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"In pursuit of a consistent, efficient, and effective Juvenile Justice System"

Delinquency

5/20/04

In **In Re K.G.**, 808 N.E.2d 631 (Ind. 2004), the Court vacated 781 N.E.2d 700 (Ind. Ct. App. 2002) and reversed and remanded the juvenile court judgment. The Court held that although juveniles alleged to be delinquent have the constitutional right to have their competency determined before they are subjected to delinquency proceedings, the adult competency statute is not applicable in reaching that determination. Four juveniles, alleged to be delinquent, were given competency examinations pursuant to the adult competency statute, IC 35-36-3-1. Subsequently, the trial court entered an order finding that each of the juveniles lacked the ability to understand the proceedings and to assist in the preparation of their respective defenses. The trial court thus ordered the juveniles committed to the division of mental health for confinement in an appropriate psychiatric institution. The State of Indiana, through the mental health division of the Family and Social Services Administration, intervened and moved that the trial court vacate its order. The trial court denied the motion and, on appeal, the Court of Appeals affirmed.

The State contended before the Supreme Court, as well as the Court of Appeals, that the trial court's reliance on the adult competency statute was improper because the juvenile code provides procedures that permit a court to make competency determinations for children and place them in treatment centers when necessary. The Court of Appeals rejected this argument, concluding (1) juveniles have a constitutional right to have their competency determined before they are subjected to delinquency proceedings, and (2) because the juvenile code provides no procedure for determining the competency of children, the adult competency statute applies.

A juvenile alleged to be delinquent has the constitutional right to have his/her competency determined before he/she is subjected to delinquency proceedings. A juvenile charged with delinquency is entitled to have the court apply those common law jurisprudential principles which experience and reason have shown are necessary to give the accused the essence of a fair trial. See In re Gault, 387 U.S. 1, 30 (1967). The cornerstone of these substantive rights is competence to understand the nature of the charge and to assist in a defense. Principles of fundamental fairness require that this right be afforded in juvenile proceedings. The Court summarily affirmed the opinion of the Court of Appeals on this issue. K.G. at 435.

The adult competency statute is not the proper vehicle for determining a juvenile's competency. Resorting to the procedures set forth in the adult competency statute when resolving questions concerning juvenile competency severely compromises the degree of discretion and flexibility afforded juvenile courts by the juvenile code. The statute mandates that, where a defendant is found to be incompetent to stand trial, the trial court “shall...order the defendant committed to the division of mental health and addiction, to be confined by the division in an appropriate psychiatric institution.” IC 35-36-3-19(b) (emphasis added). *Id.* at 637-38.

The Court noted that a juvenile court is not prohibited from committing a child found incompetent to an appropriate facility operated by the division of mental health, but there are occasions where it may not be in the child's best interest to be so committed. In the context of voluntary or involuntary commitment proceedings, IC 12-26-1-4 prohibits the juvenile court from committing or temporarily placing a child in a facility other than a child caring institution. The Court noted the lack of adequate facilities or programs providing care for children currently operated by the division of mental health, and observed that, because of the physical location of these state run facilities, a juvenile committed to the division under the auspices of the adult competency statute could be confined in an institution hundreds of miles from home and family. Noting that no less should be required for juveniles only alleged to be delinquent, the Court referred to IC 31-37-19-23 which prohibits the trial court from placing a child found to be delinquent in a facility outside of the child's county of residence if a comparable facility with adequate services is available within the county; and IC 31-37-18-6 which requires the juvenile court to enter a dispositional decree that, among other things, is “in the least restrictive (most family like) and most appropriate setting available; [is] close to the parents' home, consistent with the best interest and special needs of the child; [and] provides a reasonable opportunity for participation by the child's parent, guardian, or custodian” *Id.* at 638.

IC 31-32-12-1 allows for the examination and/or treatment of a child after a delinquency petition has been filed in order to determine the child's competency. The juvenile court system is founded on the notion of parens patriae which allows the court the power to step into the shoes of the parents. It gives juvenile courts power to further the best interests of the child, which implies a broad discretion unknown in the adult criminal court system. *Id.* at 635-36. “Although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for ‘concern,...sympathy, and ...paternal attention.’” Bellotti v. Baird, 443 U.S. 622, 635 (1979). Chief Justice Burger noted that a difference between the adult criminal system and the juvenile system is “the flexibility and informality of juvenile proceedings....” Breed v. Jones, 421 U.S. 519, 535 n. 15 (1975).

I.C. 31-32-1-1 provides, “If a child is alleged to be a delinquent child, the procedures governing criminal trials apply in all matters not covered by the juvenile law.” The Court

observed that the juvenile code does not provide an explicit procedure for handling juvenile competency issues, but held that IC 31-32-12-1 “is sufficient to the task.” It noted that the main object in construing a statute is to determine, give effect to, and implement the intent of the legislature. Neal v. DeKalb County Div. of Family & Children, 796 N.E.2d 280, 284 (Ind. 2003). The Court opined that, as a matter of statutory interpretation, and considering the history and purpose underlying the juvenile code, the Legislature did not intend that the adult competency statute should apply to juveniles. Further, the policy of Indiana and the purpose of its juvenile code are to “ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation.” IC 31-10-2-1(5). The code must be liberally construed to that end. Id. at 637-38.