JUVENILE LAW AND THE JUVENILE COURT SYSTEM

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Until the past decade, it was a rare juvenile case which came to the attention of appellate courts. However, the combination of the United States Supreme Court's pronouncement in 1966 that counsel was constitutionally mandated for juveniles accused of crime[1] and the comprehensive revision of the Georgia Juvenile Court Code in 1971 has made juvenile law the staple diet of both lawyers and appellate judges. This survey year, for the first time, there was a sufficient number of significant decisions and statutory amendments to divide new developments according to the particular stage of juvenile proceedings for which each has relevance. Thus, the first section will deal with developments in the pre-adjudicatory stage, from "arrest" through the filing of a formal petition; the second section will deal with developments in the adjudicatory stage, the trial on the merits of the petition; and the final section will focus upon developments concerning the dispositional stage, the hearing in which the judicial decision is made about what should be done with a particular child who has been the subject of juvenile proceedings.

In general, appellate decisions this year must take mixed notices. Some deserve plaudits—the courts strengthened the law governing due process notice requirements, implemented judicial concern about hasty or perfunctory transfer of cases from the juvenile to the adult system, and rejected an attempt by a juvenile court to impose fines on delinquent minors. Conversely, some decisions are disappointing and even potentially disastrous for the future of juvenile law—the courts invoked a hypertechnical rule to avoid decision on the important issue of the right to pre-trial discovery in juvenile court, perpetuated a judicially-created myth about the nature of the adjudicatory hearing, and approved the sentencing of children to special juvenile jails without any meaningful guarantee that treatment other than incarceration would result. The 1974 General Assembly broadened some rights for juveniles, refined others, and made several statutory changes which should have considerable impact on administration and efficiency of the juvenile courts, including the creation of a full-time

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1. *In re* Gault, 387 U.S. 1 (1966).

juvenile court for Chatham County, bringing the total number of such courts to twenty.[2]

I. Pre-Adjudicatory Proceedings

Under the Georgia Juvenile Court Code proceedings are initiated by the filing of formal charges termed a petition. Under the 1951 Code the petition was required to be drawn with specificity noting the

> Federal, State, or local law or municipal ordinance alleged to have been violated or attempted to have been violated, either in the terms and language of the particular code, or so plainly that the nature of the offense charged may easily be understood by the child and his parents or guardian.[3]

In the 1971 comprehensive revision, this requirement of specificity seems quite clearly to have been abrogated. Concerning the allegations of misconduct, the petition need only set out "the facts which bring the child within the jurisdiction of the court" along with a conclusory allegation that "it is in the best interest of the child and the public that the proceedings be brought."[4]

A. Judicial Decisions

In two cases written by Judge Stolz for the court of appeals, in effect the former provisions concerning specificity of the petition have now been re-engrafted upon the statutory law. In *D.P. v. State*[5] the petition filed in the Fulton County Juvenile Court alleged that the juvenile was delinquent in that he had committed the offense of burglary. The state seems to have argued that implicit in the 1971 legislative change of the requirements was an approval of a petition which failed to allege a particular offense for which a juvenile would stand trial. The court of appeals rejected this interpretation based primarily upon the United States Supreme Court's statement in *In re Gault* that the formal notice of charges, however labeled, must "set forth the alleged misconduct with particularity."[6] The court of appeals held that in order for a petition to comply with the requirements of due process, it must set forth the alleged violation of the law either in the language of the criminal code proscribing such conduct or otherwise "so plainly that the nature of the offense charged may be easily understood by the child and his parents . . . ."[7] Thus, we are back where we were in 1970, perhaps a backward step in chronology but a forward step in terms

2. Ga. Laws, 1974, p. 586, *creating* Ga. Code Ann. §24A-201(c).
3. Ga. Code Ann. §24-2411 (Rev. 1971).
4. Ga. Code Ann. §24A-1603 (Supp. 1973).
5. 129 Ga. App. 680, 200 S.E.2d 499 (1973).
6. 387 U.S. at 33.
7. 129 Ga. App. at 681, 200 S.E.2d at 500.

of protection of a juvenile's constitutional rights. Furthermore, in *K.M.S. v. State*,[8] the court of appeals noted that the particular labeling of an offense for which a juvenile stood charged, for example "murder," was surplusage as a legal conclusion which alone would not support an adjudication of delinquency. What was required was a specific statement of the operative facts which supported the label, for example that "on a certain day, in a certain county, by a certain means," the child had caused the death of a human being.

Of further interest is the supreme court's additional holding in *D.P. v. State*,[9] that where a child is charged in the petition with the commission of a certain offense, he cannot be adjudicated of any other offense not included as a lesser charge. In that case the allegation of burglary in the petition was insufficient notice to sustain a finding at the adjudicatory hearing that the juvenile had committed the offense of theft by receiving stolen goods. This is a reiteration of the position taken by the Georgia appellate courts under the former code.[10]

Neither case held, nor has any other case decided,[11] that the petition must measure up to the same standards applied to indictments in the adult criminal process. What is clear, however, is that a juvenile cannot be charged with one offense and adjudicated delinquent of another, at least where the two offenses are fundamentally different. Moreover, the petition must supply a certain minimum amount of information concerning the charge which should alert the child and his parents to precisely what alleged misconduct is at issue. Apparently *K.M.S.* neither requires or prohibits the labelling of the alleged criminal conduct, but it seems sensible to organize the charge so that the elements constituting the offense are set forth along with the specific operative facts which support them.

Such due process rules concerning notice are, at most, minimally consistent with the requirement that delinquent acts be proven beyond a reasonable doubt[12] and other procedural guarantees afforded juveniles.[13] Although juvenile court proceedings are uniformly styled "civil," the disposition of those adjudicated delinquent often is more than vaguely reminiscent of the punitive sanctions invoked against convicted criminals.[14] More-

8. 129 Ga. App. 683, 200 S.E.2d 916 (1973).

9. 129 Ga. App. 680, 200 S.E.2d 499 (1973).

10. Allen v. Ladson, 119 Ga. App. 44, 165 S.E.2d 881 (1969).

11. In A.C.G. v. State, 131 Ga. App. 156, ___ S.E.2d ___ (1974), decided after the close of the survey year, the court avoided again an outright ruling upon whether a petition in juvenile court was to be measured against the same standards as an indictment. There is, however, dictum in this case which would seem to indicate that the court is inclined to apply the same standards of strict pleading to each.

12. GA. CODE ANN. §24A-2201(b) (Supp. 1973).

13. *See, e.g.*, GA. CODE ANN. §§24A-1402(c)(bail), 24A-1801 (conduct of hearings), 24A-2001(counsel), and 24A-2002(evidentiary rules) (Supp. 1973).

14. *See, e.g.*, A.B.W. v. State, 231 Ga. 699, 203 S.E.2d 512 (1974) and text accompanying note 44, *infra*.

over, a fundamental premise of the system of juvenile justice is that youthful miscreants, through appropriate guidance and treatment, can be rehabilitated. Consequently, it is all the more imperative not only that standards of due process and fair play be adhered to scrupulously, but also that the *appearance* of justice permeates all juvenile proceedings, if respect for and obedience to the law is an expected future dividend.

An attempt to advance the pre-adjudicatory procedural rights of juveniles was stymied by judicial delaying action in *G.M.J. v. State*[15] where counsel for a sixteen-year-old alleged delinquent moved to compel production "of any and all confessions, admissions, or statements made by said juvenile or his codefendant." The juvenile court denied the motion after hearing and the juvenile appealed. The court of appeals on its own motion dismissed the appeal on the ground that no judgment had been entered at the time the notice of appeal was filed from which an appeal could be taken. Three judges dissented, but only Judge Deen discussed the substantive merits, the applicability of the discovery provisions to juvenile court proceedings. The dissent persuasively argued that if, as has consistently been the case, juvenile matters were "civil," then discovery was clearly available. On the other hand, if the rules of criminal procedure were to be used, *In re Gault* prohibited the use of a confession obtained from the child in the absence of counsel, and a further abridgement of due process occurred upon denying counsel the right to review such statement. This conclusion, the dissent argued, is further compelled by various provisions of the Juvenile Court Code which are designed to protect juveniles rather than to subject them to prosecution based upon evidence which is presumptively inadmissible.[16]

By far the most troubling cases to reach the appellate courts have concerned transfer or waiver hearings in which the juvenile court must decide whether to retain jurisdiction of a child, trying him for an offense as a juvenile, or to relinquish jurisdiction, permitting his trial as an adult by the appropriate court. Such transfer hearings, where opted for by juvenile judges, occur before the adjudicatory hearing.

In *D.M.N. v. State*[17] the court of appeals faced the question of whether charges against a sixteen-year-old juvenile of aggravated assault upon a police officer, being drunk and disorderly, and resisting arrest had been validly transferred for trial to the superior court. The juvenile court had found, upon hearing evidence, that D.M.N. was "not amenable to treatment, that probable guilt was shown on the charges made and that the needs of the child and safety of the community are such that treatment as

15. 130 Ga. App. 420, 203 S.E.2d 608 (1973).

16. Judge Deen further noted that "counsel might also have required a subpoena for the production of the documentary evidence sought" under GA. CODE ANN. §§38-801-02 (Rev. 1974) which are specifically applicable to criminal cases. 130 Ga. App. at 425, 203 S.E.2d at 611 (dissenting opinion).

17. 129 Ga. App. 165, 199 S.E.2d 114 (1973).

an adult" was required.[18] The juvenile appealed on the ground that the juvenile court's transfer order did not comply with the requirements of Ga. Code Ann. §24A-2501 (Supp. 1973) in that there had been no showing to support the conclusions that he was not amenable to treatment as a juvenile or that the interests of the community required that he be placed under legal restraint and discipline. The court of appeals agreed, finding that the Georgia Juvenile Court Code imposed the burden of proof upon the state to show that each of the five requirements for transfer had been satisfied. *D.M.N.* further reinforces the earlier opinion in *Reed v. State*[19] that the statutory safeguards for juvenile offenders considered for transfer to the adult system must be complied with strictly. It is difficult to conceive of a decision more fundamental to the effective functioning of the juvenile justice system or to the fate of a particular minor than the question of whether a case should be processed through the juvenile or adult system. Judicial insistence on precise compliance with statutory strictures regulating this issue continues to be essential.

In *Mathis v. State*[20] delinquent acts of aggravated assault and armed robbery were allegedly committed by Mathis and one other on October 9, 1972. The case had been transferred to the superior court by the juvenile court pursuant to section 24A-2501, and the appellant argued that deficiencies in complying with that section left the superior court without jurisdiction to try him. In rejecting this contention, the Georgia Supreme Court observed that at the time of the commission of the offense, the superior court had jurisdiction to try a person accused of a felony if he had reached the age of criminal responsibility and that the appellant had been indicted by a grand jury. Strictly construed, the *Mathis* case simply enunciates the state of the law prior to the ratification of a constitutional amendment and subsequent implementing action of the 1973 Georgia General Assembly.[21] Liberally interpreted, the *Mathis* case could be nothing short of disastrous for the juvenile justice system. For at least twenty years now juvenile advocates in both the courts and the legislature have been struggling to create a system in which juveniles will at least be initially treated as juveniles.[22] The 1973 General Assembly effected a comprormise

18. *Id.*

19. 125 Ga. App. 568, 188 S.E.2d 392 (1972).

20. 231 Ga. 401, 202 S.E.2d 73 (1973).

21. On November 7, 1972, the Georgia electorate ratified an amendment to GA. CONST. art. VI, §1, GA. CODE ANN. §2-3901 (Rev. 1973) which provided for exclusive jurisdiction of the superior courts to try felony cases, "except in the case of juvenile offenders as provided by law." Subsequent to that amendment, the Georgia General Assembly enacted a new version of GA. CODE ANN. §24A-301 (Supp. 1973) which provided that juvenile courts had "exclusive original jurisdiction over juvenile matters" and should "be the sole court for initiating action" involving any alleged delinquent conduct which was based upon acts that would not be considered capital felonies if tried in superior court.

22. Jackson v. Balkcom, 210 Ga. 412, 80 S.E.2d 319 (1954). *See* Henritze, *Persisting Problems of Georgia Juvenile Court Practice*, 23 MERCER L. REV. 341 (1972).

under which juvenile courts would exercise exclusive jurisdiction over children under seventeen except those accused of capital offenses. If an indictment for a lesser offense can wrest jurisdiction from the juvenile court, as *Mathis* broadly construed seems to indicate, then all efforts will be once again frustrated, albeit not by the state constitution but by judicial fiat.[23]

B. Statutory Amendments

There were two statutory amendments enacted during the survey year relating to widely disparate aspects of the pre-adjudicatory process in non-delinquency matters. One amendment[24] essentially broadened the scope of the mandatory reporting requirements in the case of abused children under Ga. Code Ann. §74-111 (Rev. 1973), while the addition of Ga. Code Ann. §24A-302(b)[25] to the Juvenile Court Code substantially resurrected provisions of the Act of 1951 allowing the transfer of child custody cases from superior to juvenile court for the purpose of recommendation or decision.

The list of persons required to report cases of child abuse pursuant to section 74-111(a)[26] was rendered less ambiguous but remained substantially unchanged by the substitution of the phrase "teacher, school administrator, child care personnel or law enforcement personnel" for a more vague description of similar persons. No longer is the reporting person required or allowed to wait until an abused child is brought or comes to him for examination or treatment before reporting suspect cases. Moreover, the types of abuse about which a report is mandated has been broadened to include neglect or exploitation by a parent or caretaker and sexual assault. Furthermore, a written report is no longer required unless requested by the child welfare agency or police authority to which the oral report is made.[27] Finally, immunity from civil or criminal liability is now

23. The issue of the effect of an indictment on juvenile court jurisdiction has been squarely presented in a case pending before the Georgia Court of Appeals. J.W.A. v. State, No. 49347 (Ga. App., March 14, 1974).

24. Ga. Laws, 1974, p. 438.

25. Ga. Laws, 1974, p. 1126.

26. Ga. Laws, 1974, p. 438. GA. CODE ANN. §74-111(a) now provides:

> Any physician, including any doctor of medicine licensed to practice under Chapter 84-9 of the Code of Georgia of 1933, as amended, licensed osteopathic physician, intern resident, dentist, podiatrist, public health nurse, social worker, teacher, school administrator, child care personnel or law enforcement personnel having cause to believe that a child under the age of eighteen has had physical injury or injuries inflicted upon him other than by accidental means by a parent or caretaker, or has been neglected or exploited by a parent or caretaker, or has been sexually assaulted, shall report or cause reports to be made in accordance with the provisions of this section; provided, however, that when the attendance of the reporting person with respect to a child is pursuant to the performance of services as a member of the staff of a hospital, school, social agency or similar facility, he shall notify the person in charge of the facility or his designated delegate who shall report or cause reports to be made in accordance with the provisions of this Section.

27. GA. CODE ANN. §74-111(b) (Rev. 1973).

provided for any reporting person, whether or not his report was required by the section, provided he acts in good faith.[28]

The enactment of Ga. Code Ann. §24A-302(b)[29] although substantially a return to prior law, has enormous ramifications concerning which court will adjudicate child custody disputes and raises disturbing questions pertaining to the rules of law which will be applicable.

The new section provides "courts of record" with the authority in "divorce, alimony, or habeas corpus cases involving the custody of a child or children" to transfer "the question of the determination of custody and support to the juvenile court for investigation and report back to the superior court." The section goes on to provide that if referred for "investigation and determination" the case shall be handled "in the same manner as though the action originated under [the Juvenile Court Code], in compliance with the order of the superior court." The new provision concludes with the authorization to the juvenile court to transfer the case back to the referring superior court.[30]

Transfers contemplated by this new authorization are, of course, permissive and within the discretion of the superior court judge. There is at least one case under the former law, however, where such a transfer was held to be mandatory.[31]

In counties not having separate juvenile courts or referees, the provision is likely to have little if any impact since it would make little sense for a superior court judge to transfer a case to himself. However, such a transfer seems theoretically possible and could be influenced by potential variance in the applicable legal standard. In counties with full or part-time juvenile court judges or referees, section 302(b) opens the door for the wholesale referral of child custody cases to the juvenile courts. Although this may provide relief to crowded superior court dockets, it also means the bifurcation of divorce cases since jurisdiction over questions of divorce rests exclusively in the superior courts.[32] Moreover, juvenile courts which are already overdocketed and understaffed face the gloomy prospect of having even less time and resources to devote to individual cases.

Yet to be resolved is the issue of the legal standards governing custody determinations for such transferred cases. There is a potential conflict of law. For example, if a habeas corpus petition is filed in superior court against natural parents by a third party, the standards pertaining to forfei-

28. GA. CODE ANN. §74-111(c) (Rev. 1973).

29. Ga. Laws, 1974, p. 1126 at 1128-29.

30. For a discussion of the former law, see Henritze, *Annual Survey of Georgia Law: Juvenile Law and the Juvenile Court System*, 25 MERCER L. REV. 169, 172-73 (1974).

31. Carstarphen v. Dayton, 222 Ga. 138, 149 S.E.2d 103 (1966).

32. Construing the transfer provisions of the 1951 Code, the supreme court has already declared that the exclusive jurisdiction of superior courts over questions of divorce does not extend to custody issues. Fortson v. Fortson, 200 Ga. 116, 35 S.E.2d 896 (1945); Wilbanks v. Wilbanks, 220 Ga. 665, 141 S.E.2d 161 (1965). *See also* Bass v. Bass, 222 Ga. 378, 149 S.E.2d 818 (1966).

ture of parental rights set forth in Ga. Code Ann. §74-108 (Rev. 1973) or the court-evolved concept of "unfitness" as defined by *Perkins v. Courson*[33] would apply in resolution of the dispute. If that same case was transferred pursuant to section 302(b), the juvenile court is mandated to proceed as if the case commenced in that court, "in compliance with the order of the superior court."[34] The Juvenile Court Code itself says nothing about forfeiture of parental rights or unfitness, but handles such cases under a generalized standard of "deprivation."[35]

Whether unfitness or the rules governing forfeiture and deprivation are identical for habeas corpus purposes is an unanswered question. Moreover, the sentence in section 302(b) demanding compliance with the superior court transfer order seems to leave room for the determination of custody cases to vary greatly among circuits.

II. Adjudicatory Proceedings

There was only one judicial decision in the area of adjudicatory proceedings in the past year. Nevertheless, the legislature made several statutory changes, the most significant of which attempted to guarantee a prompt hearing on the merits of the case, to tighten and refine the requirement that such proceedings be recorded, and to provide prosecutorial assistance to the court.

A. Judicial Decisions

In *K.M.S. v. State*[36] a twelve-year-old appealed from the juvenile court's denial of her motion to dismiss a petition which alleged she was delinquent in that she had committed the act of murder. The juvenile argued that since she was less than thirteen years of age, she was legally incapable of committing a crime.

The court of appeals affirmed, holding that it was unnecessary to find a juvenile guilty of a crime in order to support an adjudication of delinquency based on that conduct. Since the Juvenile Court Code defined a delinquent act as one designated a crime if committed by *an adult* and a delinquent child as one who has committed a delinquent act, it is sufficient to determine that the defendant has committed a delinquent act. The court further noted that Ga. Code Ann. §26-701 (Rev. 1972), which sets the minimum age of criminal accountability at thirteen years, does not render a person less than thirteen years incapable of committing a crime, but only raises a defense for such persons on the theory that it is socially desirable to protect them from the consequences of criminal guilt.

33. 219 Ga. 611, 135 S.E.2d 388 (1964).
34. *See* note 29, *supra*.
35. Ga. Code Ann. §24A-401(h) (Supp. 1973).
36. 129 Ga. App. 683, 200 S.E.2d 916 (1973).

B. Statutory Amendments

The six 1974 amendments to the Juvenile Court Code affecting the adjudicatory process are a diverse lot which generally increase protection of juveniles and enhance the efficiency of the courts.

Once a petition is filed with the juvenile court in a case where the child is not detained, a hearing now must be held thereon not later than sixty days from the date of filing.[37] The net effect of the amendment is to prohibit lengthy delays in juvenile proceedings.

In addition, hearings before the juvenile court must now be recorded unless the juvenile and his parent, guardian or attorney waive such recordation.[38] The prior version of this section did not require a record to be kept unless a party, prior to commencement of the hearing, had so requested or the court had so ordered.[39]

Finally, the 1974 amendments increase the legal assistance available to the juvenile courts which are notoriously understaffed with nonjudicial personnel to the point of seriously impairing their ability to provide adequate guidance and supervision for children coming within their jurisdiction. Probation officers and court services workers, consequently, have frequently been placed in the impossible position of winning a juvenile's confidence prior to adjudication and then performing the role of prosecutor when the case is tried. These antithetical responsibilities make extremely difficult any post-adjudication rehabilitative work and threaten to destroy the credibility of court personnel with the community at large.

To fill the prosecutorial function, the 1974 General Assembly empowered the juvenile court judge on his own motion to request assistance from the local district attorney. In the event such assistance is not available, the court may appoint counsel for this purpose.[40] If appointed counsel is required, the court is authorized to certify for county expense compensation of the designated attorney.[41] In complement of these new provisions, probation officers are now prohibited from conducting accusatory proceedings against juveniles who are or may be under their care or supervision.[42]

A rather significant legislative change occurred in the provisions relating to the judicial termination of parental rights. In such a proceeding where the parent has voluntarily consented to the adoption of the child or surrendered it to a licensed child-placing agency, acknowledgement by the par-

37. Ga. Laws, 1974, p. 1126 at 1130, *amending* GA. CODE ANN. §24A-1701(a) (Supp. 1973).

38. Ga. Laws, 1974, p. 1126 at 1130-31 *amending* GA. CODE ANN. §24A-1801(b) (Supp. 1973).

39. GA. CODE ANN. §24A-1801(b) (Supp. 1973). If a record was not made this section required the court to keep "full minutes of the proceedings." This proviso was deleted by the 1974 amendment.

40. Ga. Laws, 1974, p. 1126 at 1130-31, *amending* GA. CODE ANN. §24A-1801(d) (Supp. 1973).

41. *Id.* at 1133-34, *amending* GA. CODE ANN. §24A-3401(a)(3) (Supp. 1973).

42. *Id.* at 1129, *amending* GA. CODE ANN. §24A-602(e) (Supp. 1973).

ent of this consent before the court is no longer necessary.[43] This provision obviates the need in a consent-termination for the parent to appear at the hearing and allows the introduction of evidence pertaining to potential adoptive parents for the child without compromising the confidentiality of that proceeding.

III. Post-Adjudicatory Proceedings

There were four judicial decisions and one statutory amendment dealing with post-adjudicatory matters during the survey year. Two of the cases discuss considerations which should underlie disposition of juveniles who have been adjudicated delinquent and the alternative facilities available for treatment and rehabilitation. One case resolved the question of whether the juvenile court has the power to fine, and the remaining decision dealt with the appealability of a juvenile court adjudication prior to disposition. The legislative enactment revised dispositional alternatives available for minors adjudicated delinquent of felonious conduct.

A. Judicial Decisions

In *A.B.W. v. State*[44] the supreme court, on certiorari to the court of appeals, was presented the question of whether a juvenile who had been adjudicated delinquent and committed to the Department of Corrections[45] was thereby denied equal protection and due process of law. The court first harmonized two *prima facie* contradictory provisions of the Juvenile Court Code. Ga. Code Ann. §24A-2304 (Supp. 1973), the basis for the juvenile court's commitment of A.B.W. to the Department of Corrections, authorized such action in a case where a delinquent child was "found not to be amenable to rehabilitation or treatment." On the other hand, Ga. Code Ann. §24A-2401(a) (Supp. 1973) clearly states that "a child shall not be committed to a penal institution or other facility used primarily for the execution of sentences of persons convicted of a crime." The court concluded that, construed together, these two sections required that the Department of Corrections maintain a secure facility for juveniles, at which no adults would be detained. Unfortunately, as the Attorney General conceded in the case, no such facility was available at the time of the juvenile court's disposition, nor at the time of this appeal.

After holding that the statutes themselves were not unconstitutional, the court addressed the question of whether Ga. Code Ann. §24A-2304 (Supp. 1973) had been unconstitutionally applied. Observing that juvenile adjudi-

43. Ga. Laws, 1974, p. 389 at 389-90, *amending* Ga. Code Ann. §24A-3201(a)(3) (Supp. 1973).

44. 231 Ga. 699, 203 S.E.2d 512 (1974).

45. The Department of Corrections is now known as the Department of Offender Rehabilitation.

cations were not criminal convictions and that the panoply of procedural safeguards available to adults was not uniformly applicable to juvenile proceedings, the court concluded that section 24A-2304 meant no more than that some delinquents could only be treated adequately in high security facilities. Since the Department of Corrections alone operated such facilities, commitment of a juvenile to the department represented the trial court's conclusion that neither the juvenile court nor other public local authority could meet the needs of the particular juvenile involved. Commitment to the Department of Corrections remained, however, for the purpose of treatment and rehabilitation and was still subject to the provisions of the Juvenile Court Code pertaining to length of commitment. Thus, the majority of the court held that the juvenile court judge had not abused his discretion by committing A.B.W. to the Department of Corrections.

Justice Ingram dissented, pointing out that the juvenile court had not afforded the juvenile a dispositional hearing, following the adjudication of delinquency, on the questions of what specific treatment was required for this child and whether that treatment was unavailable from the Department of Human Resources.

In *Mathis v. State*[46] the supreme court affirmed the sentencing by a superior court of a juvenile to the Department of Corrections for the offenses of aggravated assault and armed robbery. Since the latter is a capital offense, the trial court's action was mandated by the 1972 version of Ga. Code Ann. §99-209(a)(5) which provided that minors convicted of a capital felony shall only be sentenced to the Department of Corrections.[47]

E.P. v. State[48] presented the question of whether the juvenile courts have the power to fine minors adjudicated delinquent. The case involved fines levied against twenty-two juveniles who had been adjudicated delinquent of the offense of criminal trespass in that they refused to leave the office of the county school superintendent after presenting certain demands. In all, forty juveniles were involved in the incident; eighteen were committed to the Division of Children and Youth, while the remaining twenty-two were placed on probation and fined $50 each. The court of appeals held that there was no statutory authorization for the juvenile court to impose fines on delinquent minors and ordered that portion of each order deleted.

The long, dark shadow of confusion cast by *M.E.B. v. State*[49] last term was extended a step further by the court of appeals in *D.C.E. v. State*.[50] D.C.E. was adjudicated "guilty of operating a motor vehicle under the

46. 231 Ga. 401, 202 S.E.2d 73 (1973).

47. The 1974 amendments to GA. CODE ANN. §99-209(a)(5) (Supp. 1973) are discussed at text accompanying note 53, *infra*. However, the portion of the statute applicable in *Mathis* was unchanged.

48. 130 Ga. App. 512, 203 S.E.2d 757 (1973).

49. 230 Ga. 154, 195 S.E.2d 891 (1973).

50. 130 Ga. App. 724, 204 S.E.2d 481 (1974).

influence" by the DeKalb County juvenile court and the case was transferred to Gwinnett County, the county of the juvenile's residence, for further disposition as required by the Juvenile Court Code.[51] The appeal was taken from the order of adjudication but was dismissed as premature by the appellate court on the authority of *M.E.B.*

The appellant-juvenile in *M.E.B.* had argued that his adjudication as a delinquent by the Whitfield County juvenile court was invalid since it violated the constitutional mandate that civil cases be tried in the county of the defendant's residence. Asserting the litany that a juvenile proceeding is "civil," the supreme court made the preposterous assertions that the adjudicatory hearing was analogous to an arraignment and that it was the dispositional hearing at which the actual "case" would be tried. Since the case had been transferred to the county of the juvenile's residence for disposition, the court reasoned that the constitutional requirements had been met and affirmed the trial court's decision.

The basic error in the supreme court's analysis in *M.E.B.* and this term's court of appeals decision in *.D.C.E.* does not lie in the struggle to harmonize the Juvenile Court Code hearing structure with the constitutional venue provisions. Rather, it is the rigid adherence to the terminological civil-criminal dichotomy which has been the undoing of logic. Surely the time has come to recognize overtly that juvenile court proceedings are possessed of intertwined elements of both the civil and criminal processes and that the labelling of delinquency proceedings as one or the other neither aids analysis nor rehabilitates misguided children.[52]

B. Statutory Amendments

The 1974 General Assembly amended Ga. Code Ann. §99-209(a)(5) (Supp. 1973)[53] which provides for the acceptance and incarceration of certain juveniles by the Division of Children and Youth[54] of the Department

51. GA. CODE ANN. §24A-1201(a) (Supp. 1973) authorizes such transfers.

52. Although not mentioned by the *M.E.B.* court, nor in *D.C.E.*, which rested exclusively on the higher court's ruling, these holdings find slight support in the provisions of GA. CODE ANN. §24A-2201(a) (Supp. 1973) which authorizes the juvenile court upon a dispositional finding, made subsequent to the adjudication, that the child is not in need of treatment or rehabilitation to "dismiss the petition and order the child discharged from any detention or other restriction theretofore ordered . . . ." However, the subsequent proviso in GA. CODE ANN. §24A-2201(d) (Supp. 1973) which permits the court to receive all helpful information "even though not otherwise competent in the hearing on the petition" undercuts that support. Section 2201(d) further establishes that the dispositional hearing is not intended to deal with the substantive questions of guilt or innocence by its description of procedure incident to disposition and its concluding permission to the court to keep undisclosed any confidential sources of information. Such procedural liberties are hardly consistent with the due process guarantees during adjudication of *In re Gault* and the mandate of GA. CODE ANN. §24A-2201(b) (Supp. 1973) that delinquent acts be proven beyond a reasonable doubt.

53. Ga. Laws, 1974, p. 1455.

54. The Division of Children & Youth is now known as the Youth Services Section of the Division of Community Services.

of Human Resources. The 1973 provision permitted the court, in its discretion, to sentence juveniles who had been convicted of certain enumerated crimes either to the Department of Human Resources or under the Youthful Offender Act. This former version of the statute also provided a means for sentencing of already committed juveniles to the Department of Offender Rehabilitation on petition of the custodian if the juvenile was convicted of a subsequent offense. The 1974 amendment entirely discards this framework and simply provides for the discretionary sentencing to the Department of Offender Rehabilitation or commitment as a youthful offender of "any child who has previously been adjudged to have committed an act which is a felony if tried in a superior court, and who, on a *second* or *subsequent occasion* is convicted of a felony in a *superior court*."[55]

IV. CONCLUSION

The course of juvenile law in Georgia is at best difficult to plot. By analogy to a common children's game the law, during the survey year, took small steps forward in cases such as *D.P.*, *K.M.S.*, *D.M.N.* and *E.P.*, took a giant step backward in *D.C.E.*, and merely spun in place in *A.B.W.*, *G.M.J.* and *Mathis*. To suggest a course for the forthcoming year or simply to lay litigation plans in individual cases, the juvenile advocate may best be advised to heed the words of Lewis Carroll:

> "It's by far the most confusing thing I ever heard!"[56]
> "I should like to have it explained," said the Mock Turtle.
> "She can't explain it," said the Gryphon hastily,
> "Go on with the next verse."[57]

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55. Ga. Laws, 1974, p. 1455 at 1455 (emphasis added).

56. M. GARDNER, THE ANNOTATED ALICE: ALICE'S ADVENTURES IN WONDERLAND & THROUGH THE LOOKING GLASS 140 (1960).

57. *Id.* at 139.