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NO. COA11-257  
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

IN THE MATTER OF:

D.T.F.

Columbus County  
No. 09 JB 33

Appeal by juvenile from an order entered 7 September 2010 by Judge William F. Fairley in Columbus County District Court. Heard in the Court of Appeals 22 August 2011.

*Attorney General Roy Cooper, by Assistant Attorney General Mary S. Mercer, for the State.*

*Appellate Defender Staples Hughes, by Assistant Appellate Defender David W. Andrews, for juvenile-appellant.*

MARTIN, Chief Judge.

On 1 September 2009, the trial court found, based upon the juvenile's admission, that D.T.F. ("the juvenile") had committed the offenses of breaking and entering, larceny of a firearm, larceny after breaking and entering, and misdemeanor larceny and adjudicated the juvenile delinquent. In exchange for the juvenile's admission, the State dismissed other petitions

alleging a number of offenses. The trial court entered a Level 2 disposition and placed the juvenile on probation for twelve months. The trial court also ordered thirty days of house arrest and fourteen days of intermittent confinement.

On 9 December 2009, a court counselor filed a motion for review of the juvenile's probation. The counselor alleged that the juvenile had violated the electronic house arrest provision of his probation by leaving his home. The motion was heard on 7 September 2010. During the hearing, the State moved to amend the motion to include additional probation violations. The trial court permitted the motion to be amended. The juvenile denied all alleged probation violations. The trial court found that the juvenile violated his probation based on the testimony of the court counselor and the juvenile.

The trial court entered a Juvenile Level 3 Disposition and Commitment Order based on the probation violation. In the order, the trial court indicated that the case came on for disposition upon a finding that the juvenile, who was previously given a Level 2 disposition and was placed on probation, violated the terms of probation set by the court on 28 August 2009. The trial court also checked a box indicating that "[t]he juvenile has been adjudicated for a violent or serious offense

and Level III is authorized by G.S. 7B-2508." The only information contained in the order was pre-printed text. It was ordered that the juvenile be committed to a youth development center for a minimum period of six months and a maximum period not to exceed his eighteenth birthday. The juvenile entered a written notice of appeal on 14 September 2010.

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The juvenile first contends the trial court erred in revoking his probation because the court failed to make sufficient written findings of fact to support the conclusion that the juvenile had violated the conditions of his probation. In addition, the juvenile argues that the trial court used an incorrect form when it revoked his probation.

The trial court may revoke a juvenile's probation if it finds "by the greater weight of the evidence that the juvenile has violated the conditions of probation." N.C. Gen. Stat. § 7B-2510(e) (2009). The trial court here checked a box on the Disposition and Commitment Order that indicates this case came on for disposition upon a finding that the juvenile violated the terms of his probation set by the court on 28 August 2009. In the hearing on 7 September 2009, the trial judge made oral findings that the juvenile violated the conditions of his

probation by removing an electronic monitoring device, leaving his residence, and subsequently leaving two therapeutic foster homes he was placed in. Although the trial court did not enter a separate written order containing its previously announced oral finding by the greater weight of the evidence that the juvenile violated the terms of his probation, it is unnecessary to remand this case in order that the trial court enter its findings of fact in writing on a different form. The trial court's oral findings and statement on the Disposition and Commitment Order that it found that the juvenile violated the terms of his probation comply with N.C.G.S. § 7B-2510(e).

Next, the juvenile argues, and the State concedes, that the trial court erred by committing him to a youth development center because the court failed to make sufficient findings of fact that a Level 3 disposition was warranted.

"[W]e have previously held that juvenile probation revocation proceedings are dispositional, and subject to the statutory provisions governing juvenile delinquency dispositions." *In re V.M.*, \_\_ N.C. App. \_\_, \_\_, \_\_ S.E.2d \_\_, \_\_ (Apr. 19, 2011) (No. 10-1558) (*citing In re D.J.M.*, 181 N.C. App. 126, 130-31, 638 S.E.2d 610, 613 (2007); *In re O'Neal*, 160 N.C. App. 409, 412-13, 585 S.E.2d 478, 481, *disc. review denied*,

357 N.C. 657, 590 S.E.2d 270 (2003)). "Accordingly, a juvenile dispositional order entered after a probation revocation 'shall be in writing and shall contain appropriate findings of fact and conclusions of law.'" *Id.* (quoting N.C. Gen. Stat. § 7B-2512 (2009)).

Upon a finding that the juvenile violated the conditions of his probation:

[T]he court may continue the original conditions of probation, modify the conditions of probation, or, except as provided in subsection (f) of this section, order a new disposition at the next higher level on the disposition chart in G.S. 7B-2508. In the court's discretion, part of the new disposition may include an order of confinement in a secure juvenile detention facility for up to twice the term authorized by G.S. 7B-2508.

N.C. Gen. Stat. § 7B-2510(e).

The findings of fact and conclusions of law must reflect the trial court's selection of a disposition designed to protect the public and to meet the needs and best interests of the juvenile based upon the following factors:

- (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).

"[W]e have previously held that the trial court is required to make findings demonstrating that it considered the N.C.G.S. § 7B-2501(c) factors in a dispositional order entered in a juvenile delinquency matter." *In re V.M.*, \_\_\_ N.C. App. at \_\_\_, \_\_\_ S.E.2d at \_\_\_ (citing *In re Ferrell*, 162 N.C. App. 175, 177, 589 S.E.2d 894, 895 (2004)).

The trial court made no written findings of fact in the dispositional order. *See id.* The court only used the pre-printed findings, stating that the juvenile had previously been given a Level 2 disposition, was placed on probation, had violated the terms of probation, had been adjudicated for a violent or serious offense, and that a Level 3 disposition was authorized. *See id.* The trial court also did not include any findings in the area designated as "Other Findings," which contains the instructions:

(Continue on attached pages if necessary. State any findings regarding the seriousness of the offense(s); the need to hold the juvenile accountable; the importance of protecting the public; the degree of the juvenile's culpability; the juvenile's rehabilitative and treatment needs; and available and appropriate resources.)

*See id.*

The trial court here failed to make any findings addressing the N.C.G.S. § 7B-2501(c) factors. *See id.* Accordingly, we hold that the trial court's order contains insufficient findings as required by N.C.G.S. § 7B-2512 for this Court to conduct meaningful review of whether the trial court considered the factors prescribed by N.C.G.S. § 7B-2501(c). *See id.* We must therefore vacate the trial court's dispositional order and remand the matter for a new dispositional hearing.

Vacated and remanded for a new dispositional hearing.

Judges HUNTER, JR. and THIGPEN concur.

Report per Rule 30(e).