



SUPREME COURT OF MISSOURI

en banc

IN THE INTEREST OF: J.T.J.,)
) No. SC99037
Appellant.)

Opinion issued December 21, 2021

APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY

The Honorable Sandra Farragut-Hemphill, Judge

J.T.J. appeals from the family court division’s¹ order for certification, which released and discharged him from the jurisdiction of the family court and allowed his case to be transferred to a court of general jurisdiction for trial as an adult. Requesting plain error review, J.T.J. argues that, because the allegations resulting in his certification were contained in a filing denominated a “motion to modify” as opposed to a “petition,” the transfer of jurisdiction resulted in manifest injustice. Although section 211.071² and Rule 129, the statute and corresponding rule governing the procedure for certification, reference a “petition,” J.T.J. was not prejudiced by the label of the filing in his case. This Court affirms the judgment.

¹ The “family court” in St. Louis County is designated as a division pursuant to section 487.010.1. The family court has exclusive original jurisdiction to hear and determine juvenile proceedings and all actions as provided for in chapter 211, the chapter governing juvenile courts. Section 487.080(4).

² All statutory references are to RSMo 2016, unless otherwise noted.

Background

In May 2018, the St. Louis County juvenile officer filed a petition in the family court alleging J.T.J., then 13 years old, committed second-degree burglary, first-degree property damage, and misdemeanor stealing. An amendment to the petition added two counts of being habitually absent from his home. Following an adjudication and dispositional hearing in June 2018, the family court took jurisdiction over J.T.J., placed him in the physical custody of his mother under the supervision of the juvenile officer, and referred him to several court programs. The family court continued jurisdiction at two subsequent review hearings.

In March 2019, the juvenile officer filed a motion, captioned “MOTION WITH HEARING TO MODIFY PREVIOUS ORDER OF DISPOSITION,” seeking modification of the prior dispositional order due to new allegations that J.T.J. committed the offenses of possession of a controlled substance and unlawful use of a weapon. Prior to the hearing on that motion, the juvenile officer filed two additional motions in April 2019. The first, an “AMENDMENT TO MOTION TO MODIFY,” alleged J.T.J. committed second-degree tampering. The second, “SECOND AMENDMENT TO MOTION TO MODIFY,” alleged three counts: first-degree murder; second-degree tampering; and resisting or interfering with arrest. Along with that motion, the juvenile officer filed a “MOTION TO DISMISS PETITION TO ALLOW PROSECUTION OF JUVENILE UNDER GENERAL LAW.” This motion referenced the accompanying “SECOND AMENDMENT TO MOTION TO MODIFY” and requested the family court conduct a hearing to inquire into whether J.T.J. was a proper subject to be dealt with under the provisions of the juvenile code. In May

2019, the juvenile officer filed another amended motion, “AMENDED MOTION TO DISMISS MOTION TO MODIFY AND SECOND AMENDMENT TO MOTION TO MODIFY PETITION TO ALLOW PROSECUTION OF JUVENILE UNDER GENERAL LAW.” The only substantive change from the prior motion to dismiss to allow prosecution under general law was that the allegations of possession of a controlled substance and unlawful use of a weapon, which were contained in the original motion to modify, were included along with the allegation of first-degree murder. A certification hearing was scheduled for July 2019, but the hearing was continued repeatedly.

In February 2020, the family court conducted the certification hearing. J.T.J. did not object to the family court’s authority to proceed with the certification hearing. Through the testimony of the deputy juvenile officer, the written certification report detailing the investigation conducted regarding J.T.J. was admitted. The final recommendation was that the court sustain the motion to dismiss to allow J.T.J. to be prosecuted under the general law. The deputy juvenile officer testified the alleged offenses were serious in nature and were part of a repetitive pattern of offenses. J.T.J.’s age, sophistication, and maturity were considered in the process of making the recommendation. The deputy juvenile officer opined that the programs and facilities available to the family court were not appropriate for J.T.J. J.T.J.’s attorney cross-examined the deputy juvenile officer; no evidence was presented on J.T.J.’s behalf.

The family court ordered J.T.J. transferred to the court of general jurisdiction. Its order indicated the certification hearing was called pursuant to section 211.071 and

specified the factors under that statute supporting why J.T.J. was not a proper subject to be dealt with under the provisions of the juvenile code.³

J.T.J. appeals.⁴

Standard of Review

“A judgment dismissing a juvenile from the juvenile division’s jurisdiction is final and appealable.” *D.E.G. v. Juv. Officer of Jackson Cnty.*, 601 S.W.3d 212, 218 (Mo. banc 2020). This Court reviews *de novo* the interpretation of Missouri statutes and rules of the Supreme Court of Missouri. *McGuire v. Kenoma, LLC*, 447 S.W.3d 659, 662 (Mo. banc 2014). The issue in this case – whether transfer of a juvenile to a court of general jurisdiction can be based upon a motion to modify a prior disposition made after the family court has asserted exclusive jurisdiction – is purely legal.

Analysis

In a single point, J.T.J. argues the family court erred in entering its certification order because neither section 211.071 nor Rule 129 permit the transfer of jurisdiction of a juvenile to allow prosecution under the general law upon the filing of a motion to modify. The juvenile officer argues this was a proper use of a motion to modify and that J.T.J. was not prejudiced.

Section 211.071.1 provides, in relevant part:

If a *petition* alleges that a child between the ages of twelve and seventeen has committed an offense which would be considered a felony if committed by

³ Section 211.071.6 contains 10 mandatory factors the court must consider in determining whether certification is appropriate.

⁴ After an opinion by the court of appeals, this Court granted transfer. Mo. Const. art. V, sec. 10.

an adult, the court may, upon its own motion or upon motion by the juvenile officer, the child or the child's custodian, order a hearing and may, in its discretion, dismiss *the petition* and such child may be transferred to the court of general jurisdiction and prosecuted under the general law; except that if *a petition* alleges that any child has committed an offense which would be considered first degree murder under section 565.020 ... the court shall order a hearing, and may in its discretion, dismiss *the petition* and transfer the child to a court of general jurisdiction for prosecution under the general law.

(Emphasis added). Likewise, Rule 129 repeatedly references the term "petition." *See, e.g.*, Rule 129.01 ("When *a petition* alleges that a juvenile has committed an act for which the juvenile may be transferred to a court of general jurisdiction to be prosecuted under general law, the court, at any time prior to commencement of the hearing on *the petition*, shall, when required by law, and may, upon its own motion or upon motion by the juvenile officer, the juvenile or the juvenile's parent, guardian or custodian, order that a hearing be held to determine in the discretion of the court whether the juvenile is a proper subject to be dealt with under the juvenile code." (emphasis added)).

Rule 113.01 sets forth the style and content of the petition in juvenile proceedings. The rule generally follows section 211.091. Rule 113.01b, which addresses the content of the petition, states:

The petition may be filed upon information and belief and shall set forth plainly, concisely, and with reasonable particularity:

- (1) the full name, birth date, and residence of the juvenile in whose interest the petition is filed;
- (2) the name and residence of:
 - (A) the juvenile's parents;
 - (B) the juvenile's legal guardian, if there is one;
 - (C) any person or agency with custody of the juvenile;
 - (D) the juvenile's nearest known relative, if no parent or guardian can be found; and
 - (E) the juvenile's spouse, if there is one;

- (3) the facts that bring the juvenile within the jurisdiction of the court, including the date, place and manner of the acts alleged, and the law or standard of conduct, if any, allegedly violated by the acts; and
- (4) any other pertinent data or information.

The original petition, filed in May 2018, contained each of these required elements. Pursuant to section 211.031.1(3), the family court was to have exclusive original jurisdiction over J.T.J. based on that initial petition. This petition was adjudicated in June 2018.⁵ Under section 211.181.3, the family court appropriately took jurisdiction over J.T.J. Once the family court entered its disposition, it could modify its decree on its own motion or a party can “petition the court for a modification of the order of custody.” Section 211.251.2.

Following the family court taking jurisdiction over the juvenile, neither a rule nor statute provides a straightforward method of adding additional offenses the juvenile may have committed that could or would necessitate a certification hearing. On the one hand, filing a new petition would be a redundant undertaking when the family court already has jurisdiction over the juvenile. On the other hand, section 211.071 and Rule 129 revolve around a “petition,” not any other filing. Elsewhere in the context of juvenile proceedings, statutes and rules explicitly refer to both a petition and, separately, a motion to modify. *See, e.g.*, section 211.061.3(2) (“An order to continue the child in detention shall only be entered upon the filing of a petition or motion to modify ...”); Rule 115.02c (“The court shall appoint counsel upon request for a juvenile prior to the filing of a petition or motion

⁵ The commissioner’s findings and recommendations were adopted and confirmed as a judgment in July 2018. *See* section 487.030.

to modify under subdivision (2) or (3) of subsection 1 of section 211.031”). Certification upon a motion to modify is not directly contemplated by the statutes or rules, which do not address motions to modify in the context of certification.⁶

Although the plain language of section 211.071 and Rule 129 state that a “petition” is required, J.T.J. did not object to the certification hearing premised on a motion to modify. As J.T.J. admits, the failure to object results in review only for plain error. “Plain errors affecting substantial rights may be considered on appeal, in the discretion of the court, though not raised or preserved, when the court finds that manifest injustice or miscarriage of justice has resulted therefrom.” Rule 84.13(c). Regardless of whether plain error existed in proceeding with certification based on a filing with a different label than specified under the rule or statute,⁷ relief under plain error review would require J.T.J. to “go beyond a mere showing of demonstrable prejudice to show manifest prejudice affecting his

⁶ Prior cases have recognized, in practice, that now motions to modify are used to do far more than merely modify the disposition made on the juvenile’s original adjudication of guilt in the case which initially brought the juvenile within the juvenile court’s jurisdiction.

Now, motions to modify are often also used to provide a forum for an adjudication of the juvenile’s guilt of additional crimes occurring while the juvenile was under the court’s jurisdiction.

C.L.B. v. Juv. Officer, 22 S.W.3d 233, 239 (Mo. App. 2000); *see also B.O. v. Juv. Off.*, 595 S.W.3d 506, 512-13 (Mo. App. 2020). These cases do not address certification.

⁷ The designation of a filing does not control its legal character. *See, e.g., Labrayere v. Bohr Farms, LLC*, 458 S.W.3d 319, 334-35 (Mo. banc 2015) (“The nature of an alleged cause of action is based on the substance of the pleading, not the title.”); *Weber v. Weber*, 908 S.W.2d 356, 359 (Mo. banc 1995) (“The legal character of a pleading is determined by its subject matter and not its designation to the extent that courts ignore the denomination of a pleading and look to its substance to determine its nature.”); *J. R. Watkins Co. v. Hubbard*, 343 S.W.2d 189, 195 (Mo. App. 1961) (“The legal character of a pleading is determined by its subject matter and not its designation.”).

substantial rights.” *State v. Johnson*, 524 S.W.3d 505, 513 (Mo. banc 2017) (quoting *State v. Winfield*, 5 S.W.3d 505, 516 (Mo. banc 1999)).

Given the family court’s continuing jurisdiction over J.T.J., the only relevant information to be gleaned from filing a new petition would have been the new allegations. In that regard, to bring the juvenile under the jurisdiction of the family court, Rule 113.01b(3) merely demands a basic summary of “the date, place and manner of the acts alleged, and the law or standard of conduct, if any, allegedly violated by the acts.” The juvenile officer’s motions to modify accomplished this.⁸ Because the family court already had jurisdiction, it would be illogical to require any information beyond this to allege an additional offense. Although J.T.J.’s counsel argued before this Court that a petition would require more specific facts than those contained in the motions presented to the family court, such argument is not supported by the applicable law.⁹

The label of the filing did not deprive J.T.J. of the protections afforded by the certification procedure in section 211.071 or Rule 129. J.T.J. received notice that a certification hearing would be held based on the amended motion to dismiss. *See* section 211.071.4; Rule 129.02. J.T.J. was represented by counsel. *See* section 211.071.7(2); Rule

⁸ Regarding the first-degree murder allegation, for example, the motion stated:

Said juvenile, contrary to Section 565.020.1 RSMo., did commit the class A felony of murder in the first degree in that on or about April 21, 2019, in St. Louis County, Missouri, said juvenile, acting with others, after deliberation, knowingly caused the death of [Victim] by shooting him in the chest with a glock semiautomatic pistol.

⁹ The comment to Rule 113.01 requires that, in alleging a violation of section 211.031.1(3), the alleged offense is to be stated substantially in the form of the Missouri Approved Charges-Criminal. As set forth in the prior footnote, the allegation here complied with the requirement.

129.04a. The allegations in the motion were specific to allow J.T.J. to prepare. *See* Rule 113.01b (requiring, for a petition, that “the date, place and manner of the acts alleged, and the law ... allegedly violated by the acts” be “set forth plainly, concisely, and with reasonable particularity”). The hearing was held in the presence of J.T.J. and J.T.J.’s counsel. *See* section 211.071.7(3). The court received testimony, in a hearing on the record, about whether J.T.J. was a proper subject to be dealt with under the juvenile code. *See* Rule 129.04b. His counsel cross-examined the deputy juvenile officer during her testimony. *See id.* J.T.J. was permitted to offer evidence, although he did not, and his counsel argued on his behalf against certification. *See id.* The court was provided with a written report pursuant to section 211.071.6, the section discussing criteria that must be considered by the court in determining whether the child is a proper subject to be dealt with under the provisions of the juvenile code. *See also* Rule 129.03. The certification order noted the factors discussed in that section—factors that were argued at the certification hearing. *See* section 211.071.7(4); Rule 129.04c, d. Notably, the allegation of first-degree murder weighed on several factors to be considered. *See* section 211.071.6(1)-(3). Although the filing with the new allegations may have been labeled as a motion to modify rather than a petition, nothing about the certification procedure, hearing, or judgment was affected by the title of the filing.¹⁰ Because J.T.J. fails to demonstrate prejudice, relief under plain error review is unavailable.

¹⁰ J.T.J. contends a motion to modify does not permit change of judicial officer as of right under Rule 121.02, whereas filing a new petition would. J.T.J. did not attempt to request a different judicial officer, and he was not prejudiced by the existence of this rule. Rule 121.02h states, “A change of judicial officer under this Rule 121.02 shall not be permitted

Conclusion

J.T.J. was not prejudiced by the label of the filing in his case, so relief under plain error review cannot be granted. The judgment certifying J.T.J. to the court of general jurisdiction is affirmed.

Robin Ransom, Judge

All concur.

in connection with ... a motion to modify a prior order of disposition under chapter 211 ... *unless* the designated judicial officer is not the judicial officer who conducted the hearing on the petition.” (Emphasis added). The judicial officer who conducted the hearing on J.T.J.’s petition was Commissioner Cunningham. The judicial officer in connection with the motion to modify was Judge Farragut-Hemphill. The proscription on a change of judicial officer for the motion to modify was not applicable under the circumstances.