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# IN THE
# COURT OF APPEALS OF INDIANA

I.J.,

*Appellant-Respondent,*

v.

State of Indiana,

*Appellee-Petitioner*.

August 12, 2021

Court of Appeals Case No.
20A-JV-2293

Interlocutory Appeal from the
Marion Superior Court

The Honorable Mark A. Jones,
Judge
The Honorable Ryan Gardner,
Magistrate

Trial Court Cause Nos.
49D15-2007-JD-566
49D15-2007-JD-591
49D15-2008-JD-678
49D15-2009-JD-737

**Weissmann, Judge.**

[1] A juvenile court found fourteen-year-old I.J. not competent for adjudication on four delinquency petitions, which alleged acts of domestic battery and criminal recklessness against her adoptive mother. The court ordered I.J. detained at a residential treatment facility while she received competency restoration services. I.J. filed this discretionary interlocutory appeal, claiming Indiana's juvenile code did not authorize her detention and, alternatively, that her detention could not exceed 14 days. We affirm.

## Facts

[2] I.J. has a "very lengthy mental health history . . . with a wide range of reported diagnoses." App. Vol. II, p. 134. According to her adoptive mother, F.H. (hereinafter "Mother"), these include autism and oppositional defiant disorder. Tr. Vol. II, pp. 21-22. I.J. also has been found to have a cognitive function in the "mildly impaired/delayed range," with a full-scale IQ of 62. App. Vol. VI, p. 235. "Academically, she functions at a 1st or 2nd grade level." *Id.* at 236.

[3] Between July 8 and September 3, 2020, I.J. allegedly was involved in four physical altercations with Mother, including one in which I.J. wielded a knife. The State filed a juvenile delinquency petition against I.J. after each incident, collectively asserting two counts of criminal recklessness, a Level 6 felony and a Class B misdemeanor if committed by an adult, and four counts of domestic battery, all Class A misdemeanors if committed by an adult.

[4] As the delinquency allegations piled up, the juvenile court generally released I.J. back and forth between Mother's home and emergency shelter care.

Eventually, however, I.J. was involved in a fifth altercation with Mother, in which I.J. allegedly threw an ironing board at Mother and punched her in the mouth. The State asserted a violation of I.J.'s release agreement, and the court ordered I.J. to juvenile detention pending a determination of her competency for adjudication.

[5] I.J. was examined by a child psychologist and a child psychiatrist, both of whom assessed I.J. as not competent for adjudication. However, the psychiatrist further opined that I.J.'s competency could be improved "with treatment of her mental illness." App. Vol. VI, p. 236. Based on these assessments, the court found I.J. incompetent and ordered her to receive competency restoration services while detained at Youth Opportunity Center (YOC), a residential treatment facility.[1] App. Vol. II, pp. 192-94, 206-07; Tr. Vol. II, pp. 80, 92-93.

[6] At I.J.'s request, the juvenile court certified its order for interlocutory appeal under Indiana Appellate Rule 14(B). I.J. then petitioned this Court to accept appellate jurisdiction. But before we could review I.J.'s petition, YOC requested her removal from its facility due to physical and verbal aggression, non-compliance with programming, and attempts to leave the facility. The juvenile

[1] I.J. makes much of an email in which a YOC representative stated, "Our programming does not include competency restoration services." App. Vol. II, p. 205. Instead, the representative advised that I.J.'s services "will include individual, family, group counseling to address [her] mental health and behavioral needs." *Id.* Given the psychiatrist's opinion that I.J.'s competency could be improved "with treatment of her mental illness," App. Vol. VI, p. 236, we consider the services YOC provided to be competency restoration services.

court promptly ordered I.J. released from YOC, where she had received 63 days of competency restoration services. Not long thereafter, the court dismissed the State's delinquency petitions against I.J., without objection, noting that the Department of Child Services had filed a petition alleging I.J. to be a child in need of services.[2]

[7] This Court has since accepted jurisdiction of I.J.'s appeal.

## Discussion and Decision

[8] I.J. argues that Indiana's juvenile code did not authorize the juvenile court to detain her while she received competency restoration services. Alternatively, she claims the code limited her detention to 14 days. She also claims her detention violated her right to due process under the Fourteenth Amendment to the United States Constitution.

## I. Mootness

[9] As an initial matter, the State contends I.J.'s appeal was mooted by her release from YOC and the dismissal of the delinquency petitions against her. "The long-standing rule in Indiana courts has been that a case is deemed moot when

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[2] The record indicates that I.J. was referred to the Department of Child Services (DCS) after each altercation with Mother. *See* App. Vol. VI, pp. 126, 163, 173, 219. But according to the State, DCS "repeatedly refused to get involved" in the case. Tr. Vol. II, pp. 107, 109. Absent a DCS petition alleging I.J. to be a child in need of services, the juvenile court was not statutorily authorized to refer I.J. to a dual status assessment team (DSAT), which the parties, their counsel, and other participating government agencies agreed was the best avenue for getting I.J. needed family services. *See* Tr. Vol. II, pp. 109-10, 117. Eventually, however, the court ordered a DSAT referral anyway, hoping to bring DCS to the table. *See id.*; App. Vol. IV, pp. 107-11.

no effective relief can be rendered to the parties before the court." *Matter of Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991). Although moot cases are usually dismissed, *id.*, I.J. asks this court to address the merits of her appeal under the public interest exception to the mootness doctrine. The public interest exception "may be invoked when [an] issue involves a question of great public importance which is likely to recur." *T.W. v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 121 N.E.3d 1039, 1042 (Ind. 2019).

[10] The parties agree, as do we, that whether a juvenile court has authority to detain a child after finding the child not competent for adjudication is an issue of great public importance. *See R.A. v. State*, 770 N.E.2d 376, 379 (Ind. Ct. App. 2002) (identifying "propriety of juvenile detention" as a matter of great public importance). The State argues, however, that the issues I.J. raises on appeal are not likely to recur because the Indiana General Assembly recently established a statutory framework for dealing with juvenile competency. *See* 2021 Ind. Legis. Serv. P.L. 157-2021, Sec. 3 (S.E.A. 368) (West) (to be codified at Ind. Code §§ 31-37-26-1 to -6).

[11] The forthcoming statute will indeed authorize a juvenile court to detain a child found not competent for adjudication while the child receives competency restoration services. *See* Ind. Code § 31-37-26-6(g) (effective December 31,

2022).[3] However, the statute does not become effective for nearly 1½ years. Finding the appealed issues are likely to recur during this time period, we address them on their merits.

## II. Juvenile Competency

[12] Indiana's current juvenile code "does not provide an explicit procedure for handling juvenile competency issues." *In re K.G.*, 808 N.E.2d 631, 637 (Ind. 2004). However, our Supreme Court has directed that such issues be addressed under Indiana Code § 31-32-12-1. *Id.* at 638-39. That statute provides:

> [T]he juvenile court may authorize mental or physical examinations, including drug and alcohol screens, or treatment under the following circumstances:
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> (1) If the court has not authorized the filing of a petition but a physician certifies that an emergency exists, the court:

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[3] The statute will provide, in pertinent part:

> No child may be required to participate in competency attainment services for longer than is required for the child to attain competency. In addition, if a child is:
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> (B) in a residential setting that is operated solely or in part for the purpose of providing competency attainment services, the child may not be ordered to participate for more than . . . (ii) ninety (90) days if the child is charged with an act that would be a Level 4, Level 5, or Level 6 felony if committed by an adult.
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> (C) in a residential, detention, or other secured setting where the child has been placed for reasons other than to participate in competency attainment services, but where the child is also ordered to participate in competency attainment services, the child may not be required to participate for more than . . . (ii) one hundred eighty (180) days if the child is charged with an act that would be a felony or murder if committed by an adult.

Ind. Code § 31-37-26-6(g)(2).

(A) may order medical or physical examination or treatment of the child; and

(B) may order the child detained in a health care facility while the emergency exists.

(2) If the court has not authorized the filing of a petition but a physician certifies that continued medical care is necessary to protect the child after the emergency has passed, the court:

(A) may order medical services for a reasonable length of time; and

(B) may order the child detained while medical services are provided.

(3) If the court has authorized the filing of a petition alleging that a child is a delinquent child or a child in need of services, the court may order examination of the child to provide information for the dispositional hearing. The court may also order medical examinations and treatment of the child under any circumstances otherwise permitted by this section.

(4) After a child has been adjudicated a delinquent child or a child in need of services, the court may order examinations and treatment under IC 31-34-20 or IC 31-37-19.

Ind. Code § 31-32-12-1.

[13] In *K.G.*, our Supreme Court "liberally construed" the above statute, noting: "The policy of this State and the purpose of the juvenile code are to 'ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation.'" 808 N.E.2d at 637 (quoting Ind. Code § 31-10-2-1(5)). In particular, the Court analyzed the second sentence of subsection 3, which permits a juvenile court to order medical examinations and

treatment "under any circumstances otherwise permitted by this section." *Id.* at 639. On its face, this language seems simply to incorporate subsections 1, 2, and 4 in some fashion. *See* Ind. Code § 31-32-12-1. But our Supreme Court viewed the statute "slightly differently," explaining:

> Although the statute does not specifically mention "competency," given a juvenile court's flexibility in addressing the needs of children and acting in their best interest, we conclude that this statute 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.

*K.G.*, 808 N.E.2d at 639.

## A. Restoration

[14] Though not directly in dispute, I.J.'s appeal inherently questions the juvenile court's authority to order competency restoration services after finding a child not competent for adjudication. In her brief, I.J. highlights our Supreme Court's conclusion above, that Indiana Code § 31-32-12-1(3) permits examination and treatment of a child "*to determine* the child's competency." *Id.* (emphasis added). She then claims the statute could not have authorized the juvenile court's order because "a [competency] determination had *already* been made" when the order was issued. Appellant's Br. p. 17 (emphasis in original).

[15] Essentially, I.J. interprets our Supreme Court's use of the phrase, "to determine," as meaning Indiana Code § 31-32-12-1(3) permits a competency evaluation but nothing more—including competency restoration services. This

interpretation ignores that the statute expressly authorizes a juvenile court to order "examinations *and treatment*." Ind. Code § 31-32-12-1(3) (emphasis added). Considering the protective and rehabilitative purposes of Indiana's juvenile code, we do not believe our Supreme Court intended its broad interpretation of Indiana Code § 31-32-12-1(3) to mean a juvenile court may find a child not competent for adjudication but do nothing to aid a child whose incompetence might be only temporary. *See K.G.*, 808 N.E.2d at 639. Accordingly, we specifically recognize that the statute, as interpreted in *K.G.*, allows for a competency examination as well as treatment of an incompetent child to restore the child's competency.

## B. Detention

[16] Perhaps anticipating our conclusion above, I.J.'s appeal primarily challenges the juvenile court's authority to detain her while she received competency restoration services. We note that, unlike examinations and treatment, a child's detention is not expressly authorized by Indiana Code § 31-32-12-1(3). But we

need not determine if *K.G.* somehow contemplated that authority.[4] Instead, we find I.J.'s detention authorized by a different statute altogether.

[17] Indiana Code § 31-37-6-6(a) provides, in pertinent part:

> [T]he court may order the child detained if the court finds probable cause to believe the child is a delinquent child and that:
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> (4) return of the child to the child's home is or would be:
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> (A) contrary to the best interests and welfare of the child; and
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> (B) harmful to the safety or health of the child.
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> ***

[18] Here, the juvenile court found probable cause to believe I.J. was a delinquent child when it approved the filing of the State's four delinquency petitions. App. Vol. II, p. 65; App. Vol. VI, pp. 141, 186, 224. In placing I.J. at YOC, the court also concluded that I.J.'s "detention" was warranted. App. Vol. II, p. 193. Specifically, the court found it was in I.J.'s "best interests . . . to be removed

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[4] In *K.G.*, our Supreme Court reversed the psychiatric commitment of four juveniles found not competent for adjudication and, in dicta, stated:

> This is not to say that a juvenile court is prohibited from entering an order committing a child found to be incompetent to an appropriate facility operated by the department of mental health. We merely hold that the adult competency statute is not the proper vehicle to accomplish this end. Rather we believe Indiana Code section 31-32-12-1 is sufficient to the task.

808 N.E.2d 638-39. *See generally In re R.L.H.*, 831 N.E.2d 250, 256 n.8 (Ind. Ct. App. 2005) ("In *K.G.*, our supreme court seems to say that Indiana Code Section 31-32-12-1, on its own, gives a juvenile court authority to commit an incompetent child to a [mental health] facility prior to adjudication of delinquency.").

from the home environment" and that "remaining in the home would be contrary to [her] welfare," in part, because she "has special needs that require services for care and treatment that cannot be provided in the home." *Id.* at 193-94. I.J. does not dispute these findings or otherwise address the court's authority under Indiana Code § 31-37-6-6(a)(4). Faced with detaining an incompetent teenager alleged to have attacked her mother on five occasions or releasing that teenager to her mother's care, we cannot say the juvenile court erred in choosing detention.

## C. Limitation

[19] I.J. alternatively claims that the juvenile code limited her detention to 14 days. Indiana Code § 31-32-12-2(a) authorizes a juvenile court to "order temporary confinement for not more than fourteen (14) days, excluding Saturdays, Sundays, and legal holidays, to complete the mental or physical examination of a child." Ind. Code § 31-32-12-2(a). But that limitation only applies to a commitment order issued under the same chapter of the juvenile code. *See* Ind. Code § 31-32-13-1(2) (authorizing the juvenile to issue an order "to provide a child with an examination or treatment under IC 31-32-12."). Because we have found I.J.'s detention authorized under Indiana Code § 31-37-6-6(a)(4), the 14-day limitation provided by Indiana Code § 31-32-12-2(a) is not applicable.

## D. Due Process

[20] I.J.'s final argument is that her detention violated her right to due process under the Fourteenth Amendment because it was "indefinite" in nature. Appellant's

Br. pp. 5, 11, 16, 19. We disagree with that characterization. A child detained under Indiana Code § 31-37-6-6(a)(4) "may petition the juvenile court for an additional detention hearing." Ind. Code § 31-37-6-8. I.J. filed no such petition, and she does not contend that her best interests and welfare changed in a manner that warranted her release while she continued to receive competency restoration services. Though I.J.'s release may have been required upon a finding that her competency would never be restored,[5] such a finding is not supported by the record.

[21] Instead, the juvenile court advised the parties that they could re-evaluate I.J.'s competency "at the end of [her] treatment" to "see if things have changed." Tr. Vol. II, pp. 92-93. And it specifically took under advisement I.J.'s request that a follow-up evaluation be scheduled. App. Vol. II, p. 207. I.J. does not contend that the court unreasonably delayed ordering another competency evaluation or that a final determination as to I.J.'s competency reasonably could have been made before behavioral issues forced her release from YOC. Based on the foregoing, we find that I.J. has not established a due process violation.

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[5] *See State v. Davis*, 898 N.E.2d 281, 290 (Ind. 2008) ("[I]t is a violation of basic notions of fundamental fairness as embodied in the Due Process Clause of the Fourteenth Amendment to hold criminal charges over the head of . . . an incompetent [adult] defendant. . . when it is apparent she will never be able to stand trial."); *accord Jackson v. Indiana*, 406 U.S. 715, 738, 92 S. Ct. 1845, 1858, 32 L. Ed. 2d 435 (1972).

# Conclusion

[22] Applying Indiana's current juvenile code, we conclude that Indiana Code § 31-32-12-1(3), as interpreted by our Supreme Court in *K.G.*, authorized the juvenile court to order competency restoration services after finding I.J. not competent for adjudication. We also conclude that the juvenile court was authorized to detain I.J. under Indiana Code § 31-37-6-6(a)(4) while her competency was being restored.

[23] Affirmed.

Kirsch, J., and Altice, J., concur.