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IN THE
COURT OF APPEALS OF INDIANA

K.B.S.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A04-1104-JV-251
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
Cause No. 71JO1-1102-JD-94

October 19, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

K.S. appeals the juvenile court's order placing her at a private residential facility following the finding that she committed criminal conversion, a class A misdemeanor if committed by an adult. We affirm.

Issue

The issue before us is whether the juvenile court abused its discretion when it placed K.S. at a residential facility.

Facts

On August 2, 2010, K.S., a fourteen-year old girl, stole clothing from Kohl's Department Store in Mishawaka.[1] K.S. was not detained for this offense at that time. On February 8, 2011, K.S. was detained for alleged battery against her mother. On that date, K.S. was five months pregnant and tested positive for marijuana when she was placed in secure custody. In custody, K.S. admitted to stealing before the Kohl's incident, but reported that she had not stolen after the August 2, 2010 incident.

On February 17, 2011, the State filed a delinquency petition alleging that K.S. committed conversion, a class A misdemeanor if committed by an adult, based on the Kohl's incident. On February 23, 2011, K.S. entered into a plea agreement wherein she admitted the conversion allegation and the State agreed to dismiss the separate offense of alleged battery against her mother.

[1] We assume that the Kohl's incident took place in Mishawaka because the Mishawaka Police Department responded to the incident. App. p. 10.

In preparation for K.S.'s dispositional hearing, the St. Joseph County Probation Department ("Probation Department") submitted to the juvenile court a thorough pre-dispositional report, which discussed K.S.'s family background; structure, supervision, and support from her family; and home life and neighborhood. The report stated that K.S.'s mother ("Mother") is unemployed, but works for a company cleaning houses when needed; has a criminal history, including battery and conversion; and has substance abuse issues. K.S.'s father was recently released from the Department of Correction ("DOC"), also has substance abuse issues, and is reportedly receiving inpatient services for depression. K.S. has had contact with her father since his release from the DOC. K.S.'s brother has a history with the Probation Department and was, at the time of the report, detained for theft. He has previously served time in the DOC.

Prior to being detained, K.S. was living with Mother, Mother's ex-boyfriend, her nine-year-old sister, her brother, and her brother's friend, a nineteen-year-old male. Her brother's friend had been living with the family since March 2010 and is the father of K.S.'s child. He is now being prosecuted for sexual misconduct. Mother's ex-boyfriend also had legal issues and was physically abusive toward Mother. K.S. witnessed the physical abuse and also witnessed Mother's drug use. K.S. had to take care of her family when Mother was under the influence of drugs. At the time of the dispositional hearing, Mother's ex-boyfriend, son, and son's friend were no longer living in the family's home.

When K.S. was twelve years old, she was sexually abused by one of Mother's boyfriends and never received treatment after being diagnosed with post-traumatic stress disorder ("PTSD"). At the time, the Department of Child Services ("DCS")

recommended that K.S. get treatment, but K.S. refused to attend the initial appointment and Mother never encouraged her to return. K.S. did see her family doctor who recommended that she should get assistance from mental health professionals. Mother did not get treatment for her daughter despite these recommendations. K.S.'s family has moved back and forth from Pulaski County to St. Joseph County over the last few years, and there are no reported issues with the current neighborhood.

Based on the above, the Probation Department recommended placing K.S. at Gateway Woods ("Gateway") located in Allen County. Gateway has a specific program for teenaged girls. The program "offers structure, care, education, and therapy in a family-like, group home setting . . . " Tr. pp. 6-7. It also requires parent involvement and attendance at an onsite accredited school.

On March 11, 2011, DCS received a copy of the Probation Department's recommendation and did not agree with it. DCS filed its consideration report on March 17, 2011,[2] recommending that K.S. "return to and remain in the home of her mother while participating in appropriate services." App. p. 20. These services would include home-based casework services and home-based therapy or individual and family counseling provided by a DCS contract provider. DCS believes that this combination of services "will help to improve [K.S] and her family's overall level of functioning and help her to remain safe while remaining in the community." Id. DCS's argument against placement at Gateway was that K.S. can receive proper care and services in the community. The

[2] DCS submitted its consideration report late and did not attend the dispositional hearing. App. p. 36.

juvenile court rejected DCS's recommendation and agreed with the Probation Department, placing K.S. at Gateway. K.S. now appeals.

Analysis

K.S. contends that the juvenile court abused its discretion in placing her at Gateway because it was not the least restrictive option available. Specifically, K.S. argues that the best placement for her is to return home and receive services in the community. K.S. argues that placement at her home is best because Gateway is located outside of her county of residence,[3] which restricts K.S's ability to work through the issues of her pregnancy with her family; placement at Gateway will dramatically interfere with the autonomy of K.S.'s family; placement at Gateway will disrupt her family life; and placement at home would provide an opportunity for K.S. and Mother to participate in home-based counseling services and prove they can be successful with services at home.

In determining whether the juvenile court properly placed K.S. at Gateway, 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. E.L. v. State, 783 N.E.2d 360, 366 (Ind. Ct. App. 2003). 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 favoring the least harsh disposition. C.C. v. State, 831 N.E.2d 215, 216-17 (Ind. Ct. App. 2005). An abuse of discretion occurs when the juvenile court's action is clearly erroneous and against the

[3] K.S.'s residence is in St. Joseph County. App. p. 25. Gateway is located in Allen County. Id. at 35.

logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual inferences that can be drawn therefrom. Id. The juvenile court is accorded wide latitude and great flexibility in its dealings with juveniles. C.T.S. v. State, 781 N.E.2d 1193, 1203 (Ind. Ct. App. 2003), trans. denied.

Indiana Code Section 31-37-18-6 governs juvenile dispositional decrees and provides a list of factors that the juvenile court is to consider when entering a decree. The statute 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.

Generally, the statute requires the juvenile court to select the least restrictive placement; however, the statute contains language that reveals that a more restrictive placement might be appropriate under certain circumstances. J.S. v. State, 881 N.E.2d 26, 28-29 (Ind. Ct. App. 2008). That is, the statute requires placement in the least restrictive setting "[i]f consistent with the safety of the community and the best interest of the child." Ind. Code § 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. J.S., 881

N.E.2d at 29. When considering the above factors, it is important for the juvenile court to bear in mind that "the goal of the juvenile process is rehabilitation so that the youth will not become a criminal as an adult." R.H. v. State, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010).

After considering the recommendations from the Probation Department and DCS, along with other evidence, the juvenile court rejected the DCS's recommendation and placed K.S. at Gateway. The juvenile court found DCS's recommendation "[u]nreasonable based on the facts and circumstances of the case; and [c]ontrary to the welfare and best interests of the child." App. p. 34. Furthermore, the out-of-county placement facility was appropriate because K.S. "is in need of supervision, care, treatment and services which are NOT available in the local community." Id. The juvenile court further stated that DCS's recommendation was not in the best interest of K.S. because:

> 1. The juvenile's mother has substantially failed to provide appropriate care and/or treatment for her family including [K.S.] in the past, even when recommended by those concerned for the best interests of the family.
>
> 2. While the juvenile's mother has now made a commitment to seek help for her own substance abuse and personal needs, the court was presented with absolutely no evidence of her past willingness to act in such a manner.
>
> 3. [K.S.] herself is in need of immediate and consistent services direct towards her own sexual abuse victimization in the past as well as the present which has resulted in her current pregnancy.

> 4. The DCS recommendation seems more directed at fiscal conservatism rather than providing what is best for [K.S.].

Id. at 36.

The juvenile court's findings and disposition were not unreasonable in light of the evidence presented. First, the juvenile court considered K.S.'s family life in deciding whether she should return home. The court particularly paid attention to the failings of Mother, which led to the conclusion that, if K.S. returned home, she would have an inadequate support system and structure. One of the most important factors considered by the juvenile court was that, after K.S. was abused by one of Mother's boyfriends when she was just twelve years old, Mother failed to take K.S. to DCS recommended therapy after being diagnosed with PTSD. Just one year later, K.S. became sexually active with the nineteen-year-old male who was living at her home. Despite this man's criminal record and drug use, Mother let him live at their home. Then, at fourteen years old, K.S was impregnated by this man. Mother was completely unaware of the relationship between K.S. and her son's friend. This man is now facing a charge of sexual misconduct with a minor. At home, K.S. was also a witness to domestic violence involving Mother and her then boyfriend.

Mother has a history of drug and alcohol abuse. K.S. stated that she often had to take care of her younger sibling while Mother was on drugs. Mother never sought treatment for her drug abuse issues until March 2010, after the State filed its delinquency petition. K.S. argues that she should be placed at home because Mother has been successful in treatment, has tested clean, and voluntarily attends Narcotics Anonymous

meetings. Although we applaud those efforts, the juvenile court reasonably found that they were done "somewhat under the gun of this case not necessarily when it was first needed." Tr. p. 23. When the juvenile court asked Mother what she had done prior to this case to deal with her drug or substance abuse issues, she replied "Nothing." Id. at 24.

K.S.'s own drug abuse was another concerning factor. When K.S. was detained, she tested positive for marijuana and, at the time, was five months pregnant. She also admitted to doing drugs with her friends. In addition, her friends have delinquencies and are known to the Probation Department.

K.S. also argues that returning home is the best option because Mother's ex-boyfriend, son, and the father of K.S's child are no longer living in the home. Although it is undoubtedly positive that these individuals are no longer in the home, there was no indication that this was done by Mother on her own accord and in the best interest of K.S. The son and the father of K.S.'s child left the home unwillingly due to their own legal issues.

K.S. further argues that she and Mother should be able to prove that they can be successful with home-based services. However, Mother failed to get K.S. the therapy she needed after being sexual abused at age twelve. Mother stated that K.S. refused to speak with the therapist and that is why K.S. did not receive treatment. Mother did not attempt to get treatment for her daughter after that initial appointment. It was reasonable for the juvenile court to find that K.S, a victim of sexual abuse, would not get the treatment she needs at home based on Mother's past actions, or rather inaction. Also, Mother has not

proven she can stay sober consistently. She began treatment only after the delinquency petition was filed and is on a long road to recovery.

Although K.S. and her mother have no past record with the court system of home-based services, an escalation of events, most likely due to the lack of support and structure in the home, has led to K.S.'s current situation. The Probation Department correctly noted that the issues with K.S. and her family "have not just recently occurred and have been going on for some time now." App. p. 28. It is also important to note that K.S. seems to be following in the criminal path of Mother and her brother. K.S. was detained on conversion and also charged with battery. Mother "was recently released from probation for a Battery offense and has also completed a term of probation for Criminal Conversion in 2004." Id. at 25. Her brother has a history with the Probation Department and "is currently in detention at the Juvenile Justice Center . . . pending disposition on a Theft (FD) offense." Id.

K.S.'s placement at Gateway will provide her with the structure and consistency she was not previously receiving in Mother's care. Gateway offers a program for pregnant teen girls and teen mothers that addresses the extra challenges associated with pregnancy and caring for a child in a family-like setting with a multi-faceted treatment approach. Gateway will also provide K.S. with the intensive therapy needed for her PTSD, which was never treated while living with Mother. Although K.S. argues that she does not want to be apart from Mother because she needs a strong family to help raise her child and placement at Gateway will detach her emotionally from her family, Gateway requires parental involvement. There was no indication that transportation was an issue

in visiting K.S., and Mother can participate in K.S.'s treatment via video conference at the juvenile court if needed. Gateway also offers home passes and guest visitation. K.S. also seems to ignore the fact that she was alleged to have battered Mother, suggesting that she does not have a healthy relationship with Mother as alleged.[4]

Mother's failure to provide K.S. with the structure and therapy she needs, her drug abuse, and subjecting K.S. to abuse in the home suggests that placement outside the home is in K.S's best interest. The juvenile court appropriately stated when addressing K.S.,

> if [anybody] has failed in this process I think it is your Mother and I'll say that very straight up and to her face. She has failed in many respects in terms of her conduct towards you, conduct towards her family and I truly don't believe that she has followed through with some of the recommendations that were given to her previously.

Tr. p. 34.

Based on all of the above, there is no indication that the juvenile court abused its discretion when it placed K.S. at a residential facility where she will get the therapy, treatment, education, structure, and consistency she needs to rehabilitate herself and to appropriately care for her child.

Conclusion

The order placing K.S. at Gateway was supported by ample evidence. Therefore, we cannot conclude that the juvenile court abused its discretion in placing K.S. at Gateway. We affirm.

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[4] K.S. argues that she should return home so that she "and her mother [can] continue to nurture their relationship and allow a smoother transition for her future baby." Appellant's Br. p. 9.

Affirmed.

ROBB, C.J., and BRADFORD, J., concur.