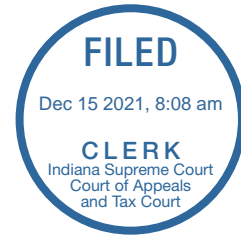


MEMORANDUM DECISION

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.



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IN THE COURT OF APPEALS OF INDIANA

B.P.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 15, 2021

Court of Appeals Case No.
21A-JV-736

Appeal from the Fountain Circuit
Court

The Honorable Stephanie S.
Campbell, Judge

Trial Court Cause No.
23C01-2004-JD-23

Pyle, Judge.

Statement of the Case

[1] Sixteen-year-old B.P. (“B.P.”) appeals the juvenile court’s order that committed him to the Indiana Department of Correction (“the DOC”) for placement in an appropriate juvenile facility. B.P. specifically argues that the juvenile court abused its discretion when it committed him to the DOC. Finding no abuse of the juvenile court’s discretion, we affirm the juvenile court’s judgment.

[2] We affirm.

Issue

Whether the juvenile court abused its discretion when it committed B.P. to the DOC.

Facts

[3] In November 2018, after thirteen-year-old B.P. threatened to kill a peer, the State filed a delinquency petition alleging that B.P. had committed an act that would be Level 6 felony intimidation if committed by an adult. B.P. agreed to a withheld adjudication and was placed on probation. In February 2020, while B.P. was still on probation, the State filed a delinquency petition alleging that B.P. had committed an act that would be Class A misdemeanor theft if committed by an adult and the status offense of leaving home without permission.

[4] In April 2020, while still on probation, B.P., who was living with his paternal grandparents, cut off his ankle bracelet and left home in his grandmother’s

(“Grandmother”) car without her permission. Grandmother contacted law enforcement and reported the vehicle as stolen.

[5] Later that month, the State filed a delinquency petition alleging that B.P. had committed an act that would be Level 6 felony theft if committed by an adult and the status offense of leaving home without permission. In May 2020, B.P. admitted that he had committed both offenses, and the juvenile court adjudicated B.P. to be a delinquent child. In addition, the juvenile court ordered that B.P. complete the residential TREC program (“TREC”) at White’s Residential and Family Services (“White’s”). The juvenile court also ordered B.P. to participate in individual and family counseling while at White’s. In addition, the juvenile court placed B.P. on probation and ordered that B.P. successfully complete TREC as one of the terms of his probation.

[6] B.P. was placed at White’s in May 2020. TREC is typically a six-month program, and B.P.’s anticipated program completion date was November 2020. Although B.P. was initially compliant with TREC requirements and the rules at White’s, in June 2020, B.P. attempted to leave White’s without permission. In addition, he failed to follow rules by possessing chewing tobacco, cursing at and arguing with staff members, repeatedly coming out of his room without permission, and being in a peer’s room without permission.

[7] In July 2020, B.P. refused to attend both a family counseling session with Grandmother and an individual counseling session. B.P. also shattered the windows and windshield of a staff member’s car. In addition, B.P. wrote on

the wall with a Sharpie, made sexual comments to a peer during a group therapy session, and continued to curse at staff members. B.P.'s inappropriate behavior continued in August 2020 when B.P. stole a peer's shoes and called another peer an explicit name. Based on B.P.'s inappropriate behavior, in mid-August, B.P.'s case manager placed B.P. on a behavior contract and extended B.P.'s stay at White's until December 2020.

[8] Despite the contract, B.P.'s behavior did not improve. In September 2020, during a family counseling session, B.P. called Grandmother a "fucking cunt[.]" (Amended App. Vol. 2 at 24). The following month, B.P.'s inappropriate behavior continued when he possessed a lighter, attempted to alter a facility camera, continuously ran and jumped on furniture, and drew a picture of a penis on a peer's neck. Also in October 2020, B.P. asked a staff member about the status of a home pass. When the staff member told B.P. that the status of his home pass was questionable because of his inappropriate behavior, B.P. told the staff member that "that type of answer is what gets their window smashed in[.]" (Amended App. Vol. 2 at 25).

[9] In November 2020, a staff member found a homemade vape in B.P.'s closet. Also in November 2020, staff members determined that, based upon his lack of progress, B.P. would have to restart TREC, which resulted in an anticipated program completion date in July 2021. In December 2020, B.P. made several comments about running away as soon as he earned a home pass and about using drugs when he was eventually placed back in Grandmother's care.

[10] In January 2021, White's submitted to the juvenile court a thirty-day notice letter, which "request[ed] alternative placement option for [B.P.] due to his continued behaviors and lack of effort." (Amended App. Vol. 2 at 67). In February 2021, the State filed a motion to modify B.P.'s disposition. The petition alleged that B.P. had "struggled to comply with the terms of [TREC] and ha[d] not been able to remediate the circumstances that [had] led to [his] detention and placement." (Amended App. Vol. 2 at 56). The petition further alleged that White's was no longer willing to provide services to B.P. and had requested that B.P. be removed "as quickly as possible" from its residential program. (Amended App. Vol. 2 at 56).

[11] In February 2021, the juvenile court held an expedited hearing on the State's motion to modify B.P.'s disposition. The purpose of the hearing was to find temporary placement for B.P. in light of his expulsion from White's. At the hearing, B.P.'s probation officer, Lindsey Winger ("Probation Officer Winger"), explained that B.P. could not return to White's because of his non-compliance with TREC, his lack of engagement with the program, and his disrespect to staff. Probation Officer Winger recommended that B.P. be placed temporarily at the Vigo County Juvenile Detention Center. In addition, Probation Officer Winger recommended that B.P. ultimately be committed to the DOC. Grandmother testified that she would like for B.P. to be placed in her home but that she "just d[id]n't know if [she] c[ould] handle him or not." (Tr. Vol. 2 at 6). Following the hearing, the juvenile court explained that it would not place B.P. with Grandmother because it could not assure her safety

or the safety of others living in the home or that B.P. would “comply with any of the parameters that might be placed on him.” (Tr. Vol. 2 at 17). Instead, the juvenile court ordered that B.P. be placed temporarily at the Vigo County Juvenile Detention Center.

[12] In April 2021, the juvenile court held a second hearing on the State’s petition to modify B.P.’s placement. At the hearing, the parties discussed placing B.P. in another residential care facility. However, B.P.’s counsel told the juvenile court that B.P. had agreed to placement in the DOC because “a DOC facility present[ed] his best chance for getting home as soon as possible.” (Tr. Vol. 2 at 26). At the end of the hearing, the juvenile court stated that, “by agreement of the parties[,]” the juvenile court was modifying the dispositional order that had previously been entered in the case. (Tr. Vol. 2 at 27). Immediately thereafter, the juvenile court explained that it had considered the “best interests of [B.P.] and the community, alternatives available for care, treatment, and rehabilitation, the financial situation of [B.P.’s] family, [B.P.’s] prior participation in services or lack thereof” and ordered B.P. committed to the DOC. (Tr. Vol. 2 at 27). The juvenile court further explained as follows:

[B.P.] has received substantial services as previously indicated . . . escalating from in[-]home services to therapeutic setting at White’s and that his conduct and behavior has risen to the level of subsequent criminal behavior, including the destruction of property, threat of violence to others and refusal to engage in services that would address his behaviors in good faith. And that the same endangers his safety as well as others.

(Tr. Vol. 2 at 28).

- [13] The juvenile court subsequently issued a written order that committed B.P. to the DOC for housing in any correctional facility for children. B.P. now appeals his commitment to the DOC.

Decision

- [14] B.P. argues that the juvenile court abused its discretion when it committed him to the DOC. As the State points out, at the hearing on the State’s motion to modify B.P.’s placement, B.P. agreed to the DOC commitment. B.P., therefore, invited the error about which he now complains. Under the invited error doctrine, “a party may not take advantage of an error that [t]he commits, invites, or which is the natural consequence of h[is] own neglect or misconduct.” *J.T. v. State*, 111 N.E.3d 1019, 1025 (Ind. Ct. App. 2018), *trans. denied*. “In short, invited error is not reversible error.” *Matter of J.C.*, 142 N.E.3d 427, 432 (Ind. 2020). Invited error notwithstanding, we find no abuse of the juvenile court’s discretion.

- [15] A juvenile court is accorded “wide latitude” and “great flexibility” in its dealings with juveniles. *Id.* at 1026 (internal citation omitted). The choice of a specific disposition of a juvenile adjudicated to be a delinquent child will only be reversed if the juvenile court abuses its discretion. *Id.* The juvenile court’s discretion in determining a disposition 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. *Id.* An abuse of discretion occurs when the juvenile

court's action is clearly 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. *M.C. v. State*, 134 N.E.3d 453, 458 (Ind. Ct. App. 2019), *trans. denied*.

[16] INDIANA CODE § 31-37-18-6 sets forth the following factors that a juvenile court must consider when entering a dispositional decree in a juvenile matter:

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.

I.C. § 31-37-18-6.

[17] Although the statute requires the juvenile court to select the least restrictive placement, the statute allows for a more restrictive placement under certain circumstances. *M.C.*, 134 N.E.3d at 459. That is, the statute requires

placement in the least restrictive setting only “[i]f consistent with the safety of the community and the best interest of the child.” *See* 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 because “commitment to a public institution is in the best interest of the juvenile and society.” *M.C.*, 134 N.E.3d at 459 (internal quotation marks and citation omitted).

[18] Here, our review of the evidence reveals that less restrictive efforts have failed to produce positive changes in B.P.’s behavior. Specifically, B.P. became involved in the juvenile justice system three years ago, in 2018, when he threatened to kill a peer. At that time, B.P. agreed to a withheld adjudication and was placed on probation. While on probation, B.P. cut off his ankle bracelet and took Grandmother’s car without her permission. Thereafter, the juvenile court adjudicated B.P. to be a delinquent child and placed him in the residential TREC program at White’s in May 2020. During the eight months that B.P. was at White’s, B.P. destroyed property, refused to engage in services, and was disrespectful to staff and Grandmother. In January 2021, a staff member at White’s requested that B.P. be removed from the residential program as quickly as possible. In light of B.P.’s history and the failure of less restrictive efforts, the juvenile court did not abuse its discretion when it committed B.P. to the DOC. *See, J.T.*, 111 N.E.3d at 1027.

[19] Affirmed.

Bailey, J., and Crone, J., concur.