

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

K.G.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

January 26, 2023

Court of Appeals Case No.
22A-JV-1700

Appeal from the Elkhart Circuit
Court

The Honorable Michael A.
Christofeno, Judge

The Honorable Elizabeth A.
Bellin, Magistrate

Trial Court Cause No.
20C01-2002-JD-53

Bailey, Judge.

Case Summary

- [1] K.G. appeals the trial court’s decision to grant wardship of K.G. to the Indiana Department of Correction (“DOC”). We affirm.

Issues

- [2] K.G. raises the following two restated issues:
- I. Whether the trial court abused its discretion when it granted wardship of K.G. to the DOC.
 - II. Whether the trial court committed fundamental error when it conducted the juvenile disposition modification proceedings remotely via video conference.

Facts and Procedural History

- [3] On October 31, 2019, thirteen-year-old K.G. was arguing with his mother when he grabbed her side, which was injured. K.G. knew that his mother’s side was injured and that grabbing her would cause her pain. The State filed a petition alleging K.G. was delinquent for committing what would be Class A misdemeanor battery in committed by an adult, and K.G. admitted he was delinquent. The trial court placed K.G. under the supervision of the Elkhart Probation Department, placed K.G. on probation, ordered psychological assessments for K.G. and his mother and that they complete any recommended services, ordered individual therapy for K.G., and ordered family therapy.

- [4] On July 23, 2020, the probation department filed a modification report requesting additional services for K.G. and his mother. K.G.'s probation supervisor testified that K.G. had tested positive for marijuana and had admitted to using ecstasy and that K.G.'s mother required additional services. K.G. agreed that he required additional services, and the trial court found that K.G. had violated his probation by missing appointments, testing positive for THC, and using ecstasy. The trial court ordered a substance abuse evaluation, case management, individual therapy, and medication management for K.G. and ordered random drug screens for K.G.'s mother.
- [5] On September 9, 2020, at the probation department's request, the court modified the dispositional order to require that K.G. participate in the Youth Advocate Program and that he be placed with his maternal grandmother rather than his mother because the latter had tested positive in a drug screen.
- [6] On December 3, 2020, the probation department recommended in a modification report that K.G. be placed in residential placement at White's Residential Facility to address K.G.'s substance abuse. Following a modification hearing, the court ordered K.G. to be placed at White's Residential Facility. During a review hearing, the trial court suspended visits by K.G.'s mother at White's Residential Facility after K.G. was found in possession of a vape pen the day his mother visited him. Visits were suspended until K.G.'s mother consistently tested negative for illegal substances. K.G.'s mother also had failed a drug screen and tested positive for methamphetamine,

opiates, and morphine. A progress report from White's Residential Facility indicated K.G. was "struggl[ing] behaviorally." App. v. II 92.

[7] The trial court held a permanency hearing on June 16, 2021. While K.G. continued to have some anger and minor behavioral issues, he was doing well in education classes, was participating in services, and "overall" was "doing a lot better." Tr. v. II at 36. The permanency plan was changed to placement with K.G.'s grandmother, as his mother had been arrested. The trial court ordered that the probation department investigate a step-down transition for when K.G. completed services at White's Residential Facility. In August of 2021, K.G. was discharged from White's Residential Facility and placed in the Rite of Passage program at Woodford Group Home. At a review hearing on November 3, 2021, the probation department indicated K.G. had required some redirection and exhibited behavioral issues, but that he continued to engage in services. The permanency plan remained reunification with his mother or grandmother.

[8] On May 5, 2022, the probation department filed a modification progress report and petition for modification in which it noted that Woodford Group Home had sent a thirty-day removal letter for K.G. due to his "ongoing non-compliance, defiant/delinquent behavior, and an unwillingness to engage in therapeutic services." App. v. II at 138. The probation department also noted that K.G.'s mother had been incarcerated recently at the Elkhart County Jail for violating probation. The probation department then filed a petition to modify K.G.'s placement but noted that Woodford Group Home was willing to allow

K.G. to remain there through the end of the school year. On May 26, 2022, the probation department amended the modification petition to recommend that K.G. be placed with his grandmother.

[9] At a June 1, 2022, initial hearing on the modification petition, K.G. admitted to violating his probation by being removed from Woodford Group Home. The probation department also raised new allegations that, prior to leaving Woodford Group Home, K.G. had taken a peer's pair of shoes; however, since the shoes had been returned to the peer, K.G. had been released to his grandmother's care on a weekend home pass. Within the first twenty-four hours of being with his grandmother on the home pass, K.G. had gone to a friend's house and, from that location, had posted to social media a video in which K.G. had threatened to cause harm to a peer at his former placement. K.G. had made this threat while in the presence of an individual who had a handgun. The trial court placed K.G. in the Elkhart Juvenile Detention Center pending further proceedings.

[10] On June 14, 2022, a disposition modification hearing was held at which K.G. appeared remotely via video conference from the Juvenile Detention Center. At K.G.'s request, the court continued the hearing to allow K.G. to review evidence. On June 21, 2022, the dispositional hearing resumed—again, with K.G. appearing remotely via video conference—and the trial court found

that it is in the Child's best interest to continue to be removed from the home because his behaviors are contrary to his interests and those of the community by placing himself and others at

serious risk of harm. Rehabilitative efforts have been unsuccessful due to the Child's prior unwillingness to engage in services, and he continues to engage in delinquent behavior. Community resources have been exhausted and testimony was provided that the Child can receive the help he needs at IDOC.

Appealed Order at 2-3. The trial court also found that "[r]easonable efforts were made to prevent the Child's removal from the Child's parent, guardian, or custodian and reunite the Child with the parent, guardian[,] or custodian[,]” including the provision of fourteen different services and/or placements over a period of two years. *Id.* at 3. The trial court granted wardship of K.G. to the DOC after determining that no less restrictive means were available. This appeal ensued.

Discussion and Decision

Placement in DOC

[11] A trial court is given “wide latitude and great flexibility in dealing with juveniles[.]” *C.T.S. v. State*, 781 N.E.2d 1193, 1203 (Ind. Ct. App. 2003), *trans. denied*. When making determinations regarding specific dispositions of delinquent children, trial courts must “be guided by the following considerations: the safety of the community, the child's best interests and freedom, the least restrictive alternative, family autonomy and life, and the freedom and opportunity for participation of the parent, guardian, or custodian.” *K.S. v. State*, 114 N.E.3d 849, 854 (Ind. Ct. App. 2018) (citing Ind. Code § 31-37-18-6), *trans. denied*. We will reverse a specific disposition

regarding a delinquent child only for an abuse of discretion, that is, a decision that is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.*

- [12] K.G. seems to assert on appeal that the trial court erred because it failed to place him in the least restrictive placement. Although Indiana Code Section 31-37-18-6 requires that a trial court select the least restrictive placement for a juvenile in a delinquency dispositional decree, “it allows for a more restrictive placement under certain circumstances[,]” such as when “the best interest of the child is better served by a more restrictive placement because ‘commitment to a public institution is in the best interest of the juvenile and society.’” *M.C. v. State*, 134 N.E.3d 453, 459 (Ind. Ct. App. 2019) (quoting *D.S. v. State*, 829 N.E.2d 1081, 1085 (Ind. Ct. App. 2005), *trans. denied*), *trans. denied*; see also, e.g., *J.T. v. State*, 111 N.E.3d 1019, 1026 (Ind. Ct. App. 2018) (holding the disposition selected for a juvenile with delinquency problems is only required to be the least restrictive disposition that is consistent with the safety of the community and the best interest of the child), *trans. denied*. Thus, this Court has held that juvenile confinement in the DOC may be an “effective rehabilitative technique” when prior, less restrictive dispositions have failed repeatedly. *K.A. v. State*, 775 N.E.2d 382, 387 (Ind. Ct. App. 2002), *trans. denied*; see also, e.g., *D.S.*, 829 N.E.2d at 1086 (finding trial court did not abuse its discretion when it placed juvenile in DOC when juvenile failed to respond to numerous less restrictive alternative placements).

[13] Here, despite receiving multiple services and less restrictive placements over the years, K.G.'s behavior deteriorated to the point where he was "in the presence of an individual with a handgun while sending threats to cause harm to a former peer from placement." Appealed Order at 2. K.G. engaged in that conduct less than twenty-four hours after he was temporarily placed in his grandmother's care. At K.G.'s dispositional hearing, the probation officer testified that K.G.'s grandmother was not able to "handle" or "control" K.G.; K.G. had been unsuccessfully discharged from his most recent residential placement; the probation department was unaware of any other residential placements that would be willing to accept K.G.; and the rehabilitative services that K.G. needs could be provided through placement in the DOC. Tr. at 62. Thus, the evidence supports the trial court's conclusions that: community resources have been exhausted; K.G.'s "behavior is dangerous to himself and the community and therefore requires the most restrictive placement available to the Court[;]" and placement with the DOC is in K.G.'s best interest "because it will give [K.G.] the opportunity for more intensive rehabilitation in a secure setting." Appealed Order at 3. The trial court's decision that it was in K.G.'s best interest to be placed in the DOC was not clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.

Juvenile Disposition Modification Proceedings Conducted Remotely

[14] K.G. also contends that the trial court violated his due process rights by failing to conduct his dispositional hearing in conformity with Indiana Administrative Rule 14, which governs court proceedings conducted remotely via telephone or audiovisual telecommunication. K.G. acknowledges that he did not object to the hearing being conducted remotely and, therefore, waived that issue on appeal. Appellant’s Br. at 29. However, he asserts that he is entitled to relief because the error was fundamental; that is, he maintains that the error “made a fair trial impossible or constituted a clearly blatant violation of basic and elementary principles of due process presenting an undeniable and substantial potential for harm.” *C.S. v. State*, 131 N.E.3d 592, 595 (Ind. 2019) (internal quotations and citations omitted). “Fundamental error is a daunting standard that applies only in egregious circumstances where the trial judge should have corrected the situation sua sponte.” *Id.* at 596 (internal quotations and citations omitted).

[15] The version of Administrative Rule 14 that was effective at the time of the hearing¹ listed in subsection A specific circumstances under which courts could conduct proceedings via “telephone or audiovisual telecommunication.” Ind. Administrative Rule 14(A) (2022). Subsection B “act[ed] as a broad, catch-all

¹ The Rule has been amended effective January 1, 2023.

provision, governing remote participation in ‘other proceedings’” not specifically enumerated in subsection A, including “[j]uvenile disposition-modification hearings.” *C.S.*, 131 N.E.3d at 596. “The rule allows remote, electronic participation only when (1) all parties consent and that consent is reflected in the Chronological Case Summary or (2) the court finds good cause.” *Id.* at 598 (citing Admin. R. 14(B)(1)-(2)). “If a trial court holds a hearing with remote participants based on a finding of good cause pursuant to Rule 14(B), it must base its good-cause determination on the factors listed in the rule and issue a written order complying with the rule’s deadlines.” *Id.* at 600 (citing Admin. R. 14(B)(2)(a)-(f)², (B)(3)³).

[16] Here, the trial court stated, in relevant part:

The Court finds that a virtual hearing in this cause is supported by Indiana Administrative Rule 14(B)(2), which allows for virtual hearings and appearances to be held when supported by good

² The factors are:

- (a) Whether, after due diligence, the party has been unable to procure the physical presence of the witness;
- (b) Whether effective cross-examination of the witness is possible, considering the availability of documents and exhibits to counsel and the witness;
- (c) The complexity of the proceedings and the importance of the offered testimony in relation to the convenience to the party and the proposed witness;
- (d) The importance of presenting the testimony of the witness in open court, where the fact finder may observe the demeanor of the witness and impress upon the witness the duty to testify truthfully;
- (e) Whether undue surprise or unfair prejudice would result; and
- (f) Any other factors a trial court may determine to be relevant in an individual case.

Admin. R. 14(B)(2)(a)-(f) (2022).

³ The timing of the court’s order regarding good cause is not at issue in this case.

cause. In this instance, the Court was notified that the Juvenile Detention Center was previously on COVID-19 quarantine and there is no availability to transport the Child to the Court. Therefore, today's hearing was held, in part, virtually via Webex.

Appealed Order at 1. Thus, the court complied with Administrative Rule 14(B) by issuing a written order finding good cause to conduct the hearing remotely. *See C.S.*, 131 N.E.3d at 600-01 (noting that lack of available transportation is a fact that would be relevant to a good cause finding). K.G. has failed to show that the trial court erred at all, much less that it committed error which "made a fair trial impossible or constituted a clearly blatant violation of basic and elementary principles of due process presenting an undeniable and substantial potential for harm." *Id.* at 595.

Conclusion

[17] The trial court did not abuse its discretion when it granted wardship of K.G. to the DOC. And the court did not commit fundamental error when it conducted the juvenile disposition modification proceedings remotely via video conference.

[18] Affirmed.

Bradford, J., and Pyle, J., concur.