STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1732

In the Matter of the Welfare of: K. M. L., Child.

Filed September 30, 2008
Affirmed
Halbrooks, Judge

Ramsey County District Court
File No. J7-07-552649

Lawrence Hammerling, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant K.M.L.)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Susan Gaertner, Ramsey County Attorney, Daniel R. Rait, Assistant County Attorney, 50 Kellogg Boulevard West, Suite 315, St. Paul, MN 55102 (for respondent State of Minnesota)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Huspeni, Judge.*

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges the district court's order including sex-offender treatment in his juvenile disposition. Because appellant was not adjudicated delinquent of a sexual

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

offense, he asserts that a sex-offender disposition cannot be imposed and that the district court's findings are insufficient to support his juvenile disposition. We affirm.

FACTS

On April 19, 2007, at approximately 11:03 p.m., police officers were dispatched to the area of 5849 73rd Avenue North, in Brooklyn Park following a report of an armed robbery and attempted sexual assault. The victim, H.K., informed the officers that a male came out of a group of trees near her apartment, pointed a gun at her head, and demanded her property. H.K. told the officers that she gave the male a small black purse, a large black purse, and a green nylon bag that included three pairs of pants, four tops, a belt, a cell phone, a social-security card, a driver's license, a check card, two checkbooks, and the keys to her car. The male then followed H.K. to the entryway of her apartment where, according to H.K., he pulled her pants down and said he was going to rape her, putting two fingers inside her vagina through her underwear. H.K. described the male to the police and told the police that there were three or four other individuals watching in the distance.

With H.K.'s permission, the police used her cell phone number to locate her cell phone. It was found within 2,000 yards of the area at 65th Avenue North and Zane Avenue North. H.K. contacted police again on April 22, 2007, and left a voicemail describing a phone call she had received from C.D., who found a purse at her residence with H.K.'s identifying information inside. C.D. asked H.K. to come to her house and retrieve the purse. Officers went to the address and spoke with C.D., who told the

officers that she had been out of town on April 19, 2007. When she arrived home on April 22, C.D. found H.K.'s purse sitting on the floor of her room.

Officers retrieved the purse and observed 16-year-old appellant K.M.L., who matched H.K.'s description of her assailant, sitting in the living room of C.D.'s home. C.D. consented to a search of her home, and officers discovered a .38-caliber Smith and Wesson pistol under the couch cushion where appellant had been sitting. H.K. subsequently identified appellant from a photo line-up as the person who robbed and sexually assaulted her.

Hennepin County filed a juvenile-delinquency petition, charging appellant with first-degree robbery in violation of Minn. Stat. §§ 609.245, subd. 1, and .11 (2006), and first-degree criminal sexual conduct in violation of Minn. Stat. §§ 609.342, subds. 1(d), 2, .11, .101, subd. 2, and .3455 (2006). The prosecutor moved to designate appellant extended jurisdiction juvenile, but the probation officer's investigation report recommended that appellant remain under "straight juvenile probation" and transfer of the case to Ramsey County where appellant resided. The district court agreed to retain juvenile jurisdiction and scheduled a pretrial conference.

At the pretrial conference, the prosecution offered to dismiss the first-degree criminal-sexual-conduct charge in exchange for appellant's guilty plea to the first-degree robbery charge. Appellant agreed, and on June 20, 2007, he admitted on the record that he committed the first-degree robbery. During the admission of the facts supporting his guilty plea, appellant made no admissions regarding the alleged criminal sexual acts. Appellant's case was then transferred to Ramsey County for disposition.

At his first appearance in Ramsey County on June 25, 2007, all parties agreed that appellant would be required by Minnesota law to register as a sex offender. By request of the Ramsey County Juvenile Probation Department, appellant was held in custody while a disposition recommendation could be prepared, and the matter was continued for disposition.

At the disposition hearing, the juvenile probation officer recommended a 90-day evaluation at the START program, a Ramsey County juvenile inpatient sex-offender-treatment program. The probation officer explained that other alternative placements were less desirable because if appellant required inpatient sex-offender treatment, he would have to be transferred into the START program and would "basically need to start over." Appellant requested a 30-day psychosexual evaluation and requested that he remain in custody but not be ordered to a formal treatment program, arguing that it was a long time to spend with "admitted sexual offenders if he is not in need of sex offender treatment."

The district court considered the probation officer's recommendations and appellant's request before stating:

> I'm inclined to do a shorter time and I'll tell you again why. . . . [T]he request for a psychosexual is well taken. We don't have that information that is specific to those sexual concerns. So I'm wondering about whether or not the START—I don't want to disrupt the program—but whether or not START can take him for the period of time that it takes to do a psychosexual, which is usually about 30 days, rather than have him just sitting. I mean, at least he's doing some programming.

The district court ordered a psychosexual evaluation of appellant while he was enrolled in the START program and scheduled a 30-day dispositional review to follow the evaluation.

At the dispositional review, the juvenile probation officer recommended that appellant be formally enrolled in the START program, noting that appellant had "started to engage in that program" and that appellant's mother "has been involved in the treatment process." The psychosexual evaluation recommended treatment in the START program, and the probation officer stated that it was preferable to other alternative placements because it could address appellant's sexual issues. Appellant requested placement in Boys Totem Town, a residential correctional facility for adolescent boys ages 12-19. He again disputed the need for sex-offender treatment, arguing that he had not admitted any sexual offense and should not be ordered to undergo treatment.

The district court ordered appellant to continue with the START program and its sex-offender treatment as part of his juvenile disposition, stating that it had "thought about other programming" but "given all of the factors before [the district court], it is the least restrictive alternative that is appropriate for this particular offense." This appeal follows.

D E C I S I O N

Appellant argues that the district court abused its discretion by ordering a juvenile disposition that includes sex-offender treatment. Appellant asserts that there are no facts in the record that support a need for sex-offender treatment and asks this court to reverse that portion of his juvenile disposition.

A district court has broad discretion in choosing the appropriate juvenile delinquency disposition. *In re Welfare of J.A.J.*, 545 N.W.2d 412, 414 (Minn. App. 1996). An appellate court reviews the district court's disposition for an abuse of discretion and should affirm the disposition of the district court if it is not arbitrary. *Id.*

Sex-offender evaluation and treatment is authorized in juvenile-deliquency matters by Minn. Stat. § 260B.198, subd. 1(k) (2006). The statute is a mandatory directive to district courts and states:

> If the child is petitioned and found by the court to have committed or attempted to commit an act in violation of section 609.342; 609.343; 609.344; 609.345; 609.3451; 609.746, subdivision 1; 609.79; or 617.23, *or another offense arising out of a delinquency petition based on one or more of those sections*, the court shall order an independent professional assessment of the child's need for sex offender treatment. . . . If the assessment indicates that the child is in need of and amenable to sex offender treatment, the court shall include in its disposition order a requirement that the child undergo treatment.

Minn. Stat. § 260B.198, subd. 1(k) (emphasis added).

The plain language of subdivision 1(k) requires the district court to order an "independent professional assessment of the child's need for sex offender treatment" when the juvenile is found to have committed an offense that is based on a delinquency petition that includes one of the enumerated criminal sexual offenses. *See* Minn. Stat. § 645.44, subd. 16 (2006) ("'Shall' is mandatory."). Here, appellant pleaded guilty to the first-degree robbery charge that was part of the same juvenile-delinquency petition that included the first-degree criminal-sexual-conduct charge. The district court was thus required to order a psychosexual evaluation of appellant, and the district court properly

exercised its discretion and ordered appellant to undergo the evaluation at the START program.[1] Although other evaluation alternatives were potentially available, placement in the START program enabled appellant to receive services while the evaluation was ongoing and did not necessitate starting the treatment process anew in the event that sex-offender treatment was determined to be appropriate.

The statute also requires the district court to include sex-offender treatment in the juvenile disposition if the independent assessment recommends that the child is in need of such treatment and is amenable to it. Minn. Stat. § 260B.198, subd. (1)k. Here, Rebecca S. Reed, Ph.D., conducted an independent professional assessment and recommended that appellant "participate[] in a residential program incorporating social and sexual boundaries as important component[s], keeping in consideration his cognitive capacities." Based on Dr. Reed's recommendation, the district court was required by statute to "include in its disposition . . . a requirement that [appellant] undergo treatment" for sex offenders. Minn. Stat. § 260B.198, subd. 1(k). We conclude that the district court properly applied the statute by ordering that appellant continue treatment in the START program.

Appellant also asserts that the sex-offender-treatment disposition is not proper because it is not necessary for his rehabilitation. *See, e.g., In re Welfare of M.A.C.*, 455

[1] We note that this mandatory requirement that a juvenile be independently evaluated, regardless of the actual charges that they are convicted of, when the initial petition contained one of the enumerated offenses listed in Minn. Stat. § 260B.198, subd. 1(k), potentially subjects juveniles to evaluations when there are no facts to support a criminal sexual offense. While such a potential abuse of the prosecutor's charging discretion is troubling, there are no such facts in the record here.

N.W.2d 494, 498 (Minn. App. 1990). We have held that a delinquency disposition must not only serve the child's best interests but must be "necessary" to restoring law-abiding behavior in the juvenile. *J.A.J.*, 545 N.W.2d at 415. Appellant contends that *J.A.J.* supports his argument that the district court's disposition was not necessary to restoring him to law-abiding behavior. In *J.A.J.*, this court reversed a juvenile disposition ordered by the district court that included sex-offender treatment when the independent professional assessment did not "identify any sexual problem requiring any treatment, let alone residential treatment." *Id.* at 414. The juvenile in *J.A.J.* had family dysfunction more properly considered by child protective services than by residential treatment for the child. *Id.* at 415.

Here, appellant's psychosexual assessment indicated the possibility of future harmful sexual conduct, an inability to accept responsibility for his actions, a lack of concern for the rights and welfare of others, and a polygraph showing deception about sexually harmful behaviors. This assessment supports the need for appellant's sex-offender treatment and demonstrates that treatment is necessary to return appellant to law-abiding behavior. *Cf. id.* (holding that when there is no evidence to support a need for sex-offender treatment, it is not necessary and thus not proper even if treatment would be beneficial).

Appellant argues that Boys Totem Town is a less restrictive alternative. As discussed above, the district court properly exercised its discretion in placing appellant in the START program for his evaluation period and then properly followed the statutory requirement that he be given sex-offender treatment as part of his disposition. The

district court considered appellant's request to have his psychosexual evaluation done outside the START program, but concluded it should be done as part of the START program so that the 30 days before his dispositional review was "not just downtime" in the event treatment was needed. Placing appellant in the START program was a proper exercise of the district court's discretion and is supported by the record.

Appellant also argues that the district court's findings are insufficient to support the portion of his disposition ordering sex-offender treatment. Appellant asserts that by not including the alternative dispositions that were considered or providing a reason why the disposition ordered was the least restrictive alternative, the district court lacks sufficient support in the record for the disposition.

A juvenile disposition including out-of-home placement must be supported by findings on the record. *In re Welfare of D.T.P.*, 685 N.W.2d 709, 712 (Minn. App. 2004). These findings must address five subjects:

> (1) why public safety is served by the disposition; (2) why the best interests of the child are served by the disposition; (3) what alternative dispositions were proposed to the court and why such recommendations were not ordered; (4) why the child's present custody is unacceptable; and (5) how the correctional placement meets the child's needs.

Id. at 712-13. When particularized findings are made on the record and appear in the transcript, the district court may incorporate those findings into the order by reference. *Id.* at 713. But when the transcript does not contain the required findings, boilerplate language that purports to incorporate the necessary findings does not suffice. *Id.*

Here, the district court incorporated the juvenile-screening placement form with the transcripts of the proceedings. The juvenile-screening form details the various alternative placements that were considered and concludes that the START program is "[a]ppropriate" because appellant and his mother have "begun engagement" in the program. Mille Lacs Academy and the Boys Totem Town programs were rejected because Mille Lacs is "[t]oo far away from mother/community" and the Boys Totem Town program "[d]oes not adequately address sex off[ender] [treatment] needed." The juvenile probation department based its recommendation on protection of public safety, correctional treatment, consequences for appellant's behavior, and his need for sex-offender treatment. Ramsey County also indicated to the district court that the START program would be "best for public safety and for [appellant]."

Although the district court relied on general language of incorporation, the record, which includes the professional evaluation, the transcript, and the juvenile-screening form, sufficiently supports the disposition. As a result, a remand is not required. *Cf. id.* at 712-13 (holding that when the record lacks the requisite findings, an appellate court should remand the matter to the district court for further factual findings).

Affirmed.