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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1257**

In the Matter of the Welfare of: C. T. H., Child.

**Filed February 5, 2018
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-JV-17-522

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Florey, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant is charged with the unintentional felony murder of her father. The district court designated her case as an extended jurisdiction juvenile (EJJ) prosecution. Appellant argues that the district court erred because the EJJ designation is based on a finding that EJJ status will provide more time for rehabilitative services, and evidence was presented suggesting that appellant could make rehabilitative progress within the timeframe available under a standard juvenile disposition. We affirm.

FACTS

In January 2017, when she was 14 years old, appellant C. T. H. allegedly stabbed her father in the chest after a heated argument over school attendance. The father died from his injury. Appellant was charged with second-degree unintentional felony murder.

The state moved for an EJJ designation, which “extends jurisdiction over a young person to age twenty-one and permits the court to impose both a juvenile disposition and a criminal sentence.” *In re Welfare of B.N.S.*, 647 N.W.2d 40, 42 (Minn. App. 2002). The district court ordered an EJJ study and psychological evaluation for appellant. The EJJ study, which contained an examination of relevant public-safety factors, recommended an EJJ designation. The psychological evaluation rendered no opinion as to the appropriateness of an EJJ designation, but recommended “long-term placement to address [appellant’s] mental health, academic, behavioral, and family needs.” The evaluation noted that appellant was “at high risk for future violence.”

Between April and June of 2017, hearings were held to determine the appropriateness of an EJJ designation. The state did not call witnesses, but offered exhibits, including the EJJ study and psychological evaluation. Appellant offered exhibits and called numerous witnesses.

In August 2017, the district court issued an order designating appellant’s case as an EJJ prosecution. The court concluded that the state had shown by clear and convincing evidence that an EJJ designation serves public safety. This appeal followed.

DECISION

If a juvenile is alleged to have committed a felony, and the juvenile was between the ages of 14 and 17 at the time of the offense, the state may request that the district court designate the proceeding as an EJJ prosecution. Minn. Stat. § 260B.130, subd. 1(3) (2016). At a hearing, the state must show by clear and convincing evidence that an EJJ designation serves public safety. *Id.*, subd. 2 (2016). If such a showing is made, the district court must designate the case as an EJJ prosecution. *Id.* In determining whether public safety is served, the district court must consider the following factors:

- (1) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Sentencing Guidelines, the use of a firearm, and the impact on any victim;
- (2) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Sentencing Guidelines;
- (3) the child's prior record of delinquency;
- (4) the child's programming history, including the child's past willingness to participate meaningfully in available programming;
- (5) the adequacy of the punishment or programming available in the juvenile justice system; and
- (6) the dispositional options available for the child.

Id.; Minn. Stat. § 260B.125, subd. 4 (2016).

In considering the aforementioned factors, the district court must “give greater weight to the seriousness of the alleged offense and the child's prior record of delinquency

than to the other factors.” Minn. Stat. § 260B.125, subd. 4. If a proceeding is designated as EJJ, and the juvenile pleads guilty or is found guilty, then the juvenile is given both a juvenile disposition and a stayed adult criminal sentence. Minn. Stat. § 260B.130, subd. 4 (2016). Further, “EJJ designation extends the juvenile court’s jurisdiction until the juvenile reaches 21 years of age, as opposed to the usual limit of 19 years.” *In re Welfare of D.M.D., Jr.*, 607 N.W.2d 432, 434 (Minn. 2000); see Minn. Stat. § 260B.193, subd. 5(b) (2016). We review, for clear error, a district court’s finding “that the prosecutor proved by clear and convincing evidence that public safety would be served by” an EJJ designation. *D.M.D.*, 607 N.W.2d at 437. Here, we conclude that the district court did not clearly err.

The district court made findings on each of the relevant factors. The court found that factor one, concerning the seriousness of the alleged offense, strongly weighed in favor of an EJJ designation. The court characterized the offense as “an escalating conflict resulting in death.” Regarding factor two, concerning appellant’s culpability, the court noted that appellant was a sole perpetrator. See *In the Matter of the Welfare of S.J.T.*, 736 N.W.2d 341, 354 (Minn. App. 2007) (concluding that district court’s finding that culpability factor weighed in favor of certification was not erroneous where the offender was sole perpetrator), *review denied* (Minn. Oct. 24, 2007). However, the court also noted that there was evidence of prior trauma suffered by appellant and evidence suggesting that the victim, appellant’s father, may have been the aggressor in the fatal altercation. The court did not render a definitive determination on whether the culpability factor weighed in favor of an EJJ designation.

Regarding factor three, concerning appellant's prior record of delinquency, the court noted appellant's previous charges for violent behavior, but considered the factor as "neutral" because the charges were resolved as misdemeanors. Regarding factor four, concerning past programming, the court noted appellant's struggles with programming and "significant programming needs," which exceed "what can be accomplished in the time remaining in the straight juvenile system." The court found that appellant was at a high risk to reoffend.

On factor five, concerning the adequacy of the punishment or programming available in the juvenile system, the court noted the benefits of "more time" in meeting appellant's rehabilitative needs. The court also discussed the public-safety benefits of a potential adult sentence should rehabilitative efforts fail. Lastly, the district court addressed factor six, concerning available dispositional options. The court noted that there was only one program for appellant available at that time, a program for girls known as FOCUS. However, the court recognized that additional programming options might be available in the future and that an EJJ designation would provide more time for that potential programming.

The record supports the district court's findings on the EJJ factors. Although the court did not find that all of the factors weighed strongly in favor of an EJJ designation, the court properly addressed the factors as they relate to public safety. The court noted the seriousness of the alleged crime and that appellant was at a high risk to reoffend. The court did not find that any of the factors favored a denial of an EJJ designation. We cannot conclude that the district court clearly erred in its consideration of the factors.

Appellant asserts that the district court designated the case as EJJ because EJJ would “provide an additional two years of supervision for trauma-informed care services needing considerable amounts of time.” Appellant asserts that this was error because evidence showed that rehabilitative progress could be made within the timeframe available under a standard juvenile disposition. Appellant’s argument is lacking for two reasons.

First, the district court, in determining that public safety would be served, did not merely rely upon the additional time for rehabilitation available under an EJJ designation. The court also noted the public-safety benefits of a potential adult sentence should programming fail to rehabilitate appellant. Appellant asserts that the programming available under a standard juvenile disposition is sufficient. But the success of any future rehabilitative efforts remains unclear. As the district court noted in its order, appellant successfully completed a juvenile intervention program just weeks before the alleged crime at issue. This indicates that future juvenile programming may be ineffective and supports the district court’s determination that a potential adult sentence better ensures public safety.

Second, although appellant points to testimony indicating that rehabilitative progress could be made within the timeframe available under a standard juvenile disposition, appellant fails to point to evidence indicating that additional time available under an EJJ designation will not be beneficial for both rehabilitative efforts and public safety. The record indicates that appellant has a “high need” for rehabilitative services and requires “long-term placement.”

Appellant points to *B.N.S.*, where we reversed an EJJ designation, to support the proposition that more time for supervision is an insufficient basis for an EJJ designation.

But the facts here are distinguishable. The alleged offense in *B.N.S.* was burglary, not murder. 647 N.W.2d at 41. Further, in *B.N.S.*, “[t]he district court failed to address at the hearing or in its written order whether there [was] clear and convincing evidence that public safety [would] be served by the EJJ designation.” *Id.* at 44. Here, the district court noted the applicable evidentiary burden and found that the state had met that burden. Moreover, the court took public safety into account, noting both the seriousness of the offense and that appellant posed a high risk of reoffending.

Appellant argues that the district court “applied the wrong legal standard” and “substituted its own opinion of what would be in appellant’s best interests.” We disagree. The district court thoroughly examined the relevant factors and reached an appropriate conclusion based on the evidence presented.

Affirmed.