

IN THE COURT OF APPEALS

STATE OF GEORGIA

IN THE INTEREST OF R.T.,)	CASE NO. A05A1584
A Child)	
Appellant)	
v.)	ON APPEAL FROM CHATHAM
)	COUNTY JUVENILE COURT
STATE OF GEORGIA,)	
Appellee)	

BRIEF OF APPELLEE

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PART I

STATEMENT OF THE CASE

The criminal offenses alleged against Appellant were committed during the period between July 4-12, 1993 when the victim was seven years old and Appellant was sixteen years old (Appellant's 17th birthday occurred the next day, July 13, 1993). (T. 5, 11-14, 32-33, 54). The victim on or about May, 2002 first disclosed, almost nine years after the incident occurred, that she had been sexually abused to her mother (T. 21) and the matter was reported to the police approximately six months later on November 9, 2002. Appellant was charged with Child Molestation and Aggravated Child Molestation by Juvenile complaint on December 17, 2003. (R. 6-7). At the time such Juvenile Complaint was filed, Appellant was twenty-seven years old, married with a child and a Sergeant in the United States Army. (T. 5, 54, 81-83). On February 24, 2004 a "Motion To Transfer To The Superior Court" was filed in Juvenile Court by the State. (R. 8). A hearing was held on that motion on July 15, 2004 and Judge Stone issued an order on March 11, 2005 granting that motion. (R. 44-45). It is from that order granting transfer to Superior Court that Appellant brings this appeal.

PART II

STATEMENT OF FACTS

On July 4, 1993 Wendy T. and her husband, Chns T., departed Savannah for a cruise vacation from Key West to Cozumel'. (T. 11, 14, 54). They left their seven year old daughter, T.T. (Victim), with Chns T's mother and Chris' sixteen year old brother, R.T. (Appellant), who

'It is the well documented date of the cruise vacation that allows the dates of the sexual abuse to be pinpointed with a high degree of accuracy.

lived nearby their residence in Savannah, Georgia. (T. 12-13, 54-55). At that time, T.T. was in the second grade and exhibited absolutely no abnormal behaviors. (T. 13-14). In fact, she was a high honor roll student in her second grade class. (T. 13-14, 33).

When T.T. (victim) was around the age of nine years, her parents began to notice a dramatic change in her behavior. (T. 34). She became extremely angry for no apparent reason. (T. 19, 34, 37). By the time she was in fifth grade her parents noticed that she was becoming disorganized and distracted. Her grades began to fall and she engaged in bad, defiant behavior which became “worse and worse” over time. T.T. threw tantrums, had outbursts and became out-of-control for no apparent reason. After T.T. attempted suicide on two separate occasions, her parents had her institutionalized. (T. 15-17). Thereafter her parents sought counseling for her from numerous counseling professionals. (T. 18, 34). Her defiant behavior included outbursts in her counselor’s office that resulted in her being arrested on one occasion. (T. 19). On another occasion, she threatened to kill her parents which resulted in her prosecution in Juvenile Court and being placed on probation for Terroristic Threats. (T. 37, 68).

A couple of months before May 2002, T.T.’s mother was visiting her at Georgia Regional Hospital. During the visit, her mother went through T.T.’s belongings and discovered photographs depicting T.T. at the age of fifteen², her fourteen year old friend K.T. and Appellant. T.T.’s mother recognized that the photos were taken at Appellant’s residence and depicted bottles of alcoholic beverages and K.T. smoking cigarettes. (T. 19-21). When T.T.’s mother questioned her about the photographs, T.T. remarked that Appellant “wasn’t as perfect as everybody thinks

²T.T.’s birthday was May 29, 1986 and thus she turned 15 years of age on May 29, 2001. (T. 10).

he is” but refused to elaborate further. (T. 21).

Following T.T.’s release from Georgia Regional Hospital, she returned to live with her parents. In May 2002, shortly before T.T.’s sixteenth birthday (i.e., May 29, 2002), T.T. had a particularly bad day at home involving throwing a tantrum which led her mother to believe that T.T. was completely out-of-control to the point that she had to be physically restrained. (T. 21-22). Following that episode, T.T. was noticed by her mother to be uncharacteristically calm and curled up in a fetal position on the couch. Her mother lovingly approached her and urged her to please try to resolve her anger. At that time, T.T. placed her head in her mother’s lap while her mother rocked her back and forth. (T. 23). During the conversation that followed, the topic of the photographs discovered earlier at Georgia Regional Hospital came up again as well as T.T.’s earlier comment that Appellant was not as perfect as everyone thought. T.T.’s mother questioned T.T. about the meaning behind that remark. (T. 23). T.T.’s mother asked, “was he doing drugs?” and T.T.’s response was, “No, worse than that.” (T. 24). “Did he touch you?”. (T. 24). When asked that question, T.T.’s body became stiff, she buried her head in her mother’s chest and she disclosed, “I thought he (Appellant) pee’d in my mouth, Mama. I didn’t know what is was.” (T. 24). T.T. immediately begged her mother not to tell anybody. She confided in her mother that she had not earlier told because she had felt that it was partially her fault; that she participated too; and that she let it happen. (T. 25). T.T.’s mother described T.T. as being tremendously embarrassed and humiliated at making the disclosure and that afterwards, she shut down and stopped discussing the allegations. (T. 26).

After being reassured by her family that the sexual contact had not been her fault, by the summer of 2002, T.T. was able to discuss the matter more openly. She was able to draw a

diagram of Appellant's house in remarkable detail depicting where the sexual contacts had occurred while her family had been on the cruise vacation. She repeated that Appellant had ejaculated into her mouth (which she earlier believed to have been urine) and afterwards cleaned her up. She also described how Appellant had placed his mouth on her vagina. (T. 26-28).

T.T. also confided in her mother how the sexual contact had adversely affected her in school. She described that as she became older, her peers would describe their first sexual encounters. She felt unable to reciprocate because, if she had told them that her first sexual experience had been with her uncle, they would have believed she was sick. (T. 29). She also confided in her mother that when she was much younger, shortly after the sexual abuse occurred, she experimented with sex upon an eight year old female friend because she had become disgusted associating a penis with sex. (T. 29-30).

T.T. continued to have anger management problems and at the age of sixteen was sent to Father Flannigan's Boys Town for Girls in DeKalb County where she made further disclosures to counselors there. (T. 30-31). T.T.'s family was instructed that the matter must be reported to the police and so her mother drove to Savannah and made a report with the Savannah Police Department. (T. 30-31, 49). Before reporting the matter to police, however, T.T.'s parents had tried to resolve this as a family matter. (T. 51, 63-64, 66).

Shortly after T.T.'s initial disclosure in May 2002, T.T.'s father, Chris T. (Appellant's older brother) confronted Appellant approximately three times by telephone about T.T.'s allegations. (T. 55-56). By the time of T.T.'s disclosure, she and her parents had moved from Savannah to Lawrenceville, GA. (T. 44, 49, 56). The first phone call occurred approximately five to eight days after her initial disclosure in May 2002. (T. 56). Chns T. testified as follows

about that phone call:

A I called (Appellant) to inform him that (T.T) had said...that he had molested her...I just told him, "(T.T) has said that you touched her and that some other things have happened, and I wanted to find out what was going on." At that point, there was no denial or any shock in his voice. It was more...of a "What? What did she say?"...I asked him again, "Did anything happen?". He said, "Well what did she tell you?" I said, "Bobby, it doesn't matter. Did anything happen?"...I was looking for a denial. I was looking for an emphatic denial, but never got that.

(T. 57-58).

Chris T. called his brother a second time approximately one week after the first call after T.T. had provided more details of the sexual contact (T. 59). Chris T. testified as follows about that phone call:

A. I told him... "I believe her. I believe that something happened. I need you to help me here. Tell me something." And, at that point, the conversation grew very quiet...and then I asked him again, "Bobby, what happened?" And he said..."Chris, I thought it was a dream." He said, "All this time I've been thinking this was a dream." I was shocked and I was - - I was so shocked at hearing that, some type of acceptance on his part to what (T.T) was saying, that something actually did happen...He apologized profusely, said that he was *sorry*.

(T. 60-61).

Following that second phone call, T.T.'s parents discussed the two telephone conversations with T.T.'s juvenile probation officer who suggested that an attempt should be

made to record further conversations in case Appellant's story changed later. (T. 37, 48-49, 61-62). Several weeks after the second phone call, Chris T. once again called Appellant to discuss the allegations made by T.T. The third call was tape recorded. (T. 62). That recording was later turned over to the police. (T. 78). Chris T. testified as follows about that phone call:

A. I counseled him on the phone, throughout the entire conversation, was pleading with him to handle this in the family...I asked him a few pointed questions and asked him if he was *sorry*. He said he was very *sorry*. I told him that it was tearing our family up and tearing our family apart. He said the same thing, it ws tearing him up inside, that he thinks about it every day. He expressed remorse on several occasions.
(T. 63-64).

Further facts will be presented as necessary in the following argument.

PART III

ARGUMENT AND CITATION OF AUTHORITY

THE JUVENILE COURT DID NOT ERR BY ENTERING AN ORDER TO TRANSFER TO SUPERIOR COURT RATHER THAN RETAINING JURISDICTION OF THE MATTER FOR FINAL DISPOSITION

It is uncontested that because Appellant was under seventeen years of age when the alleged acts were committed, Juvenile Court properly exercised its original jurisdiction in this matter. In re J.T.D., 242 Ga. App. 243 (2000). Appellant recites the proper criteria for transferring a case from Juvenile Court to Superior Court. Appellant's Brief, p. 8). Of the three

criteria listed, only one is seriously³ at issue here: “the interests of the child and the community require that the child be placed under legal restraint and transfer be made”. Appellant also correctly notes that determining the applicability of each criteria is a matter within the sound “discretion” of the court. [O.C.G.A. § 15-11-30.2 (a) (3), Appellant’s Brief, p. 8)].

The Court in its order of transfer specifically found as follows:

The interests of the child and the community require that the transfer be made and that the child be placed under legal restraint for the following reasons:

The State does not argue that the child is not amenable to treatment in this case, but rather urges this Court to transfer the case to Superior Court on the grounds that given the seriousness of the charges, the interests of the community in having the transfer outweigh the child’s interests in being treated in the juvenile system.

The Court finds that even assuming that the child is amenable to treatment, the overwhelming interests of the community require that the transfer be made, and that the child be placed under legal restraint. Although (R.T.) does not have a Juvenile Court record, the seriousness of the offenses demands a high level of supervision. The interests of the public and the community are compelling. The facts are shocking and severe. Because of the heinous nature of the offenses, the community’s interest in treating the child as an adult outweighs his interest in remaining in the juvenile system.

The Juvenile Court is not equipped to supervise or rehabilitate a man in his mid to late

³Appellant makes passing reference to the sufficiency of the evidence to establish that “there were reasonable grounds to believe he committed the delinquent acts as alleged”. (Appellant’s Brief, p. 9-10). Clearly there was evidence at the transfer hearing from which the court could conclude that there were reasonable grounds that Appellant committed the delinquent acts alleged. The Court in its order of transfer specifically found that there were such grounds and articulated them in her order. [R. 44 (3) (a)]. “Where there is evidence in support of a condition upon which transfer may be ordered, the juvenile court does not abuse its discretion in finding the same as a matter of law”. In the Interest of D. W. B., 259 Ga. App. 662 (2003).

At the heart of the Court's ruling was the Court's belief that if adjudicated delinquent in Juvenile Court for these offenses, the Court would be powerless to supervise Appellant: "The community would suffer should he be adjudicated delinquent of such heinous crimes, and not be subject to any supervision". (R. 45). The Court reached this conclusion largely because of O.C.G.A. section 15-11-70 (d) which provides as follows: "Unless otherwise provided by law, when a child who has been adjudicated as delinquent or unruly reaches 21 years of age, all orders affecting him or her then in force terminate and he or she is discharged from further obligation or control".

Appellant attacks the Court's findings and argues that if adjudicated delinquent, Appellant COULD be supervised by: (1) "a State probation officer" (Appellant's Brief, pp. 18, 27); (2) "any public agency authorized by law to receive and provide care for the child" (Appellant's Brief, p. 23); and (3) the Juvenile Court's "inherent powers to enforce its lawful orders" (Appellant's Brief, p. 26).

Since Appellant is now twenty-eight years old, it is questionable whether the Juvenile Court has jurisdiction to even enter a finding of delinquency in this matter based on crimes he committed as a sixteen year old. Assuming, without conceding such jurisdiction exists, it is clear, however, that once an adjudication of delinquency was entered in this matter, that at that moment, Appellant must be "discharged from further obligation or control" by the Juvenile Court. O.C.G.A. § 15-11-70 (d). PERIOD. That should end the inquiry because if there is no further obligation owed to Juvenile Court by Appellant at the age of twenty-one, and if there is no further control by Juvenile Court over Appellant at the age of twenty-one, then there is nothing left for Juvenile Court to supervise by any of the means proposed by Appellant.

Moreover, O.C.G.A. section 42-8-22 provides for a "state-wide probation system for *felony offenders*" (emphasis added). Contrary to Appellant's assertion, Appellant would not be a "felony offender" if adjudicated delinquent in Juvenile Court and thus, even assuming that he

could be supervised by Juvenile Court after the age of twenty-one, the state-wide probation system would be without jurisdiction to do so. Miller v. State, 231 Ga. App. 869, 871 (2) (1998) (“A juvenile is not convicted of felonies, but adjudicated a delinquent, based on delinquent acts”).

If Appellant MUST be “discharged from further obligation or control” by the Juvenile Court pursuant to O.C.G.A. § 15-11-70(d), then what legally enforceable Juvenile Court order could be asserted by “any public agency authorized by law to receive and provide care for the child” as the basis for continued supervision or control of Appellant? And likewise, how could Appellant ever be held in contempt of a Juvenile Court order after he has reached the age of twenty-one if such order is beyond the jurisdiction of the Juvenile Court to issue?

The issue in this case, a matter of first impression, can be analyzed as follows. If Appellant’s argument is accepted, then the case will remain in Juvenile Court for a determination of delinquency and if so determined, Appellant will absolutely be beyond the further control of Juvenile Court. The Juvenile Court will be powerless to exercise any control or supervision over Appellant. If Appellant’s argument is rejected and if convicted as charged in Superior Court, he would be amenable to control and supervision by that court for **up** to thirty years.

Lastly it should be noted that one offense contained within the Juvenile Complaint is now properly before the Superior Court of Chatham County regardless of this Court’s ruling in this matter on appeal. The last offense allegedly committed by R.T. upon T.T. occurred on July 12, 1993, the day before Appellant’s seventeenth birthday. (R. 7), (T. 5, 15, 54). Consequently, Appellant was legally an adult on that day and beyond the jurisdiction of Juvenile Court with respect to that single count. Edmonds v. State, 154 Ga. App. 650 (1980).

CERTIFICATE OF SERVICE

I, Greg McConnell, Assistant District Attorney of the Eastern Judicial Circuit, do hereby certify that I have this date caused a copy of the within and foregoing Brief of Appellee, on behalf of the State of Georgia, to be served upon the attorney of record for Appellant IN THE INTEREST OF R.T., A CHILD, by placing same in an envelope addressed to:

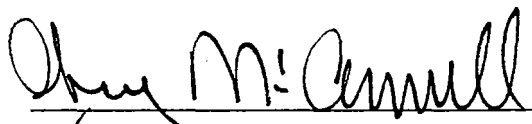
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with sufficient postage thereon to insure delivery and depositing same in the United States mail.

This 24th day of May, 2005.



GREG MCDONNELL
ASSISTANT DISTRICT ATTORNEY
EASTERN JUDICIAL CIRCUIT