

Children's Law Center of Indiana



Delinquency

4/30/10

In **J.J. v. State**, 925 N.E.2d 796 (Ind. Ct. App. 2010), the Court affirmed the juvenile court's delinquency dispositional order committing the child to the Department of Correction and reversed and remanded the delinquency finding for an act that would have been class D felony resisting law enforcement because the order did not include written findings by the juvenile court referee. The child has struggled with mental health problems, substance abuse, and anger management since the age of twelve, when he was suspended from school for taking shotgun shells and a knife to school. The child also has a history of behavioral issues, violent outbursts, and threats. The child has been in foster care twice—first, for a few months at the age of three; second for two years at the age of twelve. The child has witnessed abuse of his mother at the hands of his father, who was incarcerated several times. In November 2005, the child was evaluated by a psychologist, who concluded the child was suffering from anxiety, depression, and low self-esteem. In December 2005, the child was admitted to Meadows Hospital in Bloomington after his foster mother discovered his suicide note and observed cuts on his arm. In February 2006, the child was adjudicated delinquent for stealing a golf cart and placed on probation for one year. In March 2006, the child violated probation by failing to obey his foster parents and exhibiting explosive behavior. The child had inpatient treatment at Meadows Hospital from October 2006 until March 2007. He was admitted to the hospital because he had been cutting his arm and hearing voices, and he was diagnosed with mood disorder, hallucinations, depression, aggression, psychosis, and borderline intellectual functioning. He was prescribed antipsychotic and antidepressant medication. He successfully completed probation in February 2007 and was released to his mother's care in March 2007. The child receive counseling and medication management from the Center for Behavioral Health, where he was diagnosed with intermittent explosive disorder, bipolar disorder, bipolar II disorder with psychotic features, and parent-child relational problems.

The child was combative and disorderly at school on January 18, 2008, and threatened to kill a Bedford Police Officer who was called to the school. He was admitted to Meadows Hospital on January 22, 2008, where he stayed for seven days. On January 23, 2008, the State filed a petition in cause number 47C01-0801-JD-38 (JD-38) alleging the child to be a delinquent for class A misdemeanor resisting law enforcement, class B misdemeanor disorderly conduct, and class B misdemeanor criminal mischief. On March 14, 2008, the child kicked in the front door of a house. He was charged as a delinquent for class B misdemeanor criminal mischief cause number 47C01-0803-JD135 (JD-135). On April 8, 2008, the juvenile court held a factfinding hearing in JD-38 and an initial hearing in JD-135. The child admitted to disorderly conduct in JD-38 and to

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criminal mischief in JD-135. In JD-38, the court found that the child resisted law enforcement but did not find that he committed criminal mischief. The juvenile court referee made no specific findings of fact in the dispositional order and the child was placed on probation. In September 2008, the child was suspended from school because his anger issues posed a danger to himself, the students, and school staff. The child was arrested for public intoxication and illegal consumption on November 8, 2008, and his mother reported him as a runaway on November 17, 2008. The State filed a delinquency petition for class C misdemeanor illegal consumption and for runaway on November 26, 1008 in Cause number 47C01-0811-JS-460 (JS-460) and a motion to modify probation in JD-38 and JD-135.

On December 8, 2008, the child admitted to illegal consumption and being a runaway. On February 4, 2009, the juvenile court placed the child on probation in JD-38, JD-135, and JS-460, ordering him to take part in the Juvenile Detention Alternative Program. The child was arrested for possession of marijuana, public intoxication, and curfew violation on May 29, 2009. On June 2, 209, officers were dispatched to a residence at 4:45 a.m., and were told by a woman that male subjects had broken into her gate and were in her yard. The child, who was carrying a backpack containing a large amount of pipe fittings, was one of the subjects who had been running away from the officers. On June 22, 2009, the State filed a petition in cause number 47C01-0906-JD-240 (JD-240) alleging the child to be delinquent for class D felony receiving stolen property, class A misdemeanor possession of marijuana, class B misdemeanor public intoxication, two curfew violations, two counts of class D felony theft, and class A misdemeanor resisting law enforcement. On June 29, 2009, the State filed a motion to modify the child's probation in JD-38, JD-135, and JS-460. On August 4, 2009, in JD-240, the child admitted to the allegations of both curfew violations, public intoxication, possession of marijuana, and one count of theft. The court found as true that the child resisted law enforcement, but did not make specific findings in the order. The remaining allegations were dismissed. Following a dispositional hearing, on August 20, 2009, the juvenile court ordered the child committed to the DOC for placement at Indiana Boy's School. The court stated that Lawrence County Juvenile Probation has exhausted what means they have for the child's rehabilitation. The child's mother failed to ensure that he continued with recommended counseling, he failed to take his medication as required, and the child has not benefitted from the panoply of intense services he has received throughout the years. The child appealed, arguing that: (1) the two findings of delinquency for resisting law enforcement must be reversed because the juvenile referee failed to make sufficient findings in the orders which were signed by the juvenile court; and (2) the court erred by ordering him committed to the DOC rather than placed in a less restrictive setting.

The Court reversed the juvenile court's delinquency finding in JD-240 for an act that, if committed by an adult, would have been a class D felony resisting law enforcement and remanded with instructions to the juvenile referee to make a written record of his findings, and to the juvenile court to make a decision based upon those findings. *Id.* at 801. The Court noted that, in both JD-38 and JD-340, the juvenile referee made no findings of fact whatsoever, merely filling in a blank on an otherwise boilerplate form and signing the proposed order. *Id.* at 800. Below the referee's signature is boilerplate language stating, "If made by a Referee, the above FINDINGS and RECOMMENDATIONS are approved and adopted as the

FINDINGS and ORDER of the Court on the date file marked hereon.” Id. The juvenile court then signed the order below that language. Id. The Court reviewed IC 31-31-3-6(2), which requires, among other things, that a juvenile court referee “shall submit findings and recommendations in writing to the juvenile court, which shall enter such order as it considers proper...” (emphasis in original), and R.S. v. State, 435 N.E.2d 1019 (Ind. Ct. App. 1982). In R.S. the Court found that the trial court erred in adjudging the child to be a delinquent where the referee failed to submit adequate findings and recommendations to the court and ordered the trial court to make a decision based upon the new written findings submitted by the referee. R.S. at 1020. J.J. at 800-01. The Court stated that, because the delinquency finding in JD-38 was entered on April 8, 2008, and the child did not appeal that order or the finding of delinquency, his attempt to do so was untimely. Id. at 801. The Court opined that the appeal of JD-240 is timely. Id. The Court noted that the referee submitted no findings; instead merely offering an abbreviated conclusory statement that the child committed class D felony resisting law enforcement. Id. The Court opined that, as in R.S., this order does not provide a sufficient factual basis for the juvenile court to make a finding of delinquency or for adequate review by this Court. Id. The Court was not persuaded by the State’s argument that, because there was an audio transcript of the factfinding hearing, the referee was not required to make specific findings. Id. The Court said that to require the juvenile court to review taped transcripts undermines the purpose of referees, which is to conserve the court’s time and resources. Id. The juvenile court should be able to read the recommended order drafted by the referee, glean all relevant facts therefrom, and come to an informed decision about whether or not to adopt the referee’s recommendations. Id.

The Court found that the juvenile court acted within its discretion by requiring the child to be committed to the DOC. Id. at 797. Quoting A.M.R. v. State, 741 N.E.2d 727, 729 (Ind. Ct. App. 2000), the Court observed that “the choice of a specific disposition for a delinquent child is within the discretion of the trial court, subject to the statutory considerations of the welfare of the child, the safety of the community, and a statutory policy of favoring the least harsh disposition.” J.J. at 801. The Court also noted that IC 31-37-18-6 sets forth the statutory considerations to be made in entering a dispositional decree and the role of the juvenile court is to rehabilitate rather than punish. E.H. v. State, 764 N.E.2d 681, 685 (Ind. Ct. App. 2002). J.J. at 801. The child argued that placement with the DOC was an abuse of discretion because: (1) his offenses have all been “minor in nature”; (2) he has a history of mental health problems that make commitment to the DOC improper; (3) he has a history of substance abuse for which he has not received treatment; (4) the court “did not treat [him] as a person in need of care, protection, treatment, and rehabilitation, as the law of Indiana requires.” Id. at 801-02. The Court sympathized with the argument and acknowledged that the child is a troubled individual who is grappling with a number of significant problems, but placed great weight on the juvenile court’s conclusion that “the Lawrence County Juvenile Probation has exhausted what means they have for rehabilitation for [the child].” Id. at 802. The Court concluded that the child has made too many bad choices and has left the juvenile justice system with no alternative but to order that he be committed to DOC. Id.