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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0462**

In the Matter of the Welfare of:

D. T. S.

**Filed December 23, 2019
Affirmed
Cochran, Judge**

Steele County District Court
File No. 74-JV-19-6

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

Keith Ellison, Attorney General, St. Paul, Minnesota; and

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

Considered and decided by Bjorkman, Presiding Judge; Cochran, Judge; and Smith, John, Judge.*

UNPUBLISHED OPINION

COCHRAN, Judge

In this direct appeal from an adjudication of delinquency, appellant D.T.S. argues that the district court abused its discretion when it adjudicated him delinquent because the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

district court applied improper criteria and did not follow the recommendation of the parties to stay adjudication. Because the district court did not abuse its discretion, we affirm.

FACTS

When appellant D.T.S. was 17 years old and his girlfriend was 15 years old, they engaged in consensual sexual intercourse. At the time of the conduct, D.T.S. was 27 months older than his girlfriend. Respondent State of Minnesota charged D.T.S. with third-degree criminal sexual conduct (CSC) in violation of Minn. Stat. § 609.344, subd. 1(b) (2016).

D.T.S. admitted the allegations and pleaded guilty to the third-degree CSC charge in Blue Earth County. The case was transferred to Steele County for disposition. Before the disposition hearing, a predisposition investigation was conducted. The report recommended placing D.T.S. on probation and staying the adjudication.

During the disposition hearing, the district court heard from D.T.S., probation, and the state. All parties recommended that the court stay adjudication.

D.T.S. argued there were mitigating factors that supported a stay of adjudication including that this was his first offense and that the conduct was consensual. D.T.S. acknowledged that he was in the wrong and stated that he did not “feel like this [would] happen again.” D.T.S. also voiced irritation at being criminally charged for engaging in consensual intercourse. D.T.S. stated that he views consensual intercourse and nonconsensual intercourse differently, and that he is aware of another person who engaged in nonconsensual intercourse without facing any legal consequences.

The district court made several inquiries into how a stay of adjudication could benefit D.T.S. The probation officers recommended a stay of adjudication due to D.T.S.'s lack of criminal history, the circumstances of the case, and mental health factors. The state recommended the stay because of the unique facts of the case, the victim's view of the relationship, and D.T.S.'s cooperation throughout the proceedings and examinations. The state had concerns about D.T.S. dismissing the criminality of the conduct, but the state submitted that probation with treatment was the best option because probation officers would have "tight reigns on [D.T.S.]" and know right away if adjudication was necessary.

After hearing the parties' arguments, the district court was not convinced that staying the adjudication would protect the public. The court found it troubling that D.T.S. dismissed the CSC charge as non-criminal. Because of his attitude, the court found that D.T.S. is more likely to reoffend than an offender who recognizes the seriousness of his offense. The court also expressed concern about the parties' ability to monitor and rehabilitate D.T.S. if the court were to grant a stay of adjudication because the court's juvenile jurisdiction only extends until a juvenile's 19th birthday, which was less than five months away for D.T.S. The court found that five months was not long enough to effectively monitor D.T.S. because this "kind of behavior" does not get addressed quickly, and it takes "years of therapy and treatment" to overcome. Ultimately the court determined that predatory-offender registration was the best way to monitor D.T.S. past his 19th birthday. At the close of the hearing, the court found that, although there were mitigating factors, it was in both the public interest and D.T.S.'s interest that the court enter an adjudication.

This appeal follows.

D E C I S I O N

D.T.S. argues that the district court abused its discretion when it adjudicated D.T.S. because the court based its decision on improper criteria and because all parties recommended a stay of adjudication.

When facts in a petition have been admitted, a district court can either adjudicate the child delinquent or continue the case without adjudicating the child delinquent. Minn. R. Juv. Delinq. P. 15.05, subd. 1. The district court may stay adjudication “[w]hen it is in the best interests of the child to do so and not inimical to public safety and when the child has admitted the allegations contained in the petition.” Minn. Stat. § 260B.198, subd. 7 (2016). “[A] court shall adjudicate a child delinquent or continue the case without adjudication at the same time and in the same court order as the disposition.” *In re Welfare of J.R.Z.*, 648 N.W.2d 241, 244 (Minn. App. 2002) (quotation omitted), *review denied* (Minn. Aug. 20, 2002).

A district court has broad discretion in determining whether to stay adjudication in a delinquency proceeding. *Id.* at 245. The district court is not required to explain why an adjudication of delinquency is the least restrictive alternative. *In re Welfare of J.L.Y.*, 596 N.W.2d 692, 695 (Minn. App. 1999), *review granted* (Minn. Sept. 28, 1999) and *review dismissed* (Minn. Feb. 15, 2000). “Imposing an adjudication within the limits prescribed by the legislature is not an abuse of discretion.” *Id.*

D.T.S. first argues that the district court failed to properly assess the prescribed criteria for imposing a stay of adjudication. D.T.S. argues that the district court based its

decision on an improper understanding of law enforcement's ability to monitor D.T.S. once on the predatory-offender registry if adjudicated delinquent. But D.T.S. confuses the standard for staying adjudication with the standard for ordering a particular disposition. As noted above, the district court may stay adjudication "[w]hen it is in the best interests of the child to do so *and* not inimical to public safety and when the child has admitted the allegations contained in the petition." Minn. Stat. § 260B.198, subd. 7 (emphasis added). Here, the record reflects that the district court determined that concerns about reoffense and public safety weighed against a stay of adjudication when it decided to adjudicate D.T.S. The district court also considered D.T.S.'s interests. The reasons provided by the district court are sufficient to support the adjudication because particularized findings are not required when deciding whether to adjudicate or stay adjudication. *See J.L.Y.*, 596 N.W.2d at 695. Even assuming that the district court was incorrect in its understanding of the predatory-offender registration system, we conclude that the district court did not abuse its discretion because the district court appropriately considered public safety concerns and the risk of reoffense when it adjudicated D.T.S. delinquent.

Second, D.T.S. argues that the district court abused its discretion by denying D.T.S.'s request for a stay of adjudication when all of the parties recommended that the district court stay adjudication. As discussed above, a district court *may* choose to stay adjudication when doing so would be in the best interest of the child and a stay is not inimical to public safety. Minn. Stat. § 260B.198, subd. 7; Minn. R. Juv. Delinq. P. 15.05, subd. 4(A). As the state notes, these provisions are permissive, not mandatory. *See In re Welfare of S.L.J.*, 782 N.W.2d 549, 558 (Minn. 2010) ("[W]e are to interpret 'may' as

permissive” (citing Minn. Stat. § 645.44, subd. 15 (2008))). As a result, the district court was not required to stay adjudication simply because the parties recommended a stay.

Here, the district court found that a stay of adjudication was not supported by the record. The court recognized that there were “mitigating” factors, but found that the risk of reoffense was too great. Based on these findings, the court did not act arbitrarily when it determined that a stay of adjudication would not protect the public. *See In re Welfare of N.T.K.*, 619 N.W.2d 209, 211 (Minn. App. 2000) (stating that a district court abuses its discretion if it acts arbitrarily).

While a different court may have reached a different conclusion regarding whether to stay adjudication, on this record, we conclude that the district court did not abuse its broad discretion in adjudicating D.T.S.

Affirmed.