



SUPREME COURT OF MISSOURI

en banc

STATE OF MISSOURI,	)	<i>Opinion issued October 26, 2021</i>
	)	
Appellant,	)	
	)	
v.	)	No. SC99034
	)	
R.J.G.,	)	
	)	
Respondent.	)	

APPEAL FROM THE CIRCUIT COURT OF ST. FRANCOIS COUNTY

The Honorable Wendy Wexler Horn, Judge

R.J.G. is alleged to have committed several felony offenses in October 2020, when he was seventeen years old. The state charged R.J.G. with these offenses in a court of general jurisdiction on January 7, 2021. R.J.G. filed a motion to dismiss the action, arguing the circuit court’s juvenile division had the exclusive statutory authority to adjudicate these charges pursuant to legislation enacted in 2018 (hereinafter, “the 2018 legislation”) because he was seventeen years old at the time the offenses occurred. The circuit court sustained R.J.G.’s motion and dismissed the state’s prosecution without prejudice. The state appealed. R.J.G. filed a motion to dismiss the state’s appeal for lack of a final, appealable judgment.

This Court holds the circuit court's order dismissing the state's prosecution without prejudice constituted a final, appealable judgment because it had the practical effect of terminating the state's prosecution in a court of general jurisdiction and refiling the charges would be futile; therefore, R.J.G.'s motion to dismiss the state's appeal is overruled. This Court further holds the law as it existed at the time R.J.G. is alleged to have committed the offenses governs which division has the statutory authority to adjudicate the offenses. Because R.J.G. was considered an adult for purposes of chapter 211 at the time he is alleged to have committed the offenses, the juvenile division did not have statutory authority to adjudicate the offenses. The circuit court erred in dismissing the state's prosecution in the court of general jurisdiction. The circuit court's judgment is reversed, and the cause is remanded.

Factual and Procedural History

R.J.G., who was seventeen years old at the time, is alleged to have committed several felony offenses on or about October 2, 2020. On January 7, 2021, the state filed an indictment in the court of general jurisdiction charging R.J.G. with nine felony counts. R.J.G. moved to dismiss the case, arguing the juvenile division had the exclusive statutory authority to adjudicate any charges against him pursuant to section 211.031.1(3), RSMo Supp. 2018, as amended by the 2018 legislation because he was younger than eighteen years of age at the time the alleged offenses occurred. The state countered that section 211.031.1(3) as amended did not control because it was not effective at the time R.J.G. allegedly committed the offenses. The circuit court sustained R.J.G.'s motion to dismiss without prejudice.

The state appealed to the Missouri Court of Appeals, Eastern District. R.J.G. filed a motion to dismiss the state’s appeal for lack of a final, appealable judgment. The Eastern District ordered R.J.G.’s motion to be taken with the case. This Court subsequently ordered the case transferred prior to disposition pursuant to Rule 83.01. This Court has jurisdiction. Mo. Const. art. V, sec. 10.

Motion to Dismiss the Appeal

R.J.G. filed a motion to dismiss the state’s appeal for lack of a final, appealable judgment because the circuit court’s dismissal was entered without prejudice. R.J.G. argues the circuit court’s judgment neither disposes of all disputed issues nor leaves anything for further adjudication. R.J.G. contends, if the circuit court’s dismissal is a final judgment, then neither the juvenile division nor the court of general jurisdiction has the authority to adjudicate the allegations because they are both divisions of the same circuit court. The state counters that, although the dismissal was without prejudice, the circuit court’s dismissal had the practical effect of terminating the entire criminal proceeding and precludes the state from prosecuting R.J.G. in the court of general jurisdiction.

“This Court has an obligation, acting *sua sponte* if necessary, to determine its authority to hear the appeals that come before it.” *State v. Johnson*, 617 S.W.3d 439, 443 (Mo. banc 2021) (quoting *First Nat’l Bank of Dieterich v. Pointe Royale Prop. Owners’ Ass’n, Inc.*, 515 S.W.3d 219, 221 (Mo. banc 2017)). The right to appeal derives solely from statute. *State v. Waters*, 597 S.W.3d 185, 186 (Mo. banc 2020). “If a statute does not give a right to appeal, the appeal must be dismissed.” *Id.*

Section 547.200.1, RSMo 2016,¹ permits the state to appeal from any order or judgment that results in: “(1) [q]uashing an arrest warrant; (2) [a] determination by the court that the accused lacks the mental capacity or fitness to proceed to trial ...; (3) [s]uppressing evidence; or (4) [s]uppressing a confession or admission.” The parties agree the circuit court’s dismissal is not an order enumerated in section 547.200.1 from which the state may appeal. When the circuit court’s order or judgment does not fall into any of the categories enumerated in section 547.200.1, the judgment must be final for the state to appeal. *State v. Smothers*, 297 S.W.3d 626, 630 (Mo. App. W.D. 2009); *see also* Rule 30.01(a) (“After the rendition of a final judgment in a criminal case, every party shall be entitled to any appeal permitted by law.”).

“[A] dismissal without prejudice is not a final order unless the dismissal has the ‘practical effect of terminating the litigation in the form in which it is cast or in the plaintiff’s chosen forum.’” *Smothers*, 297 S.W.3d at 630-31 (emphasis omitted) (quoting *State v. Burns*, 994 S.W.2d 941, 943 (Mo. banc 1999)). “The exception appears to be limited to those rare situations in which a dismissal without prejudice is based on an assertedly deficient claim ... or where the basis of the dismissal without prejudice places a substantial cloud on a party’s right to further litigate an issue or claim” *Burns*, 994 S.W.3d at 943. When a litigant is precluded “from maintaining the action in the forum chosen, it is a final judgment, irrespective of whether it is denominated ‘with prejudice’ or ‘without prejudice.’” *Smothers*, 297 S.W.3d at 631.

¹ All statutory references are to RSMo 2016 unless otherwise indicated.

The state contends the circuit court’s dismissal is a final, appealable judgment because it had the practical effect of terminating the entire proceeding and prevents it from prosecuting R.J.G. in the court of general jurisdiction. R.J.G. notes the factual dispute in the indictment still may be adjudicated in the juvenile division, and, in fact, is pending as a delinquency petition in the juvenile division. Hence, R.J.G. believes the state, acting through the juvenile officer, is disposing of the same claims in the same circuit court.

While the juvenile officer is a state actor, *Adoption of C.M.B.R. v. E.M.B.R.*, 332 S.W.3d 793, 806 (Mo. banc 2011), *abrogated on other grounds by S.S.S. v. C.V.S.*, 529 S.W.3d 811, 816 n.3 (Mo. banc 2017), R.J.G.’s argument fails to account for the fundamental differences between juvenile division delinquency proceedings and criminal proceedings in the court of general jurisdiction. It is inconsequential similar claims may be, or have been, brought in a delinquency petition in the juvenile division because “[j]uvenile proceedings are civil, not criminal, and are focused on continuing care, protection, and rehabilitation of the juvenile, not punishment.” *In the Interest of A.C.C.*, 561 S.W.3d 425, 428 (Mo. App. E.D. 2018). “Although the juvenile [division] can adjudge what would be criminal conduct but for a child’s infancy, delinquency proceedings are civil in nature, and thus stand ‘apart from the criminal justice system.’” *I.D. v. Juv. Officer*, 611 S.W.3d 869, 874 (Mo. App. W.D. 2020) (quoting *J.D.H. v. Juv. Ct. of St. Louis Cnty.*, 508 S.W.2d 497, 500 (Mo. banc 1974)). Because the juvenile division has the exclusive statutory authority to determine whether R.J.G. could be certified to be tried as adult, the circuit court’s dismissal placed a substantial cloud on the state’s right to litigate these

charges further in the court of general jurisdiction. Moreover, the circuit court's dismissal deprives the state of pursuing a range of remedies not available in the juvenile division.

If the circuit court's dismissal would render refiling the action futile, the order of dismissal without prejudice is appealable. *Mayes v. Saint Luke's Hosp. of Kan. City*, 430 S.W.3d 260, 266 (Mo. banc 2014). Refiling the state's indictment in the court of general jurisdiction would be futile in this case in that the circuit court determined it lacked the statutory authority to adjudicate the charges. Because the circuit court's dismissal disposed of the state's prosecution in its entirety and the indictment cannot be refiled in the court of general jurisdiction, it is a final, appealable judgment. R.J.G.'s motion to dismiss the state's appeal is overruled.

Standard of Review

"This Court has not addressed the standard of review of a judgment sustaining a motion to dismiss a criminal indictment[.]" *State v. Merritt*, 467 S.W.3d 808, 810 (Mo. banc 2015). In *Merritt*, this Court applied civil case law precedent to hold, if the dismissal is justified on any ground alleged in the motion, this Court will affirm the judgment. *Id.* at 810-11. Here, the facts are uncontested, and the only issue to resolve is whether, and to what extent, the 2018 legislation applies in this case. "Statutory interpretation is an issue of law, which is subject to *de novo* review." *D.E.G. v. Juv. Officer of Jackson Cnty.*, 601 S.W.3d 212, 216 (Mo. banc 2020).

Analysis

The state argues the circuit court erred in sustaining R.J.G.'s motion to dismiss because it believes the 2018 legislation expanding the juvenile division's statutory

authority over seventeen-year-olds was not retroactive. The state further argues the circuit court erred in dismissing the prosecution because the expansion of the juvenile division's statutory authority to seventeen-year-olds was not effective at the time R.J.G. committed or was charged with the offenses because the general assembly did not appropriate sufficient funds for these services pursuant to section 211.438, RSMo Supp. 2018, until July 1, 2021.

The resolution of this case is controlled by this Court's opinion in *State ex rel. T.J. v. Cundiff*, No. SC98951 (Mo. banc October 26, 2021), decided concurrently herewith. The same contentions are made concerning the 2018 legislation's expansion of juvenile division authority to seventeen-year-olds and whether the expansion of services was effective on January 1, 2021, or when the general assembly appropriated sufficient funds on July 1, 2021. *T.J.* holds the 2018 legislation did not become effective until the general assembly appropriated sufficient funds on July 1, 2021, for the juvenile division to provide the expanded services.

"[A] defendant must be tried for the offense as defined by the law that existed at the time of the offense." *State v. Pierce*, 433 S.W.3d 424, 427 n.1 (Mo. banc 2014) (quoting *State v. Edwards*, 983 S.W.2d 520, 521 (Mo. banc 1999)). Because the 2018 legislation expanding the juvenile division's statutory authority was not in effect at the time R.J.G. committed the alleged offenses or when he was charged, the law as it existed at the time the alleged offenses occurred governs which division of the circuit court had the authority to dispose of the charges. In October 2020, section 211.021(1), RSMo 2016, defined an "adult" as "a person seventeen years of age or older except for seventeen year old children

as defined in this section.” Section 211.031.1(3), RSMo 2016, conferred upon the juvenile division the original statutory authority “in proceedings ... [i]nvolving any child who is alleged to have violated a state law or municipal ordinance, or any person who is alleged to have violated a state law or municipal ordinance prior to attaining the age of seventeen years.” R.J.G. was seventeen years old at the time the alleged offenses were committed and was considered an adult for purposes of chapter 211 pursuant to section 211.021(1)’s definition in effect at the time of the alleged offenses in October 2020. Accordingly, the juvenile division did not have the statutory authority to adjudicate the charged offenses, and the circuit court erred in dismissing the state’s prosecution of R.J.G. in the court of general jurisdiction.

Conclusion

The circuit court’s judgment is reversed, and the cause is remanded.

GEORGE W. DRAPER III, Judge

All concur.