

Children's Law Center of Indiana



Delinquency

08/10/2009

In **In Re D.S.**, 910 N.E.2d 837 (Ind. Ct. App. 2009), *trans. denied*, the Court affirmed the trial court's modified dispositional order placing the juvenile in an out-of-state shelter care facility against the recommendations of Indiana Department of Child Services (IDCS). On January 11, 2009, the fifteen-year-old juvenile was arrested for battery, pointing a firearm, and several other charges. The juvenile's prior history as a delinquent included alcohol and drug abuse, expulsion from high school after having completed only the ninth grade, and significant involvement with a local gang and other "negative peer associations." The juvenile eventually pled to the battery and pointing of a firearm charges, and the remaining three charges were dismissed. The Serious Habitual Offender Program Board later unanimously determined that the juvenile should be designated a Serious Habitual Offender based on his criminal history of handgun possession and involvement with gang activity. On the recommendation of the probation department and contrary to the recommendation of IDCS, after a May 19, 2009 hearing, the trial court placed the juvenile in the Rite of Passage residential program in Arizona. IDCS timely filed a Notice of Expedited Appeal pursuant to Indiana Appellate Rule 14.1

The Court held that the trial court's findings supported its placement decision, and therefore, it could not conclude that the trial court committed clear error in ordering the juvenile's placement in the out-of-state shelter care facility, Rite of Passage. *Id.* at 842.

Citing **In Re T.S.**, 906 N.E.2d 801, 804 (Ind. 2009), the Court noted that its review here is two tiered: consideration of (1) whether the evidence supports the findings, and (2) whether the findings support the judgment. The Court observed that the dispositional order, here: (1) included specific written findings and conclusions stating, among other things, that its placement decision was "consistent with the safety and the best interest of" the juvenile; (2) was consistent with IC 31-37-18-9(b), which provides that if IDCS does not agree with a probation officer's recommendation, and the trial court does not follow the IDCS recommendation, the trial court shall accompany its dispositional decree with written findings that IDCS' recommendations are "unreasonable" based on the circumstances of the case or that they are "contrary to the welfare and best interests of the child;" and (3) complied with the requirements of IC 31-37-19-3 which provides that a court may not place a delinquent child in a non-secure detention facility outside of Indiana unless the court makes written findings, based on clear and convincing evidence, that the out-of-state placement is appropriate because there is no comparable facility with adequate services located in Indiana. *Id.* at 840-41. The Court quoted the trial court's specific findings supporting the placement including its statement that the placement was for the following reasons: "[the juvenile] has a history with this Court with handgun related charges, has a history of substance abuse issues, is currently expelled from school, and has a history of gang affiliation." The Court noted as supporting the trial court's findings, among other things, the testimony of the probation officer and the report of the county's chief probation officer which included the need to get the juvenile out of the

community and into a structured environment, the fact that the Indiana facilities recommended by IDCS were secure facilities geared toward sexual predators or persons with serious psychiatric disabilities neither of which the juvenile had demonstrated a need for, and a comparison showing the per diem rates of the IDCS recommended facilities to exceed the per diem rates for the Arizona facility which rates included travel costs for the juvenile's mother to visit quarterly. Id. at 841-42. In support of its holding, the Court explained that the trial court had (1) concluded IDCS' placement recommendations were contrary to the juvenile's best interests; (2) placed the juvenile in the Rite of Passage program; and (3) supported its order with specific factual findings based on ample evidence of the juvenile's history of drug abuse, gang affiliation, and expulsion from school; his athletic and leadership abilities; his family relationships; his wishes and those of his mother; and the probation department's formal recommendation. Id. at 842.