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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0519**

In the Matter of the Welfare of: S. R. L., Child.

**Filed December 9, 2019
Reversed and remanded
Hooten, Judge**

Houston County District Court
File No. 28-JV-17-176

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

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

Samuel D. Jandt, Houston County Attorney, Suzanne M. Bublitz, Assistant County Attorney, Caledonia, Minnesota (for respondent county)

Considered and decided by Hooten, Presiding Judge; Reilly, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

In this appeal from the disposition order of the district court, appellant argues that the district court erroneously adjudicated him delinquent for having unsupervised conduct with a younger juvenile because the allegedly younger juvenile was actually one year older than appellant and resided in the same group home where appellant had been placed by the district court. We reverse and remand.

FACTS

S.R.L., age 12, was charged with multiple counts of criminal sexual conduct involving sexual assaults on each of his two younger sisters. At a pretrial hearing, within a couple of weeks after he was charged, S.R.L. agreed to placement at the Mille Lacs Academy, a juvenile inpatient sex offender program. S.R.L. was admitted to Mille Lacs Academy on April 5, 2017. On January 31, 2018, S.R.L. was still making progress in his treatment program at Mille Lacs Academy when the parties reached a resolution of the charges. S.R.L. admitted to two separate counts of second-degree criminal sexual conduct in return for the state's agreement that it would dismiss the other charges. Following a psychosexual evaluation and predisposition report, the district court dismissed the other charges brought against S.R.L., continued the cases for the admitted offenses without adjudication, and placed S.R.L. on probation for 180 days. Among other probation conditions, S.R.L. was required to remain law abiding, successfully complete the program at Mille Lacs Academy, and was prohibited from possessing sexually explicit materials and having "unsupervised contact with children younger than juvenile."

On June 1, 2018, S.R.L. completed his treatment at Mille Lacs Academy and was placed in a group foster home. In September, the state moved to extend the continuance without adjudication for another 180 days, pursuant to Minn. R. Juv. Delinq. P. 15.05, subd. 4(B). The district court granted the motion and continued the matter through March 18, 2019.

When S.R.L. was 13 years old and still living at the group foster home, the state filed a probation violation report on January 8, 2019, alleging that S.R.L. violated two

conditions of his probation: (1) possessing or using sexually explicit materials and (2) having unsupervised contact with a juvenile younger than S.R.L. The report was based on information received from S.R.L.'s group home. The owner of the group home reported to S.R.L.'s probation agent that S.R.L. had viewed pornography on another resident's prohibited cell phone and that he had entered the bed of a low-functioning resident approximately three to five times in the preceding months. S.R.L. denied the allegations, and the district court set a probation revocation hearing.

At the hearing, S.R.L.'s probation agent testified regarding the facts in support of the two probation violations. Regarding the second allegation, that S.R.L. had unsupervised contact with a younger juvenile, the probation agent explained once again what the owner had reported: "[A] lower-functioning juvenile at their home had reported that [S.R.L.] had climbed into bed with him three to five times over the course of . . . [f]our months." The probation agent testified that the other resident was 14 years old and had autism. The probation agent testified that in "one instance he was caught on top of this kid; and he, [S.R.L.] had said that he was trying to teach this kid how to get out of situations. . . . [T]here was tickling and touching, but not sexually. Just tickling and touching." The owner indicated that she believed that S.R.L.'s conduct appeared to be grooming behavior.

The probation agent testified that she spoke with S.R.L. about these reports. When she spoke with him about the second allegation, he responded, "Well, I already thought you knew about me going into the bed with him so I didn't think it was a big deal." The probation agent testified that when she told S.R.L. that she would file a probation violation, he got upset and, for the first time, he was "defiant or disrespectful" towards her.

The district court did not find that there was clear and convincing evidence that S.R.L. had possessed sexually explicit materials, but found that there was clear and convincing evidence that S.R.L. had unsupervised contact with a juvenile younger than S.R.L.:

[G]iven the serious nature of the charges that underlie all of this, the charges for which you're on probation, the fact that you would have contact with someone younger than you who—at least according to the proof provided here and is convincing to me that it's someone who may be not functioning at quite the level that others may be, that's disconcerting to say the very least.

The district court adjudicated S.R.L. delinquent and ordered that he attend outpatient juvenile sex offender treatment. This appeal follows.

D E C I S I O N

S.R.L. argues that there was not clear and convincing evidence that he violated the condition of his probation that he have no unsupervised contact with younger juveniles because the juvenile with whom he had contact was a year older than he. The state does not dispute that the other juvenile was older than S.R.L., but claims that notwithstanding the other juvenile's age, the juvenile was lower functioning and had a diagnosis of autism. The state maintains that S.R.L. should have known that this other juvenile, because of his lower functioning and autism, was equivalent to a younger juvenile with whom he was to have no unsupervised contact.

District courts have broad discretion in determining the appropriate disposition in juvenile delinquency cases. *In re Welfare of R.V.*, 702 N.W.2d 294, 298 (Minn. App. 2005). “Absent a clear abuse of discretion, a district court's disposition will not be

disturbed.” *In re Welfare of J.A.J.*, 545 N.W.2d 412, 414 (Minn. App. 1996). A district court abuses its discretion if its disposition is arbitrary or based on clearly erroneous factual findings. *In re Welfare of S.J.T.*, 736 N.W.2d 341, 346 (Minn. App. 2007), *review denied* (Minn. Oct. 24, 2007); *J.A.J.*, 545 N.W.2d at 414. A factual finding is clearly erroneous if there is no reasonable evidence to support it or if the appellate court “is left with the definite and firm conviction that a mistake occurred.” *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012).

“Adjudicating a child for an offense after initially granting a continuance without adjudication is a probation revocation and must be accomplished pursuant to Rule 15.07.” Minn. R. Juv. Delinq. P. 15.05, subd. 4(E). To revoke probation in a juvenile delinquency proceeding, district courts are not required to follow the steps provided in *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980).¹ Instead, district courts must follow the rules of juvenile delinquency procedure. *R.V.*, 702 N.W.2d at 302–04. Before a district court may adjudicate a juvenile delinquent who was previously granted a continuance without adjudication, it must find by clear and convincing evidence that the juvenile violated the terms of a disposition order. Minn. R. Juv. Delinq. P. 15.07, subd. 4(D); *see also R.V.*, 702 N.W.2d at 303. “[A]s a matter of fundamental fairness, the district court must also ensure that the conditions that the probationer is alleged to have violated were actually imposed and that the juvenile had notice that violation of the conditions of probation could result in

¹ In *State v. Austin*, the Minnesota Supreme Court ruled that, before probation can be revoked in an adult criminal case, the district court must designate the specific conditions that were violated, find the violation was intentional or inexcusable, and find that the need for confinement outweighs the policies favoring probation. 295 N.W.2d at 250.

revocation.” *R.V.*, 702 N.W.2d at 303; *see also State v. Ornelas*, 675 N.W.2d 74, 79–80 (Minn. 2004) (reversing revocation of adult probationer’s probation because the condition alleged to have been violated was not imposed by district court).

While the *Austin* factors are not required for probation violations in juvenile delinquency cases, the first factor—that the district court must identify the specific conditions violated—is analogous to the requirement to provide notice. *See R.V.*, 702 N.W.2d at 303 (“To find a violation of the terms of the disposition order by clear and convincing evidence, the district court must necessarily identify the specific conditions that the probationer violated, as *Austin* requires.”).

Here, S.R.L.’s disposition order prohibited him from having “unsupervised contact with children younger than juvenile.” The district court found that S.R.L. entered the bed of another resident of his group home on multiple occasions and concluded that he had violated this term of his disposition order. But, testimony at the revocation hearing revealed that the other juvenile is actually older than S.R.L. and was 14 years old when the contact occurred. The probation condition specifically states that S.R.L. may not have “unsupervised contact with children *younger* than the juvenile.” (Emphasis added). Because the other juvenile was older than S.R.L., the district court’s factual finding is clearly erroneous.

The state argues that S.R.L. violated probation because “he engaged in bad behaviors that were a threat to public safety and to the safety of other residents in his group home.” The state contends that the district court need not interpret the terms of S.R.L.’s disposition order literally, but may “expand” the meaning of “younger” to include those

who are developmentally delayed. The state provides no caselaw to support these assertions.

Contrary to the state's argument, caselaw provides that probation conditions must reasonably explain what conduct is prohibited. "In imposing a probationary sentence, if noncriminal conduct could result in revocation, the district court should advise the defendant so that the defendant can be reasonably able to tell what lawful acts are prohibited." *Ornelas*, 675 N.W.2d at 80 (quotation omitted). Because S.R.L.'s probation condition states that he should have no unsupervised contact with juveniles younger than S.R.L., and the district court never explained to S.R.L. that this term could be expanded to include older juveniles with disabilities or developmental delays, the conditions of probation imposed by the district court never put S.R.L. on notice that there were circumstances where having contact with a juvenile *older* than S.R.L. would violate his probation.

Although the district court placed S.R.L. in a group home with other juveniles, there is nothing in the record indicating that the district court considered how many other juveniles were in the home or their ages, the degree of supervision provided to the juveniles in the home, or whether incidental or perhaps unavoidable contact with younger juveniles in the group home would constitute a violation. There is also nothing in the record that indicates that the district court, S.R.L.'s probation officer, or anyone else advised S.R.L. as to how he was to maneuver in a group home full of juveniles, perhaps even younger than S.R.L., with varying degrees of supervision without violating the condition of no contact with younger juveniles.

The specific condition that the district court claims was violated was that S.R.L. had unsupervised contact with a juvenile younger than he. In order to support such a violation, the district court must find by clear and convincing evidence that S.R.L. had unsupervised contact with a younger juvenile. Because S.R.L. did not have unsupervised contact with a younger juvenile, as the other juvenile was older than S.R.L., the district court's finding that S.R.L. violated his probation is not supported by the record.

Accordingly, we reverse the district court's adjudication of delinquency because S.R.L. did not violate the specific probation condition relied upon by the district court. Because the juvenile's continuance without adjudication has expired, the petition against S.R.L. must be dismissed. The district court had already continued the matter for one additional 180-day continuance. See Minn. R. Juv. Delinq. P. 15.05, subd. 4(B) (providing that the district court may continue a case without adjudication for 180 days with one additional continuance of 180 days). A district court loses jurisdiction after the initial stay and one additional continuance of 180 days expires. See *In re C.S.N.*, 917 N.W.2d 427, 434 (Minn. App. 2018) (reversing and remanding when the district court lost jurisdiction to adjudicate a juvenile delinquent after failing to continue without adjudication for an additional 180 days). Therefore, we remand with directions to dismiss the petition against S.R.L.

Reversed and remanded.