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IN THE COURT OF APPEALS OF INDIANA

W.P.T.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0706-JV-280
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
Cause No. 71J01-0703-JD-166

October 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

W.P.T. appeals the juvenile court's order that he complete in-patient treatment at a private residential facility following his admission to two acts of Child Molesting, each as a Class C felony, if committed by an adult. W.P.T. raises a single issue for our review, namely, whether the juvenile court abused its discretion by ordering the in-patient treatment when a less-restrictive disposition existed.

We affirm.

FACTS AND PROCEDURAL HISTORY

Sometime between November of 2006 and January 26, 2007, fifteen-year-old W.P.T. babysat four-year-old H.G. and two-year-old N.G. While babysitting, W.P.T. "became aroused for an unknown reason and . . . went to the bathroom . . . to masturbate." Appellant's App. at 12. H.G. and N.G. followed him into the bathroom, and W.P.T. "had them rub [his] penis." Id. On March 12, the State filed a delinquency petition against W.P.T., alleging that he had committed two acts that would have constituted child molesting, as Class C felonies, if committed by an adult. On March 26, W.P.T. admitted the truth of the allegations, and the juvenile court ordered him to undergo a psychosexual evaluation and a polygraph examination.

On April 16 and 19, Todd Heim gave W.P.T. a psychosexual evaluation. On April 24, Karl R. Varga examined W.P.T. with a polygraph. And on April 30, Heim again evaluated W.P.T. On May 3, Heim prepared a report ("Report") for the juvenile court based on his evaluations and the polygraph examination. The Report stated, in relevant part, as follows:

[W.P.T.] acknowledged babysitting for [H.G.] and [N.G.] on four occasions, with the sexually abusive behaviors occurring each time. On the first evening, [W.P.T.] reported "guiding" [H.G.'s] hand under his clothes toward his penis. He indicated she had fondled him for 15-30 seconds.

During his second babysitting engagement, [W.P.T.] reported going to the bathroom and being followed by both [H.G.] and [N.G.] During his polygraph, [W.P.T.] acknowledged becoming "aroused for an unknown reason and I went to the bathroom for the purpose to masturbate." While sitting on the toilet, [W.P.T.] acknowledged being sexually aroused and thinking to himself, "I have never experienced this before and was curious about what it felt like." He then asked "[H.G.] if she wanted to touch it (referring to his penis) and then [N.G.] wanted to." [W.P.T.] reported being opposed to [N.G.] fondling his penis, however, the behavior was briefly "allowed" to occur. He indicated the victims "continued to touch it and at one point (I) told them to stop and stood up and zipped up my pants." The abuse of [H.G.] was reported to have lasted 30-60 seconds, while the victimization of [N.G.] lasted approximately 1-2 seconds. Ejaculation was denied.

During the same evening, [W.P.T.] reluctantly disclosed wrestling with both victims and becoming sexually aroused. He then proceeded to have [H.G.] sit on his lap and gave her a "horse ride," which consisted on bouncing her on his lap for approximately one minute. [W.P.T.] also reported playing Hide-and-Seek with the victims. He acknowledged[] "dry humping" [H.G.] when she was "on her hands and knees." This included rubbing his penis on her back, simulating "doggy style," for thirty seconds while she was counting. [W.P.T.] reported being fully clothed at the time.

[On a third occasion, W.P.T.] indicated babysitting for both children one day after school. On this occasion, he reported "flying" [H.G.] around. Initially he denied touching her in any sexual manner, however, he later indicated touching her buttocks under her skirt. Afterward, [W.P.T.] acknowledged laying the victim on the ground and touching her vagina. The client indicated he was not sure if he had penetrated her vagina.

The last time [W.P.T.] babysat the two victims, he admitted being aroused while playing games. He then went with [H.G.] to her room and agreed to let her listen to his [iP]od "if she licked my penis." [W.P.T.] acknowledged unzipping his pants and "allowing" [H.G.] to lick his penis for "one second." When asked the reason for stopping, [W.P.T.] replied, "I saw her face and she looked scared and I know that I didn't want to do that to her." He denied penetration and reportedly told [H.G.] he would never abuse her again.

* * *

In April 2007, [W.P.T.] took a polygraph examination. The conclusion was DECEPTION INDICATED . . . based on reactions to [two questions] . . . . After the completion of the examination . . . [W.P.T.] indicated placing [H.G.'s] hand inside his pants to fondle his penis. He reported being uncertain if he penetrated her vagina with his finger [on the third occasion], but later acknowledged having done so.

[W.P.T.] reported, prior to the examination process, that he had masturbated 2-3 times in the bathroom while babysitting for [H.G. and N.G.] However, he denied having any fantasies involving the victims or small children.

* * *

. . . Regarding all Internet pornography, [W.P.T.] estimated his viewing to be approximately 450 times; he derived this number from an average of three times per week over a period of three years. The viewing typically occurred in his home, for 15 minutes per occasion, and consisted of various pictures and videos that he would masturbate to. [W.P.T.] acknowledged being caught one[]time, when his mother reviewed the computer's search history. He acknowledged stopping after being detected, only to resume during the next month. Currently, his parent's [sic] have an Internet connection that is password protected, however, his grandparents, with whom he resides, does not. All other forms of pornography, including books and magazines, were denied.

During his polygraph examination, [W.P.T.] reported taking a picture of his penis with his mother's cell phone. This was done on one occasion and was reportedly erased before anyone else was able to view it. He also reported having a MySpace.Com website . . . .

* * *

He reported in the polygraph interview that he has masturbated publicly in a van while his mother watched a sibling's soccer game. [W.P.T.] also acknowledged using a slipper to enhance masturbation, as well as inserting his finger into his anus on 1-2 occasions while masturbating. [W.P.T.] also reported inserting a pencil on one occasion while masturbating.

[W.P.T.] acknowledged several sexual contacts, although none with same[-]aged peers. The first incident occurred when [W.P.T.] was thirteen and involved a two-year-old female ([E.W.]) that his mother babysat.

> According to the client, "I allowed her to touch my butt underneath my clothes," and then adding having "guided her hand" to touch his testicles underneath his clothes. This was reported to have lasted "no longer than a couple of seconds." He denied arousal and/or touching the victim in [a] sexual manner. When asked about his rational [sic] for this behavior, [W.P.T.] once again stated, "I wanted to see what it felt like." The next year, [W.P.T.] (14) had a 7 year-old cousin ([R.B.])[] sit on his lap. He indicated gaining an erection while his cousin sat on his lap for approximately 20-30 minutes. Any and all additional sexual behavior with his cousin was denied. However, [W.P.T.] disclosed during his polygraph that he had "rubbed his penis against her butt with clothes on approximately three times in the same day."
>
> [W.P.T.] acknowledged having his dog "lick" his testicles on one occasion, until ejaculation. He reported[,] during an additional interview, that this had occurred twice. This was reported to have occurred one year ago.

Id. at 20-22. Heim concluded that W.P.T. had a moderate risk of sexual recidivism and that W.P.T. demonstrated "a clear pattern of deviant sexual arousal toward young children." Id. at 26. Heim also expressed "concerns about potential sexual contact with his younger siblings." Id.

On June 5, the court held a disposition hearing. At that hearing, the victims' father testified that he and his wife believed W.P.T. premeditated the sexual assaults on their children. The father also stated:

> [W.P.T.] was put in a position of trust where he was suppose[d] to give support, [be] protective and responsible. He has betrayed [that trust]. He has been very irresponsible and he has violated our daughter. We feel that he needs very extensive therapy for whatever he's got going on inside of him. . . . [A]t a minimum [W.P.T.] needs to be at a residential facility to protect himself from oth—actually it's more [for] protection of others because I think at this point . . . he has premeditated many events and I don't see a reason why he won't continue to do it.

Transcript at 7-9. Heim testified that W.P.T. had begun therapy, but W.P.T. had failed to complete all of his assignments as requested. W.P.T.'s mother testified that her family

has a history of Alzheimer's, and that her mother, with whom W.P.T. had been living, is on pre-cursor medication for Alzheimer's.

Later that day, the court issued its disposition order. After reviewing various recommendations, the court concluded that W.P.T. "should be removed from the home because continuation in the home would not be in the best interest of the child and will not produce undue hardship." Appellant's App. at 13. The court, adopting the recommendation of the Probation Department, concluded that W.P.T. "is an appropriate candidate for placement in a private child caring facility, i.e.[,] Oaklawn ['Oaklawn']. The juvenile is to participate and successfully complete placement." Id. The court also found that its order "is the least restrictive alternative to insure [W.P.T.'s] welfare and rehabilitation and the safety and welfare of the community." Id. This appeal ensued.

DISCUSSION AND DECISION

On appeal, W.P.T. argues that the juvenile court abused its discretion in ordering him to be placed at Oaklawn. Specifically, W.P.T. maintains that a less-restrictive disposition, namely, out-patient counseling by an approved program, existed and therefore should have been ordered by the juvenile court instead of in-patient therapy at Oaklawn. The State responds that the juvenile court did not abuse its discretion. We must agree with the State.

The choice of the specific disposition of a juvenile adjudicated a delinquent child is a matter within the discretion of the juvenile court and will be reversed if there has been an abuse of that discretion. D.B. v. State, 842 N.E.2d 399, 404 (Ind. Ct. App. 2007). The 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. Id. An abuse of discretion occurs when the court's action is against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. Id. at 404-05.

Indiana Code Section 31-37-18-6 delineates the factors the juvenile court must consider in making a juvenile disposition:

> 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.

(Emphases added.)

We have previously noted that Section 31-37-18-6 requires the juvenile court to select the least restrictive placement in most situations. K.A. v. State, 775 N.E.2d 382, 386 (Ind. Ct. App. 2002), trans. denied. "However, the statute contains language which reveals that under certain circumstances a more restrictive placement might be appropriate." Id. at 386-87. The statute requires placement in the least restrictive setting

only if such a placement is "consistent with the safety of the community and the best interest of the child." Ind. Code § 31-37-18-6 (2006); see D.B., 842 N.E.2d at 405-06. In other words, "the statute recognizes that in certain situations the best interest of the child is better served by a more restrictive placement." K.A., 775 N.E.2d at 387.

The juvenile court did not abuse its discretion in ordering W.P.T. to participate in in-patient therapy at Oaklawn. W.P.T. molested at least four children under the age of seven, with two of those children at two years of age. Two of those victims were under W.P.T.'s care as their babysitter. A third was under his mother's care while she was babysitting, and the fourth was a young cousin of W.P.T.'s. Regarding W.P.T.'s offenses against H.G. specifically, the State correctly notes that W.P.T. "engaged in increasingly invasive sexual conduct" with her. Appellee's Brief at 8. That conduct began when W.P.T. "guid[ed]" H.G.'s hand to his penis, which was followed by W.P.T. having H.G. fondle his penis. Appellant's App. at 20. Later, W.P.T. placed his finger inside H.G.'s vagina, and, on yet another occasion, W.P.T. convinced H.G. to "lick" his penis in exchange for H.G. being permitted to listen to W.P.T.'s iPod. Id. W.P.T. engaged in similar conduct with N.G., E.W., and R.B. W.P.T. had also viewed online pornography approximately 450 times between the ages of twelve and fifteen, and he had engaged in other deviant sexual behavior, such as having the family dog lick his genitals to the point of ejaculation on multiple occasions.

At the disposition hearing, Heim expressed to the juvenile court that W.P.T. had a moderate risk of sexual recidivism, that W.P.T. demonstrated "a clear pattern of deviant sexual arousal toward young children," and that Heim had "concerns about [W.P.T.'s]

potential sexual contact with his younger siblings." Id. Heim also noted that W.P.T. had exhibited a pattern of deception towards others, most notably to both Heim and the polygraph examiner. W.P.T. had also demonstrated an unwillingness to reform, having failed to complete an assignment requested of him in therapy. Further, W.P.T.'s grandmother, with whom he resides, is taking precursor medication for Alzheimer's and lacks password protection on her home computer.

Despite those facts, W.P.T. asserts that prior decisions of this court mandate reversal of the juvenile court's order. Specifically, W.P.T. cites D.P. v. State, 783 N.E.2d 767 (Ind. Ct. App. 2003), and E.H. v. State, 764 N.E.2d 681 (Ind. Ct. App. 2002), trans. denied. But those cases are readily distinguishable. In D.P., we reversed the juvenile court's order placing a delinquent child in the Department of Correction. In so holding, we recognized unique and "special circumstances surrounding D.P.'s life," such as D.P.'s full-scale I.Q. of 65. D.P., 783 N.E.2d at 770. And in E.H., we also reversed the juvenile court's order placing a delinquent child in the Department of Correction for one year. There, we noted that the court failed to take into account neglect and abuse by the child's parents and the fact that there was "no evidence . . . that E.H. is a threat to the community." E.H., 764 N.E.2d at 686. As no such factors support W.P.T., D.P. and E.H. are inapposite here.

We cannot say that the juvenile court abused its discretion. The court balanced the safety of the community and W.P.T.'s bests interests with the least restrictive rehabilitative treatment available for W.P.T. W.P.T. has demonstrated a consistent pattern of deviant sexual behavior, has victimized at least four children between the ages

of two and seven years old, and has exploited positions of trust to abuse his victims. Thus, in ordering W.P.T. to participate in in-patient therapy at Oaklawn, the court imposed the least restrictive setting that was still "consistent with the safety of the community and the best interest of the child." See I.C. § 31-37-18-6 (2006); D.B., 842 N.E.2d at 405-06.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.