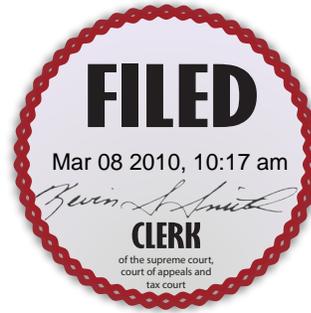


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

MICHELLE LAUX
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KATHY BRADLEY
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

J.D.S.,)
)
Appellant-Defendant,)
)
vs.) No. 71A04-0910-JV-613
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
Cause No. 71J01-0512-JS-110

March 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

J.S. appeals her continued placement in the Indiana Department of Correction (“DOC”). We affirm and remand.

Issue

J.S. raises one issue, which we restate as whether the trial court properly continued her placement in the DOC following the modification of a dispositional decree.

Facts

In 2006, thirteen-year-old J.S. admitted to being truant and was placed on probation. J.S. continued to miss school, and from 2006 until 2009, various attempts were made to secure her attendance at school. She was placed in residential facilities, foster care, and the DOC. In January 2009, J.S. ran away from her foster home, and she was placed in a residential facility.

On May 20, 2009, J.S. ran away from the residential facility and failed to attend school. On May 26, 2009, J.S. was placed in the DOC. On August 18, 2009, the trial court conducted a status review hearing and ordered J.S. to remain in the DOC and complete a GED program. The trial court found:

It is in the best interests of the child to be removed from the home environment and remaining in the home would be contrary to the health and welfare of the child because: [J.S.] while in Foster Care was doing at risk activities such as using drugs, not attending school, being disrespectful to her Foster Family, and running away. While in placement at JJC Residential she ran away [sic]. While on the run [J.S.] was assaulted and has visible marks on her body. She admits to having used marijuana while on the run. The behaviors [J.S.] has displays [sic] continues to put herself and the community at risk.

App. pp. 11-12. The trial court scheduled another status review hearing for November 11, 2008. J.S. now appeals.

Analysis

J.S. argues that the trial court improperly continued her placement in the DOC. “The disposition of a child adjudicated to be delinquent is generally left to the discretion of the trial court.” J.B. v. State, 849 N.E.2d 714, 717 (Ind. Ct. App. 2006). That discretion, however, is subject to the statutory considerations of the child’s welfare, the community’s safety, and the policy of favoring the least-harsh disposition. Id.

Indiana Code Section 31-37-18-6 provides:

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 indicates that under certain circumstances a more restrictive placement might be appropriate. D.B. v. State, 842 N.E.2d 399, 405 (Ind. Ct. App. 2006) Placement in the least restrictive setting is required only if such a placement is consistent with the safety of the community and the best interest of the child. Id.

J.S. argues that the placement in the DOC, either in Indianapolis or a new facility in Madison, was not the least restrictive placement and that it was not close to her home in Mishawaka. Assuming that Indiana Code Section 31-37-18-6 applies to the 2009 modification of the 2006 dispositional decree, we note that J.S. has been offered several less restrictive placements closer to her home and she has not successfully participated in them. J.S. has not established that a less restrictive placement is appropriate under these circumstances.

J.S. also argues that her placement in the DOC is punitive in nature because, at the time of the August hearing, no educational services were being provided to her.¹ It appears that educational services at the Indianapolis Juvenile Correctional Facility were stopped in July 2009, and were scheduled to resume after the entire population was moved to another facility in Madison. Although we are troubled by even a temporary failure to provide educational services to children placed in the DOC, we cannot say that the temporary suspension of educational services, pending relocation to a new facility, rendered J.S.'s placement in the DOC punitive.

¹ This argument is based on a report from the DOC that does not appear to have been offered into evidence at the hearing. However, at the hearing, the State conceded that no educational services would be provided at the Indianapolis Juvenile Correctional Facility from August 14, 2009, until October 14, 2009.

J.S. also claims that, by failing to provide educational services, the State violated the Compulsory School Attendance law. See Ind. Code 20-33-2. She also contends that she was improperly housed with children found to be delinquent under other provisions of the juvenile delinquency code. See Ind. Code. § 31-37-22-7 (describing placement options for the modification of a dispositional decree for running away or not attending school). J.S., however, did not raise these issues to the trial court, and they are waived. See Hoagland v. Town of Clear Lake Bd. of Zoning Appeals, 871 N.E.2d 376, 380 n.3 (Ind. Ct. App. 2007) (waiving an issue where party did not raise it to the trial court).

We understand that J.S. has literally run the trial court out of less restrictive options by her conduct. We also think it incomprehensible that a State facility for delinquent children offers no educational component. It is counterintuitive that J.S. be “educated” at a place that, in the long term, offers no education services. Thus, although the trial court did not abuse its discretion by continuing J.S.’s placement in the DOC, we remand for the trial court to determine whether J.S. is still placed in the DOC and, if she is, to determine whether she is receiving educational services. If the DOC is not providing educational services, the trial court should not indefinitely continue J.S.’s placement there until she completes a GED program because it would be impossible for her to do so.

Conclusion

The trial court did not abuse its discretion by continuing J.S.’s placement with the DOC. We remand, however, for the to trial court to determine whether J.S. is receiving educational services. We affirm and remand.

Affirmed and remanded.

MATHIAS, J., and BROWN, J., concur.