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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1839**

In the Matter of
the Welfare of: S.M.T.

**Filed May 20, 2008
Affirmed
Klaphake, Judge**

Hennepin County District Court
File No. JV-06-1542

Lawrence Hammerling, Chief Appellate Public Defender, Jodie Lee Carlson, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant S.M.T.)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael O. Freeman, Hennepin County Attorney, Donna J. Wolfson, Assistant County Attorney, C-2000 Government Center, 300 S. 6th Street, Minneapolis, MN 55487 (for respondent State of Minnesota)

Considered and decided by Klaphake, Presiding Judge; Stoneburner, Judge; and Wright, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant S.M.T. challenges an order issued by the district court following a hearing to revoke his Extended Juvenile Jurisdiction (EJJ) probation, which was imposed based on separate adjudications for theft by swindle and theft of a motor vehicle. The

district court found that appellant violated the terms and conditions of his probation contract, that his violations were intentional and inexcusable, but that revocation of his stayed 15-month sentence was not appropriate at this time. Rather, the court concluded that modification of appellant's out-of-home placement would serve public safety and appellant's best interests. The district court ordered appellant committed to the Minnesota Correctional Facility (MCF) - Red Wing, and continued his EJJ probation until his 21st birthday.

Because the district court did not abuse its discretion in declining to revoke appellant's EJJ probation and in modifying his placement, we affirm.

DECISION

Minn. R. Juv. Delinq. P. 19.11 governs EJJ revocation proceedings. Under that rule, "unless the [district] court makes written findings indicating the mitigating factors that justify continuing the stay," the court must execute a stayed adult sentence if the court finds that (1) "one or more conditions of probation were violated," (2) "the violation was intentional or inexcusable," and (3) "the need for confinement outweighs the policies favoring probation." *Id.*, subd. 3(C)(2), (3); *see State v. B.Y.*, 659 N.W.2d 763, 768 (Minn. 2003) (using similar factors applied in adult probation revocation cases to revocation of EJJ probation).

In this case, the district court found that appellant violated the terms of his EJJ probation contract when he drove a car without a valid driver's license and when he absented himself from his home while on Electronic Home Monitoring (EHM). Appellant argues that none of his disposition orders made it a violation to drive without a

license. While the state argues that the general conditions of appellant's disposition required him to remain law abiding and that driving without a license violated the law, there is some question as to whether appellant's act of driving in a parking lot was unlawful. But even seemingly minor status offenses involving curfew violations or truancy can support a probation revocation. *See In re Welfare of R.V.*, 702 N.W.2d 294, 299, 304-08 (Minn. App. 2005).

Appellant also challenges the district court's finding that he violated the terms of his EJJ probation when he failed to comply with EHM by absenting himself from his mother's home. He agrees that the terms of his EJJ probation contract specifically require him to comply with the terms of the EHM contract and to reside at his mother's home; but he claims that his violation was not "intentional or inexcusable" for the following reasons: he does not read; he believed that he was in compliance with the EHM contract when he contacted staff about his whereabouts; he thought he was no longer on EHM after his probation officer issued a warrant for his arrest; he never removed the ankle bracelet; and he planned to turn himself in but was dependent on his cousin for transportation.

The district court was entitled to find appellant's claims not credible and to reject his explanations, as it did. And despite appellant's claim that he cannot read, he signed the EJJ probation contract and has submitted a handwritten pro se supplemental brief in this appeal. Moreover, a review of the record shows that appellant has been on EHM before and that he should understand the basic restrictions imposed by that supervision.

Appellant finally argues that the district court abused its discretion by sending him to Red Wing; appellant's pro se supplemental brief also addresses this issue.¹ Appellant acknowledges that the factor involving consideration of whether the need for confinement outweighs the policies favoring probation does not directly apply to juvenile proceedings because confinement in a secure facility is not the presumptive consequence of violating probation in the juvenile setting, as it is in the EJJ setting. *See B.Y.*, 659 N.W.2d at 768.

Yet appellant insists that "there is no real distinction in [his] case because [he] was placed at Red Wing, a secure facility operated by the Commissioner of Corrections" and because "[h]e will likely serve more time in secure juvenile facilities than he would have served if [his] 15-month prison sentence was executed." But appellant appears to prefer analyzing this issue under the juvenile rules because it would afford him "greater protection against the reflexive imposition of long-term, out-of-home placement" than the need-for-confinement factor would afford.

A juvenile court disposition for out-of-home placement must be supported by findings that address five factors: (1) why public safety is served by the disposition; (2) why the best interests of the child are served by the disposition; (3) what alternative dispositions were proposed to the court and why such recommendations were not ordered; (4) why the child's present custody is unacceptable; and (5) how the correctional

¹ In his pro se supplemental brief, appellant denies violating his probation and claims that he has been doing everything asked of him. He insists that his probation officer "unfairly negotiated for me to get sent to Red Wing." He claims that he has been away from his family "too long" and that it is time for him to go home.

placement meets the child's needs. *In re Welfare of D.T.P.*, 685 N.W.2d 709, 712-13 (Minn. App. 2004); *In re Welfare of J.S.S.*, 610 N.W.2d 364, 366-67 (Minn. App. 2000); Minn. Stat. § 260B.198, subd. 1(m) (2006); Minn. R. Juv. Delinq. P. 15.05, subd. 2(A).

The district court's findings are sufficient to support its decision to place appellant at MCF-Red Wing. In particular, the court found: (1) continuing appellant's placement in his mother's home would "unduly depreciate the seriousness" of his probation violations; (2) placing appellant out of the home serves the interests of public safety and appellant's best interests; (3) the only long-term placements available, considering appellant's age and prior interventions, are Red Wing and Glen Mills; (4) Red Wing is the least restrictive alternative to return appellant to law-abiding behavior; (5) Red Wing serves the interests of public safety because, unlike Glen Mills, it is a secure facility that will reduce appellant's opportunity to be absent which has been his problem in the past; (6) Red Wing will provide additional treatment and programming to address appellant's behaviors leading to his underlying offenses and probation violations; and (7) Red Wing is a secure facility with a structured program that will provide a more appropriate consequence for appellant's probation violations.

Appellant claims that these findings fail to address his unique circumstances; appellant is transgender and wears women's clothes. He has mental health issues, academic deficiencies, and sexual identity issues. And at the hearing, he did not want to be placed at Red Wing, stating that he preferred being placed with older people and that he did not get along with younger people. But appellant failed to present any evidence to show why he believed that placement at Red Wing was not appropriate; nor did he

present any evidence regarding what he now claims are the “best practice guidelines for addressing out-of-home placements for transgender youth.” And the district court in this case was thoroughly familiar with appellant and his history, which included numerous contacts with police and social service agencies, and various dispositions ranging from EHM to an apparently unsuccessful placement at a juvenile facility in Indiana. Based on the record that it had before it, the district court did not abuse its discretion in placing appellant at MCF-Red Wing.

Affirmed.