

SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

State of New Jersey in the Interest of S.S. (A-29/38/39-04)

(NOTE: This Court wrote no full opinion in this case. Rather, the Court's affirmance of the judgment of the Appellate Division is based substantially on the reasons expressed in Judge Wecker's written opinion below.)

Argued January 18, 2005 -- Decided March 22, 2005

PER CURIAM

The Court considers whether a juvenile, brought before the court under a juvenile family-in-crisis petition, N.J.S.A. 2A:4A-83, may be adjudicated delinquent for criminal contempt.

In each of the three cases before the Court, the trial judge entered an adjudication of delinquency based on a criminal contempt arising out of the juvenile's violation of a court order to "obey the rules of home and school." In all three cases, the Appellate Division reversed. In State in the Interest of S.S., 367 N.J. Super. 400, the Appellate Division explained that truancy and running away from home are "status offenses" that would not be crimes if committed by an adult. The panel found it contrary to the legislative intent expressed in the New Jersey Code of Juvenile Justice and existing statutory and common law for a juvenile status offender to be adjudicated delinquent for contempt of court pursuant to N.J.S.A. 2C:29-9, without having committed any other act prohibited by the Code of Criminal Justice.

The panel in S.S. explained that the Code of Juvenile Justice distinguishes those juveniles found to be involved in a juvenile-family crisis—for example, juveniles exhibiting disregard for parental or school authority—from those found to be delinquent. Delinquency, as defined by N.J.S.A. 2A:4A-23, means the commission of an act which, if committed by an adult, would constitute a crime, a disorderly persons offense or petty disorderly persons offense, or a violation of other penal statute, ordinance or regulation. Adjudicating a truant or runaway juvenile as a delinquent, the panel noted, opens the door to detention in a center with delinquents who were placed there because they engaged in conduct that would constitute a crime if committed by an adult, thereby exposing the status offender to inappropriate influences. The panel recognized the concern that courts must have some means of enforcing orders involving juveniles who repeatedly run away from home or are chronically truant, but it found that N.J.S.A. 2C:29-9 was not the appropriate or intended means of enforcement. The panel reversed the orders adjudicating the defendants as delinquents.

HELD: The judgments of the Appellate Division are affirmed substantially for the reasons set forth in State of New Jersey in the Interest of S.S., 367 N.J. Super. 400 (App. Div. 2004). On the backdrop of the legislative goals underlying the criminal contempt statute and the juvenile justice scheme, it was error to subject a status offender to an adjudication of delinquency based upon a repetition of the runaway conduct and truancy that brought the family to the court for help in the first place.

1. The Court adds that this ruling does not leave the juvenile family-in-crisis judge impotent. N.J.S.A. 2A:4A-86 specifically provides that courts faced with a failure to comply with orders may proceed for the enforcement of litigant's rights. Pursuant to that authority, juvenile family-in-crisis judges have at their disposal civil proceedings under Rule 1:10-3 that include the remedy of incarceration so long as the commitment order specifies the terms of release. Because incarceration in the civil context is a last resort intended to be primarily coercive, the facts of each case require careful consideration to determine whether the remedy is appropriate. Moreover, once incarceration is in play, the trial court must assure itself that juvenile status offenders are separated from those accused of being—or

adjudicated as—delinquent. The inability to effectuate such segregation of the juvenile status offender would eliminate incarceration as an arrow in the judicial quiver. (Pp. 3—4).

2. The Court is aware of the inherent tension between the judiciary's power to enforce its own orders and its duty to provide appropriate protection for a juvenile. Recognizing that reconciling those competing interests is a difficult question that requires further review, the Court refers the issue to the Conference of Family Presiding Judges for study and recommendations for the development of a schematic to harmonize those important concerns. (P. 4).

The judgments of the Appellate Division are **AFFIRMED**.

CHIEF JUSTICE PORITZ and JUSTICES LONG, LaVECCHIA, ZAZZALI, ALBIN, WALLACE and RIVERA-SOTO join in this opinion.

SUPREME COURT OF NEW JERSEY
A-29/38/39 September Term 2004

STATE OF NEW JERSEY IN THE
INTEREST OF S.S.

A-29-04

STATE OF NEW JERSEY IN THE
INTEREST OF N.M.

A-39-04

STATE OF NEW JERSEY IN THE
INTEREST OF S.S.

A-38-04

Argued January 18, 2005 - Decided March 22, 2005

On certification to the Superior Court,
Appellate Division, whose opinion is reported
at 367 N.J. Super. 400 (2004) (State of New
Jersey in the Interest of S.S.).

On certification to the Superior Court,
Appellate Division (State of New Jersey in
the interest of N.M.).

Jeanne T. Covert, Assistant Prosecutor,
argued the cause for appellant, State of New
Jersey, (Vincent P. Sarubbi, Camden County
Prosecutor, attorney; Jack L. Weinberg,
Assistant Prosecutor, of counsel and on the
briefs).

Kevin G. Byrnes, Designated Counsel, argued
the cause for respondents S.S., N.M. and
S.S., (Yvonne Smith Segars, Public Defender,
attorney).

Jeffrey S. Mandel argued the cause for amicus
curiae Association of Criminal Defense
Lawyers of New Jersey (Pitney Hardin,
attorneys).

John A. Ducoff and Craig R. Levine submitted a joint brief on behalf of amici curiae New Jersey Office of the Child Advocate and New Jersey Institute for Social Justice (Kevin M. Ryan, attorney for New Jersey Office of the Child Advocate and Mr. Levine, attorney for New Jersey Institute for Social Justice; David P. Kelly, on the joint brief).

PER CURIAM

The question presented on these appeals is whether a juvenile, brought before the court under a juvenile family-in-crisis petition (N.J.S.A. 2A:4A-83), may be adjudicated delinquent for criminal contempt (N.J.S.A. 2C:29-9). In each of the cases before us, the Appellate Division answered that question in the negative and reversed an adjudication of delinquency based upon a criminal contempt arising out of the juvenile's violation of a court order to "obey the rules of home and school."

We now affirm both Appellate Division judgments substantially for the reasons expressed in Judge Wecker's thorough and thoughtful opinion in State of New Jersey in the Interest of S.S., 367 N.J. Super. 400 (App. Div. 2004).¹ Like the Appellate Division, we have concluded that, on the backdrop of the legislative goals underlying the criminal contempt statute and our juvenile justice scheme, it was "error to subject a

¹State in the Interest of N.M. is unpublished.

status offender . . . to an adjudication of delinquency based upon a repetition of the runaway conduct and truancy that brought her family to the court for help in the first place." Id. at 413.

Our ruling does not leave the juvenile family-in-crisis judge impotent. N.J.S.A. 2A:4A-86 specifically provides: "In the case of failure of any person to comply with any orders entered pursuant to this section, the court may proceed against such person for the enforcement of litigants' rights." See also R. 5:17-3 (quoting statute verbatim). Pursuant to that authority, juvenile family-in-crisis judges have at their disposal civil proceedings under Rule 1:10-3 that include the remedy of incarceration so long as the commitment order specifies "the terms of release." As that requirement underscores, incarceration in the civil context is a last resort intended to be primarily coercive. Anyanwu v. Anyanwu, 333 N.J. Super. 345, 352-354 (App. Div. 2000). Thus, the facts of each case require careful consideration to determine whether that remedy is appropriate in the first instance. Moreover, once incarceration is in play, the trial court must assure itself that juvenile status offenders are separated from those accused of being -- or adjudicated as -- delinquent. The inability to effectuate such segregation of the juvenile status offender would eliminate incarceration as an arrow in the judicial quiver.

We are fully aware, as was the Appellate Division, of the inherent "tension between the judiciary's power (and need) to enforce its own orders and its duty to provide appropriate protection for a juvenile -- particularly one whose conduct has not violated any criminal law and has primarily endangered only herself." S.S., supra, 367 N.J. Super. at 414. How to reconcile those competing interests is a difficult question that requires further review. We therefore refer the issue to the Conference of Family Presiding Judges for study and recommendations for the development of a schematic to harmonize those important concerns.

Affirmed.

CHIEF JUSTICE PORITZ and JUSTICES LONG, LaVECCHIA, ZAZZALI, ALBIN, WALLACE, and RIVERA-SOTO join in this opinion.

SUPREME COURT OF NEW JERSEY

NO. A-29/38/39 SEPTEMBER TERM 2004
 ON CERTIFICATION TO Appellate Division, Superior Court

STATE OF NEW JERSEY IN THE
 INTEREST OF S.S. A-29-04

STATE OF NEW JERSEY IN THE
 INTEREST OF N.M. A-39-04

STATE OF NEW JERSEY IN THE
 INTEREST OF S.S. A-38-04

DECIDED March 22, 2005
 Chief Justice Poritz PRESIDING

OPINION BY Per Curiam

CONCURRING/DISSENTING OPINIONS BY

DISSENTING OPINION BY

CHECKLIST	AFFIRM		
CHIEF JUSTICE PORITZ	X		
JUSTICE LONG	X		
JUSTICE LaVECCHIA	X		
JUSTICE ZAZZALI	X		
JUSTICE ALBIN	X		
JUSTICE WALLACE	X		
JUSTICE RIVERA-SOTO	X		
TOTALS	7		