

**SUPREME COURT OF ARKANSAS**

No. 10-112

STATE OF ARKANSAS,  
APPELLANT

VS.

J.O.,  
APPELLEE

**Opinion Delivered** November 18, 2010

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
ELEVENTH DIVISION,  
NO. JD2009-1652,  
HON. MELINDA GILBERT, JUDGE,

MOTION TO DISMISS APPEAL  
GRANTED.

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**JIM HANNAH, Chief Justice**

The State of Arkansas appeals from an adjudication order filed on November 20, 2009, and a disposition order filed on November 9, 2009, entered in delinquency proceedings against J.O. in Pulaski County Circuit Court. The State argues that the circuit court erred in interpreting Arkansas Code Annotated sections 9-27-329(f) (Repl. 2009) and 9-27-309(f) (Repl. 2009). J.O. filed a motion to dismiss and argues that there is no final, appealable order. We agree and grant the motion to dismiss. Our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(b).

In juvenile delinquency cases, the State may appeal only under those circumstances that would permit it to appeal from criminal proceedings. Ark. R. App. P.—Civ. 2(c)(1). The State’s right to appeal from criminal proceedings is set out in Arkansas Rule of Appellate

Procedure—Criminal 3. Under Rule 3, the State may appeal by filing a notice of appeal from a final order or may take an interlocutory appeal in a felony prosecution where the circuit court (1) grants a motion to suppress evidence under Arkansas Rule of Criminal Procedure 16.2, (2) suppresses a defendant's confession, or (3) grants a motion under Arkansas Code Annotated section 16-42-101(c) to admit evidence of a victim's prior sexual conduct. Ark. R. App. P—Crim. 3(a),(b).

We first consider whether there was a final order. The adjudication order reset the disposition hearing in this case for November 23, 2009. Therefore, the adjudication order is not a final order. At the disposition hearing, J.O. was committed to the Department of Youth Services; however, the case was not closed. The State had requested that the disposition order include the requirement that J.O. be put on probation following his release from Youth Services while he was in aftercare. The circuit court declined to impose probation at that time and stated, "So I will set it once he is released from aftercare for further disposition out of this court." The disposition order confirms that later disposition was to take place by stating that the "case remains open for a juvenile aftercare plan to be completed," and by setting a disposition hearing for August 19, 2010. Because there is no final disposition in this case, the orders appealed from are not final orders, and on that basis, the State had no right of appeal under Arkansas Rule of Appellate Procedure—Criminal 3(b).

The State argues that the orders are nonetheless declared appealable orders under Arkansas Rule of Appellate Procedure—Civil 2(c)(3)(A), which specifically declares that an

appeal lies from “adjudication and disposition hearings” in juvenile delinquency proceedings. But, Rule 2(c)(3) limits the right of appeal from adjudication and delinquency hearings to those where the juvenile is in “out-of-home placement.” While “out-of-home placement” is not defined in Rule 2, the Juvenile Code defines it as placement in “a home or facility other than placement in a youth services center.” Ark. Code Ann. § 9-27-303 (39)(A)(i) (Supp. 2009). Arkansas Code Annotated section 9-27-303(39)(B) (Supp. 2009) provides that “‘out-of-home placement’ shall not include placement in a youth services center or detention facility as a consequence of a finding of delinquency.” In the present case, J.O. was committed to the Department of Youth Services based on a finding of delinquency. Because J.O. was found delinquent and committed to a youth services center, this is not an out-of-home placement subject to appeal under Rule 2(c)(3)(A).

Because there is no final order, and no right to appeal from the adjudication and disposition orders under Rule 2(c)(3)(A), the State’s appeal is an interlocutory appeal. The State is permitted only those interlocutory appeals listed in Rule 3(a). Alleged error in interpretation of the statutes is not a permissible interlocutory appeal under Rule 3(a). The motion to dismiss the appeal is granted.