IN THE COURT OF APPEALS OF IOWA

No. 3-076 / 12-1412
Filed March 13, 2013

IN THE INTEREST OF M.C.,
Minor Child,

M.C., Minor Child,
Appellant.

Appeal from the Iowa District Court for Story County, Stephen A. Owen, District Associate Judge.

A sixteen-year-old girl adjudicated as delinquent appeals the juvenile court's modification of its dispositional order. **AFFIRMED.**

Kimberly A. Voss-Orr of Law Office of Kimberly A. Voss-Orr, Ames, for appellant.

Thomas J. Miller, Attorney General, Diane M. Stahle, Assistant Attorney General, Stephen Holmes, County Attorney, and Tiffany Meredith, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

M.C. appeals the juvenile court's decision to place her in residential treatment after finding she violated the terms of her probation. Specifically, she contends the State failed to present clear and convincing evidence that a more restrictive placement was necessary. M.C. also alleges the juvenile court failed to find the State made reasonable efforts to prevent removal from her home and denied her due process by relying on a mental evaluation not presented as evidence at the modification hearing.

We find no merit in M.C.'s protests. The record supports the juvenile court's view that M.C. did not respect authority, was not engaged in her rehabilitation, and was being enabled by her parents in avoiding responsibility for her delinquent acts. Given these circumstances, we agree an out-of-home placement was essential to impressing upon M.C. that her misconduct carried consequences.

Although the modification order did not include the phrase "reasonable efforts," we conclude the juvenile court nevertheless complied with Iowa Code section 232.52(7)(a) (2011) by detailing the steps taken by the State to keep M.C. in her home, which fit the definition of reasonable efforts in section 232.57. Finally, the court did not violate M.C.'s due process rights by considering a mental examination that was incorporated into the predisposition report prepared pursuant to Iowa Code section 232.48 and never challenged by M.C. before this appeal.

I. Background Facts and Proceedings

During the summer of 2011, fifteen-year-old M.C. repeatedly drew the attention of the Story City police department. Around 11 p.m. on July 21, 2011, she and several other teens were caught tossing light bulbs from the roof of a downtown building. Police referred M.C. to juvenile court services on criminal trespass charges. Ten days later, and again just after 11 p.m., an officer saw M.C. and three other juveniles had dropped their bicycles on railroad property. As the officer approached, the group took off. The officer then noticed a fire had been set on the railroad property. The police reported M.C. to juvenile authorities for reckless use of fire and trespass.

M.C. admitted her involvement in both the July 21 and July 31 incidents. On August 10, 2011, she agreed to an informal adjustment, which required her to comply with all laws; obey her parents' rules; follow curfew hours; maintain scheduled appointments with her juvenile court officer; report contact with any law enforcement; complete community service; attend therapy; complete a three-session weekend offender course; and cooperate with "enhanced community supervision," which required M.C. to check in with a tracker.

After M.C. failed to satisfy the terms of the informal probation, the State filed a delinquency petition on October 19, 2011, alleging reckless use of fire and criminal trespass. On January 25, 2012, M.C. agreed to admit trespass in exchange for the State's withdrawal of the reckless-use-of-fire charge. Both parties agreed she would undergo a pre-dispositional evaluation, which would be considered part of the dispositional materials. The juvenile court held a

dispositional hearing on April 9, 2012 and placed M.C. on one year of formal probation with the same terms as her informal adjustment agreement.

Over the next few months M.C. violated several terms of her probation, including breaking curfew, failing to complete her community service requirements, missing check-ins with her tracker, and refusing to attend the weekend programs. On April 24, 2012, she received a citation for driving without a valid license. M.C. did not report the citation or her July 12 conviction to Candace Tollakson, her juvenile court officer. The next month an officer gave her a verbal warning for driving without a license.

Because of her failure to comply with the conditions of probation, the State sought to transfer M.C.'s custody from her home to an inpatient residential treatment facility. On August 8, 2012, the district court held a hearing on the State's motion to modify.[1] After reviewing the dispositional report and receiving evidence, the court modified the dispositional order, transferring MC.'s custody to the juvenile court services for placement in residential treatment. M.C. now appeals the modification order.

II. Scope and Standard of Review

We review delinquency proceedings de novo. *In re A.K.*, 825 N.W.2d 46, 49 (Iowa 2013). While we give weight to the juvenile court's fact findings, especially regarding witness credibility, we are not bound by them. *Id.*

[1] Present at the hearing were M.C., her attorney, both her parents, and Tollakson.

III. Analysis

A. Did the State Present Clear and Convincing Evidence to Support a More Restrictive Placement for M.C.?

A juvenile court may, "after notice and a hearing at which there is presented clear and convincing evidence to support such an action . . . modify an order by imposing more restrictive conditions or [] vacate the order and substitute a more restrictive order." Iowa Code § 232.54(1)(e) (2011); *see In re C.G.B.*, 643 N.W.2d 208, 209 (Iowa Ct. App. 2002) (applying provision to modification of a dispositional order).

M.C. contends because her violations were either minor or excusable, the State failed to present clear and convincing evidence to justify a more restrictive placement. The State's motion to modify alleged M.C. violated her probation agreement by: (1) failing to complete community service hours, (2) violating curfew, (3) refusing to engage during individual therapy, and (4) refusing to attend a weekend offender program.

M.C. concedes she did not complete any of her twenty-five hours of community service before the July 1, 2012 deadline. She attributes her nonfeasance to not knowing how to sign up, and argues her four plus hours of service completed after the deadline demonstrates her attempt to comply with the terms of her probation. M.C.'s first hours of service came a month after the court-imposed deadline. She recorded two and a half hours on July 30 and two hours on August 3. The three-month period in which M.C. agreed to complete her hours provided ample time to find out from Tollakson how to satisfy the

requirement, especially when M.C. admitted knowing how to engage in community services from her time on informal probation.

M.C. next challenges Tollakson's testimony that she violated curfew five times because the court excluded details regarding those instances at the hearing as hearsay. The terms of her probation set an 8:00 p.m. curfew Sunday through Thursday and a 9:30 p.m. curfew on weekend nights. In its ruling on a hearsay objection, the court explained, "I'll sustain it only because I think [the juvenile court services court report] would establish that there were five violations." Indeed, the report noted five separate observations by Story City police officers of M.C. staying out past curfew, often into the early morning hours.

On the issue of counseling, M.C. completed nine sessions over the course of two months. The State alleged she "refused to make use of individual therapy." At the hearing Tollakson explained M.C. would not engage with the counselor. M.C. testified she was unable to open up with the therapist because she had not known her long enough.

The record contains a letter from therapist Katie Smith summarizing her account of the sessions. Smith reported M.C. would communicate minimally, often responding to questions with one or two word answers. The therapist viewed M.C. as unwilling to "accept responsibility for her behavior and actions." Ms. Smith expressed similar dissatisfaction with the participation by M.C.'s parents, noting "little to no follow through with rules or implementing consequences for [M.C.] not following directions, rules or terms of probation."

We do not find M.C.'s expression of a low comfort level with the therapist excused her lack of engagement with the counseling services provided.

In addition, the State alleged M.C. refused to participate in a weekend program for offenders where she would be provided transportation to a camp Friday evening and stay until Sunday. While M.C. claims the person providing transportation arrived earlier than expected on July 13, 2012, she acknowledged at the hearing that the driver waited fifteen minutes and gave her a warning before leaving without her. M.C. declined to participate the next weekend because it was her birthday. The record supports the State's position that M.C. did not make an effort to attend the weekend program. The record also included evidence that M.C. drove without a license and did not consistently check in with her tracker as required by the terms of her probation.

M.C. argues her violations were minor and nonviolent and did not prove she required out-of-home placement. The State counters that residential treatment was in M.C.'s best interests because she has ignored her probation requirements and her parents have been unwilling or unable to control their daughter's behavior.

We find clear and convincing evidence to support the juvenile court's modified dispositional order. *Cf. In re A.L.J.D.*, 590 N.W.2d 553, 555 (Iowa Ct. App. 1999) (finding clear and convincing evidence to support modification from residential treatment to placement at state training school). M.C. admits she reviewed the terms of the probationary contract and accepted them as a part of her plea agreement. M.C.'s rationalizations fall short of justifying her multiple

transgressions. We agree with the juvenile court that without redirection, M.C. will continue her pattern of delinquency and failing to take responsibility for her actions.

The ineffectual response by M.C.'s parents also underscores the necessity of out-of-home placement. The record shows neither parent has been consistently cooperative with juvenile court services or successful in fostering M.C.'s compliance with the terms of her probation. Accordingly, we find clear and convincing evidence to justify residential placement.

B. Did the Juvenile Court Err by Not Including a Finding That the State Made Reasonable Efforts to Avoid Out-of-Home Placement?

M.C. next argues modification was improper because the juvenile court failed to find the State made reasonable efforts to prevent M.C.'s removal from her home. The State concedes the court did not make an explicit written finding of reasonable efforts, but contends the court complied with the juvenile code by its on-the-record statements and written identification of services provided.

"When the court orders the transfer of legal custody of a child," section 232.52(7)(a) requires the order to "state that reasonable efforts as defined in section 232.57 have been made." The juvenile code defines "reasonable efforts" as "the efforts made to prevent permanent removal of a child from the child's home and to encourage reunification with the child's parents and family." Iowa Code § 232.57.

At the close of the modification hearing, the juvenile court recounted M.C. "skated by for more than a year" despite people wanting to help her, "because

evaluations were conducted, because informal adjustments were attempted, because formal proceedings were instituted." In its written order, the juvenile court mentioned services provided to, but dismissed by M.C.:

> [M.C.] has not complied with any of the terms and conditions to any significant degree, a fact from which the court concludes the current probation is not trending toward a successful conclusion. [M.C.] has incurred new law violations, has failed to perform community service, has failed to comply with tracking, and has failed to comply with curfew restrictions.

The court also noted M.C.'s juvenile court officer, her therapists, and her tracker described the juvenile as "completely unengaged."

We believe a juvenile court may comply with section 232.52(7)(a) without including the phrase "reasonable efforts" in the modification order. The failure to invoke those talismanic words is not fatal when the juvenile court, as here, recites the efforts actually made to correct the juvenile's behavior while keeping her in the community. The court listed corrective measures such as community service, tracking, curfew, assignment to a juvenile court officer, and therapy. Our court has held reasonable efforts include counseling as well as other community-based services. *See In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa Ct. App. 1997). On this record, we conclude the juvenile court complied with section 232.52.

C. Did the Juvenile Court Violate M.C.'s Due Process Rights by Considering a Psychiatric Evaluation Not Entered into Evidence?

At the close of the modification hearing, the juvenile court quoted recommendations from Dr. Gregory Barclay's report, which had not been entered into evidence. The court highlighted the prescient nature of the psychiatrist's recommendations, including his belief that M.C. and her family would be resistant

to therapy and that "if further difficulties emerge it may be necessary for [M.C.] to be placed out of home." M.C. argues because the court did not refer to the evaluation until its summation, she was denied the opportunity to cross examine Dr. Barclay in violation of her right to due process. *See In re Dugan*, 334 N.W.2d 300, 304 (Iowa 1983) (examining question of procedural due process).

In response, the State explains Dr. Barclay's evaluation was part of the predisposition investigation and report to be considered by the juvenile court before reaching a disposition under sections 232.48 and 232.49. Because the report was considered by the court in reaching the original disposition, the State argues the report did not need to be offered into evidence at the modification hearing. The State also points out M.C. did not object to the court's consideration of the evaluation before its April 9, 2012 disposition. Neither did M.C. object at the August 8, 2012, modification hearing.[2] The State contends raising the due process claim for the first time on appeal is too late.

Assuming without deciding M.C.'s due process claim is properly before us, we find no violation in the juvenile court's reflection on Dr. Barclay's assessment. On December 20, 2011, the juvenile court ordered "[b]y agreement of all parties," that M.C. would complete a pre-adjudicatory physical and/or mental examination. After accepting M.C.'s plea on January 25, 2012, the court ordered juvenile court services to prepare a predisposition investigation and report, and provide a copy to all parties before the hearing. The court also ordered M.C. to be evaluated by Dr. Barclay. The evaluation was to be "made part of the dispositional materials."

[2] After its discussion of Dr. Barclay's recommendations, the court asked M.C.'s attorney if she had any further argument and the attorney responded that she did not.

Dr. Barclay interviewed M.C. on March 5, 2012, and sent his report to Tollakson on March 15, 2012. Tollakson completed the predisposition report on April 2, 2012. The juvenile court reached its initial disposition after an uncontested hearing on April 9, 2012.

Because Dr. Barclay's report was included in the predisposition materials properly considered by the court before entering its dispositional order, the court did not deny M.C. due process by referring to that report in reaching its modification decision. *See* Iowa Code § 232.48. The court-ordered assessment complied with the statutory mandate. M.C. had notice of Dr. Barclay's findings and the opportunity to be heard if she had chosen to contest them. Because juvenile court proceedings are informal by design, the court's reference to those findings after the modification hearing did not deny M.C.'s right to a fair hearing. *See Dugan*, 334 N.W.2d at 305 (noting informalities of chapter 232 are intended to benefit the juvenile).

AFFIRMED.