NO. COA01-1335

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

IN THE MATTER OF:

GONSALO MATTHEW GOMEZ

Wake County
No. 00 J 746

Appeal by juvenile from adjudication and disposition order entered 9 May 2001 by Judge Craig Croom in Wake County District Court. Heard in the Court of Appeals 22 July 2002.

Attorney General Roy Cooper, by Assistant Attorney General Brent D. Kiziah, for the State.

Miller & Shedor, PLLC, by Marty E. Miller, for the respondent-appellant.

WALKER, Judge.

On 13 February 2001, a juvenile petition was filed charging respondent with disorderly conduct in violation of N.C. Gen. Stat. § 14-288.4(a)(6)(2001). The matter was heard on 9 May 2001.

The State presented evidence at the hearing which tended to show the following: On 2 February 2001, respondent was in an in school suspension class (ISS) at Zebulon Middle School in Zebulon. Gloria Sublett, the ISS coordinator, heard a noise which sounded like something hitting respondent's desk. When Sublett reached respondent's desk to investigate, she found the noise was made by

a "skate key." She went to confiscate the object because skate keys and skate plates were considered contraband in the classroom. Sublett testified that she took two skate plates from respondent's desk and before she could explain to him that she would return it at the end of the day, respondent "lost it." Sublett explained that respondent "stood up from his desk and walked towards the middle of the class and started spewing a lot of profanity." Sublett asked respondent to take his seat but he continued "shouting profanity," told Sublett he was getting ready to leave, and walked out of the classroom toward the main office. Sublett then called the main office and reported respondent as "skipping." The entire incident lasted a little more than a minute.

Chris Bray, the school resource officer, was called by the principal to assist him with respondent. As Bray walked toward the main office, he could hear profanity coming from the office area. Bray then walked into the office where he observed respondent and helped to calm him.

On 9 May 2001, respondent was adjudicated a delinquent juvenile for committing the offense of disorderly conduct. On the same date, a disposition order was entered confining respondent on an intermittent basis for fourteen twenty-four hour periods at the discretion of the supervising court counselor. Respondent was also ordered to comply with counseling. Respondent appeals.

Respondent first argues there was insufficient evidence to sustain the adjudication. However, respondent did not move for a dismissal at the close of the evidence. Thus, he is precluded from

raising this issue on appeal. *In Re Clapp*, 137 N.C. App. 14, 19, 526 S.E.2d 689, 693 (2000); see also *In re Davis*, 126 N.C. App. 64, 66, 483 S.E.2d 440, 441-42 (1997); N.C.R. App. P. 10(b)(3)(2001).

We next consider whether the trial court applied the wrong burden of proof. Respondent notes that the trial court found respondent "responsible." Respondent asserts that he was "entitled to have the evidence presented in their adjudicatory hearing evaluated by the same standards as apply in criminal proceedings against adults." *In re Meaut*, 51 N.C. App. 153, 155, 275 S.E.2d 200, 201-02 (1981). Thus, respondent argues that the trial court should have determined whether all the elements of the offense listed in the petition were proven "beyond a reasonable doubt."

After careful review of the record, briefs and contentions of the parties, we affirm. The adjudication order clearly states that respondent was found delinquent "beyond a reasonable doubt." *See In re Wade*, 67 N.C. App. 708, 711, 313 S.E.2d 862, 864 (1984). Accordingly, we conclude this assignment of error is without merit.

Respondent finally argues that the trial court did not have jurisdiction to adjudicate him delinquent. Respondent states that his case was originally set for hearing on 11 April 2001. However, on that date, the trial court continued the case to 9 May 2001. Respondent contends that no notice of the new court date was sent to him nor to his parents. See N.C. Gen. Stat. § 7B-1807 (2001). Nevertheless, respondent has not preserved this issue for appellate review with an appropriate assignment of error. See N.C.R. App. P. 10(a)(scope of review is limited to assignments of error set out in

the record on appeal). Accordingly, we decline to address this assignment of error as it was not properly preserved for review.

Affirmed.

Judges THOMAS and BIGGS concur.

Report per Rule 30(e).