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Bryan Denham,
Petitioner-Appellant,

-VS-

D.J.M., Child,
K.L., Mother,
D.J., Father;
Respondents-Appellees,

Supreme Ct. No. 20100403

District Ct. No. 08-09-R-00169

FEB 13 2011

STATE OF NORTH DAKOTA

APPEAL FROM AN ORDER OF THE JUVENILE COURT DATED
NOVEMBER 23, 2010

Burleigh County Juvenile Court
South Central Judicial District
The Honorable Robert O. Wefald, Presiding

Bryan David Denham
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STATEMENT OF THE ISSUES

I. N.D.C.C. § 12.1-32-15(2)(c) mandates that the Child register as a sexual offender.

II. The Juvenile Court committed reversible error when it did not make findings as to mental abnormality or predatory conduct in open court.

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STATEMENT OF THE CASE

On March 31, 2009 a petition was filed alleging that the Child committed the delinquent act of Gross Sexual Imposition in violation of N.D.C.C. § 12.1-20-03. App. pg. 2. The Child and Mother appeared before the Juvenile Court on April 7, 2009 and the child admitted to the allegation. App. pg. 5. An Order was entered on April 8, 2009 by the Honorable Julie Buechler Boschee, and that Order reserved the issue of registration for the Child. App. pg 9.

Several hearings were scheduled and reset upon the matter of registration. A hearing was finally had on October 13, 2010 before the Honorable John Grinsteiner, who took the matter under advisement.

The Order was entered on October 14, 2010 by Referee Grinsteiner in which he found the Child did not have to register. App. pg.12. The Appellant promptly filed a request for review of the Order of the Referee under N.D.Sup.Ct.Admin.R. 13. The Order of the Referee was reviewed by the Honorable Robert O. Wefald who subsequently adopted the Order of the Referee on November 23, 2010. App. pg 13.

This appeal was taken as matter of right in accordance with N.D.C.C. § 27-20-56 and N.D.R.App.P. Rule 4(e).

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ARGUMENT

Standard of Review

When the Supreme Court is faced with an order of the Juvenile Court, the standard of review it applies is comparable to that of a trial de novo. *In re C. H.*, 2001 ND 37, ¶ 9, 622 N.W.2d 720, 723. The Supreme Court is free to “independently review the evidence and consider the files, records, and minutes or transcript of the evidence of the juvenile court.” *In re L.A.G.*, 1999 ND 219, ¶7, 602 N.W.2d 516, 518 (citations omitted).

I. N.D.C.C. § 12.1-32-15(2)(c) mandates that the Child register as a sexual offender.

The first course of interpreting a statute is to look to the plain meaning of the words used therein, and if the meaning of those words is not ambiguous then that is far as one needs to go. *In re Estate Fisk*, 2010 ND 186, ¶12, 788 N.W.2d 611, 616-17.

The statute in question, N.D.C.C. § 12.1-32-15(2)(c), states:

The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within three days of coming into a county in which the individual resides or within the period identified in this section that the individual becomes temporarily domiciled. The individual must register with the chief of police of the city or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city. The court shall require an individual to register by stating this requirement on the court records, if that individual: [i]s a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03. . . . The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not exhibit

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2 mental abnormality or predatory conduct in the commission
3 of the offense.

4 The language of N.D.C.C. § 12.1-32-15(2)(c) could not be clearer in
5 that it states a court shall require an individual to register if, inter alia, the
6 individual is a juvenile found delinquent under subdivision d of subsection 1
7 of section 12.1-20-03. *Id.* Here, the Child, on April 9, 2009, was adjudicated
8 of having committed the delinquent act of Gross Sexual Imposition under
9 N.D.C.C. § 12.1-20-03(1)(d); namely that the Child engaged, or caused
10 another to engage in, a sexual act with a minor child six (6) years of age.
11 App. pgs 6 & 10. Thus, under N.D.C.C. § 12.1-32-15(2)(c), the Juvenile Court
12 was required to order the respondent child register as an offender.
13

14 However, the court could have deviated from the mandatory
15 registration requirement in the instance of a juvenile offender. *Id.* In order to
16 deviate, the court must have first found two things: 1) that the juvenile has not
17 previously been convicted as a sexual offender or for a crime against a child,
18 and 2) that the juvenile did not exhibit mental abnormality or predatory
19 conduct in the commission of the offense. See N.D.C.C. § 12.1-32-15(2)(c).
20 Thus, in the instant case, the Court could have deviated from requiring the
21 Child to register only if the Court, found both 1) that the respondent child was
22 a first-time offender and 2) that the respondent child did not exhibit mental
23 abnormality or predatory conduct. The Court never reached a finding on the
24 mental abnormality or predatory conduct prong.
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2 Based upon this, the Juvenile Court erred in not ordering the child to
3 register. The law was not followed since there had to be a negative finding as
4 to both mental abnormality and predatory conduct on the part of the Child.
5 Without this finding the Juvenile Court erred in not ordering the Child to
6 register as an offender.

7 **II. The Juvenile Court committed reversible error when it did not make**
8 **findings as to mental abnormality or predatory conduct in open court.**
9

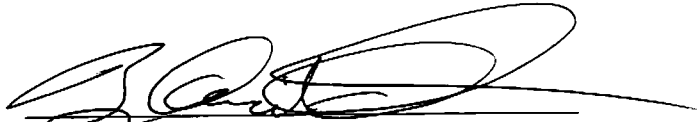
10 The reasons for not finding the Child had not exhibited mental
11 abnormality or predatory conduct must be made upon the record in open
12 court. N.D.C.C. § 12.1-32-15(4). Here, a reading of the transcript of the
13 October 13, 2010 hearing shows that the Referee did not make any findings as
14 to the Child's use of, or lack thereof, predatory conduct or mental abnormality
15 in open court.
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17 Despite the fact that the court failed to engage in the proper analysis,
18 the court deviated anyways. This is contrary to the law and the statute and the
19 Juvenile Court erred when it did so.
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3 CONCLUSION

4 Based upon the foregoing, the Appellant requests that the Order of the
5 Juvenile Court dated November 23, 2010 be reversed and remanded.

6 Dated this 18th day of February, 2011.

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10 Burleigh County Assistant State's Attorney
11 Courthouse, 514 East Thayer Avenue
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Respondents-Appellees,
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)
)
) Affidavit of Mailing

) Supreme Ct. No. 20100403

) District Ct. No. 08-09-R-00169
)

10 STATE OF NORTH DAKOTA)

11 COUNTY OF BURLEIGH)

) ss

12
13 Shawna Schatz, being first duly sworn, depose and say that I am a
14 United States citizen over 21 years old, and on the 18th day of February,
15 2011, I deposited in a sealed envelope a true copy of the attached:

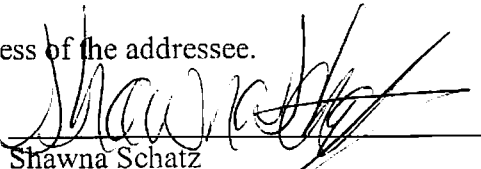
- 16 1. Brief of Petitioner-Appellant
17 2. Appellant's Appendix
18 3. Affidavit of Mailing

19 in the United States mail at Bismarck, North Dakota, postage prepaid,
20 addressed to:

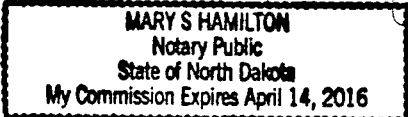
21 **BRAD PETERSON**
ATTORNEY AT LAW
P.O. BOX 2419
BISMARCK, ND 58502-2419

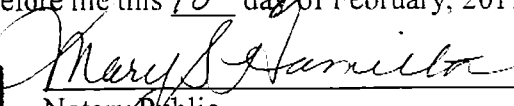
SUSAN SCHMIDT
ATTORNEY AT LAW
400 E BROADWAY AVE., STE 27
BISMARCK, ND 58501

22 which address is the last known address of the addressee.

23 
Shawna Schatz

24 Subscribed and sworn to before me this 18th day of February, 2011.

25
26 
27


Notary Public
Burleigh County, North Dakota