

STATE OF MICHIGAN
COURT OF APPEALS

In re SLADE PHILIP LASPINA, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

SLADE PHILIP LASPINA,

Respondent-Appellant.

UNPUBLISHED
December 19, 2019

No. 346684
Ottawa Circuit Court
Family Division
LC No. 16-000060-DL

Before: METER, P.J., and O’BRIEN and TUKEL, JJ.

PER CURIAM.

In this sexual-misconduct case, respondent appeals as of right the Ottawa Circuit Court family division’s (the family division) decision to waive jurisdiction of this case to the adult criminal division of the circuit court (the circuit court). We affirm.

I. BACKGROUND

Respondent is accused of sexually touching the four-or-five-year-old¹ sister of his childhood friend when respondent was 14 years old. The alleged inappropriate touching, however, was not reported for several years, until just over one month before respondent’s 18th birthday. The complainant reported that, while both were clothed, respondent “put his pee pee up her” “butthole.” In an interview with police officers, respondent eventually admitted that he had rubbed the complainant’s vagina for 10 to 15 seconds over her underwear when she was four years old; respondent, however, denied exposing himself or penetrating the complainant.

¹ The record is unclear as to exactly how old the complainant was at the time of the alleged offense.

Eventually, the prosecution charged respondent with committing second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(a). Although respondent was over the age of 17 at the time the prosecution filed the charges, because the charges related to conduct that occurred when respondent was 14 years old, the case was assigned to the family division. Respondent waived his probable-cause hearing, and the prosecution moved the family court to waive jurisdiction over respondent to the circuit court, where respondent could be tried as an adult.

The family division opined that it was in a difficult position because respondent was over 18 years old at the time the charges were filed; accordingly, the family division could either waive jurisdiction or would have to drop the case because it could not exercise continuing jurisdiction over a non-juvenile. The family division opined that the serious sexual crime deserved full adjudication and waived its jurisdiction to the circuit court. This appeal followed.

II. ANALYSIS

Respondent argues that the family division erred by waiving jurisdiction to the circuit court. We review the family division's decision on a motion to waive jurisdiction for an abuse of discretion. *People v Fultz*, 453 Mich 937, 937; 554 NW2d 725 (1996). The family division abuses its discretion when it chooses an outcome outside the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). The family division's factual findings are reviewed for clear error, which occurs when this Court is left with a definite and firm conviction that a mistake has been made. MCR 3.902(A); MCR 2.613(C); *In re Bibi Guardianship*, 315 Mich App 323, 329; 890 NW2d 387 (2016).

The family division was correct that respondent's age presented it with a unique choice between dismissing the case and waiving jurisdiction to the circuit court. The family division has original jurisdiction in all actions involving a juvenile between the ages of 14 and 17 who has been charged with committing, among other crimes, CSC-II. MCL 712A.2(a). The family division also has jurisdiction over a non-juvenile, *inter alia*, who is charged after he reaches the age of 17 with committing an offense before that age. See MCL 712A.3(1). "However, such jurisdiction shall be for the limited purpose of holding a waiver hearing pursuant to MCL 712A.4." *People v. Schneider*, 119 Mich App 480, 486; 326 NW2d 416 (1982). If the family division does not waive jurisdiction, it must dismiss the case. *Id.* at 487.²

MCL 712A.4 authorizes the family division to waive its jurisdiction to the circuit court if it determines that the "best interests of the juvenile and the public would be served by granting a waiver of jurisdiction." MCL 712A.4(4). In making this determination, the family division must weigh the following criteria:

² MCL 712A.2a(5) authorizes the family division to exercise *continuing* jurisdiction over a juvenile within its jurisdiction until the juvenile reaches the age of 19. This continuing jurisdiction, however, requires that the juvenile first come within the family division's jurisdiction before the juvenile's 17th birthday. MCL 712A.2a(5), MCL 712A.2(a), (b). Because respondent was older than 17 at the time the charges were filed, respondent was ineligible for continuing jurisdiction.

- (a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.
- (b) The culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.
- (c) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.
- (d) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.
- (e) The adequacy of the punishment or programming available in the juvenile justice system.
- (f) The dispositional options available for the juvenile. [MCL 712A.4(4).]

The family division must give "greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other criteria." MCL 712A.4(4).

With regard to the first criteria, the "seriousness of the alleged offense in terms of community protection," the family division found that respondent's alleged crime was serious and could have significant consequences for the complainant in the future. The complainant's father reported that the complainant was upset by the event and attended counseling as a result, but was otherwise doing fine. Although the complainant seems to have recovered from the assault, there can be no doubt that a sexual assault of a 4-year-old is a serious crime, one for which the consequences to complainant may not be apparent for many years. Accordingly, we agree with the family division that this factor weighed in favor of waiving jurisdiction.

Regarding the second criteria, "[t]he culpability of the juvenile in committing the alleged offense," including participation in planning and other factors considered by the guidelines, the family division noted that respondent had acted alone without apparent prior planning. It concluded that this factor did not increase the severity of the offense or weigh in favor of waiver. We agree with the family division that this factor was inconsequential. The third factor considers "[t]he juvenile's prior record of delinquency." Here, respondent did not have any significant prior juvenile issues, so we also agree with the family division that this factor did not favor waiver.

The fourth criteria is "[t]he juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming." The record discloses that a clinical assessment indicated that respondent was not at a serious risk for reoffending, that the offense was likely the product of curiosity rather than deviancy, and that respondent was remorseful for his actions. The family division concluded that this factor did not

favor waiving its jurisdiction and we, again, agree. There is no indication in the record that respondent was not willing to take responsibility for his actions or engage in rehabilitative measures, if any were needed.

Regarding the fifth and sixth criteria—respectively, “[t]he adequacy of the punishment or programming available in the juvenile justice system,” and “[t]he dispositional options available for the juvenile”—because of respondent’s age, the family division was without authority to authorize programming or punishment in the juvenile system. Therefore, the family division was without any option to meaningfully address the alleged crime. Accordingly, the family division determined that these factors strongly favored waiving its jurisdiction to the circuit court, and, given the severity of the offense—particularly its sexual nature and the fact that the complainant was a young child—we agree.

The family division emphasized the contrast between respondent’s lack of any prior delinquency and the seriousness of his sexual-misconduct. Despite the fact that this alleged offense appeared to be an isolated incidence of misconduct, the family division determined that waiver of its jurisdiction was in the best interests of the public and respondent. We are unable to find any error in this conclusion.

Respondent argues that the waiver in this case was improperly granted entirely on the basis of his age and the charge against him, rather than his conduct. We disagree. Respondent’s age did, in fact, set up the dismiss-or-waive dichotomy in this case; yet, this is the exact dichotomy set forth by the legislature, and respondent has not put forth any challenge to the Legislature’s framework on appeal. The family division must address the case presented to it and has no authority to act outside its jurisdiction. Regarding the charges against respondent, we agree with respondent that the Legislature did not render CSC-II an automatic-waiver charge. See MCL 712A.2(a)(1) (authorizing the prosecution to file charges directly in the circuit court for certain enumerated crimes). Yet, the fact that CSC-II is not an automatic-waiver charge does not detract from the seriousness of the offense.

Respondent argues that it is not in “the best interest of the juvenile” to send him to the circuit court “to proceed on a 15 year felony.” We reiterate that the relevant consideration on a motion to waive jurisdiction is whether the “best interests of the juvenile *and* the public would be served by granting a waiver of jurisdiction.” MCL 712A.4(4) (emphasis added). While avoiding penalty entirely would surely benefit respondent, the family division must weigh both respondent’s interests and the interests of the public in deciding whether to waive jurisdiction. Given these commensurate considerations, we are not left with a definite and firm conviction that the family division erred by waiving its jurisdiction. While we recognize that respondent was a juvenile at the time of the alleged offense, does not appear to be a risk for re-offense, and has not had any other significant incidents of delinquency, we agree with the family division that serious sex crimes, such as the one that respondent was charged with committing, deserve adjudication on the merits rather than cursory dismissal. Requiring respondent to answer for his conduct was in both his and the public’s best interests and the only options available to accomplish this end were in the circuit court. Accordingly, we are not left with a definite and firm conviction that the family division erred by waiving its jurisdiction. *Fultz*, 453 Mich at 937.

Affirmed.

/s/ Patrick M. Meter
/s/ Colleen A. O'Brien
/s/ Jonathan Tukel