NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: S.D., A MINOR	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: S.D.	No. 2492 EDA 2011

Appeal from the Dispositional Order July 27, 2011
in the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-JV-0000519-2011

BEFORE: BENDER, P.J., GANTMAN, J., PANELLA, J., DONOHUE, J., SHOGAN, J., LAZARUS, J., MUNDY, J., OTT, J., and WECHT, J.

CONCURRING MEMORANDUM BY MUNDY, J.: **FILED July 25, 2014**

I agree that the case before us is moot and that none of the exceptions to the mootness doctrine apply; therefore, I join the Majority in full. However, as the Dissent has chosen to offer its view on the merits of the issue before this Court as well as the mootness doctrine, I write separately to address my view on the merits as well.

The Juvenile Act grants juvenile courts broad discretion when determining an appropriate disposition. ***In re R.D.***, 44 A.3d 657, 664 (Pa. Super. 2012). In addition, "[a] petition alleging that a child is delinquent must be disposed of in accordance with the Juvenile Act. Dispositions which are not set forth in the Act are beyond the power of the juvenile court." ***Id.*** (citation omitted). We will disturb a juvenile court's disposition only upon a

showing of a manifest abuse of discretion. ***Id.*** However, when resolution of an issue turns on the interpretation of a statute, our review is *de novo*. ***Commonwealth v. M.W.***, 39 A.3d 958, 962 (Pa. 2012).

The Juvenile Act provides for the disclosure of delinquency adjudications to the school at which the delinquent juvenile is enrolled.

> **§ 6341. Adjudication**
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> **(b.1) School notification.--**
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> (1) Upon finding a child to be a delinquent child, the court shall, through the juvenile probation department, provide the following information to the building principal or his or her designee of any public, private or parochial school in which the child is enrolled:
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> (i) Name and address of the child.
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> (ii) The delinquent act or acts which the child was found to have committed.
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> (iii) A brief description of the delinquent act or acts.
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> (iv) The disposition of the case.
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> (2) If the child is adjudicated delinquent for an act or acts which if committed by an adult would be classified as a felony, the court through the juvenile probation department shall additionally provide to the building principal or his or her designee relevant information contained in the juvenile probation or treatment reports pertaining to the adjudication, prior delinquent history and the supervision plan of the delinquent child.

> (3) Notwithstanding any provision set forth herein, the court or juvenile probation department shall have the authority to share any additional information regarding the delinquent child under its jurisdiction with the building principal or his or her designee as deemed necessary to protect public safety or to enable appropriate treatment, supervision or rehabilitation of the delinquent child.
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> (4) Information provided under this subsection is for the limited purposes of protecting school personnel and students from danger from the delinquent child and of arranging appropriate counseling and education for the delinquent child. The building principal or his or her designee shall inform the child's teacher of all information received under this subsection. Information obtained under this subsection may not be used for admissions or disciplinary decisions concerning the delinquent child unless the act or acts surrounding the adjudication took place on or within 1,500 feet of the school property.
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> (5) Any information provided to and maintained by the building principal or his or her designee under this subsection shall be transferred to the building principal or his or her designee of any public, private or parochial school to which the child transfers enrollment.
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> (6) Any information provided to the building principal or his or her designee under this subsection shall be maintained separately from the child's official school record. Such information shall be secured and disseminated by the building principal or his or her designee only as appropriate in paragraphs (4) and (5).

42 Pa.C.S.A. § 6341(b.1).

When construing a statute, our objective is to ascertain and effectuate the legislative intent. 1 Pa.C.S.A. § 1921(a). "In pursuing that end, we are mindful that '[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.'" ***Commonwealth v. Shiffler***, 879 A.2d 185, 189 (Pa. 2005), *citing* 1 Pa.C.S.A. § 1921(b). In addition, "[w]hen the language of a statute is clear and unambiguous, the judiciary must read its provisions in accordance with their plain meaning and common usage." ***Commonwealth v. Love***, 957 A.2d 765, 767 (Pa. Super. 2008). However, when the words of a statute are not explicit, courts should resort to other considerations including the General Assembly's intent in enacting the provision. ***Commonwealth v. Diamond***, 945 A.2d 252, 256 (Pa. Super. 2008), *appeal denied*, 955 A.2d 356 (Pa. 2008), *citing* 1 Pa.C.S.A. § 1921(c). In addition, we observe that our Supreme Court has concluded the Juvenile Act is rehabilitative in nature and must therefore be liberally construed. ***Commonwealth v. Ifrate***, 594 A.2d 293, 295 (Pa. 1991), *citing* 1 Pa.C.S.A. § 1928(c).[1]

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[1] Appellant asks this Court to apply the statutory maxim of *expressio unius est exclusion alterius*. Appellant's Brief at 9. This maxim "establishes the inference that, where certain things are designated in a statute, 'all omissions should be understood as exclusions.'" ***Commonwealth v. Ostrosky***, 866 A.2d 423, 430 (Pa. Super. 2005) (citation omitted), *affirmed*, 909 A.2d 1224 (Pa. 2006). Applying this maxim, Appellant concludes that the Legislature's "inclusion of references to primary and
(Footnote Continued Next Page)

Applying these principles to the case *sub judice*, I conclude that the juvenile court did not exceed its authority. As our Supreme Court has noted, "the Juvenile Act is not a model of clarity." ***M.W.***, ***supra*** at 964. The Juvenile Act does not define the term school. However, I note "school" is defined as "an organization that provides instruction as **a:** an institution for the teaching of children **b:** COLLEGE, UNIVERSITY …" Merriam Webster Collegiate Dictionary 1111 (11th ed. 2009); ***see also*** Black's Law Dictionary 1372 (8th ed. 2004) (defining school as "[a]n institution of learning and education, esp[ecially] for children[]").[2] Further, the General Assembly has listed community protection as one of the purposes of the Juvenile Act.

§ 6301. Short title and purposes of chapter

…

(Footnote Continued) ———————————

secondary schools implies an exclusion of colleges and universities." Appellant's Brief at 9. However, our Supreme Court has held that "when interpreting a statute, courts are required to follow the Rules of Statutory Construction." ***St. Elizabeth's Child Care Ctr. v. Dep't of Pub. Welfare***, 963 A.2d 1274, 1278 (Pa. 2009), *citing* 1 Pa.C.S.A. § 1901 *et. seq*. Our Supreme Court has held that it is error for courts to apply "*expressio unius est exclusion alterius* … while not referring to other cannons of statutory construction." ***Id.*** As we explain *infra,* we conclude that the Rules of Statutory Construction give the most reasonable construction of the word "school" in furtherance of the overall purpose of the school notification provision and the Juvenile Act. We therefore decline Appellant's invitation to mechanically apply *expressio unius est exclusion alterius*.

[2] The Dissent acknowledges that one of its dictionary's definitions of school includes colleges and universities. Dissenting Memorandum at 6 n.1.

> **(b) Purposes.--**This chapter shall be interpreted and construed as to effectuate the following purposes:
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> …
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> (2) Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.
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> …

42 Pa.C.S.A. § 6301(b)(2); ***see also In Re A.B.***, 987 A.2d 769, 775 (Pa. Super. 2009) (*en banc*) (stating Section 6301(b)(2) "evidences the Legislature's clear intent to protect the community while rehabilitating and reforming juvenile delinquents[]") (citation omitted), *appeal denied*, 12 A.3d 369 (Pa. 2010). The school notification provision itself has the purpose of "protecting school personnel and students from danger from the delinquent child …." 42 Pa.C.S.A. § 6341(b.1)(4).

I also note the Juvenile Act includes in its definition of "child" someone who "is under the age of 21 years who committed an act of delinquency before reaching the age of 18 years[.]" ***Id.*** § 6302. The Juvenile Act further defines "delinquent child" as "[a] child ten years of age or older whom the court has found to have committed a delinquent act and is in need of treatment, supervision or rehabilitation." ***Id.*** In my view, it would be a

counterintuitive result for this Court to conclude that legislature only wished to protect students in primary or secondary schools from those juveniles who had been adjudicated delinquent but not those attending institutions of higher education. Likewise, I cannot conclude that a child who is adjudicated delinquent of a felony presents a danger to elementary, middle, and high school students, but ceases to present a danger once the delinquent child enrolls in college. ***See*** 1 Pa.C.S.A. § 1922(5) (stating when construing statutes, courts should presume "[t]hat the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable[]"). Taken in their totality, these considerations lead me to conclude that the word "school", as used in Section 6341(b.1) does include colleges and universities.

Appellant correctly observes that the school notification provision employs the terms "building principal" and "child's teacher" throughout its text. Appellant's Brief at 9. However, I agree with the juvenile court that these terms are subject to a liberal construction as well, requiring a broader interpretation. ***See*** Juvenile Court Opinion, 11/30/11, at 7 n.12. To do otherwise would be to thwart the purposes of the school notification provision and the Juvenile Act itself as described above. Furthermore, the term "principal" is defined as "a person who has controlling authority or is in a leading position as … the chief executive officer of an educational institution." Merriam Webster Collegiate Dictionary 987 (11th ed. 2009).

Furthermore, "teacher" is defined as "one whose occupation is to instruct[.]" ***Id.*** at 1281. Adhering to the principles recited above, I conclude that a college dean or president, and a college professor fit squarely within these respective definitions.[3]

Appellant also points out that the Commonwealth requires children to attend primary and secondary school, but does not require anyone to attend college. Appellant's Brief at 9. Appellant further argues that because the Commonwealth compels parents to send their children to primary and secondary school, the Commonwealth "undertakes responsibility for [a] myriad [of] issues including the safety of the student." ***Id.*** Appellant is correct that Pennsylvania law requires "every child of compulsory school age having a legal residence in this Commonwealth … to attend a day school in which the subjects and activities prescribed by the standards of the State Board of Education are taught in the English language." 24 P.S. § 13-

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[3] The Dissent concludes that Section 6341(b.1) does not apply to colleges and universities because "[t]eacher is commonly used to refer to instructors at the primary and secondary school level." Dissenting Memorandum at 6. The Dissent also notes that "[p]rincipal is not a term used in collegiate settings." ***Id.*** Although this is generally true, if the statute's text had instead said "dean" or "provost" instead of principal, and "professor" instead of teacher, the Dissent's logic would cause us to be left with a statute that would only apply to colleges and universities. ***See*** 1 Pa.C.S.A. § 1922(5). Although the text could certainly be more clear, it is not unusual that the General Assembly used the most generic terms possible in order to encompass as many into the statute's scope as it possibly could, especially given that one of the primary purposes of Section 6341(b.1) is community safety. ***See*** 42 Pa.C.S.A. §§ 6301(2), 6341(b.1)(4). In fact, I submit it is logical to do so.

1327(a). I further agree with Appellant that by compelling school attendance, the Commonwealth takes on responsibility for the safety of those students. However, I cannot conclude that the Commonwealth should have no concern for the safety of students attending college. I agree with the juvenile court that "[i]t would surely be an anomaly to intentionally shield such institutions from being notified of serious criminal conduct committed by a student to whom they have opened their doors." Juvenile Court Opinion, 11/30/11, at 7.

Based on the above, I would hold that the word "school" as used in Section 6341(b.1) includes colleges and universities. Were this Court to reach the merits, I would therefore conclude that the juvenile court did not exceed its authority under the Juvenile Act.[4]

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[4] In his second issue, Appellant argues that the juvenile court abused its discretion in requiring the notification to Temple, as it was unnecessary in light of other provisions of the dispositional order. Appellant's Brief at 12-13. The juvenile court noted several reasons why notification to Temple would be necessary. If notified, Temple University would be able to offer Appellant any support, counseling, or programs they have to offer, while still taking measures to protect its own interests. The juvenile court noted that Temple could make a determination as to whether Appellant should be given a single room to himself as opposed to living with a roommate. N.T., 7/27/11, at 13. Temple may also be able to restrict his computer and internet access and usage. ***Id.*** at 20. While it may be true that therapeutic polygraphs and forbidding Appellant from viewing child pornography are important tools in rehabilitation, it does not follow that the notification to Temple serves no purpose in assuring compliance. As a result, I would reject Appellant's second issue as well.