

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

T.K.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

December 19, 2023

Court of Appeals Case No.
23A-JV-889

Appeal from the Elkhart Circuit
Court

The Honorable Michael A.
Christofeno, Judge

The Honorable Elizabeth
Bellin, Magistrate

Trial Court Cause No.
20C01-2303-JD-101

Memorandum Decision by Judge Crone
Judges Pyle and Tavitas concur.

Crone, Judge.

Case Summary

- [1] T.K. appeals the trial court's dispositional order placing him with the Indiana Department of Corrections (DOC). He argues that the State failed to explore alternative placement with certain relatives and therefore placement with the DOC constitutes an abuse of discretion. We affirm.

Facts and Procedural History

- [2] Prior to his contacts with the juvenile justice system, T.K. received services through the Indiana Department of Child Services. These services included placement of T.K. and his siblings in foster care placement on several occasions and placement of T.K. at Bashor Children's Home and Campagna Academy between the ages of 9-11 years old.
- [3] Before the underlying case was initiated, T.K. had four prior juvenile adjudications. In June 2021, the State charged then fifteen-year-old T.K. with committing the offense of level 6 felony intimidation if committed by an adult. Also that month, in a separate cause number, the State charged T.K. with the offenses of level 5 felony intimidation, class A misdemeanor domestic battery, class A misdemeanor resisting law enforcement, and class B misdemeanor criminal mischief. In July 2021, T.K. admitted to the charges in both causes, was adjudicated a delinquent child, and placed on formal probation supervision. T.K. was placed at the Elkhart County Juvenile Detention Center (JDC) until the probation department was able to find residential placement to

focus on T.K.'s behavioral and intellectual needs. T.K. was also ordered to complete a psychological evaluation.

[4] In August 2021, T.K. was placed in the care of Gibault Children's Services where he remained for over a year. T.K. completed a psychological evaluation, in which he was diagnosed with oppositional defiant disorder, ADHD, and mild intellectual disability. In October 2022, following a hearing, T.K. was discharged to his mother's care and was to receive Family Centered Treatment services, case management, medication management, and aftercare services through Gibault.

[5] In December 2022, the State charged T.K. with committing the offense of class A misdemeanor domestic battery if committed by an adult, and the trial court ordered him released to his mother's custody. Also that month, the State charged T.K. in a separate cause with committing the offenses of level 5 felony intimidation, class A misdemeanor interference with reporting a crime, and class B misdemeanor criminal mischief if committed by an adult. Following a detention hearing, the trial court placed T.K. at the JDC. On January 5, 2023, T.K. admitted to charges in both causes and was adjudicated a juvenile delinquent. The court ordered T.K. to remain at the JDC pending further placement.

[6] On February 7, 2023, the court held a dispositional hearing. According to the probation officer, T.K.'s mother had reported that T.K.'s uncle in Mississippi was willing to care for T.K. and that there were facilities in Mississippi where

T.K. could get proper treatment. On February 11, the court released T.K. to his mother's care so that she could take him to his uncle in Mississippi. T.K. and his mother drove to Florida where T.K.'s uncle was then currently working. According to T.K.'s mother, T.K. refused his uncle's help. Tr. Vol. 2 at 33. After three days, Mother and T.K. returned to Indiana.

[7] In March 2023, the events underlying the current juvenile adjudication occurred. According to the affidavit in support of warrantless arrest, on March 14, officers were dispatched to T.K.'s residence due to a reported battery. When the officers arrived, T.K. was standing outside the house. He told the officers that "he was not staying at the residence because if he stayed there he was going to hurt or kill somebody." Appellant's App. Vol. 2 at 11. T.K.'s mother reported that she and T.K. had been arguing and when she told T.K. that he was not allowed to leave her care, he went to the kitchen, picked up a knife, pointed it at her, and threatened her with the knife. T.K.'s mother also told the officers that she was five months pregnant and that T.K.'s nine- and twelve-year-old siblings were present in the home during the incident. She also informed the officers that she was concerned for her family's safety. T.K. was arrested and taken to JDC. The State charged T.K. with committing the offense of level 5 felony intimidation with a deadly weapon if committed by an adult.

[8] On March 15, a detention hearing was held. The court found that probable cause existed for level 5 felony intimidation and proceeded to detention considerations. The probation officer testified that she had spoken with T.K.'s mother who did "not want him back." Tr. Vol. 2 at 7. The officer also stated

that mother had “brought up the option of [T.K.] going to live with his father[,]” but mother did not have father’s phone number, so the officer was not able to contact him to appear for the hearing. *Id.* The officer requested that T.K. remain in detention pending further hearing to allow the probation department to look at further options for T.K. because he had already had “extensive services” and the department had “attempted to look at other numerous placements that denied him.” *Id.* The officer testified that she did not believe that T.K. was safe in his home environment or that the community was safe if he were out in the community. She also testified that intensive mental health treatment and other interventions were going to be necessary for T.K. The court concluded that placement with JDC was the safest place for T.K. and the community. The court then ordered T.K. to be detained at the JDC pending the initial hearing.

[9] On March 23, 2023, the initial hearing was held. T.K. admitted that he had committed level 5 felony intimidation with a deadly weapon. He testified that his mother had been trying to enforce her rules, he did not listen to her because he did not like listening, he went to the kitchen, picked up a knife, pointed it at his mother, and threatened her. He also testified, “I was going to stab her. No joke.” *Id.* at 20. During the hearing, T.K. made punching motions directed toward the court. The court accepted T.K.’s admission and adjudicated him a delinquent child.

[10] The parties agreed to immediately proceed with disposition. The probation officer recommended that T.K. be made a ward of the DOC. The officer

explained that in February, the probation department had sought placement for T.K. at eight different state facilities, but he was denied placement due to his level of aggression and his inability to intellectually function with the other youth in their programs. The officer testified that “[t]he circumstances as far as the residential placements remain the same.” *Id.* at 24. In addition, the probation department had contacted the State Hospital, but that facility would consider accepting T.K. only if proof was provided that he would be released from the hospital to a residential program within forty-five days. However, no residential facility was willing to accept T.K. even after forty-five days in the hospital. The officer also testified that placement with DOC would allow T.K. to participate in educational programs, cognitive behavioral therapy, anger management classes, and life skills classes. The probation officer stressed that while T.K. was at JDC he was not getting any help, and that after he participated in the programs offered by DOC, further services could be reevaluated.

[11] T.K.’s mother testified that she loved her son, but he was “completely out of control” and he “refuses” her help. *Id.* at 33. The court found that probation had exhausted every option and that there were “no less restrictive placements available at this time that can adequately address [T.K.’s] needs, the needs of the community, [to] keep him safe, [and to] keep his family safe.” *Id.* at 36. The court concluded the DOC could “provide the necessary mental health and therapy and treatment that [T.K.] needs and also ensure the safety of all

individuals[,]”and that placement at the DOC was in T.K.’s best interest. This appeal ensued.

Discussion and Decision

[12] T.K. challenges his commitment to DOC. The trial “court is accorded wide latitude and great flexibility in its dealings with juveniles.” *M.C. v. State*, 134 N.E.3d 453, 458 (Ind. Ct. App. 2019), *trans. denied* (2020), *cert. denied*. Thus, we will reverse the court’s choice of the specific disposition of a juvenile adjudicated a delinquent child only for an abuse of discretion. *Id.* The “court’s discretion 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.* The trial court abuses its discretion when its “ 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.*

[13] The choice of an appropriate disposition is governed by Indiana Code Section 31-37-18-6, which provides as follows:

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 “states that placement in the least restrictive setting is required only “[i]f consistent with the safety of the community and the best interest of the child.” *R.H. v. State*, 937 N.E.2d 386, 391 (Ind. Ct. App. 2010) (quoting Ind. Code § 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.” *J.S. v. State*, 881 N.E.2d 26, 29 (Ind. Ct. App. 2008).

[14] T.K. contends that making him “a ward of the [DOC] without the Probation Department attempting to locate a relative with whom [T.K.] could live and secure appropriate mental health treatment that he needed was an abuse of the trial court’s discretion.” Appellant’s Br. at 7. Specifically, T.K. argues that the probation department did not try to contact his father or his relatives in Mississippi. However, the probation department attempted to obtain T.K.’s father’s phone number from mother, who did not have it. The preliminary inquiry report lists father’s address as a motel. T.K. had already refused help

from his uncle. The facts and circumstances before the trial court support a reasonable inference that alternative placement with TK.'s father or uncle was not feasible and efforts toward these placements would have been futile.

[15] Most importantly, T.K.'s argument ignores the danger T.K. presents to himself and others. Mother testified that T.K. refused her help and that she believed that he presented a clear danger to her and his siblings. T.K. had four prior juvenile adjudications for aggressive acts. Two of these adjudications occurred within months after he was released from Gibault, where he had been for over a year. T.K. is unable to control his aggressive behavior and requires treatment and services before he causes severe injury to himself or others. The evidence shows that such services can be provided by the DOC. Therefore, commitment to the DOC is in T.K.'s best interest, and we affirm his placement with DOC. *See D.S. v. State*, 829 N.E.2d 1081, 1086 (Ind. Ct. App. 2005) (affirming placement with DOC where child failed to respond to “numerous less restrictive alternatives already afforded to him”); *K.A. v. State*, 775 N.E.2d 382, 387 (Ind. Ct. App. 2002) (affirming placement with DOC where prior placements had proven unsuccessful and child had been given several chances to reform her behavior).

[16] Affirmed.

Pyle, J., and Tavitas, J., concur.