IN THE COURT OF APPEALS OF IOWA

No. 3-233 / 12-1641
Filed April 24, 2013

IN THE INTEREST OF J.L.W.,
Minor Child,

J.L.W., Minor Child,
Appellant.

Appeal from the Iowa District Court for Carroll County, James McGlynn, District Associate Judge.

A juvenile appeals the juvenile court's order adjudicating him delinquent. **AFFIRMED.**

Martha A. Sibbel of Law Office of Martha Sibbel, P.L.C., Carroll, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John Werden, County Attorney, and Tina Meth-Farrington, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

MULLINS, J.

This appeals arises from the juvenile court's order adjudicating J.L.W., a minor, delinquent after finding he committed the offense of forgery, in violation of Iowa Code section 715A.2(1)(b) (2011). In his appeal, J.L.W. argues the court erred by (1) finding sufficient evidence of his intent to defraud, (2) changing the burden of proof in a nunc pro tunc order, and (3) placing him in the custody of the juvenile court services for placement in a day treatment program. We affirm the juvenile court's orders.

I. BACKGROUND FACTS AND PROCEEDINGS.

The facts of the case are largely undisputed. J.L.W. drove his friend, B.H., to see B.H.'s girlfriend. While there, B.H. had his girlfriend fill out a blank check B.H. had taken from his grandmother. The girlfriend made the check payable to B.H. in the amount of $300 and then signed B.H.'s grandmother's name. J.L.W. then drove B.H. to J.L.W.'s bank. Because B.H. did not have a bank account, B.H. signed the check over to J.L.W., who then cashed the check in the drive-through of his bank. The money was used to put gas in J.L.W.'s truck and B.H.'s four-wheeler, and to finance a trip to Grimes and Des Moines later that day. B.H.'s grandmother's checkbook was later found in the glove compartment of J.L.W.'s truck.

At the adjudicatory hearing, B.H. and J.L.W. testified that J.L.W. did not know the check had been stolen and forged. B.H.'s girlfriend testified J.L.W. was outside of the truck on his cell phone when she wrote out the check while she was standing next to the passenger seat of J.L.W.'s vehicle. B.H. testified J.L.W.

stayed in the truck, and B.H. got out of the vehicle to have his girlfriend write out the check in the yard of the house. Officer March also testified at the hearing concerning her investigation, the statements taken from the juveniles, and the video recording from the bank drive-through.

The juvenile court found J.L.W. participated in the forgery by "clear and convincing evidence," adjudicating J.L.W. delinquent. Prior to the disposition hearing, the court issued a nunc pro tunc order stating it intended to say in the order that it found guilt "beyond a reasonable doubt" rather than by clear and convincing evidence. The court thereby amended and corrected its prior order to show it adjudicated J.L.W. based on the beyond-a-reasonable-doubt standard. At the dispositional hearing, the court again confirmed the correct burden of proof and found placement in either of J.L.W.'s parents' homes was not viable a option. It also determined placement in the high impact residential program was not the least restrictive disposition. It therefore ordered J.W.L. to participate in the day treatment program, but because of the distance to the facility, the court ordered custody of J.L.W. to be placed in the juvenile court services for placement in a shelter or foster care location near the day treatment program. The court also ordered the case to be automatically dismissed when J.L.W. turned eighteen, which occurred approximately three months after the dispositional hearing. From this order, J.L.W. appeals.

II. SCOPE AND STANDARD OF REVIEW.

The State argues for the adoption of a new standard of review, similar to the standard used in adult criminal proceedings. This request has recently been

addressed and rejected by our supreme court in *In re A.K.*, 825 N.W.2d 46, 52 (Iowa 2013). We continue to review delinquency proceedings de novo. *In re C.L.C, Jr.*, 798 N.W.2d 329, 334–35 (Iowa Ct. App. 2011). "We give weight to the factual findings of the juvenile court, especially regarding the credibility of witnesses, but we are not bound by them." *A.K.*, 825 N.W.2d at 49. The child is presumed innocent, and the State has the burden of proving the juvenile committed the delinquent act beyond a reasonable doubt. *Id*.

III. SUFFICIENCY OF THE EVIDENCE.

J.L.W. first challenges the sufficiency of the evidence with respect to his intent to defraud, an element of forgery under Iowa Code section 715A.2. *See State v. Calhoun*, 559 N.W.2d 4, 6 (Iowa 1997) (listing the elements of forgery as, "the defendant: (1) made, completed, executed, or transferred a writing purporting to be the act of another who did not authorize the act, and (2) with the specific intent to defraud or injure another person or financial institution or knew his act would facilitate a fraud or financial injury").

At the conclusion of the adjudicatory hearing, the court found on the record:

> I just, [J.L.W.], I cannot comprehend how—I just can't see any way that you weren't involved with this. You might want to put a spin on it, but here you are, you provided the wheels to get to [B.H.'s girlfriend] to get that check filled out, you provide the endorsement on the check so that it gets cashed, and then the checkbook ends up in your glove box and you enjoy the fruits of the theft, gas in your car, a night down in Des Moines and to compare a check of $300 to the occasional $5 and $10 that grandma might have given to [B.H.], this is more and so different that all the time you're driving across town to [B.H.'s girlfriend's] and across to your bank with the plans to go with the proceeds, it's just too much for me to believe that you had no involvement.

> . . . [W]ithout your help, without your assistance in getting over to [B.H.'s girlfriend's], getting to the bank, your bank, the crime would not have occurred, so I believe you are guilty of this offense and I am going to enter an order of adjudication, [and] set the disposition.

In the adjudicatory order, the juvenile court found:

> Although [J.L.W.] admits his actions, his receipt of some of the proceeds of the forgery and his possession of the remaining stolen checks in the glove box of his truck, he denies that he knowingly participated in the forgery. The court is not required to determine which of the accomplices is the most responsible for the crime because all participants of a criminal offense are equally responsible. [J.L.W.]'s role was crucial in the completion of this crime. He provided not only the transportation for [B.H.] but the means of tendering the check. [B.H.] could have tried cashing the check at the bank which issued the checking account, Carroll County State Bank, but certainly must have feared the forged check might not have been accepted by the Carroll County State Bank. Although [J.L.W.] would have the court believe that he knew nothing of what was transpiring, it is obvious to the court that [B.H.] and [J.L.W.] must have discussed the matter.

Intent is seldom capable of direct proof. *State v. Kirchner*, 600 N.W.2d 330, 334 (Iowa Ct. App. 1999). "Intent may be shown by circumstantial evidence and the reasonable inferences drawn from that evidence." *State v. Acevedo*, 705 N.W.2d 1, 5 (Iowa 2005). As stated above the evidence showed J.L.W. transported B.H. to B.H.'s girlfriend's location and then transported B.H. with the forged check to the bank—J.L.W.'s bank. B.H. signed over the check to J.L.W., who endorsed it, in order to get cash from the bank based on J.L.W.'s account. The evidence showed that J.L.W. knew B.H.'s grandmother had given B.H. money in the past but only five or ten dollars cash. J.L.W. had never seen her give B.H. a check, let alone a check in the amount of $300. B.H. and J.L.W. used the money to put gas in J.L.W.'s vehicle to drive to Des Moines. The court

was not required to believe J.L.W.'s or B.H.'s testimony that J.L.W. did not know of the forged nature of the check, and clearly the court did not. We give weight to the juvenile court's determinations of credibility. *See A.K.*, 825 N.W.2d at 49. We find sufficient evidence of J.L.W.'s intent to defraud in this case.

IV. NUNC PRO TUNC.

J.L.W. claims the juvenile court erred when it changed its adjudicatory order's recitation of the burden of proof from clear and convincing to beyond a reasonable doubt by using a nunc pro tunc order. He claims the nunc pro tunc order was the improper method to correct this error.

A nunc pro tunc order is used to make "the record show now what was actually done then." *In re Marriage of Bird*, 332 N.W.2d 123, 124 (Iowa Ct. App. 1983). "Its purpose is 'to make the record show truthfully what judgment was actually rendered.'" *Id*. (citing *Gen. Mills, Inc. v. Prall*, 56 N.W.2d 596, 600 (Iowa 1953)).

> Factors to be considered when evaluating the propriety of a nunc pro tunc order include: (1) intent of the trial judge; (2) whether the mistake is an "evident mistake;" and (3) the time elapsed from the original judgment to the application for a nunc pro tunc order. "Whether there was a 'mistake' depends ultimately upon judicial intention; whether the record is 'evidently' at odds with that intention, is likewise dependent, the dependency in both instances being proportionate to the required quantum of proof."

Id. (citations omitted). The court in its written nunc pro tunc order indicated it "intended" to state guilt was found beyond a reasonable doubt. On the record before the dispositional hearing the court stated:

> In reviewing the file, I mentioned this to counsel before coming in, I realize that I misspoke when I dictated the Order of adjudication and even reading it over the day I signed it, I missed

> the burden of proof, of course, in a delinquency case is proof beyond a reasonable doubt and inadvertently, I cannot explain, but inadvertently I referred to the clear and convincing standard, which applies in child in need of assistance cases, but it was then and continues to be the Court's finding that the State had proved its case against [J.L.W.] by proof beyond a reasonable doubt, so I have already issued a Nunc Pro Tunc Order correcting that mistake and tried to explain what that pleading is all about and why it was necessary, so that is the Court's finding that error was made by this Court, but the Court's intention throughout was to find guilt beyond a reasonable doubt.

Counsel for J.L.W. did not object to the court's use of the nunc pro tunc order at this hearing and raises it for the first time on appeal. Despite the error preservation concerns, we address the merits of the claim. Clearly the judge's intent here was for the record to reflect that he found J.L.W. delinquent based on the beyond-a-reasonable-doubt standard. He corrected the record to make it reflect his intention, both in writing and in open court with the parties present. We see no error in the use of the nunc pro tunc order to accomplish this correction.

V. DISPOSITION.

Finally, J.L.W. asserts the juvenile court erred when it ordered his placement in shelter or foster care with his attendance at the day treatment program. He claims the juvenile court should have granted his request for probation and placement in his grandmother's home. He also claims the juvenile court failed to make a finding that further reasonable efforts were not required to prevent his removal from his mother's home.

The disposition order provided the case would be automatically dismissed without the need for a further hearing as of J.L.W.'s eighteenth birthday—

December 19, 2012. At that time, "all parties, counsel, and JCS would be relieved from further responsibilities." We acknowledge a juvenile's eighteenth birthday does not automatically make an appeal of a delinquency case moot. *See In re Matzen*, 305 N.W.2d 479, 482 (Iowa 1981). In fact, under Division III above, we addressed J.L.W.'s challenge to the sufficiency of the evidence as to the adjudication. However, J.L.W.'s eighteenth birthday raises the question as to whether his claim that the juvenile court erred in not awarding him probation and in not ordering his placement with his grandmother is moot. *See In re Rousselow*, 341 N.W.2d 760, 763-64 (Iowa 1983) (finding a claim challenging the adjudication was not moot but concluding the claim challenging the dispositional order was moot due to the dismissal of the case on the minor's eighteenth birthday).

An issue is moot "when judgment, if rendered, will have no practical legal effect upon the existing controversy." *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 679 (Iowa 1998). Here, J.L.W.'s request for probation and placement in his grandmother's home would have no effect on J.L.W. at this time since he has already been released from his obligation to attend the day treatment program by virtue of his eighteenth birthday. Any relief we could award J.L.W., assuming for the sake of argument that we could find an error, would be meaningless. *See Rarey v. State*, 616 N.W.2d 531, 531 (Iowa 2000) (finding a postconviction relief action was moot where the defendant had discharged his sentence and his claim sought the restoration of good-conduct and jail-credit time); *State v. Wilson*, 234 N.W.2d 140, 141 (Iowa 1975) (holding a defendant's request to have work

release privileges reinstated was rendered moot by his release from jail). While the adjudication order has lasting effects after a juvenile turns eighteen, the same cannot be said for the disposition order in this case. *See Rousselow*, 341 N.W.2d at 763-64. We therefore find J.L.W.'s claim regarding the disposition ordered by the juvenile court moot, and we find no exception to the mootness doctrine in this case. *See Rhiner v. State*, 703 N.W.2d 174, 176–77 (Iowa 2005) (articulating an exception to the mootness doctrine to be "where matters of public importance are presented and the problem is likely to reoccur . . . particularly when the challenged action is such that the matter would be often moot before it reaches appellate review").

Because we find based on our de novo review of the record that no error exists in the juvenile court's orders, we affirm the adjudication and find J.L.W.'s claim regarding the disposition order moot.

AFFIRMED.