

Children's Law Center of Indiana



Delinquency

12/30/10

In ***K.A. v. State***, 938 N.E.2d 1272 (Ind. Ct. App. 2010), the Court reversed the juvenile court's order which modified the child's delinquency disposition. In November 2009, the child entered into a plea agreement wherein he pled guilty to the delinquent act of theft and the State dismissed allegations pending in other cause numbers. The juvenile court entered a dispositional order in December 2009 placing the child on probation for six months. The child entered into a second plea agreement on another delinquency petition in February 2010 wherein he pled guilty to the delinquent acts of conversion and resisting law enforcement. The juvenile court entered a dispositional order awarding wardship of the child to the Indiana Department of Correction, but suspended the commitment and placed the child on probation for six months.

In March 2010, the probation department alleged that the child violated his probation under both cases by being a runaway and requested modification of the child's disposition. At the initial hearing, the child denied the allegation. The juvenile court granted the child's request for an attorney, set the case for a modification hearing, and ordered the child detained until the hearing. At the modification hearing, the State presented no evidence of the alleged probation violation. The probation department recommended that the child continue on a suspended commitment to the Department of Correction and also participate in and comply with a forty-five-day diagnostic placement at the INTAC Emergency Shelter of the Youth Opportunity Center, which is located outside the child's county of residence. The State agreed with the diagnostic placement but requested that it take place in a secure facility. The child objected to modification because the State presented no evidence of the alleged probation violation, but the juvenile court overruled the objection. The child presented evidence that Resource Treatment Facility is comparable to Youth Opportunity Center, available to the child, and located in the child's county of residence. The juvenile court ordered suspended commitment to the Department of Correction and required the child to complete a forty-five-day diagnostic placement at the INTAC Emergency Shelter of Youth Opportunity Center as a special condition of probation. The child appealed.

The Court opined that the juvenile court violated the child's due process rights when it modified his disposition based on an alleged probation violation for which no evidence was presented. *Id.* at 1276. Citing *In Re K.G.*, 808 N.E.2d 631, 635 (Ind. 2004), the Court observed that a juvenile charged with delinquency is entitled to have the court apply common law jurisprudential principles which reason and experience have shown are necessary to give the

accused the essence of a fair trial. K.A. at 1274. The Court said these principles include the right to have competency determined before being subjected to delinquency proceedings, the right to adequate notice of the charges, the right to appointment of counsel, the privilege against self-incrimination, and the right to confront and cross-examine opposing witnesses. K.G. at 635. K.A. at 1274. The Court stated that the issue presented in the child's case is whether the due process rights of a juvenile additionally include the right to an evidentiary hearing before the juvenile court modifies disposition based on an alleged probation violation. Id. at 1274. The Court noted that IC 31-37-22-1 provides that a probation officer, among others, may request modification of a juvenile's disposition. Id. The Court further quoted IC 31-37-2-3(b), which states that if the motion requests any modification [other than an emergency change in the child's residence], the probation officer shall give notice to the persons affected and the juvenile court shall hold a hearing on the question. Id. The Court observed that, although the statute does not specify what the hearing must include, the Court previously clarified in In Re M.T., 928 N.E.2d 266, 271 (Ind. Ct. App. 2010), trans. denied, that a juvenile court may not modify a juvenile's disposition without a hearing at which the State presents evidence supporting the allegations listed in the revocation petition. K.A. at 1275. The Court concluded that, when modification is predicated on an alleged probation violation, principles of fundamental fairness require that the State present evidence of the allegation. Id. The Court was not persuaded by the State's argument that the juvenile court's decision to modify was not based on the child's alleged probation violation because the juvenile court ordered the violations dismissed and closed. Id. In response to this argument, the Court observed that the probation department filed an information alleging that the child violated his probation under two cases by being a runaway and requested modification of his disposition. Id. The Court said that, because the purpose of the hearing was to determine whether modification was necessary in light of the alleged probation violation, the record indicates that the modification of the child's disposition was predicated on the alleged probation violation. Id. The Court opined that the modification of the child's disposition without any evidence of his alleged probation violation was therefore a violation of due process. Id. The Court was not convinced by the State's argument that evidence in the form of the probation modification report was presented at the hearing. Id. The Court noted that the child was not given an opportunity to respond to the allegations in the modification report either through his own testimony or through cross-examination of the probation officer who prepared the report. Id. The Court also found the State's claim that statements made by the child and his mother about the child's runaway constituted evidence of the alleged probation violation to be a "flawed" argument. Id. at 1276. The Court said the statements were made: (1) only after the probation department and the State made their modification recommendations, the child had preserved the record as to his objection to the lack of evidence of the alleged probation violation, and the child made a modification recommendation standing on that objection, and (2) in direct response to the juvenile court asking the child and his mother whether they wanted to add anything before the court made its modification order. Id.