STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1137

In the Matter of the Welfare of: C.A.W., Child

Filed December 31, 2018
Affirmed
Reilly, Judge

Steele County District Court
File No. 74-JV-17-1468

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Daniel A. McIntosh, Steele County Attorney, Laura E. Isenor, Assistant County Attorney, Owatonna, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Schellhas, Judge; and Reilly, Judge.

U N P U B L I S H E D O P I N I O N

REILLY, Judge

Appellant challenges his delinquency adjudication for first-degree criminal sexual conduct, arguing that the district court (1) abused its discretion in conducting an inadequate competency hearing with the child complainant and (2) erred by refusing to continue the case without adjudication. We affirm.

FACTS

The state filed a juvenile delinquency petition alleging that appellant C.A.W. committed first-degree criminal sexual conduct against his four-year-old half-brother A.D.G. when A.D.G. was visiting their father's home on November 24 through 27, 2016. A.D.G. told his mother that appellant "put his mouth on my wiener" while they were showering one evening. After that weekend visit, A.D.G. refused to get undressed in front of other people and hid while changing his clothes. A.D.G.'s mother reported the crime to the police. During the investigation, A.D.G. told a case worker that appellant put his mouth on his "wiener" and that it "felt hot."

The defense challenged A.D.G.'s competency. The district court held a competency hearing to inquire whether A.D.G. could recall facts and know the difference between a truth and a lie. A.D.G. was five years old at the time of the hearing. The district court judge asked A.D.G. a series of questions and determined based upon A.D.G.'s answers that he was competent to testify.

The district court held a trial in April 2018. A.D.G. testified that appellant "put his mouth on my wiener" and stated that it felt "[b]ad." The court also heard testimony from A.D.G.'s mother, a child protection investigator trained in conducting forensic interviews with children, the Freeborn County Department of Human Services investigator, and the father. The child protection investigator testified that she conducted a forensic interview with A.D.G., who told her that it felt "hot" when appellant put his mouth on A.D.G.'s penis. The child protection investigator found A.D.G.'s comment "interesting" because "[f]or a four-year-old to be able to explain that a mouth on his wiener felt hot is something that you

wouldn't know until you've experienced it." The Freeborn County Department of Human Services investigator testified that she met with A.D.G. and his mother. During the conversation, A.D.G.'s mother told the investigator that the father "didn't believe [A.D.G.], and [A.D.G.] piped up and said, 'But I'm not lying.'" The district court also heard testimony from father, who testified in support of appellant. Father stated that all of his children have lied to him "[a]t some point or another," and testified that A.D.G. "likes to tell stories."

The district court found that the allegations were proven beyond a reasonable doubt. The district court adjudicated appellant delinquent and placed him on supervised probation for a period of two years, subject to a number of conditions. This appeal follows.

D E C I S I O N

I. Competency Hearing

Appellant argues that the district court abused its discretion by determining that A.D.G. was competent to testify. "Determination of witness competency rests in the discretion of the trial judge whose finding will not be reversed unless it is a clear abuse of discretion." *State v. Carver*, 380 N.W.2d 821, 824 (Minn. App. 1986), *review denied* (Minn. Mar. 27, 1986).

Minnesota law creates a rebuttable presumption that "[a] child under ten years of age is a competent witness unless the court finds that the child lacks the capacity to remember or to relate truthfully facts respecting which the child is examined." Minn. Stat. § 595.02, subd. 1(n) (2018). In assessing a child's competence, a district court considers whether the child has the capacity to tell the truth and the ability to recall facts. *State v.*

Sime, 669 N.W.2d 922, 926 (Minn. App. 2003). This is a general determination unrelated to the subject matter of the case, and "a child is not to be questioned about the specifics of the anticipated testimony" during the competency hearing. *State v. Scott*, 501 N.W.2d 608, 615 (Minn. 1993). Instead,

> questions at a competency hearing usually are limited to matters that are unrelated to the basic issues of the trial. Children often are asked their names, where they go to school, how old they are, whether they know who the judge is, whether they know what a lie is, and whether they know what happens when one tells a lie.

Id. (citing *Kentucky v. Stincer*, 482 U.S. 730, 741-42, 107 S. Ct. 2658, 2665-66 (1987)). "Where the court is in doubt as to the child's competency, it is best to err on the side of determining the child to be competent." *State v. Lanam*, 459 N.W.2d 656, 660 (Minn. 1990).

We discern no abuse of discretion in the district court's decision that A.D.G. was competent to testify. The district court judge asked A.D.G. his name, his age, where he lived, who lived in his home with him, the names of his parents, where he attended school, what grade he was in, whether he had a favorite toy, whether he had a favorite television show, and whether he had any pets. A.D.G. responded coherently to each question. The district court judge then turned to an examination of A.D.G.'s ability to distinguish between a truth and a lie. The district court judge asked A.D.G. if he knew the difference between a truth and a lie, and if he was "supposed to tell the truth." A.D.G. answered "yes" to both questions. A.D.G. testified that he would "get in trouble" if he told a lie, and that he would get a "[t]imeout." A.D.G. stated that his mother would not be happy if he told a lie. The

district court asked, "if I said that you . . . were ten years old and in the third grade, would that be true or a lie?" A.D.G. responded, "Lie."

Based upon this exchange, the district court found that A.D.G. was competent to testify because he had the "capacity to tell the truth" and "knew the difference between a truth and a lie." We agree. The district court judge posed questions to A.D.G. about his name, age, family members, home, schooling, and hobbies, as articulated by *Scott* and *Stincer*. A.D.G. answered the judge's questions and, at one point, corrected the judge when the judge misstated A.D.G.'s grade in school. The judge also asked A.D.G. whether he could distinguish between a truth and a lie. A.D.G.'s answers demonstrate that he appreciated the difference between a truth and a lie, and understood the negative consequences of lying.

Appellant argues that A.D.G. lacked an understanding of the consequences of lying under oath because a "timeout" is not the same thing as "bearing false witness in a court of law." This argument is not persuasive. A child is considered competent to testify when he knows that it is good to tell the truth, bad to tell a lie, and understands the difference between telling the truth and telling a lie. *See State v. Brovold*, 477 N.W.2d 775, 778-79 (Minn. App. 1991), *review denied* (Minn. Jan. 17, 1992). And "[a] child describing any act or event may use language appropriate for a child of that age." Minn. Stat. § 595.02, subd. 1(n). A.D.G.'s use of the word "timeout" to indicate that he understands the consequences of lying is appropriate, given his age.

Because the record supports the district court's determination that A.D.G. was competent to testify, we conclude that the district court did not abuse its discretion.

II. Disposition Hearing

Appellant argues that the district court abused its discretion by adjudicating him delinquent. "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) (quotation omitted), *review denied* (Minn. Aug. 20, 2002). On appeal, we will affirm the district court's disposition as long as it is not arbitrary. *In re Welfare of J.A.J.*, 545 N.W.2d 412, 414 (Minn. App. 1996).

"In delinquency cases, district courts have broad discretion to order dispositions authorized by statute." *In re Welfare of J.B.A.*, 581 N.W.2d 37, 38 (Minn. App. 1998), *review denied* (Minn. Aug. 31, 1998). A district court shall either "adjudicate the child delinquent" or "continue the case without adjudicating the child delinquent." Minn. R. Juv. Delinq. P. 15.05, subd. 1(A)(B). "The adjudication or continuance without adjudication shall occur at the same time and in the same court order as the disposition." *Id.*, subd. 1. The district court "may continue the case without adjudicating the child" if "it is in the best interests of the child and not inimical to public safety to do so." *Id.*, subd. 4(A). A district court is not required "to explain why an adjudication of delinquency is the least restrictive alternative." *J.R.Z.*, 648 N.W.2d at 245.

Here, the district court denied appellant's request to continue the case without adjudication and adjudicated appellant delinquent, stating:

> [T]he issue as I see it, it comes down to, do I grant the stay of adjudication here that's recommended. I understand the state's opposing it. The child and parents want it. But when you look at the standard, what's in the best interest of the child to do so, what's really in the best interest of the child is to get some

> therapy, get some understanding of sexuality, what's appropriate, what isn't.
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> . . . .
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> And so having a longer probationary term is in your best interest . . . not to just kind of close the book real fast and then have you untreated into the future.

Appellant argues that the district court's decision is arbitrary because it is contrary to probation's recommendation and is not in appellant's best interest. We acknowledge that probation recommended a continuance without adjudication because appellant had "no prior delinquency history" and "scored low risk to reoffend." But while the district court's decision is not necessarily what this court may have done, we are not the initial decision-maker and we review for an abuse of discretion. *See, e.g.*, *Wheat v. United States*, 486 U.S. 153, 164, 108 S. Ct. 1692, 1700 (1988) (explaining that a district court does not abuse its discretion just because another court "might have reached differing or opposite conclusions with equal justification"). The record does not reflect that the district court's decision to adjudicate appellant delinquent was arbitrary or constituted an abuse of the district court's broad discretion. We therefore affirm.

Affirmed.