MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

M.E.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

February 6, 2023

Court of Appeals Case No. 22A-JV-2182

Appeal from the Marion Superior Court

The Honorable Danielle Gaughan, Judge
The Honorable Peter Haughan, Magistrate

Trial Court Cause No. 49D15-2110-JD-8638

Memorandum Decision by Judge May

Judges Mathias and Bradford concur.

May, Judge.

[1] M.E. appeals his placement in the Department of Correction ("DOC") following multiple probation violations and failure in less restrictive placement. He argues the trial court abused its discretion when it granted wardship of him to DOC. We affirm.

Facts and Procedural History

[2] On October 5, 2021, M.E. was released from the Marion County Juvenile Detention Center following his arrest for a probation violation in an earlier delinquency case. As part of his probation, M.E. was required to wear a GPS monitor on his ankle (hereinafter, "GPS anklet"). On October 6, 2021, M.E. cut off his GPS anklet and absconded from his school. Later that day, surveillance video from a business showed M.E. and another male "using heavy equipment from the lot to move inoperable vehicles in order to gain access to drivable vehicles." (App. Vol. II at 21.) The two then used "a fork lift to bash into the front gate from the inside in order to leave with the vehicles they had gathered." (*Id.*) M.E. was later found driving a white Ford F350 identified by the owner as a vehicle stolen from the business. Police arrested M.E.

[3] On October 8, 2021, the State filed a petition alleging M.E. was a delinquent child for committing acts that, if committed by an adult, would be the following

crimes: Level 5 felony burglary,[1] Level 6 felony auto theft,[2] and Class A misdemeanor criminal mischief.[3] On October 21, 2021, M.E. admitted he was a delinquent child for committing an act that would be Level 5 felony burglary. On November 12, 2021, the trial court entered its dispositional order placing M.E. "on probation with a suspended commitment to the Indiana Department of Correction[.]" (*Id*. at 94.)

[4] On November 27, 2021, the State filed a petition to modify M.E.'s dispositional decree because he again had removed his GPS anklet and, at the time of the State's petition, M.E.'s whereabouts were unknown. On November 28, 2021, police arrested M.E. at Greenwood Park Mall. The State subsequently alleged M.E. was a delinquent for committing an act that would be Level 6 felony escape[4] if the offense had been committed by an adult. On November 30, 2021, the trial court found M.E. had "been detained on a new offense" and ordered he remain detained until the hearing on the State's petition to modify on December 21, 2021. (*Id*. at 108.) On December 15, 2021, M.E. admitted he was a delinquent child for committing an act that would be Level 6 felony escape. On December 21, 2021, the trial court entered its order acknowledging

[1] Ind. Code § 35-43-2-1.

[2] Ind. Code § 35-43-4-2(a)(1)(B).

[3] Ind. Code § 35-43-1-2(a)(1).

[4] Ind. Code § 35-44.1-3-4(b).

M.E.'s admission, ordered him to remain in detainment, and scheduled a dispositional hearing on the matter for January 27, 2022.

[5] On January 27, 2022, the trial court held its dispositional hearing. In an order the same day, the trial court modified M.E.'s placement and released him into the care of the Youth Opportunity Center ("YOC") in Muncie, Indiana. On May 12, 2022, the State filed a petition to modify the trial court's January 27 dispositional decree. It alleged M.E. left the YOC without permission and his whereabouts were unknown at the time of the State's petition. (*Id*. at 146.) The trial court issued a warrant for M.E.'s arrest on May 13, 2022. Police found M.E. within an hour and returned him to the YOC.

[6] On July 19, 2022, Seth Keller, Cottage Manager at the YOC, sent the trial court a letter requesting M.E.'s removal from the facility because M.E. had "eloped from the YOC campus on three separate occasions, pulled the fire alarm in an attempt to evade the secure building numerous times, threatened to harm staff and peers, threatened to harm self and been involved in multiple physical interventions." (*Id*. at 150.) Keller also indicated M.E. had "continued to be resistant to all treatment offered at the YOC and has shown little to no progress in the nearly seven months since admission." (*Id*.) Based thereon, on July 21, 2021, the State filed a petition to modify M.E.'s placement. The trial court set a hearing on the State's petition for modification and ordered M.E. detained until the hearing. After that hearing, the trial court ordered M.E. to remain in detention until the final hearing on the matter on August 18, 2022.

[7] On August 18, 2022, the trial court held its final hearing on the State's petition to modify M.E.'s placement. At that hearing, Probation Officer William Lacy[5] recommended M.E. be placed at DOC:

> It was deemed that community based services are not a viable option at this time due to his past services including therapy, mentoring and intensive intercept program. As well as his failed times on electronic monitoring. Placement [at a residential facility] was also deemed not an option as he had to be removed from his last placement [at the YOC]. However we did send out two more referrals for placements. However he was denied based on his lack of engagement in services at his last placement as well as his elopement. At this time he does not appear to [be] amenable to treatment.

(Tr. Vol. II at 18.) M.E.'s mother agreed the YOC was not a good environment for M.E. but did not think "he is DOC worthy." (*Id*. at 24.) M.E. testified during the hearing that, if returned to his mother's house, he would "have a job" and "be doing boxing." (*Id*.) M.E. told the court he participated in the acts that resulted in true findings of delinquency because he "was hanging with the wrong people at the wrong time." (*Id*. at 26.) At the end of the hearing the trial court stated:

> I am always bound by what is in your best interest as long as it is consistent with [the] safety and welfare of the community. You've committed felonies, to say that none of them were violent, I don't agree with that. I also see repeated felonies over

[5] Lacy's name is spelled "Lacy" by the court in an order, (*see* App. Vol. II at 125), but spelled "Lacey" in the transcript, (*see* Tr. Vol. II at 31). We use the spelling used by the trial court in its order.

> and over again from a young age. You've been placed outside the home for [sic] three times. You've also violated electronic monitoring, three times. Blaming somebody else and I'm with the wrong crowd. You know, you know how many times everybody in this room as [sic] heard that a million times. Alright that is something that is a common thing people say. It is not my fault, I was with the wrong crowd. I don't find your statements you are making very credible at all. I have a report from probation where they have gone through different methods to try to determine [if] out of homeplacement [sic] would work, it hasn't. I think we are at that point where it is consistent with the safety and welfare of the community, in your best interest that you are committed to the Department of Correction. That is going to be the order of the court.

(*Id*. at 29.) The trial court entered its dispositional order on the same day, ordering DOC to assume wardship of M.E.

Discussion and Decision

[8] The juvenile court system is founded on the notion of *parens patriae*, which allows the 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 interest of the child, "which implies a broad discretion unknown in the adult criminal court system." *Id*.

[9] M.E. argues the trial court abused its discretion when it placed him in the DOC. "The specific disposition of a delinquent child is within the juvenile court's discretion," *K.S. v. State*, 114 N.E.3d 849, 854 (Ind. Ct. App. 2018), *trans. denied*, and we thus review a trial court's dispositional order for an abuse

of discretion. *Id*. A decision is an abuse of discretion if it is clearly against the logic and effect of the facts and circumstances before the court or against "the reasonable, probable, and actual deductions to be drawn" from those facts and circumstances. *Id*.

[10] While juvenile courts have "'wide latitude and great flexibility'" in fashioning dispositions for delinquents, *id*. (quoting *C.T.S. v. State*, 781 N.E.2d 1193, 1203 (Ind. Ct. App. 2003), *trans. denied*), our legislature delineated factors the trial court should consider as it makes its decision:

> 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.

Ind. Code § 31-37-18-6.

[11] M.E. contends a less restrictive placement is more appropriate for him because DOC "does not serve the purpose of rehabilitation" and M.E.'s interaction with individuals who had "previously engaged in behavior sufficient to result in the most restrictive placement . . . would be particularly detrimental to M.E. during this formative time in his life[.]" (Br. of Appellant at 8.) He asserts his removal from the YOC was not his fault, and points to his testimony that he left the YOC after he was "hit in the face by a YOC worker" and there were "numerous incidents where staff were messing with kids and [M.E.]." (Tr. Vol. II at 12.)

[12] However, the State presented evidence M.E. repeatedly had been unsuccessful in less restrictive placements. M.E.'s most recent adjudication for burglary[6] is his fourth juvenile adjudication. Since 2021, M.E. has absconded from his placement, whether it be his mother's home or a residential placement, nine times. M.E. committed the acts underlying his burglary adjudication on the day after he was released from detention related to another adjudication. That activity resulted in almost $25,000.00 in damage to the victim's property. M.E. was ultimately asked to leave the YOC because, among other things, he was abusive to staff and peers and he was not engaged in treatment. Based thereon, we conclude the trial court did not abuse its discretion when it placed M.E. in the DOC. *See*, *e.g.*, *D.S. v. State*, 829 N.E.2d 1081, 1086 (Ind. Ct. App. 2005)

[6] It would seem M.E. was also adjudicated a delinquent based on his escape in November 2021, however, that adjudication does not appear in the record on the preliminary inquiry report outlining M.E.'s adjudications.

("In light of D.S.'s failure to respond to the numerous less restrictive alternatives already afforded to him, we cannot say that the juvenile court abused its discretion in committing him to the Department of Correction.").

Conclusion

[13] The trial court did not abuse its discretion when it placed M.E. in the DOC after less restrictive placements were repeatedly unsuccessful. Accordingly, we affirm.

[14] Affirmed.

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