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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re G.F., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

G.F.,

Defendant and Appellant.

A143723, A145135

(Contra Costa County
Super. Ct. No. J1200984)

G.F., a minor, appeals from a dispositional order committing her to the Department of Juvenile Justice (DJJ) and a subsequent denial of a Welfare & Institutions Code section 778 petition to set that placement aside.¹ G.F.'s contention in appeal number A143723 that the juvenile court misunderstood the scope of its discretion to select an appropriate disposition is not supported by the record, so we affirm. In appeal number A145135, G.F. challenges the juvenile court's denial of her section 778 petition to change her placement from DJJ to an out-of-state facility as contemplated in the settlement of a civil action brought on her behalf against the Contra Costa County Office of Education (Office of Education). This appeal is moot, so we order it dismissed.

¹ Further statutory citations are to the Welfare & Institutions Code.

BACKGROUND

I. Factual Background

G.F.'s involvement with the child delinquency system began in 2012, when she was 13 years old. G.F. stole a girl's shoes, punched and slapped another girl, and, in the most serious incident, brandished two large knives, threatened to kill her father, and chased him from the house. G.F. was adjudged a ward of the court. During the next two years, she was twice committed to the Girls in Motion residential program. On June 6, 2014, when G.F. was 15, her wardship was terminated unsuccessfully because she had depleted her custody time. G.F.'s grandmother could no longer care for her because of her erratic and often violent behavior and no other relatives willing to assume custody could be located, so G.F. was released to Child and Family Services (CFS) and placed in a group home in Antioch.

Three weeks later, on July 11, 2014, G.F. went to the home of R.M., pounded on the door until R.M. opened it, then "grabbed R.M. by the hair and punched her in the face, stomach, and neck. When the victim attempted to escape by retreating into her home, [G.F.] went into the home and continued her assault." R.M. was kicked repeatedly in the face and suffered a serious eye injury. The probation officer noted that the incident was "disconcertingly similar" to G.F.'s prior battery of another girl in which G.F. and a female companion went to the victim's home, asked her to come outside, then slapped and punched her repeatedly. G.F. was arrested, admitted to Juvenile Hall, and charged in a section 602 petition with felony battery causing serious bodily injury and assault by means likely to produce great bodily injury.

On July 31, 2014 G.F. was released to a group home in Antioch, but she was arrested again a week later after threatening to kill a staff member. The section 602 petition was amended to add this third offense. G.F. pled no contest to assault and the remaining two charges were dismissed.

II. The Disposition Hearing and Order

The probation department recommended a commitment to the DJJ, where “the minor will be in a structured and disciplined environment, where the values of accountability and personal responsibility are constantly being reinforced. She will also be isolated from society for a considerable amount of time (at least two years), thereby safeguarding the community from potential further illegal, violent activity on her part while affording her the much needed rehabilitative intervention. From a more therapeutic perspective, the minor will participate in individual and group counseling on a weekly basis, and she will be required to complete programs covering topics relevant to her case needs, such as victim awareness and anger management. She will also attend school five days a week, thus giving her the opportunity to make up credits lost due to past poor academic adjustment, as well as receive much needed mental health services.” The probation department noted that “since other, less restrictive correctional programs have not had the desired rehabilitative effect on [G.F.], attempting similar measures again, in probation’s opinion, would only be doing her—and the community—a disservice.”

The contested dispositional hearing was held over two days. Nisha Ajmani, a policy and program specialist with the Center on Juvenile and Criminal Justice, testified for G.F. as an expert in dispositional sentencing. Ajmani recommended that G.F. be placed in a “restricted therapeutic residential treatment program that specializes in treating high-risk youth and provides a highly individualized, highly structured, 24/7 spectrum of services, specifically to youth who have similar profiles [to G.F.], with a range of serious mental health needs, a range of behavioral challenges and similar histories of trauma.” Ajmani testified G.F.’s placement should have a “continuity-of-care component,” meaning a system that would allow her to progress incrementally to less restrictive settings while providing her appropriate services.

Ajmani opined that the DJJ’s mental health plan was “incomplete” in that several of its core components, including its mental health treatment plan, had not yet been fully developed and implemented. She noted that DJJ had an insufficient number of licensed

mental health professionals in general, but was not sure whether that was true as to the program for girls in Ventura that was recommended by the probation department.

Ventura's girls' facility, El Toyon, does not have a special mental health unit. There is a cognitive behavioral therapy program called "Girls Moving On," which Ajmani testified "had a history of cancellations in the past, but . . . has also worked well." Ajmani identified in-state level 14 programs² she felt were appropriate for G.F.: Victor Treatment Centers (VTC) and Rebekah Children Services, and the Excelsior Youth Center in Colorado.

Ajmani acknowledged on cross-examination that she did not know if Rebekah Children Services took wards of the court under section 602. Her recommendation was based on the probation report and an independent assessment by a neuropsychiatrist. She had not met or spoken with G.F., her doctors, family members, caseworkers, counselor or probation officer. Ajmani was unaware that three programs she identified as appropriate were not locked facilities. She did not know G.F. had previously been placed in seven group homes, the treatments she had received in them, or how many offenses she had committed. She did not know how many staff worked in the Ventura unit but she knew El Toyon had individual case plan counselors and psychologists and psychiatrists on call "24/7." Ajmani acknowledged that a Special Master's Report³ prepared in a case challenging conditions in juvenile facilities praised DJJ for significant improvement in mental health services for girls and found that El Toyon's intake unit, mental health unit, and the mental health entrance and exit criteria were in substantial compliance with the

² Level 14 is the highest level classification for group homes in California. Ajmani explained that "the higher the level, the more intensive the needs are of the youth, and the higher levels of education the staff member need to obtain and licenses, and typically more expensive it is."

³ This was described as the 29th Special Master's Report prepared in the context of the "Farrell litigation" and summarized by Dr. Bruce Gage, a mental health expert in that case.

court's decree. The Special Master's report gave El Toyon the highest score for offering the most mental health services. Ajmani did not know that El Toyon usually offered four or five educational classes at a time for the approximately 22 girls housed there. She was also unaware that El Toyon housed and educated girls based on their particular needs with respect to age, type of offense and mental health.

The court entertained comments from Zoe Chernicoff, an attorney who represented G.F. in federal litigation with the Office of Education relating to her individual education plan (IEP). Chernicoff said her clients had been placed in a variety of secure, effective placements in other states, including Copper Hills in Utah and Devereux in Texas. The juvenile court commented that, unlike most other counties, the Contra Costa County probation department had no contracts with out-of-state placements due to "financial issues." "[T]hey cannot simply afford to have these out-of-state contracts and send personnel out to—they require to go make monthly visits to ensure that these placements are adhering to the contracts and providing safe and adequate care. And that they simply cannot afford to send personnel out of state monthly to fulfill that. So they have limited the number of placements to those that are contained here in the state of California."

G.F.'s probation officer confirmed that the department had no wards under supervision placed out of state. She said that parents occasionally pay for placements through insurance or out of pocket, but that these are private agreements that are approved by the court. The court noted that it was aware of several "really terrific out-of-state placements that I would love to see utilized for many of the young people who appear before me. [¶] But as I have been told, given financial constraints probation departments no longer utilize[] out-of-state placements because of the cost of those resources and [of] ensuring compliance with contracts, and also [that] the facilities are safe, in providing the appropriate care. Probation has no longer utilized those resources and only utilizes in-state resources."

The court then addressed G.F. directly: “[A]s you know, I tried releasing you. I wanted to see you—if it was at all possible, I wanted to see you work with Children & Family Services and get you into an appropriate placement. What happens though, because I released you, they had to get you out of custody. And to get somebody placed in a structured, high-level placement, a level 10, 12, 14, it takes time to submit the paperwork and get it approved. So when you were released, they placed you in a group home as kind of the weighstation [*sic*] to find a more permanent placement for you. [¶] And that’s when the allegations of threatening staff occurred, and you had to be removed and you were back at Juvenile Hall. So we did try. That wasn’t very successful and didn’t last very long. [¶] I understand why probation is recommending DJJ. Number one, it’s a 707(b) offense, it qualifies. Number two, you’ve been through Girls in Motion several times, and it hasn’t seemed to address the issues. Number three, the failed attempt to put you in a group home, pending the proceedings. And number four, your statements that you’re going to run if you’re placed anywhere outside the county. And I’m unaware of any placements available inside this county that would provide the services that you are truly in need of.”

The court also noted that “Probation is very concerned about everyone’s safety, including your own, because you have shown yourself to be very assaultive. And you have been assaultive in your family home. You’ve been assaultive in a group home setting and you’re here before the Court because of some fairly significant violent behavior. [¶] So I understand why Probation is recommending what they did. It’s a very rational, reasonable recommendation. It would certainly not be my first preference, if it were possible, to find a placement, as opposed to DJJ. You are in need of extensive services. However, I do have to balance that need with the safety and the risk that you pose to others.”

The court continued the dispositional hearing for the probation department to take another look at the options and, specifically, to determine whether VTC, Rebekah Children Services, Bayfront in Long Beach or Milhaus had an available level 14

placement for G.F. G.F.'s counsel commented that G.F.'s education attorney was trying to get her school district to fund an out-of-state placement. The court indicated it would be open to an out-of-state placement if it was funded by the school district, met all of G.F.'s school and mental health needs, and provided a secure environment. Moreover, the probation department would have to investigate and assess it.

On November 10, the second day of the hearing, G.F. submitted a seven-page "Functional Behavior Assessment Report" and an 11-page assessment report from the Autism Collaborative Therapies East Bay Behavioral Services. The report observed that "[G.F.'s] challenging behaviors are of a long-term nature and successful interventions therefore need to be maintained over a prolonged period." The Autism Collaborative Therapies report recommended a "24/7 therapeutic school" that provided "a continuum of behavior interventions as well as an educational curriculum that can address [G.F.'s] identified skill deficits across all areas." The court also considered several recent incident reports about G.F.'s misbehavior at juvenile hall since the last hearing, including a physical altercation with another student and threatening staff.

Probation Supervisor Jeff Waters was in charge of the Juvenile Placement Unit. RT 154)~ He assessed G.F. for placement before the disposition hearing and later investigated the potential placements suggested on the first day of the hearing. He concluded that group care was not appropriate for G.F. "given her behaviors in the home, in group facilities, in custody, and given that Probation had attempted our in-custody program multiple times, Girls in Motion, with [G.F.] and the fact that she had been in approximately seven out-of-home placements previously, and the level of violence that she displays on a consistent basis, no matter where she was at."

Waters testified that G.F. was ineligible for or not accepted at Rebekah Children's Services, the Fred Finch Center, Charis Youth Center, and VTC's Santa Rosa Campus. Although Milhous was waiting for additional information to make its assessment, Waters did not believe the program was suitable based on G.F.'s behavior and pattern of threatening caretakers.

Waters did not screen G.F. for VTC's Stockton campus. The Stockton intake coordinator, Travis Curtis, interviewed her in Juvenile Hall and told Waters that "they may be inclined to work with her." However, Curtis had not seen the screening packet containing the information necessary to make a placement recommendation. Curtis subsequently told Waters he had received and "scanned over" the 89 page packet "and that he felt that they were still willing to give [G.F.] an opportunity to go through their program." Waters explained that "when someone tells me they scanned over information that I sent them, it's kind of concerning to me as a placement supervisor."

Based on all of his research, Waters believed a commitment to DJJ would best serve G.F.'s rehabilitative needs. "I think she needs a more secured environment which has staff that are well trained to deal with her violent outbursts. [¶] She's displayed a consistent pattern of behavior while in even Juvenile Hall in Contra Costa County of these outbursts, and I'm concerned for the staff safety, her safety and safety of the other potential residents, and in group care."

The court overruled the prosecutor's objection to the two reports provided that morning. Although they had been prepared in anticipation of G.F.'s civil action and were primarily limited to her educational needs, the court found they were of some assistance. "I think quite frankly in a disposition, the more information the Court has, the more informed a decision can be made."

Defense counsel urged the court to place G.F. at VTC in Stockton, which had accepted her and which counsel represented had staff trained in the necessary therapies and behavior control tactics, and which was more structured and therapeutic than a level 10 group home where she had previously failed. The court advised the parties that it was familiar with VTC's program.

The prosecutor argued that DJJ was "the least restrictive means that this Court can consider, given [G.F.'s] very aggressive and dangerous behavior. . . . [¶] a place where [G.F.] can go and actually have a chance at becoming a successful, productive member of society. And I simply don't think that sending her to yet another placement, which would

now be her eighth placement, would do any good, and would just be setting her up for failure, and quite frankly, would be setting somebody else up for getting hurt when [G.F.] doesn't get her way." The prosecutor said VTC's Stockton campus was for "kids who struggle with very severe mental conditions, sometimes mental retardation, sometimes schizophrenia, sometimes conditions that would require a much higher level of treatment" than G.F. G.F. is not mentally retarded, and her mental health issues, possibly bipolar disorder and ADHD, were not suitable for the proposed placement. The prosecutor stressed that placing G.F. in an unlocked facility posed a substantial risk to the safety of other minors and the public.

The court agreed. Addressing G.F., it said: "you continue to present as a risk, not only to yourself, but quite frankly everyone you come in contact with, because of your escalating violent behavior that is out of control. [¶] I did make an attempt hoping that Juvenile Hall or a locked facility would not be the answer here. I did attempt to release you to see if we can make this work. [¶] I understand [counsel's] comments that the placement that you were taken to is less restrictive than Victor Treatment. However, you have been in many placements, continue to struggle in those placements. You've been very assaultive while in those placements. And you have threatened that if you were put in a placement outside of Contra Costa County that you were going to leave. [¶] Not only do you pose a threat, physical threat to everyone around you, if you were to leave and flee, as you have promised and threatened to do, then that would truly place the community at great risk as well as yourself, because you're a young person and almost 16, and it would not at all be safe for you to be free, particularly given your struggles with controlling yourself and the situation that you might find yourself in because of your inabilities to maintain your behavior in a safe and appropriate fashion."

The court explained that G.F. needed to be around highly trained individuals who could control her behavior, "and that can best happen in a locked facility. I don't believe Juvenile Hall is that place. I think DJJ has better trained staff members to deal with young people of your intensive needs where you can get the programming that you truly

need in a very secure environment. [¶] . . . [¶] I have considered all less restrictive programs. That’s why I continued the matter for further consideration here today. And I am fully satisfied that they are inappropriate dispositions at this time, given your volatile, violent behavior, and that, rather, you could best benefit from the various programs that would be provided to you by DJJ.”

The court adjudged G.F. a ward of the court and committed her to the DJJ for a term not to exceed four years. This timely appeal followed.

DISCUSSION

I. The Commitment to DJJ

G.F. contends the court erred in committing her to the DJJ because, she asserts, it erroneously believed it lacked the discretion to consider out-of-state placements “given the probation department’s own policies forbidding out-of-state placements.” We disagree.

“The decision of the juvenile court may be reversed on appeal only upon a showing that the court abused its discretion in committing a minor to [DJJ]. [Citations.] An appellate court will not lightly substitute its decision for that rendered by the juvenile court. We 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.* (1987) 188 Cal. App. 3d 1392, 1395.) “ ‘A decision by the juvenile court to commit a minor to the [DJJ] will not be deemed to constitute an abuse of discretion where the evidence ‘demonstrate[s] probable benefit to the minor from commitment to the [DJJ] and that less restrictive alternatives would be ineffective or inappropriate.’ ” (*In re Pedro M.* (2000) 81 Cal.App.4th 550, 555–556, *disapproved of on another point in People v. Gonzales* (2013) 56 Cal.4th 353.)

There was no abuse of discretion here. The record above makes plain that the court’s decision was based on a careful consideration of the relevant factors, and that its discussion of budgetary limitations was not, as G.F. maintains, the sole or determinative basis for its dispositional choice. To the contrary, the court expressly considered all less

restrictive programs, but based on G.F.'s long and troubled history of volatile and violent behavior as well as her numerous failures in less secure placements, reasonably concluded that she would benefit most fully from commitment to the DJJ, whose staff are trained to deal with her needs and which offers suitable programming. It also found that a highly restrictive commitment was necessary for both her own protection and the public's. In short, the court conducted a fact intensive and fully informed analysis of G.F.'s history, needs and the services and security provided by the available placements. The evidence solidly supports its findings that G.F. would benefit from a DJJ commitment and that less restrictive alternatives would be inappropriate or ineffective.

G.F. argues that section 727.1 supports her position. We disagree. Section 727.1 specifies conditions that must be met for a court to place a delinquent minor out-of-state. According to section 727.1, subdivision (b), "Unless otherwise authorized by law, the court *may not* order the placement of a minor who is adjudged a ward of the court . . . in a private residential facility or program that provides 24-hour supervision, outside of the state, *unless the court finds, in its order of placement, that all of the following conditions are met:* [¶] (1) *In state facilities or programs have been determined to be unavailable or inadequate to meet the needs of the minor. . . .*" (§727.1, subd. (b), italics added.) Here, the court found that the DJJ was appropriate and adequate to meet G.F.'s particular needs. It thus seems that section 727.1 would prohibit rather than require an out-of-state placement.

G.F. asserts, and the People do not dispute, that budgetary or financial considerations, standing alone, are "not valid bases to deny minors the opportunity to participate in programs that further their rehabilitation and care." (See, e.g., *In re Devin J.* (1984) 155 Cal.App.3d 1096 [budgetary considerations did not justify sole reliance at disposition on social study prepared for fitness hearing]; *In re John O.* (1985) 169 Cal.App.3d 823 [abuse of discretion to deny statutorily favored informal supervision solely due to lack of funds] (*John O.*)) But that is not what happened here. The court expressed on the first day of the hearing that it would be open to an out-of-state

placement, subject to the probation department's input, if it were funded by the school district, met all of G.F.'s academic and mental health needs, and provided a secure environment.⁴ The court closely examined G.F.'s history and specific needs and explored and assessed an array of potential placements. It determined she would benefit from a commitment to the DJJ and that the less restrictive alternatives were not appropriate. That determination was well within its discretion. "If two programs are found appropriate and one is found unavailable for whatever reasons, the court should not be hindered in view of the situation before it from choosing the perhaps less desirable program." (*In re Gerardo B.* (1989) 207 Cal. App. 3d 1252, 1258.) In contrast to the situation in *John O.* there is no statutory preference or imperative for out-of-state placement where the DJJ is appropriate for the minor's rehabilitative and other needs. The court's willingness to consider an out-of-state program if it met G.F.'s significant needs and school district funding was available does not mean it abused its discretion when it committed her to DJJ.

II. G.F.'s Petition to Modify the Commitment

G.F. asserts the court erred when on April 7, 2015, it denied her petition to vacate the DJJ commitment. Again, we disagree.

A. Background

On March 16, 2015, G.F. filed a petition asking the court to set aside the DJJ commitment and allow her to be placed out-of-state in a locked residential treatment center. The petition was based on a February 18, 2015 settlement agreement in G.F.'s civil action against the Office of Education whereby, subject to court approval, it agreed to pay for placement in an out-of-state, level 14 locked facility through July 31, 2015. The Copper Hills residential treatment center in Utah agreed to admit G.F.

⁴ There seems to be no record that the probation department was asked to investigate any specific out-of-state program before the hearing resumed almost a month later, or that G.F. asked the court to specifically consider any such placements.

The probation department opposed the petition. It provided information about DJJ's mental health and education programs appropriate for G.F. and discussed her oppositional and " 'extremely needy' " behavior in those programs. It stated DJJ was the most appropriate facility for G.F. from a public safety perspective, "as she will be there for at least two years, and her case needs and risks seem to warrant such a lengthy commitment." Moreover, if G.F. were to be expelled from the out-of-state facility, which her history indicated was likely, she would probably be returned to juvenile hall and end up there for several months without necessary therapeutic services while awaiting her recommitment to DJJ. In addition, any out-of-state placement would first have to be approved by the Interstate Compact for Placement of Children Office, which could take several months.

The hearing was held on April 7, 2015. G.F. argued that Copper Hills offered more suitable therapeutic treatment and intervention than was available at DJJ. Counsel for the Office of Education explained that DJJ was currently responsible for G.F.'s education. Under the terms of the civil settlement, the county would assume that responsibility through July 31, the end of the fiscal year, when it would shift to the Antioch Unified School District (Antioch), her grandmother's local district. Counsel acknowledged that Antioch was not legally required to maintain G.F.'s placement at Copper Hills and could decide she did not need a locked facility and return her to her grandparents' home. The grandparents could withhold consent to moving her from Copper Hills, but whether the school district had an ongoing responsibility to provide for her there would be decided at an administrative hearing over which the juvenile court had no authority.

G.F.'s counsel suggested the court could retain jurisdiction over G.F. and order that her grandparents could not consent to removing her from Copper Hills. The court noted that the probation department would lose any right to federal reimbursement for the cost of the program if it ordered G.F. placed at Copper Hills. The department would also

be responsible for the cost of monthly inspections to ensure she was receiving appropriate care and services.

In addition, the civil settlement failed to address the juvenile court's concerns about public safety and the probation department's ability to carry out court orders. The court explained: "what I am gathering from everything being presented is that you're asking the Court to essentially give up its jurisdiction and authority over a ward and trust it with the Office of Education and the administrative processes and the civil litigation. And Probation, you are legally responsible but have no real authority to do anything here, but you are responsible legally for her well-being in the meantime. And I'm struggling with how the Court can possibly make this work, especially when I see the duration being July. [¶] We all know [G.F.] will be nowhere near being able to reenter the community in July of 2015. I think it would be optimistic if it were July of 2016 because of her extensive history and needs. [¶] So to leave it to Antioch, hopefully they will fund it, maybe they will fund it, maybe they won't fund it."

The court emphasized its concerns that the proposed placement did not provide the needed stability and permanency offered by DJJ and was problematic for "a whole host of issues" related to the probation department's obligation to supervise it and the costs and logistics involved were G.F. to leave or be dismissed from it. The court concluded: "I don't know what the magic pill is to help [G.F.] And I am hoping that she will get all the help that she needs at DJJ and balance that with the protection of both her and the community." Accordingly, the court denied the petition.

On June 8, 2015, G.F. filed a petition for writ of mandate challenging the dispositional order. We denied the petition on June 15.

B. Analysis

G.F. maintains the court erred when it denied her petition because it failed to understand the nature and scope of its continuing jurisdiction over her and erroneously believed the Copper Hills placement would only be guaranteed through July 31, 2015. We will not address the merits of her arguments because this appeal is moot. "When no

effective relief can be granted, an appeal is moot and will be dismissed. [Citation.] ‘ ‘
‘[T]he duty of this court . . . is to decide actual controversies by a judgment which can be
carried into effect, and not to give opinions upon moot questions or abstract propositions,
or to declare principles or rules of law which cannot affect the matter in issue in the case
before it.’ ’ [Citation.] . . . “[W]hen, pending an appeal from the judgment of a lower
court, and without any fault of the [respondent], an event occurs which renders it
impossible for this court, if it should decide the case in favor of [appellant], to grant him
[or her] any effectual relief whatever, the court will not proceed to a formal judgment, but
will dismiss the appeal.” ’ ’ ” (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315–1316;
In re Yvonne W. (2008) 165 Cal.App.4th 1394, 1404.) In this case, G.F.’s bid to change
her placement from DJJ to Copper Hills was premised on the settlement agreement’s
guarantee of funding for her out-of-state placement until July 15, 2015. That time has
passed, so even were this court to find merit in her claims of error⁵ we are powerless to
provide G.F. with any meaningful relief. Thus, this appeal is moot.

DISPOSITION

Appeal number A145135 is dismissed as moot. The disposition order is affirmed.

Siggins, J.

We concur:

Pollak, Acting P.J.

Jenkins, J.

⁵ To be clear, we make no such finding.