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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-684 / 90-0997

IN THE INTEREST OF D.B.S., A Child,

Appellee,

vs.

STATE OF IOWA,

Appellant.

314

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Juvenile Referee.

State appeals denial of its motion for waiver of jurisdiction from the juvenile court to the district court. **AFFIRMED.**

Bonnie J. Campbell, Attorney General, Gordon E. Allen, Deputy Attorney General, Judy Sheirbon, Assistant Attorney General, for appellant.

John S. Livingston, Gladbrook, for appellee.

Considered by Oxberger, C.J., and Schlegel and Habhab, JJ.

SCHLEGEL, J.

The State appeals denial of its motion for waiver of jurisdiction from the juvenile court to the district court. The State's delinquency petition charged that D.B.S. had been cited for driving while his license was revoked under Iowa Code section 321J.21, a serious misdemeanor. The juvenile court held that because D.B.S. was actually driving in violation of a temporary restricted license under Iowa Code section 321.193, a simple misdemeanor, and because the court was without jurisdiction over section 321.193 violations, the motion should be denied and the case dismissed. We affirm.

D.B.S. is a boy born in 1972. His license to drive was revoked after he was stopped in June 1989 for speeding and intoxication. The department of motor vehicles issued him a restricted license, see Iowa Code § 321.193 (1989), permitting him to drive to and from school within specified times. In March 1990 police stopped D.B.S. for speeding. He was cited under Iowa Code section 321J.21 for driving while his license was revoked.

The State began delinquency proceedings. Believing that there were not reasonable prospects for rehabilitating D.B.S. through the juvenile court system, the State filed a motion for waiver of jurisdiction, asking the juvenile court to waive its jurisdiction so that it could proceed in the district court. The parties agreed that the issue before the juvenile court was whether operation of a vehicle by D.B.S. was a violation section 321J.21.

Juvenile delinquency proceedings are not criminal prosecutions, but are special proceedings that serve as ameliorative alternatives to such prosecutions of children. In re J.D.S., 436 N.W.2d 342, 344 (Iowa 1989). Our review of juvenile matters is de novo. Id. at 343. In this case, however, the facts are undisputed, and the sole issue for our review rests on a disputed interpretation of law.

Iowa Code section 321J.21 provides in relevant part that one whose "license . . . has been denied or revoked as provided in this chapter and who drives a motor vehicle upon the highways of this state while the license or privilege is denied or revoked commits a serious misdemeanor." Iowa Code section 321.193 permits the department to issue a special restricted license. That section further provides that a person commits a misdemeanor when operating a vehicle in violation of restrictions. Section 321.482 provides that such misdemeanors are simple misdemeanors and specifically denies juvenile courts authority to consider such violations.

In construing two statutes, we seek to give full effect to both statutes. See Iowa Code § 4.4(2) (1989). The legislature very clearly has provided an independent procedure and penalty for persons who drive in violation of a special license restriction. The position the State now proposes, i.e., ignoring the fact that the department has

issued a special license and proceeding under section 321J.21, robs section 321.193 of its natural effect. If the legislature had intended what the State proposes, it would not have provided a separate penalty for violations of special license restrictions under section 321.193.

The juvenile court properly found itself without jurisdiction over the violation. We hold the juvenile court did not err in overruling the motion and dismissing the case.

AFFIRMED.

Oxberger, C.J., concurs; Habhab, J., dissents.

HABHAB, J. (dissenting)

I respectfully dissent. I would hold that the juvenile court does have jurisdiction.

The facts are not in dispute. D.B.S. was stopped for driving his car while intoxicated. His license was revoked pursuant to Iowa Code section 321J. The juvenile was issued a temporary restricted license pursuant to Iowa Code section 321J.20. This temporary permit authorized D.B.S. to drive to and from school on weekdays from 8:05 to 8:35 a.m. and from 3:12 to 3:42 p.m.

At 11:51 p.m. on March 9, 1990, D.B.S. was stopped for speeding and cited for driving while his license was revoked in violation of Iowa Code section 321J.21, a serious misdemeanor. Iowa Code section 321J.21 provides:

> A person whose motor vehicle license . . . has been denied or revoked as provided in this chapter and who drives a motor vehicle upon the highways of this state while the license or privilege is denied or revoked commits a serious misdemeanor.

On May 2, 1990, a delinquency petition, complaint and motion for waiver of jurisdiction was filed. The parties agreed that if the juvenile court had jurisdiction, waiver of that jurisdiction would not be resisted. The juvenile court and the majority held that by virtue of section 321.193, a simple misdemeanor violation occurred and therefore the juvenile court was without jurisdiction. See § 321.482 Iowa Code)(1989)

I disagree with the result reached by the majority. D.B.S.'s license was revoked under Chapter 321J. He was

granted a temporary restricted license under section 321J.20, not by virtue of section 321.193. He was charged under section 321J.21 and that is the applicable statute. Section 321J.20 creates a method by which the department may grant temporary restricted licenses, thus avoiding the impact of section 321J.21 as long as the restrictions are complied with. Now that D.B.S. has driven in violation of his temporary restricted license, he must face the consequences under section 321J.20. It is clear the revocation remains in effect except for the privileges granted under the restricted license.