

W O O A

IN THE FLORIDA SUPREME COURT

Case No. 65,159

FILED

SID J. WHITE

AUG 28 1984

CLERK, SUPREME COURT

By M
Chief Deputy Clerk

STATE OF FLORIDA, :

Petitioner, :

v. :

DEPARTMENT OF HEALTH AND :

REHABILITATIVE SERVICES, :

ex rel, M.H., a juvenile, :

Respondent. :

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

Respondent adopts much of the Petitioner's recital of Preliminary Statement and Statement of the Case and Facts as set forth in Petitioner's Brief on the merits. However, Respondent notes that Petitioner does not address significance to that which Respondent views as the gravament of this case. M.H. was committed to the Residential Program of the Department of Health and Rehabilitative Services after the adjudication of delinquency for failure to obey court order, i.e., contempt of court. It is M.H.'s commitment to the residential facility that the Department finds objectionable. Thus, the issue in this case goes further than the issue in A.O., a juvenile v. State, 433 So.2d 22 (Fla. 3rd DCA 1983).

ISSUE PRESENTED

THE ISSUE IS WHETHER A JUVENILE MAY BE COMMITTED TO THE DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES AND PLACED IN A RESIDENTIAL FACILITY BASED UPON AN ADJUDICATION OF DELINQUENCY FOUNDED UPON A FINDING OF CONTEMPT FOR VIOLATION OF A COURT ORDER ADJUDICATING A CHILD DEPENDENT.

ARGUMENT

A JUVENILE SHOULD NOT BE COMMITTED TO A RESIDENTIAL
PROGRAM OF THE DEPARTMENT OF HEALTH AND REHABILITATIVE
SERVICES BASED UPON AN ADJUDICATION OF DELINQUENCY
FOUNDED UPON A FINDING OF CONTEMPT FOR VIOLATION
OF A COURT ORDER ADJUDICATING THE CHILD DEPENDENT.

A.O., a juvenile v. State, 433 So. 2d 22 (Fla. 3rd DCA 1983) held that a juvenile may be adjudicated delinquent based upon a finding of contempt for violation of a previous order adjudicating the child dependent. The issue presented in the instant case is similar to that case and is an extension of the A.O. rationale.

M.H. was not only adjudicated delinquent, she was committed to a residential facility because of a violation of community control. M.H. was placed on community control because of contempt of court. The acts of contempt committed by M.H. were violations of the order finding her to be dependent. The order adjudicating M.H. to be dependent required that she abide by a curfew. When the child did not abide by this curfew she was found to be guilty of contempt of court. The situation snowballed until the girl was committed.

Clearly, M.H. was in contempt of court for violation of a court order. Clearly the statutory definition of a "child who has committed a delinquent act" includes a child who has committed contempt of court (Section 39.01(8), Florida Statutes). Nevertheless, it seems manifestly contrary to the general scheme and intention of Chapter 39, the Florida Juvenile Justice Act, to commit to a residential facility a child who has entered the system not for violation of the criminal law, but for acts which render the child to be dependent. Respondent cites the dissenting District Court Opinion in A.O. Judge Jorgenson stated that in his opinion that a concededly dependent child should not face criminal sanctions for what could be characterized as a status offense.

JORGENSEN, J., dissenting: I respectfully dissent. I do not agree that a child found guilty of contempt may be adjudicated a delinquent when the basis for that finding is a violation of an order entered during a dependency proceeding. See J.M.J. v. State, 389 So.2d 1208 (Fla. 1st DCA 1980). I do not believe that a concededly dependent child should face a criminal sanction for what could best be characterized as a status offense. See J.M.J., 289 So.2d at 1210.

A.O., fifteen years old at the time of this adjudication, now faces a potential four years of incarceration in institutions populated by young offenders who have committed real crimes, all this for the "crime" of not going to school. Such a result was not intended by the legislature. See J.M.J., 389 So.2d at 1210. I would accordingly reverse and remand with directions to vacate the adjudication of delinquency and for further proceedings pursuant to Section 39.41, Florida Statutes (1981).

There is no doubt that a juvenile can be held in contempt of court for failure to obey a court order. The issue in M.H. goes further because after the adjudication of delinquency, she was committed to an HRS residential facility which the Department finds so objectionable. In the adult penal system, a person found in criminal contempt would not go into the State Penal Systems, but rather would be held in a county jail until he purges himself of the contempt. So too, a juvenile should have the same safeguards, that he (or in this case, she) could purge himself of the contempt while held in a local or regional detention facility.

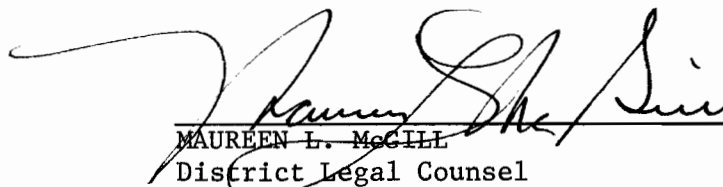
Respondent asks this Court to examine the statutory scheme of Chapter 39 with respect to the division into separate parts of delinquency cases and dependency cases. M.H. appears to be a child who lies between the two parts. One might say that she has fallen into the crack in the statute. This crack could grow into a cavern if more and more status offenders become children who have committed delinquent acts by virtue of contempt of court. Whether commitment to an HRS residential facility is an appropriate sanction for contempt of court is the issue brought to bar.

CONCLUSION

Respondent seeks that the Court resolve the issue of commitment to an HRS residential facility for a dependent child's act of contempt of court in the negative.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Department of Legal Affairs, Criminal Division, The Capitol, Tallahassee, Florida, 32301, and Robert C. Elmore, Assistant State Attorney, Okaloosa County Courthouse Annex, Shalimar, Florida, 32548, by U.S. Mail this 24th day of August, 1984.



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