

IN THE COURT OF APPEALS OF IOWA

No. 9-290 / 08-1483

Filed July 2, 2009

**IN THE INTEREST OF E.L.C.,
Minor Child,**

STATE OF IOWA,
Appellant.

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

Following the grant of discretionary review, the State seeks reversal of the juvenile court's ruling denying its application for waiver of juvenile court jurisdiction. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellant State.

M. Kathryn Miller, Juvenile Public Defender, Des Moines, for minor child.

Heard by Sackett, C.J., and Vogel and Miller, JJ.

VOGEL, J.

The State filed a petition alleging E.L.C. to have committed delinquent acts and subsequently requested that the juvenile court waive its jurisdiction. The juvenile court denied the State's request and the State sought discretionary review, which was granted. The State asserts that the juvenile court abused its discretion in denying its request for waiver of jurisdiction. We reverse and remand.

I. Background Facts and Proceedings

The delinquency petition and police reports reveal the following facts. On August 6, 2008, seventeen-year-old E.L.C. was involved in a vehicle accident that killed a motorcycle driver. E.L.C. first struck a van with her vehicle and sped away. She then ran a red light and struck a motorcycle, resulting in the death of the driver. She again drove away, but crashed into a nearby telephone pole. Although E.L.C. got out of her vehicle and attempted to walk away, two bystanders approached her and brought her back to the accident scene.

The State filed a delinquency petition charging E.L.C. with the acts of (1) homicide by vehicle in violation of Iowa Code section 707.6A(2) (2007); (2) failure to give information and aid, leaving the scene of an accident resulting in death in violation of Iowa Code sections 321.261(4) and 321.263; and (3) failure to give information and aid, leaving the scene of an accident resulting in vehicle damage in violation of Iowa Code sections 321.262 and 321.263.

Subsequently, the State sought waiver of juvenile court jurisdiction.¹ On September 3, 2008, a hearing was held. The evidence revealed that E.L.C. had previously attended Roosevelt High School in the ninth and tenth grades, but due to truancy problems was transferred to SCAVO High School, where she was currently in the twelfth grade. While at SCAVO High School, E.L.C. was in the Future Pathways Program and did not have any reported problems. Additionally, E.L.C. had no prior criminal history.

The State introduced the report and recommendation completed by John Hawkins, a juvenile court officer (JCO). Hawkins testified that prior to the accident, E.L.C. had not stayed at her parents' home for two or three days, had purchased a vehicle, and against her parents' instructions, drove the vehicle in spite of the fact that she did not have a valid driver's license or automobile insurance. He described the accident as not just a thirty-second situation, but rather "a series of bad decisions on her part." However, he believed this was an isolated incident that took place over the course of three days.

After an exhaustive examination of many specific factors, he ultimately recommended the juvenile court waive its jurisdiction. He noted the seriousness of the offense resulting in the death of another, which warranted both appropriate consequences and services. Although Hawkins did not see a pattern of behavior

¹ It appears that the State did not file a written motion requesting the juvenile court to waive jurisdiction. However, the State served E.L.C. with notice stating that a motion to waive jurisdiction was on file. In response to a motion to waive jurisdiction, a juvenile court officer provided the juvenile court and E.L.C. with a written report and recommendation prior to the hearing. On August 13, 2008, a detention hearing was held, during which the juvenile court discussed with the parties that the waiver hearing was scheduled for September 3. On that date, E.L.C. and her attorney participated in the hearing without objection. Therefore, we find any objection to the lack of a written motion waived. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2006) (stating we will not address an issue raised for the first time on appeal).

that requires rehabilitation, he opined that E.L.C. still had “some thinking errors . . . that need to be corrected.” Because E.L.C. was then eighteen years old, the juvenile court could only supervise her on probation for eighteen months with jail time as the consequence if she violated probation. Therefore, Hawkins concluded there were not any reasonable prospects that E.L.C. would be adequately served if the juvenile court retained jurisdiction. However, if jurisdiction was waived, the adult court could offer more services, including the Youthful Offender Program. This program would offer more intense services, including driver’s education and other classes as well as education and employment requirements, for a longer period of time. He reviewed the appropriate factors, focusing on finding a balance for “what’s best for the community as a whole and rehabilitation which address what is best for [E.L.C.] at this time.”

Dr. Ruth Webb also testified that she had completed a psychological evaluation of E.L.C., but was instructed not to discuss with E.L.C. the legal charges, including E.L.C.’s rebellious behavior that led up to the accident or the accident itself. She opined that E.L.C. did not need any mental health rehabilitation, but then stated that E.L.C. would benefit from counseling to address feelings of hopelessness and sadness that may have existed prior to the accident and to address the sobering consequences from the accident. Additionally, she stated that she saw no evidence of “criminal thinking” by E.L.C., but qualified this by stating that she did not discuss the event with her and later admitted that if a person is aware of the law and chooses to violate it, such could be considered “criminal thinking.” Finally, although Dr. Webb had no background

with the adult system and the services available, she did not think there would be any benefit to E.L.C. if the juvenile court waived its jurisdiction.

At the conclusion of the hearing, the juvenile court denied the State's request. The court discussed that it was the State's burden to prove both that there were not reasonable prospects for rehabilitation in juvenile court and that it was in the child's and the community's best interests to waive jurisdiction. As for the reasonable prospects for rehabilitation, the juvenile court concluded that "there may be no need for rehabilitation." The juvenile court then found the record was absent any evidence that it would be in E.L.C.'s best interests for the court to waive jurisdiction. As for the adult system, "[T]here's been mention about a Youthful Offender Program. That has not been disclosed to this judge as an option in this circumstance." The juvenile court then characterized the Youthful Offender Program as one for "criminal thinking youths." Finally, the juvenile court discussed that if waived to adult court, E.L.C. could be sentenced to prison if the court waived its jurisdiction and E.L.C. was found guilty of homicide by vehicle and the other charges. Thus, the court denied the motion to waive jurisdiction.

The State sought discretionary review, which our supreme court granted. On appeal, the State asserts that the district court abused its discretion in denying its motion to waive jurisdiction.

II. Scope of Review

Generally, we review juvenile proceedings de novo. *State v. Tesch*, 704 N.W.2d 440, 448 (Iowa 2005). However, we review a decision on whether a waiver of juvenile court jurisdiction is warranted for an abuse of discretion. *Id.*

“An abuse of discretion occurs when the court’s decision is based on grounds or reasons that are clearly untenable or unreasonable.” *Id.* We give weight to the juvenile court’s factual findings, especially when concerning the credibility of witnesses, but are not bound by them. *Id.*; see also *State v. Greiman*, 344 N.W.2d 249, 251 (Iowa 1984) (discussing that although we review a decision on waiver for an abuse of discretion, our review is de novo to the extent of examining all the evidence to determine whether the district court abused its discretion).

III. Waiver Proceeding

Pursuant to Iowa Code section 232.45(6), following a hearing the juvenile court may waive its jurisdiction over a child if the following criteria are met: (a) the child is fourteen years of age or older; (b) the juvenile court determines there is probable cause to believe the child committed a delinquent act, which would constitute a public offense; and

(c) The court determines that the state has established that there are not reasonable prospects for rehabilitating the child if the juvenile court retains jurisdiction over the child and the child is adjudicated to have committed the delinquent act, and that waiver of the court’s jurisdiction over the child for the alleged commission of the public offense would be in the best interests of the child and the community.

There is no dispute that E.L.C. was seventeen at the time she allegedly committed the delinquent acts and that there was probable cause that she committed the delinquent acts. Rather the juvenile court denied the State’s motion based upon the grounds of subsection (c). Iowa Code § 232.45(6)(c). In determining whether the State has met its burden on this prong, the juvenile court must consider:

(a) The nature of the alleged delinquent act and the circumstances under which it was committed.

(b) The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.

(c) The programs, facilities and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities and personnel which would be available to the court that would have jurisdiction in the event the juvenile court waives its jurisdiction so that the child can be prosecuted as an adult.

Id. § 232.45(8). Again, there is no dispute that E.L.C. was less than two weeks from her eighteenth birthday when she allegedly committed a serious crime that resulted in the death of a man. However, she has no prior contacts with the juvenile authorities. Once more, it is subsection (c) that is at issue.

The State asserts that the district court abused its discretion in denying its request for waiver because (1) the juvenile court did not give sufficient weight to E.L.C.'s age and the seriousness of the offense; (2) the juvenile court did not give sufficient weight to the JCO's recommendation of waiver; (3) adult court has more options and provides the better chance for rehabilitation; and (4) the juvenile court placed too much emphasis on the possibility of prison time. We first note that although E.L.C. does not have a criminal history, her age and the seriousness of the alleged offense weigh heavily in favor of waiver. *Greiman*, 344 N.W.2d at 251 ("While [her] minimal contacts with authorities prior to this incident militate against waiver, the nature of the act weighs strongly in favor of waiver."). Additionally, the JCO's recommendation of waiver should be given significant weight. See *id.* (stating that the juvenile court probation officer's opinion should be entitled to considerable weight).

Next, we examine what the record reveals as to the differences between the juvenile and adult systems. *Id.* (stating the statute requires weighing of the prospects for rehabilitation offered by the juvenile and adult systems). If the juvenile court retains jurisdiction, due to E.L.C.'s age, she would only be subject to probation for a period of eighteen months. JCO Hawkins mentioned in his report that services available would be court supervision, tracking and monitoring, and counseling. Services beyond E.L.C.'s eighteenth birthday could include therapy or out-patient treatment, but Hawkins did not believe she needed either. If she were to violate probation, the only remedy would be a contempt proceeding, possibly resulting in jail time. However, if the juvenile court waived jurisdiction, Hawkins noted other options are available, including the Youthful Offender's Program. This program allows first-time offenders who are charged with a felony to plead guilty to a non-felony charge and, in most cases, receive a deferred judgment.² The duration of probation under this more intense program may last up to five years and include education and employment requirements, additional services, and programming. If an offender fails to complete the program, she is prosecuted for the initial offense for which she was charged. Although prosecution is available should E.L.C. fail in the Youthful Offender's Program, any probation failure of E.L.C. and subsequent repercussions are purely speculative.

² The Youthful Offender Program is geared toward first-time felons ages sixteen to twenty-one. Under the program, an offender is released on a pre-trial status and required to complete all program requirements, which may take six months to two years. The program requirements may include maintaining employment and obtaining a high school diploma. Once the offender has completed the program requirements, the felony charge is dismissed and the offender pleads guilty to a non-felony charge and, in most cases, is granted a deferred judgment and placed on formal probation.

In weighing the services offered by the juvenile system and the adult system, we agree with the State that in this case, the juvenile system provides fewer options and for a shorter time frame than the adult system, particularly in light of the Youthful Offender Program. Under that program, E.L.C. would be required to obtain her high school diploma, maintain employment, and receive counseling. She would also be required to complete driver's education classes and obtain her driver's license. Additionally, the duration of probation would allow her more time to mature, which was specifically mentioned by Dr. Webb as something E.L.C. would benefit from. Dr. Webb testified that E.L.C. needed supervision by someone whose rules she would follow, but did not know if it would be in E.L.C.'s best interests if she continued under the supervision of her parents, which testimony indicated would occur if E.L.C. remained in the juvenile system. Additionally, the JCO testified that he felt the serious nature of the offense as well as the death of another warranted both appropriate consequences and services, which would be better provided for in the adult system.

Furthermore, we find that the juvenile court failed to weigh the programs available in the juvenile and adult systems. See *Greiman*, 344 N.W.2d at 251 (stating the statute requires weighing of the prospects for rehabilitation offered by the juvenile and adult systems). Although presented with testimony regarding the Youthful Offender program, the juvenile court found that "there had been mention about a Youthful Offender Program. That has not been disclosed to this judge as an option in this circumstance." The JCO specifically testified that although not under his control, the Youthful Offender Program was an option if

E.L.C. was waived into adult court. The juvenile court placed emphasis on the possibility of E.L.C. facing prison time if simply tried and convicted in adult court rather than the possibility of being admitted into the Youthful Offender Program.

As the JCO carefully noted in his written report:

What is the best way to meet society's need to feel safe and know that our members are going to be held accountable for their actions and, how is this young woman best served in the court system for a series of immature, disobedient and reckless acts that resulted in a death?

This Officer cannot honestly state that there are any reasonable prospects of rehabilitating this child if returned to Juvenile Court nor am I comfortable stating that it is in [E.L.C.'s] best interest to be waived to the Adult Court. My problem with both options is that there is no middle ground. It is either all or nothing. To keep jurisdiction with the Juvenile Court means that [E.L.C.] could never be held accountable for violations of her probation without first being found in contempt of court. On the other hand if jurisdiction is waived to the Adult Court there are no guarantees that she would not spend time in prison. Nevertheless, due to the seriousness of the charge combined with [E.L.C.'s] age at the time of the offense I feel that I am left with only one option [Waiver.]

On our de novo review of the entire record, we find the juvenile court abused its discretion in concluding the State failed to meet its burden of proof that waiver to the adult system was not in E.L.C.'s or the community's best interests. Therefore, we reverse and remand.

REVERSED AND REMANDED.

Miller, J. concurs. Sackett, C.J. dissents.

Sackett, C.J., (dissenting)

I would affirm. Both the juvenile court officer and the juvenile court weighed all options and reached reasonable but different conclusions in this case where there are no clear answers. The juvenile court officer is charged with making a recommendation to the juvenile court and the juvenile court is charged to making the decision whether or not to transfer. The juvenile court clearly considered the recommendation of the juvenile court officer, but for reasons clearly articulated in its order the juvenile court did not accept the juvenile court officer's recommendation. I do not believe the juvenile court abused its discretion.