IN THE COURT OF APPEALS OF IOWA

No. 1-717 / 01-0620
Filed December 12, 2001

FILED
DEC 12 2001
CLERK SUPREME COURT

IN THE INTEREST OF A.H., Minor Child,

A.H., Minor Child,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Richard R. Gleason, District Associate Judge.

A minor appeals from a juvenile court ruling adjudicating him delinquent and refusing his request for a consent decree. **REVERSED AND REMANDED.**

Jennifer A. Clemens-Conlon of Reynolds & Kenline, L.L.P., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Leslie C. Ayers, Legal Intern, and Lyle R. Galliart, Assistant County Attorney, for appellee-State.

Considered by Sackett, C.J., and Mahan and Hecht, JJ.

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HECHT, J.

A minor appeals from a juvenile court ruling adjudicating him delinquent and refusing his request for a consent decree. We reverse and remand to the juvenile court for further proceedings consistent with this opinion.

I. **Factual Background and Proceedings.** A.H., a sixteen-year-old male, entered *Alford* pleas to trespass, third-degree burglary, and public intoxication. After a hearing, the court reserved ruling on the issue of adjudication, kept the record open, and ordered the juvenile court officer to file a report within thirty days outlining A.H.'s progress. The court expressly informed A.H.'s counsel that she would be permitted to present a responsive argument after the report was generated and prior to a ruling by the court.

The court received the report, adjudicated A.H. delinquent, and denied his request for a consent decree, without further argument or cross-examination by his attorney. On appeal, A.H. contends the juvenile court erred in (1) denying his request for a consent decree and (2) denying his right to present evidence and subject the contents of the report to cross-examination prior to entry of the final order.

II. **Standard of Review**. Juvenile delinquency proceedings are not criminal prosecutions but are special proceedings that serve as an ameliorative alternative to the criminal prosecution of children. *In re J.D.S.*, 436 N.W.2d 342, 344 (Iowa 1989). Our scope of review in appeals from delinquency cases is de novo. *In re G.J.A.*, 547 N.W.2d 3, 5 (Iowa 1996). Questions of both law and fact

are subject to review. Iowa Code § 232.133(1) (2001); *In re D.L.C.*, 464 N.W.2d 881, 882 (Iowa 1991).

III. Discussion. A.H. contends the juvenile court erred when it ruled on the issue of adjudication without permitting him the right to present evidence and cross-examine adverse witnesses following the filing of the juvenile officer's report. The State argues A.H. failed to preserve this issue for review. The State contends A.H. had ample time to challenge the contents of the report, but failed to do so. We disagree. During the hearing, the juvenile court specifically advised A.H.'s counsel he would allow her to make an argument in response to the juvenile court officer's anticipated report. In so doing, the court created a reasonable expectation that A.H. would have an opportunity for further judicial proceedings to respond to the report. The denial of this opportunity became manifest to A.H. after the district court's final ruling, thereby precluding either party from making arguments or objections. Under these circumstances, we conclude error was preserved.

The noncriminal nature of juvenile delinquency proceedings "does not deprive the child in interest of all procedural rights." *In re J.D.S.*, 436 N.W.2d at 344. "Although the child is not entitled to a jury trial, he or she is entitled to several other due process rights, including the right to confront and cross-examine adverse witnesses." *Id.* (citing *McKeiver v. Pennsylvania*, 403 U.S. 528, 545, 91 S. Ct. 1976, 1986, 29 L. Ed. 2d 647, 661 (1971); *In re Johnson*, 257 N.W.2d 257 N.W.2d 47, 49 (Iowa 1977); *In re Delaney*, 185 N.W.2d 726, 729 (Iowa 1971)); *cf. State v. Wright*, 456 N.W.2d 661, 665-66 (Iowa 1990) (holding

no right to confrontation in waiver hearing because dispositional, not adjudicatory, in nature). We conclude the juvenile court erred in denying A.H. the right to respond to the court officer's report prior to its ruling adjudicating A.H. delinquent.

IV. Conclusion. Having determined the juvenile court erred in failing to allow A.H. an opportunity to respond to the contents of the juvenile court officer's report, we reverse and remand to the juvenile court for further proceedings consistent with this opinion. Accordingly, we need not address the other alleged errors urged by A.H. on appeal.

REVERSED AND REMANDED.

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