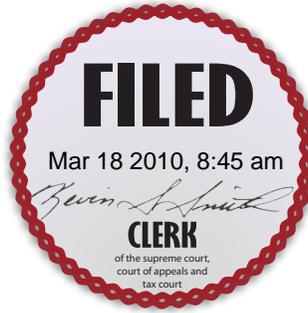


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

ELIZABETH HARDTKE
South Bend, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

J.L.M.,)
)
Appellant/Respondent,)
)
vs.) No. 71A04-0912-JV-684
)
STATE OF INDIANA,)
)
Appellee/Petitioner.)

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
Cause No. 71J01-0909-JD-577

March 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

On appeal, Appellant/Respondent J.L.M. challenges her placement in the Department of Correction (“DOC”) following the probate court’s¹ determination that she is a delinquent child. Specifically, J.L.M. claims that the juvenile court abused its discretion by placing her with the DOC because a less restrictive placement was available. Concluding that the juvenile court did not abuse its discretion, we affirm.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the adjudication reveal that on the afternoon of September 9, 2009, J.L.M., who at the time was fifteen years of age, walked out of one of her classes at Washington High School in South Bend for no apparent reason. J.L.M. became very belligerent when approached by the school principal. The principal attempted to convince J.L.M. to return to class. J.L.M. refused to return to class, attempted to pull away from the principal, and, before being subdued and taken to the school office by school security, tried to fight with the principal. J.L.M. indicated that she believed that her actions were justified because the principal, who she claimed touched her, should have let her walk away.

On September 17, 2009, the State filed a delinquency petition alleging that J.L.M. had committed what would have constituted Class B misdemeanor Disorderly Conduct if she were an adult. J.L.M. admitted the allegation, and the State agreed to abide by the dispositional recommendation of the Probation Department. The Probation Department filed a Pre-Dispositional Report on October 15, 2009, in which it recommended that J.L.M. “be

¹ The St. Joseph County Probate Court has jurisdiction over all juvenile matters. *See* <http://www.stjosephcountyindiana.com/departments/Courts/WhatProbateCourt.htm> (last visited March 2, 2010). We will hereinafter refer to the probate court as the juvenile court.

awarded to the care and custody of the [DOC] for placement at an appropriate facility.”

Appellant’s App. p. 13.

On October 20, 2009, the juvenile court conducted a dispositional hearing at which J.L.M. introduced a letter from a child therapist who had worked with J.L.M. In this letter, the therapist conveyed her belief that J.L.M. was in need of treatment rather than punishment. The juvenile court considered this letter but ultimately determined that the appropriate disposition was to follow the recommendation of the Probation Department, finding as follows:

Reasonable efforts were made to prevent or eliminate the need for removal, including: [J.L.M.] has been in therapy for a long time, and she also has been placed at the [DOC] in another case prior to this incident. [J.L.M.] is also currently on Probation and was just let out of detention less than 24 hours prior to this incident.

These efforts did not prevent removal of the child because [J.L.M.] continues to runaway and commit delinquent offenses.

These efforts were reasonable because: [J.L.M.] was receiving services that were keeping her in the home.

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.L.M.] is not obeying her mother’s rules and curfew and is staying away from home late at night which is placing herself and the community at risk of harm.

The court has investigated or has made provisions for the delivery of the most appropriate services from those available to prevent the child’s placement out of the child’s home or to reunify the child and family.

Said child is in need of supervision, care, treatment and services which are NOT available in the local community.

The child is in need of services beyond those which can be provided through probation services.

There is no available person or facility in St. Joseph County Indiana which can provide the child with the necessary services.

Suitable relative placement was explored and could not be found.

Said child should be removed from the home because continuation in the home would not be in the best interest of the child.

The St. Joseph County Probation Department has the responsibility for placement and the care of the child.

This Dispositional Order is consistent with the safety and the best interest of the child and is the least restrictive and most appropriate setting available close to the parent's home, least interferes with the family's autonomy, is least disruptive of family life, imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

The Court further finds its Disposition is the least restrictive alternative to insure the child's welfare and rehabilitation and the safety and welfare of the community.

Appellant's App. pp. 15-16. In light of these findings, the juvenile court issued the following dispositional order:

Pursuant to IC 31-37-19-6 the Court now awards wardship of the child to the Indiana [DOC] for housing in any correctional facility for children or any community-based correctional facility for children....

The Court's Dispositional Order is entered for the following reasons:

The child has failed to abide by Court ordered terms of probation.

The present offense is serious in nature warranting placement in a secure facility.

The child's past history of delinquent acts, even though less serious, warrants placement in a secure facility.

Lesser restrictive means of controlling the child's behavior have been investigated or tried.

Furthermore, the child's right to personal freedom is outweighed by the community's right to protection.

Appellant's App. pp. 16-17. This appeal follows.

DISCUSSION AND DECISION

When a person under the age of eighteen commits an act that would be an offense if committed by an adult, the person is adjudicated a "delinquent child." Upon finding that a child is delinquent, the juvenile court enters a dispositional decree providing for the placement of the child and other sanctions and treatment. Dispositional decrees are intended to promote rehabilitation.

R.J.G. v. State, 902 N.E.2d 804, 806 (Ind. 2009) (internal citations omitted).

Here, the juvenile court entered a dispositional decree ordering that J.L.M. be placed in a DOC facility for children. J.L.M. contends that the juvenile court abused its discretion by placing her with the DOC because it is not the least restrictive placement option. Specifically, J.L.M. argues that her placement does not comply with Indiana Code section 31-37-18-6 (2009) because the juvenile court failed to take into consideration her special needs relating to her mental health issues and her need for treatment as opposed to punishment.

In determining whether the juvenile court properly placed J.L.M. with the DOC, we note that “the choice of the specific disposition of a juvenile adjudicated a delinquent child is a matter within the sound discretion of the juvenile court and will only be reversed if there has been an abuse of that discretion.” *J.S. v. State*, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008).

The juvenile 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. 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 inferences that can be drawn therefrom. Hence, the juvenile court is accorded wide latitude and great flexibility in its dealings with juveniles.

Id. (internal citations omitted).

Indiana Code section 31-37-18-6 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.

Without question, Indiana Code section 31-37-18-6 requires the juvenile court to select the least restrictive placement in appropriate situations. However, Indiana Code section 31-37-18-6 “contains language that reveals that a more restrictive placement might be appropriate under certain circumstances.” *J.S.*, 881 N.E.2d at 29. “That is, [Indiana Code section 31-37-18-6] requires placement in the least restrictive setting only ‘[i]f consistent with the safety of the community and the best interest of the child.’” *Id.* (quoting I.C. § 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.” *Id.* (citing *K.A. v. State*, 775 N.E.2d 382, 387 (Ind. Ct. App. 2002)).

Here, J.L.M. exhibited escalating danger to both herself and the public at large. While it is undisputed that J.L.M. suffers from serious mental issues and has been receiving treatment for these mental issues since she was five years old, the record indicates that J.L.M. has exhibited a history of both verbal and physical abuse against her peers. In fact, the instant proceedings resulted from J.L.M.'s attempted fight with her high school principal less than twenty-four hours after her release from a prior placement in the DOC. In addition, J.L.M., who was fifteen years old when she committed the instant delinquent act, is sexually promiscuous, having had sexual intercourse with at least seven different partners in the past six months. Also, J.L.M. has previously “cut” herself and has made at least one failed

suicide attempt. J.L.M. shows no empathy for her victims and is reluctant to accept responsibility for her actions. At home, J.L.M.'s behavior can vary from cooperative and loving to uncontrollable, and J.L.M. has run away from home on multiple occasions. J.L.M.'s mother has previously sought help for J.L.M., but stated that "nothing appears to have helped much." Appellant's App. p. 9.

Moreover, J.L.M. has been involved with the juvenile justice system on multiple occasions, including delinquency proceedings for prior delinquent acts which would have constituted criminal mischief and battery if she were an adult. Further, J.L.M. has exhibited a total inability to control her temper, even during periods of detention. J.L.M. has previously attacked a detention officer and was previously placed in administrative segregation as a result of her failure to follow the orders of the detention staff and her self-harming behavior. In addition, J.L.M. was on probation when she committed the instant offense which, again, she committed within hours of her release from the DOC.

In support of her claim that the juvenile court abused its discretion in placing her in the care of the DOC, J.L.M. relies on *E.H. v. State*, 764 N.E.2d 681 (Ind. Ct. App. 2002). *E.H.*, however, can easily be distinguished from the instant matter. In *E.H.*, a panel of this court vacated the juvenile court's dispositional decree placing the juvenile in the care of the DOC for a period of one year because the court concluded that in light of the recent stability and progress in rehabilitation efforts, "[T]he one-year commitment imposed by the juvenile court conflicts with the rehabilitative goals of the juvenile justice system." 764 N.E.2d at 686. In coming to this conclusion, the court noted that although the juvenile came from an

abusive and unstable background, the juvenile had recently been placed in a stable foster home and was making significant improvement with his adjustment issues. *Id.* The court further noted that the juvenile was also enrolled in the Dawn Project and was receiving counseling. *Id.* The court concluded that in light of the juvenile’s recent progress, a less restrictive placement would be to continue the juvenile “in foster care under the care of the Dawn Project.” *Id.*

Here, unlike in *E.H.*, J.L.M.’s reoccurring delinquent behavior was escalating despite growing up and living in an apparently loving and stable home. J.L.M. had long been receiving outpatient treatment for her mental issues but had shown no recent signs of improvement. J.L.M. committed the instant delinquent acts less than twenty-four hours after being released from a prior placement in the DOC. J.L.M. had exhibited a violent history and had previously attempted to commit suicide. Moreover, the record indicates that J.L.M.’s mother had not shown the ability to control J.L.M. or her violent and suicidal impulses.

Although J.L.M. requests that we conclude that the juvenile court abused its discretion by placing her with the DOC because a less restrictive option was available, it is well-settled that there are times when commitment to a suitable public institution is in the best interest of the juvenile and society. *Id.*; *D.S. v. State*, 829 N.E.2d 1081, 1085 (Ind. Ct. App. 2005). We conclude that this is one of those times. The juvenile court, therefore, did not abuse its discretion in placing J.L.M. in the DOC for placement in a DOC children’s facility.

The judgment of the juvenile court is affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.