2022 VT 36

No. 22-AP-074

In re D.K., Juvenile

Supreme Court

On Appeal from
Superior Court, Bennington Unit,
Family Division

July Term, 2022

Kerry Ann McDonald-Cady, J.

Jared C. Bianchi, Deputy State's Attorney, Bennington, for Appellant State.

Michael Rose, St. Albans, for Appellee Juvenile, and Allison N. Fulcher, Barre, for Appellee Mother.

PRESENT: Reiber, C.J., Eaton, Carroll, Cohen and Waples, JJ.

¶ 1. **WAPLES, J.** The State appeals the family division's denial of its request to extend an order placing seventeen-year-old D.K. in the conditional custody of his mother. We agree with the court's conclusion that it lacked authority to extend a conditional custody order (CCO) for a third six-month period under 33 V.S.A. § 5320a(a), and therefore affirm.

¶ 2. D.K. was born in September 2004. In August 2020, the State filed a petition alleging that D.K. was a child in need of care or supervision (CHINS) because he was "without or beyond the control of his parents" under 33 V.S.A. § 5102(3)(C). The affidavit supporting the petition alleged that D.K. had engaged in lewd and lascivious conduct with a four-year-old child

in April 2019. The State had previously filed a juvenile delinquency petition against D.K. based on the same conduct, which it dismissed in November 2020 after filing the CHINS petition.

¶ 3. In September 2020, D.K.'s mother stipulated that he was a CHINS because "[w]hile in the camper, D.K. assisted M.B. to pull up his pants and touched M.B.'s penis in a manner that made M.B. feel uncomfortable." The parties agreed that "[t]reatment for sexual concerns raised in the affidavit" could be addressed at disposition.

¶ 4. The court conducted a disposition hearing in February 2021 and issued a CCO continuing custody of D.K. with mother. The CCO required D.K. to complete an assessment at United Counseling Service (UCS) for sexually harmful behavior and follow any recommendation for treatment. D.K. was also required to follow any additional recommendations for mental health treatment made by UCS. The accompanying disposition case plan indicated that D.K. denied the allegations in the CHINS affidavit but was willing to cooperate with completing an assessment.

¶ 5. UCS recommended that D.K. undergo a full psychosexual evaluation. After a hearing in July 2021, the court amended the CCO to require D.K. to participate honestly in the evaluation. The amended CCO stated that it would expire in February 2022 and could not be extended any further pursuant to 33 V.S.A. § 5320a(a).

¶ 6. The psychosexual evaluation of D.K. was completed in September 2021. The evaluator recommended that D.K. participate in community-based, sex-offense-specific treatment. D.K. remained enrolled with UCS throughout this period.

¶ 7. In November 2021, the court held a hearing to review the CCO. D.K.'s case worker asked the court to extend the CCO to provide court oversight while D.K. engaged in treatment. The court indicated that it could extend the CCO until February 2022, when the order would lapse. The court warned that the November 2021 hearing would be the last review hearing and that the CCO could not be legally extended again. No party objected, and the court issued an order stating the CCO would remain in effect until February 2022.

¶ 8. Shortly before the CCO expired in February 2022, the State moved to extend the order for an additional six months. The State asserted that D.K. had made progress but had not fully completed his sex-offender treatment program. The State argued that the court had authority to extend the CCO under 33 V.S.A. § 5320a(a) for as many six-month periods as it found necessary in the best interests of the child. D.K. opposed the State's motion, arguing that the case was nearly three years old, he had been residing under his mother's supervision without any further allegations of a similar offense, and he had consistently engaged in treatment and had nearly completed the program at UCS. D.K. further argued that the CCO could not be extended beyond the one-year statutory period.

¶ 9. The court denied the State's motion without a hearing. It reasoned that under the plain language of § 5320a(a), a CCO may only be extended for one additional six-month period. It further concluded that even if it had authority to extend the CCO, the State had failed to demonstrate that there existed a change in circumstances sufficient to extend the order. The court found that the State's allegation that D.K. denied having a sexual-behavior problem was not a change because D.K. had never admitted to needing treatment for sexual-behavior concerns. The court further concluded that extending the CCO would not be in D.K.'s best interests because mother had complied with the CCO by ensuring that D.K. participated in the psychosexual evaluation and engaged in treatment, and there were no allegations that he had engaged in further sexually harmful behaviors or was beyond her control. The court therefore vacated the CCO.

¶ 10. On appeal, the State argues that the family division incorrectly interpreted 33 V.S.A. § 5320a(a) to prohibit more than one six-month extension of a CCO. It also challenges the court's analysis of changed circumstances, arguing that there was a change because D.K. had stagnated in his treatment. It argues that the court erred in focusing the scope of disposition on the facts admitted in the CHINS merits stipulation. Finally, it argues that the court erred in ruling on the motion without holding a hearing. We conclude that the family division lacked authority to

grant the State's request for an extension of the CCO and was therefore not required to hold a hearing to determine whether changed circumstances existed.

¶ 11. Whether 33 V.S.A. § 5320a(a) authorizes the family division to grant more than one six-month extension of a CCO is a question of statutory interpretation which we review de novo. See In re A.W., 2013 VT 107, ¶ 5, 195 Vt. 226, 87 A.3d 508. "Our primary objective in construing a statute is to effectuate the Legislature's intent." Wesco, Inc. v. Sorrell, 2004 VT 102, ¶ 14, 177 Vt. 287, 865 A.2d 350. We begin by examining the text of the statute "because we presume that the Legislature intended the plain, ordinary meaning of the statutory language." Shires Hous., Inc. v. Brown, 2017 VT 60, ¶ 9, 205 Vt. 186, 172 A.3d 1215. If the statutory language is unambiguous, we accept its plain meaning as the intent of the Legislature. Wesco, Inc., 2004 VT 102, ¶ 14.

¶ 12. Section 5320a(a) of Title 33 provides:

> Whenever the court issues a conditional custody order transferring custody to a parent either at or following disposition, the presumptive duration of the order shall be no more than six months from the date of the disposition order or the conditional custody order, whichever occurs later, unless otherwise extended by the court after hearing. At least 14 days prior to the termination of the order, any party may file a request to extend the order pursuant to subsection 5113(b) of this title. Upon such motion, the court may extend the order for an additional period of time not to exceed six months. Prior to vacating the conditional custody order, the court may schedule a hearing on its own motion to review the case prior to discharging the conditions. If a motion to extend is not filed, the court shall issue an order vacating the conditions and transferring full custody to the parent without conditions.

At issue is whether the third sentence of § 5320a(a), which allows the court to extend a CCO "for an additional period of time not to exceed six months," authorizes more than one such extension. When used as an indefinite article, the word "an" typically indicates a singular quantity. See A, Merriam-Webster, https://www.merriam-webster.com/dictionary/a#h2 [https://perma.cc/2ET7-Y8YJ] (stating "a" is "used as a function word before singular nouns when the referent is

unspecified"); An, Merriam-Webster, https://www.merriam-webster.com/dictionary/an [https://perma.cc/S7VT-C2X5] (explaining that "an" is a version of "a"). Under the ordinary meaning of its words, the statute authorizes a single extension.

¶ 13. The State argues that we should read the term "an" in the plural, pointing to 1 V.S.A. § 175. Section 175, which is one of several statutes in a chapter codifying rules for statutory construction, provides that "[w]ords importing the singular number may extend and be applied to more than one person or thing." We have applied this rule in another context to interpret the term "a" in the plural. See State v. Gurung, 2020 VT 108, ¶¶ 29-30, 214 Vt. 7, 251 A.3d 572 (holding that criminal rule permitting court to require criminal defendant to submit to "a reasonable mental examination" allowed court to order second examination).

¶ 14. However, this rule does not apply when it would be "inconsistent with the manifest intent of the General Assembly or repugnant to the context of the same statute." 1 V.S.A. § 101; see In re N.H., 135 Vt. 230, 235, 373 A.2d 851, 855 (1977) ("It is an accepted rule of statutory construction that words used in the singular may be read as to include the plural, and the plural the singular, except where a contrary intention plainly appears."). Viewed in the context of the CHINS statute as a whole, and considered in light of the statutory purpose, the word "an" as used in § 5320a(a) is clearly intended to limit the family division to a single six-month extension of a CCO. See In re A.W., 2013 VT 107, ¶ 5 ("Where there is uncertainty about legislative intent, we must consider the entire statute, including its subject matter, effects and consequences, as well as the reason for and spirit of the law." (quotation omitted)).

¶ 15. "[T]he purpose of the CHINS statute as a whole . . . is to protect the best interests of children and to ensure permanency for them within a reasonable time." In re C.L.S., 2021 VT 25, ¶ 15, __ Vt. __, 253 A.3d 443. Conditional custody is a disposition option designed to allow the court to temporarily monitor a parent or other custodian while determining whether the child can safely reenter that person's full custody. See In re S.S., No. 2017-081, 2017 WL 2962882, at

*3 (Vt. June 26, 2017) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo17-081.pdf [https://perma.cc/MAJ6-F3FX] ("[C]onditional custody placement is intended to be an interim measure that establishes a temporary caretaking situation for a child until a more desirable permanency option, such as reunification, adoption, or permanent guardianship, can be achieved."). Of the disposition options listed in 33 V.S.A. § 5318, only conditional custody is subject to a strict time limit. The limited duration of a CCO balances the state's interest in ensuring children are safe with "the right of a parent to custody and the liberty interest of parents and children to relate to one another in the context of the family, free from governmental interference." Paquette v. Paquette, 146 Vt. 83, 92, 499 A.2d 23, 29 (1985). Interpreting § 5320a to allow the court to indefinitely extend conditional custody, six months at a time, would place children in a prolonged state of uncertainty about their placement, and potentially undermine the "paramount" goal of ensuring timely permanency for children who are involved in CHINS proceedings. 33 V.S.A. § 5101(a)(4).

¶ 16. The history of the statutes relating to conditional custody supports our conclusion. Prior to 2008, disposition orders in CHINS cases were governed by 33 V.S.A. § 5528, which permitted the court to issue an order granting custody of a child to a parent or custodian "subject to such conditions and limitations as the court may prescribe" and did not place any time limit on such an order. 33 V.S.A. § 5528(a) (repealed by 2007, No. 185 (Adj. Sess.), § 13). In 2008, the Legislature repealed the entire juvenile judicial proceedings chapter and replaced it with current chapters 51-53. See 2007, No. 185 (Adj. Sess.). Under the new scheme, disposition orders were governed by 33 V.S.A. § 5318, which as originally enacted specified that the court could enter a CCO to a parent or custodian "for a fixed period of time not to exceed two years." 33 V.S.A. § 5318(a)(1) (2009) (amended 2016). In 2016, the Legislature enacted Act 170, which amended § 5318(a)(1) to remove the two-year limit and added § 5320a. 2015, No. 170 (Adj. Sess.), §§ 6, 11. Section 5320a(a) reduced the permissible duration of a CCO to six months and allowed the

court to extend the order for an additional six-month period. The statement of purpose of Act 170 as introduced was, among other things, to "narrow the time frame for conditional custody orders." S.183, 2015-2016 Gen. Assem., Bien. Sess. (Vt. 2016) (as introduced). Likewise, the Act Summary for the final version of the bill stated that it "shorten[s] the presumptive duration of conditional custody orders issued under the CHINS and juvenile delinquency chapters from two years to six months." Act Summary, 2015, No. 170 (Adj. Sess.). Given this history, we find it unlikely that by referring to "an additional period of six months," the Legislature intended to permit a CCO to be indefinitely extended at the court's discretion.

¶ 17. This case is therefore distinguishable from Gurung, in which we held that a rule stating that the court may require a criminal defendant to submit to "a reasonable mental examination" gave the court discretion to order a second examination. 2020 VT 108, ¶¶ 29-30. In that case, there was no evidence of contrary legislative intent, and we observed that there were many situations when a second examination might be reasonable and necessary. Id. Here, by contrast, the legislative history and the purposes behind the statute indicate that the Legislature intended the word "an" to limit the court to a single extension of a CCO. If further court involvement is necessary to protect a child, there are other disposition options available. But a CCO is not intended to be a substitute for criminal probation, which is effectively how the State would like to use it here.

¶ 18. "The family division of the superior court is a court of limited jurisdiction, the scope of which is determined by statute." In re C.L.S., 2021 VT 25, ¶ 10. The family division correctly concluded that § 5320a did not authorize it to grant a second six-month extension of the CCO in this case. Because the court did not have power to grant the relief requested by the State, it was not required to consider whether changed circumstances existed under 33 V.S.A. § 5113(b), and it did not err in disposing of the State's motion without a hearing. See In re C.L., 2021 VT 66, ¶ 31, __ Vt. __, 263 A.3d 745 (holding family division did not err in disposing of post-termination 33

V.S.A. § 5113(b) motion without hearing where relief was unavailable under § 5113(b) at that point in case). We therefore need not address the State's arguments about whether there existed a sufficient change in circumstances to extend the order.

Affirmed.

FOR THE COURT:

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Associate Justice