IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

No. 1-481 / 00-1838
Filed September 12, 2001

IN THE INTEREST OF Z.T.S.,
Minor Child,

Z.T.S., Minor Child,
Appellant.

Appeal from the Iowa District Court for Shelby County, Kathleen A. Kilnoski, District Associate Judge.

Juvenile appeals from the juvenile court ruling ordering that he be returned to the custody of the State for placement in a group facility. **AFFIRMED.**

Thomas J. Anderson of McMartin & Anderson, Harlan, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Jeffrey L. Larson, County Attorney, for appellee-State.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

SACKETT, C.J.

This is an appeal by Zachary, a juvenile who was ordered placed in a group foster home. Zachary contends (1) reasonable efforts were not made to keep him home, and (2) the juvenile court, in making the placement decision, did not consider placing him in the least restrictive environment. Zachary contends his problems can best be corrected by leaving him in his parental home and providing him with community-based services. We affirm.

Zachary was born in November of 1985. He is the oldest of his parents' three sons. He comes from an intact family. Zachary's father is a carpenter. His mother, who has suffered serious health problems in recent years, does not work outside the home.

A delinquency petition was filed about May 1, 2001, charging Zachary with receiving stolen property.[1] Zachary admitted the allegations of the delinquency, and on June 7, 2000 the juvenile court entered a consent decree suspending the proceedings for six months during which time Zachary was placed under the supervision of a juvenile court officer and ordered to comply with the directives of the officer. One of the directives imposed on Zachary was that he submit to random urinalysis. No record is kept of the tests unless they show drug usage. On June 23, 2000 Zachary tested positive for marijuana and served four days in detention. He tested positive again on August 11, 2000 and served eight days' detention. On August 29, 2000 he again tested positive. He was placed in

[1] We have little information concerning the offense. The petition states Zachary took possession of several compact discs owned by Nicholas Beerman, knowing the discs had been stolen. The estimated value of the property was stated to be between $500 and $1,000. Zachary contends all he attempted to do was return the discs that someone else had stolen to the police department.

detention and ordered to a shelter care facility for chemical dependency, psychiatric and psychological evaluations. While in the shelter Zachary, though unhappy about the placement, was generally cooperative. He did, however, bring cigarettes back from a home visit, was found to have glue in his closet, and said inappropriate things to teachers. Also, during the time Zachary was in the shelter he was assessed at the Manning Regional Healthcare Center for substance abuse. It was the recommendation of the staff there that Zachary undertake outpatient treatment consisting of what the center calls Level 1 extended outpatient substance abuse counseling. The Center also reported that the recommended services were available at the Gordon Recovery Center in Denison, Iowa. Zachary was also assessed by Ivan Delgado, who recommended he remain at the shelter until a residential bed was available, and Renae Ludwig, who recommended a residential foster care placement. On October 17, 2000 Zachary was released from the shelter. He remained with his parents following his release and attended his local public high school.

The matter came up for a delinquency review modification hearing on November 8, 2000. At that time the State requested Zachary be placed in a residential facility. Zachary and his parents objected. The juvenile court heard evidence. On the day of the November 8, 2000 hearing, the juvenile court made a decision on the record. The court found Zachary had a substance abuse problem. The court stated it had before it recommendations for treatment in (1) residential inpatient treatment and (2) residential foster care. The court accepted the second recommendation and ordered Zachary placed in group foster care. It also provided that he get chemical dependency treatment and that he and his

family participate in family therapy. The court made no mention of the recommendation that Zachary take outpatient treatment. Zachary was also ordered to remain on probation for six months, although it is unclear from the juvenile court order when the six months commenced. On November 9, 2000 Zachary filed a notice of appeal.

On November 13, 2000 the juvenile court filed a written order which basically followed the earlier written findings except that the court specifically found (1) placement in group foster care was the least restrictive alternative suited to Zachary's needs; (2) reasonable efforts had been made to prevent or eliminate the need for the removal of Zachary from his home; and (3) continuation in the home was contrary to his welfare. No specific factual findings were made by the court to support its determination that it had ordered the least restrictive placement and that reasonable efforts determinations had been made. On November 20, 2000 the juvenile court filed an addendum to its November 8, 2000 order, finding it had inadvertently neglected to revoke Zachary's consent decree and adjudicate him a delinquent child, so it amended the earlier order to do so. No appeal was taken from these two orders.

There is a question of whether this was an appeal from a final order, and if so, there is a question of whether the district court had jurisdiction to enter the last two orders. Both the State and Zachary have treated the appeal as an appeal from a final order.

Under Iowa Rule of Appellate Procedure 1, final orders (except those not involving amounts specified in Iowa Rule of Appellate Procedure 3) are appealable as a matter of right. Interlocutory rulings can be appealed under rule

2, but only with permission of the supreme court. Obtaining this permission is jurisdictional. *Banco Mortgage Co. v. Steil*, 351 N.W.2d 784, 786 (Iowa 1984); see Iowa R. App. P. 1, 2.

However, an appeal taken without permission from an interlocutory order is not necessarily dismissed, but rather shall be considered an application for interlocutory appeal under Iowa Rule of Appellate Procedure 2. *In re Marriage of Graziano*, 573 N.W.2d 598, 600 (Iowa 1998)

An interlocutory order is "one that is not finally decisive of the case." *Williams v. Bourne*, 248 Iowa 189, 194, 79 N.W.2d 751, 754 (1956). An order is interlocutory if it directs an inquiry into a matter of fact preparatory to a final decision. *In re W.D.*, 562 N.W.2d 183, 185 (Iowa 1997); *In re C.S.*, 516 N.W.2d 851, 857 (Iowa 1994). The question of whether a challenged order is final or interlocutory can become blurred. *See W.D.*, 562 N.W.2d at 185; *see also McGuire v. City of Cedar Rapids*, 189 N.W.2d 592, 596-97 (Iowa 1971). A ruling is not final if the court intends to do something further to signify its final adjudication of the case, and a juvenile court order is not final unless it disposes of all the issues. *C.S.*, 516 N.W.2d at 857. Even though it is not always clear whether an order is final, "ordinarily a final judgment conclusively adjudicates all of the rights of the parties." *Rowen v. LeMars Mut. Inc. Co. of Iowa*, 357 N.W.2d 579, 581 (Iowa 1984).

The November 8 order made a final decision as to Zachary's placement. The subsequent orders issued by the juvenile court merely corrected omissions in the November 8 order. The order appealed from was a final order. We need

not decide whether the juvenile court had jurisdiction to enter the subsequent orders and do not do so.

The questions we need to address are whether this was the least restrictive placement and whether reasonable efforts were made to allow Zachary to remain at home with his family. Our review is de novo. *In re Meek*, 236 N.W.2d 284, 289 (Iowa 1975); *In re B.L.*, 491 N.W.2d 789, 791 (Iowa Ct. App. 1992).

In any reasonable efforts analysis, an early issue that must be addressed is "can society be protected if the child is left in his or her home?" *B.L.*, 491 N.W. 2d at 792. The juvenile court did not find, nor does the record support, that society will be at serious risk if Zachary is allowed to remain in his parents' home. Zachary's behaviors are more destructive to himself than to others. Having so decided, we next move to the interests of Zachary.

In doing this we look at two Code sections. Iowa Code section 232.52(1) (1999) provides:

> Pursuant to a hearing as provided in section 232.50, the court shall enter the least restrictive dispositional order appropriate in view of the seriousness of the delinquent act, the child's culpability as indicated by the circumstances of the particular case, the age of the child [and] the child's prior record. . . .

Iowa Code section 232.52(6) provides:

> When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraphs "d", "e" or "f", the order shall state that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home.

Iowa Code section 232.52(7) provides:

> If the court orders the transfer of the custody of the child to the department of human services or to another agency for placement in foster group care, the department or agency shall make every

> reasonable effort to place the child within the state, in the least restrictive, most family-like, and most appropriate setting available and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

For the court to comply with section 232.52(6), reasonable efforts to prevent removal from the child's home must be found before placement in a foster group home can occur. *In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa Ct. App. 1997). As construed in our case law, "reasonable efforts" could include counseling and other community-based services. *Id. See also In re B.L.*, 491 N.W.2d 789 (Iowa Ct. App. 1992). When the court orders the transfer, Iowa Code section 232.52(7) comes into play.

Zachary complains that at the dispositional hearing the State recommended group home placement due to his misbehaving, not for his lack of willingness to accept community-based services.

Zachary points out that when he initially tested positive for marijuana he was put in detention, but no effort was made to provide community-based services to address the serious drug problems the State alleges he has. He further points out that his charge was not drug usage but possession of stolen property. He argues there is absolutely no evidence that he has continued to receive or possess stolen property. Zachary argues that the State seems willing to expose him to more hardened youth and rob him of family love and support.

Zachary also contends the State offered no evidence regarding his behavior at home, did not present his school records and accused him of having a package of cigarettes at school when, in fact, a letter from the school stated he

had only been seen with one cigarette in his mouth. He contends he is doing well in school and showed he was getting an A in English.

Zachary's parents expressed their willingness to take him to outpatient treatment in Denison. The record indicates that outpatient treatment was both recommended and available. Zachary's grandfather testified that they had a good relationship and that he is willing to help Zachary.

Zachary has used marijuana, and there is evidence he has a drug problem. Zachary also likes to smoke cigarettes. Complaints are made about his interest in girls and his lack of interest when adults talk to him. His is not a model student but shows interest in school. His parents show a serious interest in his development, they want him in their home and are committed to helping him. Zachary is not involved in school extracurricular activities. His drug use has probably disqualified him from participating in them. He is not involved in community activities. He does not have a part-time job. His major problem is treatment for his drug problem. An underlying problem is that he does not have enough to do to keep him busy.

While we agree with Zachary and his parents that he could stay in the community without being a danger to it and that he can obtain outpatient drug treatment, we note that reasonable efforts were initially made to keep Zachary in his home. While an early referral for inpatient drug treatment may have helped Zachary with his problem, it was not in the initial stage of this proceeding and will not be addressed now.

The next issue we need to resolve is whether the placement made is the least restrictive. Our review of this issue is hindered by the scant record on the

location and school used by the foster placement and the services that were to be utilized by the placement to meet Zachary's needs. Zachary, however, has failed to show that the foster care placement does not meet those things required by statute to be considered in determining the least restrictive placement. We affirm.

AFFIRMED.