

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

T.W.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 4, 2023

Court of Appeals Case No.
22A-JV-2350

Appeal from the Delaware Circuit
Court

The Honorable Amanda L.
Yonally, Magistrate

The Honorable Kimberly S.
Dowling, Judge

Trial Court Cause No.
18C02-2207-JD-76
18C02-2112-JC-128

Memorandum Decision by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] The Delaware Circuit Court adjudicated T.W. a delinquent child for committing battery, which would be a Class B misdemeanor if committed by an adult. The Court had previously adjudicated T.W. a Child in Need of Services (“CHINS”). Thus, T.W. is a “dual status” child.¹ T.W. raises the following dispositive issues for our review:²

I. Whether the State presented sufficient evidence to support her adjudication as a delinquent child.

II. Whether the trial court abused its discretion when it committed her to the Department of Correction (“DOC”).

[2] We affirm in part, reverse in part, and remand with instructions.

¹ A “dual status child” is defined in relevant part as a child who is adjudicated a CHINS and is also alleged to be or adjudicated a delinquent child. [Ind. Code § 31-41-1-2\(1\)](#). As we observed in *K.S. v. State*, 114 N.E.3d 849, 852 (Ind. Ct. App. 2018), *trans. denied*,

“[r]esearch has demonstrated that there is a greater likelihood of delinquency among children who have suffered abuse and neglect.” Dual Status Resource Notebook, Tab 3: Why Dual Status?, [https://www.in.gov/judiciary/probation/files/Dual% 20Status% 20Resource% 20Notebook.pdf](https://www.in.gov/judiciary/probation/files/Dual%20Status%20Resource%20Notebook.pdf) (last visited October 18, 2018). Indiana Code Article 31-41 was enacted in 2015 to address the specific needs of these children by providing both the child welfare system and the juvenile justice system “tools to identify, communicate and implement a coordinated plan that serves a child’s best interests and welfare.” *Id.* Therefore, when a child enters either the child welfare system or the juvenile justice system, the court and responding agencies must determine whether a child is a dual status child and proceed accordingly. See [Ind. Code § 31-34-7-1](#) (requiring dual status determination in preliminary inquiry of a child in need of services (“CHINS”) allegation); [Ind. Code § 31-37-8-1](#) (requiring same in preliminary inquiry of a delinquency allegation).

² T.W. also raises issues related to her adjudication as a CHINS. The State has moved to dismiss T.W.’s appeal with respect to those issues because T.W. did not timely file a notice of appeal. We grant the State’s motion to dismiss by separate order.

Facts and Procedural History

- [3] T.W. was born July 9, 2010. T.W.'s mother used illegal drugs during her pregnancy with T.W. T.W.'s parents' rights were terminated in January 2013, and T.W.'s grandmother, B.N., adopted her. In December 2021, B.N. died, leaving T.W. and her siblings in the care of M.N., T.W.'s great aunt. The Indiana Department of Child Services ("DCS") filed a petition alleging that T.W. was a CHINS, and the trial court adjudicated T.W. a CHINS.³
- [4] In addition to the loss of her parents and the death of her adoptive mother, T.W. has suffered other, substantial traumas in her young life. As a result, T.W. displays aggressive behaviors towards herself and others. In February 2022, T.W. was admitted to Damar for treatment. A report prepared by Damar in March provides insight into T.W.'s background and her special needs:

She has an extensive history of aggressive behaviors and elopement behaviors. These behaviors have occurred in multiple settings, the community and acute placements. During her stay at the Courage Center, [T.W.] was placed in four therapeutic holds. She has a history of homicidal ideations, [self-injurious behavior] and suicidal ideations, including licking rat poison and stating she was going to be with her mom (who is deceased). She was hospitalized in December for her suicidal ideations then in January for her homicidal ideations (she grabbed a knife and went after her sister). Law enforcement has been called to the home several times. She has expressed a history of auditory and

³ Although this appeal is from T.W.'s adjudication as a delinquent child, given her dual status, the CHINS proceedings were relevant to the background for the court's placement decision in the delinquency action. And we take judicial notice of the CHINS record to aid in our review of this appeal.

visual hallucinations. She recently disclosed sexual abuse by her biological father but has changed the identity of the perpetrator several times and has refused to give a full account of the abuse. [T.W.] has not attended school consistently due to her behaviors and since . . . she was moved to Muncie, Indiana in November of 2021.

* * *

[T.W.] has struggled since her admission. She has had several incidents of self-injurious behaviors and aggression. When escalated, [T.W.] is difficult to calm down. She has hit her head on the wood phone box and lockers. She has attempted to pull her hair out and bite her fingers. She is defiant and aggressive towards peers and staff. She will run into peer[s'] rooms to engage in physical altercations. She has thrown chairs and other objects at staff when escalated. She has required multiple physical interventions to keep her . . . safe during her dangerous behaviors. Her biggest struggles appear to be at bedtime. She refuses to go to bed and wants to keep peers up. She makes frequent suicidal statements and ignores staff's directives. She has been non-compliant with medication and was found spitting them out.

* * *

[T.W.] exhibits severe recurrent temper outbursts that are grossly out of proportion in intensity and duration to the situation in which she is responding. She becomes angered and manifests verbal and/or behavioral outbursts in the form of verbal rages and physical aggression towards others and property. She exhibits extremely poor boundaries, sometimes ignoring how her behaviors and comments are impacting others. She has extreme irritability and mood fluctuations. These fluctuations can occur numerous times throughout the day. These mood fluctuations are typically a result of her perception of rejection by others. She will likely exhibit not only difficulties with emotionality but also with

engagement in highly impulsive behaviors. This includes her engagement in self-injurious behaviors as well.

Given [T.W.]’s early attachment, major developmental stages were unsuccessfully achieved, she is likely to exhibit highly immature functioning and will likely exhibit poor and inadequate coping. When [T.W.] experiences negative emotionality she will likely act in hostile ways. She may turn inward and engage in self-destructive behaviors such as self-injurious, lies to obtain desired results, and aggressive actions. These overt behaviors will be impulsive, and she will lack awareness of the threat and dangerousness of her behavior.

* * *

Needs/Recommendations

1. *The most important factor for [T.W.] at this time is the establishment of a safe, stable, and secure living environment. She is engaging in highly destructive, dangerous behaviors. She has been provided numerous supports in the community and continues to show instability in her behaviors. [T.W.] currently needs a more restrictive environment that is structured, secure, and can provide the necessary treatment for her to begin to feel safe. Safety is at the forefront of her making progress as this is a young lady who has not felt safe and harbors extreme fear and mistrust. For this reason, a residential facility is being recommended.*

2. Safety can be established through several means including giving her time, showing affection, using praise instead of criticism and consequence, consistently setting clear boundaries and maintaining those boundaries, and by creating a routine. Creating a routine where [T.W.] is aware of the schedule for the day and the schedule remains consistently applied will help decrease mood related symptoms as well as increase feelings of safety. If she is able to anticipate and know what is to happen

throughout her schedule then her fear and anticipation of the unknown will decrease. As nighttime appears most difficult for [T.W.], routine and other measures should be created in order to support this challenging time.

3. A mentor for [T.W.] will be an essential component to improving her current functioning. [T.W.] (when not negatively aroused) responds well to positive reinforcement and enjoys having the support of others. A mentor will help to provide her the non-judgmental support, positive role-modeling, and direct reinforcement of positive behaviors necessary to improve her confidence and increase her self-worth.

4. As [T.W.] continues to progress through her educational endeavors, her learning challenges and interferences place her at more risk than most of her peers. Given [T.W.]'s obvious and more subtle symptoms of anxiety, emotionality, inattention and impulsivity, her profile is suggestive of a child who will function less adequately than her same aged peers. *She will likely need specialized accommodations to promote and ensure her success* and more importantly to prepare her for the more difficult academic demands of middle school and on. Her current needs continue to support the need of an Individualized Education Plan. She will require significant supports in the school environment to be successful.

5. [T.W.] will respond better if she is given more opportunity to be positively reinforced for her behaviors and social skills versus rejection from others. Specific training and behavioral trials with over learning social strategies should be applied.

6. Flooding [T.W.] with activities that help her engage in positive age-appropriate behaviors and that engage her in helpfulness and giving back to others will increase her sense of worth. Volunteer experiences or organizations such as the Girl Scouts would help foster prosocial skills and values that will have a positive impact on her profile. Engagement in age[-] appropriate clubs, sports or

activities would assist in building positive character, increasing prosocial interactions with others, learning skills that build collaborative relationships with others and helping fill her time with prosocial activities.

7. Given current testing results and despite [T.W.]’s strengths, her academic functioning remains at moderate risk. She will likely need specialized accommodations to promote and ensure her success, and more importantly, to prepare her for the more difficult academic demands of middle and high school. It is recommended that the parents share this evaluation information with the learning support team for consultation and to discuss the most appropriate educational supports for [T.W.] that may be available.

8. [T.W.] will struggle to see the “big picture” and sequencing events correctly to understand the cause/effect in a specific situation. Because these steps are necessary in problem solving, teaching [T.W.] using guided questions, how to describe events in order and how to use detail to understand the “big picture.”

9. [T.W.] will learn best by presenting information verbally and sequentially either in writing or orally (i.e. first, second..., etc.).

10. [T.W.] will benefit from specialized tutoring. Tutors should work closely with [T.W.] to assist not only in technical solutions and formulas but to assist in her understanding of concepts and the best ways to approach tasks.

11. [T.W.] will benefit from special accommodations as necessary including extended time, resource support, preferential seating, use of the resource room for testing, and specific monitoring of her academic progress. Her need for accommodations will be especially important when [T.W.] is required to read lengthy written instructions or when expected to produce lengthy or complicated written responses.

Appellant's App. Vol. 2, pp. 113-127 (emphases added).

- [5] During a July review hearing in the CHINS proceedings, while T.W. was in residential treatment at Crossroads, a family case manager, Kendall Stout, testified that T.W. had been arrested four times while at Crossroads, twice for elopement and twice for battery. Stout also testified that, due to “self-harming, insubordination, and aggressive behavior,” T.W. had had “short term stays in the Allen County Justice Center, as well as acute stays at Parkview Behavioral Hospital.” Tr. p. 48. Crossroads did not want T.W. to continue to stay there, and DCS was trying to find another placement.
- [6] On August 1, the State filed a petition alleging that T.W. was a delinquent child for committing battery, a Class B misdemeanor if committed by an adult.⁴ That petition was based on an allegation that T.W. had kicked and struck Gwendolyn Clark, a supervisor at Crossroads. Following a fact-finding hearing on August 16, the trial court entered a true finding for battery, as a Class B misdemeanor. During a dispositional hearing, a representative from the probation department, Kaitlyn Boomsma, asked that DCS determine placement for T.W. Mark Johnson, a family case manager supervisor with DCS, testified that he had been in contact with residential facilities in Ohio and Tennessee, as well as the State Hospital in Indiana, but that he had not yet found placement for T.W. and he had no idea how long that process would take. In the

⁴ The State also filed a petition alleging that T.W. was a delinquent for leaving detention without permission, but the State subsequently dismissed that petition.

meantime, T.W. was in a detention facility, which did not have counseling services or other treatment appropriate for T.W.

[7] At the conclusion of the dispositional hearing, the trial court asked Boomsma whether the “Department of Correction, Division of Youth Services would be an appropriate decision for” T.W. *Id.* at 111. Boomsma responded that she did not consider DOC to be an option “because [T.W. is] twelve,” but she told the trial court that she would look into it. *Id.* The court stated,

[i]t’s not the number one choice, obviously, she’s twelve years old, but I also don’t know that—I mean if the Department is unable to identify residential treatment placement either in state or out of state, and then it’s going to be many months. I think that *she needs the treatment that at least could potentially be provided.*

Id. (emphasis added). The State’s attorney then added,

[w]e had another child who had the ability to go to a program following a small stay in the DOC. I do think that [it is] not permanent or not any kind of long term solution, but maybe going to the DOC, and having a review hearing where the Court could check in on [T.W. and] see how she’s doing, see what treatment she’s had, and then if DCS are able to get her into the State [H]ospital or some other facility, the Court could essentially pull her back, and then we could send her off to a less restrictive environment. I do think that would be an appropriate solution so that she doesn’t continue to have these types of problems, and just sit in detention rather than get the therapy and the treatment that she needs. Which the DOC could obviously provide for her in a safe, secure, structured environment. *It wouldn’t be a long-term solution, it’s just a—it’s like a bridge.* Think of it like a bridge between where you’re at now, and where you need to go.

Id. at 112-13 (emphasis added).

- [8] Seven months later, as of March 13, 2023, T.W. is still placed in her “bridge” placement in the DOC, with the next review hearing scheduled for June.⁵

Discussion and Decision

Issue One: Sufficiency of the Evidence

- [9] T.W. first contends that the State presented insufficient evidence to support her adjudication as a delinquent child. When reviewing the sufficiency of the evidence in a juvenile-adjudication appeal, we do not reweigh the evidence or judge witness credibility. *B.T.E. v. State*, 108 N.E.3d 322, 326 (Ind. 2018). We consider only the evidence favorable to the judgment and the reasonable inferences supporting it. *Id.* “We will affirm a juvenile-delinquency adjudication if a reasonable trier of fact could conclude that the defendant was guilty beyond a reasonable doubt.” *Id.*
- [10] An adult who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits Class B misdemeanor battery. *Ind. Code* § 35-42-2-1 (2022). On appeal, T.W. argues that the State failed to show that she touched Gwendolyn Clark in a rude, insolent, or angry manner, as alleged in the petition. We disagree.

⁵ We take judicial notice of an order on periodic case review in the CHINS case following a hearing on March 13, 2023.

[11] Clark testified that T.W. kicked and hit her and other staff members. T.W. contends that Clark’s testimony was ambiguous whether T.W. had allegedly struck Clark or just other staff members. But our review of Clark’s testimony convinces us that the State presented sufficient evidence to support the true finding. We therefore affirm T.W.’s adjudication as a delinquent child.

Issue Two: Commitment to the DOC

[12] T.W. next contends that the trial court abused its discretion when it committed her to the DOC. Our standard of review is well settled:

[T]he choice of the 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. The juvenile court’s discretion 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. 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 the court or the reasonable, probable, and actual inferences that can be drawn therefrom. Hence, the 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) (internal citations omitted).

[13] Although the juvenile court is given wide latitude and great flexibility in determining the disposition of a delinquent child, its discretion is circumscribed by statute. [Indiana Code section 31-37-18-6\(1\)\(A\)](#) provides that “[i]f consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that . . . is . . . in the least restrictive

(most family like) and most appropriate setting available[.]” [Ind. Code § 31-37-18-6\(1\)\(A\)](#).

[14] Here, there is no dispute that the most appropriate placement for T.W. is a residential or hospital setting. The State, DCS, and the trial court have all agreed on that point. The record shows that the *only* reason T.W. was committed to the DOC is because, despite months of trying to find a placement either in Indiana or out of state, DCS was not able to find a residential or hospital placement for T.W. DOC was mentioned as a last resort and a temporary “bridge” until a residential placement could be obtained. Tr. p. 113. And yet, T.W. remains in DOC several months later.

[15] A CASA report filed in December 2022 states that T.W. was “not doing well mentally or emotionally at what the DCS case manager stated was the ‘kid’s prison.’”⁶ The CASA reported that the DCS case manager “feels the only appropriate place for [T.W.] is the State Hospital and [she] wants to see that expedited.” Notably, also in that report, the CASA observed that

[i]t appears [T.W.] doesn’t want to misbehave but somehow doesn’t know what appropriate behavior is and how to control herself. Responding by lashing out, acting out—seems to be . . . all she has known. *She openly says she wants to learn how to control her behavior but doesn’t know how.*

⁶ We take judicial notice of the CASA report submitted at the December 19, 2022, permanency hearing in the CHINS case, 18C02-2112-JC-128.

(Emphasis added.)

[16] Given the facts and circumstances of this case and the statutory policy favoring the least-harsh disposition, we reverse the juvenile court's commitment of T.W. to the DOC. The record is clear that T.W. needs care and treatment that the DOC cannot provide. The clear intent of the trial court and DCS was that the DOC placement would be temporary, and yet T.W. is still there and there is no indication that her release is imminent. We remand with instructions to the juvenile court to vacate its dispositional decree, order T.W.'s placement in an appropriate residential or hospital setting within thirty days of the date of this opinion, and submit to this Court a report verifying that placement.

Conclusion

[17] T.W. is a twelve-year-old girl who has been abandoned by her parents and orphaned by her adopted mother. T.W. has suffered unknowable traumas in her short life, and she needs intensive treatment and care that she has not been provided in the DOC. We can and must do better to meet T.W.'s needs. The record shows that the longer T.W. goes without treatment, the worse her situation becomes. We acknowledge our State's limited resources for addressing complicated cases like this one, but there is no excuse for a "bridge" placement of 12-year-old T.W. in the DOC for a period now exceeding seven months and counting.

[18] We hold that the State presented sufficient evidence to support the true finding of Class B misdemeanor battery. But the trial court abused its discretion when it

committed T.W. to the DOC. We reverse that commitment and remand with instructions that the trial court find a placement for T.W. at either a residential or hospital setting appropriate for her within thirty days. The search shall include both in-state and out of state facilities. The trial court shall report to this Court within thirty days to verify T.W.'s placement in an appropriate facility.

[19] Affirmed in part, reversed in part, and remanded with instructions.

May, J., and Bradford, J., concur.