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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0136**

In the Matter of the Welfare of:
D. D. D., Child

**Filed June 25, 2012
Affirmed
Chutich, Judge**

Pine County District Court
File No. 58-JV-11-169

David W. Merchant, Chief Appellate Public Defender, Susan J. Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John K. Carlson, Pine County Attorney, John A. Bowen, Assistant County Attorney, Steven C. Cundy, Assistant County Attorney, Pine City, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Kalitowski, Judge; and Chutich, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

In this appeal from an order certifying appellant D.D.D. to adult court, D.D.D. argues that the court erred in concluding that retaining his case in juvenile court as an extended jurisdiction juvenile would not serve public safety. Because the district court

did not abuse its discretion in finding that D.D.D. failed to rebut the presumption of certification as an adult, we affirm.

FACTS

In the early morning hours of September 7, 2011, 16-year-old D.D.D. was at his home in Pine County, where he lived with his mother, T.S., and his mother's boyfriend, M.M. M.M. lived with D.D.D. and T.S. for several years, and D.D.D. considers M.M. his stepfather. M.M. came home from work about 2:40 that morning and fell asleep in a recliner.

D.D.D., who often did not get along with M.M., was in his bedroom thinking about their prior disagreements, and he began to have uncontrollable thoughts about M.M. M.M. and T.S. were often strict with D.D.D., and in a recent physical altercation M.M. choked D.D.D. after D.D.D. and his mother argued over chores. On September 7, D.D.D. decided that he would either kill himself or harm M.M.

D.D.D. sneaked into his parents' bedroom while his mother was sleeping, and he retrieved and loaded a .22 revolver. He returned to his bedroom and held the gun to his own head, but decided not to kill himself and went upstairs to harm M.M. instead. Holding the gun in his lap, D.D.D. sat on the floor behind the recliner in which M.M. was sleeping. D.D.D. then kneeled behind the recliner, brought the gun to M.M.'s head,

steadied his right arm with his left hand, and heard the gun go off. He claimed that he blacked out,¹ and when he came to, M.M. was bleeding and incoherent.

D.D.D. then woke his mother and told her that M.M. needed help. T.S. did not see the bullet hole and thought that M.M. was possibly having a stroke; she instructed D.D.D. to call 911. Paramedics responded and transported M.M. to the hospital, where doctors found the bullet in his head. A Pine County investigator then went to the residence and questioned D.D.D. and T.S. D.D.D. eventually admitted that he shot M.M.² M.M. underwent surgery and survived the gunshot, although he has continuing health problems.

After the shooting, D.D.D.'s mother found packed suitcases and M.M.'s cash card in D.D.D.'s room. The Pine County investigator also learned from D.D.D.'s cousins that D.D.D. had told them at different times during the preceding year that he wanted to shoot or stab M.M.

The state charged D.D.D. in Pine County juvenile court with one count of attempted second-degree murder and two counts of second-degree assault.³ The state also filed a motion to certify D.D.D. to adult court. The district court ordered two

¹ D.D.D. gave slightly different versions of the shooting to the police investigator and to the mental-health professionals. In all of them, he claimed that he blacked out at some point and does not remember actually pulling the trigger.

² Initially, D.D.D. told the investigator that he planned to sneak out of the house that night, and merely shot the gun to frighten the dog to stop him from barking. D.D.D. told him that the bullet must have entered the house and mistakenly hit M.M. When the investigator told him that the story did not make sense, D.D.D. admitted to the intentional shooting.

³ The state later amended the petition to also charge D.D.D. with additional counts of attempted first-degree murder and first-degree assault. Because the court had not yet made a finding of probable cause on the first-degree charges, its certification decision was based only on the original second-degree charges.

certification studies, appointing psychologists Dr. James Gilbertson and Dr. Dawn Peuschold to examine D.D.D.

Dr. Gilbertson's Certification Study

Dr. Gilbertson interviewed D.D.D. and administered several personality, intelligence, and risk-assessment tests. He also spoke with T.S., along with staff members of the detention center where D.D.D. was being held. He noted that D.D.D. has had a long history of encopresis, which means he was never fully bowel-trained and often defecated in his pants, which caused serious social issues. Dr. Gilbertson found that D.D.D. was of low-average intelligence, immature, and had several mental-health and social problems, including Attention Deficit Hyperactivity Disorder (ADHD), possible mood disorder, anger control issues, and depression, which have never been fully addressed in a therapeutic setting. He concluded that D.D.D. was at moderately high risk to reoffend. Dr. Gilbertson discussed each public safety factor and recommended against certification, opining that D.D.D. would benefit from programming in the juvenile system and public safety would be served by designating D.D.D. as an extended jurisdiction juvenile.⁴

Dr. Peuschold's Certification Study

Dr. Peuschold also interviewed D.D.D. extensively, although, despite many attempts, she was not able to speak to his mother. She spoke with several teachers from

⁴ Under extended jurisdiction juvenile status, the child receives both a juvenile disposition and a stayed adult sentence, Minn. Stat. § 260B.130, subd. 4 (2010), and the juvenile court retains jurisdiction until the child reaches age twenty-one. Minn. Stat. § 260B.193, subd. 5(b) (2010). If the child violates the conditions of the stayed sentence, the court may execute the full adult sentence. Minn. Stat. § 260B.130, subd. 5 (2010).

D.D.D.'s school and noted that he had several relatively minor discipline problems over the past few years. She discussed D.D.D.'s long history of encopresis and the social problems the disorder caused. Dr. Peuschold diagnosed D.D.D. with ADHD, Conduct Disorder, possible Schizotypal Personality Disorder,⁵ Psychotic Disorder, the prodromal phase of Schizophrenia,⁶ and Depression. She found that D.D.D. was at relatively high risk to reoffend. Analyzing the public safety factors, Dr. Peuschold concluded:

Given the seriousness of the alleged offenses, D.D.D.'s longstanding and serious constellation of difficulties, and uncertainty about his ability to benefit from programming and treatment in a manner that decreases his risk for violent reoffense and adequately serves the public safety, I am unable to overcome the presumption of certification.

The certification studies were introduced into evidence at the hearing, and Drs. Gilbertson and Peuschold both testified consistent with their written reports, Dr. Gilbertson against adult certification and Dr. Peuschold in favor of certification. In a detailed and thorough order, the district court concluded that D.D.D. failed to rebut the presumption of certification to adult court. This appeal followed.

D E C I S I O N

I. Standard of Review

“This court will not reverse a juvenile certification order unless the district court’s findings are ‘clearly erroneous so as to constitute an abuse of discretion.’” *In re Welfare*

⁵ Schizotypal Personality Disorder is “a pervasive pattern of social and interpersonal deficits and cognitive or perceptual distortions such as odd beliefs, suspiciousness, constricted affect, lack of close friends, and unusual perceptual experiences.”

⁶ Symptoms of this disorder are flat affect, odd beliefs, and unusual perceptual experiences.

of *H.S.H.*, 609 N.W.2d 259, 261 (Minn. App. 2000) (quoting *In re Welfare of S.J.G.*, 547 N.W.2d 456, 459 (Minn. App. 1996)). In reviewing the certification, we give the district court's decision "considerable latitude." *Id.* (quotation omitted).

Upon review, findings of fact that reflect erroneous application of the law may be set aside. *St. Louis Cnty. v. S.D.S.*, 610 N.W.2d 644, 650 (Minn. App. 2000). We do not, however, weigh evidence or second-guess a district court's credibility findings. See *In re Welfare of K.M.*, 544 N.W.2d 781, 785 (Minn. App. 1996) ("Where the experts' testimony is at issue, we defer to the juvenile court's credibility determinations."). In addition, for certification determinations, "the juvenile is presumed guilty of the alleged offense." *In re Welfare of S.J.T.*, 736 N.W.2d 341, 346 (Minn. App. 2007), review denied (Minn. Oct. 24, 2007).

Certification was presumed in this case because D.D.D. was 16 years old when he shot M.M.; the attempted second-degree murder charge carries a presumptive prison commitment; and D.D.D. used a firearm. See Minn. Stat. § 260B.125, subd. 3 (2010). D.D.D. could "rebut this presumption by demonstrating by clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety." *Id.* If the child does rebut the presumption and adult certification is not ordered, "the court shall designate the proceeding an extended jurisdiction juvenile prosecution." Minn. R. Juv. Delinq. P. 18.06, subd. 5(A); see also Minn. Stat. § 260B.130 (2010) (extended jurisdiction juvenile prosecutions).

In determining whether certification would serve public safety, the court considers the following statutory factors:

- (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 child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Sentencing Guidelines;
- (3) the child's prior record of delinquency;
- (4) the child's programming history, including the child'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 child.

Minn. Stat. § 260B.125, subd. 4 (2010). The court must give greater weight to the first and third factors than the others. *Id.* The factors “must be applied but are not a rigid, mathematical equation.” *In re Welfare of D.M.D., Jr.*, 607 N.W.2d 432, 438 (Minn. 2000).

II. Analysis

D.D.D. does not dispute the district court's findings on the first, third, fourth, and sixth factors, and we conclude that they are correct. The court weighed the first factor in favor of certification. The shooting was a very serious offense that D.D.D. planned and carried out, using a firearm, and M.M. was lucky to survive the attack, suffering permanent health problems as a result. In addition, an aggravating factor existed because the sleeping M.M. “was particularly vulnerable due to . . . reduced physical or mental

capacity.” Minn. Sent. Guidelines II.D.2.b(1) (2010); *see also State v. Skinner*, 450 N.W.2d 648, 654 (Minn. 1990) (stating that a sleeping victim is particularly vulnerable for purposes of imposing an aggravated sentence), *review denied* (Minn. Feb. 28, 1990).

The district court properly found that the third, fourth, and sixth factors weighed against certification. D.D.D. had essentially no prior record of delinquency or any programming history to suggest that he was not amenable to treatment, and secure placement was available for D.D.D. in the juvenile system.

D.D.D. contends that the district court’s findings on the second and fifth factors were clearly wrong, and resulted in the erroneous conclusion that he failed to rebut the presumption of certification. We discuss each in turn and conclude that the district court did not err in its certification analysis.

A. Factor 2: Culpability and Mitigating Factors

D.D.D. argues that his background of abuse and neglect is a “substantial ground” that “tend[s] to excuse or mitigate [his] culpability.” *See* Minn. Sent. Guidelines II.D.2.a(5) (2010). He contends that the district court made several findings about his mental-health issues and problems at home and school, but failed to give these findings sufficient weight and “summarily dismissed” them as a mitigating factor when determining his culpability.

Concerning this second factor, the district court found that D.D.D. had a high degree of culpability in carrying out the shooting. He planned and prepared for the attack, thought of several ways in which he could harm M.M., stole the gun from his parents’ bedroom, and had a getaway plan. While recognizing D.D.D.’s “mental-health

issues, conflict in his family, and problems at school,” the district court found that “his act was cold-blooded, calculated, well thought out, and voluntary.” The court thus found that his mental-health background did not rise to the level of a mitigating factor,⁷ and concluded that this second factor weighed in favor of certification to adult court.

Given the “considerable latitude” that we give the district court in certification matters, its findings and decision on the second factor are not clearly erroneous. The court carefully considered all of the evidence, and the record supports its findings that D.D.D. thought about, planned, and executed the shooting voluntarily and without provocation. Despite evidence of D.D.D.’s troubled family life and his mental health difficulties, we cannot conclude that the district court clearly erred in finding that this background was not a “substantial ground” mitigating his culpability. Thus, the district court’s weighing of the second factor in favor of certification was within its discretion.

B. *Factor 5: Adequacy of Punishment or Programming*

D.D.D. next argues that the district court clearly erred in concluding that the punishment or programming available in the juvenile system was not adequate to protect public safety. He notes that both Drs. Gilbertson and Peuschold thought sufficient time remained in the extended jurisdiction juvenile system to determine whether he could be rehabilitated. Given this agreement and undisputed evidence that D.D.D. had no prior juvenile record or history of programming, he contends that it was clear error for the district court to weigh this fifth factor in favor of certification. He also asserts that the

⁷ The district court, in making this finding, noted that Dr. Gilbertson did not find D.D.D.’s mental-health symptoms to be a mitigating factor.

certification statute does not require a juvenile to present the court with a specific “treatment plan” to rebut the presumption of certification.

Concerning the fifth factor, the court found that D.D.D. posed a high risk to reoffend and had a number of complicated mental-health issues, many of which were so entrenched that they could not sufficiently be addressed under an extended jurisdiction juvenile designation. The court credited the testimony of Dr. Peuschold that, despite the time available for treatment in the juvenile system, D.D.D.’s more ingrained psychological problems—anger, ragefulness, resentment, suspiciousness, and alienation—are chronic. Specifically, the court noted Dr. Peuschold’s testimony that D.D.D.’s “cognitive entrenched defects can’t be set aside,” and her opinion that “I don’t think what’s available is enough to fix this so he won’t reoffend in a really violent way.”

Thus, even though D.D.D. may benefit from treatment, Dr. Peuschold believed that these characteristics made it likely that he could build up his anger and “lose it” again in the future in a violent way, undermining public safety. Crediting this testimony, the district court believed that this level of uncertainty about the type and efficacy of treatment was unacceptable given the dangerousness of D.D.D.’s behavior.

As noted above, we must defer to the district court’s credibility determinations, *see K.M.*, 544 N.W.2d at 785; on the record before us, the decision to credit Dr. Peuschold’s opinion over that of Dr. Gilbertson was within the district court’s discretion.

In addition, the district court’s finding that the punishment available in the juvenile system was inadequate is not clearly erroneous. Along with the concerns raised by Dr. Peuschold, the court concluded that it was “unconvinced that 50 months in the

juvenile system is a sufficient punishment for shooting a man in the head. This was a violent and deliberate act that could have resulted in death.” Weighing all of these concerns, the district court thus found that retaining D.D.D. in the juvenile system would not serve public safety. This determination that the fifth factor weighed in favor of certification as an adult is not clearly erroneous.

In weighing all of the certification factors, the court was understandably troubled by the seriousness of D.D.D.’s offense, which is one of the factors given greater weight in the certification analysis. *See* Minn. Stat. § 260B.125, subd. 4. As the district court noted, the outcome is unfortunate for D.D.D., who could perhaps benefit from the programming available in the juvenile system. Given the district court’s detailed factual findings, thorough analysis and weighing of the relevant factors, and credibility determinations, the district court’s conclusion that D.D.D. failed to rebut the presumption of adult certification for this very serious offense was within its discretion.

Affirmed.