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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0579**

In the Matter of the Welfare of:
E. P. T., Child.

**Filed January 13, 2020
Affirmed
Jesson, Judge**

Mille Lacs County District Court
File No. 48-JV-18-2797
Stearns County District Court
File No. 73-JV-18-4295

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

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

Joseph J. Walsh, Mille Lacs County Attorney, Sarah E. Erickson, Assistant County Attorney, Milaca, Minnesota (for respondent county)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

A juvenile, who sexually abused his much younger sister and bribed her with candy to allow the abuse to continue, challenges the district court's decision to adjudicate him delinquent. Because the district court did not abuse its discretion in determining that

adjudication is in the juvenile's best interests and that he poses a risk to public safety, we affirm.

FACTS

Appellant E.P.T. was accused of sexually abusing his younger sister for about a year. His sister reported the abuse to a child-protection worker during an unrelated investigation. At the time, E.P.T. was about 13 or 14 years old and his sister was about five. E.P.T. spoke with police about the report and confessed many instances of sexual contact with his sister. The contact included E.P.T. touching his sister's unclothed vagina and buttocks with his mouth, hands, and erect penis. E.P.T. reported that his sister asked him to stop touching her. But he bribed her with candy to let him continue.

The abuse occurred while the parents and other family members were home, where they lived on the grounds of a community camp. E.P.T. was one of ten children in the family at the time of the abuse and the oldest of seven children living with their mother and father.¹

After investigating, police arrested E.P.T. and the state charged him with one count of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct.² After his release from custody, E.P.T.'s parents arranged for him to live indefinitely with family friends in another town and executed a delegation of parental authority.

¹ E.P.T.'s three older siblings lived together in the family's previous home.

² Under Minn. Stat. §§ 609.342, subd. 1(a), .343, subd. 1(a) (2016), respectively.

Six months after he was charged, E.P.T. pleaded guilty to second-degree criminal sexual conduct in exchange for the county dismissing the first-degree charge. He participated in several assessments, which were disclosed to the district court. And he continued attending outpatient therapy with his established therapist. E.P.T. started a sex-offender-treatment program but stopped after a month because his parents thought the programming was too difficult for him to understand.³ Later, E.P.T. started a different sex-offender-treatment program—intended for adolescents—and was doing well in it. That program generally includes nine to 12 months of outpatient programming and six months of aftercare.

After reviewing various professional evaluations of E.P.T. and considering their recommendations, probation submitted a predisposition report. The report recommended that E.P.T. be adjudicated delinquent, placed on indefinite probation, required to register as a predatory offender, and complete a sex-offender-treatment program.

At a disposition hearing, three months after E.P.T.’s plea, the district court heard arguments and testimony regarding both adjudication and disposition.⁴ His probation

³ Father explained that the program was developed for adult participants and was delivered unmodified to E.P.T. so it did not seem effective for his age. This opinion was bolstered by mother, who homeschools the children and has researched educational curriculum for that purpose.

⁴ Adjudication refers to whether the district court determines that the juvenile should be adjudicated delinquent or whether a continuance without adjudication is appropriate. Minn. R. Juv. Delinq. P. 15.05, subd. 1. Adjudication as a delinquent may subject the juvenile to longer-term court oversight than a continuance. *Compare* Minn. Stat. § 260B.198, subd. 7 (2016), *with* Minn. Stat. § 260B.193, subd. 5(a) (2016). And disposition is separate from adjudication. *See generally* Minn. R. Juv. Delinq. P. 15.05, subd. 1 (“The adjudication or continuance without adjudication shall occur at the same time and in the same court order as the disposition.”). A juvenile-delinquency disposition refers

officer and parents testified. The probation officer testified consistent with her predisposition report. She explained that she believed her recommendations were appropriate because of the seriousness of the offense, the duration and frequency of the abuse, the age of the victim, the impact on the victim, and the length of time needed for treatment. E.P.T.'s parents testified that they wanted to be proactive and keep everyone safe by having E.P.T. continue therapy and stay with the family friend indefinitely. And the parents explained that the children, including the victim, missed having E.P.T. in the home and that the victim was "doing very good." The district court also acknowledged that it reviewed the many assessments filed in the matter. Generally, the parties agreed as to the recommended disposition, but disagreed as to whether E.P.T. should be adjudicated delinquent, rather than be granted a continuance without adjudication.

The district court took the matter under advisement. At a subsequent disposition hearing, and in a written order, the district court denied E.P.T.'s request for a continuance and adjudicated him delinquent. In doing so, it concluded that adjudication was in his best interests and managed the risks to public safety. The district court also ordered E.P.T.'s disposition to include probation, registration as a predatory sex offender,⁵ completion of

to the requirements for rehabilitation that the offender must meet, and may include out-of-home placement and appropriate treatment. *See id.* at subd. 2; *see also* Minn. Stat. § 260B.198, subd. 1 (2016).

⁵ While the district court's order does not indicate for how long E.P.T. must register, we read the statute to require ten years of registration. *See* Minn. Stat. § 243.166, subd. 6(a), (d) (2016) (requiring an individual adjudicated delinquent for the relevant offenses to register for ten years unless the individual has been previously adjudicated for an offense requiring registration).

sex-offender treatment, and other conditions relating to contact with children. E.P.T. appeals.

D E C I S I O N

E.P.T. challenges the district court's order adjudicating him delinquent, arguing that the record lacked evidence that adjudication was in his best interests and that he posed a risk to public safety. We review a district court's determination of whether to continue an adjudication in a delinquency proceeding for an abuse of discretion. *In re Welfare of J.L.Y.*, 596 N.W.2d 692, 695 (Minn. App. 1999), *review dismissed* (Minn. Feb. 15, 2000). And district courts have broad discretion to decide whether to adjudicate. *In re Welfare of J.R.Z.*, 648 N.W.2d 241, 244 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

In a juvenile-delinquency proceeding, a district court has two options with regard to adjudication. It may adjudicate a juvenile delinquent or continue the case without adjudication. Minn. R. Juv. Delinq. P. 15.05, subd. 1. A court may continue without adjudication when it is in the best interests of the child and doing so does not harm public safety. Minn. Stat. § 260B.198, subd. 7(a); *see also* Minn. R. Juv. Delinq. P. 15.05, subd. 4(A). But in all other cases, the statute authorizes a district court to adjudicate the juvenile delinquent. *See* Minn. Stat. § 260B.198, subd. 7.

At the disposition hearing, E.P.T. argued for a continuance without adjudication, under rule 15.05. He explained this was appropriate because his parents were supporting his needs and protecting the victim, and he and the victim were doing well. The county argued against a continuance because of the seriousness of the crime, E.P.T.'s apparent minimization of his conduct in the evaluations, the anticipated length of his treatment

programming, and some concern that the family might pull E.P.T. from treatment early if he was no longer ordered by the court to participate. But the district court denied the request for a continuance and made explicit findings that adjudication was in E.P.T.'s best interests and mitigated safety risks to the public. In its conclusion, the district court summarized:

The lesser restrictive alternative of a stay of adjudication was considered and rejected primarily because it cannot meet the many needs of the [c]hild. Secondly, a stay of adjudication cannot reasonably assure the safety of the public. The [c]ourt concludes that in this case a stay of adjudication is inimical to public safety.

The record thoroughly supports the district court's conclusion. E.P.T. has significant ongoing mental-health needs and used grooming behaviors to continue abusing his sister and hide it for over a year. His five-year-old sister was particularly vulnerable.⁶ The abuse occurred in the family's home while his mother was in another room, which presents serious community protection concerns if he returns to his family without other precautions. And E.P.T. withdrew from the first sex-offender-treatment program over concerns it was too difficult. In light of these facts, the district court did not abuse its discretion in determining that adjudication is in E.P.T.'s best interests because it best serves his rehabilitation needs. And the facts the district court considered—the seriousness of the offense, his opportunistic conduct, the impact on the victim, and the culpability of E.P.T.—are all indicators that a continuance without adjudication would pose a risk to public safety.

⁶ We also note that the victim suffers from posttraumatic stress disorder and is in therapy because of the abuse.

Still, E.P.T. contends that the district court erred in its adjudication decision because it adopted the state's assertion that adjudication was necessary to ensure his completion of sex-offender treatment. Specifically, his treatment program was expected to take longer than a year and a continuance without adjudication is statutorily required to be shorter. *See* Minn. Stat. § 260B.198, subd. 7 (describing how a continuance without adjudication is limited to only two 180-day periods). But E.P.T.'s parents likely sparked this concern when they pulled him from his first treatment program after only a month of programming, deeming it too difficult for him. E.P.T. tried to assuage any fear that he may discontinue treatment again by noting that the family's involvement with child protection can provide oversight to ensure E.P.T. completes his program. But the purposes of delinquency and child protection are different and the family's continued child protection involvement is also not a certainty. And regardless of the concern about E.P.T. actually completing his programming, the district court did not solely base its adjudication decision on the length of time necessary for treatment.⁷

In sum, substantial evidence supports the district court's concerns for public safety and the child's best interests. Thus, E.P.T.'s statement that "no facts" in the record support a concern for public safety or the child's best interests is incorrect. Because E.P.T. did not meet the statutory criteria to justify a continuance without adjudication and the record

⁷ E.P.T. also criticized a deferential review of matters like this, contending that it is unfair for this court to "[abandon] any authority to review a district court's order refusing to stay adjudication." But while the abuse-of-discretion standard is deferential, it does not prevent our review.

contains evidence that supports the district court's conclusion, the court did not abuse its discretion in adjudicating E.P.T. delinquent.

Affirmed.