

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

M.H.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

April 17, 2023

Court of Appeals Case No.
22A-JV-2500

Appeal from the
Elkhart Circuit Court

The Honorable
Elizabeth Bellin, Magistrate

The Honorable
Michael A. Christofeno, Judge

Trial Court Cause No.
20C01-2204-JD-121

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

- [1] M.H. appeals his placement in the Indiana Department of Correction (DOC) following a juvenile-delinquency adjudication, arguing the court erred in determining his placement and in amending the dispositional order without a hearing. We affirm.

Facts and Procedural History

- [2] M.H. was born in March 2005. M.H.’s juvenile history started in 2018, when he was adjudicated a delinquent child for what would be, if committed by an adult, felony residential entry, misdemeanor dangerous possession of a firearm, and misdemeanor intimidation. The next year, he was twice adjudicated a delinquent child for what would be, if committed by an adult, misdemeanor domestic battery.
- [3] On April 3, 2022, seventeen-year-old M.H. “grabbed” his mother’s arm and tried to push her out of their hotel room, causing pain to her elbow and hands. Appellant’s App. Vol. II p. 111. M.H. was arrested, and the juvenile court found there was probable cause to believe that M.H. committed domestic battery. The State filed a delinquency petition, alleging M.H. was a delinquent child for committing what would be Class A misdemeanor domestic battery if M.H. were an adult. An adjudication hearing was scheduled for June 20. M.H. was released to his mother’s custody on electronic monitoring, and they both

agreed to a safety plan. However, M.H. and his mother struggled to follow the safety plan due to their “constant fighting.” Tr. Vol. II p. 96.

[4] On April 18, M.H.’s mother reported she no longer wanted M.H. to reside with her, and a few days later the trial court placed M.H. with his father, who lived in Illinois. In early June, M.H.’s father reported to probation that M.H. was disrespectful and “out of control” and he no longer wanted M.H. to live there. *Id.* at 126. On June 20, M.H. failed to appear for the adjudication hearing, and he was taken into custody and placed in a juvenile-detention center. While at the juvenile-detention center, M.H. admitted to tampering with a drug screen.

[5] The hearing was held on July 18, and the court found M.H. committed domestic battery. The court adjudicated M.H. a delinquent child and ordered he continue to reside at the juvenile-detention center. A few days later, a space became available at a children’s emergency shelter, and M.H. was placed there. While at the shelter, M.H. was discovered with contraband, and employees noted he associated with gangs and had “poor boundaries with female peers.” Appellant’s App. Vol. II p. 126.

[6] A dispositional hearing was held in September. Before the hearing, M.H. participated in a psychological assessment, which found he is “a significant risk to himself and the community.” *Id.* at 133. At the hearing, M.H.’s probation officer recommended his placement in the DOC, citing the psychological assessment. The probation officer also noted that M.H. had been unsuccessfully placed with both parents, he had exhibited concerning behavior while at the

emergency shelter and at the juvenile-detention center, and the “only option” left to ensure he received the therapy and support he needed was placement in the DOC. Tr. Vol. II p. 202.

[7] At the dispositional hearing, the court noted that commitment to the DOC “is part of a rehabilitative model here. It is a work-your-way-out system. So there are programs and opportunities for [M.H.] to get the tools that [he] need[s] so [he] can transition home.” *Id.* at 214. The court also stated it assumed M.H.’s placement in the DOC “will be successful” and “brief.” *Id.* at 224.

[8] The court ordered M.H. committed to the DOC:

Pursuant to I.C. 31-37-19-6, the Court now awards wardship of the Child to the Indiana Department of Correction for housing in any correctional facility for children.

The Court’s Dispositional Order is entered for the following reasons:

1. Community resources have been exhausted that can adequately address the safety concerns for both the Child and the community, and the [DOC] can be an effective rehabilitative technique that the Child cannot receive while in the community. *B.K.C. v. State*, 781 N.E.2d 1157, 1172 (Ind. Ct. App. 2003).
2. The Child’s behavior is dangerous to himself and the community and therefore requires the most restrictive placement available to the Court.

3. Placement at the [DOC] is in the Child's best interest because it will give Child the opportunity for more intensive rehabilitation in a secure setting.

4. The Child has engaged in repetitive or serious misconduct warranting a **determinate** [DOC] commitment.

Appellant's App. Vol. II p. 165 (emphasis added).

[9] About a month later, the court issued an amended dispositional order changing "determinate" to "indeterminate." *Id.* at 18.

[10] M.H. now appeals.

Discussion and Decision

I. Placement in DOC

[11] M.H. contends the juvenile court should not have placed him in the DOC. The disposition of a juvenile adjudicated a delinquent is within the discretion of the juvenile court and is reviewed on appeal for an abuse of discretion. *J.S. v. State*, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008). "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." *Id.* The court has "wide latitude" in dealing with juveniles. *Id.*

[12] The court's discretion is subject to Indiana Code section 31-37-18-6:

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.

The statute favors the least harsh placement only if “consistent with the safety of the community and the best interest of the child.” *J.S.*, 881 N.E.2d at 29. The statute recognizes that a more restrictive placement is sometimes in the best interest of the child. *Id.*

[13] M.H. argues that commitment to the DOC is not the least restrictive and most family-like environment for him. M.H., however, has been given multiple chances at less-restrictive environments. M.H. was placed with his mother—the

victim in his domestic-battery adjudication—until she informed the court that he needed to be placed elsewhere. M.H. was then placed with his father, but soon after his father also reported that M.H. was “out of control” and could no longer live with him. While M.H. was living with his father and on electronic monitoring, he failed to appear for his adjudication hearing and was arrested. After that, he was placed in juvenile detention, where he tampered with a drug screen. At one point, he was released to an emergency shelter for juveniles, but he exhibited concerning behavior including possessing contraband, having associations with gangs, and having poor boundaries with females. Ultimately, M.H.’s probation officer testified that the only option left for him was placement in the DOC.

[14] The juvenile court acted well within its discretion by placing M.H. in the DOC.

II. Amended Dispositional Order

[15] M.H. next argues the juvenile court erred in amending the dispositional order without holding a hearing. M.H. points to Indiana Code section 31-37-22-3(b), which provides that for non-emergency modification of a juvenile’s disposition, “the probation officer shall give notice to the persons affected and the juvenile court shall hold a hearing on the question.” The State responds that no hearing was required because the amended order was not a “modification” of the

dispositional order, but rather a nunc pro tunc entry correcting a clerical mistake.¹ We agree.

[16] A nunc pro tunc entry is defined in law as “an entry made now of something which was actually previously done, to have effect as of the former date.” *Cotton v. State*, 658 N.E.2d 898, 900 (Ind. 1995) (citation omitted). Such an entry may be used to either record an act or event not recorded in the court’s order book or to change or supplement an entry already recorded in the order book. *Id.* Its purpose is “to supply an omission in the record of action really had, but omitted through inadvertence or mistake.” *Id.* (citation omitted).

[17] To correct an error by a nunc pro tunc order, the trial court’s record must show that the unrecorded act or event actually occurred. *Dillon v. State*, 993 N.E.2d 240, 243 (Ind. Ct. App. 2013). Such entries must be based upon written memoranda, notes, or other memorials which must (1) be found in the records of the case; (2) be required by law to be kept; (3) show action taken or orders or rulings made by the court; and (4) exist in the records of the court contemporaneous with or preceding the date of the action described. *Stowers v. State*, 363 N.E.2d 978, 983 (Ind. 1977). “The requirement of a written memorial may be relaxed when a simple correction of a clerical error in the record is sought.” *Id.*

¹ M.H. does not respond to the State’s argument.

- [18] Here, the dispositional order sufficiently supports the court’s nunc pro tunc order. The order states that M.H. is being placed in the DOC pursuant to Indiana Code section 31-37-19-6, which does not permit determinate placements. *See D.C. v. State*, 958 N.E.2d 757, 759 (Ind. 2011) (Indiana Code section 31-37-19-6 provides for “an indeterminate commitment of a delinquent child” and “the DOC determines . . . the duration of the placement”). Furthermore, the statute that does provide for determinate sentences does not apply to M.H. here because his act amounted only to a misdemeanor. *See Ind. Code* § 31-37-19-10(a) (authorizing determinate sentence in the DOC for delinquent child over the age of fourteen if the child committed a certain felony and has two unrelated prior adjudications for acts that would be felonies if committed by an adult). Given that the dispositional order makes clear M.H. is to be placed in the DOC, and Indiana law requires that placement to be indeterminate, this supports the court’s nunc pro tunc entry changing “determinate” to “indeterminate.”
- [19] Additionally, the transcript of the dispositional hearing also supports the nunc pro tunc entry. *See Stowers*, 363 N.E.2d at 978 (holding the transcripts of a guilty plea hearing and a sentencing hearing “form an adequate documentary basis for the nunc pro tunc entry”). The transcript shows no one at the hearing—not probation, the State, the court, or M.H.’s attorney—discussed the possibility of his placement being determinate. To the contrary, the court made clear that the length of the placement depended on M.H.’s behavior, telling him it was a “work-your-way-out” system and his stay could be “brief” if he was successful.

[20] The trial court did not err in amending the dispositional order to reflect that M.H.'s placement in the DOC is indeterminate.

[21] Affirmed.

Tavitas, J., and Foley, J., concur.