STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0415

In the Matter of the Welfare of: L. B., III, Child.

Filed August 29, 2022
Affirmed
Reyes, Judge

Dakota County District Court
File No. 19HA-JV-21-814

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kathryn M. Keena, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for appellant State of Minnesota)

Drake D. Metzger, Jasmin Quiggle, Metzger Law Firm, L.L.C., Minneapolis, Minnesota (for respondent L.B., III)

Considered and decided by Reilly, Presiding Judge; Reyes, Judge; and Halbrooks, Judge.*

NONPRECEDENTIAL OPINION

REYES, Judge

On appeal from a pretrial order denying certification of a juvenile for adult prosecution, appellant-state argues that the district court clearly erred in its findings on three of the public-safety factors and abused its discretion by denying adult certification. We affirm.

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

FACTS

These facts are based on the allegations in appellant State of Minnesota's certification petition, which we must presume are true. *See In re Welfare of J.H.*, 844 N.W.2d 28, 38 (Minn. 2014). Midmorning on April 4, 2021, respondent L.B. drove eastbound on County Road 42 at a high speed. Respondent's twin sister sat in the front passenger seat. Respondent's older sister drove alongside him in another car, and the siblings appeared to be racing. A Honda going westbound on County Road 42 pulled into the turn lane to cross County Road 42 onto Newton Avenue. The Honda moved forward to cross County Road 42, and respondent "T-boned" the Honda with such force that the Honda split in half. The Honda driver and passenger died at the scene. Respondent's twin sister suffered severe injuries and required several surgeries.

A crash-reconstruction report estimated respondent's speed at between 93 and 100 miles per hour when he hit the Honda, well over the posted speed limit of 50 miles per hour. The report stated that respondent's excessive speed was the primary contributing factor to the crash. The secondary contributing factors were respondent's racing and the Honda turning into the path of respondent's vehicle.

At the time of the crash, respondent was 17 years old. He turned 18 just over two months later.

The state filed a juvenile-delinquency petition charging respondent with two counts of third-degree murder and two counts of criminal vehicular homicide for the deaths of the two victims in the Honda and one count of criminal vehicular operation resulting in great bodily harm for the injuries caused to respondent's twin sister. It also moved for

presumptive certification for adult prosecution under Minn. Stat. § 260B.125, subd. 3 (2020).

The district court held a certification hearing. The district court received into evidence two certification evaluations: (1) a certification study prepared by Dakota County probation officer Julie Eckstrom and (2) a psychological evaluation prepared by Dr. Tricia Aiken. Eckstrom's report recommended extended jurisdiction juvenile (EJJ) designation. Dr. Aiken's report recommended certification. Both Dr. Aiken and Eckstrom testified at the hearing about their recommendations.

The district court denied the state's certification motion. It first determined that respondent is subject to presumptive certification. It then found that two of the six public-safety factors (the seriousness of the offense and respondent's culpability) supported certification, while the other factors (respondent's prior delinquency record, his programming history, the adequacy of punishment or programming in the juvenile system, and the dispositional options available) weighed in favor of EJJ. After considering all six factors, the district court found that respondent rebutted the presumption of certification and ordered that the matter remain in juvenile court as an EJJ proceeding. This appeal follows.

DECISION

The district court did not abuse its discretion by denying the state's motion for presumptive certification.

The state argues that the district court abused its discretion by denying the state's motion to certify respondent for adult prosecution. Although we recognize that this is a close and difficult case, given our standard of review, we disagree.

The district court "has considerable latitude in deciding whether to certify" a juvenile for adult prosecution. *In re Welfare of P.C.T.*, 823 N.W.2d 676, 679 (Minn. App. 2012) (quotation omitted). We review a district court's certification decision for an abuse of discretion. *See J.H.*, 844 N.W.2d at 34. We review the district court's underlying factual findings for clear error. *See id.* at 35. A finding is clearly erroneous "only if there is no reasonable evidence to support the finding" and we are "left with the definite and firm conviction that a mistake occurred." *Id.* (quotation omitted). "[W]e view the record in the light most favorable to the [district] court's findings." *Id.*

Certification for adult prosecution is presumed when a juvenile is 16 or 17 years old and is alleged to have committed an offense that involves a presumptive commitment to prison. Minn. Stat. § 260B.125, subd. 3. It is undisputed that the presumption of adult certification applies here, because respondent was 17 years old at the time of the offense and his charges involve a presumptive commitment to prison.

When the presumption of certification applies, the juvenile has the burden of rebutting it by "demonstrating by clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety." *Id.* If the district court finds that

the juvenile has not rebutted the presumption, it must certify the proceeding. *Id.* The district court must consider six factors when determining whether certification serves public safety:

> (1) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Sentencing Guidelines, the use of a firearm, and the impact on any victim;
>
> (2) the culpability of the [juvenile] in committing the alleged offense, including the level of the [juvenile's] participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Sentencing Guidelines;
>
> (3) the [juvenile's] prior record of delinquency;
>
> (4) the [juvenile's] programming history, including the [juvenile's] past willingness to participate meaningfully in available programming;
>
> (5) the adequacy of the punishment or programming available in the juvenile justice system; and
>
> (6) the dispositional options available for the [juvenile].

Id., subd. 4 (2020). The district court must weigh all the factors but must "give greater weight" to the seriousness of the offense and the juvenile's record of delinquency. *Id.*

Undisputed First, Second, and Fourth Factors

The district court found that the seriousness of the offense and respondent's culpability favor certification. Neither party challenges the district court's findings on these factors. Respondent was driving more than 40 miles per hour over the speed limit at the time of the collision. The collision caused the death of two people and serious injuries

to another person. The record also reflects that respondent instigated the race with his sister, and there are no mitigating factors affecting his role in the collision. The district court did not clearly err by finding that the first two factors favor certification.

The district court found that the fourth factor, respondent's programming history, weighed in favor of EJJ. This finding too is supported by the record. Respondent completed probation for three prior offenses and is responding well to his current programming at the Juvenile Service Center. Dr. Aiken and Eckstrom both opined that this factor supports EJJ, and the state does not challenge the district court's finding on this factor.

The state argues, however, that the district court clearly erred by finding that the third, fifth, and sixth public-safety factors support EJJ. We address each in turn.

Third Factor: Prior Record of Delinquency

A juvenile's "prior record of delinquency" refers to records of petitions to juvenile court and juvenile court adjudications. *In re Welfare of N.J.S.*, 753 N.W.2d 704, 710 (Minn. 2008). Respondent's delinquency record consists of: (1) a 2018 disorderly conduct charge, for which he received a continuance without adjudication after successfully completing 180 days of probation; (2) a 2019 misdemeanor theft charge, successfully resolved by a continuance without findings after he completed 90 days of probation; (3) a 2020 juvenile adjudication of fifth-degree assault; and (4) a 2021 petty misdemeanor traffic violation for running a red light.

The district court acknowledged those offenses and noted that respondent was still on probation for the assault and theft offenses at the time of the collision. But it also stated

that respondent has no prior felony record and that his delinquency history is "limited." It accordingly found that this factor weighs in favor of EJJ.

The state argues that the district court's finding is clearly erroneous because respondent's record shows "consistent involvement" with the juvenile court system and escalating dangerousness. The state appears to suggest that the seriousness of respondent's current felony offense shows that this factor favors certification, citing *In re Welfare of K.A.P.*, 550 N.W.2d 9, 12 (Minn. App. 1996), *rev. denied* (Minn. Aug. 20, 1996). But in *K.A.P.*, we confirmed that the district court may consider *prior* unadjudicated, pending offenses when considering certification for a *subsequent*, separate offense. 550 N.W.2d at 12. Here, as the district court noted, respondent has no *prior* felony petitions or adjudications; his record consists of misdemeanor and petty misdemeanor offenses. Moreover, both Dr. Aiken and Eckstrom agreed that respondent's prior record of delinquency supported EJJ rather than certification. The district court's finding that this factor favors EJJ is therefore not clearly erroneous.

Fifth Factor: Adequacy of Punishment or Programming Available in the Juvenile Justice System

The fifth public-safety factor requires the district court to consider "the adequacy of the punishment or programming available in the juvenile justice system." Minn. Stat. § 260B.125, subd. 4(5). The district court found that this factor weighed in favor of EJJ. It credited Dr. Aiken's report, which only recommended treatment in the form of therapy to address respondent's behavioral issues, criminogenic thinking, relationships, and stress management; Dr. Aiken's note that respondent "seems most appropriate for standard

correctional programming in a facility such as Red Wing"; and Dr. Aiken's statement that respondent does not have needs requiring specialized or intensive programming. The district court also credited Eckstrom's report that correctional placement under EJJ could range up to 21 months.

The district court's finding is supported by the record. Although Dr. Aiken believed that this factor supports certification, she also testified that the available juvenile programming is adequate "to meet [respondent's] needs" and can provide respondent with various treatment groups and therapy through which respondent could address his "criminogenic thinking." She stated that she recommended certification on this factor because she believed that two and a half years is not an adequate length of punishment given the seriousness of respondent's offense.

Eckstrom's report, which ultimately recommended EJJ, stated that this factor could support either EJJ or certification. Eckstrom's report noted that EJJ jurisdiction over respondent would extend approximately 30 months, until respondent turned 21. It stated that respondent could spend 6-21 months in correctional programming under EJJ and that an adult sentence could be imposed if respondent fails to complete programming or commits a new offense. It also stated that respondent could complete programming in the time he would have left under EJJ jurisdiction. Although the committee members whose votes provided the basis for Eckstrom's recommendation did not unanimously agree on

this factor, Eckstrom testified that four of the seven committee members believed this factor supported EJJ.[1]

The state argues that the district court's finding that this factor favors EJJ is clearly erroneous because respondent would have fewer than 24 months under EJJ supervision while his adult sentence could hypothetically range up to 318 months.[2] But while "[i]nsufficient time for rehabilitation under the juvenile system is an appropriate consideration when determining whether to certify a juvenile," *In re Welfare of S.J.T.*, 736 N.W.2d 341, 354 (Minn. App. 2007), *rev. denied* (Minn. Oct. 24, 2007), a disparity between the EJJ disposition and the length of an adult sentence is only one consideration. And, here, the district court acknowledged that the presumptive adult sentence for respondent's most serious charge is 150 months and that the term of supervision under EJJ is shorter than the presumptive adult sentence for respondent's offenses. But it ultimately concluded, based on Dr. Aiken's testimony that programming is available for respondent and Eckstrom's recommendation, that this factor supports EJJ. Because that finding is supported by the record, it is not clearly erroneous.

---

[1] Dakota County Corrections relies on a seven-member staffing committee for final recommendations on certification cases. The committee's votes provided the basis for Eckstrom's recommendations on each public-safety factor and on the report's overall recommendation that the matter remain in the juvenile court as an EJJ proceeding.

[2] A 318-month sentence assumes that respondent is found guilty of all charges and sentenced consecutively, which the district court would be permitted but not required to do under the sentencing guidelines. *See* Minn. Sent. Guidelines 2.F.2.a (2020). While we presume for the purposes of a certification motion that the state's charges are true, we are not required to presume that respondent will receive the longest possible adult sentence under the sentencing guidelines.

Sixth Factor: Available Dispositional Options

The state argues that the sixth factor supports certification because any dispositional options are limited by the short amount of time that respondent will be under EJJ jurisdiction and because it is "not clear" that two of the shorter programs described in Eckstrom's report would provide necessary rehabilitation.

The district court found that dispositional options for respondent are available in the juvenile system. The record supports this finding. The district court cited Eckstrom's report, which listed three options available to respondent within the juvenile system: (1) the Dakota County Juvenile Service Center Long Term Program, which has a maximum program length of six to nine months but could be extended to 12 months if ordered by a judge, and which provides therapy, cognitive behavioral groups, schooling, and accountability; (2) placement at MCF–Red Wing, which would allow for potential discharge between seven-and-a-half to nine months; or (3) commitment to the commissioner of corrections for placement at MCF–Red Wing, which would lengthen the timeframe that respondent could spend in the secured facility to 21 months, followed by a 90-day furlough to a group-home-like setting. Eckstrom's report described the programming available at MCF–Red Wing as including individualized treatment plans, aggression-replacement training, trauma therapy, cognitive-skills development, living skills, education and vocations training, and mental-health services. Given those options, Eckstrom's report recommended that this factor supports EJJ.

Dr. Aiken disagreed and opined that the dispositional-options factor supports certification. Her report and testimony suggested that she based her recommendation on

her belief that the juvenile programs are inadequate considering the seriousness of respondent's offense and the limited time that respondent would remain under juvenile jurisdiction. However, Dr. Aiken did testify, as noted above, that "the juvenile program is equipped to provide [respondent] the necessary programming," and that "standard correctional programming in a facility such as Red Wing" is most appropriate for respondent. Here, again, because the district court's finding on this factor is supported by the record, we conclude that it is not clearly erroneous.

Weighing of Factors

Finally, the state, relying on its arguments that factors three, five, and six support certification, asserts that the district court abused its discretion by denying its motion to certify respondent. We disagree. Having concluded that the district court did not clearly err in its findings on the six public-safety factors, and mindful of our deferential standard of review, we also conclude that it did not clearly err by finding that respondent rebutted the presumption of certification. *See J.H.*, 844 N.W.2d at 35 (stating that appellate court will not disturb finding on whether public safety would be served by retaining proceeding in juvenile court unless it is clearly erroneous). The district court stated that it weighed the factors, "giving greater weight to the seriousness of [respondent's] offense and [respondent's] prior delinquency record," and found that respondent overcame the presumption of certification and established that EJJ serves public safety.

We acknowledge that this is a close and difficult question. However, our role as an appellate court is to correct errors, not to reweigh the evidence or substitute our judgment for that of the district court. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)

(reiterating that appellate courts reviewing district court's findings for clear error may not reweigh evidence or retry issue but only determine whether record supports findings). Even if we would have come to a different conclusion, if the record "reasonably supports" the district court's finding, then "it is immaterial that the record might also provide a reasonable basis for . . . findings to the contrary." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-23 (Minn. 2021) (discussing highly deferential clear-error standard). Because the district court did not clearly err by finding that respondent met his burden of showing that EJJ serves public safety, the district court acted within its discretion by denying the state's motion for certification.

Affirmed.