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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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| In re G. B., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE, Plaintiff and Respondent, | A105093 |
| v. G. B., Defendant and Appellant. | (Contra Costa County Super. Ct. No. J02-02368) |
| In re G. B., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE, Plaintiff and Respondent, | A105322 |
| v. MAHMOOD B. et al., Defendants and Appellants. | (Contra Costa County Super. Ct. No. J02-02368) |

On November 25, 2002, a Welfare and Institution Code section 602 petition was filed alleging that defendant, then a minor, had committed two counts of vehicular manslaughter (Pen. Code, § 192, subd. (c)(1)), by driving her vehicle with gross negligence resulting in the deaths of two other persons. Defendant admitted to the petition's allegations, and the court then found the petition's allegations to be true. On November 21, 2003, the court ordered defendant committed to the California Youth

Authority (CYA) for a term not exceeding seven years four months. The court also ordered defendant's parents to reimburse the county for the defendant's maintenance.

Defendant appeals from the dispositional order. Her parents appeal from the order requiring them to reimburse the county for the costs of defendant's maintenance. The appeals have been consolidated, and we will decide both here, affirming the order of commitment, and reversing the order for reimbursement.

BACKGROUND

On the afternoon of August 15, 2002, defendant was driving with two friends, Denika and Sebastian, on Ygnacio Valley Road in Concord. Defendant was 17 years old at the time, had received her driver's license two days earlier, and therefore was legally prohibited from transporting passengers under the age of 20 years without being accompanied by a parent or licensed driver over the age of 25 years. (Former Veh. Code, § 12814.6, subd. (a)(8).) She was driving at 73 to 82 miles per hour in a 45-mile-per-hour speed zone. She failed to negotiate a curve, struck the solid center median on the road, flipped the car and struck two vehicles traveling in the opposite direction on the other side of the road. The drivers of the other two cars were injured. Defendant sustained serious injuries resulting in an extended hospital stay and permanent residual injuries. Defendant's friends were killed. There is evidence that defendant did not simply lose control of the car, but instead purposefully drove straight as the road curved. A witness reported that "it almost looked like it was intentional, like [the driver] was attempting to commit suicide or something. That car just went straight to the median and never slowed down." There also is evidence that defendant may have acted out of exhilaration, experiencing a "wild moment" of freedom.

Clinical psychologist Caroline Purves examined defendant. Dr. Purves does not perceive defendant as posing any kind of danger to the community, but is concerned that she might become a danger to herself as she experiences the impact of her responsibility for the death of her friends. Dr. Purves opined that incarceration would be of no benefit to defendant, but believed that defendant would benefit from monitoring such as she would receive from continued probation. Dr. Purves's report and supporting data were

reviewed by a second clinical psychologist, Dr. Nancy Van Couvering, who reported that the supporting materials suggested that defendant may suffer from a personality disorder marked by lack of impulse control, problems with empathy, and possible rigidity, all of which increase the possibility that she poses a danger to others. Dr. Van Couvering also criticized a number of Dr. Purves's procedures and the basis for a number of her conclusions.

The probation department originally recommended that defendant be placed in a residential treatment program at the Chris Adams Girls' Center. By the time of the dispositional hearing, however, defendant, then 19 years old, no longer was eligible for placement there. The probation department then recommended that defendant be sentenced to one year in the county jail, explaining that it was not persuaded that a CYA commitment was warranted.

The court noted that defendant had admitted to driving a vehicle with gross negligence and violating the speed laws, thereby effectively admitting that the consequences of her acts reasonably could have been foreseen, so that the victims' deaths were not simply accidents, but the natural and probable result of defendant's aggravated conduct. The court specifically stated that it could not conclude, as the prosecution had argued, that the accident was the result of an attempted suicide and murder. It found, however, that there was evidence that defendant suffered from "some kind of personality and/or serious mental disorder," and that she represented a danger to herself and to others.

The court declined to follow the recommendation of the probation department, and ordered defendant committed to CYA, explaining that it did so not for the purpose of retribution, but as a sanction that in its severity would emphasize to defendant the seriousness of her conduct and hold her accountable for it, acting as a restraint on future conduct. The court explained, further, that by committing defendant to CYA, it was committing her to an institution that that would offer ongoing psychological counseling and therapy.

CYA COMMITMENT

Defendant contends that the record does not support the order committing her to CYA, noting that CYA generally is viewed as the final treatment resource available to the juvenile court. (See *In re Aline D.* (1975) 14 Cal.3d 557, 564.) She claims that she is not the kind of person who should be committed to CYA, pointing out, except for the incident at issue, she has no criminal history. She claims, further, that the court had no valid basis for committing her to CYA as a means of ensuring that she will receive treatment, asserting that study after study has shown that CYA only exacerbates the mental health problems of those committed to that institution.¹

The basic principles were summarized by the court in *In re Asean D.* (1993) 14 Cal.App.4th 467, 473: “We review a commitment decision only for abuse of discretion, and indulge all reasonable inferences to support the decision of the juvenile court. [Citations.] Furthermore, it is clear that a commitment to the Youth Authority may be made in the first instance, without previous resort to less restrictive placements. [Citation.] Finally, the 1984 amendments to the juvenile court law reflected an increased emphasis on punishment as a tool of rehabilitation, and a concern for the safety of the public. [Citation.]” Nonetheless, it is true that “[b]ecause commitment to CYA cannot be based solely on retribution grounds ([Welf. & Inst. Code,]§ 202, subd. (e)(5)), there must continue to be evidence demonstrating (1) probable benefit to the minor and (2) that less restrictive alternatives are ineffective or inappropriate. However, these must be taken together with the Legislature’s purposes in amending the Juvenile Court Law.” (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396.)

¹ The minor has filed motions requesting that we take judicial notice of two reports critical of the mental health care currently being provided by CYA, of a complaint in a taxpayer action against the director of CYA, alleging that severe unconstitutional and illegal problems plague that institution, and of documents filed in connection with that action. The motions are denied. The documents at issue were not filed in the trial court and were not before the court when it issued its orders. Moreover, the material contained in the reports does little more than reflect the opinions of the authors, and the complaint contains only unsupported allegations. Nonetheless, we are aware that CYA has been criticized for a number of reasons, including that it has been unable to provide adequate mental health care to persons committed there.

Here, the record contains evidence that defendant acted in a way that was reckless or grossly negligent, endangering the lives of a number of people, including herself. The evidence is that her actions were not merely accidental, but were motivated either by a wish to end her life and the lives of those she was with (a theory rejected by the trial court) or by a wild impulse that she did not or could not control. Her conduct was abnormal and irresponsible, whether it was intentional or merely grossly negligent, and whether it was motivated by suicidal tendencies or by exhilaration. The trial court was fully justified in determining that defendant needed to be committed to an institution as a means of holding her accountable for her conduct. The record also demonstrates that the only institutions available to the minor were CYA and the county jail.

In addition, all concerned agree that defendant is in need of treatment for her mental health. She undoubtedly will need treatment to help her move forward, as Dr. Purves emphasized. There also is evidence that defendant needs help finding and treating that part of her personality that caused her to engage in such abnormal and dangerous conduct. There is no evidence that she sought treatment on her own, or that she or her parents recognized that treatment was needed. The court therefore also was justified in concluding that the minor, while taking responsibility for the deaths of her friends, does not recognize or understand that her conduct was abnormal and dangerous, and that she needs treatment to help her avoid similar impulses in the future and to prevent her from acting on such impulses should they occur. In short, the evidence supports the court's conclusion that defendant remains a danger to herself and to others, and needs to be in an institution where that danger can be contained and where she will receive treatment.

The record reflects that the juvenile court did not lightly commit the minor to CYA. It very carefully considered its options, and chose CYA not simply because the minor could receive treatment there, but because less restrictive options that did not involve commitment to an institution would not be appropriate, and incarceration in the county jail also would not be appropriate. In short, the juvenile court's dispositional order was not an abuse of discretion.

ORDER OF REIMBURSEMENT

The parents contend that the court's order requiring them to reimburse the county for the maintenance of the minor was error because (1) the court lacked jurisdiction over the parents as they never were provided with notice that they might be ordered to reimburse the county and never were served with summons, and (2) because, as defendant is over the age of 18, she is not a minor and her parents have no legal obligation to support her. (Fam. Code, § 3900.)

The People recognize that parents, such as defendant's parents here, have due process and statutory rights to notice and a hearing before they can be required to reimburse a county for the expenses of maintaining a minor.² They contend, however, that this court should not entertain the parents' appeal because there is no actual controversy between the parties, pointing out that there is no evidence that the county has attempted or will attempt to collect any money from the parents.

Although it is true that there is no evidence that the county will attempt to collect the costs of maintaining the minor, the fact remains that there is an order that permits them to do so. An existing order creates a controversy even if a party has not yet attempted to enforce it. We therefore have considered the parents' arguments, and, finding that the order was improperly issued, reverse it.

² Welfare and Institutions Code section 903.4 allows an agency to seek a court order requiring parents to pay for the support of a minor. The order can issue only after the parents, by means of an order to show cause, have had the opportunity to appear and present evidence that they are not financially able to pay. (Welf. & Inst. Code, § 903.4, subs. (c), (d) & (e).) Welfare and Institutions Code section 903.45 allows a county to designate a county financial evaluation officer who is empowered to hold hearings for the purposes of determining if a parent or other person liable for support has the ability to pay, and to petition the court for an order requiring that person to pay. The parent or other person has a right to notice and a hearing before the county financial evaluation officer, and a right to contest the county financial officer's determination before the juvenile court. (Welf. & Inst. Code, § 903.45, subs. (a) & (b).)

DISPOSITION

The dispositional order committing defendant to CYA is affirmed. The order requiring the parents to reimburse the county for the costs of the minor's maintenance is reversed.

STEIN, J.

We concur:

MARCHIANO, P.J.

MARGULIES, J.