

IN THE COURT OF APPEALS OF IOWA

No. 3-745 / 12-1315
Filed September 5, 2013

**IN THE INTEREST OF T.H.,
Minor Child.**

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A teenager appeals a juvenile court order adjudicating him a delinquent, contending the court abused its discretion in failing to suspend the adjudication and enter a consent decree. **REVERSED AND REMANDED.**

Jane M. White of Jane M. White Law Office, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee State.

Considered by Eisenhauer, C.J., and Vaitheswaran and Doyle, JJ.

VAITHESWARAN, J.

A teenager appeals a juvenile court order adjudicating him a delinquent. He contends the court abused its discretion in failing to suspend the adjudication and enter a consent decree.

I. Background Proceedings

T.H. was the subject of a child-in-need-of-assistance proceeding initiated when he was a toddler. Both his parents' rights were terminated. Following termination, T.H. was placed in the custody of the Department of Human Services and spent time in various foster homes and residential facilities. The department retained custody, and T.H. remained a child-in-need-of-assistance.

When T.H. was fourteen, the State filed delinquency petitions alleging he committed four counts of assault against employees of the Iowa Juvenile Home where he was living. T.H. admitted to three of the assaults and, at his request, adjudication on the petitions was withheld.

At a subsequent dispositional hearing, T.H.'s attorney asked the juvenile court to withhold adjudication and enter a consent decree. The assistant county attorney said she did not object, if that was what the court wished to do.

The court did not enter a consent decree. The judge stated he had reviewed a recent Iowa Court of Appeals opinion, *State v. Iowa Dist. Ct.*, No. 11-2031, 2012 WL 2122619 (Iowa Ct. App. June 13, 2012), and "after such review in light of facts of this case, . . . determined he did not have authority to enter consent decree in this case." The court filed a delinquency disposition order adjudicating T.H. a delinquent. T.H. appealed.

II. Analysis

T.H. contends that the juvenile court abused its discretion in refusing to enter a consent decree pursuant to Iowa Code section 232.46(1) (2011). That provision states in pertinent part:

At any time after the filing of a petition and prior to entry of an order of adjudication pursuant to section 232.47, the court may suspend the proceedings on motion of the county attorney or the child's counsel, enter a consent decree, and continue the case under terms and conditions established by the court.

Iowa Code § 232.46(1). If the child does not comply with the terms and conditions of the consent decree, the child may be “held accountable as if the consent decree had never been entered.” *Id.* § 232.46(5). If the child does comply with the decree, the original petition cannot be reinstated, and any delinquent act alleged in the petition cannot be used as a basis to proceed against the child. *Id.* § 232.46(5)–(6).

As noted, the juvenile court's refusal to enter a consent decree was premised on an opinion of this court. After the court filed its dispositional order, the Iowa Supreme Court took further review of the opinion and filed *State v. Iowa District Court*, 828 N.W.2d 607 (Iowa 2013).

In *Iowa District Court*, as in this case, the State alleged that a child committed a delinquent act. 828 N.W.2d at 609. Unlike this case, the child was removed from the family home rather than an institution. *Id.* The district court issued a consent decree, withholding adjudication of delinquency and ordering the child placed in a group foster care facility. *Id.* at 610. On appeal, the State argued that the court did not have authority to place the child outside the home pursuant to a consent decree. *Id.* at 611. The supreme court agreed, holding

that section 232.46 “does not authorize a juvenile court to change temporary custody, send a child to a residential facility, and require State payment.” *Id.* at 617.

The court’s holding, however, was narrow. The court declined the State’s invitation to rule that residential treatment may never be ordered under a consent decree. *Id.* The court stated that authority to enter the order pursuant to section 232.46 was absent only where residential treatment required a change of custody. *Id.* at 617 n.7. The court reasoned that (1) none of the terms and conditions set forth in section 232.46 involved a change of placement or custody, (2) there was no legal mechanism to fund a residential placement entered pursuant to a consent decree, (3) the time limits for complying with the terms and conditions in section 232.46 were inconsistent with placement at a residential facility, (4) the statutory structure, when compared with a similar provision in the child-in-need-of-assistance portion of the statute, suggested that the child was to remain with the parent, (5) precedent supported this reading, and (6) the child’s reading of the statute would allow a child to “be taken away from his or her parents without the parents’ consenting to the action or even having an opportunity to be heard.” *Id.* at 612–16. The court emphasized that placement of the child outside the home could be accomplished through other means, including a child-in-need-of-assistance proceeding. *Id.* at 617.

As T.H.’s attorney points out, this case is distinguishable in one key respect: T.H. was a child in need of assistance at the time the delinquency petitions were filed and, from the age of three, had been in the custody of the Iowa Department of Human Services rather than his biological family. While his

placement was slated to change, his custody was not. Indeed, a juvenile court officer who prepared a pre-dispositional report noted that juvenile court services was working “co-jointly” with the department to ensure an expeditious placement of the child. She recommended that the child “*remain* in the custody and guardianship of the Department of Human Services for placement commensurate with his needs.” (emphasis added.) She also recommended that the case “be supervised by [the department] and monitored by Juvenile Court Services and come for review in six months in conjunction with the CINA proceedings.” Because T.H. was already in the department’s custody at the time of the dispositional hearing and a payment mechanism through the department was already in place, the rationale supporting the holding of *Iowa District Court* is inapplicable.

We conclude the juvenile court had the discretion to consider suspending adjudication and filing a consent decree. The court, believing its hands were tied by our opinion, failed to exercise that discretion. See *Lawson v. Kurtzhals*, 792 N.W.2d 251, 257 (Iowa 2010) (“A court abuses its discretion when it fails to exercise any discretion.” (quoting *State v. Hager*, 630 N.W.2d 828, 836 (Iowa 2001))). Accordingly, we reverse the dispositional order and remand for consideration of whether a consent decree is warranted.

REVERSED AND REMANDED.