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STATEMENT OF THE ISSUE

¶1 Should the District Court’s denial of K.J.A.’s petition for early destruction of records be upheld pursuant to N.D.C.C. § 25-03.3-04 when K.J.A. was found to be a delinquent child pursuant for violations of N.D.C.C. § 12.1-20-12 (Deviant Sexual Act), N.D.C.C. § 12.1-20-3(1)(d) (Gross Sexual Imposition), and N.D.C.C. § 12.1-20-03(2)(a) (Gross Sexual Imposition)?

STATEMENT OF THE CASE

¶2 The District Court properly denied a petition by K.J.A. to destroy records related to Billings County Case No. 04-2020-JV-00001. On August 4, 2020, K.J.A. was found to be a delinquent child for violations of N.D.C.C. § 12.1-20-12 (Deviant Sexual Act), N.D.C.C. § 12.1-20-3(1)(d) (Gross Sexual Imposition), and N.D.C.C. § 12.1-20-03(2)(a) (Gross Sexual Imposition). On or about June 7, 2022, K.J.A. petitioned the Court for an order that all records and files relating to Case No. 04-2020-JV-00001 be destroyed.

¶3 The District Court denied the petition to destroy records, holding that N.D.C.C. § 25-03.3-04 was controlling. The District Court reasoned, in relevant part:

The North Dakota Supreme Court has held, “Under our rules of statutory construction, a specific statute controls a general statute.” Johnson v. Nodak Mut. Ins. Co., 2005 ND 112, ¶ 12, 699 N.W.2d 45. Section 1-02-07, N.D.C.C., states:

Whenever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that such provision shall prevail.

...

[T]he Court concludes N.D.C.C. § 25-03.3-04 is controlling since it is a specific statute whereas Rule 19 N.D.R.Juv.P, is a general statute. There is

no manifest legislative intent which indicates the legislature intended Rule 19, N.D.R.Juv.P, be an exception to N.D.C.C. § 25-03.3-04. Thus, the Court does not have authority or power to grant the Petition for Destruction of Records. Therefore, the Petition is DENIED.

(R103:3:¶5-7).

STATEMENT OF THE FACTS

[¶4] On August 5, 2020, a Juvenile Petition was filed in Billings County Case No. 04-2020-JV-00001 asserting K.J.A. was a delinquent child pursuant to N.D.C.C. 27-20-02(7). The Petition alleged the following facts: (1) on or about July 13, 2020 in Billings County, North Dakota, K.J.A. committed the crime of Deviant Sexual Act, to wit: the Respondent Child placed his penis inside the mouth of the family dog with the intent to arouse or gratify his sexual desire in violation of N.D.C.C. 12.1-20-12, a Class A Misdemeanor that constitutes a delinquent act; and (2) on or about July 27, 2020 in Billings County, North Dakota, K.J.A. committed the crime of Gross Sexual Imposition, to wit: the Respondent Child placed his penis on or near the face of his stepsister L.S. DOB 10/8/2019 and took a photo and/or video and thereafter ejaculated onto the face of L.S. in violation of N.D.C.C. 12.1-20-03(1)(d), a Class A Felony which constitutes a delinquent act. (R8:1-2: ¶5).

[¶5] A Juvenile Disposition Hearing was held on November 4, 2020, before the Honorable Dann Greenwood. The District Court issued Findings of Fact, Conclusions of Law, and Order for Disposition following that hearing. (R64:1:1).

[¶6] On November 5, 2020, the Court entered Findings of Fact, Conclusions of Law, and Order for Disposition providing as follows:

- a. The Respondent Child, K.J.A. was found to be a delinquent child pursuant to Section 27-20-02(7) of the North Dakota Century Code for violations of

N.D.C.C. § 12.1-20-12, N.D.C.C. § 12.1-20-3(1)(d), and N.D.C.C. § 12.1-20-03(2)(a). (R64:2:5).

b. The Respondent Child was found to be in need of treatment or rehabilitation as a delinquent child. (R64:2:6).

c. The Respondent Child was found not to have been previously convicted as a sexual offender or for a crime against a child. (R64:2:7).

d. The Respondent Child was found not to exhibit mental abnormality or predatory conduct in the commission of the offense. (R64:2:8).

e. The Court did not require the Respondent Child to register as a sexual offender pursuant to N.D.C.C. 12.1-32-15. (R64:3:10).

f. The Respondent Child was placed in the custody of the North Dakota Department of Juvenile Services and detained at the North Dakota Youth Correctional Center. (R64:3:11).

[¶7] The Findings of Fact, Conclusions of Law, and Order for Disposition found that:

a. That on or about July 13, 2020, in Billings County, North Dakota, the Respondent Child, K.J.A. did commit the crime of Deviate Sexual Act, to wit: the Respondent Child placed his penis inside the mouth of the family dog with the intent to arouse or gratify is sexual desire. (R64:2:5).

b. That on or about July 27, 2020, in Billing County, North Dakota, the Respondent Child K.J.A. engaged in a sexual act with another when the victim was less than fifteen years old, and did commit the crime of Gross Sexual Imposition, to wit: The Respondent Child placed his penis on or near the face of his step-sister L.S., DOB:

10/8/2019, and took a photo and/or video and thereafter ejaculated on the face of his step-sister L.S., DOB: 10/8/2019. (R64:2:5).

[¶8] On or about June 7, 2022, K.J.A. petitioned the Court for an order that all records and files relating to this matter be destroyed. (R70:1).

[¶9] On August 9, 2022, the Court held oral argument on Respondent Child's motion to destroy records. (R103:1).

[¶10] The State of North Dakota submitted a closing brief on August 9, 2022. (R99:1).

[¶11] K.J.A. submitted a closing brief on August 17, 2022. (R101:1).

[¶12] On August 29, 2022, after having considered the oral arguments and closing briefs submitted by the parties, the District Court denied the petition to destroy records, holding N.D.C.C. § 25-03.3-04 was controlling. (R103:3:¶5-7).

STATEMENT OF THE STANDARD OF REVIEW

[¶13] Under N.D.R.Civ.P, Rule 52(a), this Court reviews a juvenile court's factual findings under a clearly erroneous standard of review, with due regard given to the opportunity of the juvenile court to judge the credibility of the witnesses. A finding of fact is clearly erroneous if there is no evidence to support it, if the reviewing court is left with a definite and firm conviction that a mistake has been made, or if the finding was induced by an erroneous view of the law. This Court reviews questions of law de novo. Interest of D.O., 2013 ND 247, ¶ 6, 840 N.W.2d 641.

[¶14] The District Court did not err as a matter of law when it applied N.D.C.C. § 25-03.3-04 to deny the petition for destruction of records. This conclusion of law is reviewed de novo.

LAW AND ARGUMENT

[¶15] N.D.C.C. § 27-20.2-26 allows an aggrieved party to appeal from a final order of the juvenile court to the Supreme Court. K.J.A. appeals the August 29, 2022 Memorandum Decision and Order which denied K.J.A.'s petition for destruction of records.

[¶16] N.D.C.C. § 27-20.2-25 (formerly N.D.C.C. § 27-20-54) governs destruction of juvenile court records, and provides as follows:

1. *Except as otherwise required under section 25-03.3-04*, all juvenile court records must be retained and disposed of pursuant to rules and policies established by the North Dakota Supreme Court.
2. Upon the final destruction of a file or record, the proceeding must be treated as if it never occurred. The juvenile court shall notify each agency named in the file or record of the destruction. All index references, except those which may be made by the attorney general and the directors of the department of transportation, the department of health and human services, the department of corrections and rehabilitation, the commission on legal counsel for indigents and its public defender offices, law enforcement agencies, and human service zones, must be deleted. Each agency, except the attorney general and the directors of the department of transportation, the department of health and human services, the department of corrections and rehabilitation, the commission on legal counsel for indigents and its public defender offices, law enforcement agencies, and human service zones, upon notification of the destruction of a file or record, shall destroy all files, records, and references to the child's apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court. The attorney general, the department of health and human services, the department of corrections and rehabilitation, the commission on legal counsel for indigents and its public defender offices, law enforcement agencies, and human service zones may not keep a juvenile file or record longer than is required by the records retention policy of that official, department, or agency. Upon inquiry in any matter the child, the court, and representatives of agencies, except the attorney general and the directors of the department of transportation, the department of health and human services, the department of corrections and rehabilitation, law enforcement agencies, and human service zones, shall properly reply that no record exists with respect to the child.

(emphasis added). N.D.C.C. 25-03.3-04 goes on to provide:

Notwithstanding any other provision of law, all adult and juvenile case files and court records of an alleged offense defined by chapters 12.1-20 and 12.1-27.2 must be retained for twenty-five years and made available to any state's attorney for purposes of investigation or proceedings pursuant to this chapter. If the subject of a case file or court record has died before the expiration of the twenty-five-year period, the official, department, or agency possessing the case files and records shall maintain the case files and records in accordance with the case file and records retention policies of that official, department, or agency. For purposes of this section, "adult and juvenile case files" mean the subject's medical, psychological, and treatment clinical assessments, evaluations, and progress reports; offenses in custody records; case notes; and criminal investigation reports and records.

[¶17] In summary, in cases where there is not a sexual offense as set forth by chapters 12.1-20 and 12.1-27.2, records may be destroyed pursuant to N.D.C.C. § 27-20.2-25. However, in this case, the underlying offense rises from violations of N.D.C.C. § 12.1-20-12, N.D.C.C. § 12.1-20-3(1)(d), and N.D.C.C. § 12.1-20-03(2)(a). Therefore, N.D.C.C. § 25-03.3-04 applies in this case, and the records must be retained for twenty-five years. The District Court correctly held N.D.C.C. 25-03.3-04 controlled. Therefore, it was not appropriate for the records to be destroyed before the twenty-five-year statutory time frame.

[¶18] K.J.A. argues N.D.R. Juv. P, Rule 19 allows for destruction of the records. N.D.R. Juv. P, Rule 19 (d) provides in relevant part,

Early Destruction of Records. A party who is the subject of a delinquency or unruly proceeding may petition the court for early destruction of records. The state's attorney of the county in which the records are held must be notified of the request. The judge may order the early destruction upon a showing of good cause to destroy the records by the party. The records may not be destroyed if it is known that the subject of the motion has criminal charges pending before any other court.

[¶19] The District Court held N.D.C.C. § 25-03.3-04 was controlling. The District Court reasoned, in relevant part:

The North Dakota Supreme Court has held, “Under our rules of statutory construction, a specific statute controls a general statute.” Johnson v. Nodak Mut. Ins. Co., 2005 ND 112, ¶ 12, 699 N.W.2d 45. Section 1-02-07, N.D.C.C., states:

Whenever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that such provision shall prevail.

...

[T]he Court concludes N.D.C.C. § 25-03.3-04 is controlling since it is a specific statute whereas Rule 19 N.D.R.Juv.P, is a general statute. There is no manifest legislative intent which indicates the legislature intended Rule 19, N.D.R.Juv.P, be an exception to N.D.C.C. § 25-03.3-04. Thus, the Court does not have authority or power to grant the Petition for Destruction of Records. Therefore, the Petition is DENIED.

(R103:3:¶5-7).

[¶20] N.D.C.C. § 25-03.3-04 and N.D.R. Juv. P, Rule 19 (d) cannot be construed to give effect to both provisions. N.D.C.C. § 25-03.3-04 specifically provides “notwithstanding any other provisions of law” juvenile records of certain sexual offenses “must” be retained for twenty-five years while N.D.R. Juv. P, Rule 19 (d) provides records may be destroyed early for good cause. Therefore, due to the irreconcilable conflict, N.D.C.C. § 25-03.3-04 is construed as an exception to N.D.R. Juv. P, Rule 19.

[¶21] K.J.A. has generally asserted that N.D.R. Juv. P, Rule 19 was last revised in 2021 and that N.D.C.C. § 25-03.3-04 was last revised in 2019. However, K.J.A. has provided no authority to indicate that it was the manifest legislative intent that N.D.R. Juv. P, Rule 19 provision shall prevail over N.D.C.C. § 25-03.3-04.

[¶22] K.J.A. generally relies on N.D.R. Juv. P, Rule 1, which provides, “These rules govern the procedure in all actions conducted under the Juvenile Court Act, N.D.C.C. chs.

27-20.2, 27- 20.3, and 27-20.4, and under N.D.C.C. ch. 27-20.1 on guardianship of a child. They must be construed and administered to protect the best interests of children and to address the unique characteristics and needs of children.” K.J.A. presents no authority to support an argument that such provision revokes N.D.C.C. § 25-03.3-04.

[¶23] Furthermore, K.J.A. is not the only child affected by the proceedings. K.J.A. was found to be a delinquent child for gross sexual imposition involving sexual acts committed against a nine-month-old child. North Dakota law specifically provides that those records are to be retained, arguably for the benefit of victims and for law enforcement purposes.

[¶24] It is possible the documentation of K.J.A.’s prior juvenile proceedings may prevent him from joining the Marines at this time. While that is unfortunate, it does not change the fact North Dakota law clearly and unambiguously provides that the records in this matter must be retained for twenty-five years pursuant to N.D.C.C. § 25-03.3-04. The District Court properly held N.D.C.C. § 25-03.3-04 prevents the destruction of records at this time.

[¶25] The State of North Dakota respectfully requests the Court DENY the petition for destruction of records.

CONCLUSION

[¶26] For these reasons and those stated above, Appellee the State of North Dakota respectfully requests that this Court affirm the ruling of the District Court.

