STATE OF MINNESOTA
IN COURT OF APPEALS
A09-555

State of Minnesota,
Respondent,

vs.

Michael Duane Matson,
Appellant.

Filed February 23, 2010
Affirmed
Shumaker, Judge

Otter Tail County District Court
File No. 56-CR-08-377

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

David Hauser, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Charles A. Krekelberg, Mathew A. Soberg, Krekelberg, Skonseng & Soberg, P.L.L.P., Pelican Rapids, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Shumaker, Judge; and Worke, Judge.

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

SHUMAKER, Judge

Appellant challenges his conviction of second-degree criminal sexual conduct, arguing that (1) the district court erred when it denied his motion to dismiss the criminal

charges based upon collateral estoppel because of determinations made in a prior civil termination-of-parental-rights proceeding and (2) there was insufficient evidence to support the conviction. We affirm.

FACTS

We are asked to decide whether the district court erred in ruling that the state was not collaterally estopped from prosecuting appellant Michael Duane Matson for criminal sexual conduct against his child, despite the court's prior determination in a proceeding to terminate Matson's parental rights (TPR) that sexual abuse had not been proved. We are also asked to decide whether sufficient evidence supported Matson's conviction of criminal sexual conduct.

Matson is the biological father of C.M. and S.M., both minors. On October 8, 2007, the Otter Tail County Department of Human Services (DHS) filed a petition to terminate Matson's parental rights to both children, alleging that Matson had sexually abused them.

After a trial, the district court denied the petition, concluding that DHS had not shown that C.M. and S.M. had experienced egregious harm in that it had not been proved "by clear and convincing evidence that Michael Matson committed criminal sexual conduct toward either of the children . . . ." The court found that "[t]he sole factual basis" for the sexual abuse allegation was "one alleged incident of sexual touching of each child." The alleged incident of Matson's abuse of C.M. occurred while C.M. and Matson were watching a Dukes of Hazzard movie in the bedroom of the trailer home in which they were living.

Before the TPR trial, the Otter Tail County Attorney, on behalf of respondent State of Minnesota, charged Matson with four counts of criminal sexual conduct relating only to C.M. The charges included the Dukes of Hazzard incident. After the district court denied the TPR petition, the state proceeded with the criminal prosecution. Matson then moved to collaterally estop the prosecution because it was "based upon the exact same facts and the exact same alleged evidence as presented to this Court in the . . . parental termination proceedings . . . ." The district court denied the motion; Matson waived his right to a jury trial; and the district court held a bench trial. The district court found Matson not guilty of three counts and guilty of one count of criminal sexual conduct toward C.M. The count of which the district court found Matson guilty involved sexual touching of C.M. that "occurred in the bathroom at the trailer home in Otter Tail County in which they lived."

During the criminal trial, the district court received several documentary exhibits prepared by various social services agencies and a mental-health center relating to the allegations that became the subject of the prosecution. In some of those documents, C.M. is reported to have said that Matson touched him sexually in his trailer home in the bedroom (the Dukes of Hazzard incident) and in the bathroom. C.M. stated that Matson touched him about 20 times. Sometimes Matson touched C.M.'s penis with his hand and other times Matson touched C.M. with his penis.

The court also heard evidence that C.M. had reported that two other men had sexually abused him in his home; that C.M. has encopresis—a condition that causes him

to evacuate his bowels when he is extremely frightened; and that C.M. often experienced encopresis when he encountered Matson.

Although C.M. did not testify at the TPR trial, he did testify in the criminal trial. During that testimony, C.M. stated that Matson touched his penis in the bathroom of the trailer home and that this happened one time.

This appeal followed Matson's conviction and sentencing.

D E C I S I O N

Collateral Estoppel

Matson contends that because the district court found in the TPR proceeding that he had not committed criminal sexual conduct against C.M., the state is collaterally estopped from prosecuting that same conduct in a criminal proceeding. We hold that collateral estoppel does not apply here.

For purposes of criminal prosecutions, the doctrine of collateral estoppel is incorporated in the protection against double jeopardy, which assures that a person will not be twice subjected to proceedings and punishment on the same facts. *Ashe v. Swenson*, 397 U.S. 436, 443-44, 90 S. Ct. 1189, 1194 (1970). Collateral estoppel may be applied to a criminal proceeding that arises out of the same facts determined in a prior civil proceeding if the object of the civil proceeding was punishment. *Dranow v. United States*, 307 F.2d 545, 556 (8th Cir. 1962). The first reason that collateral estoppel does not apply is that the object of the TPR proceeding was not the punishment of Matson, but rather the protection of C.M.'s best interests.

In general, the doctrine of collateral estoppel provides that a "'right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies.'" *Ryan v. Progressive Cas. Ins. Co.*, 414 N.W.2d 470, 472 (Minn. App. 1987) (quoting *S. Pac. R.R. Co. v. United* States, 168 U.S. 1, 48-49, 18 S. Ct. 18, 27 (1897)), *review denied* (Minn. Jan. 15, 1988). Four elements must exist for the proper application of collateral estoppel: (1) the issue claimed to be the subject of estoppel must be identical to the issue previously adjudicated; (2) the parties to the proceedings must be the same or in privity with each other; (3) the party to be estopped must have been given a full and fair opportunity to be heard on the issue that is the subject of the estoppel; and (4) there was a final judgment on the merits in the prior matter. *State v. Wagner*, 637 N.W.2d 330, 337 (Minn. App. 2001) (citation omitted). "Whether collateral estoppel precludes litigation of an issue is a mixed question of law and fact that we review de novo." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004) (citation omitted).

The second reason collateral estoppel does not apply here is that there is no identity of issues in the TPR proceeding and the criminal prosecution. The single issue in dispute in the TPR matter was one alleged instance of criminal sexual conduct that occurred in C.M.'s bedroom (the Dukes of Hazzard incident). The single act of which Matson was found guilty, however, was criminal sexual conduct that occurred in the bathroom.

The third reason collateral estoppel does not apply is that the party to be estopped, namely, the State of Minnesota, was neither a party to the TPR proceeding nor in privity with the Otter Tail County Department of Human Services (DHS), which was a party.

Privity can be found if the party to be estopped "(1) had a controlling participation in the first action, (2) had an active self-interest in the previous litigation, or (3) had a right to appeal from a prior judgment." *State v. Lemmer*, 736 N.W.2d 650, 661 (Minn. 2007) (citations omitted). Determining whether privity exists requires an examination of the circumstances of each case. *Margo-Kraft Distribs., Inc. v. Minneapolis Gas Co.*, 294 Minn. 274, 278, 200 N.W.2d 45, 47 (1972). Coincidental interests alone, even when combined with an opportunity to participate in and contribute to the prior action, are not sufficient to establish privity. *Denzer v. Frisch*, 430 N.W.2d 471, 474 (Minn. App. 1988); *Bogenholm by Bogenholm v. House*, 388 N.W.2d 402, 405-07 (Minn. App. 1986), *review denied* (Minn. Aug. 13, 1986). The state, as sovereign, and government agencies will not automatically be considered in privity because their respective functions and responsibilities are so distinct that applying collateral estoppel would "interfere with the proper allocation of authority between them." *Lemmer*, 736 N.W.2d at 661 (quoting Restatement (Second) of Judgments § 36 cmt. f (1982)).

DHS is a county agency with interests and responsibilities distinct from those of the state in its capacity and authority to conduct criminal prosecutions. In a TPR proceeding, DHS is responsible for protecting the best interests of the child. Minn. Stat. § 260C.301, subd. 7 (2008). This responsibility is separate and distinct in both burden of proof and objective from the function the state serves in the criminal prosecutions. *See*

Lemmer, 736 N.W.2d at 661 (finding that the purpose of the Minnesota Department of Public Safety in implied-consent proceedings differs from that of the State of Minnesota in DWI prosecutions). Furthermore, the best interests of the child, as the primary focus of the TPR proceeding, may conflict with the full prosecution of the criminal sexual conduct charges. *See* Minn. Stat. § 260C.301, subd. 7 (providing that the best interests of the child are paramount in a TPR proceeding). As the district court observed during the hearing on the collateral-estoppel motion, the alleged victim was not called to testify in the TPR trial because of concern for the potential trauma to the child. However, in the subsequent criminal proceeding, C.M. was called to testify at least in part because of the more stringent burden of proof the state had to meet.

Collateral estoppel is inapplicable for a fourth reason. The state had no opportunity to be heard in the TPR proceeding. Although the Otter Tail County Attorney's Office represented both DHS and the state in the respective proceedings, the TPR matter was conducted for and on behalf of DHS, and for the sole purpose of achieving the termination of Matson's parental rights to C.M. A full and fair opportunity to participate in a matter requires both an actual opportunity and an incentive to do so, and collateral estoppel can apply if the party fails to do so. *Lemmer*, 736 N.W.2d at 663 (citing *In re Miller*, 153 B.R. 269, 274 (Bkrtcy. D. Minn. 1993)). The state's interest and incentive were not the termination of parental rights, but rather conviction and punishment. Although it might be reasonable to conclude that the state would support the termination of the parental rights of a person who had sexually abused his child, that is

not tantamount to the incentive and interest required for the application of collateral estoppel.

We also reject the notion that the requisite opportunity and incentive exist merely because the same county attorney's office represents both DHS in the civil action and the state in the criminal matter. We further note the statute that addresses the order of proceeding in matters in which there might be both a TPR case and a criminal prosecution.

> If criminal charges have been filed against a parent arising out of the conduct alleged to constitute egregious harm, the county attorney shall determine which matter should proceed to trial first, consistent with the best interests of the child and subject to the defendant's right to a speedy trial.

Minn. Stat. § 260C.301, subd. 3 (2008). This provision indicates that the legislature intended termination proceedings and criminal proceedings to be separate and distinct, making collateral estoppel inapplicable. The county attorney's good-faith reliance on the statute is analogous to the situation in *Lemmer*, in which the state relied in good faith on section 169A.53, subdivision 3(g), which provides that "[t]he civil hearing under this section shall not give rise to an estoppel on any issues arising from the same set of circumstances in any criminal prosecution." 736 N.W.2d at 663. The court in *Lemmer* concluded that, because the state relied in good faith on the statute, it had no incentive to participate in the civil proceeding. *Id*.

The fifth and final reason collateral estoppel does not apply is that, as noted above, there was no final judgment in the TPR matter on the merits of the issue upon which

Matson was found guilty in the criminal prosecution. The latter issue was not addressed at all by the court in the TPR proceeding.

Sufficiency of the Evidence

Matson argues that there was insufficient evidence to sustain his criminal conviction.

The same standard of review on the sufficiency of the evidence applies to bench trials, in which the district court is the trier of fact, and to jury trials. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999); *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998). Our review on appeal consists of a painstaking analysis of the record to determine merely whether the evidence, in the light most favorable to the conviction, was sufficient to allow the jurors to reasonably find the defendant guilty. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). In our review of the evidence, we assume that the trier of fact "believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Wright*, 679 N.W.2d 186, 189 (Minn. App. 2004) (citation omitted), *review denied* (Minn. June 24, 2004).

The trier of fact is in the best position to evaluate witness credibility. *State v. Tovar*, 605 N.W.2d 717, 726 (Minn. 2000). Even when a witness's credibility is seriously called into question, the trier of fact is entitled to believe him or her. *State v. Pippitt*, 645 N.W.2d 87, 94 (Minn. 2002). Conflicts in evidence do not necessarily render testimony false or compel a reversal. *State v. Stufflebean*, 329 N.W.2d 314, 319 (Minn. 1983). Inconsistencies reflect human fallibility and are not proof of false testimony, particularly if the testimony concerns a traumatic event. *Wright*, 679 N.W.2d at 190; s*ee*

State v. Blair, 402 N.W.2d 154, 158 (Minn. App. 1987) (holding that, despite numerous inconsistencies, a child victim's testimony was sufficient to support the verdict). Minn. Stat. § 609.347, subd. 1 (2004), provides that a victim's testimony in a criminal sexual conduct case such as this one does not require corroboration. "Corroboration of an allegation of sexual abuse of a child is required only if the evidence otherwise adduced is insufficient to sustain conviction." *State v. Myers*, 359 N.W.2d 604, 608 (Minn. 1984) (citation omitted).

Matson was convicted under Minn. Stat. § 609.343, subds. 1(a), 2(a) (2004), which proscribe sexual contact when a victim is under 13 years of age and the actor is more than 36 months older. "Sexual contact" for purposes of Minn. Stat. § 609.343, subd. 1 (2004), includes intentional touching with a sexual or aggressive intent of the complainant's intimate parts and the touching of the clothing covering the immediate area of the intimate parts. Minn. Stat. § 609.341, subd. 11(a)(i),(iv) (2004). "Intimate parts" includes the "primary genital area, groin, inner thigh, buttocks, or breast of a human being." Minn. Stat. § 609.341, subd. 5 (2004).

Matson argues in particular that there was insufficient evidence to establish sexual or aggressive intent, as required by the law under which he was convicted. The district court found that Matson touched C.M.'s genital area, groin, and inner thigh, and that C.M. did not like this touch and felt it was a "bad touch." C.M. testified that Matson touched his privates in a way C.M. did not like. The evidence showed that C.M. knew that certain sexual touching was bad. The sole inference supported by this record is that

Matson had an intent to achieve sexual gratification by touching C.M.'s intimate areas. A child's testimony, though somewhat vague, yet clearly indicating that the appellant "would push really hard" in the middle of his butt while wiping him in the bathroom, can be sufficient to support a conviction. *State v. Jones*, 500 N.W.2d 492, 493 (Minn. App. 1993), *review denied* (Minn. June 9, 1993). And a child's testimony that the appellant had touched her on her buttocks "where he's supposed to not touch [her]" can be sufficient to implicate sexual intent in support of a conviction. *State v. Kraushaar*, 470 N.W.2d 509, 511 (Minn. 1991).

Other evidence introduced at trial corroborates C.M.'s testimony and allows a reasonable inference that Matson touched C.M. with sexual intent. After contact with Matson, C.M. experienced multiple incidents of encopresis, which is a reaction to fear. C.M. testified that he does not like to talk about what happened and that he has nightmares about it. One witness testified that C.M. had acted out sexually with another child because of what Matson had done to him. C.M.'s therapist stated that, in her opinion, the victim's encopresis was clearly related to memories of Matson or contact with Matson. C.M. disclosed to his therapist that the sexual abuse was the "fault" of various people living in C.M.'s trailer home, namely, "Mike, Jeff, Evan, and April," which clearly includes Matson. In an August 2007 CornerHouse interview, C.M. told the interviewer that Matson touched him "on his privates," which C.M. indicated was a place not okay to touch. Two of the witnesses testified that C.M. told them that Matson had touched his genitals.

Finally, as part of his challenge to the sufficiency of the evidence, Matson argues that the evidence points to two other men as the perpetrators, rather than to him. Matson argues that the testimony of these men and other witnesses is completely inconsistent, unreliable, and not credible, and he also points to various inconsistencies in C.M.'s own testimony. In essence, Matson invites this court to reweigh the evidence and to draw a different conclusion from that of the district court. This is not within the proper scope of our review. *See State v. Robinson*, 536 N.W.2d 1, 2 (Minn. 1995) (stating that this court does not reweigh the evidence as a kind of 13th juror), *review denied* (Minn. Nov. 15, 1995). It is completely within the purview of the district court to determine the credibility and reliability of testimony. *See Pippitt*, 645 N.W.2d at 94 (deferring to the jury's determination as to the truthfulness of a witness's statements, despite finding that the witness's credibility was seriously called into question). The district court specifically found credible both C.M.'s testimony and that of Matson's sister regarding C.M.'s implication of Matson. Furthermore, the district court found that the possible sexual abuse of C.M. by individuals other than Matson does not make Matson any less culpable, which indicates that the district court considered evidence that may have pointed toward other perpetrators, but still found that Matson had committed sexual misconduct.

Examining the evidence in a light most favorable to the verdict, presuming the trier of fact believed the prosecution's witnesses and disbelieved any evidence to the contrary, and yielding to the trier of fact's credibility determinations, we conclude that

the evidence was sufficient to uphold Matson's conviction of second-degree criminal sexual conduct.

Affirmed.