

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

A.W.,
Appellant-Respondent

v.

State of Indiana,
Appellee-Petitioner.

January 31, 2023

Court of Appeals Case No.
22A-JV-1787

Appeal from the Lawrence Circuit
Court

The Honorable Anah Hewetson
Gouty, Juvenile Referee

Trial Court Cause No.
47C01-2111-JD-440

Pyle, Judge.

Statement of the Case

- [1] A.W. (“A.W.”) appeals the trial court’s order that placed him in a residential treatment program at Josiah White’s (“White’s”). A.W. specifically argues that the trial court abused its discretion when it placed him at White’s. Finding no abuse of the trial court’s discretion, we affirm the trial court’s judgment.
- [2] We affirm.

Issue

Whether the trial court abused its discretion when it placed A.W. at White’s.

Facts

- [3] In 2021, then-thirteen-year-old A.W. frequently visited the H. family’s home to play with nine-year-old L.H. In September 2021, L.H.’s mother reported to a Lawrence County Sheriff’s Department deputy that A.W. had molested L.H. several times. At the beginning of October 2021, Kelly Hunkler (“Hunkler”) from Susie’s Place conducted a forensic interview of L.H. L.H. told Hunkler that A.W. had put his “pee-pee” in L.H.’s “mouth,” “butt,” “pants,” and “everywhere.” (App. Vol. 2 at 20). When Hunkler showed L.H. an anatomical drawing of a boy and asked L.H. to identify the “pee-pee,” L.H. circled the boy’s genitals. (App. Vol. 2 at 20). L.H. further told Hunkler that when A.W. put his “pee-pee” “in [L.H.’s] butt[,]” it was “very painful.” (App. Vol. 2 at 21). In addition, L.H. told Hunkler that A.W. had told him to “keep it a secret”

and “offered to give him a toy if he didn’t tell and let him keep doing that.” (App. Vol. 2 at 21).

[4] Later in October 2021, Lawrence County Sheriff’s Department Deputy Logan Smoot (“Deputy Smoot”) scheduled a joint interview with A.W. and his mother (“Mother”). Before the joint interview, Mother requested to privately speak with Deputy Smoot. During this conversation, Mother told Deputy Smoot that she had a long history of concerns about A.W.’s actions. For example, Mother told Deputy Smoot that when A.W. was three years old, Mother had found him in a bedroom with a two-year-old boy. A.W. had removed both his pants and the two-year-old’s diaper. Mother further told Deputy Smoot that when A.W. was five or six years old, he had asked a neighbor girl if he could touch her privates. Mother also told Deputy Smoot that A.W.’s father (“Father”), whom Mother referred to as a sperm donor, was a convicted child molester. According to Mother, even though A.W. had not had contact with Father since A.W. was an infant, Mother feared that Father, being a child molester, “might have [had] something to do with it.” (App. Vol. 2 at 23). Mother also told Deputy Smoot that she had a “high sex drive” and that her cousin was afraid that A.W. “m[ight] have that same kind of drive.” (App. Vol. 2 at 23). Mother further told Deputy Smoot that she did not feel comfortable having A.W. in her house and that she could not help him. According to Mother, she had an eight-year-old daughter from a previous marriage. The daughter lived with her father, and Mother told Deputy Smoot that she could not have her daughter in the same house as A.W. Thereafter,

when Deputy Smoot met with both Mother and A.W., A.W. acknowledged that he had “sexually touched [L.H.] where [he] shouldn’t have.” (App. Vol. 2 at 24).

- [5] In November 2021, the State filed a delinquency petition alleging that A.W. had committed acts that would be: (1) Level 3 felony rape if committed by an adult; (2) Level 3 felony child molesting if committed by an adult; and (3) Level 6 felony sexual battery if committed by an adult. A.W. remained in Mother’s home with Mother and her fiancé during the pendency of the proceedings.
- [6] In February and March 2022, A.W.’s school reported that A.W. had been involved in sexually inappropriate incidents with other students. In one incident, A.W. had inappropriately touched a female student’s buttocks. In another incident, A.W. had asked a female student if she wanted to “toot on his trumpet.” (App. Vol. 2 at 66). Because of these incidents, the school had instituted procedures to separate A.W. from the other students. For example, A.W. had to wait until all the other students had gone to class before he was allowed to walk to his class. In addition, the school provided A.W. with a separate bathroom. The school also dismissed A.W. from school early so that he could ride a bus with a monitor to watch his behavior.
- [7] Also in March 2022, the father of Mother’s eight-year-old daughter told Mother that the daughter had told him that A.W. had touched her vagina. The daughter’s father also reported that the daughter was “walking funny.” (App. Vol. 2 at 67). Although Mother usually kept an eye on A.W. and his half-sister

because of A.W.'s previous sexual behaviors, Mother had fallen asleep on the couch during the time that the daughter alleged that A.W. had touched her vagina. Following that incident, Mother's daughter no longer visited Mother at Mother's home.

[8] At an April 2022 hearing, A.W. admitted that he had committed an act that would be Level 3 felony child molesting if committed by an adult, and the State dismissed the remaining allegations in the delinquency petition. The trial court adjudicated A.W. to be a delinquent child, and the State requested that A.W. complete a psychosexual evaluation before the dispositional hearing.

[9] At the end of April 2022, Lawrence County Juvenile Probation Officer Katie Messman ("P.O. Messman") referred A.W. to Ethan Smith ("Smith"), a licensed mental health counselor, a licensed marriage and family therapist, and a credentialed sexual abuse youth clinician at Bloomington Counseling Center, for the psychosexual evaluation. During the course of the evaluation, which included many of the facts set forth above, Smith spoke with both A.W. and Mother.

[10] Mother told Smith that she was not comfortable discussing sexual topics with A.W. and that she was not aware of A.W.'s daily sexual habits. Mother also told Smith that she and her fiancé had previously thought that A.W. "was gay because he would hold hands with and kiss one of his male friends." (App. Vol. 2 at 66). According to Mother, in an attempt "to steer [A.W.] toward

heterosexuality[,]” Mother’s fiancé had given A.W. magazines with pictures of nude females. (App. Vol. 2 at 66).

[11] A.W. told Smith that Mother’s fiancé had given him “some pornographic magazines to which he masturbate[d] to the pictures.” (App. Vol. 2 at 67). A.W. further told Smith that when he was five or six years old, one of Mother’s friends had touched his penis and he had touched her breasts and vagina. A.W. also told Smith that Mother had told him that he was over-sexualized. A.W. further told Smith that he did not know Father, did not know Father’s name, did not care to know him, and did not ask Mother about him. Regarding the incident with Mother’s daughter, A.W. explained that while Mother was sleeping on the couch, the daughter had fallen while doing gymnastics in the living room. According to A.W., he had accidentally grabbed the daughter’s “vagina area” when he had picked her up. (App. Vol. 2 at 67).

[12] In addition to speaking with A.W. and Mother, Smith used PROFESSOR (Protective + Risk Observations for Eliminating Sexual Offense Recidivism) and J-SOAP-II (Juvenile Sex Offender Assessment Protocol-II) assessments to evaluate A.W. Based on all the information available to Smith, it was Smith’s professional opinion that A.W. was a moderate to high risk for recidivism. It was also Smith’s professional opinion that A.W. should “be referred to a residential facility where he w[ould] receive individual and family therapy services focusing on sexual maladaptive treatment.” (App. Vol. 2 at 90).

[13] In June 2022, P.O. Messman completed A.W.'s pre-dispositional report. In this report, P.O. Messman recommended, based on the psychosexual evaluation, that A.W. "receive residential treatment prior to receiving treatment in the community." (App. Vol. 2 at 62).

[14] At A.W.'s June 2022 dispositional hearing, P.O. Messman recommended that A.W. be placed at White's, which has a program that "helps youth who have sexually maladaptive behaviors." (Tr. Vol. 2 at 31). P.O. Messman further explained that this recommendation was based on Smith's psychosexual evaluation, which had recommended that A.W. be placed in a residential treatment facility. A.W. did not ask P.O. Messman if she had considered any other dispositional alternatives.

[15] Also at the hearing, Father testified that he had recently re-connected with A.W. Father acknowledged that he had a prior conviction for child molesting and that he had not had any contact with A.W. since A.W. had been an infant. However, Father, who lives in Indianapolis, explained that he had "changed [his] whole life around." (Tr. Vol. 2 at 23). According to Father, he was married and had three children. Specifically, he had adopted his wife's son from a prior relationship, and he and his wife had two daughters. At the time of the hearing, the son was fourteen years old, and the daughters were twelve and nine years old. Father explained that from Friday through Sunday, he was a professional wrestler and travelled throughout the Midwest to wrestling matches. However, Father further explained that Monday through Thursday, he was at home with his children, who were home-schooled. According to

Father, he would, therefore, be available to make the one and one-half hour drive from Indianapolis to Lawrence County to take A.W. to outpatient counseling appointments. Father further testified that A.W. was welcome to stay at Father's home in Indianapolis, where he would share a room with Father's son.

[16] In addition, Mother testified that she had previously supported A.W.'s placement in a residential treatment program because her work schedule had prevented her from being able to take him to outpatient counseling appointments. According to Mother, Father's offer to take A.W. to counseling appointments "free[d] up that biggest burden that was facing on [her]." (Tr. Vol. 2 at 40). In addition, Mother testified that the previous situation between A.W. and her daughter was not what they thought it had been. Mother specifically explained that A.W. had only been wrestling with Mother's daughter and had ended up pinching the daughter's inner thigh. According to Mother, she was no longer concerned about her daughter and A.W. being together in her home.

[17] At the end of the hearing, the State explained that based on the nature of the crime and Smith's conclusion that A.W. was at a moderate to high risk to re-offend, the State was recommending that the trial court place A.W. in White's residential treatment program. The State further pointed out that although Father had offered to drive from Indianapolis to Lawrence County to take A.W. to outpatient counseling appointments, the relationship between A.W. and Father was relatively new. On the other hand, A.W. argued that "it [was]

worth a shot here to allow [him] to receive treatment at home[.]” (Tr. Vol. 2 at 51).

[18] The trial court asked P.O. Messner if there were any local programs to address A.W.’s issues, and P.O. Messner responded that Bloomington Counseling Center provided treatment for those issues. Thereafter, the trial court explained that it was going to take the matter under advisement and told the parties to just know that it was going to try and do what it thought was best for A.W. to get the services that he needed right then.

[19] The trial court subsequently issued a written order that provides, in relevant part, as follows:

3. [A.W.] admitted to child molesting. The . . . services at Josiah White’s will greatly aid [A.W.] in rehabilitation given the facts of this case. [A.W.]’s behaviors are extremely concerning given his young age and the young victims. [A.W.] has not reoffended since the filing of the Delinquency Petition, but he has had behaviors at school that are sexually inappropriate. The Psycho[sexual] evaluation completed also recommends residential treatment for [A.W.] to get him services to alleviate his reoffending in the future.
4. The Lawrence County Probation Department recommends placement at Josiah White’s Residential Treatment Facility[.]

[20] (App. Vol. 2 at 96). The trial court concluded that it was in A.W.’s best interest to be placed at White’s and that White’s was the least restrictive placement that could meet A.W.’s needs.

[21] A.W. now appeals.

Decision

[22] A.W. argues that the trial court abused its discretion when it placed him at White's. We disagree.

[23] A trial court is accorded "wide latitude" and "great flexibility" in its dealings with juveniles. *J.T. v. State*, 111 N.E.3d 1019, 1026 (Ind. Ct. App. 2018) (internal citation and quotation marks omitted), *trans. denied*. The choice of a specific disposition of a juvenile adjudicated to be a delinquent child will only be reversed if the trial court abuses its discretion. *Id.* The trial 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 favoring the least harsh disposition. *Id.* An abuse of discretion occurs when the trial court's action is clearly 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. *M.C. v. State*, 134 N.E.3d 453, 458 (Ind. Ct. App. 2019), *trans. denied*.

[24] INDIANA CODE § 31-37-18-6 sets forth the following factors that a trial court must consider when entering a dispositional decree in a juvenile matter:

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.

I.C. § 31-37-18-6.

[25] Although the statute requires the juvenile court to select the least restrictive placement, the statute allows for a more restrictive placement under certain circumstances. *M.C.*, 134 N.E.3d at 459. That is, the statute requires placement in the least restrictive setting only “[i]f consistent with the safety of the community and the best interest of the child.” *See* I.C. § 31-37-18-6. Thus, the statute recognizes that, in certain situations, 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.*, 134 N.E.3d at 459 (internal citation and quotation omitted).

[26] Here, our review of the evidence reveals that A.W., who was just thirteen years old when he committed the offense in this case, has an extremely long history of inappropriate sexual behaviors. Mother had become concerned about A.W.'s behaviors when, at three years old, he took off his pants and removed a

two-year-old's diaper. At five or six years old, A.W. asked a neighbor girl if he could touch her privates. When he was thirteen years old, A.W. admitted that he had committed what would have been Level 3 felony child molesting if committed by an adult when he engaged in maladaptive sexual behaviors with a then-nine-year-old child. Further, while waiting for the disposition of that case, A.W. exhibited inappropriate sexual behaviors at school, which prompted school officials to separate him from other students in the hallway and bathroom as well as on the school bus. Based on these facts and circumstances, the trial court's ordered placement is consistent with A.W.'s best interest and the safety of the community. The trial court did not abuse its discretion in placing A.W. at White's.¹

¹ A.W. also argues that P.O. Messman's predispositional report did not describe all dispositional options that she considered. In support of his argument, A.W. directs us to INDIANA CODE § 31-37-17-6.1, which provides that the predispositional report prepared by the probation officer must include a description of all dispositional options considered in preparing the report and an evaluation of each of the options considered in relation to the plan of care, treatment, rehabilitation, or placement. However, in *J.B. v. State*, 849 N.E.2d 714, 717 (Ind. Ct. App. 2006), this Court explained that:

the statute does not require that a predispositional report provide information about every single placement option that is conceivably available to a juvenile. The statute mandates that a predispositional report provide, 'A description of all dispositional options considered in preparing the report.' I.C. 31-37-17-6.1. [The probation officer] unequivocally testified that she considered only the DOC placement option for J.B. and that is the option she discussed in her report. In so doing, she complied with the statute.

A.W. asks us to reconsider our decision in *J.B.*, thereby requiring a probation officer to provide in a predispositional report information about every single placement option that is conceivably available to a juvenile. We decline this request. Further, we disagree with A.W.'s argument that "[P.O.] Messman's conduct still falls short of what was deemed adequate in *J.B.*[]" (A.W.'s Br.13). P.O. Messman clearly considered only White's as a placement option for A.W., and that is the option that she included in A.W.'s predispositional report. In so doing, P.O. Messman, like the probation officer in *J.B.*, complied with the statute. See *J.B.*, 849 N.E.2d at 717, In addition, we disagree with A.W.'s argument that P.O. Messman "delegated [her] authority to a third[-]party psycho[sexual] evaluator and simply adopted his recommendations as a stand-in for her own." (A.W.'s Br. 14). INDIANA CODE § 31-37-17-1.1 provides that

[27] Affirmed.

Altice, C.J., and Riley, J., concur.

the person preparing the dispositional report may “confer with individuals who have expertise in professional areas related to the child’s needs in the areas of appropriate care, treatment, rehabilitation, or placement for a delinquent child.” We find no error.