

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

J.C.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

March 16, 2022

Court of Appeals Case No.
21A-JV-1660

Appeal from the Elkhart Circuit
Court

The Honorable Michael A.
Christofeno, Judge

The Honorable James N. Fox,
Magistrate Pro Tempore

Trial Court Cause No.
20C01-2101-JD-6

May, Judge.

[1] J.C. challenges the validity of the juvenile court’s July 7, 2021, dispositional order. He presents two issues for our review, which we restate as:

1. Whether the further dispositional matter was properly before the juvenile court; and

2. Whether the magistrate pro tempore who presided over the dispositional hearing had the authority to do so.

We affirm.

Facts and Procedural History

[1] On January 14, 2021, the State alleged J.C. was a delinquent based on his alleged commission of an act that would be Level 3 felony child molesting if committed by an adult. The juvenile court held a fact-finding hearing on March 15, 2021, during which the juvenile court adjudicated J.C. as a delinquent. The juvenile court held a dispositional hearing the same day and ordered J.C. to complete supervised probation, create a safety plan for in-home placement, and complete a comprehensive psychological-psychosexual assessment. J.C. was initially placed in the care of his parents, but the juvenile court stated in its disposition order, “[i]f a placement is located a hearing shall be requested and held to address the out-of-home option.” (App. Vol. II at 50.)

[2] The juvenile court scheduled a “Further Dispositional Hearing” for April 14, 2021. (*Id.* at 53.) On April 1, 2021, the probation department requested a continuance of the April 14 hearing because “the psychosexual assessment was

not completed as scheduled and currently waiting for [R.G.] (mother) to call and reschedule.” (*Id.*) The juvenile court granted the request and rescheduled the hearing for May 5, 2021. On April 23, 2021, the probation department requested a continuance of the May 5 hearing because “one section of the psychosexual assessment was completed on April 19, 2021 and the second section has not been scheduled[.]” (*Id.* at 57.) The juvenile court granted the continuance and noted “Probation will notify the Court once assmnt completed and request F. Dispo hearing be set. . . . Further Dispo to be reset upon request of Probation.” (*Id.*) (original language and formatting).

- [3] On June 8, 2021, the probation department filed a “Memorandum for Further Recommendations” indicating J.C. completed the psychosexual assessment and providing recommendations for J.C.’s further placement. (*Id.* at 60) (original formatting omitted). On July 2, 2021, the juvenile court entered an administrative event into the chronological case summary stating, “PO/Moody^[1] filed a Memorandum requesting a Further Dispo hearing be set. Court sets matter for 7/07/21[.]” (*Id.* at 76) (original language and formatting). On July 7, 2021, the juvenile court held the further dispositional hearing and issued its further dispositional order the same day. The order placed J.C. “in the home environment with services in place.” (*Id.* at 81.) The order further required:

¹ J.C.’s probation officer was Klorissa Moody.

1. Minor shall complete a sexually harmful/reactive treatment through a DCS [Department of Child Services] State-approved provider for this specialty population with DCS to pay and family to reimburse if able.
2. Minor shall continue to follow his protection plan, which should be reviewed and refined with his therapist. [J.C.] shall be directly supervised when he is in the presence of children 2 years or younger.
3. Minor shall remain on probation supervision until he successfully completes his treatment goals.
4. Mother [R.G.], and stepfather, [A.G.], shall participate in [J.C.'s] treatment to address parent/family issues contributing to his offending behavior, complete non-offending parent education and receive supervision training. [J.C.] shall provide his parents with information needed to be his supervisor.
5. Minor shall not have access to any device with the ability to connect to the internet with the exception of school device [sic] which the use with [sic] be monitored by parents, school personnel and probation.
6. Probation shall have random home visits.

(*Id.* at 80-1.)

Discussion and Decision

1. Further Dispositional Issue Properly Before the Trial Court

[4] Our standard of review regarding juvenile dispositional orders is well-settled:

A juvenile court is accorded “wide latitude” and “great flexibility” in its dealings with juveniles. *J.S. v. State*, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008). “[T]he choice of a specific disposition of a juvenile adjudicated a delinquent child is a matter within the sound discretion of the juvenile court and will only be reversed if there has been an abuse of that discretion.” *Id.* (citing *E.L. v. State*, 783 N.E.2d 360, 366 (Ind. Ct. App. 2003)). The juvenile court’s discretion in determining a disposition is subject to the statutory considerations of the welfare of the child, the safety of the community, and the policy of favoring the least-harsh disposition. *Id.* (citing *C.C. v. State*, 831 N.E.2d 215, 216-17 (Ind. Ct. App. 2005)). An abuse of discretion occurs when the juvenile court’s action is “clearly erroneous” and against the logic and effect of the facts and circumstances before it. *Id.*

J.T. v. State, 111 N.E.3d 1019, 1026 (Ind. Ct. App. 2018), *trans. denied*. J.C. argues the juvenile court’s July 7, 2021, dispositional order is invalid because the “probation department never filed any motion for modification of the dispositional decree” and thus “the trial court improperly held and considered modification of the March 15, 2021 decree.” (Br. of Appellant at 7.)

[5] Indiana Code section 31-37-22-1 governs the modification of juvenile dispositional orders and states, in relevant part:

(a) While the juvenile court retains jurisdiction under IC 31-30-2, the juvenile court may modify any dispositional decree:

(1) upon the juvenile court’s own motion;

(2) upon the motion of:

(A) the child;

(B) the child's parent, guardian, custodian, or guardian ad litem;

(C) the probation officer; or

(D) the prosecuting attorney; or

(3) upon the motion of any person providing services to the child or to the child's parent, guardian, or custodian under a decree of the court.

J.C. argues the probation department's "Memorandum of Further Recommendations" filed on June 8, 2021, was not a motion for modification as required by Indiana Code section 31-37-22-1. (App. Vol. II at 60.) J.C. is correct that the Memorandum was not a formal motion for modification.

[6] However, the juvenile court can modify a dispositional decree "upon the juvenile court's own motion[.]" Ind. Code § 31-37-22-1(a)(1). On April 14, 2021, the juvenile court indicated it would be holding a further dispositional hearing after probation completed the required psychosexual/psychosocial evaluation. That hearing was continued twice because the evaluation had not been completed. When the evaluation was completed, the probation department filed its memorandum on June 8, 2021, and the juvenile court scheduled the further dispositional hearing – as had been the trial court's intention since it entered the original dispositional decree on March 15, 2021. Thus, whether the probation department properly moved for modification is of

no consequence because the juvenile court had the authority to modify the decree without such a request.²

2. Authority of Magistrate Pro Tempore

J.C. also contends the order of July 7, 2021, is void because Magistrate Pro Tempore James N. Fox was not properly appointed. If the appointment of a judicial officer was improper, “the record would be devoid of an appealable final order of judgment because the criteria and the procedure for appointment of temporary judges are non-discretionary.” *A.P. v. Porter Cnty. Ofc. of Family & Children*, 734 N.E.2d 1107, 1110 (Ind. Ct. App. 2000), *reh’g denied, trans. denied*. Indiana Trial Rule 63(E) governs the appointment of a judge pro tempore if the sitting judge is unavailable to attend and states, in relevant part:

A judge who is unable to attend and preside at his court for any cause may appoint in writing a judge pro tempore to conduct the business of this court during his absence. The written appointment shall be entered in the records of the court. When duly sworn, or without being sworn if he is a judge of a court of this state, the judge pro tempore shall have the same authority during the period of his appointment as the judge he replaces. A judge appointed under this provision must meet the qualifications prescribed in subdivision (C) of this rule.

² J.C. also argues, in passing, that he did not receive proper notice of the July 7, 2021, hearing. Indiana Code section 31-37-22-3(b) requires a probation officer give notice “to the persons affected” by a request for modification of a dispositional decree. However, the chronological case summary indicated an automated e-notice was sent to the parties and their counsel on July 3, 2021. Further, J.C. and his mother appeared at the July 7, 2021, hearing. Accordingly, we conclude J.C. received notice of the July 7, 2021, hearing.

Indiana Trial Rule 63(C) requires a judge pro tempore be “an attorney in good standing at the bar of the Supreme Court of this state.”

[7] As the State points out, J.C. did not object to Magistrate Pro Tempore Fox presiding over his further dispositional hearing. Our Indiana Supreme Court has explained that

it has been the long-standing policy of this court to view the authority of the officer appointed to try a case not as affecting the jurisdiction of the court. Therefore, the failure of a party to object at trial to the authority of a court officer to enter a final appealable order waives the issue for appeal. We conclude that it is improper for a reviewing court to *dismiss* an appeal on these grounds where no showing has been made that the issue was properly preserved. Instead, the reviewing court should *deny* relief on grounds of waiver.

Floyd v. State, 650 N.E.2d 28, 32 (Ind. 1994) (emphases in original).

Accordingly, J.C. waived any argument he may have had about the authority of Magistrate Pro Tempore Fox.

[8] Waiver notwithstanding, we review instances when a litigant fails to object under the fundamental error exception:

A claim that has been waived by a defendant’s failure to raise a contemporaneous objection can be reviewed on appeal if the reviewing court determines that a fundamental error occurred. The fundamental error exception is “extremely narrow, and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process.” The error claimed must either “make a fair trial

impossible” or constitute “clearly blatant violations of basic and elementary principles of due process.” This exception is available only in “egregious circumstances.”

Brown v. State, 929 N.E.2d 204, 207 (Ind. 2010) (internal citations omitted), *reh’g denied*.

- [9] J.C. does not contend he suffered any prejudice when Magistrate Pro Tempore Fox presided over his further dispositional hearing. Magistrate Pro Tempore Fox is the Title IV-D Commissioner for Elkhart County and, thus, is a judicial officer. In addition, Judge Michael Christofeno countersigned J.C.’s July 7, 2021, dispositional order, indicating Judge Christofeno approved and adopted the findings and conclusions therein. Thus, J.C. has not demonstrated fundamental error occurred when Magistrate Pro Tempore Fox presided over J.C.’s further dispositional hearing. *See Floyd*, 650 N.E.2d at 32 (while “an improperly appointed judge *pro tempore* could present a problem compelling reversal . . . such error is not ‘fundamental’”) (quoting *Survance v. State*, 465 N.E.2d 1076, 1081 (Ind. 1994)) (emphasis in original).

Conclusion

- [10] The further dispositional matter was properly before the juvenile court even without a formal motion from the probation department because the juvenile court could hold such a hearing on its own motion. Additionally, no fundamental error occurred when Magistrate Pro Tempore Fox presided over

J.C.'s further dispositional hearing. Accordingly, we affirm the decision of the juvenile court.

[11] Affirmed.

Brown, J., and Pyle, J., concur.