

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN THE INTEREST OF: I.M.R., A MINOR,

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: I.M.R.,

Appellant

No. 2001 MDA 2013

Appeal from the Dispositional Order October 11, 2013  
In the Court of Common Pleas of Luzerne County  
Juvenile Division at No(s): CP-40-JV-0000138-2013

BEFORE: BENDER, P.J.E., BOWES, and PANELLA, JJ.

MEMORANDUM BY BOWES, J.:

**FILED JULY 23, 2014**

I.M.R. appeals from the dispositional order imposing probation, a curfew, and completion of the Making Changes Program at Family Service Association as well as other minor conditions. The order was entered after Appellant was adjudicated delinquent based upon her commission of delinquent acts constituting simple assault and reckless endangerment, both graded as second-degree misdemeanors. We reject Appellant's allegation that the juvenile court improperly found that she was in need of treatment, supervision, or rehabilitation. We therefore affirm.

We first set forth the facts underlying the juvenile court's determination that Appellant committed acts that constitute the crimes of simple assault and reckless endangerment.

The victim testified that she was currently thirteen (13) years of age and in the 7<sup>th</sup> grade at the time of the incident.

She testified that while she was on the bus on February 5, 2013, on her way home from school she was told that the Juvenile wanted to fight her and that she indicated that she did not want to fight the Juvenile. Thereafter, she recollected that when the bus arrived at her [stop] and she got off and began to walk home when the Juvenile ran toward her and hit her. (N.T., p. 13). The [victim] testified that after she was hit she closed her eyes and swung but was unsure whether or not she actually struck the Juvenile. She recollected that they then fell to the ground at which time the Juvenile started smashing the side of her head off the ground. She noted that when they fell to the ground, the Juvenile was on top of her and continued to smash her head off of the ground multiple times. (N.T., p. 14). After the assault ended, the [victim] stated that her friend, Cammie, found her and they attempted to walk home. As she walked home, . . . she collapsed and her mother arrived shortly thereafter. She noted that an ambulance was called and she went to the hospital for treatment. (N.T., p. 14).

Wayne Alan Coyne, Jr., brother of the victim, testified that he was in 7th grade on the date when the fight occurred. He testified that words were exchanged back and forth between the Juvenile and victim on the bus which turned into physical violence. (N.T., pp. 20-21). He recollected that when the bus stopped, his sister exited the bus and the Juvenile threw down whatever she was carrying and ran after his sister with closed fists. He testified that he saw his sister get hit in the face at which time she swung back at the Juvenile. He then saw the Juvenile throw his sister to the ground and started to "curb stomp her". (N.T., pp. 21-22). The witness defined curb stomping as follows:

Pretty much, you know, like putting someone's head like right next to the curb- - more like on the ground and just keep stomping on it, nonstop. (N.T., p. 22).

He further noted that his sister's head hit the pavement multiple times. He further testified that he ran to his house to get his mother after he asked his sister to get up and she said she could not. (N.T., p. 23). After the victim's mother arrived at the scene, they began to walk home at which time she collapsed and stated that she could not walk. He recollected that the

ambulance was called and picked her up and that they drove to the hospital. (N.T., p. 24).

Thereafter, Samantha Coyne, mother of the victim, testified that her son came running into their home stating that his sister was on the ground getting beat up by another girl. She testified that she took the car and drove to the bus stop at which time another family friend, Cammie, was helping the victim up the street. She testified that her daughter was lethargic and dizzy, vomited and had red marks on her body. She called 911 and an ambulance took the victim to the General Hospital. (N.T., pp. 32-33). Initially, the victim was admitted to the General Hospital where she was discharged that day. After being discharged from the General Hospital, the victim's mother observed that there was blood running down her face and she appeared to have passed out and could not remember members of her family so they took her to the Geisinger Medical Center where she remained in the Emergency Room for approximately four (4) to five (5) hours. She was discharged to her home with instructions that she had to be observed for signs of throwing up or additional nose bleeds. The parents monitored the child in shifts and walked her to the bathroom. (N.T., pp. 34-35).

After monitoring the victim, the family noted that she did not remember who her brother was, was unsure who family members were and started to act oddly. Based on this, they went back to the Wilkes-Barre General Hospital where she was admitted and remained at the hospital for approximately one (1) week. (N.T., pp. 36-37).

Trial Court Opinion, 3/7/14, at 3-5.

In this appeal, Appellant raises following issue: “Whether the Juvenile Court erred by adjudicating the Juvenile delinquent where the Juvenile was not in need of treatment, supervision, or rehabilitation?” Appellant’s brief at 2. Our standard of review herein is very limited in that we “will disturb a juvenile court's disposition only upon a showing of a manifest abuse of discretion.” *In re C.A.G.*, 89 A.3d 704, 709 (Pa.Super. 2014). In *Commonwealth v. M.W.*, 39 A.3d 958, 959 (Pa. 2012), our Supreme Court

clarified that “the Juvenile Act requires a juvenile court to find both (1) that the juvenile has committed a delinquent act; and (2) that the juvenile is in need of treatment, supervision, or rehabilitation, before the juvenile court may enter an adjudication of delinquency” and dispositional order.<sup>1</sup>

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<sup>1</sup> Further, the term “delinquent child” is defined as, “A child ten years of age or older whom the court has found to have committed a delinquent act and is in need of treatment, supervision or rehabilitation.” 42 Pa.C.S. § 6302. Additionally, § 6341 of the Juvenile Act provides that, after the court finds that a child committed the delinquent acts ascribed to him, the court then shall “proceed immediately or at a postponed hearing” to determine “whether the child is in need of treatment, supervision or rehabilitation and to make and file its findings thereon.” 42 Pa.C.S. § 6341(b). Finally, Juvenile Rule 409 provides:

**A. Adjudicating the juvenile delinquent.** Once the court has ruled on the offenses as provided in Rule 408, the court shall conduct a hearing to determine if the juvenile is in need of treatment, supervision, or rehabilitation.

(1) *Not in need.* If the court determines that the juvenile is not in need of treatment, supervision, or rehabilitation, the court shall enter an order providing that:

(a) jurisdiction shall be terminated and the juvenile shall be released, if detained, unless there are other reasons for the juvenile's detention; and

(b) any fingerprints and photographs taken shall be destroyed.

(2) *In need.*

(a) If the court determines that the juvenile is in need of treatment, supervision, or rehabilitation, the court shall enter an order adjudicating the juvenile delinquent and proceed in

(Footnote Continued Next Page)

Appellant assails the finding that she is in need of treatment, supervision, or rehabilitation. She maintains that the “Juvenile Court focused its decision on the charges against the Juvenile, after she had been held factually responsible, instead of conducting a proper review of the second prong of the test set forth in ***M.W.***” Appellant’s brief at 6. We disagree with her characterization of the juvenile court’s adjudication. The juvenile court first carefully outlined the evidence supporting its finding that Appellant committed delinquent acts that would constitute simple assault and reckless endangerment, if committed by an adult. It also rendered findings as to the grading of those offenses.

Thereafter, the juvenile court concluded that Appellant was in need of treatment, supervision, and rehabilitation based upon the testimony of Probation Officer Phillip Nardiello, as follows:

With respect to whether the child was in need of treatment, supervision or rehabilitation, the Commonwealth presented the testimony of Luzerne County Juvenile Probation Officer Phillip Nardiello. Officer Nardiello testified that he is an Intake Officer and has been a probation officer in Luzerne County for approximately three (3) years. As an Intake Officer, once an allegation arrives in the office, Officer Nardiello interviews the juvenile and make[s] a recommendation to the Court. (N.T., p. 86). Officer Nardiello is trained in the Juvenile Act, was trained by the [probation] staff, and attended numerous trainings throughout the years. (N.T., pp. 86-87). He testified that he conducted an intake interview of the Juvenile on

(Footnote Continued) \_\_\_\_\_

determining a proper disposition under Rule 512.

Pa.R.J.C.P. No. 409.

May 1, 2013. (N.T., p. 87). During the interview, he concluded that she did not have any drug or alcohol issues and noted two teachers described the Juvenile as argumentative and one teacher described her as impulsive. He testified that when the Juvenile was in the sixth grade, she had a physical fight with another student. When Officer Nardiello asked the Juvenile if she believed her actions were criminal, she did not believe her actions were criminal and stated that she was not completely sorry for her actions.

Based upon all of the information gathered by Officer Nardiello, as well as speaking to the victim's unit and obtaining victim input, Officer Nardiello believed that the Juvenile was in need of treatment, supervision, or rehabilitation and believed that she would benefit from supervision. (N.T., pp. 87-88, 91).

Consequently, based upon the credible testimony of Officer Nardiello, this Court found the Juvenile in need of treatment, supervision or rehabilitation.

Trial Court Opinion, 3/7/14, at 8-9.

Herein, the juvenile court clearly relied upon the testimony of Juvenile Probation Officer Nardiello in rendering its determination that Appellant was in need of treatment, supervision, or rehabilitation. It did not, contrary to Appellant's position, merely base that finding upon the delinquent acts that Appellant committed herein. As we observed in ***In re K.J.V.***, 939 A.2d 426, 427-28 (Pa.Super. 2007), *abrogated on other grounds, M.W., supra*:

In reviewing the sufficiency of the evidence to support the adjudication below, we recognize that the Due Process Clause of the United States Constitution requires proof beyond a reasonable doubt at the adjudication stage when a juvenile is charged with an act which would constitute a crime if committed by an adult. Additionally, we recognize that in reviewing the sufficiency of the evidence to support the adjudication of delinquency, just as in reviewing the sufficiency of the evidence to sustain a conviction, though we review the entire record, we

must view the evidence in the light most favorable to the Commonwealth.

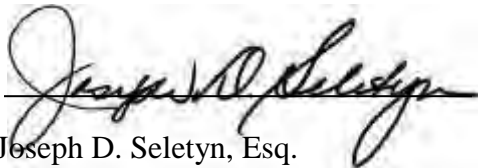
Viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, the testimony of Officer Nardiello was sufficient to establish that Appellant is in need of rehabilitation, supervision, or treatment. First, Appellant viciously attacked the victim by sucker punching her and then repeatedly pounding her head into the pavement. The victim suffered significant injuries, collapsed, and had to be hospitalized for one week. Appellant had no insight into the significance of her actions and failed to appreciate that they would constitute crimes if committed by an adult. Appellant was not remorseful for the injuries she inflicted on the victim. Additionally, two teachers described Appellant as argumentative and impulsive, and the present altercation is not Appellant's first. Hence, there was sufficient proof to find that Appellant is in need of treatment, supervision, or rehabilitation.

Appellant also assails the ruling that she is in need of treatment, supervision, or rehabilitation by complaining that the juvenile court "ignored the multitude of factors that indicated that the Juvenile was not in need of treatment, supervision, or rehabilitation." Appellant's brief at 6-7. Appellant points out that Officer Nardiello acknowledged that she does well in school, engages in extracurricular activities, listens to her parents, and does not have mental health issues. She also notes that Officer Nardiello indicated that some teachers spoke well of her. However, the juvenile court's decision squarely rested on its finding that Officer Nardiello credibly testified, based

on other factors, that Appellant did need treatment, supervision, or rehabilitation. **See** N.T., 10/11/13, at 87-88. Additionally, since the juvenile court heard Officer Nardiello's testimony regarding Appellant's positive qualities, we are required to presume that it weighed those factors. **See Commonwealth v. Devers**, 546 A.2d 12, 18 (Pa. 1988) ("It would be foolish, indeed, to take the position that if a court is in possession of the facts, it will fail to apply them to the case at hand."). The juvenile court elected to credit Officer Nardiello's ultimate conclusion regarding Appellant's need for supervision, rehabilitation, or treatment. Thus, we are required to affirm. **In re B.T.**, 82 A.3d 431, 435 (Pa.Super. 2013 (where "the juvenile court's factual finding is based upon its credibility determinations and is supported by the record," that "finding will not be disturbed on appeal").

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/23/2014