

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1957

September Term, 2013

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IN RE: AUGUSTINE K.

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Meredith,  
Graeff,  
Leahy,

JJ.

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Opinion by Graeff, J.

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Filed: June 18, 2015

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Augustine K., appellant, appeals the October 23, 2013, order of the Circuit Court for Prince George’s County, sitting as a juvenile court, committing him to a “Level B,” staff-secure inpatient facility.<sup>1</sup> Augustine’s attorney subsequently filed a motion to modify the juvenile court’s October 23, 2013, disposition order, which the court denied.

On appeal, Augustine raises two questions for our review, which we have revised slightly as follows:

1. Did the juvenile court abuse its discretion in committing Augustine to a “Level B,” staff-secure inpatient facility after Augustine violated his probation?
2. Did the juvenile court fail to comply with Md. Rule 11-115(b)?

For the reasons set forth below, we shall affirm the judgment of the juvenile court.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

On June 3 and June 4, 2013, eleven-year-old Augustine K. broke into a private residence in Beltsville, Maryland. He damaged the personal property of the residents, and he took various items of electronics and jewelry. When confronted by the police, Augustine admitted his involvement in the burglaries.

On June 5, 2013, an eight-count juvenile delinquency petition and a complaint for restitution were filed in the Circuit Court for Prince George’s County. Augustine was placed

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<sup>1</sup> In the Disposition Order (Commitment), a “Level B” facility was described as follows:

Non Community Residential Facility  
(Youth Centers, Schaeffer House, O’Farrel, Residential Treatment Centers,  
or other Private Staff Secure Facilities, Independent Living, Meadow  
Mountain Youth Center)

in the temporary care and custody of the Department of Juvenile Services (“DJS”) until he became eligible for electronic monitoring and could be released to the custody of his mother.

On July 22, 2013, Augustine entered a plea of involved on the count alleging fourth degree burglary. The remaining counts in the petition were dismissed. Based on the evidence presented at restitution hearings on August 19, and September 3, 2013, the court assessed restitution in the amount of \$1,752.75 against Augustine and his mother.

On September 3, 2013, the court conducted a disposition hearing. DJS recommended that Augustine be placed on supervised probation. Although the State indicated that it normally would request a Level C commitment based on the seriousness of the offense, it stated that, because Augustine was only 11 years old, it would agree to the recommendation of DJS that Augustine be placed on supervised probation. Defense counsel asserted that, during the previous three months, Augustine had behaved well while on electronic monitoring. Augustine and his family also had moved to a new school district, severing ties with the peers in their prior community who may have been a bad influence on Augustine. Counsel requested that the court consider placing Augustine on unsupervised probation.

After hearing all the arguments, the court released Augustine from electronic monitoring, but it placed him on supervised probation, which included the following special conditions:

1. Attend school regularly;
2. Complete a letter of apology to the victim by October 3, 2013;
3. Have no further contact with the victim;

4. Comply with family counseling as referred; and
5. Pay Court costs in the amount of \$155.00

On October 7, 2013, DJS requested a violation of probation hearing. In its memorandum, DJS stated that Augustine had failed to comply with several of the conditions of his probation, as follows:

The respondent started family counseling with Family Functional Therapy on September 25, 2013. To date, Augustine has not provided this writer the apology letter or submitted any payments for court cost[s] or restitution. On September 30, 2013, this writer received a call from Ms. K[.] the respondents mother, to inform this writer that the youth has in-school suspension on October 1 and 2, 2013, for being disrespectful to staff. The respondent also refused to go to school on October 3 and 7, 2013, stating he did not “feel like it and no one in the house could make him.” Ms. K[.] expressed to this writer her concerns for Augustine’s safety due to him jumping out the window and leaving the home for long periods of time with his whereabouts unknown. Ms. K[.] further informed this writer that the respondent has been getting up in her face in an aggressive manner and telling her that he is going to do what he wants.

In light of the above mentioned information, [] the Department of Juvenile Services respectfully requests that a violation hearing be set in this matter. It is further requested that the respondent be placed on Electronic Monitoring pending a Violation Hearing.

On October 22, 2013, DJS filed another memorandum, in anticipation of the violation of probation hearing scheduled for the next day. DJS reported that the problems with Augustine’s behavior continued to escalate, noting:

On October 8, 2013, this writer received a phone call from the respondent[’]s principle [sic] to inform this writer that the youth was given in-school suspension for throwing things at students during class. The respondent refused to go to school on October 10th, 11th and 15th, 2013. On October 10, 2013, the respondent began services with IFCS [a family counseling provider]

due to the respondent[']s needs for more intensive outpatient services. On October 15, 2013, this writer received a call from Prince George's County Police, stating they had spotted the youth in a park holding up a sign asking for money because his mother had been hurt in a bad car accident and could not afford to pay the bills. The respondent was taken to the police station and charged with truancy and released to his mother.

In light of the above mentioned information, [ ] the Department of Juvenile Services respectfully requests that the respondent be placed on Electronic Monitoring, and ordered to continue to participate with IFCS. It is further requested, that a Review Hearing be set within thirty days to check the respondent[']s progress.

On October 23, 2013, the court conducted the violation of probation hearing. Augustine admitted, and the court found, that he violated the terms of his probation. The State reminded the court of the seriousness of the offenses for which Augustine had been found responsible, and it proffered the following grounds for Augustine's violation of probation:

[W]here he is extremely disrespectful to his mother, where he is repeatedly being suspended in school, where he refuses to go to school saying he doesn't feel like it and no one can make him or he has jumped out of windows where he is found by the Prince George's County Police Officers last week being in a park holding up a sign asking for money because allegedly his mother has been hurt in a bad car accident.

The State requested, in light of Augustine's recent behavior problems at home and in school, that Augustine be placed in the custody of DJS for a period of four days, and then be re-enrolled in the electronic monitoring program under the supervision of his mother. Defense counsel objected to committing Augustine to DJS for any period, but he conceded that electronic monitoring was appropriate and would be helpful to Augustine.

When Augustine's mother was given an opportunity to address the court, she testified:

Since he have left the Court, he has not abided to anything. Every day I'm one hour late for work just to try to get him to school. Every day teacher has been calling me, three or four times defensive and complaining and not doing what's expected of him in school, not doing school work. He jumped out of the window. [W]henever I tell him not to go outside and he goes outside. I don't know where he is going to. He come home with things that I don't buy for him, watch, phones and it's a lot. Yesterday, he even go to the extent of slapping me.

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He slapped me yesterday at 11:30 in the evening when I told him not to go outside, he slapped. It's a lot of things. He has been arrested and by the police trying to beg money in the street. I don't know where he leave the home to go to even though I tell him not to go. Very disrespectfully – told his father to buy him a gun. He always go to the store and buy a toy gun and shoot in the lights and um, we've been thrown out because of his behavior where we was. Where we went to, two months ago asked us to leave just because of him. It's a whole lot, sir. It's a whole lot. He is very disrespectful to everybody in church, in school. I've been called to school almost every day. It's a lot, sir. I won't hide it. . . .

After hearing all the testimony, as well as the recommendations of DJS, the State, and defense counsel, the judge ordered Augustine committed to a Level B placement for a period not to exceed three years. The court stated on the record:

Okay. Madam Clerk, the Court has reviewed the file and has considered all the statements by all the individuals. The Court will therefore permit Respondent Level B. Put it back on the . . . . 25th of November for review. Young man, let me just say, many times it started at the age you are and many times parents and mamas don't want to come to Court and tell the actual truth as to what is going on, if you do not get help now, I read through what happened and I read through the statements that your mom may have made and that's the reason why I asked your mom because I felt like she was not going to sugarcoat it and I recall quite clearly what you did in this case. I gave you

a big break, but you have not elected to take advantage of it. If you don't change right now, you're going to have some serious problems in the future. Bring it back on the 25th.

Defense counsel asked the court to make a finding of dangerousness, and the court replied: "Sir, if what you have heard is not a danger to himself and the community and everybody else, then nothing else will be."

On November 4, 2013, defense counsel filed a Motion to Modify Disposition Order, asserting that there were no appropriate placement options for Augustine in a Level B facility due to his age and adjudicated offense. On November 5, 2013, the Court denied Augustine's motion to modify. Following a review hearing on November 25, 2013, the court continued Augustine in his current placement.<sup>2</sup>

## **DISCUSSION**

### **I.**

#### **Placement in Level B Facility**

Augustine contends that the juvenile court abused its discretion by committing him to a Level B, staff-secure inpatient facility in contravention of the disposition recommendations made by DJS and the State. He asserts that the out-of-home placement was unnecessarily punitive, that there was no evidence that he was a danger to himself or the public, and that a less restrictive disposition, including intensive counseling and electronic

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<sup>2</sup> Augustine contends in his brief that he was sent to Cheltenham Youth Facility, then to St. Vincent's Center in Timonium, where he spent 90 days before being transferred to the Board of Child Care in Woodlawn.

monitoring, would have better served the rehabilitative purpose of the juvenile justice system. The State contends that the circuit court did not abuse its discretion in determining that a more restrictive placement was in the best interest of Augustine and the public in light of evidence of Augustine’s frequent, varied, and serious misbehavior in violation of the conditions of his probation.

We address first the order that is before us for review, i.e., the October 23, 2013, order modifying Augustine’s disposition or the November 5, 2013, order denying Augustine’s motion to modify the October order. We reject the State’s argument that the November order, denying the motion to modify, is the only ruling before us. Augustine filed his Notice of Appeal on November 7, 2013. Because Augustine’s appeal was filed less than thirty days after the juvenile court’s October 23, 2013, order modifying his disposition and placing him in a “Level B” facility, and less than thirty days after the court’s November 5, 2013, order denying his motion to modify, the appeal properly encompassed both of the juvenile court’s orders. *See Edery v. Edery*, 213 Md. App. 369, 377 n.7 (2013) (“A notice of appeal . . . does not need to specify the orders appealed from, and operates as an appeal of any order that is appealable at that time.”). Appellant’s initial brief, however, addressed only the propriety of the October 23, 2013, order, and therefore, that is the order we shall address.

In Maryland, juvenile delinquency proceedings are civil rather than criminal in nature, and the goal is not to punish young offenders for their misbehavior, but rather, to “remove the taint of criminality and the consequences of criminal behavior from children who have

committed delinquent acts.” *In re Keith G.*, 325 Md. 538, 543 (1992). *Accord In re Victor B.*, 336 Md. 85, 93 (1994) (“The Maryland Courts have consistently construed the laws governing juvenile causes to reflect the principle that juvenile proceedings are special in nature and are not criminal proceedings.”). The law governing juvenile delinquency proceedings is set forth in the Juvenile Causes subtitle of Md. Code (2012 Supp.) §3-8A-01 *et seq.* of the Courts and Judicial Proceedings Article (“CJP”).

CJP § 3-8A-02 sets forth the purposes of the Juvenile Causes subtitle, as follows:

- (a) The purposes of this subtitle are:
  - (1) To ensure that the Juvenile Justice System balances the following objectives for children who have committed delinquent acts:
    - (i) Public safety and the protection of the community;
    - (ii) Accountability of the child to the victim and the community for offenses committed; and
    - (iii) Competency and character development to assist children in becoming responsible and productive members of society;
  - (2) To hold parents of children found to be delinquent responsible for the child's behavior and accountable to the victim and the community;
  - (3) To hold parents of children found to be delinquent or in need of supervision responsible, where possible, for remedying the circumstances that required the court's intervention;
  - (4) To provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this subtitle; and to provide for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest;
  - (5) To conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or in the interest of public safety;
  - (6) If necessary to remove a child from his home, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents;
  - (7) To provide to children in State care and custody:

- (i) A safe, humane, and caring environment; and
  - (ii) Access to required services; and
- (8) To provide judicial procedures for carrying out the provisions of this subtitle.

Pursuant to § 3-8A-19(d)(1)(i), a juvenile court may place a child on probation, under supervision in his own home, or place the child in custody “upon terms the court deems appropriate,” including placing the child with DJS. Once a disposition has been made in a juvenile delinquency action, it is subject to modification and revision only if the juvenile court determines that the change is “in the best interest of the child or the public.” Md. Rule 11-116(a).

In reviewing the circuit court’s decision in a juvenile delinquency matter, “[w]e review any conclusions of law *de novo*, but apply the clearly erroneous standard to findings of fact.” *In re Elrich S.*, 416 Md. 15, 30 (2010). A decision regarding disposition is committed to the discretion of the trial judge and will be reversed only if there has been an abuse of discretion. *In re Hamill*, 10 Md. App. 586, 592 (1970). An abuse of discretion occurs only “‘where no reasonable person would take the view adopted by the [trial] court,’ or when the court acts ‘without reference to any guiding rules or principles.’” *Pickett v. State*, 222 Md. App. 322, 331 (2015) (quoting *Nash v. State*, 439 Md. 53, 67 (2014)).

Here, we perceive no abuse of discretion by the circuit court in placing Augustine in a Level B facility after he violated his probation. Augustine’s conduct, twice breaking into a neighbor’s home and destroying furniture and stealing items, was serious. Although

Augustine received a break in the initial disposition, where the court imposed supervised probation, Augustine continued to exhibit serious misbehavior that constituted violations of the conditions of his probation. Augustine refused to respect the rules and requests of his mother, his school, his church, and his community. Augustine's bad behavior was escalating toward more frequent and more violent offenses, including throwing things at students, hitting his mother, and asking his father for a gun. Moreover, he was leaving the house without his mother's permission, and his mother did not know where he went, which presents concerns for an eleven-year-old's safety.

Based on this evidence, the juvenile court reasonably could have concluded that Augustine's behavior constituted a risk to himself, his mother, and to other people in the community, and therefore, an out-of-home placement was in the best interest of Augustine and necessary for the safety of the public. *See* CJP §3-8A-02(a)(5) (providing that an out-of-home placement is only appropriate where it is "necessary for [the juvenile's] welfare or in the interest of public safety"); Md. Rule 11-116(a) (requiring that the court find a modification of a disposition "to be in the best interest of the child or the public"). We perceive no abuse of discretion in the court's placement of Augustine in a Level B facility following his violation of the terms of his probation.

**II.**

**Md. Rule 11-115(b)**

Augustine next contends that the case must be remanded for a new disposition hearing because the juvenile court failed to comply with Md. Rule 11-115. Subsection (b) of the rule provides, in pertinent part, as follows:

If the disposition hearing is conducted by a judge, and his order includes placement of the child outside the home, the judge shall announce in open court and shall prepare and file with the clerk, a statement of the reasons for the placement.

As the State notes, Md. Rule 11-115 applies to the disposition hearing, which in this case was conducted on September 3, 2013. At that time, the juvenile court placed Augustine on supervised probation.

The order at issue in this appeal, the October 23, 2013, order was a modification of the original disposition, and therefore, it was governed by Md. Rule 11-116, which provides that “[a]n order of the court may be modified or vacated if the court finds that action to be in the best interest of the child or the public.” Md. Rule 11-116(a). Rule 11-116 does not require the court to make the same findings for an out-of-home placement that are required pursuant to Md. Rule 11-115. Accordingly, Augustine’s contention that the juvenile court erred in failing to clearly articulate the circumstances that justified removing him from his

home and committing him to the custody of DJS for placement in a Level B facility is without merit.

**JUDGMENT OF THE CIRCUIT  
COURT FOR PRINCE GEORGE'S  
COUNTY AFFIRMED. COSTS TO  
BE PAID BY APPELLANT.**