**Summary of SC97869, *In the Interest of D.E.G. v. Juvenile Officer of Jackson County***
Appeal from the Jackson County circuit court, Judge J. Dale Youngs
Argued and submitted November 6, 2019; opinion issued June 16, 2020

**Attorneys:** The juvenile was represented by Tim Honse of the public defender's office in Kansas City, (816) 889-2099; the juvenile officer was represented by Lori A. Fluegel, an attorney in Kansas City, (816) 694-9182, and Daniel G. Barry, an attorney in Kansas City.

*This summary is not part of the opinion of the Court. It has been prepared by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A juvenile appeals his certification to stand trial as an adult. In a 4-3 decision written by Chief Justice George W. Draper III, the Supreme Court of Missouri retransfers the case to the appeals court for a review of the underlying merits of the juvenile division's judgment. Because the plain language of the statute clearly and unambiguously allows an aggrieved party to appeal from any final judgment reached under the provisions of chapter 211, RSMo, the juvenile has a statutory right to appeal the certification judgment.

In an opinion joined by two judges, Judge W. Brent Powell dissents. He would hold a juvenile certification ruling is not appealable under this Court's precedent and would dismiss the appeal. If not dismissed, he agrees with the other dissenting opinion that the Court should decide the issues rather than retransferring the case and should find the statutory certification process constitutional on its face and as applied to the juvenile's hearing.

In an opinion joined by two judges, Judge Zel M. Fischer also dissents. He would hold the juvenile's constitutional challenges invoke this Court's original appellate jurisdiction because they are real and substantial, not merely colorable, and this Court should decide them rather than retransfer the case to the court of appeals for final resolution. He would further hold the statutes are constitutionally valid and would affirm the judgment. The juvenile received all the process he was due under the statutes, which is all that is required by United States Supreme Court precedent; the juvenile did not establish the certification process violated his right to equal protection; and, because the juvenile system uses a purely civil process, its structure does not violate the separation of powers.

**Facts:** The Jackson County juvenile officer filed a petition alleging D.E.G. committed conduct that would be a crime if committed by an adult. The juvenile officer sought to certify D.E.G. to stand trial as an adult. D.E.G. moved to deny certification, challenging the constitutional validity of the state's certification process. The circuit court overruled his motion, held the certification hearing and certified him to stand trial as an adult. D.E.G. appeals.

**RETRANSFERRED.**

**Court en banc holds:** (1) A juvenile has a statutory right to appeal any final juvenile division judgment. Section 211.261.1's plain language is clear and unambiguous: it allows for an appeal from any final judgment, order or decree made under the provisions of chapter 211. The juvenile division here entered a judgment of dismissal pursuant to section 211.071 that was signed by a

judge and set forth detailed reasoning for ordering and adjudging D.E.G. dismissed from its jurisdiction. The juvenile division's judgment, therefore, is final and appealable.

(2) Because this Court in *In re T.J.H.* held, without discussing section 211.261.1's statutory language, that an order certifying a juvenile as an adult is not appealable, *T.J.H.* and its progeny are overruled and no longer should be followed.

**Dissenting opinion by Judge Powell:** The author would hold a juvenile certification ruling is not appealable under this Court's decision in *T.J.H.* and, therefore, would dismiss the appeal. The statutory right to appeal in section 211.261.1 has not changed since this Court decided, in *T.J.H.*, that a juvenile certification resulting in the dismissal of a petition in the juvenile division is not a final judgment, order or decree from which an appeal is authorized. In the absence of legislative changes to the statutory provision, this Court should be bound by its precedent and not deviate from the law established in *T.J.H.* The author agrees with the other dissenting opinion both that, if the appeal is not dismissed, this Court should decide the issues raised rather than retransferring this case as well as that section 211.071 is constitutional on its face and as applied to D.E.G.'s certification hearing.

**Dissenting opinion by Judge Fischer:** (1) The author would hold D.E.G.'s constitutional challenges are real and substantial, and not merely colorable, and this Court should decide them rather than retransfer the case because the challenges invoke this Court's original appellate jurisdiction. Several challenges raise issues of first impression, including whether the certification process outlined in section 211.071 violates equal protection and whether the juvenile system violates the separation of powers. In addition, D.E.G.'s due process challenge raises novel issues such as whether juveniles have a due process right to the strict application of the rules of evidence in certification hearings and whether hearsay testimony is admissible in a juvenile certification proceeding. Such claims fall within this Court's exclusive jurisdiction and cannot be retransferred to the appeals court. Because this Court granted transfer from the court of appeals, it is this Court's responsibility, after full briefing and argument, to resolve all the issues before it and avoid further delay.

(2) The author would hold the statutes are constitutionally valid. D.E.G. received all the process he was due pursuant to section 211.071, which is all that is required by United States Supreme Court precedent. Because section 211.071 does not require that the general rules of evidence should apply in juvenile certification hearings, that a witness testified about matters in the investigatory report outside her direct, personal knowledge may go to the weight of her testimony but does not justify reversing the juvenile division's decision and sending the case back for another hearing. It is undisputed the juvenile division adhered to section 211.071 when it dismissed the petition and certified D.E.G. for prosecution in a court of general jurisdiction, making detailed findings and conclusions for doing so. D.E.G. failed to present sufficient evidence to support his claim that the certification process violated his right to equal protection. Further, because the juvenile system rehabilitates juveniles through a purely civil process in lieu of a criminal prosecution, its structure does not violate the separation of powers by infringing on the executive branch's prosecutorial discretion. That the challenges ultimately lack merit, however, does not bear on whether the challenges invoke this Court's original appellate jurisdiction. The author would affirm the judgment and further concurs in the other dissenting opinion.