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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1749**

In the Matter of the Welfare of: T. B., Child.

**Filed July 27, 2020
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-JV-18-1365

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

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

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

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges the district court's decision to revoke his stay of adjudication and adjudicate him delinquent for third-degree criminal sexual conduct. Because we conclude that the district court did not abuse its discretion, we affirm.

FACTS

This case arises out of a juvenile delinquency petition. The petition alleged that in November 2017, appellant T.B. pushed his coworker into a bathroom, pulled down her pants and underwear, and forcibly inserted his penis into her vagina without her consent. Respondent State of Minnesota filed the petition in March 2018, charging appellant with third-degree criminal sexual conduct. At the July 2018 plea hearing, appellant entered a guilty plea and admitted to facts supporting a determination that he was guilty of the charged offense. The state agreed to a juvenile disposition. The district court stayed adjudication for 180 days to allow appellant to seek sex-offense-specific treatment in an outpatient program. Appellant began treatment in August 2018.

In September 2018, appellant assaulted a student at a restaurant by grabbing the back of the student's head and slamming it down on a table two or three times, causing a concussion. Appellant was cited for fifth-degree assault for this incident.

In October 2018, the parties appeared before the district court for a disposition hearing on the criminal-sexual-conduct charge. At the hearing, the state urged the district court to adjudicate appellant delinquent of the criminal-sexual-conduct charge based on the seriousness of that offense, appellant's behavior in the community after being placed on probation, his new fifth-degree-assault charge, and his lack of progress in treatment. Appellant's counsel requested a stay of adjudication. The district court denied the state's request and stayed adjudication for 180 days, as permitted under the statute. The district court indicated that it would set a return hearing date for approximately 90 days later to review appellant's progress and potentially continue the case for a longer period of time.

The district court ordered appellant, as a condition of the stay, to complete outpatient programming, including dialectical behavioral therapy (DBT) and aftercare. The district court also ordered appellant to follow the rules of probation, abstain from alcohol or drugs, remain law abiding, and attend school regularly. In March 2019, the district court held a review hearing and extended the stay of adjudication for another 180 days.

In August 2019, appellant caused a disturbance at a restaurant in the Mall of America and refused to leave. Mall security took appellant into custody and reported the incident to the police department. The police department issued appellant a citation for misdemeanor trespassing, refusing to depart. During the same time, appellant's therapist reported that appellant was not regularly attending treatment. The state moved to revoke appellant's stay of adjudication because he failed to complete treatment and failed to remain law abiding.

The district court held a three-day hearing on the state's revocation motion in September 2019. The district court heard testimony from appellant's juvenile probation officer, two police officers, the lead therapist at the treatment program, and a high school social worker. The probation officer testified that appellant had many unexcused absences from treatment and would not be able to complete the treatment program within the required timeframe, even with the previously granted extension. The lead therapist testified that appellant had several unexcused missed therapy sessions and would not be able to complete the aftercare services on time.

Following the hearing, the district court revoked the stay of adjudication and adjudicated appellant delinquent of third-degree criminal sexual conduct. The district court

determined that (1) there was clear and convincing evidence that appellant violated the conditions of his stay of adjudication by failing to participate fully in sex-specific treatment, DBT and aftercare, remain law abiding, and attend school regularly; (2) there was clear and convincing evidence that appellant's violations were intentional and inexcusable; and (3) there was clear and convincing evidence that appellant's best interests and public safety would be served by the disposition of adjudication. This appeal follows.

D E C I S I O N

District courts have “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). A district court abuses its discretion if its disposition is arbitrary or based on clearly erroneous factual findings. *In re Welfare of S.J.T.*, 736 N.W.2d 341, 346 (Minn. App. 2007), *review denied* (Minn. Oct. 24, 2007). A factual finding is clearly erroneous if there is no reasonable evidence to support it or if the reviewing court is “left with the definite and firm conviction that a mistake occurred.” *State v. Diede*, 795 N.W.2d. 836, 846-47 (Minn. 2011) (citation omitted).

For each proven charge in a delinquency petition, the district court shall either “adjudicate the child delinquent pursuant to Minnesota Statutes, section 260B.198, subdivision 1,” or “continue the case without adjudicating the child delinquent pursuant to Minnesota Statutes, section 260B.198, subdivision (7).” Minn. R. Juv. Delinq. P. 15.05, subd. 1. The district court may continue adjudication “[w]hen it is in the best interests of the child” and “the child has admitted the allegations contained in the petition.” Minn.

Stat. § 260B.198, subd. 7 (2018). The district court may also consider the protection of the public when determining whether to continue an adjudication. *J.R.Z.*, 648 N.W.2d at 246. “[A]djudication after initially granting a continuance without adjudication is a probation revocation proceeding” governed by Minn. R. Juv. Delinq. P. 15.07. *In re Welfare of J.S.H.-G.*, 645 N.W.2d 500, 504 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002). The district court may revoke a stay of adjudication based on clear and convincing evidence or the juvenile’s admission of a violation of the conditions of probation. Minn. R. Juv. Delinq. P. 15.07, subd. 4(D).

Following a three-day probation-revocation hearing, the district court determined that clear and convincing evidence supported revoking appellant’s stay of adjudication and adjudicating him delinquent because he committed three violations of the conditions of his stay. Specifically, appellant (1) failed to participate fully in sex-specific treatment, DBT, and aftercare; (2) failed to remain law abiding because he assaulted a student in September 2018, and received a citation for misdemeanor trespass in August 2019; and (3) failed to maintain regular attendance at school.

Appellant does not challenge these findings on appeal, which are amply supported by the record. The record establishes that appellant did not complete treatment. The lead therapist testified that appellant’s attendance at treatment was “[i]nconsistent,” and that he had 18 unexcused missed therapy sessions. The lead therapist testified that appellant would not be able to complete the full program or the aftercare services in the required timeframe. The juvenile probation officer testified that appellant “struggled with attendance” at

treatment and would not be able to complete the program and aftercare within the required timeframe, even with the previously-granted extension.

The record also supports the district court's determination that appellant failed to remain law abiding. A police officer testified that in September 2018, she cited appellant for fifth-degree assault for slamming another student's head into a table at a restaurant. The student suffered a concussion as a result of the assault. A second police officer testified that in August 2019, appellant caused a disturbance in a restaurant at the Mall of America, refused to leave, and received a misdemeanor trespassing citation.

Lastly, the record shows that appellant failed to maintain regular attendance at school. Appellant's mother unenrolled him from his first high school in September 2018. He did not reenroll in another school until November 2018. Appellant remained at his second high school from November 2018 to January 2019, when he unenrolled himself from the school. Appellant was an adult at the time he unenrolled from this school. Appellant did not reenroll in another high school until February 2019.

Appellant concedes that he "did not comply with all the required conditions," but argues that several factors mitigate against revocation. At a revocation hearing, a juvenile may present mitigating circumstances or other reasons why a probation violation "if proved, should not result in revocation." Minn. R. Juv. Delinq. P. 15.07, subd. 4(A). Appellant argues that revocation was inappropriate because juveniles are "categorically immature" and "less culpable" than adults. Appellant unpersuasively cites to *Graham v. Florida*, which held that the Eighth Amendment to the United States Constitution prohibits a life sentence without the possibility of parole for juveniles who commit nonhomicide

offenses. 560 U.S. 48, 74-75, 130 S. Ct. 2011, 2030 (2010). But the *Graham* decision does not prohibit a district court faced with clear and convincing evidence of a probation violation from adjudicating a juvenile delinquent, as is the case here. And even if mitigating factors were present and appellant was immature as a juvenile, “[i]mposing an adjudication within the limits prescribed by the legislature is not an abuse of discretion.” *J.R.Z.*, 648 N.W.2d at 245 (citation omitted).

Appellant also argues that the district court failed to “provide a reason specific to the juvenile’s situation as to why adjudication and registration [as a sex offender] was a valid exercise of discretion.” We disagree. The district court made extensive findings of fact that appellant failed to participate fully in a sex-specific outpatient treatment program, and that this failure was “intentional and not excusable.” The district court also determined that appellant failed to remain law abiding and attend school regularly. Based on these findings, which are supported by the record, the district court determined that “[p]ublic safety and [appellant’s] best interests are served by adjudication and the resultant registration requirement.” *See J.R.Z.*, 648 N.W.2d at 246 (recognizing that district court may consider protection of the public).

Testimonial evidence in the record, coupled with appellant’s own admissions, support the district court’s determination that appellant violated numerous conditions of his stay of adjudication. Appellant’s failure to fully complete his treatment, remain law abiding, and attend school regularly provides adequate grounds for revocation of his stay. Given this record, we conclude that the district court’s decision to revoke appellant’s stay

of adjudication and adjudicate him delinquent for third-degree criminal sexual conduct was within its broad discretion. For these reasons, we affirm.

Affirmed.