

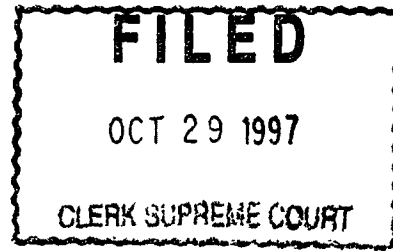
IN THE COURT OF APPEALS OF IOWA

000143

No. 7-489 / 97-179

IN THE INTEREST OF J.F., Minor Child,

J.F., Minor Child,
Appellant.



Appeal from the Iowa District Court for Black Hawk County, Steven C. Clarke, Associate Juvenile Judge.

Juvenile appeals the dispositional order entered following her admissions to committing the offenses of third-degree burglary and operating a motor vehicle without owner's consent. **AFFIRMED IN PART; REMANDED.**

Kellyann M. Lekar of Randall, Nelson & Hawbaker, P.L.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Steven J. Halbach, Assistant County Attorney, for appellee-State.

Considered by Cady, C.J., and Huitink and Vogel, JJ.

VOGEL, J.

Juvenile appeals from the dispositional order entered following her admissions to committing the offenses of third-degree burglary and operating a motor vehicle without owner's consent. She contends the juvenile court failed to (1) enter the least restrictive dispositional order and (2) specify the duration of the disposition.

Background facts. Jennifer F., a juvenile, admitted to the offense of third-degree burglary, in violation of Iowa Code section 713.6A (1993). On December 17, 1995, the court continued her custody with juvenile court services for suitable placement, which included the home of a relative. The State filed an amended petition charging Jennifer with the additional offense of operating a motor vehicle without owner's consent, in violation of Iowa Code section 714.7. She admitted to the offense on May 3, 1995. Her custody remained with juvenile court services for foster group care.

In August 1996, the court modified the dispositional order, placing Jennifer with her aunt and uncle and ordering her to participate in a day/evening treatment program. Jennifer was subsequently removed from her aunt and uncle's home because she failed to comply with their rules and the day/evening treatment program, and she had run away. The court placed her in detention by order dated November 21, 1996.

After allowing Jennifer's counsel an opportunity to investigate the possibility of family foster care with further day/evening treatment , the juvenile court placed Jennifer in foster group care by order dated January 2, 1997.

Jennifer appeals.

Scope of review. Our review of this juvenile matter is de novo; we review both questions of law and fact. Iowa Code § 232.133(1); *In re D.L.C.*, 464 N.W.2d 881, 882 (Iowa 1991). We give weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7); *In re J.D.S.*, 436 N.W.2d 342, 343 (Iowa 1989).

I. Least restrictive dispositional order. Section 232.52(1) of the Iowa Code provides that the court shall enter the least restrictive dispositional order appropriate under the circumstances. Jennifer argues the court did not utilize the least restrictive disposition as she was placed in foster group care rather than in foster family care with day care treatment services.

However, Jennifer's prior record of law violations, running away, and disruptive behavior militated against placement in family foster care, along with the recommendation of the psychologist, Dr. Jennings, for a highly structured and confrontive residential placement. Dr. Jennings further noted in his November 17, 1996, psychological evaluation that this "'boot camp' type of structured residential programming is about all that is likely to impact this young lady. The prognosis is not favorable." The juvenile court officer also agreed that a structured setting was

necessary. We give the opinion of the juvenile court officer considerable weight. *State v. Bickell*, 493 N.W.2d 100, 103 (Iowa App. 1992). Additionally, past interventions by the court and the family have not served to alter Jennifer's "problematic behavioral patterns" effectively. Thus, we agree with the juvenile court that the least restrictive placement was group foster care; we accordingly affirm on this issue.

II. Validity of dispositional order. Jennifer also argues the dispositional order is not valid because it does not specify the duration of the disposition as required by Iowa Code section 232.52(1) (1997). The State argues Jennifer has not preserved this issue on appeal as she did not file a section 179(b) motion.

Generally, a motion to enlarge or amend findings under Rule 179(b) is essential to preserve error when the trial court fails to resolve an issue, claim, defense, or legal theory properly submitted to it for adjudication. *Rouse v. Union Township*, 530 N.W.2d 714, 717 (Iowa 1995). However, a 179(b) motion, although preferred, is not essential to attack a dispositional order following a juvenile delinquency hearing to preserve the issue for review. *In re N.W.E.*, 564 N.W.2d 451, 456 (Iowa App. 1997).

It would have been more efficient and served the interests of all concerned to have brought the defect in the dispositional order to the immediate attention of the juvenile court, or at least within the time frame required for a 179(b) motion. It could

have been quickly remedied under either method. *See id.* However, we find Jennifer's direct appeal is sufficient for the issue to be preserved for review.

Jennifer attacks the dispositional order which failed to specify the duration of her placement. Jennifer is only requesting the statutory mandate be met regarding the specification of duration in the dispositional order. She is not asking for findings, nor challenging the lack of findings to support any particular duration. We find the juvenile court should have stated the duration of the placement in the dispositional order, following the clear language of Iowa Code section 232.52(1). *See In re M.D.S.*, 488 N.W.2d 715 (Iowa App. 1992).

Having carefully considered all arguments on appeal, we affirm the placement decision of the juvenile court and remand for entry of an order stating the duration of the placement, realizing the issue may be moot by virtue of a lapse of time since the dispositional hearing.

AFFIRMED IN PART; REMANDED.