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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0651**

In the Matter of the Welfare of:
N. J. S., Child.

**Filed November 20, 2017
Affirmed
Kirk, Judge**

Fillmore County District Court
File No. 23-JV-16-618

Cathryn Middlebrook, Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant N.J.S.)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Brett A. Corson, Fillmore County Attorney, Melissa Hammell, Assistant County Attorney, Preston, Minnesota (for respondent state)

Considered and decided by Florey, Presiding Judge; Rodenberg, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant-juvenile was found guilty of fifth-degree assault and adjudicated delinquent by the district court following a court trial. A separate disposition hearing was later held, at which time the court continued its prior order adjudicating the juvenile delinquent and issued a written disposition order indicating the same. The juvenile argues

that the district court failed to follow the rules of juvenile delinquency procedure and erred by denying him a stay of adjudication. Because the district court corrected the procedural error, and because the district court has broad discretion to decide whether or not to adjudicate a juvenile delinquent, we affirm.

FACTS

On July 22, 2016, stepbrother-victim J.A.B., then age 7, was visiting his father's home for the weekend, where appellant-juvenile N.J.S., then age 15, also lives. Victim's father is married to juvenile's mother. Victim and juvenile were home alone together. Victim was eating in the kitchen when juvenile turned on the gas stove, heated a spoon, and touched the spoon on victim's calf, causing victim pain and burning his leg. When victim returned to his mother's home on July 24, his mother noticed a significant burn mark on victim's leg and took him to Olmsted County Medical Center for treatment. Victim was diagnosed with a second-degree burn on his left lower leg (posterior calf).

A county child protection social worker spoke to victim on July 27 and to juvenile later that same day about the incident. Victim said that juvenile heated the spoon on the stove to make it hot, chased him, and then put the spoon on his leg. The social worker observed the burn mark. Juvenile initially told the social worker that he tripped and the spoon hit victim's leg. After further discussion, juvenile admitted to the social worker that he held the spoon on victim's leg. Juvenile also spoke to an investigator about the incident and initially told him that it was an accident. Juvenile changed his story a couple times before acknowledging that he chased victim around saying, "I'm gonna get you," and that

he intentionally touched the spoon on victim's leg. Juvenile said that he did not think the spoon was that hot.

On September 16, 2016, juvenile was charged by juvenile delinquency petition with two counts of assault, the first of which was dismissed for lack of probable cause.¹ Following a court trial on the remaining charge on February 7, 2017, the district court found juvenile guilty of fifth-degree assault—inflict or attempt to inflict bodily harm. In the February 8 posttrial order, the district court found that the fifth-degree assault charge was proved beyond a reasonable doubt, issued its guilty verdict, and made related factual findings.² In the same order, the court adjudicated juvenile delinquent for the offense, ordered a predisposition report, and scheduled a disposition hearing.

Community corrections subsequently submitted a predisposition report, which placed juvenile in a low-risk category to reoffend and recommended probation. The report emphasized that juvenile was 15-years-old at the time of the offense and that he exhibits functioning and behaviors consistent with those on the autism spectrum. The report also noted that juvenile had no criminal history, did fairly well in school, showed remorse for the incident, and engaged in therapeutic services prior to the disposition hearing.

¹ Juvenile was charged with third-degree assault—substantial bodily harm and fifth-degree assault—inflict or attempt to inflict bodily harm. On November 21, 2016, the court dismissed the third-degree assault charge because it found that the injury to victim did not constitute substantial bodily harm.

² Following the conclusion of a trial, Minn. R. Juv. Delinq. P. 13.09 provides that the district court has seven days to issue an order making a general finding of guilt and 15 days to make specific findings of fact to support the finding of guilt.

A separate disposition hearing was held on March 27, 2017, at which the district court heard juvenile's argument regarding both adjudication and disposition. At the hearing, the court denied juvenile's request for a stay of adjudication and continued its prior order adjudicating juvenile delinquent. On the record, the court imposed a disposition of supervised probation for an indeterminate time period with conditions. The court issued its written disposition order the same day, imposing juvenile's disposition, and again noting that juvenile was adjudicated delinquent.³ Juvenile appeals the district court's adjudication of delinquency and asks this court to reverse and remand for a new disposition hearing.

D E C I S I O N

I. The district court cured the procedural deficiency.

Juvenile argues that the district court failed to follow the rules of juvenile delinquency procedure by adjudicating him delinquent in the same February 8, 2017 order that found him guilty of fifth-degree assault, without holding a separate disposition hearing first. The state concedes that the district court erred in prematurely adjudicating juvenile delinquent in its February 8 order, but contends that any procedural error was corrected by the later March disposition hearing and disposition order. We agree.

We review the interpretation of procedural rules de novo. *Melillo v. Heitland*, 880 N.W.2d 862, 864 (Minn. 2016). Pursuant to the rules of juvenile delinquency procedure, once the court has found that the charge contained in the juvenile delinquency petition was proved beyond a reasonable doubt, the court must hold dispositional proceedings pursuant

³ Minn. R. Juv. Delinq. P. 15.02, subd. 2, provides that “[t]he [district] court shall enter a dispositional order . . . within three[] days of the disposition hearing.”

to rule 15. Minn. R. Juv. Delinq. P. 13.10. For each charge proved, the court must either: (A) adjudicate the juvenile delinquent pursuant to Minn. Stat. § 260B.198, subd. 1 (2016), or (B) continue the case without adjudication pursuant to Minn. Stat. § 260B.198, subd. 7 (2016). Minn. R. Juv. Delinq. P. 15.05, subd. 1(A), (B). The adjudication decision must be made “at the same time and in the same court order as the disposition.” *Id.*, subd. 1(B).

The district court enters a disposition order pursuant to rule 15.05 only after a disposition hearing. Minn. R. Juv. Delinq. P. 15.02, subd. 2. The disposition hearing must be a separate hearing where the juvenile and his counsel are present. Minn. R. Juv. Delinq. P. 15.04, subd. 1. The disposition hearing may take place immediately after the hearing in which the court finds that the charge was proved, or the court may continue the disposition hearing for a later time. Minn. R. Juv. Delinq. P. 15.02, subd. 1. Accordingly, the court’s adjudication decision under rule 15.05, subdivision 1(A) or (B), must take place at the same time and in the same order as the disposition, which the court may only issue after a separate disposition hearing has occurred.

Here, the district court did not follow the procedural timeline provided in the rules of juvenile delinquency procedure. The court prematurely adjudicated juvenile delinquent in its February 8 order before holding a separate disposition hearing, and did so in a different order than the disposition decision. However, the court scheduled a separate disposition hearing in its February 8 order, indicating that the required hearing would take place at a later date. The separate disposition hearing took place on March 27, and the court then issued its disposition order, which included the adjudication decision.

An order adjudicating a juvenile delinquent prior to disposition is ineffective and not appealable, and it only becomes appealable as part of a disposition once a disposition order is made. Minn. R. Juv. Delinq. P. 21.03, subd. 1(A)(3); *In re Welfare of G._(NMN)_M.*, 533 N.W.2d 883, 884 (Minn. App. 1995). Thus, the district court's February 8 order adjudicating juvenile delinquent did not become final or appealable until after the March 27 disposition hearing and resultant disposition order. *See* Minn. R. Juv. Delinq. P. 21.03, subd. 1(A)(3) (providing that a juvenile "may appeal . . . an adverse final order[,]") which includes "adjudication and disposition in delinquency proceedings[)").

At the March 27 hearing, juvenile's attorney acknowledged the court's unusual procedure and argued for a stay of adjudication. This was proper because the court's premature adjudication decision was not yet final or appealable pursuant to Minn. R. Juv. Delinq. P. 21.03, subd. 1(A)(3). The parties and community corrections presented arguments regarding both the adjudication and the disposition. After hearing these arguments, the court again adjudicated juvenile delinquent on the record, imposed a disposition, and issued its written disposition order accordingly. The record shows that the parties and the court treated the March 27 hearing as the separate disposition hearing required by the rules. Therefore, we conclude that the district court cured the procedural deficiency by later holding a separate disposition hearing as required by the rules, and thereafter issuing a disposition order, in which juvenile's adjudication of delinquency became final and appealable.

II. The district court did not abuse its discretion in adjudicating juvenile delinquent.

Juvenile argues that the district court erred in denying his request for a stay of adjudication and that the district court's disposition order must be reversed and remanded because the court failed to consider all of the factors relevant to a determination of necessity.⁴

“A district court has broad discretion in determining whether to continue an adjudication in a delinquency proceeding.” *In re Welfare of J.R.Z.*, 648 N.W.2d 241, 244 (Minn. App. 2002) (quotations omitted), *review denied* (Minn. Aug. 20, 2002). “When it is in the best interests of the child to do so and not inimical to public safety . . . the court *may* continue the case for a period not to exceed 180 days on any one order.” Minn. Stat. § 260B.198, subd. 7 (emphasis added); *see also* Minn. R. Juv. Delinq. P. 15.05, subd. 4. Section 260B.198, subdivision 7, does not require the district court to explain why an adjudication of delinquency is the least restrictive alternative (as opposed to a continuance). *In re Welfare of J.L.Y.*, 596 N.W.2d 692, 695 (Minn. App. 1999), *review granted* (Minn. Sept. 28, 1999) *and order granting review vacated* (Minn. Feb. 15, 2000). “Imposing an adjudication within the limits prescribed by the legislature is not an abuse of discretion.” *Id.*

Juvenile contends that the court was required to make the findings of necessity required under Minn. R. Juv. Delinq. P. 15.05, subd. 2(B)(1), in making its decision to

⁴ Although juvenile challenges the district court's disposition order, juvenile does not challenge the disposition decision itself.

adjudicate juvenile delinquent. But rule 15.05, subdivision 2(B)(1), requires the district court to consider the principle of necessity in issuing a proper *disposition*, not in making a decision to adjudicate a juvenile delinquent or to stay an adjudication of delinquency. Juvenile’s argument conflates the court’s adjudication decision with the court’s disposition decision. Although rule 15.05, subdivision 1, requires that the adjudication decision take place in the same order and at the same time as the disposition decision, the adjudication decision is not the disposition decision. *See* Minn. Stat. § 260B.198, subd. 1 (stating that if the court finds a juvenile delinquent, “it shall enter an order making one of the following dispositions . . .”).

Further, while the district court must make particularized findings for a *disposition*, there is no similar requirement for the court’s *adjudication* decision.

We find nothing in the statute that requires particularized findings on the court’s decision to impose or withhold adjudication of delinquency. The particularized findings, including the finding on the least restrictive means for restoring a juvenile to law-abiding conduct, are required in determining a disposition, but not when deciding whether to adjudicate or stay adjudication. The dispositions listed in subdivision 1 are separate from the subdivision 3 provisions allowing a court to continue an adjudication.

J.L.Y., 596 N.W.2d at 695.

Here, the error made in juvenile’s argument is similar to the error made by the juvenile in *J.R.Z.*, where this court found that the juvenile incorrectly argued that a district court’s decision to adjudicate must be the “least drastic step necessary to restore law-abiding conduct in the juvenile.” 648 N.W.2d at 245. We explained that, “[a]ppellant confuses the standard for staying *adjudication* with the standard for ordering a particular

disposition.” Id. at 245-46. Because the district court is not required to make any particularized findings about its adjudication decision, the only inquiry for this court on appeal is whether the district court abused its discretion in adjudicating juvenile delinquent.

The court’s February 8 order found juvenile guilty and initially adjudicated him delinquent without further explanation. Before continuing its decision to adjudicate juvenile delinquent on the record at the March 27 disposition hearing, the court noted that it relied on the information set forth at the adjudicatory hearing (the trial), and that it had previously found juvenile committed bodily harm against victim. The court also indicated that it was concerned that the incident had occurred. The court noted that it had to “weigh factors such as punishment, deterrence, rehabilitation, and what it’s going to take” and that the “[delinquency] disposition [was] required in the particular case.”⁵

Here, the court sat through the trial, was familiar with the case and juvenile, weighed the evidence and nature of the offense, and heard the arguments and recommendations from the parties and community corrections before deciding that a stay of adjudication was not appropriate. The court’s decision to adjudicate juvenile delinquent was an adjudication within the prescribed legislative limits, and based on this record we cannot conclude that the district court abused its discretion in denying juvenile’s request for a stay of adjudication.

Affirmed.

⁵ It appears that in passing the district court also conflated its decision to adjudicate juvenile delinquent with the disposition imposed following an adjudication or stay of adjudication of delinquency.