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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0356**

In the Matter of the Welfare of: O. O. A., Child

**Filed October 21, 2013
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-JV-12-5131

David W. Merchant, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County
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Considered and decided by Cleary, Presiding Judge; Connolly, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant argues that the district court abused its discretion by ordering him
committed to the Red Wing Correctional Facility after he violated his probation by
failing to go to a group home as ordered. We affirm.

FACTS

In 2009, appellant O.O.A. was adjudicated delinquent for aggravated robbery and committed to the Minnesota Correctional Facility at Red Wing. While on furlough in May 2012, he was arrested for possession of a firearm by an ineligible person under age 18. He admitted the offense and was adjudicated delinquent. The district court ordered him committed to Red Wing, but stayed the commitment and ordered him to enter a residential program.

In October 2012, O.O.A. was released to his family for transportation to a group home in Auburn Lakes. Instead of reporting to the group home, however, he went home. An order for detention was issued immediately and he was arrested less than two months later. Following a hearing, the district court revoked his probation and ordered him committed to Red Wing.

This appeal follows.

DECISION

A district court has broad discretion when revoking parole and ordering a disposition in a juvenile-delinquency case. *In re Welfare of R.V.*, 702 N.W.2d 294, 298 (Minn. App. 2005). This court will not reverse absent a clear abuse of discretion. *Id.* The district court must consider “whether a particular disposition will serve established principles of dispositions,” which include, but are not limited to (1) necessity, (2) best interests of the child, and (3) sanctions. Minn. R. Juv. Delinq. P. 15.05, subd. 2(B). Considerations bearing on whether a disposition is necessary include the risk to public

safety, as well as proportionality, meaning “whether the disposition is the least restrictive action consistent with the child’s circumstances.” *Id.* subd. 2(B)(1).

O.O.A. does not dispute that he violated the terms of his probation. But he argues that the district court abused its discretion by ordering him committed to Red Wing instead of sending him to a group home. He argues that sending him back to Red Wing is disproportional to his probation violation of failing to go to his group home as ordered, in light of the fact that he remained cooperative while living at home, did chores, and found a job. He also argues that Red Wing is not the least restrictive option consistent with his circumstances.

At the probation-violation hearing, O.O.A. testified that he knew going to the group home was a condition of his probation and that it was a mistake not to go. He testified that “I have been away from home a long time and [am] starting to realize . . . I don’t want to be away from it any longer.” He testified that “it just started clicking to me that listening to my mom . . . was the best thing for me and . . . I didn’t want to put them through any more than I had to.” He also testified that he had found a job and was supposed to start work the day he was arrested. He asked the district court to give him “another chance at the group home because . . . I know I messed it up the first time, but . . . I did the things I wanted to do, like spend time with my family, and now I know I can go there and do what I have to do.”

O.O.A.’s mother confirmed O.O.A.’s testimony that he spent his time at home looking for work and staying home. She testified that the group home would give him the opportunity to “work and . . . live and be a good person.” But she admitted that she

knew he was supposed to be at Auburn Lakes, knew there was a warrant out for his arrest, and made no effort to contact the authorities. She testified that she did not contact the authorities partly because of a language barrier, and partly because she wanted O.O.A. to be in school rather than in detention.

The district court determined that the serious nature of O.O.A.'s underlying offense, combined with the "blatant way" he disregarded court orders, did not justify "giving [him] another chance." The district court explained that "[c]ommitment is in [O.O.A.'s] best interest and remaining in the home is contrary to [his] welfare because prior programming, treatment and consequences failed to return [him] to law abiding behavior." And it concluded that because O.O.A. "has been unsuccessful in less restrictive programming. . . . commitment to Red Wing is the only remaining placement and the least restrictive alternative that meets all of [his] programming needs in order to return him to law abiding behavior and protect public safety."

O.O.A. argues that commitment to Red Wing is disproportional to his violation in light of the fact that he remained cooperative and law-abiding while living at home, did chores, and found a job. But he was not law-abiding because he was on warrant status and in violation of his probation. Although he may have cooperated with his mother while at home, he was not cooperating with probation. And his mother's testimony indicates that she is not willing or able to hold him accountable for his actions.

O.O.A. also argues that Red Wing is not the least restrictive option available and that the district court incorrectly focused on his prior bad behavior rather than his more recent good behavior while living at home. He argues that the district court erred in

concluding that he had been unsuccessful in less restrictive programming because he has shown that he can succeed at Red Wing, which was why the district court ordered him to Auburn Lakes. And he argues that a less restrictive option is available: returning him to Auburn Lakes.

These arguments are undermined by the fact that when O.O.A. was offered placement in a less restrictive environment, he absconded rather than take advantage of that placement. Regardless of his good behavior while at home, he was still in violation of his probation. Coupled with the seriousness of his underlying offenses and history of violations while on furlough, the district court did not err in concluding that only a secure placement would meet O.O.A.'s needs and protect public safety. The district court considered the evidence before it, including testimony from O.O.A. and his mother, and concluded that commitment to Red Wing was in O.O.A.'s best interest and necessary for public safety. The district court's conclusion that commitment to Red Wing was the appropriate disposition was not an abuse of discretion.

Affirmed.