

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 KJ 1253

STATE OF LOUISIANA

IN THE INTEREST OF D.S.

Judgment Rendered: DEC 23 2014

On appeal from the
Juvenile Court

In and for the Parish of East Baton Rouge
State of Louisiana

Docket Number 2011 JU 60433 Div. "B"

Honorable Pamela Taylor Johnson, Judge

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D.S.

BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

GUIDRY, J.

The state previously filed a petition (number 105173) alleging that D.S., a fifteen-year-old child, should be adjudicated delinquent and/or in need of supervision based upon the commission of second degree battery, a violation of La. R.S. 14:34.1 (count one), and negligent injuring, a violation of La. R.S. 14:39 (count two). He denied each allegation of the petition. After two continuances - one requested by the child and one requested by the state - the state moved for a third continuance. When the juvenile court denied this motion, the state dismissed the petition.

Subsequently, the state filed two new petitions alleging that D.S. should be adjudicated delinquent and/or in need of supervision based upon the commission of simple battery, a violation of La. R.S. 14:35 (petition number 105878); second degree battery, a violation of La. R.S. 14:34.1 (petition number 105879, count one); and negligent injuring, a violation of La. R.S. 14:39 (petition number 105879, count two). The child filed a motion to dismiss, alleging that the state failed to comply with the time limitations of La. Ch. C. art. 877. Following a hearing, the juvenile court granted the child's motion to dismiss. The state now appeals, alleging that the juvenile court erred in granting the child's motion to dismiss. For the following reasons, we affirm the juvenile court's ruling.

PROCEDURAL HISTORY

The state filed petition 105173 on October 2, 2013. The petition alleged that the child committed second degree battery and negligent injuring on September 27, 2013. The record is unclear as to when the child denied the allegations in the petition, but the state's brief represents that the child's denials occurred on October 10, 2013, at which time an adjudication hearing was set for December 11, 2013. On October 22, 2013, the child filed a motion for discovery and motions to suppress physical evidence and statements. On December 11, 2013, the child

appeared for a hearing on his motions to suppress and his adjudication hearing, but he requested a continuance due to his mother's illness. The juvenile court granted that continuance and reset the suppression and adjudication hearings for February 20, 2014.

At the hearing on February 20, 2014, the state moved for a continuance over the objection of the child's counsel. The juvenile court granted that request for a continuance and reset the suppression and adjudication hearings for March 13, 2014. On March 13, 2014, the state moved for a continuance to receive medical records, but the child's counsel objected due to time limitations. The juvenile court denied the state's motion for a continuance. At that time, the state dismissed the petition.

On April 8, 2014, the state filed two new petitions - numbers 105878 and 105879 - alleging D.S. to be delinquent and/or in need of care. The state now concedes that the allegations in these petitions arise from the same occurrence and set of facts for the allegations in petition 105173. On June 18, 2014, the child filed a motion to dismiss, alleging that the time limitations for adjudication had passed. Following a hearing, the juvenile court granted the child's motion to dismiss. The juvenile court filed extensive written reasons for this ruling into the record.

ASSIGNMENT OF ERROR

In related assignments of error, the state alleges that the juvenile court erred in granting the child's motion to dismiss. Specifically, the state argues that the child's preliminary motion filings suspended the time limitations of La. Ch. C. art. 877. Further, the state contends that the juvenile court erred in not recognizing its right to file a new petition pursuant to La. C. Cr. P. art. 576.

If a child is not continued in custody, the adjudication hearing shall commence within ninety days of the appearance to answer the petition. See La. Ch. C. art. 877(B). If the hearing has not been commenced timely, upon motion of

the child, the court shall dismiss the petition. See La. Ch. C. art. 877(C). For good cause, the court may extend such period. See La. Ch. C. art. 877(D).

Where procedures are not provided in the Children's Code, or otherwise by law, the court shall proceed in accordance with the Code of Criminal Procedure in a delinquency proceeding and in a criminal trial of an adult. See La. Ch. C. art. 104(1). Where procedures are not provided in Title VIII of the Children's Code (relative to delinquency proceedings), the court shall proceed in accordance with the Code of Criminal Procedure. See La. Ch. C. art. 803. The Code of Criminal Procedure states that when a defendant files a motion to quash or other preliminary plea, the running of the periods of limitation established by Article 578 shall be suspended until the ruling of the court thereon; but in no case shall the state have less than one year after the ruling to commence the trial. See La. C. Cr. P. art. 580(A). Under certain circumstances, the Code of Criminal Procedure allows for reinstitution of prosecution following the dismissal of a prosecution where the state can show that the dismissal was not for the purpose of avoiding the time limitation for commencement of trial under Article 578. See La. C. Cr. P. art. 576.

The state contends that the Children's Code lacks specific provisions to address interruption and suspension of time limitations, so the juvenile court should have applied the language of La. C. Cr. P. art. 580(A) to suspend the time limitation to proceed with adjudication. In addition, the state argues that under La. C. Cr. P. art. 576, it had the right to reinstitute proceedings after it dismissed the initial petition.

The Supreme Court has previously found that there is a fundamental difference between the Code of Criminal Procedure and the Children's Code in the area of time limitations for commencement of trial. See State in Interest of R.D.C., Jr., 93-1865 (La. 2/28/94), 632 So. 2d 745, 748. Under the Code of Criminal Procedure, the time limits for commencement of trial may only be interrupted or

suspended for specifically enumerated reasons set forth in La. C. Cr. P. arts. 579 and 580, and there is no mechanism for the trial judge to extend the time limits for good cause. Therefore, the Code of Criminal Procedure gives the state the option of dismissing and re-filing its charges in those instances when it can make a showing that the dismissal was not for the purpose of avoiding the time limitation for commencement of trial. See La. C. Cr. P. art. 576. By contrast, the Children's Code builds in a mechanism in La. Ch. C. art. 877(D) for the state to obtain an extension of the time limits to commence the adjudication hearing by making a showing of good cause. Under this article, there is no need for the state to dismiss and then justify its re-filing after the period has run; rather, it is incumbent on the state to make a showing of good cause and obtain an extension before the period has run. In the event that a good cause extension is not granted and the period runs out, the state may not re-file its petition. Otherwise, the good cause requirement of La. Ch. C. art. 877(D) would be rendered meaningless, since the state could always circumvent an adverse decision by simply dismissing and re-filing the petition. R.D.C., Jr., 632 So.2d at 748.

In juvenile proceedings, the scope of review of this court extends to both law and facts. See La. Const. art. V, § 10(B); State in the Interest of D.F., 08-0182, p. 5 (La. App. 1st Cir. 6/6/08), 991 So. 2d 1082, 1085, writ denied, 08-1540 (La. 3/27/09), 5 So. 3d 138. In the state's initial filing of petition number 105173, the child answered the petition on or about October 10, 2013. He was not in continued custody, so the adjudication hearing should have been commenced within ninety days of that date. See La. Ch. C. art. 877(B). Applying the formula for computation of time set forth in La. Ch. C. art. 114, the adjudication hearing should have been commenced by January 10, 2014. The child filed his pre-adjudication motions on October 22, 2013, and these motions and his initial adjudication hearing were timely set for December 11, 2013. On that date, the

child moved for a continuance due to his mother's illness, and the juvenile court reset the motion and adjudication date for February 20, 2014. The record indicates that on February 20, 2014, the state requested – and was granted – a continuance until March 13, 2014; the child's counsel objected to this continuance. The minutes for March 13, 2014, reflect that the state "motioned for a continuance to receive medical records," with another objection from the child's counsel. The juvenile court denied the state's motion, and the state dismissed the petition.

As the Supreme Court stated in R.D.C., Jr., 632 So.2d at 748, the Children's Code expressly allows the state to seek an extension of the time limitations upon a showing of good cause. Therefore, there is no need to refer to the provisions of the Code of Criminal Procedure in this case; the state had to rely upon a showing of good cause to justify any requested extensions of the time limitations. The state contends that failing to apply La. C. Cr. P. art. 578 could lead to absurd scenarios in which a child could avoid adjudication by failing to appear, by filing a motion for competency, or by entering a plea of insanity, all of which might stymie the adjudication process beyond the ninety-day period. However, each of those posited scenarios would certainly constitute "good cause" to extend the time limitations for adjudication, and the latter two situations come with delays expressly provided for by the Children's Code. See La. Ch. C. arts. 832, et seq.; La. Ch. C. art. 869, et seq.

The state also argues that the child's unresolved motions to suppress should automatically suspend the time limitations for adjudication. As support for this contention, the state cites dicta from R.D.C., Jr., wherein the Court wrote that the state might have been entitled to "a suspension of time for the approximately twenty days it took to satisfy the child's Brady motion." See R.D.C., Jr., 632 So. 2d at 749, n.10. Nonetheless, the Court further explained that the state must raise such a ground in the lower court as a possible basis for a good cause extension.

See R.D.C., Jr., 632 So. 2d at 749 n.10. Here, the minutes reflect only that the state filed a continuance “to receive medical records,” and the state did not designate a transcript from the March 13, 2014 hearing as part of its instant appeal. If the state experienced difficulty in preparing for either the motion or adjudication hearing as a direct result of the child’s motions to suppress, it should have so informed the court at the time of its request for a continuance. However, we note that the initial petition was filed on October 2, 2013, and the child filed his pre-adjudication motions on October 22, 2013. Therefore, the state was plainly aware of the existence of these motions for nearly the entire duration of the matter.

Regardless of the state’s reasons for seeking the March 13, 2014 continuance, it was incumbent upon the state to show good cause at that time. See La. Ch. C. art. 877(D). When the juvenile court denied the state’s motion, it implicitly found no good cause for an extension. At that time, the state could have sought review of the juvenile court’s decision by application for supervisory writs, but it chose not to do so. Because the state failed to timely seek review of that matter, it cannot be reviewed at this time, and we must accept the juvenile court’s implicit conclusion that there was no good cause for an extension on March 13, 2014. See R.D.C., Jr., 632 So. 2d at 748.

When, on April 8, 2014, the state filed petitions 105878 and 105879 – which it admits are based upon the same occurrence as petition 105173 – it clearly did so after the juvenile court had found no good cause for an extension of the time limitation to commence the adjudication hearing in petition 105173. Under La. Ch. C. art. 877(D), the state is not permitted to dismiss its petition and then justify its re-filing after the period has run. Where a good cause extension is not granted and the period runs out, the state may not re-file its petition. Otherwise, the good cause requirement of La. Ch. C. art. 877(D) would be rendered meaningless, since

the state could always circumvent an adverse decision by simply dismissing and re-filing the petition. See R.D.C., Jr., 632 So. 2d at 748.

Based on the record as a whole, we find that the juvenile court did not err or abuse its discretion when it granted the child's motion to dismiss the petitions in 105878 and 105879. Those petitions were clearly filed after the time limitation for commencement of the child's adjudication hearing, and the state had failed to show good cause to the juvenile court for an extension of the time limitation. Once the state dismissed its initial petition after the juvenile court's finding of no good cause, it was not permitted to re-file petitions based upon the same alleged occurrence.

AFFIRMED