

# Children's Law Center of Indiana



## Delinquency

06/10/2009

In ***In Re D.M.***, 907 N.E.2d 582 (Ind. Ct. App. 2009), the Court affirmed the trial court's modified dispositional order placing the juvenile, previously adjudicated to be a delinquent, in an out-of-state shelter care facility against the recommendations of Indiana Department of Child Services (IDCS). On July 31, 2007, the juvenile entered a plea on an auto theft charge, a class D felony when committed by an adult, and was adjudicated a delinquent. The juvenile was placed on Intensive Probation, and was directed to participate in a day treatment program in order to meet his educational needs. This disposition and the juvenile's subsequent disposition of placing him on Official Probation and placement at Gibault, Inc., a residential treatment facility in Terre Haute, Indiana, failed because of the juvenile's numerous behavioral problems and non-compliance. When in December 2008, Gibault staff requested that the juvenile be discharged from its program as unsuccessful, a second petition for modification of probation was filed. On April 20, 2009, IDCS submitted to the trial court a Consideration Report recommending placement at Youth Opportunity Center, a residential facility in Muncie, IN. This report was in response to the Probation Officer's Hearing Report, wherein the probation officer changed his initial recommendation of commitment to the Department of Correction, to a recommendation that the juvenile be placed at Silver State Academy, a residential treatment facility in Nevada. Subsequent to a hearing on the modification petition, on April 21, 2009, the trial court determined that IDCS' placement recommendation was unreasonable in light of the facts and circumstances of the case and that the juvenile's interests would be best served by a placement at Silver State, and, therefore, issued an order modifying its prior dispositional order and placing the juvenile at Silver State. On April 23, 2009, IDCS submitted a second Consideration Report re-asserting its prior recommendation of placement either at Youth Opportunity Center, or in one of several other Indiana residential facilities. The trial court did not thereafter modify its dispositional order, and IDCS timely filed a Notice of Expedited Appeal, pursuant to Indiana Appellate Rule 14.1, from the April 21, 2009 order.

**A thorough review of the record left the Court convinced that the trial court's modified dispositional order placing the juvenile at Silver State Academy, an out-of-state residential treatment facility, against IDCS' recommendation is supported by clear and convincing evidence.** *Id.* at 586. The trial court's modified disposition was appealed pursuant to Indiana Appellate Rule 14.1, effective January 1, 2009, which provides IDCS with an avenue for expedited interlocutory review of trial court orders for services and out-of-home placements in CHINS and juvenile delinquency cases where such orders are made contrary to IDCS' recommendations to the court. The Court (1) cited to ***In Re T.S.***, 906 N.E.2d 801 (Ind. 2009) and its finding regarding the appropriate standard of review to be applied in Rule 14.1 Expedited Appeals cases; (2) stated, "Thus, our review is implemented by a two-tiered analysis, considering first whether the evidence supports the findings and second, whether the findings support the judgment;" and (3) concluded that if the evidence and inferences therefrom support the trial

court's decision, "we must confirm." Id. at 584 (citations omitted). The Court observed that in this case, (1) after considering the recommendations from both IDCS and the Probation Department, the trial court reached a decision concerning the juvenile's placement that was contrary to IDCS' recommendation; (2) the trial court therefore issued an order containing written findings and conclusions including a finding that IDCS' recommendations were "unreasonable based on the facts and circumstances of the case, and/or are contrary to the welfare or the best interests of the child;" (3) this was consistent with IC 31-37-18-9(b) which provides that if IDCS does not concur with the probation officer's recommendation, and the trial court does not follow IDCS' alternative 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;" (4) because the trial court's placement is contrary to IDCS' recommendation and is an out-of-state placement, IC 31-37-19-3 is also implicated; (5) IC 31-37-19-3(b)(2)(A) provides, in pertinent part, that a trial court may not place a delinquent child in a home or facility that is not a secure detention facility and is located outside Indiana unless the court makes written findings based on clear and convincing evidence that the "out-of-state placement is appropriate because there is not a comparable facility with adequate services located in Indiana...."; and (6) In arriving at its decision to follow the Probation Department's recommendation to place the juvenile at Silver State, the trial court made the appropriate findings. Id. at 584-85. The Court noted the following supporting record evidence: (1) the probation officer testified explaining that he felt that IDCS' proposed alternative placement, the Youth Opportunity Center, was not comparable placement to Silver State and why, as well as that the per diem charges at Silver State were less; (2) the juvenile and his mother testified that they preferred placement at Silver State and why; (3) IDCS failed to specifically identify how the trial court's findings lacked supporting evidence or how these findings, in turn, did not support the trial court's ultimate decision to place the juvenile at Silver State; and (4) although IDCS argued that there are comparable residential treatment facilities in Indiana that use a Cognitive Behavioral approach, as Silver State does, IDCS failed to provide any evidence that the Indiana programs have comparable vocational training and athletic services and instead summarily dismissed the importance the trial court placed on such program's for the juvenile's successful rehabilitation. Id. at 585-86.