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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION 1

In re E.L., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

E.L.,

Defendant and Appellant.

A143377

(Contra Costa County
Super. Ct. No. J1400971)

Appellant E.L. admitted to two counts of selling or furnishing marijuana in violation of Health and Safety Code section 11360, subdivision (a) in connection with distributing marijuana-laced cookies to her classmates at her school. The juvenile court adjudged E.L. a ward of the court under Welfare and Institutions Code section 602,¹ removed her from her mother's custody, and placed her in a group home. E.L. argues that the juvenile court abused its discretion in ordering the group-home placement. We disagree and affirm.

¹ All further statutory references are to the Welfare and Institutions Code.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

In September 2014, 17-year-old E.L. sold marijuana-laced cookies to students at her Richmond high school. According to the probation report, two students became very ill after eating the cookies and police were called to the school. One of these students passed out, stopped breathing, and was revived with cardiac pulmonary resuscitation. Both students were taken to a hospital for medical treatment. While talking with a police officer at school, E.L. admitted to selling “edibles” to classmates. The probation report noted that two other students also became ill after eating a marijuana-laced cookie from E.L. Following the offense, E.L. was housed in juvenile hall, where she remained until she was placed in a group home.

In response to the school incident, a five-count wardship petition was filed (§ 602, subd. a) alleging that E.L. sold or furnished marijuana (Health & Saf. Code, § 11360, subd. (a); counts one through four), and possessed marijuana for sale (Health & Saf. Code, § 11359, subd. (f); count five). The fifth count stemmed from a February 2014 incident in which police cited E.L. for possession of nine marijuana-laced “Rice Krispy” treats. Under a plea agreement, E.L. admitted to the allegations contained in counts one and two in exchange for a dismissal, with a *Harvey* waiver, of the other three counts.²

At the disposition hearing, the probation officer recommended E.L. be adjudged a ward of the court and placed on at-home probation. The probation officer testified that E.L. was a “young lady who now wants to do the right thing,” and the probation report noted E.L. was remorseful for her actions. But the probation officer also testified that E.L.’s mother had noticed a difference in her daughter’s attitude in recent years and that E.L. had been having difficulty following curfew guidelines. The probation report noted that while E.L.’s mother wished for her daughter to return home, she welcomed the assistance of the probation department, and she believed her daughter required outpatient

² Under a *Harvey* waiver, the defendant agrees that the court may consider the dismissed counts at disposition. (*People v. Harvey* (1979) 25 Cal.3d 754.)

counseling services, including substance-abuse counseling. The report also stated that E.L. had a “relatively significant history of negative school behavior.” Echoing the probation report’s conclusion that E.L.’s risk of reoffending was low, the probation officer testified that at-home probation would be an effective alternative to out-of-home placement.

The prosecutor opposed the probation officer’s recommendation and requested E.L. to be placed in a group home. The prosecutor emphasized the threat to public safety and the serious danger in which E.L. placed her classmates by selling the marijuana-laced cookies. The prosecutor also pointed out that this was not E.L.’s first involvement with edibles and suggested that she had not learned from the prior incident.

At the end of the disposition hearing, the juvenile court adjudged E.L. a ward of the court, formally removed her from her mother’s custody, and placed her in the custody of the probation department for placement in a group home with a maximum commitment period of five years, but a likelihood of returning home by September 2015. The juvenile court found it would be contrary to E.L.’s welfare to allow her to stay at home and that reasonable efforts were made to prevent or eliminate the need for home removal. This timely appeal followed.

II. DISCUSSION

E.L. argues that the juvenile court abused its discretion when it removed her from her mother’s custody and placed her in the custody of the probation department for placement in a group home. We are not persuaded.

Section 202 provides that the care, treatment, and guidance of minors under juvenile court jurisdiction shall be consistent with the minor’s best interests and “in conformity with the interests of public safety and protection.” (§ 202, subd. (b); see also *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396.) As a result of juvenile court law amendments in 1984, greater emphasis has been placed on the “ ‘protection and safety of the public.’ ” (*Ibid.*) Within the bounds of section 202, the juvenile court “has broad discretion to choose probation and/or various forms of custodial confinement in order to

hold juveniles accountable for their behavior, and to protect the public.” (*In re Eddie M.* (2003) 31 Cal.4th 480, 507.) Juvenile placements “need not follow any particular order Nor does the court necessarily abuse its discretion by ordering the most restrictive placement before other options have been tried.” (*Ibid.*) The court does not have to state on the record its consideration of less restrictive placements and its reasons for rejecting them if there is evidence on the record to show a consideration of less restrictive placements was before the court. (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 577.) Furthermore, the court is free to either “accept or reject the recommendations of the probation officer.” (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329.)

In issuing a disposition order, the juvenile court must consider (1) the age of the minor, (2) the circumstances and gravity of the offense, and (3) the minor’s previous delinquency history, in addition to any other relevant and material evidence. (§ 725.5; see also *In re John F.* (1983) 150 Cal.App.3d 182, 184.) Although the court need not specifically discuss each factor at the dispositional hearing, it must be apparent that it at least considered the appropriate factors. (*Id.* at p. 185.)

A juvenile court’s commitment order may be reversed on appeal only upon a showing that the court abused its discretion. (*In re Robert H., supra*, 96 Cal.App.4th at pp. 1329-1330.) “An appellate court will not lightly substitute its decision for that rendered by the juvenile court. [It] must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them.” (*In re Michael D., supra*, 188 Cal.App.3d at p. 1395.) Substantial evidence is evidence that is “ ‘reasonable, credible, and of solid value—from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof.’ ” (*In re Jorge G.* (2004) 117 Cal.App.4th 931, 942.)

E.L. argues there was no evidence to support the juvenile court’s findings that it would be contrary to her welfare to allow her to stay at home and that reasonable efforts were made to eliminate the need for home removal. But we conclude there was substantial evidence to support both findings. To begin with, the incident giving rise to this case was not the first time E.L. was involved with marijuana-laced edibles. After she

was cited for marijuana possession in February 2014, she continued to access marijuana and sell edibles, endangering her classmates. E.L.'s mother also reported that E.L.'s attitude had recently changed, and E.L. had difficulty following curfew guidelines at home. E.L.'s mother welcomed the assistance of the probation department and stated that E.L. required substance-abuse therapy for her admitted marijuana problem. The record also indicated that E.L. had a "relatively significant history of negative school behavior" but was seemingly doing well in the juvenile-hall environment. This cumulative evidence was sufficient to permit the juvenile court to find it would be contrary to E.L.'s welfare to allow her to stay at home and that reasonable efforts were made to eliminate the need for home removal.

E.L. relies on *In re Teofilio A.*, *supra*, 210 Cal.App.3d 571 in arguing that the juvenile court abused its discretion. But in *Teofilio A.*, the only evidence supporting the juvenile court's out-of-home placement order was a probation report that was found to be without factual support. (*Id.* at p. 578.) By contrast, here there was substantial evidence supporting the juvenile court's determination it would be contrary to E.L.'s welfare to allow her to stay at home. And unlike the juvenile court in *Teofilio A.*, the juvenile court here considered less restrictive placement options and subsequently rejected the probation officer's recommendation for at-home probation. (*Id.* at p. 577.)

E.L. contends the juvenile court did not properly weigh the relevant factors before issuing its dispositional order. We disagree. At the time of disposition, the juvenile court noted E.L.'s ambition and hard work, but concluded: "When somebody has been caught once, and then they do the same conduct and other children are hurt, it's really upsetting. I can't imagine how those kids feel and their families feel. And you're so lucky that the girl was revived. [¶] I don't think that home supervision is appropriate." It is clear from the record that the court fulfilled its obligation under section 725.5 by considering the relevant factors, including additional "relevant and material evidence" such as E.L.'s positive attributes. (§ 725.5.) There is no requirement under section 725.5 that certain weight be given to each factor.

E.L. also argues that the juvenile court abused its discretion by not following the probation department's recommendation for at-home probation, but again we disagree. There is no requirement that the juvenile court accept the probation department's recommendation. (*In re Robert H.*, *supra*, 96 Cal.App.4th at p. 1329.) The juvenile court has broad discretion to order various forms of confinement, including placement in a group home. (*In re Eddie M.*, *supra*, 31 Cal.4th at p. 507.)

We acknowledge that evidence of E.L.'s positive attributes and low risk for re-offense would have permitted the juvenile court to order at-home probation. And we are encouraged that E.L. "wants to do the right thing" and that her mother is supportive and concerned about E.L.'s well-being. But it is not our role as an appellate court "to determine what we believe would be the most appropriate placement for a minor. This is the duty of the trial court, whose determination we reverse only if it has acted beyond the scope of reason." (*In re Khamphouy S.* (1993) 12 Cal.App.4th 1130, 1135.) Accordingly, we conclude that the juvenile court did not abuse its discretion in removing E.L. from her mother's custody and ordering placement in a group home.

III. DISPOSITION

The disposition order is affirmed.

Humes, P.J.

We concur:

Dondero, J.

Banke, J.