

**STATE V. MICHAEL R., 1988-NMCA-087, 107 N.M. 794, 765 P.2d 767 (Ct. App. 1988)**

**STATE OF NEW MEXICO, Plaintiff-Appellee,  
vs.  
MICHAEL R., A Child, Defendant-Appellant**

No. 10807

COURT OF APPEALS OF NEW MEXICO

1988-NMCA-087, 107 N.M. 794, 765 P.2d 767

October 06, 1988, Filed

APPEAL FROM THE CHILDREN'S COURT OF CHAVES COUNTY, ALVIN F. JONES,  
Children's Court Judge

Petition for Writ of Certiorari Denied November 9, 1988

**COUNSEL**

HAL STRATTON, Attorney General, Santa Fe, New Mexico, Attorney for Plaintiff-Appellee.

JACQUELYN ROBINS, Chief Public Defender, LYNNE FAGAN, Appellate Defender, Santa Fe, New Mexico, Attorneys for Defendant-Appellant.

**AUTHOR: ALARID**

**OPINION**

{\*795} ALARID, Judge.

{1} This is a Children's Court case in which the child appeals from the children's court's judgment and disposition finding him to be a delinquent child and placing him on probation. The calendar notice proposed summary affirmance. The child filed a timely memorandum in opposition to proposed summary affirmance. Having found his memorandum unpersuasive, we affirm.

{2} The sole issue raised is whether the children's court could place the child on probation without first entering a finding that he is in need of care and rehabilitation. The child contends that a finding that the child is in need of care and rehabilitation is necessary in order to place a child on probation. In his docketing statement, he cited several cases decided by this court, which have held that such a finding was required in

adjudicating proceedings on a petition alleging delinquency. These cases were decided under prior law and, thus, are distinguishable from the present case. In holding that the adjudicatory proceedings on a petition alleging delinquency involve two aspects, (1) whether the child committed the delinquent act and (2) whether the child is in need of care and rehabilitation, this court relied, in part, on the statute in effect at the time the cases were decided. The statute defined a delinquent child as a child who has committed a delinquent act and who is in need of care and rehabilitation. *State v. Doe*, 95 N.M. 90, 619 P.2d 194 (Ct. App.1980); **State v. Doe**, 93 N.M. 206, 598 P.2d 1166 (Ct. App.1979); **State v. Doe**, 90 N.M. 249, 561 P.2d 948 (Ct. App.1977).

{3} The applicable statute in the present case, NMSA 1978, Section 32-1-3(P) (Cum. Supp.1988) (applicable until July 1, 1989), defines a delinquent child as "a child who has committed a delinquent act." The children's court found that the child committed the delinquent act alleged in the petition. The child does not challenge this finding.

{4} NMSA 1978, Section 32-1-31(E) (Repl.1986), provides that "[i]f the court finds that a child alleged to be delinquent or in need of supervision is not in need of care or rehabilitation, it may dismiss the petition and order the child released from any detention or legal custody imposed in the proceedings." It does not require that the children's court dismiss the petition, as did the statute in effect at the time the above cases were decided. Rather, it leaves the children's court with discretion in determining whether or not to dismiss the petition. {796} Section 32-1-31(E) further provides that "[n]o child shall be placed in the custody of the department of corrections after adjudication of his case without a finding of need for care and rehabilitation." There is no such requirement for placing a child on probation.

{5} Given these changes in the relevant statutes, we conclude that the legislature has changed the law on which our prior cases were based. As a result, the children's court can now place a delinquent child on probation without finding that the child is in need of care and rehabilitation.

{6} In his memorandum in opposition, the child concedes that the statute does not specifically require that a finding of the need for care and rehabilitation be made for placing the child on probation. Where the meaning of the statutory language is plain, and where the words used by the legislature are free from ambiguity, there is no basis for interpreting the statute. **State v. Mobbey**, 98 N.M. 557, 650 P.2d 841 (Ct. App.1982). He emphasizes that the legislative purpose of the Children's Code is to provide for the care of children and to provide a program of supervision, care and rehabilitation. He also contends that the provisions of the Children's Code should be interpreted to provide care, supervision and rehabilitation, as needed, to children coming before the court. The child reasons that the purposes of the Code are not fulfilled by depriving a child of any liberty unless the children's court finds a need for care and rehabilitation. We disagree.

{7} The interpretation set out above is consistent with the purposes of the Children's Code outlined by the child in his memorandum. The children's court exercises its

discretion in determining whether a child needs supervision, care and rehabilitation, and what sort of supervision is appropriate for the particular child before the court. Placing a child on probation is an alternative that now lies within the children's court's discretion for a child who has been adjudicated a delinquent.

{8} We need not inquire into the wisdom, policy or justness of an act of the legislature. **See Gruschus v. Bureau of Revenue** , 74 N.M. 775, 399 P.2d 105 (1965). In interpreting a statute, our goal is to decide what the words chosen by the legislature mean. **Security Escrow Corp. v. State Taxation & Revenue Dep't**, 107 N.M. 540, 760 P.2d 1306 (Ct. App.1988). In this case, the legislature used the phrase "may dismiss" where it had formerly provided that the children's court "shall dismiss." **See** 1984 N.M. Laws, ch. 74, § 1. The legislature clearly gave the children's court discretion regarding whether to dismiss a case or place a child on probation when it has found that the child is not in need of care and rehabilitation. **See** § 32-1-31(E). Therefore, the children's court acted within the discretion given to it by the legislature.

{9} Based on the above, the children's court had authority to place the child on probation without first entering a finding that he was in need of care and rehabilitation. Accordingly, the judgment and disposition of the children's court is affirmed.

{10} IT IS SO ORDERED.

MINZNER and FRUMAN, JJ., concur.