

Children's Law Center of Indiana



Delinquency

08/28/2009

In ***In Re T.D.***, 912 N.E.2d 393 (Ind. Ct. App. 2009), the Court affirmed the trial court's modified dispositional order placing the juvenile in an out-of-state shelter care facility contrary to the placement recommendations of Indiana Department of Child Services (IDCS). On November 24, 2008, a delinquency petition was filed alleging the juvenile committed burglary and theft, respectively Class B and D felonies if committed by an adult. At the time, the juvenile was on probation for truancy. The juvenile eventually admitted to the theft charge and the remaining charge was dropped. On April 21, 2009, the juvenile was placed on strict and indefinite probation, and her temporary custody was awarded to her grandmother. On April 22, 2009, the juvenile skipped classes and was suspended from school for two days. On April 24, 2009, her urine screen tested positive for marijuana and cocaine. Following an emergency modification hearing, the juvenile was temporarily detained at the juvenile justice center. The Probation Department recommended that the juvenile be placed at Forest Ridge Youth Services, a licensed residential substance abuse treatment program for adolescent girls in Estherville, Iowa. IDCS disagreed, recommended placement at one of two Indiana residential homes, and supported its recommendation with reasons. The Probation Department disagreed, compared the three facilities which were under consideration, and presented evidence as to why Forest Ridge better met the juvenile's needs. On May 28, 2009, the trial court placed the juvenile at Forest Ridge. 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. IDCS timely filed a Notice of Expedited Appeal pursuant to Indiana Appellate Rule 14.1

The Court concluded that the trial court did not commit clear error in placing the juvenile at Forest Ridge. *Id.* at 398. 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 396-97. The Court held that, after reviewing IDCS' and the Probation Department's Consideration Reports and the

evidence and testimony admitted during the modification hearing, the trial court concluded IDCS' alternative placement recommendations were contrary to the juvenile's best interest and that the order placing the juvenile at Forest Ridge was supported with ample evidence of her history of drug abuse, her diagnosed mental disorders, her family relationships, her wishes and those of her grandmother, and the Probation Department's formal recommendation. Id. at 397-98.

The Court noted that, at the time of the disposition of this case, IC 31-40-1-2(1) obligated IDCS to pay the costs of this out-of-state placement, but if the disposition had been after IC 31-40-1-2(1)'s amendment, effective July 1, 2009, IDCS would not have been obligated to pay the costs. Id. at 398 n.2.