IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 22-0326
PLYMOUTH COUNTY NO. JVJV003698

STATE OF IOWA,
Plaintiff - Appellant,

vs.

IOWA JUVENILE COURT IN AND FOR PLYMOUTH COUNTY,
Defendant - Appellee.

APPEAL FROM THE IOWA DISTRICT COURT FOR PLYMOUTH COUNTY
HONORABLE DANIEL P. VAKULSKAS, JUDGE

Appellee's Final Brief and Argument and Request for Oral Argument

---

JOEL E. FENTON AT0011280

LAW OFFICES OF JOEL E. FENTON, PLC
309 Court Avenue, Suite 224
Des Moines, IA 50309
Telephone: (515) 480-1542
Facsimile: (866) 604-6341
E-mail: joelfentonlaw@gmail.com

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, and TYPE-STYLE REQUIREMENTS

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

[X] this brief contains 4122 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or,

[ ] this brief uses a monospaced type face and contains _____ lines of text, excluding the parts exempted by Iowa R. App. P. 6.903(1)(g)(2).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) because:

[X] this brief has been prepared in a proportionally spaced typeface using Microsoft Word in size 14 Times New Roman font, or

[ ] this brief has been prepared in a monospaced typeface using Microsoft Word with _____ font.

/S/ - Joel E. Fenton — 01/29/2023

_____ _____

Signature — Date

TABLE OF AUTHORITIES

CASES

STATUTES

RULES OF COURT

STATEMENT OF ISSUES PRESERVED FOR REVIEW

I. The Juvenile Court's Waiver of Jurisdiction Did Not Deprive It of the Power to Modify or Vacate Its Own Waiver.

II. The Juvenile Court Did Not Abuse Its Discretion by Vacating the Waiver Order

ROUTING STATEMENT

Appellee urges that this case be directed to the Iowa Supreme Court, pursuant to Iowa R. App. Pro. 6.1101(2)(c) and (d), since it presents substantial issues of first impression as well as fundamental issues of broad public importance – namely juvenile courts and their jurisdiction.

STATEMENT OF THE CASE

Nature of the Case: Appellee takes no issue with the Appellant's description of the nature of the case.

Course of Proceedings and Disposition in the District Court: Appellee takes no issue with the Appellant's recitation of the course of proceedings and disposition in the Iowa District Court.

ARGUMENT

I. The Juvenile Court's Waiver of Jurisdiction Did Not Deprive It of the Power to Modify or Vacate Its Own Waiver.

Standard/Scope of Review and Error Preservation

In Appellant's proof brief, the description of preservation of error as provided is not contested by Appellee, insofar as the Appellee does not agree with the characterization of the Court's ruling as error but agrees that the issue has been preserved for appellate review. Appellee also agrees with the standard of review for questions of statutory interpretation as cited. State v. Tarbox, 739 N.W.2d 850, 852 (Iowa 2007).

Argument

The juvenile court in Iowa is conferred its jurisdiction by statute. Iowa Code §232.8(1)(a) provides exclusive original jurisdiction in proceedings concerning children alleged to have committed a statutorily defined "delinquent act" unless otherwise provided by law. The juvenile court is further empowered to hold a hearing and proceed via §232.45 to waive its jurisdiction of a child alleged to have committed a public offense to allow for the prosecution of that child as an adult or youthful offender in another court – generally an adult proceeding before an associate district court judge or a district court judge. Iowa Code §232.8 is typically described as the "waiver" statute, and, importantly, the statutory scheme under Chapter 232 allows for waiver into the conventional criminal system and a

process for a so-called "reverse waiver" back into juvenile court if the court deems that good cause exists to apply the juvenile delinquency process to the child instead. Iowa Code §§ 232.8, 232.45.

Waiver of this exclusive jurisdiction requires an analysis grounded in the possibility of effective rehabilitation – if probable cause exists that a youth fourteen years of age or older has committed a delinquent act constituting a public offense, the juvenile court considers whether there are "reasonable prospects for rehabilitat[ion]" of the child by continuing within the juvenile court system. A best interests analysis – for both the child and the community - accompanies this consideration. If the child cannot be rehabilitated and both offender and society cannot benefit, then prosecution continues in the adult court.

Appellant's brief does characterize the possibility of a child being prosecuted under the label of a "youthful offender" (thereby having the court retain jurisdiction over the child) for purposes of determining under §232.2 whether the child remains in detention or is released as the only statutory circumstance where a juvenile court retains jurisdiction. *See* Iowa Code §232.45(7)(b). No other means of retention of jurisdiction is specifically stated under the statute.

Appellant characterizes the waiver of jurisdiction as a one-way street, utilizing a law dictionary's definition of waiver as an act of abandonment, surrender, or yielding of a right, claim or privilege. For this plain language

argument to work, it is necessary to set aside the inconvenient fact that – as previously stated – the Iowa Code contains a built-in means by which the juvenile court, upon the taking of evidence and receiving of argument, can take back jurisdiction upon a finding that a return of the child to its jurisdiction is the least harmful and most beneficial means of dealing with the child offender. This mechanism is a starting point for identifying a legislative recognition of unique function of the juvenile court as the best potential arena for dealing with the specific issues and challenges facing children in terms of their welfare and their contact with the criminal justice system. The juvenile court is given a method by which it can determine that a child's interests, alongside society's interests, are better served by the services to be obtained and the specific handling that the juvenile court system affords youth – and jurisdiction can be returned to the court. Appellant's view that a waiver of jurisdiction is irrevocable and effectively written in stone is not supported by the deference that juvenile courts should be given regarding understanding and applying special expertise in juvenile matters.

Even the example cited by the Appellant relates to the expertise of the juvenile court. Iowa Code §232.23 concerns detention but it also relates to the assignment of a juvenile court officer whether the child is detained or released. An equally compelling argument can be made that the juvenile court's abilities and resources as contemplated under §232.23 warranted the specific cite for retention

of jurisdiction by the juvenile court to address detention issues under Iowa Code §232.45(7)(b). Nor can an appeal to ancient maxims of statutory construction assist the State's argument in this regard. Citing Kucera v. Baldazo, 745 N.W.2d 481 (Iowa 2008), the rule of '*expressio unius est exclusio alterius*' is invoked by the State for the proposition that where the legislature expressly mentions one thing, it at the same time implies the exclusion of others not so named. No less of an authority than the United States Supreme Court has reminded courts that the maxim is a tool, not a one-size-fits-all framework.

> "As we have held repeatedly, the canon *expressio unius est exclusio* does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an "associated group or series," justifying the inference tht items not mentioned were excluded by deliberate choice, not inadvertence. United States v. Vonn, 535 U.S. 55, 65, 122 S.Ct. 1043, 152 L.Ed.2d 90 (2002); Chevron U.S.A. Inc. v. Echazabal, 536 U.S. 73, 81, 122 S.Ct. 2045, 153 L.Ed.2d 82 (2002). Just as statutory language suggesting exclusiveness is missing, so is that essential extrastatutory ingredient of an expression-exclusion demonstration, the series of terms from which an omission bespeaks a negative implication. The canon depends on identifying a series of two or more terms or things that should be understood to go hand in hand, which [is] abridged in circumstances supporting a sensible inference that the term left out must have been meant to be excluded E. Crawford, Construction of Statutes 337 (1940) (*expressio unius* ' "properly applies only when in the natural association of ideas in the mind of the reader that which is expressed is so set over by way of strong contrast to that which is omitted that the contrast enforces the affirmative inference." ' (quoting State ex rel. Curtis v. De Corps, 134 Ohio St. 295, 299, 16 N.E.2d 459, 462 (1938))); United States v. Vonn, *supra.*" Barnhart v. Peabody Coal Company, 537 U.S. 149, 123 S.Ct. 748, 154 L.Ed.2d 53 (2003).

It is not at all clear from the statute that the legislature, in empowering Iowa juvenile courts with exclusive and original jurisdiction, meant to constrain or bar any sort of exercise of jurisdiction previously because of a specific statutory reference to jurisdiction and connection to the issue of juvenile detention. No other content in the statute seems to follow the Supreme Court's omission bespeaking a negative implication. Indeed, the statute does have a means to return jurisdiction to the juvenile courts via the reverse waiver (Iowa Code §§803.5(5), 803.6(3)) so it can fairly be argued that the legislature contemplated the prospect that the juvenile court might hear evidence or receive information leading to a decision that a return to the juvenile justice system is the better way to go in certain instances. *See also* In re Sabrina H., 149 Cal.App.4th 1403, 1411, 57 Cal.Rptr.3d 863, 869 (2007), in which a California court declined to apply the maxim for purposes of construing California's Welfare and Institutions Code as application of the principle would run contrary to the stated legislative purpose of the statute to protect and serve the needs of children. The Iowa statute rearticulates the best interests of child and greater community priority as well as notes that the statute and rules are to be liberally construed. Liberal construction and application is hardly served by rigid application of statutory construction maxims.

The State also uses other principles of statutory construction to strictly delineate the ability of the juvenile court to reassert jurisdiction, noting that the

phrase "as an adult" somehow tags the waived juvenile and provides another layer between the juvenile court and the youth for purposes of any jurisdictional link. Yet, with procedures in place within chapters 232 and 803, the youth to be tried as an adult can be moved back to juvenile court for cause and no longer be subject to the adult system. This is admittedly thorugh the statutory vehicle and through the district court, rather than the original juvenile court.

Iowa Code §232 also uses the word "transfer" over 130 times. While many of these uses pertain to the movement of children within CINA cases to and from foster care or guardianships, the word transfer is also used repeatedly in terms of movement between jurisdiction of courts. For example, adults who have committed delinquent acts while juveniles can be "transferred" into the jurisdiction of the juvenile court despite their age. *See* Iowa Code §§232.8(1)(a), 803.5. Children are transferred into juvenile court under other parts of §232.8. The reverse waiver procedure described in Iowa Code §803.6(3) uses the transfer term. The Appellee would submit that repeated use of the word "transfer" in these contexts indicates a willingness of the legislature and, indeed, the court system to contemplate moving the offender back and forth between the courts as needed and as warranted to accomplish the goals of justice and effectuation of the stated purposes of the juvenile justice statutes.

The Court has previously stated that juvenile offender proceedings are special in nature. "We begin our analysis with a recognition that proceedings in juvenile court are not prosecutions for crime. They are special proceedings which serve as an ameliorative alternative to criminal prosecution of children." In Interest of Johnson, 257 N.W.2d 47 (Iowa 1977). Later in the opinion, the Johnson court discusses transfers of children for prosecution in district court. "A child under jurisdiction of the juvenile court is not amenable to prosecution under the criminal law until she is transferred for prosecution as an adult." Johnson at 48-49; State v. Speck, 242 N.W.2d 287, 289 (Iowa 1976). This language appears to indicate a recognition by the Court that children can move between these two fora as needed and so as to accomplish the purposes of the juvenile statute.

The State has identified prior decisions of this Court that concern juvenile jurisdiction. Bergman v. Nelson, 241 N.W.2d 14 (Iowa 1976) involved a defendant seeking to have a tardy indictment dismissed. The language contained in Bergman regarding the binding of a "juvenile to the jurisdiction of the district court for criminal prosecution" refers to the indictment in adult court as the next step of prosecution and is in no way a statement regarding the transfer of juvenile court jurisdiction or the permanency thereof of such a waiver or transfer. Id. at 14.

The State's reliance on In re Franklin is misplaced given the underlying facts and procedural posture of that Maryland case. Franklin involved a juvenile filing a

motion in the juvenile court to secure a return from adult court. The direct holding of Franklin was that a juvenile court cannot act to "divest[…] a criminal authority of its power and authority to try the case." In re Franklin, 783 A.2d 673, 690 (Md. 2001). In the series of court rulings involved in this matter, the District Court actually filed an order finding that the juvenile court should take up the decision on the merits of reconsideration of waiver. [App. pp. 85-110] This yield of jurisdiction is highly unusual but opened the window for the juvenile court to consider the new information regarding treatment programs that were not known at the time of waiver hearing. These events, unique to this matter, distinguish the Franklin case from this matter due to what was being asked of the Maryland juvenile court.

In terms of the application of Vairin M., 647 N.W.2d 208 (Wis. 2002), dicta in that decision described a method by which the Wisconsin Supreme Court envisioned a juvenile defendant being able to either pursue an interlocutory appeal and seeking a stay of criminal proceedings, or proceed to filing a motion in criminal court citing a new factor that would have affected the juvenile court's determination regarding waiver to adult court. *See* Vairin M. at 219. This process was effectively what the juvenile did in the instant matter. The juvenile in this matter filed a Motion to Modify Order Waiving Jurisdiction to District Court utilizing Iowa R. Civ. P. 1.1012(6). [App. pp. 69-72] That rule articulates the

factors for new material evidence that was newly discovered after the waiver hearing, evidence that could not be discovered and produced at the waiver hearing with reasonable diligence, and not discovered within the time for moving for a new hearing under rule 1.1004. These requirements are akin to those cited with approval in Varian M. After the hearing on this new evidence, the juvenile court judge acted to vacate the prior order and overruled the State's motion to waive to the district court. [App. p. 126]

Of particular comparison and relevance to the actions of the juvenile and district courts in this matter is this discussion from Vairin M.:

> "We agree with Vairin that in many cases, an interlocutory appeal or a direct appeal is simply not an adequate remedy. We further conclude that in some cases, particularly in small counties, the requirement that a juvenile appeal a waiver decision to the court of appeals is impractical. *It is not difficult to imagine a judge in a single-judge county entering a waiver order as a juvenile court, and then, after assuming jurisdiction as a criminal court, learning of new evidence that would have changed his or her waiver decision. In such an instance, the judge might wish he or she could reconsider the waiver order, and transfer jurisdiction back to the juvenile court. Requiring an appeal to the court of appeals to afford a remedy would be absurd.* [Emphasis added.] Moreover, if 14 days had passed after waiver before new information came to light, the only remedy would be to wait for a direct appeal after the juvenile was convicted in criminal court. The appeal process embraced by the State would be unworkable in many cases." Vairin M., 647 N.W.2d at 218.

The emphasis added is to highlight the practicality of this remedy and this process in situations where there is compelling evidence that jurisdiction - a transfer - of the child offender should be contemplated. This type of flexibility is not contrary

to the Iowa juvenile statute and does not offend traditional senses of jurisdiction because there must always be a hearing and an inquiry requiring demonstrable new evidence or new grounds for the reviewing court to consider returning the child to juvenile court.

The State warns of misapplication of rules 1.1012 and 1.1013 to waiver orders and subsequent disruption to trials, pleas, and sentencing. This ignores the necessity for the high hurdles of those roles to demonstrate that new evidence warranting a change back to juvenile court exists and should be applied to make the requested change. It is highly unlikely that juvenile courts will actively disrupt the prosecution in district court in the manner described, and the safeguards of the required showing under these civil procedure rules should ensure that only matters where there are highly significant and highly relevant grounds to revisit the waiver to district court will be considered. The Appellant believes the juvenile court has inherent authority to revisit jurisdiction as described earlier in this brief, and would also argue in the alternative that a process such as previously described – including the procedural steps that occurred in this matter between the juvenile and district courts – is supportable by rule and liberal application of Chapter 232 and restrained by the fairly narrow circumstances and signficant quantum of proof required to move the court in question to act.

II. The Juvenile Court Did Not Abuse Its Discretion by Vacating the Waiver Order

Standard/Scope of Review and Error Preservation

In Appellant's proof brief, the description of preservation of error as provided is not contested by Appellee, insofar as the Appellee does not agree with the characterization of the Court's ruling as error but agrees that the issue has been preserved for appellate review. Appellee also agrees with the standard of review for purposes of consideration of abuse of discretion. *See e.g.* State v. Smith, 573 N.W.2d 14, 17 (Iowa 1997).

Argument

Judges are typically given wide discretion regarding acting on newly discovered evidence and an abuse of discretion is needed for reversal. Soults Farms, Inc. v. Schafer, 797 N.W.2d 92, 109 (Iowa 2011) (involving ruling on a petition to vacate the judgment and/or grant of a new trial). The State cites a four-pronged test from criminal cases (*e.g.* Jones v. State, 479 N.W.2d 265, 274 (Iowa 1991) which has some dissimilarities to the list of factors as articulated in Iowa R. Civ. P. 1.1012(6) under the grounds for vacating or modifying judgment.

> "Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial, and was not discovered within the time for moving for new trial under rule 1.1004."

The new evidence factors as articulated in the criminal caselaw are more related to issues of guilt and innocence as presented in a criminal trial. The kinds of newly discovered evidence presented by the juvenile in this case, and presumably in other cases where a juvenile would seek a waiver back to juvenile court would typically involve issues related to services and resources, psychological health and evaluation, and similar factors. The State's comparison equating evidence of additional treatment facilties and exculpatory evidence in criminal matters is not persuasive. The spectre of endless motions to modify or claw back juvenile orders is largely a phantom concern.

The State devotes nearly five pages of its brief to criticism of the juvenile's efforts to provide information to the juvenile court regarding treatment options, facilities, and personnel and whether such information is truly newly discovered evidence. The relative dearth of treatment facilities addressing psychological issues (including those related to sexuality or sexual criminal behavior) for adolescents would tend to support a view that an expert's searches for facilities and professionals to treat or consult with a child are not as easily performed or executed as the State argues and there may indeed be lags in time for a resource to be identified, investigated, and otherwise vetted for suitability. The type of information provided by Dr. Stokes is the sort of evidence sought for purposes of steering the process back to juvenile court. [App. pp. 20-49 *passim*, 72-75] The

State notes that the juvenile court's order cited no caselaw, nor did it outline any legal framework for newly discovered evidence. Yet, juvenile courts themselves operate largely outside of the formalistic framework of the rules of evidence and often rely on the expertise and judgment of the juvenile court judges regarding admissibility and weight of evidence. Application of the harsher strictures of the newly discovered evidence standards to juvenile court proceedings runs the risk of excluding some of the very forms of evidence that juvenile courts use to rehabiltate or to convey services and resources to those in need. The juvenile court in this matter was performing the type of inquiry and evaluation that juvenile courts were intended to do, by being a form of specialty court specifically tailored to implement the expectations and requirements contained in Chapter 232. Given the nature of the work done by juvenile courts and the purpose of the statute, the court's actions cannot be considered an abuse of discretion.

CONCLUSION

Appellee urges the Court to find that the juvenile court had authority to vacate and reassume jurisdiction over the juvenile in this case, as well as the authority to modify or vacate the juvenile court's order. The Court is further urged to find that the juvenile court did not abuse its discretion, and in fact utilized its specific insight and experience with juvenile court matters in making the determination to revoke the original waiver and reassume jurisdiction.

REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument.

PROOF OF FILING AND CERTIFICATE OF SERVICE

I, the undersigned, certify that on January 29, 2023, I electronically filed a true copy of the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel below:

Attorney General
Criminal Appeals Division
1305 E. Walnut
Hoover Building
Des Moines, IA 50319

ATTORNEYS FOR APPELLANT
STATE OF IOWA

BY: /s/ - Joel E. Fenton

JOEL E. FENTON AT0011280

Law Offices of Joel E. Fenton, PLC

309 Court Avenue, Suite 224
Des Moines, Iowa 50309
Telephone: (515) 480-1542
Fax: (866) 604-6341
E-mail: joelfentonlaw@gmail.com
ATTORNEY FOR APPELLEE