IN THE COURT OF APPEALS OF IOWA

No. 1999-120 (9-336) / 98-1123
Filed July 23, 1999

FILED
JUL 23 1999
CLERK SUPREME COURT

**IN THE INTEREST OF M.K.,
MINOR CHILD,**

**M.K., Minor Child,
Appellant.**

Appeal from the Iowa District Court for Floyd County, Gerald W. Magee, Associate Juvenile Court Judge.

Matthew K. appeals the juvenile court's modification of a dispositional order which placed him in a group residential facility. **AFFIRMED.**

Rodney E. Mulcahy of Eggert, Erb & Frye, P.L.C., Charles City, for appellant.

Thomas J. Miller, Attorney General, Diane M. Stahle, Assistant Attorney General, Marilyn Dettmer, County Attorney, and Kimberly Birch, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Streit and Vogel, JJ.

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HUITINK, P.J.

Matthew K. appeals the juvenile court's modification of a dispositional order which placed him in a group residential facility. We affirm.

I. *Background Facts and Proceedings.*

Matthew was adjudicated a delinquent child on February 17, 1997. A dispositional order entered April 14, 1997, provided for a one-year probation and placement with his parents. In December 1997 the dispositional order was modified to include mandatory therapeutic counseling for Matthew.

In February 1998 the State, citing Matthew's failure to cooperate with court-ordered counseling, sought further modification of the dispositional order. The juvenile court found Matthew suffered from "severe maladjustments" necessitating treatment Matthew's father would not support. As a result, Matthew was placed in a group residential facility to obtain appropriate psychological treatment.

On appeal Matthew argues the State failed to make reasonable efforts to avoid placement outside of his parents' home. Matthew also argues his behavior did not justify the final disposition ordered and the juvenile court failed to consider less restrictive placement options.

II. *Scope of Review.*

Our review in delinquency proceedings is de novo. *In re B.L.*, 491 N.W.2d 789, 791 (Iowa App. 1992).

III. *Mootness.*

In a recently filed motion to dismiss, the State claims Matthew's appellate contentions were rendered moot by the juvenile court's May 14, 1999, "Order Ceasing and Terminating Juvenile Court Action." A juvenile's appeal is not mooted simply because he or she reaches the age of majority and the underlying action is statutorily terminated. *In re Matzen*, 305 N.W.2d 479, 482 (Iowa 1981). Additionally, the propriety of underlying adjudication or dispositional orders present justiciable controversies despite their expiration or termination before final appellate resolution. *See, e.g., In re Rousseau*, 341 N.W.2d 760, 763 (Iowa 1983) (citing limited admissibility of adjudication and dispositional proceedings as evidence in adult sentencing proceedings per Iowa Code section 232.55(2)). Because Matthew's dispositional proceedings are potentially admissible in future proceedings, the merits of the juvenile court's dispositional order present a surviving justiciable controversy. The State's motion to dismiss is accordingly denied, and we proceed to consider Matthew's appeal on its merits. Even if we were to conclude otherwise, a moot question should be determined when, as here, the situation is such that the matter will be moot before it can reach an appellate court. *Danner v. Hass*, 257 Iowa 654, 660, 134 N.W.2d 534, 539 (1965).

IV. The Merits.

Matthew contends the juvenile court erred in finding the State made reasonable efforts to avoid his placement outside his parents' home and that residential placement

was the least restrictive placement option available. *See* Iowa Code §§ 232.52(1) & 232.52(6). We disagree. In making this determination, we are guided by two inquiries: (1) Can society be protected if the child is left in his or her home; and (2) What services are necessary to correct the child's problems? *In re B.L.*, 491 N.W.2d at 792.

With respect to the first inquiry, we find the record contains evidence of Matthew's repeated acts of sexually inappropriate touching, harassment, and innuendo. The fact that no one was physically injured is of little consequence. The juvenile court was also presented with expert testimony that Matthew is a substantial risk for re-offense.

Turning to the second *B.L.* inquiry, the record indicates the State initially made several attempts to assist Matthew overcome his problems. These measures included "Official Probation, psychological evaluation, individual counseling, monitoring and tracking, letters of apology, community service, adolescent offender group therapy, family group therapy, and extensive psychological assessment involving family members." The record also includes undisputed evidence of Matthew's refusal to participate in an adolescent offender program through Parents United. Finally, the record contains Matthew's psychological evaluation in which the evaluator indicated Matthew is "desperately in need of treatment" and that appropriate treatment cannot occur in either parent's home. The record contains several professional recommendations in favor of psychological treatment in a residential facility.

We find the juvenile court correctly found the State offered reasonable services to Matthew prior to his removal from his parents' home, and that the residential placement of Matthew was the least restrictive alternative for his treatment. We therefore affirm the juvenile court.

AFFIRMED.