



IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF:

)

Filed January 31, 1978

GLENN KLINGSMITH,

)

and

DONALD KLINGSMITH,

)

Juveniles,

)

352

3-60419

3-60420

Appellants.

Appeal from Black Hawk Juvenile Court - Forest Eastman, Judge.

Consolidated appeals from separate court orders finding appellants delinquent children pursuant to chapter 232. Appeals dismissed for lack of jurisdiction because no final judgment has been made by the trial court.

W. H. Gilliam, of Mattson & Gilliam, P.C., Waterloo, for Appellants.

Richard C. Turner, Attorney General of Iowa, Stephen C. Robinson, Special Assistant Attorney General, Theodore R. Boecker, Assistant Attorney General and David H. Correll, Black Hawk County Attorney, for Appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Juveniles Glenn and Donald Klingsmith appeal separate juvenile court orders finding them delinquent children pursuant to chapter 232, The Code, because they had committed public offenses. On appeal, the Klingsmiths contend that certain evidence against them should have been suppressed because the search warrant obtained was issued without an adequate factual showing that the informant was reliable and credible. The Klingsmiths also complain that items seized in the search should have been excluded from evidence because they were never proven to be stolen property but were merely proven to resemble stolen property. The juveniles' separate appeals were consolidated by order of the supreme court dated April 20, 1977.

The court orders of February 23, 1977, found both Glenn and Donald Klingsmith delinquent. However, the orders did not make dispositions of the juveniles' cases, but scheduled dispositional hearings for March 29, 1977. It does not appear from the record that those dispositional hearings were ever held. Notices of appeal were filed on February 24, 1977, and there is no record of any further proceedings in the trial court. The Klingsmiths did not seek or receive permission to file an interlocutory appeal. Our first inquiry is whether we have jurisdiction to entertain these appeals. Appeal from juvenile proceedings is controlled by § 232.58, The Code. Although at first glance § 232.58 appears to permit liberal appellate review, the second sentence of that section greatly qualifies that initial right of review. "The procedure for such appeals shall be governed by the same provisions applicable to appeals from the district court." Section 232.58, The Code; Interest of Clay, 246 N.W.2d 263, 265 (Iowa 1976). The relevant procedure for appeals from district court is set out in *Helland v. Yellow Freight System, Inc.*, 204 N.W.2d 601, 604 (Iowa 1973). See also Clay, *supra*; rules 1 and 2, Rules of Appellate Procedure.

Rule 1 states that all final judgments and decisions may be appealed, but no interlocutory ruling or decision may be appealed, except as provided in rule 2, until after the final judgment or order. Rule 2 contains the provisions whereby appeal from an interlocutory ruling or decision may be made on application to the supreme

court prior to final judgment. Rules 1 and 2, R. App. P. No such application was made. The supreme court has consistently held there is no jurisdiction to entertain an appeal where no final judgment was entered and no permission to appeal from any ruling less than a final judgment or decision was obtained. **Helland**, supra. Therefore, unless the order filed was a final judgment, we are without jurisdiction to proceed.

A final judgment or decision has been defined as "one that finally adjudicates the rights of the parties. It must put it beyond the power of the court which made it to place the parties in their original position. A ruling or order is interlocutory if it is not finally decisive of the case." **Clay**, supra at 266; **Helland**, supra. Entry of sentence constitutes final judgment in a criminal case. *State v. Anderson*, 246 N.W.2d 277, 279 (Iowa 1976); *State v. Aumann*, 236 N.W.2d 320, 321 (Iowa 1975). Interlocutory appeals are not allowed in criminal cases but rulings are reviewable on appeal from final judgment when error has been properly preserved. **Aumann**, supra.

Although a juvenile proceeding is not a criminal proceeding, and an interlocutory appeal may be permitted (See Clay, supra), the same practical considerations which require finality in criminal cases are applicable to appeals in juvenile proceedings. Fractional appeals, unavoidable delay and a subordination of the primary issue of guilt or innocence and its determination would otherwise occur. **Interest of Clay**, 246 N.W.2d at 266. In criminal cases, as well as civil, the judgment is final when it terminates the litigation between the parties on the merits and leaves nothing to be done but to enforce by execution what has been determined. **Aumann**, supra; *State v. Klinger*, 259 Iowa 381, 383, 144 N.W.2d 150, 151 (1966).

In the instant case, the Klingsmiths filed their notices of appeal after the adjudicatory but prior to the dispositional stage of the juvenile proceeding. No such disposition was ever made. Under § 232.34, The Code, the court had a choice from among several different types of dispositions once it found either juvenile delinquent. However, no such disposition was ever made. The rights of the parties were never fully adjudicated. It was not beyond the power of the court to place the

parties in their original positions. The judgment could not be final because there was something still to be done -- the disposition. There was nothing to enforce by execution. **Aumann**, *supra*.

This consolidated appeal must be dismissed and the causes remanded for further proceedings without prejudice to the Klingsmiths' rights to appropriately raise these same issues raised herein in event of appeal from final judgment entered. **Interest of Clay**, 246 N.W.2d at 266.

Appeal dismissed.