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NO. COA11-100
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

IN THE MATTER OF:

R.F.

Washington County
No. 10-JB-20

Appeal by juvenile R.F. from order entered 16 September 2010 by Judge Samuel G. Grimes in District Court, Washington County. Heard in the Court of Appeals 18 July 2011.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Teresa Townsend, for the State.

Mary McCullers Reece, for juvenile-appellant.

STROUD, Judge.

Randy¹ appeals, arguing (1) the trial court erroneously concluded it was required to enter a Level 2 Disposition, and (2) the trial court erred in ordering him to pay \$500.00 in restitution.

The State's evidence tended to show the following: On 20 June 2010, at approximately 5:00 p.m., Helen Williford returned home, "raised the garage door to drive in," and smelled a strong

¹ We will use pseudonyms to protect the identity of the minors.

odor. She looked to the left and noticed that all the doors of her home were opened, although she recalled locking the doors when she left home on the afternoon of 18 June 2010. Ms. Williford then backed out of the driveway and called the police. When the police arrived, Ms. Williford walked through her home and observed that it was "completely trashed." The glass back door was broken, and it looked as if a brick had been thrown through it. The glass-top tables and mirrors were broken. "All of the drawers in the house had been opened and gone through." The chairs in the living room were put together "as if to start a bonfire underneath" them. "A fire was set in the kitchen [using] magazines." Ms. Williford also noticed a strong odor where something had been poured all over the furniture and carpet. Ms. Williford testified that the damage was in excess of \$1,000.00, but insurance would cover some of it. She testified that she has an insurance deductible of at least \$500.00.

John testified that in June 2010, he and Tom broke into Ms. Williford's home by tossing a brick through the glass back door. A cousin of John told him there were weapons in the home and that no one lived there. John and Tom entered the home and looked around, but did not see anything, so they left. The

following day, John told Randy and Lance what he and Tom had done. Randy then accompanied John and Lance to Ms. Williford's home. They broke into the home and went through the drawers, set magazines on fire on the stove, and damaged the home as described by Ms. Williford's testimony. Randy testified that he was not present for any of the events, and that he did not learn about the break-in until after the fact.

The trial court adjudicated Randy delinquent for committing the offenses of felonious breaking and entering, injury to personal property, and burning personal property. At disposition, the trial court entered a Level 2 Disposition and ordered Randy to pay \$500.00 in restitution.

Once a juvenile has been adjudicated delinquent, the trial court must determine the appropriate level of disposition, "depending on the juvenile's delinquency history and the type of offense committed." *In re Robinson*, 151 N.C. App. 733, 737, 567 S.E.2d 227, 229 (2002). The trial court considers the juvenile's prior adjudications to determine his delinquency history level. N.C. Gen. Stat. § 7B-2507 (2009). In this case, Randy had no prior adjudications; therefore, his delinquency history level was "low." N.C. Gen. Stat. § 7B-2507(c) (2009).

Next, the trial court considers the class of the adjudicated offense.

If a juvenile is adjudicated of more than one offense during a session of juvenile court, the court shall consolidate the offenses for disposition and impose a single disposition for the consolidated offenses. The disposition shall be specified for the class of offense and delinquency history level of the most serious offense.

N.C. Gen. Stat. § 7B-2508(h) (2009). The most serious offense for which Randy was adjudicated delinquent was a Class H felony. A Class H felony is considered a "serious" offense. N.C. Gen. Stat. § 7B-2508(a) (2009). Based upon the Randy's delinquency history level of "low" and the "serious" offense, he could have received either a Level 1 or Level 2 Disposition. N.C. Gen. Stat. § 7B-2508(f) (2009).

On the disposition order form, the trial court checked the box which states, "The Court is required to order a Level 2 disposition (*and also may order any Level 1 disposition*)."

Therefore, the juvenile contends "[t]he trial court was under a misapprehension in concluding that it was required to order a Level Two disposition, and thus could not have properly weighed the above factors to determine" the most appropriate disposition.

In choosing among statutorily permissible

dispositions, the court shall select the most appropriate disposition both in terms of kind and duration for the delinquent juvenile. Within the guidelines set forth in G.S. 7B-2508, the court shall select a disposition that is designed to protect the public and to meet the needs and best interests of the juvenile, based upon:

- (1) The seriousness of the offense;
- (2) The need to hold the juvenile accountable;
- (3) The importance of protecting the public safety;
- (4) The degree of culpability indicated by the circumstances of the particular case; and
- (5) The rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment.

N.C. Gen. Stat. § 7B-2501(c) (2009). "[T]he court may consider written reports or other evidence concerning the needs of the juvenile," and "any evidence . . . that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." N.C. Gen. Stat. § 7B-2501(a) (2009). "[I]n those instances where there is a choice of level, there are no specific guidelines solely directed at resolving that issue. Accordingly, choosing between two appropriate dispositional levels is within the trial court's discretion." *Robinson*, 151 N.C. App. at 737, 567 S.E.2d at 229.

This Court will not disturb the trial court's choice absent an abuse of discretion. *Id.*

In this case, we find the trial court exercised its discretion in imposing a Level 2 disposition. The record and the trial court's disposition order indicate the trial court considered the written reports and recommendations of the juvenile court counselor. Moreover, "[a] ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). We find no abuse of discretion by the trial court. Lastly, the juvenile contends the trial court erred in ordering him to pay \$500.00 in restitution where neither the evidence nor the findings of fact support an order of restitution.

The trial court may "[r]equire restitution, full or partial, up to five hundred dollars (\$500.00), payable within a 12-month period to any person who has suffered loss or damage as a result of the offense committed by the juvenile." N.C. Gen. Stat. § 7B-2506(4) (2009). "An order of restitution must be supported by the record, which demonstrates that the condition is fair and reasonable, related to the needs of the child, and

calculated to promote the best interest of the juvenile in conformity with the avowed policy of the State in its relation with juveniles." *In re Schrimpsheer*, 143 N.C. App. 461, 464, 546 S.E.2d 407, 410 (2001). "If the juvenile participated with another person or persons, all participants should be jointly and severally responsible for the payment of restitution[.]" N.C. Gen. Stat. § 7B-2506(4) (2009).

Here, although others participated in the break-in, the trial court made no findings from which we can determine whether the participants acted jointly in causing the damage. Furthermore, the trial court made no findings regarding the total amount of damage caused to Ms. Williford's home, nor any findings as to how much damage was attributable to the juvenile. We find the trial court made insufficient findings to support the condition that the juvenile make restitution in the amount of \$500.00. Accordingly, we vacate this portion of the disposition order and remand to the trial court for further proceedings. On remand, the trial court must determine whether Randy is responsible only for the damage that he individually caused, the amount of said damages, or whether there should be some form of joint and several liability imposed.

AFFIRMED IN PART, VACATED IN PART AND REMANDED.

Judges CALABRIA and STEELMAN concur.

Report per Rule 30(e).