UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2724

September Term, 2014

IN RE: A.B.

Wright,
Graeff,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Rodowsky, J.

Filed: December 15, 2015

This appeal involves an application of Maryland Code (1984, 2012 Repl. Vol.), § 5-607 of the Family Law Article (FL), which governs the ability of the Department of Juvenile Services (the Department) to place adjudicated delinquent juveniles in out-of-state residential treatment institutions. FL § 5-607 is part of Maryland's codification of the Interstate Compact on the Placement of Children (ICPC). That compact has been adopted in substantially identical form by all fifty states.[1] FL § 5-607 reads, in its entirety:

> "A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact *but no such placement shall be made unless* the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to the child being sent to such other party jurisdiction for institutional care and *the court finds that*:
>
> "(1) *equivalent services are not available in the sending agency's jurisdiction; and*
>
> "(2) *institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.*"

(Emphasis added).

[1]"An interstate compact is basically an agreement between two or more states, entered into for the purpose of dealing with a problem that transcends state lines," *In re Adoption No. 10087 in Circuit Court for Montgomery County*, 324 Md. 394, 597 A.2d 456 (1991) (quoting P. Hardy, *Interstate Compacts: The Ties That Bind* 2 (1982)), which "arises when two or more states enact essentially identical statutes which govern an area of mutual state concern and define the compact, its purposes, and policies." *Id.*

Per the website of the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC), "[t]he Interstate Compact on the Placement of Children (ICPC) is a statutory agreement between all 50 states, the District of Columbia and the US Virgin Islands. The agreement governs the placement of children from one state into another state." http://www.aphsa.org/content/AAICPC/en/resources/ICPCFAQ.html.

The appellant, A.B., was adjudicated delinquent at the age of thirteen by the Circuit Court for Prince George's County, sitting as a juvenile court, on August 31, 2012, upon entering a plea of involved to two counts of attempted armed robbery. Following a hearing on September 27, 2012, the juvenile court issued a Disposition Order, committing the appellant to the custody of the Department and directing that he be placed in a level B "staff-secure" facility.

The appellant is challenging a modified Disposition Order issued by the juvenile court on February 6, 2015, which (1) raised his level of detention from a level B staff-secure facility to a level A "hardware-secure" facility, and (2) authorized the Department to place him in an out-of-state institution. The appellant was transported to a level A hardware-secure facility in Michigan on February 17, 2015.

He presents a single issue on appeal, namely:

> "Did the court err in placing Appellant in an out of state facility and in failing to make factual findings necessary to sustain that ruling?"

For the reasons hereinafter set forth, we shall affirm.

Factual and Procedural Background

A.B. was adopted at age one together with an older sister. He was exposed in utero to drugs and alcohol. His biological mother's parental rights were terminated because of mental health issues and substance abuse. He has no contact with her and his biological father is dead. His sister was killed in an automobile accident. He has borderline

intelligence. The adoptive parents are divorced and, prior to his juvenile commitment, A.B. lived with his adoptive mother. Their relationship became strained. He began using marijuana at age twelve and developed a habit of daily use. A.B. has been expelled from school and suspended multiple times, for fighting and stealing.

In June 2012, A.B. ran away from home. Thereafter, the time that he has spent at home was five days at the end of July. He again left, after stealing $400 from his mother and taking her credit card. On August 11, 2012, the appellant successively attempted to rob two victims of their cell phones by threatening them with a replica, BB handgun. At a hearing on August 13, 2012, his mother told the court that she could not control his behavior.

The Disposition Order, dated September 27, 2012, designated the type of facility and, using the terminology of FL § 5-607, authorized out-of-state placement. It reads:

> "B. _X_ Non Community Residential Facility
> (Youth Centers, Schaeffer House, O'Farrel, Residential Treatment Centers, or other Private Staff Secure Facilities, or Bowling Brook, Vision Quest, Glen Mills, Silver Oak, ~~Independent Living~~,) *** **Equivalent facilities for the juvenile are not available in the State of Maryland; and institutional care in the other jurisdiction is in the best interest of the juvenile and will not produce undue hardship.**[2] (NO GROUP HOMES)[.]"

(Emphasis in original).

[2] Notwithstanding this emphasized language, the appellant's first placement was the Meadow Mountain Youth Center, located in Grantsville, Maryland.

By January 29, 2014, the appellant had been unsuccessfully discharged from three Maryland facilities due to aggressive behaviors, as recounted by the Department in a court memorandum filed on January 30, 2014:

> "The [appellant] has been placed in various placements since his commitment of September 27, 2012. The [appellant] was unsuccessfully discharged from Meadow Mountain Youth Center on May 7, 2013 for assaulting a staff member. He was later placed at Adventist Behavior Health RTC on the Eastern Shore on September 4, 2013. He was also discharged from that program unsuccessfully November 8, 2013 for engaging in several unsafe behaviors which include multiple assaults on peers and staff. The [appellant] was then placed at the Woodbourne Diagnostic Center [in Baltimore City] on December 11, 2013 for a ninety day evaluation. The [appellant] was discharged from the Woodbourne Diagnostic Center on January 23, 201[4] for engaging in unsafe behavior which included an assault on a peer and threatening staff."

In a letter dated January 23, 2014, furnished to the court with the memorandum, Woodbourne Center advised the Department that the center was "no longer able to manage the youth's behavior and recognizes that more intensive services are required to address [A.B.'s] needs."

On March 6, 2014, the Department again advised the juvenile court that the appellant had been rejected for placement by a number of in-state facilities and that the Department was beginning to explore out-of-state options:

> "The [appellant's application] was rejected [by] Good Sheppard on February 6, 2014. Packets were sent in state to Sheppard Pratt, Rica Baltimore and Rockville, and the Jefferson School. Youth was rejected from Sheppard Pratt and Rica Baltimore for being too aggressive. The Department is still waiting to hear back from the Jefferson School and Rica Rockville. ... Packets were sent out of state to Deveroux Florida and Pennsylvania as well

> as New Hope in South Carolina and Newport News. The [appellant] was accepted to New Hope. *The Department wants to rule out in state placements before we move forward with out-of-state placements*."

(Emphasis added).

On April 14, 2014, the Department informed the juvenile court that the appellant had been accepted by Coastal Harbor, a facility located in Savannah, Georgia, and that it intended to move forward with placing him at that facility pending "approval from the SCC [State Coordinating Council] and Interstate Compact." On May 13, 2014, the appellant was transported to Coastal Harbor.[3] He was discharged by that facility on November 20, 2014. The Department advised the juvenile court of this event in a memorandum dated November 24, 2014, and characterized the discharge as unsuccessful. A psychological evaluation of A.B. conducted at Coastal Harbor concluded, in part, that he "would need a high level supervision in the years to come."

The appellant's packet was rejected by an alternative facility in Georgia on December 5, 2014, "due to his history of aggressive behavior toward staff and peers." On December 23, 2014, the Department advised the juvenile court that it had "forwarded a packet to Turning Point," *i.e.*, the Turning Point Youth Center, which is a level A hardware-secure facility in Michigan. On the last day of 2014, the Department referred A.B. to Glass Health Program in Baltimore County for a neuropsychological evaluation.

[3]Notably, this out-of-state placement appears to have been accomplished without any further action by the juvenile court, presumably because language satisfying the statutory requirements of FL § 5-607 had already been incorporated into the disposition order.

The juvenile court conducted a review hearing on January 7, 2015. Through counsel, the appellant articulated a concern that Turning Point was a level A hardware-secure facility. Counsel interpreted the evaluation performed at Coastal Harbor on November 18, 2014, in anticipation of appellant's return to Maryland, as not recommending an increase in his level of detention. Counsel requested that the juvenile court consider allowing the appellant to return to the general community.

The court replied:

> "Now why would I do that?
>
> ***
>
> "... Everywhere he goes, he gets into fights. He wouldn't be standing here now but for his behavior at each placement. They keep working with him and working with him and working with him. And how do you get the benefit of going back home when you act as he's acting. I don't understand that. Why?"

Counsel also acknowledged that the appellant's adoptive mother could not provide a stable residence at that time due to her financial situation. The juvenile court denied the appellant's requested return to the community.

By a memorandum headed, "Request for an Amended Commitment," dated January 15, 2015, the Department advised the juvenile court that the appellant had been "accepted for admission into Turning Point Youth Center which is a Hardware Secure Placement Program Located in Michigan," as evidenced by an attached letter from "Kidlink

Treatment Services," dated January 7, 2015. The letter requested, *inter alia*, a "[c]opy of court order (if applicable)."

Filed with the request for an amended commitment was the report of the neuropsychological evaluation by Glass Health Programs dated January 9, 2015. It advised that the evaluation had been requested to assist with "treatment planning recommendations" for A.B. who had been at Cheltenham Youth Facility (in Prince George's County) since November 20, 2014. The purpose of the evaluation was to determine if appellant suffered from "any deficits, organic impairments or abnormalities of a neuropsychological nature, which might explain his inability to adjust."

The evaluation concluded that, although "neurocognitive factors may likely play a role in his impulsive and maladjusted propensity to respond aggressively to perceived (and misperceived) threats[,]" the evaluators concluded that A.B. "would benefit from an intensive therapeutic/rehabilitative intervention setting that focuses on behavior modification and anger management techniques[.]"

The Department requested that "the [appellant]'s Staff Secure Commitment be amended to a Hardware Secure Commitment with the out of state language." On January 20, 2015, the juvenile court informally approved the Department's request by checking a box marked "approved" at the bottom of the January 15 memorandum. On January 27, 2015, the Department requested that an "amended commitment order be generated in court with appropriate out-of-state language."

At a February 6, 2015 hearing, the appellant argued that neither the November 18, 2014 evaluation by Coastal Harbor nor the subsequent Glass evaluation specifically had recommended the proposed increase in the level of detention. The juvenile court indicated that it had reviewed the most recent evaluation.

In addressing the Department's request that the modified Disposition Order contain "appropriate out-of-state language," the question of whether the statutory requirements of FL § 5-607 were satisfied was expressly treated as a foregone conclusion:

> "THE COURT: Well, they [*i.e.*, the Department] probably wanted me to do all this because they had a place in place and they had done all of the staffing they needed to do.
>
> "[THE DEPARTMENT]: We have, Your Honor.
>
> "THE COURT: Pardon?
>
> "[THE DEPARTMENT]: We have. *I believe that it's already been staffed and he's prepared to go to placement. We just needed the paperwork with the out of state language*."

(Emphasis added). Appellant requested that the juvenile court note his objection to amending the commitment order.

In Prince George's County, the juvenile court utilizes preprinted order forms on which options may be checked and blanks filled. The juvenile court instructed the deputy court clerk to prepare an amended order for a level A designation with the "out of state language" inserted under the level A designation. As acknowledged by appellant's counsel, it was recognized by all the interests at the February 6, 2015 hearing that the amended order could

not be the final word on whether A.B. would be treated at an out-of-state facility. Funding for that treatment had to be approved by the State Coordinating Council. Apparently, funding was granted.

The appellant noted this appeal on February 11, 2015. He was transported to Turning Point on February 17, 2015. The amended Order was filed on February 27, 2015.

Discussion

The ICPC, of which FL § 5-607 is a part, was enacted in Maryland by Chapter 266 of the Acts of 1975 and is presently codified at Maryland Code (1984, 2012 Repl. Vol.), §§ 5-601 to 5-611. The stated purpose of the ICPC is for "the party states to cooperate in the interstate placement of children," FL § 5-602, such that:

> "(1) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and [in] ... institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.
>
> "(2) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.
>
> "(3) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made."

Id.

The provisions of the ICPC are to be "liberally construed in order to effectuate the purposes thereof." FL § 5-611. The Court of Appeals has emphasized, albeit in the context

of interstate adoption, that compliance with the procedures of the ICPC is mandatory where it applies. *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 701 A.2d 110 (1997); *In re Adoption No. 10087 in Circuit Court for Montgomery County*, 324 Md. 394, 597 A.2d 456 (1991) ("Observance of the procedures of the ICPC was mandatory.").

In this Court, appellant's argument focuses on the findings for an ICPC out-of-state placement required by FL § 5-607; specifically, (1) that equivalent services were not available in Maryland, (2) that placement in the out-of-state institution (*i.e.*, the Turning Point Youth Center) was in the appellant's best interest, and (3) that the out-of-state placement would not create undue hardship. The appellant contends that each of these findings, "required the production of evidence, and attendant factual findings," and that, notwithstanding the statutory language in the Disposition Order,

> "[t]he [juvenile] court made no reference to, nor finding regarding Appellant's needs, how and/or why they could not be met by a Maryland program, and how they would be better addressed at the Michigan facility. The [juvenile] court similarly failed to set forth a finding as to how the transfer to the out of state program was in Appellant's best interest and how it would not result in an undue hardship."

He suggests that the juvenile court simply incorporated the statutory language into the order by "checking a box" on a template form.

This argument is devoid of merit. Each of the challenged findings is fact intensive. Similar findings of a juvenile court are typically subject to the clearly erroneous standard of review. *In re Shirley B.*, 419 Md. 1, 18 A.3d 40 (2011). This is a highly deferential

standard, and "if there is any competent, material evidence to support the factual findings below, we cannot hold those findings to be clearly erroneous." *Cannon v. Cannon*, 156 Md. App. 387, 404, 846 A.2d 1127, 1136 (2004) (quotations and citations omitted).

Appellant seemingly would have this Court myopically look only to the transcript of the February 6, 2015 hearing and ignore the balance of the record that goes back to August 2012. There is evidence to support the findings throughout the record. Suffice it to say that appellant's mother recognized long ago that she could not control him, that no facilities in Maryland would admit him because of his history of assaults on staff and peers at other institutions, and the health professionals who have evaluated him opine that the hope for behavior modification and anger management lies in an intensive intervention setting. Further, because the State Coordinating Council has a duty to track "the types, costs, and effectiveness of services required to meet the needs of children who are recommended for out-of-state placements," Maryland Code (2007, 2015 Cum. Supp.), § 8-404(3) of the Human Services Article, the juvenile court's finding that equivalent services were not available in Maryland is reinforced. Here, where the first level facts are uncontradicted and there are no disputed inferences, it would seem that there is no need to repeat, at the time of ordering transfer out of state, appellant's case history to explain the ultimate findings that satisfy FL § 5-607.

Appellant refers us to *In re J.S.*, 139 Vt. 6, 420 A.2d 870 (1980), interpreting the ICPC. He submits that the Vermont court "placed great weight upon the importance of

detailed fact-finding based upon the evidence." Appellant's brief at 6. The case is not on point. It involved the Vermont counterpart to FL § 5-603(4) defining "'[p]lacement'" to mean "the arrangement for the care of the child ... in a child-caring agency or institution but does not include any institution ... primarily educational in character[.]" The Vermont juvenile court had transferred J.S. to a camp in Florida but had not made the three findings required by the ICPC and had not found that the camp was primarily educational in character. The Supreme Court of Vermont remanded. *In re J.S.* does not support the proposition that FL § 5-607 findings are not made if they articulate the statute *in haec verba.*

The absence from FL § 5-607 of any requirement that first level fact-findings be articulated, or reasons explained, to support the statutorily required findings is highlighted by comparison to Maryland Rule of Procedure Rule 11-115(b) dealing with disposition hearings in juvenile causes. It provides in relevant part:

> "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."

"'Disposition hearing'" is defined by Maryland Code (2013 Repl. Vol., 2015 Cum. Supp.), § 3-8A-01(p) of the Courts and Judicial Proceedings Article (CJ) to mean, for non-CINA cases,

> "a hearing ... to determine:
>
> "(1) Whether a child needs or requires guidance, treatment, or rehabilitation; and, if so
>
> "(2) The nature of the guidance, treatment, or rehabilitation."

The disposition hearing ordinarily is required to be "held no later than thirty days after the conclusion of the adjudicatory hearing." Maryland Rule 11-115(a). In the case before us, the disposition hearing was held on September 27, 2012, and the order of commitment at that time included the FL § 5-607 findings, which were not appealed.[4]

Also highlighting the absence of any requirement for first level fact-finding, or for an explanation of the FL § 5-607 required finding in an amended commitment, is the comparison to the revision of the juvenile causes statutes effected in 2001 by Chapter 35 of the Acts of that year. That legislation split the treatment of CINA and CINS cases. Prior to that enactment Maryland Code (1998), CJ § 3-819(f)(1), applicable to both CINA and CINS cases, provided:

> "If the disposition removes a child from the child's home, the order shall:
>
> "(1) Set forth specific findings of fact as to the circumstances that caused the need for the removal[.]"

After 2001, that is, well after the adoption of present Rule 11-115, as former Rule 915, effective January 1, 1977, disposition orders in CINS cases that committed for out-of-home placement were divided into two classes, based on the seriousness of the conduct in which the juvenile was involved. CJ § 3-8A-19(d)(3)(i) lists certain less serious conduct.[5]

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[4]It is not contended that appellant's record has improved since then.

[5]CJ § 3-8A-19(d)(3)(i) reads:

(continued...)

CJ § 3-8A-19(d)(3)(iii) provides:

> "(iii) A child whose most serious offense is an offense listed in subparagraph (i) of this paragraph may be committed to the Department of Juvenile Services for out-of-home placement if the court makes a written finding, including the specific facts supporting the finding, that an out-of-home placement is necessary for the welfare of the child or in the interest of public safety."

Thus, the legislative policy is that, where, as here, the juvenile's involvement is two attempted armed robberies, there is no need for the juvenile court to articulate specific facts supporting the necessity of out-of-home placement. The record speaks for itself.

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[5](...continued)

"Except as provided in subparagraph (ii) or (iii) of this paragraph, a child may not be committed to the Department of Juvenile Services for out-of-home placement if the most serious offense is:

"1. Possession of marijuana under § 5-601(c)(2)(ii) of the Criminal Law Article;

"2. Possession or purchase of a noncontrolled substance under § 5-618 of the Criminal Law Article;

"3. Disturbing the peace or disorderly conduct under § 10-201 of the Criminal Law Article;

"4. Malicious destruction of property under § 6-301 of the Criminal Law Article;

"5. An offense involving inhalants under § 5-708 of the Criminal Law Article;

"6. An offense involving prostitution under § 11-306 of the Criminal Law Article;

"7. Theft under § 7-104(g)(2) or (3) of the Criminal Law Article; or

"8. Trespass under § 6-402(b)(1) or § 6-403(c)(1) of the Criminal Law Article."

Per CJ § 3-8A-19(d)(3)(ii) exceptions from the requirements of subparagraph (i) are: (1) delinquents with three or more separate priors, (2) waivers, and (3) compliance with subparagraph (iii).

Two conclusions flow from our analysis of Rule 11-115(b) and CJ § 3-8A-19(d)(3)(iii). If the Legislature or the Court of Appeals intends more detailed fact-finding or reasoning, beyond that required by the language of statute or rule in out-of-home placements, they know how to state it. More substantial, this Court would be adding words to the statute, which we may not do, were we to impose the requirement sought by appellant.

A.B. also suggests that the Legislature did not intend to permit the FL § 5-607 findings to be made by checking a space on a preprinted form of court order. We decline this invitation to destroy the motor vehicle offenses docket of the District Court of Maryland.

We enter the following mandate.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED.

COSTS TO BE PAID BY THE APPELLANT.