

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

T.W.,
Appellant-Respondent

v.

State of Indiana,
Appellee-Petitioner

May 10, 2024

Court of Appeals Case No.
23A-JV-2666

Appeal from the Delaware Circuit Court
The Honorable Kimberly Dowling, Judge
The Honorable Amanda L. Yonally, Magistrate

Trial Court Cause Nos.
18C02-2112-JC-128
18C02-2308-JD-144

Memorandum Decision by Judge Vaidik
Judges May and Kenworthy concur.

Vaidik, Judge.

Case Summary

- [1] T.W. appeals her commitment to the Indiana Department of Correction (DOC) following a juvenile-delinquency adjudication. We affirm.

Facts and Procedural History

- [2] T.W. was born in July 2010. Her parents' rights were terminated in 2013, and T.W.'s grandmother, B.N., adopted her. In 2021, B.N. died, leaving T.W. in the care of M.N., her great aunt.
- [3] T.W. has an extensive history of aggressive, self-harming, and elopement behaviors, was found to be a child in need of services (CHINS) in January 2022, and has received treatment in residential facilities and hospitals.¹ In August 2022, T.W., then twelve, was found to be a delinquent child for committing what would be Class B misdemeanor battery if committed by an adult for injuring a worker at Crossroads, a residential-treatment center where

¹ Due to the CHINS finding, T.W. was a dual-status child. *See* Ind. Code § 31-41-1-2.

she was staying. As a result of T.W.'s behavior, Crossroads ended her placement.

[4] At the dispositional hearing, the parties discussed where to place T.W. since she had already received treatment at several places with no success. A family case manager with the Indiana Department of Child Services (DCS) testified that he had contacted several residential-treatment centers (both in-state and out-of-state) and the state hospital, but he had not yet found a placement that would accept her. The trial court placed T.W. in the DOC until a residential or hospital placement could be found.

[5] T.W. appealed her DOC placement. On April 4, 2023, this Court issued a decision reversing that placement:

The record is clear that T.W. needs care and treatment that the DOC cannot provide. The clear intent of the trial court and DCS was that the DOC placement would be temporary, and yet T.W. is still there and there is no indication that her release is imminent. We remand with instructions to the juvenile court to vacate its dispositional decree, order T.W.'s placement in an appropriate residential or hospital setting within thirty days of the date of this opinion, and submit to this Court a report verifying that placement.

T.W. v. State, No. 22A-JV-2350 (Ind. Ct. App. Apr. 4, 2023) (mem.), *trans. denied*.

[6] On May 1, DCS filed a report in the trial court detailing its exhaustive efforts in trying to find a placement for T.W., including contacting the state hospital as

well as in-state and out-of-state facilities. No facility, however, had accepted T.W. primarily due to her age and significant behavioral or mental-health needs. Left with no other options, DCS developed a plan for T.W. to return to M.N.'s home. This included a safety plan, such as installing door alarms and locks, and in-home services.

[7] Two days later, on May 3, the trial court filed a report with this Court as required by our April 4 decision. *See* No. 22A-JV-2350 (May 3, 2023). The trial court explained that since this Court's decision on April 4, "new referrals have been made for residential treatment and considerable efforts have been made for hospitalization." *Id.* T.W., however, had been rejected everywhere (and even put on the "do not admit" list at some places) except Youth Villages in Tennessee, which had a sixty-day waitlist. The court detailed that the probation department had contacted the assistant deputy director at DCS about getting T.W. into the state hospital, but they were "unable to offer further assistance." *Id.* The court ordered T.W. to be placed in the Delaware County Juvenile Detention Center while the safety plan was being implemented and in-home services were being set up.

[8] T.W. was released to M.N.'s home on June 12. Five days later, the police were called because T.W. wouldn't return home. T.W. was found and returned home. On June 26, T.W. was taken to the hospital for ingesting THC gummies. On her way to the hospital, she sliced her forearm with glass. She was transferred to Valle Vista for an acute stay.

- [9] T.W. was returned to M.N.'s home on July 3. Two days later, M.N. called the police because T.W. was acting erratically. An officer approached T.W. as she was walking away from M.N.'s house. T.W. made a comment about wanting to get hit by a car. As a truck drove by, she tried to step in front of it, but an officer pulled her back. She was taken to the hospital and then to Bloomington Meadows for a second acute stay.
- [10] On July 18, T.W., now thirteen, was taken to the hospital because she was suicidal and brandishing a knife. She was transferred to Hendricks Behavioral Health for a third acute stay.
- [11] Two weeks later, on August 3, T.W. called the police and accused M.N. of hitting her with an extension cord and not feeding her, but when officers arrived, food was being made. T.W. told the officers that she would kill herself if they left her there and walked outside. She also said she had "called some of her boys" so they could "drive by and shoot" the officers. Appellant's App. Vol. III p. 194. She asked the officers to smash her head in the car door or have a K-9 bite her face. As she was being put in the ambulance, she threatened to jump out headfirst. She was taken to the hospital and then to Harsha for a fourth acute stay.
- [12] Things came to a head on August 16. That night, the police were called to M.N.'s home for a mental-health check on T.W. While en route, an officer saw T.W. walking away from the house and tried to stop her, but she kept walking. Once T.W. stopped, the officer observed a cut on her hand and took her back to

M.N.'s home. There, T.W. kept reaching for something in her pocket; when asked what it was, she made a motion like she was cutting her wrist. M.N. reported that she had found T.W. smoking marijuana in the house and knocked it out of T.W.'s hand. T.W. became upset and threatened to kill the entire family and tried to hit them. T.W.'s sister reported that T.W. had grabbed a hot-dog fork and threatened to kill her with it. The police learned that T.W. had cut her hand when she punched out the window on the front door. When the police told T.W. to stand up and walk to the police car, she refused, so they had to physically move her. Once inside the police car, T.W. banged her head on the walls of the cage, so the police removed her from the car and called EMS to transport her. While waiting for EMS, T.W. hit her head on the ground. When EMS arrived, T.W. tried to bite one of the officers as he helped put her in the ambulance. T.W. was taken to the hospital and then detained at the Delaware County Juvenile Detention Center.

[13] A detention hearing was held, and M.N. said she no longer wanted T.W. in her home. The trial court found that T.W. should continue to be detained at the Delaware County Juvenile Detention Center. Thereafter, the State filed a petition alleging that T.W. was a delinquent child for committing seven offenses on August 16, four of which T.W. later admitted: felony intimidation, felony attempted battery on a public-safety official, misdemeanor criminal mischief, and misdemeanor resisting law enforcement. After admitting the offenses, T.W. asked the court to return her to the DOC because that is the only

place where she had made progress and felt safe. Tr. p. 174. The court said it would consider her request at the dispositional hearing.

[14] Meanwhile, T.W.'s behaviors at the Delaware County Juvenile Detention Center "escalated significantly." Appellant's App. Vol. IV p. 152. She became "increasingly aggressive toward others" and "repeatedly engaged in self-harm and suicidal ideation." *Id.* Twelve incident reports were filed. These reports detailed several disturbing incidents, including T.W. trying to choke herself with her t-shirt and bra while in isolation, trying to bite a staff member, tying the elastic from her underwear around her neck, removing one of her hands from handcuffs and trying to choke herself with them, and punching a staff member when he tried to stop her from banging her head into a cement wall. For these and other incidents, T.W. was taken from the detention center to the emergency room "numerous" times and had "multiple acute hospitalizations." *Id.* On the last occasion, October 2, the detention center called for an ambulance to take T.W. to the emergency room for cutting herself with a piece of flooring and then putting the flooring in her mouth. Later that day, she was returned to the detention center, where, less than thirty minutes later, they had to call for an ambulance again.

[15] A dispositional hearing was held on October 3. DCS said that it had recently learned that Youth Villages in Tennessee would have a bed available in about a week. DCS, however, had "significant and serious concerns" about sending T.W. there given her recent escalating behaviors and hospitalizations. Tr. p. 193. DCS noted that T.W. had "the most success" in the DOC. *Id.* at 197.

Similarly, the probation department said that although it had originally recommended Youth Villages, it no longer did so given that Youth Villages is a non-secure facility and T.W. needed a secure facility due to her worsening and dangerous behaviors. The probation department reiterated that T.W. had been denied by “over forty” residential-treatment centers and the state hospital “twice.” *Id.* at 194. The probation department believed that the DOC was the “only” place to send T.W., which is where T.W. wanted to go anyway. *Id.* at 195. Both M.N. and T.W.’s court-appointed special advocate agreed with DCS’s and the probation department’s recommendation that T.W. should be placed in the DOC. Although T.W.’s attorney had no position on T.W.’s placement, *see id.* at 197, T.W. told the trial court that she wanted to be placed in the DOC because she can “get more help if [she] stay[s] there longer,” *id.* at 198. When the court asked the record to reflect that T.W. was “happy” with being placed in the DOC, T.W. confirmed that she was. *Id.* at 203. The court ordered T.W. to be placed in the DOC:

This Court has grave concerns about [T.W.’s] safety and the safety of others. Given that [T.W.] has been unable to maintain even minimally safe or stable behavior in a secure detention facility, this Court is not optimistic that [T.W.] would be successful in a non-secure residential treatment program. Moreover, sending [T.W.] with her complex history of behavior, risks and needs to an out-of-state facility is not in her best interest. [T.W.] would be at significant risk of eloping at Youth Villages, which would place her at serious risk of harm.

Appellant’s App. Vol. IV pp. 152-53.

[16] T.W. now appeals her placement in the DOC.

Discussion and Decision

[17] T.W. contends the trial court should not have placed her in the DOC. The disposition of a juvenile adjudicated a delinquent is within the discretion of the trial court and is reviewed on appeal for an abuse of discretion. *J.S. v. State*, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008). The court's discretion is subject to Indiana Code section 31-37-18-6:

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.

The statute favors the least harsh placement only if “consistent with the safety of the community and the best interest of the child.” *J.S.*, 881 N.E.2d at 29. The statute recognizes that a more restrictive placement is sometimes in the best interest of the child. *Id.*

[18] T.W.’s argument on appeal is very narrow:

There was a bed available at Youth Villages in the State of Tennessee a few days after the dispositional hearing was held. . . . The Court, DCS, and CASA had all been waiting for the bed to become available at Youth Villages as an appropriate placement for TW for months prior to the dispositional hearing. Once that bed became available, TW should have been placed at Youth Villages.

Appellant’s Br. pp. 23-24. The problem with T.W.’s argument is that it doesn’t acknowledge what has happened since Youth Villages was first being considered as a placement option for her. From June 12, 2023, when T.W. was placed back with M.N., to August 16, 2023, when T.W. threatened to kill her family and was detained, the police were called to M.N.’s home to address T.W.’s behavior nine times and T.W. had four acute hospitalizations. And things didn’t get any better once T.W. was placed at the Delaware County Juvenile Detention Center. In the six weeks she was there (from mid-August to early October), T.W. harmed herself and others and was consistently being sent to the hospital, even twice on one day. Given that Youth Villages is a non-secure facility and T.W. needs a secure facility for her safety and the safety of others, the trial court acted well within its discretion when it placed T.W. in the

DOC. We recognize this outcome is different than the outcome this Court reached in April 2023; however, we believe this is warranted given all the circumstances that have changed since then.

[19] Affirmed.

May, J., and Kenworthy, J., concur.

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