

STATE OF MICHIGAN
COURT OF APPEALS

In re A C DAVIS-SEELEY, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

A C DAVIS-SEELEY,

Respondent-Appellant.

UNPUBLISHED
February 27, 2018

No. 338933
Oakland Circuit Court
Family Division
LC No. 2016-846910-DL

Before: GLEICHER, P.J., and BORRELLO and SWARTZLE, JJ.

PER CURIAM.

Respondent appeals as of right an order of disposition committing her to the Michigan Department of Health and Human Services (DHHS) for placement and care. The trial court adjudicated respondent responsible for assault and battery, MCL 750.81, and creating a disturbance in school, Detroit Ordinances, § 38-7-2. Respondent was made a DHHS “150 ward”¹ and ordered into a residential placement. We affirm.

I. BACKGROUND

Respondent suffers from intermittent-explosive disorder. This case involves an incident occurring at respondent’s high-school where respondent was disciplined for violating the school’s cell-phone policy. Respondent was not taking medication at the time of the incident and became angry when the school’s assistant principle refused to return her cell phone. Respondent pushed the assistant principal, and then cursed at the assistant principal and officers called in to help assist. Respondent was expelled from school for her behavior.

¹ See the Youth Rehabilitation Services Act, MCL 803.301 *et seq.* This act provides that “[a] youth agency may receive and accept youths as public wards for purposes of care and rehabilitation,” and provides the responsibilities of DHHS regarding the custody of children as public wards. MCL 803.303(1).

On September 14, 2016, a petition was filed alleging that respondent violated MCL 750.81 by assaulting the assistant principal and that respondent violated Detroit Ordinances, § 38-7-2, by creating a disturbance in a school. The trial court adjudicated respondent guilty of both counts on January 24, 2017. The trial court entered an order of adjudication on February 10, 2017, which provided that respondent would remain in her mother's care pending disposition.

On February 12, 2017, respondent was arrested and taken to the hospital because she became violent in her mother's care. DHHS conducted a social history of respondent on February 13, 2017, which revealed that respondent was currently suspended from a new school for fighting with another student. The social-history report also showed that respondent had multiple previous encounters with the police for intimidating respondent's classmates, and that respondent was detained on April 26, 2016, for two counts of assault with a dangerous weapon. The dispositional hearing was originally set for February 21, 2017, but respondent and her mother did not appear and could not be contacted on that date. The hearing was rescheduled for March 7, 2017, at which time the referee recommended that respondent be temporarily detained at Children's Village. Additionally, respondent and her mother were recommended to undergo psychiatric evaluations.

The trial court attempted to schedule a second dispositional hearing for April 11, 2017; however, defense counsel informed the court that he was unavailable on that date. The trial court offered defense counsel the choice between April 4 and 18, 2017, and defense counsel chose the latter. The trial court entered an order adopting the referee's recommendations on March 29, 2017.

At the dispositional-review hearing on April 18, 2017, DHHS reported that, although respondent and her mother had undergone psychiatric evaluations, respondent's mother refused to authorize the release of the evaluations. A psychiatrist had seen respondent and prescribed her new medication, but respondent's mother would not consent to respondent taking the medication. In the meantime, respondent's behavioral problems continued at Children's Village, including refusing to follow instructions and threatening staff. DHHS recommended that respondent become a DHHS 150 ward because of respondent's behavior and mental-health concerns and respondent's mother's refusal to cooperate.

Defense counsel argued that detention was too extreme a remedy for a first offense and suggested that respondent be released to her mother's care so that she could attend a daily out-patient program that respondent's mother had discovered. The referee noted that "the Court really wants the youngster to be able to succeed as quickly as possible" and recommended that respondent be made a DHHS 150 ward so that she could obtain a placement where she would receive "consistent mental health treatment, which mother will be a part and parcel of." The trial court entered an order affirming the referee's recommendation on May 4, 2017. Respondent was ordered to be placed in the Vista Maria facility on June 23, 2017. Respondent now appeals.

II. ANALYSIS

This Court reviews a trial court's order for residential placement for an abuse of discretion. See *In re Ricks*, 167 Mich App 285, 295; 421 NW2d 667 (1988). An abuse of

discretion occurs when the decision of the trial court falls outside the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). This Court reviews a trial court's findings of fact during a dispositional hearing for clear error. *People v Brown*, 205 Mich App 503, 504-505; 517 NW2d 806 (1994). This Court will reverse a trial court's finding of fact only if "this Court is left with a definite and firm conviction that a mistake has been made." *Id.* at 505.

In a delinquency case, the probate code should be "liberally construed" to ensure that "each juvenile coming within the court's jurisdiction receives the care, guidance, and control, preferably in his or her own home, conducive to the juvenile's welfare, and the best interest of the state." MCL 712A.1(3). Upon a showing that the juvenile has violated "any municipal ordinance or law of the state," MCL 712A.2(1), or that the juvenile is not receiving proper parental care and maintenance, MCL 712A.2(4), the trial court may enter an order of disposition that is "appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained," MCL 712A.18(1). See also MCR 3.943(E)(1). The trial court has discretion to choose among several different dispositional options as the situation presents, including committing the juvenile to the care of DHHS for placement in an appropriate institution. See MCL 712A.18(1)(e). When a delinquency case reaches a "second and subsequent dispositions," however, the trial court "must consider imposing increasingly severe sanctions" including "out-of-home placement." MCR 3.943(E)(2) "If a juvenile is removed from the control of his or her parents, the juvenile shall be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents." MCL 712A.1(3). See also MCR 3.902(B).

The Trial Court Did Not Abuse Its Discretion In Ordering Detainment. On appeal, respondent first argues that the trial court abused its discretion by initially detaining her in Children's Village and then detaining her as a DHHS 150 ward. Respondent argues that these placements did not give her the care that was "nearly as possible equivalent to the care that the minor's parents should have given the minor." MCR 3.902(B)(2). According to respondent, she did not receive mental-health treatment while detained in Children's Village and, if she had been in the care of her mother, she would have been able to attend an outpatient mental-health program. Respondent also argues that, because it was her first offense, detainment as a DHHS 150 ward was too severe of a disposition. We disagree.

To begin with, the record undermines respondent's assertion that she would have received mental-health services in her mother's care that she did not receive while detained. While respondent's mother did indicate that she had found an outpatient mental-health program for respondent, she had allowed respondent to stop taking prescribed medication in the past and had refused to authorize the release of the psychiatric evaluations. Given this, we cannot find the trial court abused its discretion by declining respondent's mother's request to leave respondent's mental health in her hands.

Additionally, contrary to respondent's assertion on appeal, the record indicates that respondent's behavioral problems were not isolated to the lone incident involving the cell phone. Rather, respondent's aggressive behavior dated back several months before this incident and continued throughout the proceedings. Respondent has a history of intimidating her classmates. This intimidation eventually escalated to school staff, causing respondent's expulsion and

adjudication. Days after the adjudication, respondent was arrested for being violent in her mother's home and, around that time, was also suspended from a different school for fighting with a student. While at Children's Village, respondent was even aggressive with staff.

Thus, as the record makes apparent, respondent's mental-health needs and behavioral issues were quite serious, requiring diligent and structured intervention. Under these circumstances, the trial court did not abuse its discretion by detaining respondent in Children's Village and then, when the problems persisted, detaining respondent as a DHHS 150 ward.

Respondent Has Waived Her Claim Under MCR 3.943(B). Next, respondent argues that the trial court erred because it held the dispositional hearing more than 35 days after respondent was detained. We disagree.

Once the trial court determines that a juvenile has committed an offense, it must hold a dispositional hearing to determine what further measures the court will take. MCR 3.943(A). MCR 3.943(B) grants the trial court discretion to set the "interval between the plea of admission or trial and disposition." The discretion is limited, however, "when the juvenile is detained," in which case "the interval may not be more than 35 days, except for good cause." *Id.*

Respondent argues that the trial court abused its discretion by scheduling the dispositional hearing for April 18, 2017, because that date was more than 35 days past March 7, 2017, the date respondent was detained. While more than 35 days did pass between March 7, 2017, and the next dispositional review hearing on April 18, 2017, the trial court attempted to schedule the disposition review hearing for April 11, 2017, within the 35-day limit. When defense counsel indicated that he could not make that date, the trial court gave defense counsel the choice between April 4, 2017, within the 35-day limit, and April 18, 2017, outside of the 35-day limit. Counsel chose the latter date, and by agreeing to that date, waived any objection to the 35-day limit, leaving no error for this Court to review. *People v Aldrich*, 246 Mich App 101, 111; 631 NW2d 67 (2001).

Within her argument regarding the 35-day limit, respondent appears to take issue with the length of time between her adjudication on February 10, 2017, and her placement in Vista Maria on June 23, 2017. We decline to reach this issue because it was not presented in the statement of questions involved for appeal or given more than cursory treatment in respondent's brief. See MCR 7.212(C)(5); *People v Payne*, 285 Mich App 181, 195; 774 NW2d 714, 724 (2009).

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Stephen L. Borrello
/s/ Brock A. Swartzle