STATE OF MINNESOTA
IN COURT OF APPEALS
A10-932

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

Filed February 1, 2011
Affirmed in part, reversed in part, and remanded
Kalitowski, Judge

Olmsted County District Court
File No. 55-JV-09-8399

David W. Merchant, Chief Appellate Public Defender, Susan J. Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Mark A. Ostrem, Olmsted County Attorney, David F. McLeod, Assistant County Attorney, Rochester, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Lansing, Judge; and Huspeni, Judge.*

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

KALITOWSKI, Judge

Appellant M.M.B. contends that her juvenile-delinquency adjudication of aiding and abetting check forgery must be reversed because the state did not present sufficient evidence. Appellant also argues that the district court abused its discretion by imposing a

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

disposition without making the required findings. We affirm the adjudication but reverse and remand the disposition.

D E C I S I O N

I.

Appellant argues that the state failed to present sufficient evidence to sustain her delinquency adjudication of aiding and abetting check forgery. We disagree.

In a criminal case against a juvenile, the state is required to prove every element of the charged crime beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 368, 90 S. Ct. 1068, 1075 (1970). In reviewing a sufficiency-of-the-evidence claim, an appellate court considers whether the evidence and legitimate inferences from the facts proven permit the fact-finder, giving due regard to the presumption of innocence, to reasonably conclude that the defendant is guilty beyond a reasonable doubt. *State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010). This court views the record in the light most favorable to the determination and assumes that the fact-finder believed the testimony supporting the determination and disbelieved any contrary evidence. *In re Welfare of S.M.J.*, 556 N.W.2d 4, 6 (Minn. App. 1996). Bench trials are reviewed the same as jury trials when determining whether the evidence is sufficient to sustain a criminal conviction. *State v. Holliday*, 745 N.W.2d 556, 562 (Minn. 2008).

Appellant was charged with (1) offering a forged check, in violation of Minn. Stat. § 609.631, subd. 3 (2008); and (2) aiding and abetting check forgery, in violation of Minn. Stat. §§ 609.631, subd. 2(1), 609.05, subd. 1 (2008). Following a trial, the district court found appellant guilty of both counts.

A person is guilty of check forgery if she "with intent to defraud . . . falsely makes or alters a check so that it purports to have been made by another." Minn. Stat. § 609.631, subd. 2(1). A person is liable for a crime committed by another if she intentionally aids, advises, hires, counsels, conspires with, or otherwise procures another to commit the offense. Minn. Stat. § 609.05, subd. 1.

Appellant argues that the evidence was insufficient to sustain a conviction of aiding and abetting check forgery because she merely endorsed a check that had been made payable to her. We disagree because the district court specifically found that appellant's testimony concerning her role in the forgery was not credible and because other evidence shows that appellant was active in the forgery scheme.

At trial, an investigator from the Rochester Police Department testified that in February 2009 he learned that the New Richland State Bank was receiving checks that had been written on a closed account belonging to the victim, a former patron of the bank. The investigator subsequently identified appellant, the father of appellant's child (R.C.), and R.C.'s mother (A.L.) as suspects.

On March 20, 2009, the investigator conducted a recorded telephone interview with appellant concerning a check from the victim's account that had been deposited at the Kasson State Bank. The recording was introduced into evidence at trial. Appellant told the investigator that the victim had given her the check as payment for babysitting the victim's children. Appellant said she only babysat the children once, in early March 2009. When the investigator asked her why the check indicated that it was payment for babysitting on February 16 and 28, appellant said that it was a mistake. Later in the

interview, appellant stated that A.L. had actually given her the check and that the check was already made payable to appellant when A.L. gave it to her. Appellant, who was living in Rochester, Minnesota, at the time of the interview, told the investigator that she had gone to the Kasson State Bank to open an account because she was considering moving to Kasson, Minnesota, although she did not have a steady source of income or own a vehicle.

Appellant also testified at trial. Appellant denied telling the investigator that she babysat the victim's children, although the recorded telephone interview indicated otherwise. Rather, appellant explained, A.L. babysat the victim's children and gave appellant the $300 she had earned from babysitting for appellant to pay her rent. Appellant testified that she did not know why A.L. offered to drive appellant and R.C. to the bank in Kasson. Appellant testified that she opened an account at the Kasson State Bank in order to deposit the check.

Appellant testified that she did not see the check in question until she was at the Kasson State Bank with A.L. and R.C. Appellant testified that she assumed A.L. had told the victim to make the check payable to appellant because A.L. was going to help appellant pay her rent. But appellant also testified that the first time she told A.L. about her inability to pay rent was the day that they drove to Kasson.

The district court did not believe appellant's explanation of how she obtained the forged check. Assessing witness credibility and weighing the testimony of a witness is the exclusive province of the district court. *In re Welfare of A.A.M.*, 684 N.W.2d 925, 927 (Minn. App. 2004), *review denied* (Minn. Oct. 27, 2004). Witness credibility is "not

an issue for this court to consider on appeal." *State v. Garrett*, 479 N.W.2d 745, 747 (Minn. App. 1992), *review denied* (Minn. App. Mar. 19, 1992). The record supports the district court's statements that the explanation given by appellant "just makes no sense at all," and that the district court could not see how appellant "could possibly have been driving out there to Kasson thinking that this was all on the up and up."

Appellant argues that the evidence is insufficient because the state produced no evidence that she helped to obtain the victim's blank check, fill it out, or forge the victim's signature on the check. But the state produced other evidence to support the conclusion that appellant aided and abetted the check forgery. The check was made payable to appellant. Appellant went with A.L. to a bank in a different city, opened an account, and cashed the check as her only transaction on the account. And appellant used the money she acquired as a result of cashing the forged check to pay her rent.

We reject appellant's argument that *State v. Ulvinen*, 313 N.W.2d 425 (Minn. 1981), supports her insufficiency-of-the-evidence argument. In *Ulvinen*, the supreme court reversed a conviction because the state presented no evidence that the defendant did anything more than passively approve of a murder, which was not enough to sustain a conviction of aiding and abetting. 313 N.W.2d at 428. The supreme court reasoned that statutory language that includes terms such as "aids," "advises," and "conspires," requires more than "mere inaction to impose liability as a principal." *Id.*

Unlike *Ulvinen*, the evidence here shows that appellant was active in the check-forgery scheme. The forged check was made payable to appellant, and appellant anticipated receiving $300 from the forged check after she cashed it. In addition,

although appellant testified that she was not involved in the making of the check, the district court did not believe her. Furthermore, it is undisputed that appellant traveled to another city to open an account for the sole purpose of cashing the forged check.

We conclude that the evidence was sufficient to support appellant's conviction of aiding and abetting check forgery.

II.

Appellant argues that the district court abused its discretion in imposing the disposition because it did not make specific findings to support the disposition and failed to consider appellant's ability to pay restitution and a fine. We agree.

In juvenile matters, restitution is governed by both the general restitution statute, Minn. Stat. § 611A.04, subd. 1 (2008), and the restitution provision of the juvenile-delinquency statutes, Minn. Stat. § 260B.198, subd. 1(5) (2008). *In re Welfare of H.A.D.*, 764 N.W.2d 64, 66 (Minn. 2009). A district court may impose a wide variety of dispositions that it deems "necessary to the rehabilitation" of the juvenile, including restitution and up to a $1,000 fine. Minn. Stat. § 260 B.198, subd. 1(5)-(6) (2008).

Minn. R. Juv. Delinq. P. 15.05, subd. 2(B), requires that any disposition in a juvenile-delinquency case must be necessary for the rehabilitation of the child and in the child's best interests. Rule 15.05 also requires that the district court make written findings of fact to support its chosen disposition, including why it serves public safety and the child's best interests, what alternatives were presented, and why these alternatives were not appropriate. Minn. R. Juv. Delinq. P. 15.05, subd. 2(A)(1)-(2); *In re Welfare of J.L.Y.*, 596 N.W.2d 692, 696 (Minn. App. 1999) (stating that failure to make the required

findings is an independent basis for reversal), *review granted* (Minn. Sept. 28, 1999) *and appeal dismissed* (Minn. Feb. 15, 2000).

Here, the district court's dispositional order does not comply with rule 15.05 or Minn. Stat. § 260B.198, subd. 1(5). The district court made no written findings to support its disposition. The dispositional order consisted merely of a preprinted form indicating that appellant had been found guilty and out-of-home placement was not ordered. A sentence at the end of the form states: "The attached minutes are incorporated herein and made a part of this order." In *J.L.Y.*, this court considered the sufficiency of written findings on a similar preprinted form, which stated that the "facts, including why the disposition is in the child's best interest and what alternatives were considered but rejected, were 'contained in the transcript of these proceedings and incorporated herewith.'" *J.L.Y.*, 596 N.W.2d at 696. We concluded that although "in many cases the sound reasons for the disposition ordered are on the records . . . incorporating the entire transcript into the order does not satisfy the written-findings requirement." *Id.* The purpose of having written findings is: "(1) to guarantee that the [district] court consider the appropriate factors in reaching its decision; (2) to enable the parties to understand the [district] court's decision; and (3) to facilitate meaningful appellate review." *Id.*

The record indicates that the $300 in restitution ordered by the district court constitutes the value of the forged check and that the imposed fine of $500 represents $10 per hour for the 50 hours of community work service that the district court initially ordered, but appellant stated she did not want to do. But although the district court

acknowledged that appellant has a child to care and provide for, it did not indicate that it had considered appellant's ability to pay the amount ordered. And the district court made no written findings to satisfy the requirements of the statute and rule.

We therefore reverse appellant's disposition and remand to the district court to make specific, written findings to explain why the disposition is in appellant's best interests. *See* Minn. R. Juv. Delinq. P. 15.05, subd. 2(A)(1)-(2), 2(B). In addition, if the disposition on remand includes restitution and/or a fine, the district court must make findings concerning appellant's ability to pay.

Affirmed in part, reversed in part, and remanded.