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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1821**

In the Matter of the Welfare of: C. A. H.

**Filed July 1, 2019
Reversed and remanded
Schellhas, Judge**

Blue Earth County District Court
File No. 07-JV-17-2175

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

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for respondent State of Minnesota)

Considered and decided by Schellhas, Presiding Judge; Jesson, Judge; and Tracy M. Smith, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant challenges his adjudication of delinquency and the district court's award of restitution. We reverse and remand.

FACTS

Appellant C.A.H., born in 2004, is a resident of Oklahoma and temporarily resided in Minnesota. During a night in June 2017, C.A.H. threw a large rock at the window of a motorcycle store in Mankato and destroyed inventory, by tipping over seven motorcycles on the showroom floor and damaging two of the store's trucks. Law enforcement arrested and *Mirandized* C.A.H., who admitted that he broke into the store and damaged the store and its property because he "was bored."

Respondent State of Minnesota charged C.A.H. with one count of third-degree burglary, one count of first-degree damage to property, and one count of fleeing a peace officer. On June 14, 2017, with advice of counsel, C.A.H. entered into a plea agreement whereby he would plead guilty to criminal damage to property, and the state would dismiss the remaining counts. The district court questioned C.A.H. about the trial rights that he was waiving by entering a plea, and C.A.H. offered a factual basis for his guilty plea. The court accepted C.A.H.'s plea and dismissed the remaining counts. On June 28, the court conducted a disposition hearing. The general manager for the crime victim testified that the store faced "a potential loss of \$147,000" due to the damage caused by C.A.H. The court stayed adjudication of C.A.H. for 12 months, placed him on probation, and ordered him to write an apology letter and to pay restitution of \$2,232.50 to the store and \$27,424.95 to the store's insurers. The court allowed C.A.H. to return to his home state of Oklahoma with his mother.

In May 2018, a Blue Earth County probation officer filed a probation-violation report, alleging that C.A.H. had failed to write an apology letter and had paid nothing

toward the court-ordered restitution. The district court scheduled a probation-violation hearing on June 27, but C.A.H. failed to appear, and the court rescheduled the hearing. On October 9, C.A.H. again failed to appear, and the court was advised that C.A.H.'s nonappearance was because his mother was in the process of a divorce and had no funds to get him to court. The court revoked C.A.H.'s stay of adjudication, adjudicated him delinquent, and ordered a "civil judgment for restitution."

This appeal follows.

DECISION

C.A.H.'s restitution challenge

C.A.H. challenges the district court's award of restitution, arguing that the court did not consider his ability to pay and failed to make proper findings of fact. We reject C.A.H.'s arguments because he failed to properly challenge restitution before the district court.

"Statutory interpretation is a question of law, which we review de novo." *In re Welfare of J.J.P.*, 831 N.W.2d 260, 264 (Minn. 2014). "In juvenile-delinquency matters, restitution is governed by both the restitution provision of the juvenile-delinquency statute . . . and the general restitution statute." *In re Welfare of I.N.A.*, 902 N.W.2d 635, 640 (Minn. App. 2017), *review denied* (Minn. Nov. 28, 2017). A district court may order restitution if it finds a juvenile offender delinquent or enters a stay of adjudication. *See* Minn. Stat. § 260B.198, subds. 1(5) (2016) (allowing court to order restitution if it finds a juvenile delinquent), 7(a) (2016) (allowing court to "enter an order in accordance with the provision of subdivision 1" of section 260B.198, following a stay of adjudication); *see also I.N.A.*, 902 N.W.2d at 642 (concluding that district court may order child to pay reasonable

restitution without finding of delinquency during stay of adjudication). “An offender may challenge restitution, but *must do so* by requesting a hearing within 30 days of receiving written notification of the amount of restitution requested, or within 30 days of sentencing, whichever is later.” Minn. Stat. § 611A.045, subd. 3(b) (2016) (emphasis added).

Here, on June 28, 2017, the district court ordered C.A.H. to pay restitution, and C.A.H. neither objected to nor challenged the restitution order. We therefore do not consider C.A.H.’s challenge to the court’s restitution order. *See* Minn. Stat. § 645.44, subd. 15a (2018) (“‘Must’ is mandatory.”); *see also Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (“This court generally will not decide issues which were not raised before the district court.”); *In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981) (refusing to consider constitutional issue because arguments were not raised in the district court).

District court’s subject-matter jurisdiction to adjudicate C.A.H.

C.A.H. next argues that because the district court failed to review his case after 180 days, it violated Minn. Stat. § 260B.198, subd. 7 (2016), and therefore lacked subject-matter jurisdiction to adjudicate him delinquent. We agree. “Subject-matter jurisdiction is a court’s power to hear and determine cases that are presented to the court.” *State v. Losh*, 755 N.W.2d 736, 739 (Minn. 2008). Lack of subject-matter jurisdiction can be raised by either party at any time, and jurisdiction cannot be conferred on the court by waiver or consent. *In re Welfare of C.S.N.*, 917 N.W.2d 427, 431 (Minn. App. 2018). The state concedes that the district court lacked subject-matter jurisdiction to adjudicate C.A.H. delinquent. While appellate courts generally accept a party’s concessions, they need not do so when the party has made a concession on a threshold issue that presents a question

of law. See *State v. Tibiatowski*, 590 N.W.2d 305, 308 (Minn. 1999) (addressing issue of custody despite parties’ stipulation that suspect was in custody). We therefore review this argument to ensure it is in accordance with the law.

Minnesota Statutes section 260B.198, subdivision 7(a), provides:

[W]hen a hearing has been held as provided for in section 260B.163 and the allegations contained in the petition have been duly proven but . . . before a finding of delinquency has been entered, the court may continue the case for a period not to exceed 180 days in any one order. The continuance may be extended for one additional successive period not to exceed 180 days, but only with the consent of the prosecutor and *only after the court has reviewed the case and entered its order for the additional continuance without a finding of delinquency.*

(Emphasis added.) Section 260B.198, subdivision 7(a), “sets out the procedure to stay the adjudication of a juvenile case.” *C.S.N.*, 917 N.W.2d at 431.

In *C.S.N.*, this court concluded that section 260B.198, subdivision 7(a), “plainly limits a court to only issue one continuance, up to 180 days, and requires a court’s review *prior to* extending that continuance for another 180 days.” *Id.* (emphasis added). This court further concluded that when a court fails to review a juvenile-delinquency case prior to extending a continuance for another 180 days, a district court “loses jurisdiction to adjudicate a juvenile delinquent.” *Id.* at 433; *see also* Minn. R. Juv. Delinq. P. 15.05, subd. 4(F) (“A probation revocation proceeding to adjudicate the child on any allegation initially continued without adjudication must be commenced within the [two 180-day] period[s] . . . or [a] juvenile court’s jurisdiction over the charges terminates.”). This court therefore concluded that the district court lost subject-matter jurisdiction over the delinquency proceeding “because it improperly continued the case without adjudication for two 180-

day periods at the original time of disposition and never reviewed his case during the first 180-day period, in violation of section 260B.198, subdivision 7. *C.S.N.*, 917 N.W.2d at 433. This court reversed *C.S.N.*'s delinquency adjudication and remanded the case for dismissal of the delinquency petition. *Id.* at 433–34.

Here, at *C.A.H.*'s disposition hearing on June 28, 2017, the state argued against a stay of adjudication, raising the practical difficulty of *C.A.H.* having to travel to Minnesota for a review hearing before extension of the stay of adjudication. When the district court addressed the issue with *C.A.H.*'s counsel, counsel stated, “No, there’s no need for another hearing. It’s just to ask for that second Order to be filed before the six months is up, . . . [W]e’d be willing to waive the requirement of a second Order in this case, if the court would consider the one year stay.” The court therefore stayed adjudication for two 180-day periods, noting that “[i]t’s been placed on the record that there is a waiver of the six month hearing,” and the court did not conduct a review hearing within 180 days of the stay of adjudication. But jurisdiction cannot be conferred on the court by waiver or consent. *Id.* at 431.

Because the district court did not conduct a review hearing within the first 180 days of *C.A.H.*'s stay of adjudication, it lacked jurisdiction to adjudicate *C.A.H.* delinquent on October 9, 2018. We therefore reverse *C.A.H.*'s adjudication of delinquency and remand for dismissal of the delinquency petition.

Reversed in part and remanded.