STATE OF MINNESOTA
IN COURT OF APPEALS
A09-324

In the Matter of the Welfare of: Z. S. T., Child.

Filed December 22, 2009
Affirmed in part, reversed in part, and remanded
Shumaker, Judge

Hennepin County District Court
File Nos. 27-JV-08-14920, 86-JV-08-10580

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Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

SHUMAKER, Judge

In this juvenile-delinquency case, appellant argues that the district court abused its discretion by placing him in a long-term, out-of-home placement, and made inadequate findings in support of its disposition. Although the district court did not abuse its

discretion in placing appellant outside the home, we reverse and remand for the court to make specific findings on the best interests of the child and the suitability of that placement.

FACTS

On December 18, 2008, appellant Z.S.T. pleaded guilty to third-degree assault for punching a boy at school and breaking his nose.

At the disposition hearing, the district court adjudicated Z.S.T. delinquent and placed him at the Hennepin County Home School for a period of one year, despite the fact that Z.S.T.'s mother and siblings had recently moved to Illinois.

Z.S.T. appealed, arguing that placement at the Hennepin County Home School was not the least-restrictive disposition and that the court made inadequate findings.

D E C I S I O N

Disposition

Z.S.T. argues that his disposition should be reversed. "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 disposition will not be disturbed." *Id.*

Specifically, Z.S.T. claims that "there was no evidence" that placing him into a long-term, out-of-home facility was necessary to rehabilitate him, especially when his mother and siblings had just moved to Illinois and he had never been given an "intermediate" consequence. "The goal of disposition in a delinquency case is to rehabilitate the child, and the court's decision must be necessary to achieve that goal."

In re Welfare of D.S.F., 416 N.W.2d 772, 774 (Minn. App. 1987), *review denied* (Minn. Feb. 17, 1988). In other words, a district court's delinquency disposition must be "the least drastic step necessary to restore law-abiding conduct in the juvenile." *In re Welfare of M.R.S.*, 400 N.W.2d 147, 151 (Minn. App. 1987); *see* Minn. Stat. § 260B.198, subd. 1 (2008) (directing dispositional decision to be that "necessary to the rehabilitation of the child"); Minn. Stat. § 260B.198, subd. 1(13(i) (2008) (requiring any disposition ordered to consider best interests of the child). "In determining what is necessary, the court must consider the severity of both the act and the proposed disposition." *D.S.F.*, 416 N.W.2d at 774.

The record reflects that the district court weighed several alternative dispositions and the severity of Z.S.T.'s act before deciding to place him at the Hennepin County Home School. The court heard recommendations from a probation agent, the state, and Z.S.T.'s defense counsel. The probation agent recommended sending Z.S.T. to the Red Wing Correctional Facility because this was Z.S.T.'s third felony in 13 months, and the Placement Screening Committee had considered other less-restrictive alternatives, such as a short-term consequence, but did not feel that this option was "appropriate for his level of offense." The probation agent considered but rejected the Hennepin County Home School because Z.S.T.'s mother was moving to Illinois and would not be available for the "family component" that the school would offer. The state recommended a long-term, out-of-home placement. This recommendation was based upon the nature of the charges, which it characterized as "attacking the victim and breaking his nose at school.

It was an unprovoked assault." Finally, Z.S.T.'s public defender proffered three options he considered to be less restrictive than the Hennepin County Home School.

The public defender stated a "belief" that Z.S.T. and his mother were now Illinois residents and therefore, "[o]ne option the Court would have is transferring the disposition of this matter" to Illinois. Alternatively, counsel suggested that the court adjudicate Z.S.T. in Minnesota, then transfer probation to Illinois. Finally, counsel suggested that the court could impose a short-term consequence in Minnesota, for example, three to six weeks in the "Beta Program," then transfer probation to Illinois, but order a stayed, long-term, out-of-home placement as a condition of probation. Then, "[s]hould [Z.S.T.] return to the State of Minnesota and not reside in Illinois, the Court could impose that long-term or short-term out of home consequence . . . ."

The district court considered Z.S.T.'s previous adjudications, including a September 2007 burglary in the first degree (a "person offense"), a separate aiding and abetting burglary in the third degree from the same time period, and other previous lesser offenses including disorderly conduct. As consequences for these prior adjudications, Z.S.T. had been ordered to, inter alia, complete 18 hours of community service; spend time in short-term, out-of-home placements, such as "Thistledew"; undergo a psychological evaluation; participate in family counseling; and submit to electronic home monitoring. Z.S.T. was also previously given a stayed long-term, out-of-home placement. The court determined that "all of these things were not sufficient to return [Z.S.T.] to law-abiding behavior."

Finally, the court considered the nature of the present offense, which had been characterized as an "unprovoked assault." After Z.S.T. addressed the court, the court noted that it was "obvious . . . that you have no victim empathy . . . . You apparently . . . feel that he got what he deserved." Although the court stated its belief that Z.S.T. *could* be placed at Red Wing, it decided that out-of-home placement at the Hennepin County Home School was "the least restrictive alternative available . . . because it offers a structured and safe environment, an appropriate consequence for the offense, excellent education programming, and comprehensive health care facilities." The district court rejected the alternatives involving transferring Z.S.T.'s disposition or probation to Illinois, stating that such a transfer was not within its "understanding of the Interstate Compact . . . and, furthermore, I have no guarantee that they would even accept disposition."

The record shows that the court considered the severity of Z.S.T.'s offense, his prior history including "person" offenses, his lack of remorse, his inability to remain law-abiding, and the alternatives available. Z.S.T. did not, and does not, explain what "intermediate" consequence would have been more appropriate for his disposition. It was not an abuse of discretion for the court to find that an increased consequence was necessary to rehabilitate Z.S.T. and make him law-abiding; and that, considering the nature of the offense, the programming history, and the availability of options, this was the least-restrictive alternative available that would meet the needs of a juvenile under the circumstances. *See In re Welfare of L.K.W.*, 372 N.W.2d 392 (Minn. App. 1985) (taking into consideration the child's prior violations of law, severity of the offense, and

repetition of unlawful conduct in evaluating the least-restrictive action necessary). Indeed, the court showed some leniency in refusing to send Z.S.T. to the Red Wing Correctional Facility.

Z.S.T. also argues that the district court abused its discretion because it "erroneously" interpreted the Interstate Compact on Juveniles (the compact) when it stated that it could not be sure that Illinois would accept Z.S.T.'s disposition or probation. First, we note that under article II of the compact, the decision to transfer probation is *discretionary* with the "sending state." Minn. Stat. § 260.51, art. VII(a) (2008). Furthermore, when "the parent . . . is not a resident of the receiving state," the receiving state—Illinois, in this case—has the discretion to accept or reject the transfer of the juvenile's probation. *Id.* The compact defines "residence" as the "place at which a home or regular place of abode is maintained." *Id.*, art. III.

The record reflects that Z.S.T.'s mother initially told the court that she was going to move to Crystal, Minnesota, but at the time of the disposition hearing she reported that her family was "in the process of finding their own place" in Illinois. Z.S.T.'s mother could not provide a permanent address for herself in Illinois, and was admittedly only staying temporarily with her sister. Based on the evidence presented, the district court could not be sure whether Z.S.T. or his mother were residents of Illinois. Therefore, it was correct in concluding that it could not be sure that Illinois would accept Z.S.T.'s disposition or probation. The court did not abuse its discretion in this regard.

Finally, Z.S.T. argues that the district court used an "improper factor" in deciding to send him to the Hennepin County Home School when it made the following comment:

> The difference is that [Z.S.T.'s mother] has decided to relocate to Illinois and it's on that basis that we more frequently have young people go to the Commissioner of Corrections because there's no real tie to Hennepin County. However, since he's not previously had the opportunity to be in a long-term treatment program, I'll still order you to go to the County Home School based upon that your mother has said and demonstrated I believe that she will get back on the bus and come here to do monthly visits or be available by phone for the family therapy component.

Read in context, the passage to which Z.S.T. cites was the court's lamentation that, at times, juveniles are sentenced to the commissioner of corrections when their families live out of state. But the court chose *not* to impose this sanction, instead placing Z.S.T. in the Hennepin County Home School *despite* the fact that Z.S.T.'s family did not reside in Minnesota. Thus, this argument is also without merit, and we affirm the district court's placement.

However, as we discuss below, remand is necessary for the court to make specific findings on Z.S.T.'s best interests and the suitability of the Hennepin County Home School. Of course, if those findings reveal that the school is not suitable or in Z.S.T.'s best interests, the court will be required to impose an alternative disposition.

Findings

Z.S.T. also argues that the district court's findings were insufficient to support its disposition, and seeks remand for "particularized findings to be made." We agree.

A district court's decision to impose an out-of-home placement in a delinquency proceeding must be supported by findings that address five subjects:

> (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 placement [is suitable and] meets the child's needs.

In re Welfare of D.T.P., 685 N.W.2d 709, 712-13 (Minn. App. 2004) (citing *In re Welfare of J.S.S.*, 610 N.W.2d 364, 366-67 (Minn. App. 2000), which combined the statutory factors with rules of juvenile procedure in a list of five factors that must be considered in dispositional decision). "[W]e have repeatedly emphasized the importance of findings in our many published decisions that hold inadequate juvenile disposition findings constitute reversible error." *In re Welfare of N.T.K.*, 619 N.W.2d 209, 211-12 (Minn. App. 2000).

The district court's written findings were largely conclusory in nature, and its oral findings from the dispositional hearing (which were incorporated by reference into the court's written order) added little substance. While the court adequately addressed the first, third, and fourth required findings, it provided insufficient findings regarding the best interests of the child and the suitability of the placement.

Best Interests Finding

It is well-settled that the best interests of the child are generally served by remaining in parental custody. Minn. R. Juv. Delinq. P. 15.05, subd. 2(B)(3); *L.K.W.*, 372 N.W.2d at 399. Thus, "[i]f a child has valuable home relationships, they cannot be taken away without evidence of unusually severe needs of the child for rehabilitation." *Id.* at 400. "A bare conclusion that the best interests of a child require a particular

disposition is insufficient," as is a finding of best interests with "minimal elaboration." *J.S.S.*, 610 N.W.2d at 367.

The district court found that the out-of-home placement would be in Z.S.T.'s best interests based solely upon the fact that the previous consequences imposed upon him appeared to have had no deterrent effect. The court did not analyze Z.S.T.'s familial relationships or make factual findings as to why Z.S.T.'s mother was unable to care for him. Additionally, the court did not discuss Z.S.T.'s particular individual needs. The court stated that the Hennepin County Home School would provide structure, a safe environment, "an appropriate consequence for the offense, excellent educational programming, and comprehensive health care facilities," but it did not identify how these characteristics related to Z.S.T.'s particular needs. Therefore, these findings are insufficient. *See J.S.S.* 610 N.W.2d at 367 (findings are insufficient when court does not explain how the child's best interests would be served by the particular out-of-home placement).

Suitability of Placement Finding

Similarly, where an out-of-home placement is considered, "the evidence should reveal the program of a facility and a competent assessment of the child's needs." *L.K.W.*, 372 N.W.2d at 400. Here, as with the best-interests factor, it appears that the district court only considered that the previous out-of-home placements failed to deter Z.S.T. from reoffending. The record does not reveal the nature of the Hennepin County Home School, an assessment of Z.S.T.'s particular needs, or how the program provided there would meet those needs. These findings are insufficient. *Id.*

Therefore, we reverse and remand "for the limited purpose of requiring the district court to . . . issue written findings of fact comporting with the statutory and rule requirements," as noted more particularly in this opinion. *N.T.K.*, 619 N.W.2d at 212.

Affirmed in part, reversed in part, and remanded.