

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

T.C.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

June 6, 2023

Court of Appeals Case No.
23A-JV-81

Appeal from the Kosciusko
Superior Court

The Honorable Christopher D.
Kehler, Judge

Trial Court Cause No.
43D01-2001-JD-7

Memorandum Decision by Judge Weissmann
Judges Bailey and Brown concur.

Weissmann, Judge.

- [1] Just before his 14th birthday, T.C. was adjudicated a delinquent for acts that would be theft and intimidation if committed by an adult. The juvenile court initially placed T.C. on formal probation, but over the next 2½ years, the court progressively modified his disposition to more restrictive placements. When T.C. tested positive for methamphetamine, the court placed him in an unsecure facility for drug treatment. When T.C. ran away from the unsecure facility, the court placed him in a secure facility to continue his treatment. And when T.C. tested positive for fentanyl while in the secure facility, the court placed him in the Indiana Department of Correction (DOC). T.C. appeals this final placement, claiming he received inadequate notice of the proceedings in violation of his due process rights. He also claims the juvenile court abused its discretion in committing him to the DOC rather than returning him to a less restrictive placement. We affirm.

Facts

- [2] At age 13, T.C. stole oxycodone pills from his grandmother's house and threatened to shoot another child over a dispute about a girl. The State filed a delinquency petition alleging T.C. committed acts that would be theft and intimidation, both Class A misdemeanors, if committed by an adult. In March 2020, just before T.C.'s 14th birthday, he admitted to the allegations of the State's petition and was adjudicated a delinquent. After a dispositional hearing, the juvenile court ordered T.C. to spend one weekend in juvenile detention, followed by formal probation until he turns 18 years old.

- [3] In late April 2020, the State filed its first petition to modify the juvenile court’s dispositional order, alleging separate incidents in which T.C. ran away from home, was caught with a glass smoking pipe containing burnt marijuana, and became violent with his stepdad over a dispute about the family dogs. After a modification hearing, the juvenile court modified its dispositional order to require T.C. to participate in “Family Centered Therapy.” Appellant’s App. Vol. II, p. 91. The juvenile court again modified its dispositional order in September 2020, this time requiring T.C. to reside in a kinship placement.¹
- [4] At a disposition review hearing in early March 2021, the State presented evidence that T.C. and another student had fought at school over T.C.’s “weed stash.” Tr. Vol. II, p. 18. T.C. also admitted to using marijuana. After the hearing, the juvenile court continued T.C. on probation.
- [5] In late March 2021, the State filed its second petition to modify the juvenile court’s dispositional order, alleging that T.C. tested positive for methamphetamine on one occasion and admitted to using marijuana on another. The State also alleged that T.C.’s kinship placement had failed. After a modification hearing, the juvenile court modified its dispositional order and

¹ The reason for the kinship placement is not clear. The record includes neither the transcript of the September 2020 modification hearing nor the “information” the State filed before the hearing. Appellant’s App. Vol. II, p. 92. We note, however, that the Indiana Department of Child Services filed a petition alleging T.C. was a child in need of services in October 2020.

placed T.C. at White's Residential Facility for drug treatment while on electronic monitoring.

[6] In April 2021, the State filed its third petition to modify the juvenile court's dispositional order, alleging that T.C. cut off his electronic monitoring device and fled White's Residential Facility. After a modification hearing, the juvenile court modified its dispositional order and placed T.C. in the secure unit at Bashor Children's Home (BCH) for continued drug treatment.

[7] In February 2022, the State filed its fourth petition to modify the juvenile court's dispositional order, alleging that T.C. tested positive for fentanyl while in the secure unit at BCH. The probation department recommended that T.C. be committed to the DOC until he completed an intensive substance abuse program. But after a modification hearing, the juvenile court denied the State's modification request and continued T.C.'s placement at BCH.

[8] At a disposition review hearing in September 2022, the State presented evidence that T.C. progressed in his treatment at BCH, was moved to an unsecure unit, and was given passes to leave the facility for family visits. But T.C. was returned to the secure unit after testing positive for methamphetamine and threatening to run away from BCH. The State also presented evidence that the DOC was the only residential placement more secure than the secure unit at BCH, in which T.C. had tested positive for fentanyl.

[9] After the review hearing, the juvenile court modified its dispositional order and granted wardship of T.C. to the DOC.

Discussion and Decision

- [10] T.C. challenges his commitment to the DOC, alleging his due process rights were violated and the juvenile court abused its discretion. Finding T.C.'s due process claims waived and no abuse of discretion, we affirm.

I. Waived Due Process Claim

- [11] The Due Process Clause of the Fourteenth Amendment to the United States Constitution generally applies to juveniles alleged to be delinquent children. *In re Gault*, 387 U.S. 1, 30 (1967). The standard for determining what due process requires in a particular juvenile proceeding is “fundamental fairness.” *K.S. v. State*, 114 N.E.3d 849, 853 (Ind. Ct. App. 2018). Whether a juvenile’s due process rights were violated is a question of law that we review de novo. *A.M. v. State*, 134 N.E.3d 361, 365 (Ind. 2019).
- [12] T.C. claims he was denied due process because “[n]o notice was given of the modification portion of the [periodic review] hearing and no predispositional report was filed.” Appellant’s Br., p. 11. But T.C. did not raise these claims in the juvenile court; thus, he has waived them for appeal. *See Pigg v. State*, 929 N.E.2d 799, 803 (Ind. Ct. App. 2010) (noting due process rights generally are waived if raised for the first time on appeal); *see also McBride v. Monroe Cnty. Off. Fam. & Child.*, 798 N.E.2d 185, 194 (Ind. Ct. App. 2004) (finding due process claim waived when raised for first time on appeal).
- [13] Moreover, it is undisputed that T.C. received notice of the periodic review hearing, and he cites no authority for his claim that additional notice was

required. *But see generally* Ind. Code § 31-37-20-2 (requiring juvenile court to “determine whether the dispositional decree should be modified” at periodic review hearing). Likewise, it is undisputed that the probation department filed various progress report documents before the periodic review hearing.

Appellee’s App. Vol. II, pp. 1-174. T.C. does not articulate how these filings were deficient. *See generally* Ind. Code § 31-37-21-1(a) (requiring probation department to “prepare a report on the progress made in implementing the dispositional decree” before periodic review hearing).

II. No Abuse of Discretion

[14] The disposition of a juvenile adjudicated a delinquent is a matter committed to the trial court’s discretion, subject to the statutory considerations of the child’s welfare, community safety, and the policy favoring the least harsh disposition. *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010). We review the trial court’s disposition for an abuse of discretion, which occurs if its decision is clearly against the logic and effect of the facts and circumstances before it or the reasonable inferences that may be drawn therefrom. *Id.* In determining whether a trial court has abused its discretion, we neither reweigh evidence nor judge witness credibility. *J.S. v. State*, 110 N.E.3d 1173, 1175 (Ind. Ct. App. 2018).

[15] “The nature of the juvenile process is rehabilitation and aid to the juvenile to direct his behavior so that he will not later become a criminal.” *Jordan v. State*, 512 N.E.2d 407, 408 (Ind. 1987). “For this reason the statutory scheme of dealing with minors is vastly different than that directed to an adult who

commits a crime.” *Id.* Juvenile courts have a variety of placement options for children with delinquency problems. *Id.* But, “[i]f consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that . . . [is] in the least restrictive (most family like) and most appropriate setting available. Ind. Code § 31-37-18-6(1)(A).

[16] T.C. claims BCH—not the DOC—is the least restrictive disposition consistent with his best interest and the community’s safety. But T.C. ignores that he repeatedly tested positive for methamphetamine while at BCH and even tested positive for fentanyl while in BCH’s secure unit. The juvenile court was under no obligation to repeat this failed strategy before placing T.C. in the DOC. Indeed, “in certain situations the best interest of the child is better served by a more restrictive placement.” *M.C. v. State*, 134 N.E.3d 453, 459 (Ind. Ct. App. 2019). The juvenile court did not abuse its discretion.

[17] T.C. also complains that the juvenile court made no findings of fact in support of its modification decision. However, the court specifically found in its order on review hearing: “Respondent child has tested positive for illegal substances while out on passes from Bashor Children’s Home.” Appellant’s App. Vol. II, p. 196. And during the review hearing, the juvenile court explained to T.C.:

I don’t trust you. You have shown by your actions, by your decisions, that you are not worthy at this time of trust. Messing with fentanyl is very dangerous. Exposing other individuals at the Bashor home to drugs including, but not limited to, fentanyl is very dangerous. It is a liability for them to have someone in their home who[m] they can’t trust.

You don't leave me in a good choice. Bashor would love to take you back[,] but they can't trust ya. They can't do more for you at that facility. Your guardians would love to take you in[,] but I think you're wily enough, you're sneaky enough, your history and your actions convince me that you could sneak around if you wanted and your actions show that you do. So, I'm going to accept the department's recommendation; transfer you to Boys' School.

Tr. Vol. II, pp. 87-88. The juvenile court adequately articulated its reasoning for committing T.C. to the DOC.

[18] We affirm the juvenile court's judgment.

Bailey, J., and Brown, J., concur.