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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1081
A10-1082**

In the Matter of the Welfare of:
J. R. S., Child.

**Filed March 15, 2011
Reversed and remanded
Crippen, Judge***

Ramsey County District Court
File Nos. 62-JV-10-1119, 62-JV-09-2395

David W. Merchant, Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant J.R.S.)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, Afsheen Demira Foroozan-Yazdani, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Stauber, Judge; and Crippen, Judge.

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant challenges his juvenile court delinquency disposition, which was decided in May 2010 as he turned age 17. Appellant argues that the Ramsey County

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

probation staff failed to make a record permitting the disposition and that the district court approved the disposition on an insufficient record and findings. There being merit in appellant's contentions, we reverse and remand for any necessary exercise of the district court's continuing jurisdiction.

FACTS

Appellant, born in May 1993, was adjudicated on a delinquency petition for a gross-misdemeanor criminal-damage-to-property offense in March 2010. Following three dispositional hearings in April and May 2010 before three different district court judges, an order issued on May 21, 2010, transferring appellant's legal custody by commitment to the commissioner of corrections for placement at Minnesota Correctional Facility-Red Wing. The order also entered an adjudication that was stayed in July 2009 on an earlier delinquency petition. This appeal concerns evidence and findings in the record to support appellant's commitment to Red Wing.

Appellant was adjudicated a child in need of protection or services in May 2008, when he was 14 years old. He also was the subject of delinquency proceedings that resulted in a petty-misdemeanor adjudication in November 2007, a disorderly conduct adjudication in October 2008, and a misdemeanor false-information adjudication in May 2009. In July 2009 and January 2010, adjudication was stayed on a petition from June 2009 that alleged appellant's fifth-degree sale of marijuana; in July 2009, adjudication was stayed to permit involvement in a substance abuse correction effort, and when that failed the adjudication was stayed in January 2010 on condition of placement at Boys Totem Town in Ramsey County.

The current delinquency adjudication is based on window damage at Totem Town, and appellant admitted this offense at a court appearance in March 2010. At the March hearing he also admitted absconding from Totem Town, stated as a violation of conditions on stayed adjudication of a 2009 marijuana-sale allegation; the current delinquency adjudication may also be premised on this earlier allegation.

On April 7, 2010, at the first dispositional hearing on the property-damage adjudication, the district court chose a placement for appellant at Bar None, an Anoka County residential treatment program, initially in its secure unit. The court's order cited appellant's continuing disregard of court orders and failure to cooperate with probation officers as justification for the placement, information repeated from the "Justification for Placement" section in an April 2006 probation staffing report form.¹ The district court found placement at Bar None, not Red Wing or other choices, was in appellant's best interests, and the court's order premised this finding on the transcript of the hearing.² In the transcript, the district court (a) opined that Red Wing was a "last resort" placement; (b) observed that a longer placement at Red Wing made re-offending more likely; (c) stated the preference for a graduated dispositional approach; (d) expressed the opinion

¹ The staffing report recommended placement at Red Wing. Bar None was listed in the report as the second and only other placement under consideration in the "Placements under Consideration" portion of the form.

² The April 7 order contained this incorporation language:

The transcript of these proceedings sets forth facts which support this disposition order and is hereby incorporated as to: (a) why the best interests of the child are served by this disposition order and (b) what alternative dispositions were considered by the court and discussed as to why they were not appropriate in said case.

that a 9-12 month placement at Red Wing would be heavy-handed; and (e) noted concern that the Red Wing recommendation may be “overkill” because the damage stated in the current delinquency petition was to property at Boys Totem Town.

Two days later, it was reported to the district court that Bar None was unwilling to accept appellant’s placement because he had not been diagnosed with a mental illness. The second district court judge ordered appellant to undergo a psychological evaluation at a secure facility: “As I understand it, there has been no psychological evaluation, so it makes sense that we do that and then see if we can still effect that Bar None disposition.”

After a third hearing on May 21, 2010, before still another judge, the district court ordered that appellant be committed to Red Wing on findings in a form nearly identical to the April 7 order. The court again accepted the staffing report as support for the disposition. But the modified staffing report contains no entry in its “Justification for Placement” section, neither replacing nor adding to the “Justification for Placement” entry written in the report that was submitted in April and then adopted by the district court. In its May 21 order, the district court stated that the justification for the placement was “flight risk,” an evident reference to a series of difficulties with the juvenile; these flight incidents occurred from June 2009 through March 2010; although the staffing report does not address the topic, these incidents were part of the record in all three 2010 proceedings.³

³ In addition to the violation of absconding from Boys Totem Town, the record suggests that appellant walked away from a shelter placement in September 2009, fled while on a probation furlough in November 2009, and fled from a police officer in March 2010.

Although the May 21 transcript shows that the district court made several comments about the program offerings of Red Wing, the record includes no evidence or findings about the suitability or availability of Bar None.⁴ The version of the staffing report submitted on May 21, without explanation, contained no reference to Bar None as an alternative placement to Red Wing. At the hearing, the district court asked the probation officer about Bar None and accepted the officer's response that Bar None "would not take [appellant] when we first did the recommendation" and that the probation staff had decided to stand by its initial recommendation of placement at Red Wing. The transcript contains no references to the rationale of the district court at the April 7 hearing.⁵ The only new evidence submitted was the mental-health report; nothing in this report either contradicts the April determination that Bar None was an appropriate placement or indicates that the mental-health report would not have enabled the Bar None placement.

DECISION

"In delinquency cases, district courts have broad discretion to order dispositions authorized by statute." *In re Welfare of J.B.A.*, 581 N.W.2d 37, 38 (Minn. App. 1998), *review denied* (Minn. Aug. 31, 1998). "Absent a clear abuse of that discretion, the

⁴ The May 21 order also contains a paragraph incorporating the hearing transcript, in lieu of written findings on disposition alternatives considered and reasons favoring the court's choice of disposition.

⁵ The choice to overlook the first judge's observations evidently was enabled by the forms employed, which, instead of stating the rationale for the placement, merely incorporated the transcript. Thus, the record indicates that the judges at the second and third hearings did not have the benefit of findings found in a transcript of the April 7 hearing.

disposition will not be disturbed.” *Id.* Findings of fact in the dispositional order will be accepted unless clearly erroneous. *In re Welfare of L.K.W.*, 372 N.W.2d 392, 397 (Minn. App. 1985).

Minnesota law requires that all dispositional orders contain written findings of fact to support the disposition and “set forth in writing the following information: (i) why the best interests of the child are served by the disposition ordered; and (ii) what alternative dispositions were considered by the court and why such dispositions were not appropriate in the instant case.” Minn. Stat. § 260B.198, subd. 1(13) (2008). Similarly, the rules of delinquency procedure state that dispositions must include, in writing, “what alternative dispositions were recommended to the court and why such recommendations were not ordered.” Minn. R. Juv. Delinq. P. 15.05, subd. 2. The statute and rule both require a district court to provide a double explanation in a dispositional order: (1) why the chosen placement is appropriate and (2) why the rejected placements were inappropriate.

Minnesota law also demands that a district court consider the proportionality of a disposition; that is, whether the disposition is “the least restrictive action consistent with the child’s circumstances.” Minn. R. Juv. Delinq. P. 15.05, subd. 2(B)(1)(b); *see also In re Welfare of M.R.S.*, 400 N.W.2d 147, 151 (Minn. App. 1987) (stating that a district court’s delinquency disposition must be “the least drastic step necessary to restore law-abiding conduct in the juvenile”).

Additionally, if a juvenile is to be placed at Red Wing, (1) “the county of referral must have considered all appropriate local or regional placements and have exhausted potential in-state placements in the geographic region”; and (2) the district court “must

state on the record that this effort was made and placements rejected.” Minn. Stat. § 260B.199, subd. 1 (2008).

Furthermore, Minnesota law places limits on the modification of a dispositional order. If in the course of reviewing a dispositional order, the district court finds “good cause to believe a modification of the disposition is warranted,” the district court may commence a modification proceeding. Minn. R. Juv. Delinq. P. 15.06. But the review process does not permit a district court to increase the severity of a disposition without a hearing and without a showing of a “substantial change of circumstances such that the original disposition is: (A) insufficient to restore the child to lawful conduct; or (B) inconsistent with the child’s actual rehabilitative needs.” Minn. R. Juv. Delinq. P. 15.08, subd. 8; *In re Welfare of M.A.C.*, 455 N.W.2d 494, 497-98 (Minn. App. 1990).

As appellant contends, the May 21 dispositional order fell short of these standards. The order did not include any explanation of why Bar None was rejected as a placement despite the fact that the first judge of the district court deliberately chose Bar None in April. The record indicates that the probation staff failed to provide the district court with any information that would facilitate the district court’s consideration of alternatives to placement at Red Wing—in particular, Bar None. And the staff, then the court, failed to address the reasons that the first judge placed on the record as to why Red Wing was unsuitable, including the principle of proportionality. Finally, the order increased the severity of the original disposition without cause.⁶ Both the probation staffing report and

⁶ The first judge of the district court knew of appellant’s history of flight, and the mental health report confirmed the concerns that the first judge had expressed on the record.

the dispositional order of May 21 were inadequate. Accordingly, we reverse and remand for the district court to take into account the record developed before May 21, 2010, and the circumstances that have since unfolded.

Reversed and remanded.