). Ten Ohio counties have Juvenile Courts as part of the Common Pleas Court, Division of Domestic Relations. They are: Butler, Franklin, Lorain, Lucas, Mahoning, Montgomery, Richland, Stark, Summit and Trumbull counties.

³ This includes the remaining counties. See Ohio R. C. 2301.03 and 2151.07.

⁴ Ohio R. C. 2151.55, Ohio Jur. 2d., 33 Juvenile Courts, Sec. 4.

A "child" is defined by the Ohio Revised Code as any person under the age of eighteen, unless such child is crippled or otherwise physically handicapped, in which case the age limit is twenty-one. An "adult" is any person eighteen years of age or over who does not come within the reference which includes the handicapped child.⁵ The Revised Code defines a "delinquent child" as one who violates any law of Ohio or of the United States; who does not submit to the reasonable control of his parents, teachers, guardians or custodians, by reason of being wayward or habitually disobedient; who is habitually truant from home or school; who so deports himself as to injure or endanger the morals or health of himself or others; or who attempts to marry in any State without the consent of his parents, custodian, legal guardian or other legal authority.⁶ Marriage of a minor under eighteen does not remove him from the jurisdiction of the Court.

A "neglected child" includes one who is abandoned by his parents, guardian or custodian; or who lacks proper parental care because of the faults and habits of his parents, guardian or custodian; or whose parents, guardian or custodian neglect or refuse to provide him with proper care, subsistence, education, medical or surgical care or other care necessary for his health, morals or well being; or whose parents or guardians neglect or refuse to provide special care necessary for his mental condition; or who is found in a disreputable place, or visits a place prohibited by law, or associates with criminals or immoral persons, or who engages in an occupation prohibited by law or which is injurious to life and limb or to health or morals of himself or others.⁷

A "dependent child" is one who lacks proper care and support, or is homeless through no fault of his parents, or due to the mental condition of the parents, or whose condition or environment is such as to warrant the State, in the interests of the child, assuming his guardianship.⁸

The Code further defines when a child is "without proper parental care or guardianship." Such a child is one whose home is filthy or unsanitary; or whose parents, step-parents, guardian,

⁵ Ohio R. C. 2151.01 (B1 & 2).

⁶ Ohio R. C. 2151.02, Ohio Jur. 2d., 33 Juvenile Court, Sec. 27.

⁷ Ohio R. C. 2151.03, Ohio Jur. 2d., 33 Juvenile Court, Sec. 28.

⁸ Ohio R. C. 2151.04, Ohio Jur. 2d., 33 Juvenile Court, Sec. 29.

or custodian permit him to become dependent, neglected or delinquent; or whose parents, step-parents, guardian or custodian, though able, refuse or neglect to provide him with necessary care, support, medical attention and educational facilities, or who fail to subject the child to necessary discipline.⁹

The Juvenile Court has concurrent jurisdiction (with Common Pleas Court) over Bastardy cases.

In regard to adults charged with *contributing* to delinquency or neglect, the Juvenile Court has original jurisdiction. These acts of adults are criminal and although they are misdemeanors, are punishable under the Juvenile Court law. Under the *neglect* statute is included the failure of an adult, so responsible, to support his minor child. The Common Pleas Court has concurrent jurisdiction over these non-support cases, and although the statutory penalties may differ, the code sections are not inconsistent with each other.¹⁰ An adult may be prosecuted and convicted for aiding, abetting, inducing, causing, encouraging or contributing to the dependency, neglect or delinquency of a child, if by reason of the acts of the defendant the child becomes a dependent, delinquent or neglected child, as those terms are defined above.¹¹

Anyone may file an affidavit with the Clerk of the Juvenile Court, charging that a child is delinquent, dependent or neglected, as well as charging any adult with contributing to or tending to cause such condition. The facts must be set forth in the affidavit. Through the administrative procedure of the Court, the case will be brought on for hearing. At that time the facts alleged in the complaint must be proved in accordance with the rules of evidence used in similar cases in other courts.

In cases involving the neglected and dependent child, the condition must be shown to be consistent with the statutes so defining such a child. If the situation does not fall within one of the elements set forth in the statute (Sections 2151.03, 2151.04, or 2151.05) the Court has no jurisdiction to hear the matter. Consent on the part of the parents will not give the Court jurisdiction. The fact that it may be shown that a child might be better off with others, or in an institution, is not sufficient ground for finding such child to be neglected or dependent. The

⁹ Ohio R. C. 2154.05, Ohio Jur. 2d., 33 Juvenile Court, Sec. 30.

¹⁰ Ohio R. C. 2903.08, Ohio Jur. 2d., 33 Juvenile Court, Sec. 59.

¹¹ Ohio Jur. 2d., 33 Juvenile Court, Sec. 61.

allegations must be proved in accordance with the usual rules of *civil* procedure. Thus, a preponderance of the evidence is required. We must keep in mind that though the Juvenile Court must look to the best interests of the child, it also must correlate this with the rights of parents to raise their own children as they see fit.

The rules of evidence applicable to adults charged with contributing to or tending to cause neglect, dependency or delinquency, are those that are used in any other *criminal* case. The adults are charged with a crime, which is punishable by fine or imprisonment. Therefore the rules of criminal procedure are applicable throughout the hearing. The adult is entitled to trial by jury, and has the right of appeal. The prosecution must prove every element of the crime charged, beyond a reasonable doubt. The prosecution must also prove the element of delinquency which the defendant caused or contributed to.¹² The record of the separate proceeding which found the child to be delinquent is admissible evidence. The delinquency need not be established at a separate proceeding. It is sufficient to establish by evidence that the child was guilty of acts of delinquency. This is the first element necessary to be proved before the defendant can be shown to have "aided or contributed to" this.¹³

There is one other type of case which usually involves adults; that is the *paternity* case. In this action, an unwed mother comes to the Court and swears out an affidavit that (1) she is unwed, and (2) that she is either pregnant or has delivered a bastard child, and (3) gives the name of the man she believes to be the father of the child. The paternity case is considered to be of a *civil* nature, rather than criminal. The rules of evidence to prove paternity, therefore, are those applicable to civil procedure, namely by a preponderance of the evidence. This type of case is developing into a whole specialized area with reference to proof and evidence. Such questions arise as the validity of the blood test to determine paternity, and its admissibility into evidence. The rules of various States differ as to this, at present. Due to the complexity of this area of the law, we do not propose to say any more about it, but mentioned this fact in relation to the rules of evidence, simply because it is another type of case which the Juvenile Court must handle.

¹² Ohio Jur. 2d., 33 Juvenile Court, Sec. 73.

¹³ Fisher v. State, 84 Ohio St. 360, 95 NE 908 (1911); Anss v. State, 16 Ohio App. 502 (1922).

Of chief importance are the rules of evidence applicable to the child charged with delinquency. As stated above, the purpose and philosophy of the Juvenile Court is to serve the welfare of the child. Therefore, in order to carry out this purpose, the Juvenile Court hears cases regarding minors in an informal atmosphere. This rule is set forth in the Revised Code¹⁴ in order to create a friendly atmosphere around the child. The child will then look upon the Court as someone who wants to help him, and not necessarily to punish him as a criminal. The legislature further stated, in that same section of the Code,¹⁵ that the Court shall permit the child to be represented by an attorney at law during any hearing before it; and that the Court shall hear and determine all cases before it without a jury. Moreover, the judgment rendered by the Court shall not impose any civil disabilities such as ordinarily are imposed by conviction, because the child is not a criminal by reason of such adjudication.¹⁶

Judge Harry L. Eastman, who recently retired as Administrative Judge of the Cuyahoga County Juvenile Court, wrote in one of his articles that the Judge must "safeguard the rights of parties before the Court against those who assume an unwarranted control over them."¹⁷ In large urban communities such as Cleveland, many of those who appear in Court are the socially and economically underprivileged. These persons are "susceptible to arbitrary action and abuse of due process."¹⁸ Therefore, "the judicial process of the Court must always remain open to the parties."¹⁹ Here again the Court must have adequate legal grounds in order to find a child delinquent, and can only commit him to an institution when these grounds are found, and not simply because it would be good for him.²⁰ The Court is charged to act in the best interests of the child, but the Court must have legal jurisdiction of such child. Thus, it is the Judge's duty to point out to confused or ignorant persons that they have a right to counsel.

¹⁴ Ohio R. C. 2151.35.

¹⁵ Ohio R. C. 2151.35.

¹⁶ *State v. Shardell*, 8 Ohio Op. 2d. 262, 107 Ohio App. 388 (1958).

¹⁷ Eastman, *The Juvenile Court Judges Job*, National Probation and Parole Assn. J. 5 (4), Oct. 1959.

¹⁸ *The Plan of The Temporary Commission on The Courts for a Simplified Statewide Court System*, N. Y., N. Y. State Temporary Commission on The Courts, July 2, 1956, p. 115.

¹⁹ *Ibid.*

²⁰ Eastman, *The Juvenile Court Judges Job*, National Probation and Parole Assn. J. 5 (4), Oct. 1959.

In *State v. Shardell*²¹ (probably the leading case in this field), the Court pointed out that the Juvenile Court's philosophy of protection and rehabilitation comes into play even though the act of delinquency of the minor would be a felony if he were an adult. In the *Shardell* case, the attorney for the minor maintained that, since the act would have been a felony, the rules of criminal procedure were applicable, and that his guilt must be proved beyond a reasonable doubt. The Appeals Court did not agree with this. Not only was the philosophy of the Juvenile Court reiterated, but the Appeals Court again stated that Juvenile Court proceedings are not criminal in nature, and that the Judge may properly carry on a "conversational type of investigation," which is conducive to eliciting of the truth.

Hearings and procedures involving minors are civil rather than criminal in nature, and carry with them the judicial connotations of a civil action. Therefore a mere preponderance of the evidence is sufficient to warrant the finding that a minor is a delinquent. This is the case even though the determination means that a criminal statute of the State has been violated.²²

Judge Eastman cautioned Juvenile Court Judges that they must carefully adhere to rules of evidence. He admonished them not to infer that a child must have committed the delinquent act specified in the petition simply because he had previously manifested bad behavior. The Judge must stand firm and not be swayed by indignant people.²³

In delinquency cases the Court must not allow the admission of hearsay evidence. In the *Shardell* case, the police had obtained information from other boys, not in the presence of the minor charged, while conducting an independent investigation. The attorney objected, and upon completion of this testimony the Court struck it from the record. The Appellate Court upheld the trial court, and said: "We believe that it was proper for the trial judge to strike all hearsay evidence presented by this police officer who at no time during the investigation of this case was under the direction and control of the Juvenile Court judge . . . The Legislature clearly had in mind that though the

²¹ *State v. Shardell*, 8 Ohio Op. 2d. 262, 107 Ohio App. 338 (1958); *State v. Scholl*, 167 Wis. 504, 510, 167 NW 830 (1918).

²² *State v. Shardell*, *supra*, n. 21; *People v. Lewis*, 260 N. Y. 171, 183 NE 353, 86 ALR 1001 (1932).

²³ Eastman, *The Juvenile Court Judges Job*, National Probation and Parole Assn. J. 5 (4), Oct. 1959.

hearings be informal in nature, the legal safeguards with respect to evidence be adhered to.”²⁴ Second-hand information was not needed in order to learn the truth, least of all from boys who were not in Court and could not be cross-examined. The Appellate Court stated that the Juvenile Court Judge has the training and experience to disregard incompetent evidence that has appeared in the record, when considering the case on the merits.²⁵ This places great responsibility on the Juvenile Judge, who is generally well qualified to undertake this responsibility.

Many persons feel that the Juvenile Court does not operate in accordance with accepted legal principles, and that much of its activity is in violation of individuals' rights. Yet, though hearings in the Juvenile Court are informal, and though many persons are not represented by counsel, the hearings *are* due process, and individual rights are not violated. When the minor makes statements or admissions which are damaging to him, which he usually does, this is not violation of the Fifth Amendment to the United States Constitution. The Fifth Amendment states that, “No person . . . shall be compelled in any criminal case to be witness against himself” The Ohio Constitution, Article 1, Section 10, contains the identical wording. These sections clearly refer to matters which relate to a *criminal* prosecution. But cases in the Juvenile Court regarding minors are not criminal, but *civil* in nature. In keeping with the philosophy of the Court, there is no prohibition against self incrimination. Thus the Fifth Amendment is not applicable to proceedings in Juvenile Court.

The friendly and understanding atmosphere of the Court and of its investigations are not intended to find a child guilty of a crime and to punish him, but rather to determine the conditions and influences which he could no longer withstand. This informality is not a violation of the right to trial by jury guaranteed by the Constitution. In *Commonwealth v. Fisher*, the Court said, “Every statute which is designed to give protection, care and training to children, as a needed substitute for parental duty is but a recognition of the duty of the state, as the legitimate guardian and protection of children when other guardianship fails. No constitutional right is violated.”²⁶ The

²⁴ *State v. Shardell*, 8 Ohio Op. 2d. 262, 107 Ohio. App. 338 (1958).

²⁵ *State v. Shardell*, *supra*; *People v. Lewis*, 260 N. Y. 171, 183 NE 353, 86 ALR 1001 (1932).

²⁶ *Commonwealth v. Fisher*, 213 Pa. 48, 62 A. 198, 5 Ann. Cas. 92 (1905).

Court disposed of this problem in the *Shardell* case, and held that the minor ". . . was not charged with a crime *per se*, and was not prosecuted for a criminal offense or subjected to questioning for the purpose of retribution by the state for any wrong committed by him in these proceedings. His constitutional rights with respect to self-incrimination were, therefore, not invaded."²⁷ This reaffirms the view that these informal court proceedings, held without a jury, in conformity with the Revised Code (Sec. 2151.35) are due process under the Fifth and Sixth Amendments of the United States Constitution and under the Constitution of Ohio.

From modest beginnings, the body of law related to juvenile behavior has grown to formidable proportions. It will continue to grow in the next decade, as society becomes more aware of the social problems surrounding youth, and as the concepts underlying the Juvenile Code gain wider acceptance.

At present there is no recognized specialty in practice in the field of juvenile law, as there is for probate, personal injury, criminal, or tax law. Very few attorneys have acquired the specialized knowledge and understanding of juvenile law and of the procedures by which it is carried out. But it is reasonable to expect that these will develop, even though the process will be handicapped by the fact that practice in this field cannot be lucrative in comparison with some other fields of specialization.

The field of juvenile law is highly important to the liberty of the individual and to the welfare of society. In the Juvenile Court are found, in dynamic interaction, the dedicated efforts of people trained in law and in social service. From these efforts there is emerging a new body of law that has vital importance to society.

²⁷ *State v. Shardell*, 8 Ohio Op. 2d. 262, 107 Ohio App. 338 (1958).