MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

B.D.,
Appellant-Respondent

v.

State of Indiana,
Appellee-Petitioner

May 8, 2024

Court of Appeals Case No.
23A-JV-2951

Appeal from the Adams Circuit Court

The Honorable Chad E. Kukelhan, Judge

Trial Court Cause No.
01C01-2301-JD-1

Memorandum Decision by Judge Weissmann
Judges Mathias and Tavitas concur.

Weissmann, Judge.

[1] After admitting to violating the terms of his probation, 15-year-old B.D. was placed in the custody of the Indiana Department of Correction (DOC). B.D. appeals that placement, arguing that the State failed to present the statutorily required modification report at his dispositional hearing and that the DOC was not the least restrictive and most appropriate placement available for him. Finding no error, we affirm.

Facts

[2] In January 2023, B.D. was living at home when he suddenly "snapped." App. Vol. II, p. 20. During the incident, B.D. struck his mother in the face, ripped a necklace off his half-brother's neck, and attempted to bait an adult into hitting him before walking out of the house. The police came and arrested B.D. As a result of the incident, the local probation department filed a preliminary inquiry report with the juvenile court. The report identified B.D. as a dual status child, noting that he had been declared a CHINS in May 2019.

[3] At a hearing before the trial court, B.D. admitted that his actions during the incident, if committed by an adult, amounted to domestic battery as a Class A misdemeanor and disorderly conduct as a Class B misdemeanor. B.D. had also engaged in other conduct in the past few years that, if committed by an adult, would have amounted to auto theft as a Level 6 felony, obstructing traffic as a

Class B misdemeanor, and theft as a Class A misdemeanor.[1] The juvenile court thus adjudicated B.D. as a delinquent and placed him on probation. As part of B.D.'s probation, he was sent to complete a residential treatment program at the Youth Opportunity Center (YOC).

[4] B.D.'s time in the YOC did not go well. In several progress reports submitted to the Court, YOC reported that B.D. was acting out and had been involved in several physical altercations. After nine months, the YOC terminated B.D. from its residential treatment program. Following B.D.'s removal from the program, the State moved to revoke B.D.'s probation and modify his dispositional decree. At a dispositional hearing, B.D. admitted to the alleged probation violations. The juvenile court modified B.D.'s placement and granted wardship of B.D. to the DOC.

Discussion and Decision

I. Modification Report

[5] B.D. first argues that the State's failure to present a modification report at his dispositional hearing constitutes reversible error. B.D. has waived this argument on appeal for failure to raise it before the trial court. *Curtis v. State*, 948 N.E.2d 1143, 1148 (Ind. 2011). And B.D. further waived the issue by failing to allege that this error represented fundamental error. *Id.* ("Because [the appellant]

[1] These acts represent only a portion of B.D.'s extensive juvenile record.

failed to allege fundamental error in his principal appellate brief, this issue is waived.").

[6] But waiver notwithstanding, we reject B.D.'s claim. To be sure, "[t]he legislature has provided a fairly detailed list of procedural requirements for juvenile courts to follow in delinquency proceedings." *K.S. v. State*, 114 N.E.3d 849, 853 (Ind. Ct. App. 2018). As relevant here, "[w]hen modification of a dispositional decree is requested, the probation department *must complete a modification report* governed by the requirements for a predispositional report, Ind. Code § 31-37-22-4." *Id.* (emphasis added). But the failure to follow statutory procedural requirements does not amount to reversible error per se.[2] *Id.*

[7] Here, B.D. was represented by counsel at the hearing to modify his placement. B.D. did not dispute any of the State's allegations, particularly the report that he was removed from the YOC for a pattern of problematic behavior. And the factual reason B.D. alleges a reversible error occurred—because the trial court did not consider any alternative placements besides the DOC—is squarely disproved by the record. As was made clear at the dispositional hearing, B.D.'s probation officer "did a lot of work" in identifying over half-a-dozen alternative

[2] The proper course would have been for the State to complete and present to the trial court a modification report before the court issued its ruling. Recently in *G.W. v. State*, --N.E.3d --, 2024 WL 1549176, *1 (Ind. Apr. 10, 2024), our Supreme Court advised that the "proper appellate remedy for curing a deficient dispositional order" is "remand . . . while holding the case in abeyance." This case presents a dispositional order in proper form, but a missing modification report. We do not read *G.W.* as requiring remand here.

placements. Tr. Vol. II, pp. 4-5. Yet, as B.D.'s attorney admitted, "none of those places approved the placement . . . ." *Id.* at 5.

[8] Accordingly, B.D. has not shown the lack of a modification report here constituted reversible error.

II. Placement on Modification

[9] B.D. next contends that the trial court abused its discretion because the DOC was not the least restrictive and most appropriate placement available.

[10] The specific disposition of a juvenile adjudicated to be delinquent is "a matter within the sound discretion" of the trial court. *A.C. v. State*, 144 N.E.3d 810, 812-13 (Ind. Ct. App. 2020). As such, "[w]e will reverse a juvenile disposition only for an abuse of discretion." *Id.* An abuse of discretion occurs when the trial 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 drawn therefrom." *Id.*

[11] Indiana Code section 31-37-18-6 sets forth the factors that a juvenile court must consider in entering a dispositional decree and provides that a juvenile placement:

> (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.

[12] With these factors in mind, placement with the DOC was the only option available to B.D. As referenced above, over half-a-dozen programs and facilities were contacted to see if B.D. could be placed there. Tr. Vol. II, pp. 4-5. None would accept him. And B.D. concedes that his mother, in her testimony at the dispositional hearing, stated she did not want him placed with her either.[3]

[13] But even if there had been less restrictive placements available, we view this case as one where "commitment to a suitable public institution is in the 'best interest' of the juvenile and of society." *D.S. v. State*, 829 N.E.2d 1081, 1085 (Ind. Ct. App. 2005) (quoting *S.C. v. State*, 779 N.E.2d 937, 940 (Ind. Ct. App. 2002)). We cannot ignore B.D.'s extensive juvenile record, stretching back to when he was only 10 years old. Despite opportunities at each step to benefit from rehabilitative programs, B.D. has failed to do so. Thus, we find the trial court acted within its discretion in placing B.D. with the DOC.

---

[3] We note that the transcript appears to contain a scrivener's error as it relates to Mother's testimony. When asked if she would be "willing or able to have [B.D.] come back" to her home, the transcript shows Mother replying, "I would be able to at this time." Tr. Vol. II, p. 10. But as both parties and the trial court describe Mother's testifying that she would *not* take B.D. back, we adopt their version of events.

Conclusion

Finding neither a reversible error in the State's failure to present a modification report nor an abuse of the trial court's discretion in B.D.'s placement, we affirm.

Mathias, J., and Tavitas, J., concur.

ATTORNEY FOR APPELLANT

Cara Schaefer Wieneke
Wieneke Law Office, LLC
Brooklyn, Indiana

ATTORNEY FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Nicole D. Wiggins
Deputy Attorney General
Indianapolis, Indiana