

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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M.G.,  
*Appellant-Respondent,*

v.

State of Indiana,  
*Appellee-Petitioner.*

March 17, 2023

Court of Appeals Case No.  
22A-JV-2046

Appeal from the Madison Circuit  
Court

The Honorable Stephen J. Koester,  
Judge

Trial Court Cause Nos.  
48C02-2008-JD-217  
48C02-2010-JD-238  
48C02-2103-JD-68

**Memorandum Decision by Judge Tavitias**  
Judges Vaidik and Foley concur.

**Tavitas, Judge.**

## **Case Summary**

[1] M.G. appeals the juvenile court’s modification of his dispositional order and his placement in the Department of Correction (“DOC”). On appeal, M.G. argues that: (1) the juvenile court’s modification of his dispositional order does not comply with Indiana Code Section 31-37-18-9; and (2) the juvenile court abused its discretion by placing M.G. in the DOC. We conclude that the juvenile court’s order complies with the statutory requirements and that M.G.’s placement in the DOC was not an abuse of discretion. Accordingly, we affirm.

## **Issues**

[2] M.G. raises one issue, which we revise and restate as:

- I. Whether the juvenile court’s modification of M.G.’s dispositional order complies with Indiana Code Section 31-37-18-9.
- II. Whether the juvenile court abused its discretion by placing M.G. in the DOC.

## **Facts**

[3] M.G. was born in February 2007. In September 2020, the State alleged that thirteen-year-old M.G. was delinquent for committing an act that would be domestic battery if committed by an adult, a Class A misdemeanor. The State alleged that M.G. threw a beverage at his mother and that he threw and broke items in the home. M.G. admitted the acts, and the juvenile court withheld

judgment and ordered M.G. to continue with wraparound services, which he had been receiving for several years.

[4] In October 2020, the State alleged that M.G. was delinquent for committing an act that would be theft if committed by an adult, a Class A misdemeanor. The State alleged that M.G. and another juvenile stole watches, a necklace, lighters, male enhancement pills, condoms, food, and beverages totaling more than \$150.00 from Wal-Mart. M.G. admitted to committing the theft, and the juvenile court placed M.G. on supervised probation and ordered M.G. to complete day reporting at the Madison County Youth Center, home-based therapy, and counseling services.

[5] In January 2021, the State filed a petition for modification of the dispositional decree and alleged that M.G. failed to report for day reporting and took his mother's vehicle. After a modification hearing, the juvenile court placed M.G. in secure detention and ordered him to continue probation. At a review hearing on February 26, 2021, the juvenile court ordered M.G.'s release from secure detention on March 5, 2021, and ordered that M.G. continue probation and day reporting.

[6] Fourteen-year-old M.G., however, failed to report to probation for eight days over his spring break and again stole his mother's vehicle. The State filed a petition for modification of the dispositional decree, and the State also alleged that M.G. was delinquent for committing an act that would be auto theft if committed by an adult, a Level 6 felony. M.G. admitted to the allegation, and

the juvenile court placed M.G. in secure detention and ordered a diagnostic/psychological evaluation of M.G.

- [7] A pre-dispositional report indicated that M.G. was failing all of his classes, tested positive for marijuana, and was at a high risk to reoffend. The psychological evaluation diagnosed M.G. with a disruptive mood dysregulation disorder, complex post-traumatic stress disorder, and cannabis abuse.
- [8] On May 7, 2021, the juvenile court held a combined modification and dispositional hearing. The trial court placed M.G. at White's Residential Program ("White's"). The juvenile court held review hearings in November 2021 and March 2022, and although M.G.'s improvement was inconsistent, the juvenile court made no placement changes. In March 2022, White's gave M.G. a "complete reset," and M.G. had the "chance to basically start over at that point . . . ." Tr. Vol. II p. 24.
- [9] M.G.'s progress, however, "stalled due to on-going behavior issues." Appellant's Amended App. Vol. II p. 57. M.G. had thirteen behavioral incidents in April 2022, including displaying extreme disrespect to the staff, having verbal and physical altercations with his peers, throwing his lunch tray, possessing contraband, and roaming the campus. White's reported that M.G. had "not only become a distraction to the peers in his cottage, but also a safety risk, as he has assaulted one of his peers." *Id.* at 72. White's noted that M.G. did not take responsibility for his actions and blamed others.

[10] On April 21, 2022, White’s submitted notice of M.G.’s termination from its program with the recommendation that the “continued behavioral issues have proved that [M.G.] needs an increase in structure and security.” *Id.* at 73. On April 28, 2022, the juvenile court ordered M.G. to be placed in secure detention. In secure detention, M.G. purposely and repeatedly set off the “scream alarm” and was found breaking off pieces of a plastic utensil. Tr. Vol. II p. 12.

[11] In May 2022, the State filed a petition for modification of the dispositional decree. At the modification hearing, M.G. admitted to the violations. The probation department recommended secure detention until M.G. obtained a higher level and then sixty days of electronic monitoring. The State requested an alternative placement at a residential facility. The juvenile court disagreed and stated, “I don’t know what else to do with you. . . . You always say the right things, but your actions tell me everything I need to know, and it is not safe to put you back out in the community . . . .” *Id.* at 25. The juvenile court modified the dispositional decree and ordered wardship of M.G. to the DOC. M.G. now appeals.

## **Discussion and Decision**

### ***I. Juvenile Court’s Order***

[12] M.G. first argues that the juvenile court’s order failed to comply with the requirements of Indiana Code Section 31-37-18-9(a), which provides:

(a) The juvenile court shall accompany the court's dispositional decree with written findings and conclusions upon the record concerning approval, modification, or rejection of the dispositional recommendations submitted in the predispositional report, including the following specific findings:

(1) The needs of the child for care, treatment, rehabilitation, or placement.

(2) The need for participation by the parent, guardian, or custodian in the plan of care for the child.

(3) Efforts made, if the child is removed from the child's parent, guardian, or custodian, to:

(A) prevent the child's removal from; or

(B) reunite the child with;

the child's parent, guardian, or custodian.

(4) Family services that were offered and provided to:

(A) the child; or

(B) the child's parent, guardian, or custodian.

(5) The court's reasons for the disposition.

(6) Whether the child is a dual status child under IC 31-41.

[13] M.G. argues that the juvenile court’s order here “fails to address any of the required findings except whether the child is a dual status.” Appellant’s Br. p. 10. A juvenile court entering a modification of a dispositional order must comply with the same requirements governing dispositional orders. *K.S. v. State*, 114 N.E.3d 849, 853 (Ind. Ct. App. 2018) (citing Ind. Code § 31-37-22-3(c)), *trans. denied*. Indiana Code Section 31-37-18-9(c), however, provides: “The juvenile court may incorporate a finding or conclusion from a predispositional report as a written finding or conclusion upon the record in the court’s dispositional decree.”

[14] The juvenile court’s order provided, in part:

The Court has reviewed and considered the reports, statements, evidence and recommendations offered or filed by the parties, the Madison County Juvenile Probation Department, and/or the Department of Child Services; the best interests of the child and the child’s community; the various alternatives available for the care, treatment, rehabilitation, or placement of this child; the necessity, nature, and extent of the participation by a parent, guardian, or custodian in the program of care, treatment, or rehabilitation for the child; and the financial responsibility of the parent or guardian of the estate for services provided for the parent or guardian or the child.

Appellant’s Amended App. Vol. II pp. 24-25. The juvenile court’s order also incorporated by reference and adopted as findings “[t]he statements in the Probation Officer’s Hearing Report and all attachments . . . including any and all statements of reasonable efforts to provide services . . . .” *Id.* at 25. The modification order and the incorporated report detail M.G.’s history and needs,

the reasonable efforts that have been attempted and services that have been provided, the events leading up to the modification, and the reason for the juvenile court's disposition. Under these circumstances, we cannot say the juvenile court's order failed to comply with Indiana Code Section 31-37-18-9.<sup>1</sup>

## *II. Modification of Dispositional Decree*

[15] M.G. appeals the juvenile court's modification of his dispositional decree. "A juvenile 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) (quoting *J.S. v. State*, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008)), *trans denied*. "[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.* "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.* An abuse of discretion occurs when the juvenile court's action is "against the logic and effect of the facts and circumstances before it." *Id.*

[16] The goal of the juvenile process is rehabilitation, not punishment. *Id.* "Accordingly, juvenile courts have a variety of placement options for juveniles

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<sup>1</sup> M.G. also argues that the juvenile court was required to warn him that repeated probation violations could lead to placement in the DOC. M.G. cites no authority for this argument, and it is waived. *See* Ind. Appellate Rule 46(A)(8) (requiring cogent reasoning).



with delinquency problems, none of which are considered sentences.” *Id.*

Indiana Code Section 31-37-18-6 sets forth the following factors that a juvenile court must consider when entering a dispositional decree:

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.

[17] This statute “contains language that reveals that a more restrictive placement might be appropriate under certain circumstances.” *J.S.*, 881 N.E.2d at 29.

“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.’”

*Id.* (quoting 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.” *Id.*

[18] M.G. argues that the juvenile court’s modification to placement in the DOC was an abuse of discretion because the probation department recommended a different placement, M.G.’s mother wanted M.G. returned to her care, and the incidents leading to the modification were not serious. M.G. contends that the juvenile court failed to consider his mental health and trauma and that placement in the DOC was not the least restrictive placement.

[19] M.G. has been offered significant services in an attempt to modify his behaviors. M.G. has received wraparound services, supervised probation, participation in day reporting, extensive therapy, placement in secure detention, and placement in residential services. Despite these many placements and services, M.G.’s behavioral issues have continued. In 2022, White’s “staff reviewed his treatment . . . and considered submitting a request for a removal from the program within 30 days due to his behavior problems.” Appellant’s Amended App. Vol. II p. 88. In late March 2022, however, M.G. was given another chance to complete the White’s program. Despite this second chance, M.G. had thirteen behavioral incidents in April 2022. On April 21, 2022, White’s submitted notice of M.G.’s termination from its program and noted that the “continued behavioral issues have proved that [M.G.] needs an increase in structure and security.” *Id.* at 73. Given these circumstances, the juvenile court disagreed with the probation department’s recommendations.

The trial court identified M.G.'s continued behavioral issues and the safety of the community as the reasons for the DOC placement. Given M.G.'s lack of success in his other placements, we cannot say that the juvenile court abused its discretion by modifying M.G.'s placement to the DOC.

### **Conclusion**

[20] The juvenile court's order complied with the statutory requirements, and the juvenile court did not abuse its discretion by modifying M.G.'s placement to the DOC. Accordingly, we affirm.

[21] Affirmed.

Vaidik, J., and Foley, J., concur.