IN THE COURT OF APPEALS OF IOWA

No. 6-471 / 06-0020
Filed June 28, 2006

IN THE INTEREST OF J.T.S.,
Minor Child,

J.T.S., Minor Child,
Appellant.

Appeal from the Iowa District Court for Cedar and Muscatine Counties, John G. Mullen, Associate Juvenile Judge.

J.T.S. appeals from a dispositional order and all adverse rulings and orders inhering therein. **AFFIRMED.**

Esther Dean, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Dana Christiansen, County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

SACKETT, C.J.

Jonathan, born in January of 1989, appeals from a December 23, 2005 dispositional order and all adverse rulings and orders inhering therein. He contends the juvenile court erred in finding him to be a delinquent child, denying his defense of insanity and/or diminished responsibility, and placing him at the State Training School for Boys in Eldora. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

Jonathan was adjudicated on September 2, 2003 as delinquent for having engaged in conduct which would be the public offenses of burglary in the third degree and theft in the third degree as the result of a break-in on July 14, 2003. Following the finding a dispositional order was issued on September 22, 2003, placing Jonathan on probation for an indefinite period not to extend beyond his eighteenth birthday. On October 8, 2004, the dispositional order was modified to place custody of Jonathan with Juvenile Court Services for placement in family foster care. On November 5, 2004, a permanency order was entered continuing placement with Juvenile Court Services. On May 13, 2005, on review of the permanency order, Jonathan was placed with the Iowa Department of Human Services and his current foster placement was approved.

Then on September 20, 2005, a petition alleging Jonathan was a delinquent was filed alleging he committed theft in the fourth degree, in violation of Iowa Code sections 714.1(1) and 714.2(4) (2005), and had possession of a firearm, in violation of section 724.26. On November 14, 2005 the juvenile court found Jonathan a delinquent child within the definition of section 232.2(12) because of the commission of the crime of theft in the fourth degree, in violation

of section 713.2(4), and possession of a firearm by a felon, in violation of section 724.26. On December 23, 2005, the dispositional order from which this appeal was taken was entered, placing the guardianship and custody of Jonathan with the Director of the Department of Human Services for placement in the State Training School in Eldora, Iowa, and requiring him to complete a certain number of hours of community service and pay restitution.

II. SCOPE OF REVIEW.

Juvenile delinquency proceedings are not criminal prosecutions, but are special proceedings that serve as an ameliorative alternative to the criminal prosecution of children. *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996). Our scope of review of juvenile court matters is de novo. *In re C.S.*, 516 N.W.2d 851, 857 (Iowa 1994). We review both questions of law and fact. Iowa Code § 232.133(1); *In re C.S.*, 516 N.W.2d at 857.

III. INSANITY AND/OR DIMINISHED REPONSBILITY DEFENSE.

Jonathan contends he should not have been found to be a delinquent child because he raised an insanity and/or diminished responsibility defense and proved by a preponderance of the evidence that he did not have the mental capacity to understand the nature and quality of his acts and did not have the mental capacity to form a specific intent in taking the items he took.

The State makes three arguments as to why Jonathan's appeal as to this issue should fail: (1) error was not preserved on this issue; (2) there was no factual basis for an insanity defense; and (3) the juvenile court did not err in rejecting Jonathan's insanity defense.

Issues raised for the first time on appeal are not properly before this court and we do not consider them. *See In re Dugan*, 334 N.W.2d 300, 306 (Iowa 1983). In the present case, we will address the issue without deciding if error was properly preserved.

The insanity defense, codified in Iowa Code section 701.4, provides:

> A person shall not be convicted of a crime if at the time the crime is committed the person suffers from such a diseased or deranged condition of the mind as to render the person incapable of knowing the nature and quality of the act the person is committing or incapable of distinguishing between right and wrong in relation to that act. Insanity need not exist for any specific length of time before or after the commission of the alleged criminal act. If the defense of insanity is raised, the defendant must prove by a preponderance of the evidence that the defendant at the time of the crime suffered from such a deranged condition of the mind as to render the defendant incapable of knowing the nature and quality of the act the defendant was committing or was incapable of distinguishing between right and wrong in relation to the act.

This statute incorporates the *M'Naghten* rule adopted by the Iowa Supreme Court as a common law rule. *State v. McVey*, 376 N.W.2d 585, 587 (Iowa 1985). The words "right" and "wrong" refer to a legal, not moral, right or wrong. *State v. Jacobs*, 607 N.W.2d 679, 684 (Iowa 2000); *State v. Collins*, 305 N.W.2d 434, 436 (Iowa 1981).

The diminished responsibility defense is a common law doctrine that permits proof of a defendant's mental condition on the issue of the defendant's capacity to form a specific intent in those instances in which the State must prove a defendant's specific intent as an element of the crime charged. *Jacobs*, 607 N.W.2d at 684; *McVey*, 376 N.W.2d at 586. The diminished responsibility defense is not available for a crime that requires only a general criminal intent. *Jacobs*, 607 N.W.2d at 684.

The record is replete with evidence showing that Jonathan had a difficult childhood. He lived with his mother for eight years, then with his father for two, and then back with his mother. Since late 2000 he has been in and out of residential placement, group foster care, and family foster care. He was physically abused by his birth father and sexually abused by a family friend. He has an attention deficit disorder, a history of substance abuse, and a history of oppositional defiant disorder.

To support his defenses Jonathan relied on the opinion of Dr. John F. Stecker, III, M.J.D., a child/adolescent psychiatrist. Stecker examined Jonathan and came to the following conclusion:

> [W]e cannot make a definitive determination as to what [Jonathan's] mental state was at the time of the illegal acts because of the limited information that we have. . . . It is quite possible that the firearm and alcohol were taken as a result of his depression and suicidal ideation and impulsivity. I do believe Jonathan certainly knew right from wrong, but his reasoning for taking the shotgun and alcohol certainly could have been due to the suicidal ideation that he alleges was present. I would recommend that the Court attempt to obtain information from several different sources, which were not available to us at this time, before making any decisions with regard to disposition.

We conclude Jonathan did not present evidence that was adequate to meet his burden to prove his insanity or diminished responsibility defense. We affirm on this issue.

IV. DENIAL OF JONATHAN'S REQUEST FOR PLACEMENT.

Jonathan contends he should not have been placed at the State Training School in Eldora, rather he should have been placed in the SUMMIT Program in Davenport run by Family Resources, Inc. He further contends that when he completes the program he should be placed with his mother. He contends this

program, a type of boot camp, is a behavior modification program and it would be less restrictive and more helpful to him than State Training School. He argues it would allow him to continue counseling with a current counselor, and while in the program he could maintain contact with his mother, who lives in Davenport.

In a disposition of a child found to have committed a delinquent act, the court is to enter the least restrictive dispositional order that is appropriate under the circumstances. *See* Iowa Code § 232.52(1). Though a juvenile judge is not required to implement each less restrictive dispositional alternative before reaching the most restrictive one, the selection of any one disposition over another requires rejection of others, more or less onerous, and reasons for that rejection. *In re W.E.G.*, 342 N.W.2d 900, 901 (Iowa Ct. App. 1983).

The pre-dispositional report recommended Jonathan be placed at Eldora. It also illustrated that Jonathan had received a number of services in the past but had little success. The report further indicated that the only level of success Jonathan has had was in a highly structured residential setting. The report rejected Jonathan's preference finding it focused on punishment and had no real therapeutic value.

The juvenile court considered Jonathan's request for placement but also recognized that he had a lot of work to do to fix his life. The court recognized that Jonathan's mother has her own issues and was challenged to stay sober. The court recognized Jonathan's desire to be closer to his mother and improve on their past relationship, but the court was not convinced that either Jonathan or his mother were at a place where they could help each other.

On our review of the record we find no reason to disagree with the juvenile court's decision placing Jonathan at the State Training School in Eldora.

AFFIRMED.