

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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F.H.,  
*Appellant-Respondent,*

v.

State of Indiana,  
*Appellee-Petitioner*

March 2, 2023

Court of Appeals Case No.  
22A-JV-1969

Appeal from the LaGrange Circuit  
Court

The Honorable William R. Walz,  
IV, Judge

Trial Court Cause No.  
44C01-2202-JD-4

**Memorandum Decision by Judge May**  
Judges Mathias and Bradford concur.

**May, Judge.**

[1] F.H. appeals his placement in the Department of Correction (“DOC”) following his violation of the probation he was serving during the suspended commitment to the DOC that was imposed following his earlier adjudication as a delinquent child. F.H. asserts that, because he is a dual status child,<sup>1</sup> the juvenile court erred by not referring him for a dual status assessment prior to entering a modified dispositional order. Because F.H. was sent to the DOC by agreement of the parties, he cannot challenge his placement on appeal. Nor did the juvenile court’s failure to send F.H. for dual status assessment violate the controlling statute, Indiana Code section 31-41-2-1, as that statute makes assessment of children in F.H.’s circumstances discretionary rather than mandatory. Nevertheless, we remand for the juvenile court to modify the dispositional order to include a finding that F.H. is a dual status child, as required by Indiana Code section 31-37-18-9(a)(6). Accordingly, we affirm and remand.

## Facts and Procedural History

[2] On February 15, 2022, fifteen-year-old F.H. and his twin brother engaged in a physical altercation with their stepfather. After their stepfather pushed the boys outside without coats or shoes, F.H. “kicked the front screen door, destroyed the mailbox, knocked over a garbage can, and threw a cooking pot at the back

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<sup>1</sup> The Indiana Legislature has provided six definitions of “dual status child” in Indiana Code section 31-41-1-2. In this instance, it means F.H. was previously adjudicated a child in need of services (“CHINS”) and that wardship ended prior to the filing of the present delinquency petition. *See* Ind. Code § 31-41-1-2(4).

door.” (App Vol. II at 22.) As a result of this conflict, the State filed a Petition Alleging Delinquency setting out three delinquent acts: Count 1 alleged F.H. battered his stepfather, which if committed by an adult would be Class A misdemeanor domestic battery;<sup>2</sup> Count 2 alleged F.H. damaged the mailbox and screen door, which would be Class B misdemeanor criminal mischief if committed by an adult;<sup>3</sup> and Count 3 alleged F.H. committed acts that if committed by an adult would be Class B misdemeanor disorderly conduct.<sup>4</sup>

[3] The LaGrange County Probation Department prepared and filed a Preliminary Inquiry Report prior to F.H.’s initial hearing on the State’s delinquency petition. That report identified F.H. as a dual status child and recommended an assessment by a Dual Status Assessment Team because “Child has a previous CHINS case, current alleged delinquent acts, and an open DCS assessment.” (*Id.* at 28.) The report also recommended F.H. be committed “to Indiana Boys’ School because a return home at this time does not appear to be an option, as there still appears to be significant conflict in the family.” (*Id.*)

[4] At the pre-fact-finding hearing, the parties indicated they had reached an agreed disposition whereby F.H. would admit committing acts that, if committed by an adult, would be criminal mischief and disorderly conduct and the State would dismiss the domestic battery allegation. The parties also agreed F.H.

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<sup>2</sup> Ind. Code § 35-42-2-1.3(a)(1).

<sup>3</sup> Ind. Code § 35-43-1-2(a).

<sup>4</sup> Ind. Code § 35-45-1-3(a)(1).

would receive a suspended commitment to the DOC, serve probation for six months with the first month served on home detention, undergo mental health and substance abuse assessments and follow any recommendations, complete forty-eight hours of community service, and participate in family therapy with his mother and stepfather. F.H. agreed to proceed with the dispositional hearing the same day as his admissions, as the disposition was an agreed entry, and the juvenile court entered the agreed dispositional order.

- [5] Approximately six weeks later, the probation department alleged F.H. violated probation by repeatedly testing positive for marijuana, being removed from group therapy, and failing a high school class. Prior to the fact-finding hearing on the modification petition, the parties advised the juvenile court there was an agreed resolution. F.H.'s counsel advised a factual basis would be established for the probation violations and F.H. would be placed in the DOC because there were substance abuse treatment resources that F.H. wanted to access at the DOC. F.H. testified to establish a factual basis for the probation violations, and the trial court accepted F.H.'s admissions. The juvenile court then committed F.H. to the DOC.

## Discussion and Decision

- [6] F.H. challenges the juvenile court's order placing him in the DOC. The juvenile court system is founded on the notion of *parens patriae*, which allows the juvenile court to step into the shoes of the parents. *In re K.G.*, 808 N.E.2d 631, 635 (Ind. 2004). The *parens patriae* doctrine gives juvenile courts power to

further the best interests of the child “which implies a broad discretion unknown in the adult court system.” *Id.* Accordingly, juvenile courts have “wide latitude and great flexibility” in fashioning dispositions for delinquents, and we review a juvenile court’s decision for an abuse of discretion. *K.S. v. State*, 114 N.E.3d 849, 854 (Ind. Ct. App. 2018), *trans. denied*. A decision is an abuse of discretion if it is clearly against the logic and effect of the facts and circumstances before the trial court or against “the reasonable, probable, and actual deductions to be drawn” from those facts and circumstances. *Id.*

[7] Where, as here, a juvenile court’s modified dispositional order memorialized the agreement of the parties, that disposition cannot be challenged on appeal. *See, e.g., Hole v. State*, 851 N.E.2d 302, 305 (Ind. 2006) (when parties’ agreement called for Hole to serve a ten-year sentence and trial court accepted plea agreement, “Hole received the precise sentence for which he bargained” and could not challenge the ten-year sentence under Appellate Rule 7(B)). F.H. specifically requested placement in the DOC because the DOC had a substance abuse treatment program that F.H. wished to access. We accordingly decline to review that disposition. *See, e.g., id.* (“Only if the trial court is exercising discretion in imposing a sentence may a defendant then contest on appeal the merits of that discretion . . .”).

[8] Nevertheless, we turn briefly to F.H.’s argument that the juvenile court erred when it modified his disposition without sending him for assessment by a dual status assessment team. Our Indiana Legislature has provided:

After a juvenile court has determined that a child is a dual status child, the juvenile court may refer the child to be assessed by a dual status assessment team after:

(1) considering the reports provided pursuant to IC 31-34-7-2 or IC 31-37-8-5; or

(2) making a determination pursuant to IC 31-34-10-2(e) or IC 31-37-12-2(e).

However, all children identified as a dual status child under IC 31-34-1-2(1) through IC 31-41-1-2(3), or IC 31-41-1-2(6), shall be referred to the dual status assessment team.

Ind. Code § 31-41-2-1 (emphasis added). Pursuant to the plain language of that code section, juvenile courts must refer for assessment “all children identified as a dual status child under” subsections (1), (2), (3) and (6), but juvenile courts have discretion whether to refer other dual status children for assessments by a dual status assessment team. *See, e.g., Romine v. Gagle*, 782 N.E.2d 369, 379-80 (Ind. Ct. App. 2003) (“When the word ‘shall’ appears in a statute, it is construed as mandatory . . . . The term ‘must’ carries with it the same meaning . . . . The term ‘may’ in a statute ordinarily implies a permissive condition and a grant of discretion.”), *reh’g denied, trans. denied*. As we noted above, *see supra* n.1, and as the parties concede, F.H. has been adjudicated a CHINS and was alleged to be a juvenile delinquent, which means he is a dual status child pursuant to Indiana Code section 31-41-1-2(4). Accordingly, the juvenile court had discretion whether to refer F.H. for a dual status assessment, *see* Ind. Code § 31-41-2-1 (“the juvenile court *may* refer the child to be assessed”) (emphasis

added), and did not err as a matter of law when it entered the parties' agreed disposition without first referring F.H. for assessment by a dual status assessment team.

- [9] Finally, as the State concedes, the juvenile court's dispositional decree should have included a specific finding that F.H. is a dual status child. (*See* Br. of Appellee at 10 n.3.) Indiana Code section 31-37-18-9(a)(6) requires a specific finding regarding "[w]hether the child is a dual status child under IC 31-41." *See also* Ind. Code § 31-37-22-3(c) (making procedures required by Indiana Code section 31-37-18-9 applicable to modifications of dispositional decrees). We accordingly remand for the juvenile court to add a finding to the dispositional decree regarding F.H. being a dual status child.

## Conclusion

- [10] Because F.H. agreed to the modified dispositional order that placed him in the DOC, he cannot challenge that placement on appeal. Moreover, because the ordering of a dual status assessment for a child in F.H.'s circumstances is discretionary, rather than mandatory, pursuant to the controlling statute, the juvenile court did not err as a matter of law by failing to refer F.H. for assessment prior to imposing the parties' agreed modification of the dispositional order. Nevertheless, we agree the juvenile court erred when it failed to include a finding in the modified dispositional order that indicated F.H. is a dual status child. Accordingly, we affirm and remand for modification of the order to include that finding.

[11] Affirmed and remanded.

Mathias, J., and Bradford, J., concur.