

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

D.J.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

May 18, 2021

Court of Appeals Case No.
20A-JV-2085

Appeal from the Clark Circuit
Court

The Honorable Vicki Carmichael,
Judge

Trial Court Cause Nos.
10C04-1912-JD-283
10C04-2004-JD-58
10C04-2008-JD-99

Weissmann, Judge.

[1] While on probation for twice battering his father, fifteen-year-old D.J. pointed a loaded handgun at his father and threatened to shoot him in the head. D.J. was adjudicated a delinquent, and the juvenile court ordered that he be removed from his father's home and placed in a residential treatment facility. D.J. now appeals this disposition, arguing that the juvenile court abused its discretion by not placing him in his mother's home. He specifically claims the court erred in concluding his mother could not meet his rehabilitative needs. Finding the juvenile court's conclusion is supported by the record, we affirm.

Facts

[2] Between December 2019 and August 2020, D.J. committed three increasingly violent acts against his father. The first occurred during an argument over laundry and video games. D.J. shoved and swatted at his father while trying to force his way into his father's bedroom. Police were called, and the State filed a petition for delinquency, alleging D.J. had committed battery, a Class B misdemeanor if committed by an adult. The petition was taken under advisement on the condition that D.J. attend counseling.

[3] Four months later, D.J. told his father he would "f***ing knock [him] out" when he tried to break up an argument between D.J. and his younger sister. App. Vol. II, p. 236. D.J. then got in his father's face, shoved him, and placed him in a choke hold before taking him to the ground. Again, police were called. And again, the State filed a petition for delinquency, this time alleging D.J. had committed domestic battery, a Class A misdemeanor if committed by an adult.

- [4] At a hearing on the State’s first and second delinquency petitions, D.J. admitted to both battery allegations, and the juvenile court adjudicated him a delinquent. Pursuant to a plea agreement with the State, the court placed D.J. on probation for one year and ordered him to participate in in-home therapy.
- [5] D.J. committed his third violent act against his father just two days later. On August 12, 2020, at approximately 2:00 a.m., D.J.’s father and stepmother were awakened by D.J. playing loud music in his bedroom. Both asked D.J. to turn the volume down, but he refused. Eventually, D.J. became aggressive, shoving his father and calling him “derogatory names.” App. Vol. III, p. 191. D.J. then pointed a handgun at his father and said he “had eight hollow point bullets for him” and was going to “blow [his] brains out,” “blow his f***ing head off,” and “have a hit put on the house.” *Id.* at 191-92.
- [6] After threatening to shoot his father, D.J. left the house for five to ten minutes. Police later found a handgun underneath a neighbor’s shed. The gun was “loaded with a round chambered” and had been reported stolen by its owner. *Id.* at 193. D.J. ultimately admitted to stealing the gun and confirmed there was a bullet in the gun’s chamber when he aimed it at his father. Tr. Vol. II, p. 41.
- [7] The State filed a third delinquency petition, alleging D.J. had committed intimidation and theft of a firearm, both Level 5 felonies if committed by an adult; dangerous possession of a firearm, a Class A misdemeanor if committed by an adult; and battery, a Class B misdemeanor if committed by an adult. The

State also moved to modify D.J.'s prior dispositional decree, alleging he had violated the terms of his probation.

- [8] D.J. entered into a plea agreement with the State, pursuant to which he admitted to intimidation, dangerous possession of a firearm, battery, and probation violation. Following a dispositional hearing, the juvenile court ordered D.J. removed from father's home and placed at Childplace, a residential treatment facility. D.J. appeals this disposition.

Discussion and Decision

- [9] D.J. argues that the juvenile court erred by placing him at a residential treatment facility rather than his mother's home. 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).

- [10] "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 Indiana Code § 31-37-18-6 requires a court to consider the following factors 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.

[11] The juvenile court’s dispositional decree for D.J. states, in pertinent part: “The juvenile’s rehabilitative needs cannot be met in the homes of his parents or in a home-like environment due to his need for constant supervision, structure, and intervention.” App. Vol. IV, p. 63. D.J. claims this conclusion is not supported by the record. We disagree.

[12] In the span of eight months, D.J. went from shoving his father to placing him in a choke hold to pointing a loaded handgun at his head. And the latter act occurred just two days after D.J. was placed on probation for the others. D.J. also admitted to having behavioral problems at school, including repeated acts of disruption, defiance, and verbal aggression. Tr. Vol. II, pp. 96-97; App. Vol. III, pp. 47-61. At the time of his dispositional hearing, D.J.'s school was considering expelling D.J. "due to concerns that he poses too great a risk to the physical safety of others." App. Vol. III, p. 37.

[13] Given the sharp escalation in D.J.'s violent behavior, his clinical social worker, Ashley Emmitt, assessed D.J. as requiring a "highly structured environment with constant supervision, intervention, security, mental health services, and substance abuse services." *Id.* at 40. Emmitt further advised that D.J.'s rehabilitative needs "cannot be met in the home or [a] home-like environment." *Id.* at 41.

[14] D.J. also received a psychological assessment. According to the psychological report submitted to the juvenile court:

Placement in a therapeutic residential setting should be strongly considered. This will offer the best opportunity for this youth to work through his psychological and addiction issues. [D.J.] will require a very structured environment with good oversight and healthy boundaries and rules as he navigates treatment for substance abuse issues. It will be critical that he be in an environment that will offer him no access to drugs and that will not re-traumatize him. It appears that residential treatment will offer such an environment.

App. Vol. IV, p. 41.

- [15] Ultimately, D.J.'s probation officer recommended that D.J. be placed at Childplace, a highly structured group home that provides twenty-four-hour supervision, constant redirection, and on-site mental health services. Tr. Vol. II, pp. 80, 85. The Department of Child Services and D.J.'s father both agreed with this recommendation. Only D.J. and his mother did not.
- [16] D.J.'s mother testified that her home could provide the stability D.J. needs while he receives outpatient treatment. *Id.* at 56-58. Concluding otherwise, however, was not clearly against the logic and effect of the facts and circumstances before the juvenile court. As the court explained to D.J.'s mother at the dispositional hearing: "The approach at Childplace will be much different than simply out-patient counseling and therapy. [D.J.] needs more services than that, they will provide some wraparound services that include a lot of other things besides just individual therapy." *Id.* at 118.
- [17] The trial court did not abuse its discretion in determining residential placement was the least restrictive means to meet D.J.'s needs while also preserving community safety. The judgment of the juvenile court is affirmed.

Kirsch, J., and Altice, J., concur.