

SUPREME COURT OF VERMONT

In re M.A.

189 Vt. 354 (2011) · Decided January 28, 2011

OPINION

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BURGESS, J.

Burgess, J. ¶ 1. Defendant, M.A., appeals a district court order placing him in the custody of the Commissioner of Disability, Aging and Independent Living (DAIL). Defendant had been charged with sexual assault and lewd or lascivious conduct with a child, but was ruled incompetent to stand trial. The district court found, under 18 V.S.A. § 8839,1 that defendant presented a danger of harm to others, was “ ‘in need of custody, care and habilitation’ ” and that the Commissioner could provide defendant placement in a program meeting defendant’s needs. Defendant contends the order must be vacated for lack of jurisdiction in the district court and because there was insufficient evidence to *356support a finding that he presents a danger of harm to others. We affirm. ¶ 2. In February 2004, Detective Anderson of the Bellows Falls Police Department commenced an investigation into two reports of possible sexual abuse of a nine-year-old girl. Detective Anderson, accompanied by an investigator from the Department for Children and Families (DCF), met with the child, known in the record as H.H., her mother, and a relative about their relationship with the then thirty-year-old defendant. Detective Anderson learned that defendant, whom the parties later stipulated suffered from mild mental retardation, spent a great deal of time alone with H.H. He also learned that at times defendant’s behavior, including inappropriate touching, was concerning to her mother and others; that defendant’s touching, as described by H.H., felt “weird” and “not good” to her; and that H.H.’s relationship with defendant began when she was approximately six. During these initial interviews, there was no explicit disclosure of sexual abuse. ¶ 3. Shortly after meeting with H.H., Detective Anderson intercepted defendant on his way to visit H.H.’s relative and requested an interview about the child. At Anderson’s request, defendant drove himself to the police department. There, defendant sat at a table with both Detective Anderson and the DCF investigator in a chair next to the open door of the interview room. Detective Anderson informed defendant he was not under arrest and was free to leave at any time. Defendant indicated he understood, and that he was willing to speak with the detective. ¶4. Over the next four hours, in a videotaped interview, defendant admitted to sexually molesting two other girls; stated he was in love with H.H.; and admitted to sexual contact with H.H. including kissing, digital intercourse, vaginal intercourse, and ejaculating with her on his lap. Defendant also acknowledged — while describing individual assaults — that he “probably

shouldn't have touched her," that H.H. appeared uncomfortable, that his relationship with H.H. was inappropriate, and that he worried about going to jail. Detective Anderson elicited many of these admissions through leading questions, by indicating he already knew what had happened, implying that he had conducted or would conduct a medical exam of the child, and assuring defendant that the substance of the interview was private and "you're not in trouble anyways." Toward the end of the interview, defendant produced a letter he had written for H.H., which states: *357I love you with all my heart I dont want to lose you so dont worry SRS2 Dont have A thing on me because if they Did I would not be able to see my Mother not ever ... I will be back soon I want to be there with you right know but I can't . . . Love [M.] forever (Grammatical and other errors in original.) The bottom of the letter next to defendant's signature is decorated with twenty-one hand-drawn hearts. At the conclusion of the interview, defendant was placed under arrest, handcuffed, and taken into custody. Defendant was charged, and released on conditions to his mother's custody. ¶ 5. Prior to his trial date, defendant sought to suppress his statements as involuntarily made and the result of oppressive interrogation techniques and his intellectual limitations. The district court found it highly unlikely that the detective would not have recognized defendant's lower than average cognitive abilities, but determined that the detective's persistent and sophisticated interviewing technique was neither abusive nor threatening. Judging from the videotaped interview, the district court was satisfied that the detective did not veer from the "limits of the 'generally recognized' latitude afforded to law enforcement officers" in interviewing suspects. Finding that defendant failed to demonstrate any objective coercion, the court considered the effect of defendant's mental retardation on the voluntariness of his admissions. Based on the videotaped interview and opinions of mental health experts, the district court concluded that the record did not show that defendant lacked understanding of the subject matter and purpose of the interview or of the criminal implications of his admitted behavior. Holding the confession to be voluntary, and not the product of unduly manipulative or coercive psychological interrogation techniques, the court denied the motion to suppress, and the case proceeded to trial. ¶ 6. At jury selection, defense counsel raised a concern about defendant's competency to stand trial. The district court ordered an evaluation and appointed Dr. Paul Cotton to make an assessment. Dr. Cotton found defendant "incapable of moving beyond a simple fact[,] . . . incapable of considering explanations other than his own for a given fact," and unable to grasp the meaning of a *358plea agreement or the trial process, including what a jury does and how they weigh evidence. Based on Dr. Cotton's testimony, the court was satisfied defendant could not consult with his lawyer with a reasonable degree of rational understanding or appreciate the proceedings against him. ¶ 7. The court concluded defendant was incompetent and ordered a placement hearing to determine if he should be placed in the custody of the DAIL Commissioner. Over defendant's objection that the family court had exclusive jurisdiction over Act 248 proceedings, placement hearings were held in district court beginning in June 2008 and continuing over several months. Detective Anderson testified at the hearing, as did H.H. and a sociologist called by the defense as an expert in police

interrogation. ¶ 8. In its written ruling, issued in January 2009, the court adopted the findings on voluntariness from the previous order denying defendant's motion to suppress and concluded that, although the police questioning was at times "intense," it was not overbearing or coercive and did not render the admissions involuntary. The court also rejected the expert's suggestion that the "motivational tactics" employed by the investigating officer rendered the responses unreliable, noting their essential consistency with the victim's statements and testimony. The trial court thus found by clear and convincing evidence that defendant had committed sexual assaults and lewd or lascivious behavior against H.H., and was therefore a danger to others within the meaning of the placement statute, 18 V.S.A. § 8839(3)(B), and ordered his placement in the custody of the Commissioner. This appeal followed. ¶ 9. We review a trial court's placement determination for clear error. See *State v. Bean*, 171 Vt. 290, 295, 762 A.2d 1259, 1262 (2000). Title 13 requires consideration of protective custodial placement and treatment for criminal defendants determined to be incompetent to stand trial. See 13 V.S.A. § 4820(4) (providing, in pertinent part, that when a criminal defendant is found incompetent to stand trial due to mental defect, "the court before which such person ... is to be tried . . . shall hold a hearing for the purpose of determining whether such person should be committed *359to the custody of the commissioner of mental health").³ The necessary basis for the court to order placement is clear and convincing evidence of defendant's mental retardation, dangerousness to others, and availability of least restrictive appropriate treatment. 18 V.S.A. § 8843(c) (stating that upon finding defendant in need of custody, court shall order placement in "a designated program in the least restrictive environment"); *id.* § 7616(b) (imposing the State's burden of proof by "clear and convincing evidence"). At the merits hearing, the parties here stipulated to defendant's mental retardation. Aside from his objections to the district court's jurisdiction to hear the case, defendant's appeal is limited to contending that the State failed to meet its burden to prove he poses a danger of harm to others. 18 V.S.A. § 8839(1).⁴ ¶ 10. Because "jurisdiction is a prerequisite to the power of a court to hear a case," *Soucy v. Soucy Motors, Inc.*, 143 Vt. 615, 620, 471 A.2d 224, 227 (1983), superseded by statute on other grounds as stated in *State v. Willis*, 145 Vt. 459, 494 A.2d 108 (1985), we first address the jurisdiction of the district court to order placement under Act 248. The trial court read the Family Court Act, 1989, No. 221 (Adj. Sess.), as establishing jurisdiction only over voluntary and involuntary mental health-related commitment proceedings commenced independently of, and not arising from, a criminal prosecution in a criminal court.⁵ Accordingly, the district court concluded it retained jurisdiction over defendant's commitment proceeding as originating out of the underlying *360criminal prosecution in that court. The court found support in the part of the statute providing that: When a person charged . . . with a criminal offense:

(2) Is found upon hearing pursuant to section 4817 of this title to be incompetent to stand trial due to a . . . mental defect . . .

. . . the court before which such person is tried or is to be tried for such offense, shall hold a hearing for the purpose of determining whether such person should be committed to the custody

of the commissioner 13 V.S.A. § 4820. ¶ 11. Defendant argues here, as below, that after the family court was founded in 1990, the Family Court Act requires all Act 248 hearings to be held only in the family court. Defendant asserts that the exclusive jurisdiction of the family court is set forth in the sweeping declaration within the Family Court Act that, “[notwithstanding any other provision of law to the contrary,” all “proceedings filed pursuant to chapter 206 of Title 18,” also a part of Act 248, are to be heard and disposed of in family court. 4 V.S.A. § 454. Defendant contends, essentially, that the extension of family court jurisdiction to “[a]ll care for mentally retarded persons proceedings filed pursuant to chapter 206 of Title 18” under 4 V.S.A. §454 means all Act 248 commitment cases, including those commenced in criminal court pursuant to § 4820 of Title 13. Conceding that other parts of Act 248 address placement proceedings in criminal court, defendant points out that the Family Court Act was enacted after Act 248 and so supersedes the latter jurisdictionally. ¶ 12. Reconciliation of defendant’s perceived jurisdictional competition between the district and family courts in this matter lies in a plain reading of the statutes, giving effect to all of their provisions. See *In re S. Burlington-Shelburne Highway Project*, 174 Vt. 604, 605, 817 A.2d 49, 51 (2002) (mem.) (when construing complex statutory scheme, our goal is to harmonize the statutes and give effect to all of their constituent parts). It is clear that the Legislature here intended mental health and retardation *361commitment proceedings “filed pursuant to” Title 18 to be initiated and disposed of in the family court. 4 V.S.A. § 454(11), (13). It is no less clear that the Legislature intended the question of custodial care and treatment for persons deemed incompetent to stand criminal trial to be heard in the same court that determined the person incompetent. 13 V.S.A. § 4820. There is no conflict between these two provisions since family court jurisdiction expressly lies for cases filed pursuant to Title 18, while commitment cases arising under Title 13 are not filed at all, but proceed automatically from the criminal court’s finding of defendant incompetence in the course of an underlying criminal prosecution.⁶ As the statutes are neither ambiguous nor incompatible in their alignment, no further interpretation is required. See *In re Estate of Cote*, 2004 VT 17, ¶ 10, 176 Vt. 293, 848 A.2d 264 (where legislative intent can be ascertained from its plain meaning, the statute must be enforced according to its terms without resorting to statutory construction). Accordingly, we conclude that the district court properly exercised jurisdiction in this matter. ¶ 13. In his second claim on appeal, defendant contends there was insufficient evidence that he presented a danger of harm to *362others as required to support a placement in the care of the DAIL Commissioner. The foundation for defendant’s argument is that his confession during the interview with investigators was unreliable because his mental deficiencies rendered him easily-overborne by extensive, coercive questioning. Led and manipulated into confessing, defendant argues he made involuntary admissions which should be accorded no evidentiary weight. Defendant claims that the remaining evidence, H.H.’s testimony, was also unreliable because it was “inconsistent and incredible.” ¶ 14. The State and defendant agree that for purposes of involuntary commitment the trial court was required to find by clear and convincing evidence that defendant posed a danger to others. Engaging in either lewd

or lascivious conduct or sexual assault would be sufficient evidence of that risk under Act 248. 18 V.S.A. § 8839(1) (defining danger of harm to others to “mean[] the person has . . . committed an act that would constitute a sexual assault or lewd or lascivious conduct with a child”). The trial court made its findings by clear and convincing evidence that H.H. was abused and subjected to lewd or lascivious conduct by defendant. ¶ 15. Against the standard of clear and convincing evidence, our review remains deferential: The test ... is not whether this Court is persuaded that there was clear and convincing evidence, but whether the factfinder could reasonably have concluded that the required factual predicate was highly probable. . . . Only where the record indicates that the trial court “clearly erred” in finding clear and convincing evidence will this Court reverse such a finding. *In re E.T.*, 2004 VT 111, ¶ 13, 177 Vt. 405, 865 A.2d 416 (quotation omitted). In assessing findings of fact challenged on appeal, “our role is limited to determining whether they are supported by credible evidence,” while credibility and weight are left to the sound discretion of the trial court. *In re A.F.*, 160 Vt. 175, 178, 624 A.2d 867, 869 (1993). In making that determination, we review the evidence in the light most favorable to the State. *State v. McCarty*, 2006 VT 4, ¶ 12, 179 Vt. 593, 892 A.2d 250 (mem.). ¶ 16. While defendant disagrees with the trial court’s determination that his statements were voluntary and reliable, he does not dispute the underlying evidence cited by the court in support of its findings. As earlier summarized, the trial court here believed the testimony of H.H. concerning the assaults, and found H.H. and defendant’s respective versions of the events to be corroborative. Moreover, defendant’s inculpatory love letter to H.H., authenticated by him, was evidently penned independently and before the investigator’s interview. ¶ 17. In attacking the reliability of his admissions, defendant reiterates the expert’s testimony below to the effect that his low intellectual ability was no match for the detective’s interrogation techniques so that his responses were practically coerced. Both courts below, however, found that the officer’s questioning techniques, while “persistent” and “sophisticated,” were not “abusive or threatening” and contained no “improper promises of leniency, or undue psychological trickery,” and that defendant’s will was not overborne. ¶ 18. The district court, as the trier of fact, was best positioned to evaluate the credibility of the witnesses and the weight to be assigned their testimony — including that of defendant’s expert — and its findings will not be disturbed absent a showing of clear error. *State v. Fairbanks*, 128 Vt. 298, 300, 187 A.2d 335, 336-37 (1963). Defendant has not shown that the trial court’s findings concerning the absence of coercion were clearly erroneous. Furthermore, there is no basis in either the law or the facts presented to conclude that defendant’s cognitive limitations, standing alone, rendered his statements involuntary or unreliable. See *Colorado v. Connelly*, 479 U.S. 157, 167 (1986) (coercive police conduct is necessary predicate to finding due process violation); *State v. Ives*, 162 Vt. 131, 134, 648 A.2d 129, 131 (1994) (same). Similarly, the court’s reliance upon the testimony of H.H., especially as bolstered by defendant’s confession, was within “the sound discretion of the [trial] court to determine the credibility of the witnesses and to weigh the evidence.” *In re A.F.*, 160 Vt. at 178, 624 A.2d at 869. Hence we discern no basis to disturb the trial court’s findings and

conclusions. Affirmed. The court's hearing was what is commonly referred to as an "Act 248 proceeding," after the 1988 legislation generally revising the state's response to certain mentally retarded persons who pose a danger to others. 1987, No. 248 (Adj. Sess.). The Vermont Department of Social and Rehabilitation Services, or "SRS", preceded DCP as the state agency responsible for child protection services. While § 4820 refers only to the mental health commissioner, the next section makes clear that defendants deemed incompetent on account of mental illness may be subject to the custody of the mental health commissioner and the procedures for hearings in chapter 181 of Title 18. Defendants found incompetent due to mental retardation may be subject to the custody of the DAIL Commissioner pursuant to the "[p]rocedures for hearings for persons who are mentally retarded ... as provided in subchapter 3 of chapter 206 of Title 18" (also known as "Act 248"). 13 V.S.A. § 4821. Subchapter 3 of chapter 206 of Title 18 includes 18 V.S.A. §8839. Though contested below, respondent does not appeal the district court's determination that the assigned program meets his needs in the least restrictive environment possible. Although the instant commitment case evolved from a criminal prosecution in the district court, at the time, both the district and superior courts had jurisdiction over criminal cases. See 4 V.S.A. § 114 (superior court criminal jurisdiction); 4 V.S.A. §§ 439-440 (concurrent district court jurisdiction over felonies and misdemeanors). Hence our references to "criminal court" as the court from which post-incompetency commitment proceedings arise. The court below also cited 18 V.S.A. § 8840 in support of its rationale. Under the rubric "Jurisdiction and venue," § 8840 still provides that mental health proceedings "brought under this subchapter [of Title 18] . . . shall be commenced by petition in the district court." This section is inapposite to the instant case, however, since the commitment proceeding was not "brought" under Title 18, but followed the district court's determination that respondent was incompetent to stand trial under 13 V.S.A. §§ 4817 and 4820(2). Before the creation of family court in 1990, all Title 18 mental health commitments not arising from the criminal docket were filed in district court. Thus, the jurisdiction and venue provisions of § 8840 are among those included in the anachronistic "other provisions] of law to the contrary" declared overridden by the new exclusive jurisdiction established in the family court under 4 V.S.A. § 454. It is noteworthy, as well, that the supplement to Title 18 includes a "revision note" purporting to explain a revision to § 8840 that "[r]edesigned the venue for commitment proceedings for the mentally retarded from district court to family court to reflect the redesignation provided for in subdivision 454(13) of Title 4." Revision note — 2005, 18 V.S.A. § 8840. As published in the supplement, however, the entire text of § 8840 remains unchanged. Review of the Legislature's Acts and Resolves for 2005 and 2005 (Adj. Sess.) reflect no amendment to the statute. Thus, the note is curious, but not helpful. The question of revision is more substantive than a scrivener's error, since a revision of only the words "district" to "family" court would not change today's result, while omitting or changing its qualifying application to "[p]roceedings brought under this subchapter [of Title 18]" (emphasis added) could well affect the outcome.

