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JULY 23, 2019
STATE OF NORTH DAKOTA

In the Supreme Court of the State of North Dakota

	)	Supreme Court No. 20190136
State of North Dakota	)	
Plaintiff, Appellee	)	District Court Nos.
	)	47-2019-CR-100
v	)	47-2019-CR-102
	)	47-2019-CR-103
[redacted], G.C.H.	)	47-2019-CR-104
Defendant, Appellant	)	47-2019-CR-120

Appellee's Brief

G.C.H. -
[redacted] appeals an Order Denying Motion to Dismiss, entered on April 10, 2019, by an Order Certifying Question of law to the Supreme Court of the State of North Dakota on April 30, 2019.
Judge Cherie L. Clark presided.

ORAL ARGUMENT REQUESTED

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[¶1] Issue Presented for Review

[¶2]. Whether the district court has exclusive jurisdiction over a juvenile who committed crimes after he was married, but still under 18 years of age.

[¶3] Statement of the Case

[¶4]. The State accepts G.C.H.'s procedural history of the case.

[¶5] Statement of the facts

[¶6] G.C.H. got married on June 6, 2017 at the age of 16 years. *See, Appellant's Appendix (App.) 12.* Between December 2017 and August 2018, G.C.H. was arrested for multiple offenses. *See Appellant's App.* 1-49. Because G.C.H. was married at the time of the offenses, the Juvenile court supervisor orally informed the State that the juvenile court lacked jurisdiction to entertain G.C.H.'s cases.

[¶7] The State forwarded the question of jurisdiction over G.C.H.'s cases to the Attorney General's Office, and on January 29, 2019, the Office of the Attorney General wrote the State a letter saying that "...a married juvenile is excluded from the category of "child" in § 27-20-02, and therefore juvenile court would be barred from receiving or hearing a petition alleging the married juvenile committed a delinquent act." *See Appellant's App.* 51.

[¶8] The State charged G.C.H. in the district court with the crimes listed in Appellant's Appendix 1-49. The rest of the relevant facts are contained in Appellant's Statement of the Case. *Appellant's Brief* ¶ ¶ 6-15

[¶9] Law

[¶10] N.D.C.C. §27-20-02(4):

""Child" means an individual who is :

a. Under the age of eighteen years and is not married; or
b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years."

[¶11] N.D.C.C. § 1-02-38. Intentions in the enactment of statutes:

"In enacting a statute, it is presumed that:

1. Compliance with the constitutions of the state and of the United States is intended.
2. The entire statute is intended to be effective.
3. A just and reasonable result is intended.
4. A result feasible of execution is intended.
5. Public interest is favored over any private interest."

[¶12] N.D.C.C § 31-11-05(23) reads: 'The law neither does nor requires idle acts.'

[¶13] The Supreme Court construes statutes in a way which does not render them meaningless because it presumes the legislature acts with purpose and does not perform idle acts. *Tillich v. Bruce*, 2017 ND 21, ¶ 9, 889 N.W.2d 899, 903, (*citing Meier v. N.D. Dep't of Human Servs.*, 2012 ND 134, ¶ 10, 818 N.W.2d 774.), *see also Wheeler v. Gardner*, 2006 ND 24, ¶ 15, 708 N.W.2d 908, 912 (It is presumed that the legislature acts with purpose and does not perform idle acts)

[¶14] "In construing a statute, the spirit of the enactment must be considered and the statute should if possible, be construed in accordance therewith..." *State ex rel. Olson v. Thompson*, 248 N.W.2d 347, 352 (N.D. 1976) (*citing Perry v. Erling*, 132 N.W.2d 889, 896 (N.D.1965)).

[¶15] It is a "fundamental canon of statutory construction that the words of a statute must be

read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809, 109 S.Ct. 1500, 103 (1989). A court must therefore interpret the statute "as a symmetrical and coherent regulatory scheme," *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569, 115 S.Ct. 1061, (1995), and "fit, if possible, all parts into an harmonious whole," *FTC v. Mandel Brothers, Inc.*, 359 U.S. 385, 389, 79 S.Ct. 818, (1959); *Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133, 120 S.Ct. 1291, 1301 (2000).

[¶16] "It is well established that our task in interpreting separate provisions of a single Act is to give the Act 'the most harmonious, comprehensive meaning possible' in light of the legislative policy and purpose." *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 632, 93 S.Ct. 2469, 2484 (1973), (*citing Clark v. Uebersee Finanz-Korp.*, 332 U.S. 480, 488, 68 S.Ct. 174, 178 (1947).

[¶17] "Words in a statute are given their plain, ordinary, and commonly understood meaning, unless they are defined by statute or unless a contrary intention plainly appears.... The letter of a statute cannot be disregarded under the pretext of pursuing its spirit when the language of the statute is clear and unambiguous." *State v. Martin*, 2011 ND 6, ¶ 5, 793 N.W.2d 188, 190 (*citing* N.D.C.C. § 1–02–02., 1–02–05.) "Statutes are construed as a whole and are harmonized to give meaning to related provisions." *Id. (Citing Industrial Contractors, Inc. v. Workforce Safety & Ins.*, 2009 ND 157, ¶ 11, 772 N.W.2d 582.

[¶18] "We will harmonize statutes if possible to avoid conflicts between them, and our statutory interpretation "must be consistent with legislative intent and done in a manner [to further] the policy goals and objectives of the statutes." *Industrial Contractors, Inc. v. Workforce Safety & Ins.*, 2009 ND 157, ¶ 11, 772 N.W.2d 582, 589 (*citing Haugenoe v. Workforce*

Safety & Ins., 2008 ND 78, ¶ 8, 748 N.W.2d 378.) "We presume the Legislature did not intend an unreasonable result or unjust consequence." *Workforce Safety & Ins.* at ¶ 11.

[¶19] "The word 'or' is disjunctive in nature and ordinarily indicates an alternative between different things or actions." *Id.* at ¶ 12 (*citing State v. FreeEats.com, Inc.*, 2006 ND 84, ¶ 14, 712 N.W.2d 828). "Terms or phrases separated by 'or' have separate and independent significance." *Workforce Safety & Ins.* at ¶ 12 (*holding* "The plain language of N.D.C.C. § 65–05–28.2(5) requires both written notice to the employee and posting of an employer's designated medical provider selection under the program, and any failure to comply with either requirement under "this subsection invalidates the [employer's] selection,...")

[¶20] "The juvenile court has exclusive original jurisdiction of...[p]roceedings in which a child is alleged to be delinquent unruly or deprived..." *State v. Arot*, 2013 ND 182, ¶ 7, 838 N.W.2d 409.

[¶21] Argument

[¶22] **A. Because G.C.H. [redacted] is an adult under N.D.C.C. § 27-20-02(4)(a), he cannot claim the category of "child" under N.D.C.C. § 27-20-02(4)(b), thus his alleged offenses are not delinquent acts, but are crimes giving the district court exclusive jurisdiction.**

[¶23] G.C.H. [redacted] concedes that he is an adult under N.D.C.C. § 27-20-02(4)(a), because he was married when he was 16 years old prior to committing the alleged offenses. *See Appellant's Brief*, ¶ 30. G.C.H. [redacted] then claims that he is also a child under N.D.C.C. § 27-20-02(4)(b) which is not only contradictory, but leads to an asymmetrical and incoherent interpretation of N.D.C.C. § 27-20-02(4) as warned against by the United States Supreme

Court in *Gustafson v. Alloyd Co.*, because one cannot be a child, and at the same time an adult. *See Alloyd Co.*, at 569 (A court must therefore interpret the statute "as a symmetrical and coherent regulatory scheme,"); *see aslo Appellant's Brief*, ¶ 30,.

[¶24] G.C.H. [redacted] argues that his alleged offenses are delinquent acts, and that he should be charged as a child under N.D.C.C. § 27-20-02(4)(b). *See Appellant's Brief*, ¶ 32-34. G.C.H. [redacted]'s argument is incorrect because G.C.H. [redacted] is not a child under N.D.C.C. § 27-20-02(4)(a), as such, he was charged as an adult for crimes he committed as an adult, and not for delinquent acts. *See Appellant's Brief*, ¶ 7 for G.C.H. [redacted]'s charges.

[¶25] Reading N.D.C.C. § 27-20-02(4) in "the most harmonious, comprehensive meaning possible" and "in light of the legislative policy and purpose," as directed by the United Stated Supreme Court in *Hynson, Westcott & Dunning, Inc.* at 632, it is apparent that the purpose and intent of the North Dakota State legislature is not for one to be a child, and at the same time an adult under the same sub section, N.D.C.C. § 27-20-02(4), as our statute expressly stated, "The law neither does nor requires idle acts. N.D.C.C. § 31-11-05(23).

[¶26] In construing N.D.C.C. § 27-20-02(4), the spirit of the enactment must be considered and this statute should if possible, be construed in accordance therewith. *Thompson*, 352. The use of "or" in N.D.C.C. § 27-20-02(4) indicates that (a) and (b) have separate and independent significance, *Workforce Safety & Ins.*, ¶ 12, and therefore G.H.C. [redacted]'s failure to meet the requirement of child in either of (a) or (b) invalidates his claim of child in (b) as envisaged by the North Dakota Supreme Court in *Workforce Safety & Ins.*, ¶ 12 .

[¶27] Evidently, the legislature did not intend for a person who is not a child under (a) to claim that category under (b). If the legislature intended such result, it would have used "and" which is conjunctive in nature, *Martin*, 190, requiring G.H.C. [redacted] to fail both (a) and (b) in

order to be considered an adult. Instead, the legislature used "or" which is disjunctive in nature and ordinarily indicates an alternative between different things. *Workforce Safety & Ins.*, ¶ 12. Thus the legislature required G.H.C. to fail the requirement of either (a) or (b) to be considered an adult, and not both of them.

[¶28] If G.C.H. is right that he is a child under N.D.C.C. § 27-20-02(4)(b), and that his alleged offenses are delinquent acts, then G.C.H. is arguing that the legislature may have acted not only without a purpose by enacting the subsection, but may have also performed an idle act, *Gardner*, ¶ 15 because one cannot be a child, and at the same time an adult.

[¶29] G.C.H.'s interpretation contradicts the rules of statutory construction. In fact, G.C.H.'s interpretation of N.D.C.C. § 27-20-02(4) renders (a) meaningless. *See Appellant's Brief*, ¶ 33-34; *Bruce*, ¶ 9 (The Supreme Court construes statutes in a way which does not render them meaningless because it presumes the legislature acts with purpose and does not perform idle acts.) Because G.C.H. cannot be an adult, and a child at the same time, his alleged offenses are therefore crimes giving the district court exclusive jurisdiction.

[¶30] B. [redacted] mistakenly argues that N.D.C.C. § 27-20-02(4)(b) is a surplusage, it is not; it merely provides an avenue for a person who committed an offense while still under 18 years and unmarried to still claim the category of child under N.D.C.C. § 27-20-02(4)(b) if that person is under 20 years of age.

[¶31] G.C.H. argues that there is more than one way for an individual to be a child under N.D.C.C. § 27-20-02(4). *Appellant's brief*, ¶34. If G.C.H. is right that N.D.C.C. § 27-20-02(4)(b) makes him a child, despite being an adult under N.D.C.C. § 27-20-02(4)(a), then G.H.C. is inadvertently saying that N.D.C.C. § 27-20-02(4)(a), is in his own words "...useless and would just be a surplusage." *Appellant's brief*, ¶34.

[¶32] N.D.C.C. § 27-20-02(4) used "or" to separate (a) and (b). This naturally means that a person can claim the category of child, either by virture of (a) or (b). G.C.H. is already an adult under (a), and therefore cannot be a child under (b) thus G.C.H.'s interpretation of the statute is absurd. Simply put, G.C.H. cannot have his cake, and eat it too.

[¶33] Had N.D.C.C. § 27-20-02(4) used "and' instead of "or", then G.C.H. may have still been a child under (b) irrespective of his status under (a) because the law may have been interpreted to require both subsections for the juvenile court to have full jurisdiction. *See Martin*, 2011 ND 6, ¶ 5 (..."and" is conjunctive in nature and ordinarily means in addition to). Therefore, if the legislature intended for G.C.H. to still be a categorized as a child after marriage but while still under 18 years, it would have used "and" instead of "or".

[¶34] However, because "or" is a disjunctive word and "ordinarily indicates an alternative between different things or action," *Workforce Safety & Ins.*, ¶ 11, G.C.H. cannot be a child under N.D.C.C. § 27-20-02(4)(b), because he is already an adult under N.D.C.C. § 27-20-02(4)(a). In construing N.D.C.C. § 27-20-02(4) as a whole, and harmonizing it, *Workforce Safety & Ins.*, ¶ 11, N.D.C.C. § 27-20-02(4)(b) cannot therefore be a surplusage as assumed by G.C.H. in ¶ 34 of his brief.

[¶35] A good illustration follows: a person under the age of 18 years, unmarried, and commits an offense may be a delinquent child under N.D.C.C. § 27-20-02(4), and his alleged offenses may be delinquent acts under the same subsection. If that child is under 20 years, the juvenile court may still have jurisdiction under N.D.C.C. § 27-20-02(4)(b) over the alleged offenses that the child (probably now adult) committed when that child was under 18 years old if that child was unmarried when the child committed the alleged offenses. In the above scenario, the child would have still been considered a child under N.D.C.C. §

27-20-02(4)(a) when he committed the alleged offenses, even though the juvenile court retained jurisdiction under N.D.C.C. § 27-20-02(4)(b).

[¶36] On the other hand, if our illustrative child above marries before turning 18 years, any offence he commits after marriage would no longer be a delinquent act because even though he still may be under 18, years, he is now an adult under N.D.C.C. § 27-20-02(4)(a). As such, the offense would be a crime committed by an adult under N.D.C.C. § 27-20-02(4)(a) hence the district court would have exclusive jurisdiction.

[¶37] The above illustration is similar to our case. N.D.C.C. § 27-20-02(4)(a) bars G.C.H. [redacted] from claiming the category of child under N.D.C.C. § 27-20-02(4)(b) because he is already an adult by virtue of his marriage. N.D.C.C. § 27-20-02(4)(b) is thus not surplusage, it serves a distinct purpose and should be harmonized with N.D.C.C. § 27-20-02(4)(a) to avoid conflicts between the two provisions of the subsection, and to achieve the policy goals and objectives of the statute. *See Workforce Safety & Ins.*, ¶ 11 ("We will harmonize statutes if possible to avoid conflicts between them, and our statutory interpretation "must be consistent with legislative intent and done in a manner [to further] the policy goals and objectives of the statutes.")

[¶38] C. N.D.C.C. § 27-20-02(4)(b) simply does not apply to G.C.H. [redacted] because he is married. Thus the district court rightly denied G.C.H. [redacted]'s motion to dismiss because G.C.H. [redacted] committed the alleged offenses as an adult and not as a child, and the alleged offenses were charged as crimes and not delinquent acts.

[¶39] The State did not allege that G.C.H. [redacted] committed delinquent acts, neither did the State file this action in the juvenile court seeking to adjudicate G.C.H. [redacted] as a delinquent. *See Appellant's App.*, 4-52; *Arot*, ¶ 7, ("The juvenile court has exclusive original jurisdiction

of...[p]roceedings in which a child is alleged to be delinquent...") The State charged G.H.C. [redacted] with crimes in the district court. *See Appellant's App.*, 4-52.

[¶40] A person who does not fit into the category of "child" under N.D.C.C. § 27-20-02(4)(a), may still claim that category under N.D.C.C. § 27-20-02(4)(b) only if that person was under 18 years and unmarried when the offense was committed. G.C.H. [redacted] is under 18 years and married, thus cannot claim that category under N.D.C.C. § 27-20-02(4)(b).

[¶41] The district court reasoned that G.C.H. [redacted] was not a child "under either subsection." *See Appellant's App.*, 54. Because "[w]ords in a statute are given their plain, ordinary, and commonly understood meaning, unless they are defined by statute or unless a contrary intention plainly appears...." *Martin*, ¶ 5, Marriage therefore removes G.H.C. [redacted] from the category of child under N.D.C.C. § 27-20-02(4).

[¶42] Also, because of the presumption that the legislature did not intend an unreasonable result or unjust consequence, *Workforce Safety & Ins.* at ¶ 11, G.C.H. [redacted] cannot be a child under N.D.C.C. § 27-20-02(4)(b) as that would produce an unreasonable result.

[¶43] Simply put, it is not the intent and purpose of the statute for G.C.H. [redacted] to be both a child, and an adult at the same time. *See Martin*, ¶ 5 (The letter of a statute cannot be disregarded under the pretext of pursuing its spirit when the language of the statute is clear and unambiguous.") G.C.H. [redacted] therefore ceased to be a child when he got married, and as a result cannot claim the category of child under N.D.C.C. § 27-20-02(4)(b). The district court therefore rightly denied G.C.H. [redacted]'s motion because G.C.H. [redacted] is not a child under N.D.C.C. § 27-20-02(4).

[¶44] Conclusion

[¶45]. The State respectfully asks this Court to find:

A. That not satisfying the requirements of either N.D.C.C. § 27-20-02(4)(a) or N.D.C.C. § 27-20-02(4)(b) removes jurisdiction from the juvenile court, and conveys it exclusively on the district court;

B. That because G.C.H. is already an adult under N.D.C.C. § 27-20-02(4)(a) he can no longer claim to be child under N.D.C.C. § 27-20-02(4)(b);

C. That the district court rightly denied Henne's motion to dismiss;

D. That G.C.H.'s offenses are crimes and not delinquent acts;

E. That the district court has exclusive jurisdiction over G.C.H.'s crimes; and

The State respectfully asks the Supreme Court to affirm the order denying G.C.H.'s motion to dismiss.

Dated: July 23, 2019.

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[¶46] Oral Argument Requested

[¶47] Oral argument has been requested to clarify Appellee's written arguments on their merits.

[¶48] Certificate of Compliance

[¶49] The "Brief of Plaintiff-Appellee State of North Dakota," filed on July 23, 2019, by the

attorney for the Appellee, Assistant State's Attorney Joseph K. Nwoga, complies with the 38 page limit in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure. The "Brief of Plaintiff-Appellee State of North Dakota" is 11 pages.

Dated July 23, 2019.

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[¶50] Certificate of Service

[¶51] On July 23, 2019, the *Appellee's Brief, Oral Argument Requested*, and *Certificate of Compliance,* were served by e-mail to the attorney for the Appellant, Ashley K. Schell, at Fargopublicdefender@nd.gov

[¶52] On July 23, 2019, the *Appellee's Brief, Oral Argument Requested*, and *Certificate of Compliance,* were filed electronically with the Clerk of the North Dakota Supreme Court by e-mailing to: supclerkofcourt@ndcourts.gov

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