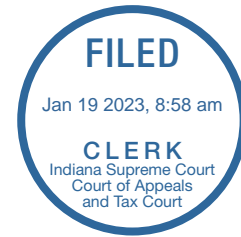


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

S.D.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

January 19, 2023

Court of Appeals Case No.
22A-JV-1821

Appeal from the St. Joseph Probate
Court

The Honorable Jason A.
Cichowicz, Judge

The Honorable Graham C.
Polando, Magistrate

Trial Court Cause Nos.

71J01-1901-JD-7

71J01-1912-JD-450

71J01-2012-JD-409

71J01-2104-JD-117

71J01-2204-JD-154

71J01-2101-JD-12

Altice, Chief Judge.

Case Summary

[1] Between 2019 and 2022, S.M.D. was the subject of six delinquency petitions and found to have committed acts that constituted five misdemeanors and one felony if committed by an adult. In a dispositional order on two of the causes and a modification order on the other four, the trial court granted wardship of S.M.D. to the Indiana Department of Correction (the DOC). S.M.D. appeals the DOC placement, asserting that it was an abuse of discretion.

[2] We affirm.

Facts & Procedural History

[3] S.M.D. became involved with Indiana’s juvenile justice system at age twelve, when, on January 15, 2019, the State filed a delinquency petition under 71J01-1901-JD-7 (Cause No. 7), alleging that S.M.D. committed what would be Class A misdemeanor domestic battery if committed by an adult. The petition stemmed from an altercation at S.M.D.’s home during which he punched his mother (Mother) causing injuries, including a mild concussion. The probation officer’s preliminary inquiry report indicated that S.M.D. had previous diagnoses of “Disruptive Behavior Disorder, Oppositional Defiant [sic] Disorder, Attention Deficit Hyperactivity Disorder, and Bipolar Disorder” and had previously received behavioral health services, including inpatient stays, in

Michigan.¹ *Appellant's Appendix Vol. 2* at 5. S.M.D. admitted the petition's allegations.

[4] The predispositional report reflected S.M.D.'s significant history of aggression and violence both at home and school and detailed "an array of services since 2012, to include outpatient services and four acute psychiatric hospitalizations[.]" *Id.* at 31. Probation recommended strict probation and "a residential setting, where [S.M.D.] can address his mental health, behavioral issues, past trauma, and focus on improving his academics." *Id.* The trial court placed S.M.D. at Gibault, "a private child caring facility" in Terre Haute. *Id.* at 36. During the approximately ten months he was there, he received incident reports involving assaults on staff and peers, and due to "no progress," the court modified his disposition in November 2019 and placed S.M.D. with Mother and stepfather. *Id.* at 39.

[5] In December 2019, police were called to S.M.D.'s home on a domestic battery report. Because Mother grounded S.M.D., he became angry, threw things, and kicked and punched her. On December 10, 2019, the State filed a delinquency petition in cause number 71J01-1912-JD-450 (Cause No. 450), alleging that S.M.D. committed what would be Class A misdemeanor domestic battery if committed by an adult. S.M.D. admitted the allegations. The predispositional report reflected diagnoses of disruptive mood dysregulation disorder, persistent

¹ The family moved to Indiana in September 2018 in hopes of gaining access to more and better resources for S.M.D.

depressive disorder with anxious distress, conduct disorder, ADHD, parent-child relational problem, and a learning disorder, and S.M.D. received multiple incident reports in detention. The trial court placed S.M.D. at Oaklawn, another “private child caring facility,” from February 2020 to November 2020. *Id.* at 128. In November 2020, the court modified S.M.D.’s placement in Cause Nos. 7 and 450, ordering discharge from Oaklawn and return to Mother’s care.

[6] On December 28, 2020, the State filed a delinquency petition in cause number 71J01-2012-JD-409 (Cause No. 409), alleging that S.M.D. committed what would be, if committed by an adult, Class A misdemeanor domestic battery, Class B misdemeanor disorderly conduct, and Class B misdemeanor criminal mischief. The allegations stemmed from an incident at home during which S.M.D. was upset and throwing things, Mother tried to restrain him, and he hit her. S.M.D. then ran away and was detained by police. S.M.D. admitted to disorderly conduct and criminal mischief allegations, and the court placed S.M.D. at Bashor Emergency Shelter Care and on probation. In March 2021, the court issued an order for S.M.D. to begin a program to transition back to Mother’s care.

[7] In April 2021, S.M.D. ran away while on a home pass. Police located him in Michigan, and the trial court ordered S.M.D. detained at the Juvenile Justice Center. On April 27, 2021, the State filed a delinquency petition in cause number 71J01-2104-JD-117 (Cause No. 117), alleging that S.M.D. committed what would be Level 6 felony failure to return to lawful detention if committed by an adult. While detained between April 25 and May 20, 2021, S.M.D.

received fourteen incident reports, including attempted battery on a peer.

S.M.D. admitted the petition's allegations, and the court granted wardship of S.M.D. to the DOC until February 15, 2022.

[8] On April 15, 2022, S.M.D. became upset with Mother, threw his laptop, kicked Mother when she approached him, and ran down the street. Eight days later, S.M.D. and Mother argued, he became violent, throwing objects, smashing his laptop, punching walls, and taking Mother's cell phone, among other things. Based upon these incidents, the State filed two delinquency petitions on April 27, 2022. One, filed under cause number 71J01-2204-JD-154 (Cause No. 154), alleged that S.M.D. committed what would be Class B misdemeanor criminal mischief and Class A misdemeanor domestic battery if committed by an adult. The other, filed under cause number 71J01-2204-JD-143 (Cause No. 143), alleged that S.M.D. committed what would be Class B misdemeanor criminal mischief and Class A misdemeanor conversion if committed by an adult. S.M.D. admitted to the two criminal mischief allegations.

[9] On July 12, 2022, the court held a combined dispositional hearing and modification hearing on the six pending causes. Probation Officer Todd Cummins testified that S.M.D. was given opportunities at prior placements but continued to engage in delinquent behavior, some of which was "violent in nature," including battering and injuring a peer in detention weeks prior to the current hearing. *Transcript* at 7. Cummins recommended placement with the DOC to "curb that type of behavior and keep [S.M.D.'s] family safe as

possible.” *Id.* S.M.D. opposed placement at the DOC and requested placement at his grandmother’s (Grandmother) home.

[10] Grandmother testified that for the first ten years of his life, S.M.D. lived a couple of blocks away from her and her husband (collectively, Grandparents), and described that S.M.D. “pretty much grew up at our house.” *Id.* at 12. Grandmother stated that S.M.D. felt safe and acted respectfully at their home and they never experienced any discipline issues with him. Grandmother testified to Grandparents’ willingness and desire to have S.M.D. live with them.

[11] Mother testified and opined that the occasions when S.M.D. had been violent primarily occurred either when he was detained or was in her home, where she surmised there were “triggers” and a “traumatic history involving his father.” *Id.* at 15. She believed that S.M.D. needed to be in a supportive environment, which would be the case at Grandparents’ home, and being there would allow S.M.D. to continue with his current mental health treatment. Mother opposed placement in the DOC, which she believed was “not going to be a benefit at all for [S.M.D.]” *Id.* at 15.

[12] S.M.D. testified and asked the court to place him at Grandparents’ home. He acknowledged that the court had given him “a lot of chances,” but expressed, “if you give me this opportunity, I promise that I will not waste it.” *Id.* at 11. S.M.D. stated that, during the last few months in detention, he realized that he does not “want to be known as a juvenile delinquent” and that he “only ha[s] a few more years until [he is] an actual adult.” *Id.* S.M.D. believed the “different

environment with different people” at Grandparents’ home would help him, and that he would spend his time productively, playing sports and doing activities with Grandparents, including attending church with them. *Id.*

[13] The State argued that the DOC “is most consistent with public safety” and that “a secured environment is necessary[,]” while S.M.D.’s counsel argued that S.M.D., who “has a lot of mental health issues,” had already been through DOC’s programming, which evidently was not successful. *Id.* at 9. His counsel urged that placement on probation at Grandparents’ home would provide a new, fresh environment, where S.M.D. would be the only child and away from some of the family stressors and would be the least restrictive setting.

[14] The trial court expressed understanding for S.M.D.’s and Mother’s positions, but explained that, given the number of times that S.M.D. had been referred to that court – estimated at ten – it was unable to find “that any less restrictive placement would be consistent with community safety.” *Id.* at 17. The trial court adopted the probation department’s recommendations and ordered commitment to the DOC.

[15] That same day, trial court issued two written orders – a dispositional order on Cause Nos. 154 and 143 and a modification order on Cause Nos. 7, 450, 409, and 117 – that each stated, in part:

Reasonable efforts were made to prevent or eliminate the need for removal, including: services through Riverwood Center and Cedar Creek Behavioral Health Center in Michigan. He has received services with Oaklawn, where he participated in therapy

and medication management, to help with his aggressive and threatening behaviors. The Respondent has had inpatient stays at Michiana Behavioral Health Center. He was in a residential placement at Gibault from January 2019 to October of 2019 and at Oaklawn from February 2020 to November of 2020. The Respondent was ordered to IDOC in May of 2021 and successfully completed in February of 2022 [and] at that time, was placed in the Community Transition Program.

These efforts did not prevent removal of the child because the Respondent continues to engage in aggressive and/or violent behavior and committed a new offense.

* * *

It is in the best interests of the child to be removed from the home environment and remaining in the home would be contrary to the health and welfare of the child because: Continued placement at home would not provide the level of structure and supervision necessary to prevent future delinquent behaviors which are harmful to the Respondent and others.

* * *

In previously committing the Respondent to the Department of Correction, the Court noted “his extensive history of delinquent acts.” Sadly, soon after his release, the Respondent continued that pattern, and . . . the Court cannot find that the mere “change of scenery” represented by Grandmother would adequately address his issues. . . .

Appellant’s Appendix Vol. 4 at 122-23, 126-27. The court awarded wardship of S.M.D. to the DOC “for housing in any correctional facility for children or any

community-based correctional facility for children,” after which S.M.D. would return to probation, be placed on home detention, and complete a transition program through community corrections. *Id.* at 122, 126. S.M.D. now appeals.

Discussion & Decision

[16] S.M.D. contends that the trial court’s decision contravenes Ind. Code § 31-37-18-6, which provides:

If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:

(1) is:

(A) in the least restrictive (most family like) and most appropriate setting available; and

(B) close to the parents’ home, consistent with the best interest and special needs of the child;

(2) least interferes with family autonomy;

(3) is least disruptive of family life;

(4) imposes the least restraint on the freedom of the child and the child’s parent, guardian, or custodian; and

(5) provides a reasonable opportunity for participation by the child’s parent, guardian, or custodian.

(Emphasis added).

[17] The choice of a specific disposition of a juvenile adjudicated a delinquent child is a matter within the sound discretion of the juvenile court. *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. App. 2010). “That discretion, however, is subject to the statutory considerations of the child’s welfare, the community’s safety, and the policy of favoring the least-harsh disposition.” *J.B. v. State*, 849 N.E.2d 714, 717 (Ind. Ct. App. 2006). An abuse of discretion occurs if the trial court’s action is clearly erroneous and against the logic and effect of the facts and circumstances before the court, or against the reasonable, probable, and actual deductions to be drawn therefrom. *Id.*

[18] The goal of the juvenile process is rehabilitation so that the youth will not become a criminal as an adult. *R.H.*, 937 N.E.2d at 388. We have held that commitment of a juvenile to the DOC should be resorted to only if less severe dispositions are inadequate. *E.L. v State*, 783 N.E. 2d 360, 366 (Ind. App. 2003). Here, SMD argues that “[h]e should have been given an opportunity at an alternative disposition,” suggesting that his behavior “was not repetitive or serious.” *Appellant’s Brief* at 7. We disagree.

[19] S.M.D.’s behavior was both repetitive and serious. He was adjudicated of what would be domestic battery two times and criminal mischief three times. During placements and detentions, S.M.D. behaved aggressively toward staff and peers, sometimes destroying property. The aggressive and violent outbursts resumed each time after he was discharged. For instance, a month after release

from Gibault in November 2019, police were called to his home for battery on Mother. Within a month after discharge from Oaklawn in November 2020, S.M.D. assaulted Mother. While home on a pass from Bashor in April 2021, he ran away to Michigan. In May 2021, two residential treatment facilities denied S.M.D. placement due to his “lack of amenability to treatment” and his need for “a more contained setting.” *Appellant’s Appendix Vol. 3* at 106-07.

[20] S.M.D. urges that Grandparents “were a fit and willing relative for placement” that “should have been tried first,” prior to DOC placement. *Appellant’s Brief* at 9. However, the trial court was under no obligation to order such placement. *See J.B.*, 849 N.E.2d at 717 (holding that the juvenile court is required to consider the least restrictive placement only to the extent that it comports with the safety needs of the community and the child’s best interest).

[21] In sum, given the repeated failures of less restrictive means to rehabilitate S.M.D.’s behavior, the trial court did not abuse its discretion by granting wardship to the DOC. *See M.C. v. State*, 134 N.E.3d 453, 459 (Ind. Ct. App. 2019) (holding that juvenile’s wardship to the DOC was warranted where multiple less restrictive rehabilitative efforts did not produce positive changes in his behavior), *trans. denied, cert. denied* (2020); *C.C. v. State*, 831 N.E.2d 215, 218-19 (Ind. Ct. App. 2005) (observing that a juvenile’s repeated involvement with the juvenile justice system and repeated failures at rehabilitation efforts, coupled with the failure to alter behavior despite several placements by the court, were appropriate considerations for a grant of wardship to the DOC).

[22] Judgment affirmed.

Brown, J. and Tavitas, J., concur.