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IN THE COURT OF APPEALS OF INDIANA

F.D.,
Appellant- Defendant,
vs.
STATE OF INDIANA,
Appellee- Plaintiff,

No. 71A03-1003-JV-199

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Peter J. Nemeth
The Honorable Harold Brueseke, Magistrate
Cause No. 71J01-0806-JD-475

August 31, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

F.D., previously adjudicated a delinquent child, appeals the juvenile court's order modifying her placement and committing her to the Indiana Department of Correction. F.D. raises one issue for our review, which we restate as whether the trial court abused its discretion by ordering her committed to the Department of Correction. Concluding the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

On April 14, 2008, then-thirteen-year-old F.D. was found in possession of marijuana while at Studebaker Alternative School. She was subsequently adjudicated a delinquent child for possession of marijuana, a Class A misdemeanor if committed by an adult. According to a pre-dispositional report, F.D. was being prescribed various psychiatric medications and had received therapy and case management services. F.D.'s previous involvement in the juvenile justice system consisted of warnings in 2007 for both being a runaway and committing intimidation, apparently while at school, and a 2001 child in need of services case for truancy.

On September 16, 2008, the juvenile court held a dispositional hearing and placed F.D. on probation. The conditions of her probation required her to, among other things, remain on house arrest for ninety days, attend school with no suspensions or unexcused absences, obey all school rules, abstain from illegal substances, participate in individual counseling, and comply with all medication requirements.

On October 6, 2008, the probation department filed a petition for modification of F.D.'s placement based upon allegations F.D. had been suspended from school for fighting with another student, ran away from home twice, and refused to take her medications. The juvenile court found these allegations true and, on November 6, 2008, modified F.D.'s placement by ordering her placed at Forest Ridge, a private care facility in Estherville, Iowa. F.D. was ordered "to participate and successfully complete placement" at Forest Ridge. Appellant's Appendix at 26.

While at Forest Ridge, F.D. for the most part received and took various medications the Forest Ridge physician prescribed for her emotional and behavioral difficulties. In January 2009, the nurses' notes indicate F.D. was "[o]ut of medications – waiting for Indiana to send." Id. at 52. However, subsequently-dated notes indicate "[m]edication [c]heck[s]" in March 2009 and each succeeding month thereafter. Id. at 52, 58, 66.[1] Forest Ridge staff were also made aware that F.D. had been a victim of rape "shortly before she went to Forest Ridge," and staff attempted to address that issue with F.D. Id. at 82. However, F.D. admitted to sharing only "some, but not all" relevant information with the Forest Ridge staff regarding being abused or harmed. Id. at 112.

Forest Ridge's periodic progress reports indicate F.D. failed to make significant progress in improving her behavior. See id. at 49 (90-day report stating that after one month, F.D. "started to act out in a negative manner . . . swearing, not listening to directives and displaying defiant behavior . . . . [and] was placed in physical restraints on . . . March 8, 2009 and . . . March 16, 2009. Due to [F.D.]'s continuously instigating and

[1] In April 2009, F.D.'s Adderall dosage was increased and Cymbalta discontinued. In June 2009, F.D. was placed on Clonidine, and in August 2009 she was discontinued from Risperdal and started on Seroquel.

encouraging negative behaviors, she was moved to Parks Hall on March 18, 2009"); id. at 55 (180-day report stating F.D. "does not show respect towards others on a regular basis and is disrespectful when she does not agree with what is said to her. Due to this, she has escalated herself to be placed in physical restraints on . . . April 5, May 5 and 31, 2009. [F.D.] has had instances of . . . swearing at others, calling others names, refusing to follow through with directives, and encouraging negative behaviors from others."); id. at 67 (360-day report concluding "[F.D.]'s estimated discharge date at her 90 day reporting was June of 2010, [but] due to [her] recent behaviors and lack of progress it is more realistic to move her discharge date to December 2010").

On December 14, 2009, the probation department filed a petition for modification of F.D.'s placement, alleging F.D. was "disruptive" and "noncompliant" at Forest Ridge and "not committed to the program." Id. at 29. The next day, the juvenile court held a hearing at which F.D. participated telephonically, and the court issued an order committing F.D. to the Department of Correction. One week later, however, the court vacated its order and ordered that F.D. remain at Forest Ridge "to give her another opportunity to make positive improvements." Id. at 79. On February 4, 2010, the probation department filed a renewed petition for modification of F.D.'s placement to the Department of Correction. The petition restated the probation department's prior allegations and further alleged that on January 19, 2010, Forest Ridge contacted the probation department "and classified [F.D.] as a placement failure because she continues to display the same defiant delinquent behavior." Id. at 35. On February 5, 2010, the

juvenile court issued a renewed order finding this allegation true and committing F.D. to the Department of Correction.

On February 8, 2010, the juvenile court held a status hearing at which it was informed by the probation department that one of F.D.'s three medications, Adderall, "may have been tampered with or reduced in strength without appropriate medical action and that the limits thereby on the effect of her medication might . . . be somewhat explanatory of her conduct while at Forrest Ridge." Id. at 41. Thus, the court vacated its prior order committing F.D. to the Department of Correction.

On February 22, 2010, the juvenile court held a further status hearing. A Forest Ridge representative testified by telephone that investigation into possible medication tampering was ongoing, but F.D. was still considered a placement failure because despite any lack of Adderall, "she has the ability to make appropriate choices" and "just chose not to." Id. at 104. The Forest Ridge representative further testified that F.D.'s "consistent[]" misbehavior consisted of such things as "[e]ither choosing not to go to class, choosing not to follow certain norms and expectations, challenging the staff when given direction, [and] being rude and disrespectful to other girls that she lived with." Id. at 108. The juvenile court then issued its order committing F.D. to the Department of Correction. She now appeals.

Discussion and Decision

I. Standard of Review

When a juvenile is adjudicated a delinquent, the choice of a specific disposition rests within the sound discretion of the juvenile court. C.C. v. State, 831 N.E.2d 215, 216

(Ind. Ct. App. 2005). 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. E.L. v. State, 783 N.E.2d 360, 366 (Ind. Ct. App. 2003) (citing Ind. Code § 31-37-18-6). We will reverse the juvenile court's decision only for an abuse of discretion, which occurs where the decision is clearly erroneous and against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions therefrom. Id.

II. Placement with Department of Correction

Our supreme court has described the nature of Indiana's juvenile system as follows:

> 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. For this reason the statutory scheme of dealing with minors is vastly different than that directed to an adult who commits a crime. Juvenile judges have a variety of placement choices for juveniles who have delinquency problems, ranging from a private home in the community, a licensed foster home, a local juvenile detention center, to State institutions such as the Indiana Boys School and Indiana Girls School. None of these commitments are considered sentences. A child can become a juvenile delinquent by committing acts that would not be a violation of the law if committed by an adult, such as incorrigibility, refusal to attend public school, and running away from home. A child can also become a delinquent by committing acts that would be a crime if committed by an adult. In the juvenile area, no distinction is made between these two categories. When a juvenile is found to be delinquent, a program is attempted to deter him from going further in that direction in the hope that he can straighten out his life before the stigma of criminal conviction and the resultant detriment to society is realized.

Jordan v. State, 512 N.E.2d 407, 408-09 (Ind. 1987).

As factors to be considered in determining a juvenile's placement, the general assembly has provided:

> 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.

Ind. Code § 31-37-18-6. This statute directs the juvenile court to select the least restrictive placement in most situations, but by its terms requires placement in the least restrictive setting only "if consistent with the safety of the community and the best interest of the child." Id.; see J.S. v. State, 881 N.E.2d 26, 29 (Ind. Ct. App. 2008). "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.

In this case, the juvenile court placed F.D. with the Department of Correction only after previously ordering the less restrictive placements of probation and a private care facility. However, in less than one month from the start of her probation, F.D. violated its terms by running away from home twice, fighting at school with a resulting suspension, and refusing to take medications as directed. The juvenile court then placed F.D. at Forest Ridge, but after one year there she made minimal progress in improving her behavior and continued to display defiant behavior. At the December 2009 hearing, F.D. was placed on notice that her continued poor behavior might result in commitment to the Department of Correction, yet the juvenile court cancelled that modification so

F.D. would have another opportunity to improve. Yet, in January 2010, Forest Ridge notified the probation department that F.D. was a "placement failure." Appellant's App. at 104. With Forest Ridge apparently no longer an option – F.D. did not argue at any of the hearings that she should remain there – the juvenile court considered returning her home in the care of her mother or grandmother. However, in light of F.D.'s pattern of running away from home and other delinquent behavior while in her family's care, the juvenile court found F.D. "needs a more secure placement" and "[c]ontinuing in the home would not be in the best interest of [F.D.]." Id. at 44.

Given these facts and circumstances,[2] and the reasonable inference that less restrictive alternatives failed to modify F.D.'s delinquent behavior, the juvenile court did not abuse its discretion by committing F.D. to the Department of Correction. See, e.g., D.S. v. State, 829 N.E.2d 1081, 1086 (Ind. Ct. App. 2005) (concluding commitment to Department of Correction was not abuse of discretion "[i]n light of D.S.'s failure to respond to the numerous less restrictive alternatives already afforded to him"). Further, we disagree with F.D.'s argument that her placement with the Department of Correction is solely punitive rather than rehabilitative. While we acknowledge this placement is more restrictive than the alternatives the juvenile court previously attempted with F.D., that does not mean it lacks any rehabilitative value. See S.C. v. State, 779 N.E.2d 937, 940-41 (Ind. Ct. App. 2002) (noting "a short term of confinement can serve many functions, not all of them punitive," including juvenile's opportunity for rehabilitative

[2] F.D. points out that the present case is her first, and thus far her only, juvenile adjudication. However, unlike in adult criminal court where each new crime results in a new case, in juvenile court subsequent delinquent acts are treated in the same cause number. The juvenile court was well within its discretion to look to the entire history of F.D.'s delinquent behavior in deciding the issue of modification.

counseling to address mental health and substance abuse issues) (quotation omitted), trans. denied. Moreover, the indeterminate duration of F.D.'s placement makes it unlike a criminal sentence. To the extent F.D. chooses a pattern of good behavior consistent with rehabilitation, the Department of Correction may decide to end her commitment sooner rather than later.

Conclusion

The juvenile court did not abuse its discretion by committing F.D. to the Department of Correction.

Affirmed.

MAY, J., and VAIDIK, J., concur.