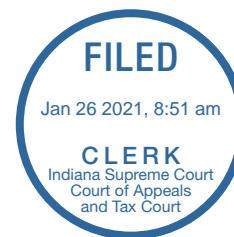


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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N.R.,  
*Appellant-Respondent,*

v.

State of Indiana,  
*Appellee-Petitioner.*

January 26, 2021

Court of Appeals Case No.  
20A-JV-1590

Appeal from the DeKalb Circuit  
Court

The Honorable Kurt Grimm, Judge

Trial Court Cause Nos.  
17C01-1707-JD-30  
17C01-1803-JD-16  
17C01-2002-JD-6

**Baker, Senior Judge.**

## Statement of the Case

- [1] N.R. appeals from the juvenile court’s order placing him in the wardship of the Indiana Department of Correction (“DOC”), contending that the court abused its discretion in so doing. We affirm.

## Issue

- [2] N.R. presents the following issue for our review: whether the juvenile court abused its discretion in not choosing a less restrictive disposition.

## Facts and Procedural History

- [3] The facts most favorable to the juvenile court’s disposition reflect the following. On May 27, 2017, N.R.’s mother called the police because N.R. was “being out of control.” Appellant’s App. Vol. II, p. 16. After arriving and finding N.R. refusing to go to school, the officer ordered N.R. to dress himself for school. N.R. refused and the officer “picked [N.R.] off of [his] bed.” *Id.* at 16. N.R. responded by pushing the officer, forcibly resisting the officer’s attempt to handcuff him. The officer eventually was able to gain control of N.R. That same year, on June 17, N.R. spat on another person’s leg. Next, on July 1<sup>st</sup> of that year, N.R. repeatedly threw rocks at a deaf person, striking this person on the head with one of those rocks. For these above incidents, the State alleged N.R. was a delinquent child in 17C01-1707-JD-30 (“JD-30”).
- [4] While JD-30 was pending, N.R. had been expelled from school for having “over a 3 ½ inch knife in his backpack.” *Id.* at 56. His mother reported to a

therapist at that time that she “didn’t know if she [could] handle [him] being home all day.” *Id.* In February 2018 N.R. pushed his mother to the ground, and his mother received an eviction notice precipitated by N.R. igniting a fire with a lighter and an aerosol can.

[5] N.R. admitted in JD-30 to committing resisting law enforcement and criminal recklessness. However, prior to the disposition on that admission, N.R. was with a friend on March 20<sup>th</sup> and the two stole \$1,300 and a .380 caliber handgun from the friend’s father’s closet. They gave the money to an adult to buy ammunition for the gun and two mini bikes. They then shot at geese and a house. After that crime was reported, N.R. admitted to the theft to police, and his friend told the police that, the night prior to the theft, N.R. “attempted to break into 30 vehicles,” taking items from three of them. Appellant’s App. Vol. III, pp. 12-13. This additional conduct led to the filing of the delinquency petition under 17C01-1803-JD-16 (“JD-16”).

[6] JD-30 and JD-16 were consolidated for disposition with N.R. admitting to the commission of resisting law enforcement, criminal recklessness, and theft. The juvenile court ordered a suspended commitment to the DOC and placed N.R. at the Youth Opportunity Center, a residential treatment facility. After approximately one month at the placement, the State filed a motion for immediate emergency detention and a request to modify N.R.’s placement. The State alleged that N.R.’s behavior at the Youth Opportunity Center was “so uncooperative, disruptive, and disrespectful that said facility [had] requested his removal immediately.” Appellant’s App. Vol. II, p. 73. The

juvenile court granted the modification and ordered the placement of N.R. at Wernle Youth and Family Treatment Center, another residential treatment facility. The juvenile court expressly found that N.R.'s mother was "unable to keep him safe." *Id.* at 93.

[7] Two months after being placed at Wernle, N.R. ran away from the treatment center. He threatened to do so again the next day, stating to Wernle staff that "he had fun when he ran away." *Id.* at 104. In January 2019, N.R. and another resident ran away from the facility and went to Walmart where they shoplifted some items. That same month, N.R. intentionally tripped another resident, intimidated staff, and had to be restrained after he "went after" another resident who he had called a "fat hoe." *Id.* at 128.

[8] During the course of several months that followed, N.R. continued to misbehave at Wernle. His conduct included targeting other peers, inciting other residents to fight him, punching windows, hitting another resident with a branch from a thorn bush, breaking a door handle, threatening staff, punching his own nose until it bled, spitting blood on staff, stealing from a staff member's backpack, and hitting another resident in the face causing the resident's glasses to fall off. In April 2019, N.R. and two other residents scaled the wall of one of the facilities' buildings and "proceeded to destroy property on the roof, laughing about it the entire time." *Id.* at 150. The staff nurse attempted to persuade N.R. and the others to come down, but N.R. "took debris from the roof and threw it at her." *Id.* A team leader attempted to persuade the boys to

come down, but the boys responded by throwing a rock, striking the team leader on the head. N.R. eventually came down from the roof.

[9] By August 2019, N.R. started to show improvement which continued for several months. N.R. was removed from Wernle, was placed on probation, and was returned to his mother's care in October that same year. Then in December, while at school, N.R. hit another student in the face at least six times. When asked why he hit the other student so many times, N.R. responded, "because he wasn't bleeding and I wanted to hurt him." *Id.* at 211. The student was taken to the hospital where he was diagnosed with a broken nose and a concussion. This conduct led to the delinquency petition filed in 17C01-2002-JD-6 ("JD-6").

[10] During the time period between December 2019 and the disposition of JD-6 in July 2020, N.R. continued to misbehave. A services provider found him "incredibly resistant," and he "verbally insulted and fought with his mother several times, to the point of police being called." *Id.* at 188, 190. While in his mother's care, N.R. threw a game controller into a wall causing a dent in the wall and used his mother's cell phone to impersonate her to a family services worker. Despite N.R.'s behavior toward his mother, she remained "extremely enabling and wants [N.R.] to like and appreciate her," and "still gives [N.R.] privileges, and [allows] him to leave home against his probation officer's direction." *Id.* at 190.

[11] In a letter accompanying the motion for immediate detention and modification of probation in JD-16 and JD-30, N.R.'s probation officer informed the trial court that "all services [had been] exhausted," and that the probation officer would have recommended that N.R. be ordered into detention much sooner but for the emergency court procedures in place due to the COVID-19 pandemic. *Id.* at 217-18. N.R.'s probation officer also informed the court that N.R.'s father, who did not live with N.R. and N.R.'s mother, refused to allow N.R. to live with him because he "had too many people living" with him. *Id.* at 217.

[12] At the June 30, 2020 hearing, the juvenile court addressed the status of JD-16, JD-30, JD-6, and a fourth petition—alleging battery resulting in bodily injury, intimidation, theft, criminal mischief, and criminal trespass. N.R.'s probation officer, Kelly Mattes, testified that N.R. was not attending the Change Academy because he was ill, but N.R. was nonetheless going out of the house despite the lockdown due to the pandemic. Mattes further reported that N.R.'s behavior was "getting increasingly more violent," and that he could not be controlled by his mother. Tr. p. 11. N.R.'s father also testified at the hearing, stating that it might be possible for N.R. to live with him, but that he could not ensure adult supervision during the twelve hours per day he was at work. An unspecified person was identified as a possibility for adult supervision, however, the juvenile court found that the possibility was not realistic though the court wished that it could be so. N.R. was ordered to be detained pending the dispositional hearing due to his "increasing and escalating behaviors." *Id.* at 21.

[13] A dispositional hearing was held at which Mattes testified, related the history of her supervision of N.R., and recommended that N.R. be placed under the wardship of the DOC. Mattes testified that any option involving N.R. remaining at home was not possible “because giving him at home isn’t working.” *Id.* at 42. N.R.’s father testified that he could not provide an option where N.R. would be supervised while he was working. When speaking to N.R., the juvenile court informed him that living with N.R.’s father was not feasible, and that the court “never wanted to get to this point.” *Id.* at 57. The trial court also rejected the option of electronic monitoring in N.R.’s mother’s home stating, “I don’t believe for (1) minute that you would change your behavior if I put a bracelet on you and send you back to your mother’s house. She, she has never been able to be successful with you and there is absolutely nothing about putting something around your ankle that would change things.” *Id.* at 58. The juvenile court found that it had no other option but to order N.R. to be placed under the wardship of the DOC. N.R. now appeals.

## Discussion and Decision

[14] Once a juvenile court determines a child is a delinquent, the court must hold a dispositional hearing to consider, among other topics, “[a]lternatives for the care, treatment, rehabilitation, or placement of the child.” Ind. Code §31-37-18-1 (1997). In deciding where a child should be placed, the court must consider the following:

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 (1997). Quite literally, the statute requires the juvenile court to select the least restrictive placement in most situations; however, the statute also permits a court to impose a more restrictive placement under certain circumstances. *J.S. v. State*, 881 N.E.2d 26, 28-29 (Ind. Ct. App. 2008).

[15] Subject to these statutory considerations, we review the trial court's choice of disposition for an abuse of discretion. *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006). 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 deductions to be drawn therefrom. *D.B. v. State*, 842 N.E.2d 399, 404-05 (Ind. Ct. App. 2006).



- [16] The juvenile court chose a more restrictive placement in ordering N.R. to be under the wardship of the DOC, and N.R. argues the evidence does not support that decision. More specifically, he contends that the trial court abused its discretion by failing to allow him to be placed in his mother's home under electronic monitoring. We disagree.
- [17] The record is replete with instances of N.R.'s continued and escalating misconduct while under supervision in less restrictive placements. The juvenile court noted while issuing its dispositional order that it had exhausted all other options less restrictive than wardship to the DOC. Within a month of N.R.'s first residential placement, his behavior was so unruly and disrespectful that the facility asked for his immediate removal. Next, he was placed at Wernle where his stay was filled with violent outbursts, multiple batteries on other residents, and throwing rocks at staff members from a roof. N.R. also escaped from Wernle multiple times, committing thefts while on the lam.
- [18] Though N.R.'s behavior improved to the point that he was discharged from Wernle and was returned to the care of his mother, he resumed his delinquent behavior. N.R. fought with his mother, broke COVID-19 lockdown orders while he was ill, disregarded services provided to him, and broke a classmate's nose.
- [19] N.R. argues that electronic monitoring while placed in his mother's home is a more appropriate placement and that the court abused its discretion by not so ordering. The record reflects, however, that the court examined numerous

options from potential placement in N.R.'s father's home, which was not feasible, to electronic monitoring at N.R.'s mother's home, which was not an option given mother's inability to control and properly discipline N.R. and her enabling behavior. N.R. asks us to find that the juvenile court's decision was clearly erroneous because N.R.'s successful completion of the program at Wernle supports the option of electronic monitoring in his mother's home. N.R.'s small period of improved behavior at Wernle was bracketed by increasingly violent, disruptive, and delinquent behavior both in and out of a secure facility. There is ample evidence to support the juvenile court's dispositional order. We find no abuse of discretion here.

## Conclusion

[20] For the foregoing reasons, we affirm the juvenile court's dispositional order.

[21] Affirmed.

Vaidik, J., and Pyle, J., concur.