IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1047

Filed: 16 May 2017

Wayne County, No. 13 JB 96

In the Matter of T.K.

Appeal by Juvenile-Appellant from orders entered 26 May 2016 by Judge Les Turner in Wayne County District Court. Heard in the Court of Appeals 7 March 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Gerald K. Robbins, for the State.

Appellate Defendant Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for Juvenile-Appellant.

INMAN, Judge.

The omissions of a signature by a juvenile court counselor, or other appropriate representative of the State, and the words "Approved for Filing" in a petition in a juvenile delinquency case amount to a jurisdictional error that precludes the district court's authority to consider the matter contained within the petition.

T.K. (Thomas),[1] Juvenile-Appellant, appeals from orders adjudicating him delinquent and imposing a level 2 disposition placing him on twelve months of probation and requiring him to perform 30 hours of community service. Thomas

[1] A pseudonym is used to protect the identity of the juvenile.

argues that because the petition lacked the requisite signature and "Approved for Filing" language from the juvenile court counselor, the district court lacked jurisdiction to hear the matter. After careful consideration, we agree and vacate the trial court's orders and dismiss the petition.

Facts and Procedural Background

At the beginning of the school day on Saint Patrick's Day 2016, before the start of first period, a behavioral specialist at Goldsboro High School, Tamoris Wooten, stood watch in the hallway as the students headed to class. Thomas, walking away from a "ruckus" down the hall, approached Wooten, told him, "I'm going to stand right here," and stated "Sir, I'm not trying to get in trouble this morning." Before Wooten could ask Thomas any questions about what he meant, a second student, Brad,[2] walked up to Thomas, said a few words, and punched Thomas in the face. Thomas dropped to the floor.

Thomas tried unsuccessfully to climb to his feet while Brad continued punching him. A crowd of around 25 to 30 students gathered around them. Wooten called for staff assistance. Thomas "put his arm up to get [Brad] off of him," and threw one or two punches. Another male staff member helped Wooten separate the boys and Wooten walked with Thomas away from the fight.

[2] A pseudonym is used to protect the identity of the juvenile.

As Wooten led Thomas away down the hall to his office, Thomas uttered what was later described as "profanity." Wooten instructed Thomas to stop cursing and to calm down. Thomas stopped cursing by the time they reached Wooten's office and Wooten left him in his office to calm down.

On 26 April 2016, Officer Nicki Artis of the Goldsboro Police Department submitted a complaint with the Clerk of Wayne County Superior Court alleging that Thomas was delinquent because he committed a simply affray, a Class 2 misdemeanor, in violation of N.C. Gen. Stat. § 14-33(a) at his school on 17 March 2016. On 5 May 2016, a juvenile court counselor signed the complaint and marked it "Approved for Filing" as a petition. The petition was then filed with the Wayne County District Court and the matter was scheduled for hearing on 26 May 2016.

On the day of the hearing, Officer Artis signed a second petition related to the same incident, alleging that Thomas was delinquent because he committed disorderly conduct at school. This second petition alleged that Thomas had disturbed the discipline at Goldsboro High School by "arguing loudly in a Goldsboro High School hallway with another student, [Brad], which ultimately led to a physical altercation . . . ." This second petition was not signed by a court counselor, nor was it marked as "Approved for Filing," but it was nevertheless filed with the district court.

During the hearing, the State dismissed the simply affray charge and proceeded only on the disorderly conduct petition. The trial court adjudicated

Thomas delinquent for disorderly conduct, imposed a Level 2 disposition, ordered Thomas to be placed on a 12 month probation, and ordered him to perform 30 hours of community service.

Thomas timely appealed.

Analysis

Before a court can address any matter on the merits, it must have jurisdiction. Thomas asserts that the trial court lacked subject matter jurisdiction to consider the second petition filed against him because the juvenile court counselor failed to sign the petition and mark whether the petition was "Approved for Filing" as required by N.C. Gen. Stat. § 7B-1703. We agree.

"A universal principle as old as the law is that the proceedings of a court without jurisdiction of the subject matter are a nullity." *Burgess v. Gibbs*, 262 N.C. 462, 465, 137 S.E.2d 806, 808 (1964) (citation omitted). "Subject matter jurisdiction is the indispensable foundation upon which valid judicial decisions rest, and in its absence a court has no power to act[.]" *In re T.R.P.*, 360 N.C. 588, 590, 636 S.E.2d 787, 790 (2006) (citations omitted).

"Our General Assembly 'within constitutional limitations, can fix and circumscribe the jurisdiction of the courts of this State.' " *Id.* (quoting *Bullington v. Angel*, 220 N.C. 18, 20, 16 S.E.2d 411, 412 (1941)). "Where jurisdiction is statutory and the Legislature requires the Court to exercise its jurisdiction in a certain manner,

to follow a certain procedure, or otherwise subjects the Court to certain limitations, an act of the Court beyond these limits is in excess of its jurisdiction." *Eudy v. Eudy*, 288 N.C. 71, 75, 215 S.E.2d 782, 785 (1975), *overruled on other grounds by Quick v. Quick*, 305 N.C. 446, 290 S.E.2d 653 (1982). "[W]here it is required by statute that [a] petition be signed and verified, these essential requisites must be complied with before the petition can be used for legal purposes." *In re Green*, 67 N.C. App. 501, 503, 313 S.E.2d 193, 194-95 (1984) (citation omitted).

The General Assembly, by enacting the Juvenile Code, imposed specific requirements that must be satisfied before a district court obtains jurisdiction in juvenile cases. For a petition alleging a juvenile delinquent, the Juvenile Code states that

> [e]xcept as provided in [N.C. Gen. Stat. §] 7B-1706, if the juvenile court counselor determines that a complaint should be filed as a petition, the counselor shall file the petition as soon as practicable, but in any event within 15 days after the complaint is received, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The juvenile court counselor shall assist the complainant when necessary with the preparation and filing of the petition, *shall include on it the date and the words "Approved for Filing", shall sign it*, and shall transmit it to the clerk of superior court.

N.C. Gen. Stat. § 7B-1703 (2015) (emphasis added). This Court has stated that "[w]e cannot overemphasize the importance of the intake counselor's evaluation in cases involving juveniles alleged to be delinquent or undisciplined." *In re Register*, 84 N.C.

App. 336, 346, 352 S.E.2d 889, 894-95 (1987). The role of the counselor is "to ensure that the needs and limitations of the juveniles and the concern for the protection of public safety have been objectively balanced before a juvenile petition is filed initiating court action." *Id.* at 346, 352 S.E.2d at 895. Our courts have not previously addressed whether the signature and the "Approved for Filing" designation on a juvenile petition are prerequisites to the district court's jurisdiction.

In *In re D.S.*, 364 N.C. 184, 194, 694 S.E.2d 758, 764 (2010), the North Carolina Supreme Court held that the Legislature did not intend the time deadlines imposed by N.C. Gen. Stat. § 7B-1703 to "function as [a] prerequisite[] for district court jurisdiction over allegedly delinquent juveniles." The Court looked to the Legislature's intent in imposing the deadline at issue in that case. *Id.* at 192, 694 S.E.2d at 763. The Court further noted that its decision was "consistent with the conclusions reached in prior North Carolina appellate decisions that have addressed Chapter 7B timeline requirements and jurisdiction, particularly in the context of abuse, neglect, and dependency and termination of parental rights." *Id.* at 194, 694 S.E.2d at 764 (citations omitted). *In re D.S.* does not address whether the statute's requirements for signature and approval for filing by a juvenile court counselor or other appropriate representative of the State are prerequisites to district court jurisdiction.

In the absence of precedent on the precise issue before us, we turn to analogous case authority for guidance. In a case involving a petition to adjudicate a juvenile as abused or neglected, this Court held that "the failure of the petitioner to sign and verify the petition before an official authorized to administer oaths rendered the petition fatally deficient and inoperative to invoke the jurisdiction of the court over the subject matter." *In re Green,* 67 N.C. App. 504, 313 S.E.2d at 195 (vacating the trial court's denial of a motion to dismiss because "the trial court lacked jurisdiction over the subject matter"). In *In re Green*, the Juvenile Code required the petition alleging abuse and neglect to be signed and verified pursuant to N.C. Gen. Stat. § 7A-544 and N.C. Gen. Stat. § 7A-561(b).[3] *Id.* Because the petition lacked the necessary signatures and verification, our Court concluded that the trial court necessarily lacked jurisdiction over the matter. *Id.*

The State urges us to extend the holding in *In re D.S.* to recognize failures to comply with the signature and "Approved for Filing" requirements for a petition alleging delinquency as non-jurisdictional errors. Such an extension would conflict with the purpose of the Juvenile Code. Section 7B-1500 articulates the following purposes and policies underlying the statutes related to delinquent juveniles:

> (1) To protect the public from acts of delinquency.
>
> (2) To deter delinquency and crime, including patterns of repeat offending:

[3] The relevant sections of N.C. Gen. Stat. § 7A have been re-codified under N.C. Gen. Stat. § 7B and are sufficiently similar for our purposes.

> a. By providing swift, effective dispositions that emphasize the juvenile offender's accountability for the juvenile's actions; and
>
> b. By providing appropriate rehabilitative services to juveniles and their families.
>
> (3) *To provide an effective system of intake services for the screening and evaluation of complaints* and, in appropriate cases, where court intervention is not necessary to ensure public safety, to refer juveniles to community-based resources.
>
> (4) To provide uniform procedures that assure fairness and equity; that protect the constitutional rights of juveniles, parents, and victims; and that encourage the court and others involved with juvenile offenders to proceed with all possible speed in making and implementing determinations required by this Subchapter.

N.C. Gen. Stat. § 7B-1500 (2015) (emphasis added). The juvenile court counselor's role in signing and approving a petition for delinquency is the only indication on the face of a petition that a complaint against a juvenile has been screened and evaluated by an appropriate authority. Not unlike the signature of a Grand Jury foreperson with the indication "true bill" on an indictment sought by a prosecutor, the juvenile court counselor's signature and approval for filing on a petition reflects that the complaint has not simply been asserted, but that it has satisfied the first test of validity in the court system.

Consistent with our precedent in *In re Green,* the Supreme Court's precedent in *In re D.S.*, and the Legislature's intent in drafting the Juvenile Code, we conclude

that a petition alleging delinquency that does not include the signature of a juvenile court counselor, or other appropriate representative of the State,[4] and the language "Approved for Filing," the petition fails to invoke the trial court's jurisdiction in the subject matter.

Here, the petition alleging Thomas delinquent for disorderly conduct at school failed to include a signature from the juvenile court counselor and does not indicate whether or not it was "Approved for Filing." The trial court therefore was without jurisdiction to proceed on the merits of this petition. Because we conclude that the trial court lacked subject matter jurisdiction, we deem it unnecessary to discuss Thomas's other assignments of error.

VACATED AND DISMISSED.

Judge BRYANT concurs.

Judge STROUD concurs by separate opinion.

[4] N.C. Gen. Stat. § 7B-1704 (2015) provides an alternate route for the district court's jurisdiction when a juvenile counselor denies approval of filing a petition. In such instances, the district attorney may approve the filing if the record affirmatively discloses that the juvenile counselor denied the approval. *See In re Register*, 84 N.C. App. at 343-44, 352 S.E.2d at 893. Our ruling today does not address and should not interfere with the appeal process delineated in N.C. Gen. Stat. §§ 7B-1704 or 7B-1705.

STROUD, Judge, concurring.

I concur in the result reached by the majority, since I tend to agree that the juvenile court counselor's signature on the petition may be necessary to invoke jurisdiction, although I also note that the juvenile court counselor was present and participating in the hearing. I write separately to concur because I believe that even if the court had jurisdiction, the adjudication and disposition orders would have to be reversed. It is unusual for a concurring opinion to address an issue which perhaps need not be addressed since the adjudication is being vacated. Yet I also recognize the possibility of further appellate review and feel compelled to note other errors in this adjudication and disposition.

Mr. Tamoris Wooten, a behavioral specialist at Goldsboro High School testified that Thomas told him he had prior juvenile court involvement, but on the day of this incident, was almost done with his probation. No doubt Thomas had been encouraged during his involvement with juvenile court not to engage with other students who may cause a "ruckus" and instead to seek assistance from school personnel if problems occurred. Indeed, when a "ruckus" did occur, Thomas did exactly "the right thing" -- as the lower court even noted -- by going directly to Mr. Wooten to try to protect himself and avoid getting into trouble. But then, right in front of Mr. Wooten, another student punched Thomas in the face and attempted to continue punching him as he was on the ground.

After another staff member arrived and the boys were separated, Mr. Wooten began walking with Thomas to the office and "was talking to him to try to find out what was going on." Thomas said something Mr. Wooten described as profanity. Mr. Wooten could not remember any particular words or phrases Thomas used. Mr. Wooten told Thomas to stop cursing and he did. There is no evidence that anyone other than Mr. Wooten even heard Thomas, though the hallway they were walking down did have many other students in it.

Perhaps another student, instead of cursing, would have instead cried; both are noises which may attract the attention of other students or school personnel. Since we don't know what the words were, really, all we know is that he made a noise. But there is no doubt Thomas's exclamation -- whatever he said -- was a response to an attack by another student; it was not something initiated by Thomas with the intent to "[d]isrupt[], disturb[] or interfere[] with the teaching of students . . . or disturb[] the peace, order or discipline" of the school, which is a necessary element of the offense for which he was adjudicated as delinquent. N.C. Gen. Stat. § 14-288.4(a)(6) (2015).

Once Thomas had calmed down, he told Mr. Wooten that he and the other student were "in the neighborhood" and had some sort of disagreement a week or so earlier. On the morning of the incident, the issue "just started to boil back up and they were having words with each other" in the cafeteria. Thomas then sought out

Mr. Wooten to avoid any trouble, and later in the office, told Mr. Wooten "he didn't want to get in trouble because he was just coming off from being in trouble with probation and stuff." Mr. Wooten explained what he was thinking when he was talking to Thomas, "So I'm saying, okay, here's a kid that's maybe trying to make the right decision. So then at that point, then I left it alone and I stepped out of the room where he was and left him."

Though Mr. Wooten had no prior dealings with Thomas and had only been at this particular school for two days, he also testified about his role as a behavioral specialist and noted that he tries to teach students to turn to him for help:

> I say, you know, 'Walk away and let an administrator or let me know, and let us deal with those type of things instead of you guys trying to fight your battles. That's why I'm here, and that's why the administration is here. But you guys have got to understand' -- I say, 'Stop trying to gain hallway cred, which means you're trying to establish credibility with your friends in the hallway. It's okay to walk away. That doesn't make you a coward. That doesn't make you, as they say, a punk. That doesn't make you soft. It makes you smart. And if you do it this way, then the outcome could be different for you when we start to do the investigation on what discipline needs to be given out.'

Thomas did exactly that -- he walked away from the issue in the cafeteria and went to Mr. Wooten for help.

As noted by the majority, the simple affray petition was dismissed, leaving the disorderly conduct at school ("disorderly conduct") petition which was unsigned by the court counselor. The disorderly conduct petition alleged that Thomas had

violated North Carolina General Statute § 14-288.4(a)(6) by "arguing loudly in a Goldsboro High School hallway with another student, [Brad], which ultimately led to a physical altercation in the Goldsboro High School hallway[.]" We do not know from the adjudication order exactly what conduct the lower court based the adjudication upon, because the section of the form which is to include findings of fact for those facts "proven beyond a reasonable doubt" is entirely blank.

But upon adjudicating Thomas as delinquent, the trial court stated the reasons for adjudication, and it was based solely upon Thomas's use of profanity:

> You did everything right except one thing, close your mouth. You walked away. That's the right thing to do. You went and found the gentleman. That was absolutely the right thing to do. This kid that came up and blindsided you and punched you, that was wrong. Putting up your arm while you were on the floor, that's self-defense. It depends on how many punches you threw back before you crossed the line of engaging in the fight rather than self-defense, but that issue is not before me.
>
> The main reason I adjudicated you is because you were engaging in the verbal aspect coming down the hall, and then after you were punched with the profanity. You've just got to be a bigger man. I know. I understand anger. I understand you might want to let it rip with profanity. You don't want anybody talking junk to you. The gentleman said a little pride might have been involved. You did everything right except refrain from talking, the running of the mouth and then the cussing.

Ultimately Thomas was adjudicated under North Carolina General Statute § 14-288.4(a)(6) which provides:

> (a) Disorderly conduct is a public disturbance

> intentionally caused by any person who . . .
>
> . . . .
>
> (6) [d]isrupts, disturbs or interferes with the teaching of students at any public or private educational institution or engages in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent thereto.

N.C. Gen. Stat. § 14-288.4(a)(6).

Although the petition cites only conduct *prior* to the "physical altercation" -- "arguing loudly in a . . . hallway" -- the lower court seemingly adjudicated Thomas based only on conduct which occurred *after* the altercation, his "cussing," because there was no evidence Thomas used "profanity" or engaged in "cussing" before the physical altercation as the petition alleged. Thus, even assuming that after the altercation Thomas "cussed" loudly where many students could hear, there was also simply no evidence that by his cursing he intentionally sought to "disrupt[], disturb[], or interfere[] with the teaching of students" or that he intentionally "disturb[ed] the peace, order or discipline" of the school. Mr. Wooten was the only witness for the State and nothing in his testimony indicates Thomas used profanity or cursed for any reason other than the fact that he had just been punched in the face. Indeed, Mr. Wooten testified that Thomas was likely "cursing and making noise" due in part to adrenaline -- an adrenaline rush most people would likely experience if suddenly punched in the face.

Several cases which have addressed disorderly conduct in a school demonstrate the necessity of the evidence of intentional disruption of the educational process in the school. *See generally State v. Wiggins*, 272 N.C. 147, 158 S.E.2d 37 (1967); *State v. Midgett*, 8 N.C. App. 230, 174 S.E.2d 124 (1970); *In re M.J.G.*, 234 N.C. App. 350, 759 S.E.2d 361 (2014). In *State v. Wiggins*, our Supreme Court considered convictions arising from a group picketing and marching in front of a school during the school day when classes were in progress. 272 N.C. 147, 155, 158 S.E.2d 37, 43 (1967). The evidence showed that the picketing substantially interrupted the school's operations:

> The marchers carried placards or signs. These signs were utterly meaningless except on the assumption that they related to some controversy between the defendants and the administration of the school, specifically Principal Singleton. Presumably, they were deemed by the defendants sufficient to convey some idea to students or teachers in the school. The site was the edge of a rural road running in front of the school grounds, with only two residences in the vicinity. There is nothing to indicate that the marchers intended or desired to communicate any idea whatsoever to travelers along the highway, or to any person other than students and teachers in the Southwestern High School. As a direct result of their activities, the work of the class in bricklaying was terminated because the teacher could not retain the attention of his students, and disorder was created in the classrooms and hallways of the school building itself.

Id.

The defendants in *Wiggins* argued that the statute under which they were convicted was too vague and indefinite to be enforced. *See id.* at 153, 158 S.E.2d at 42. The Court rejected this argument and noted that the statute was clear:

> When the words 'interrupt' and 'disturb' are used in conjunction with the word 'school,' they mean to a person of ordinary intelligence a substantial interference with, disruption of and confusion of the operation of the school in its program of instruction and training of students there enrolled. We found no difficulty in applying this statute, in accordance with this construction, to the activities of a group of white defendants in *State v. Guthrie*, 265 N.C. 659, 144 S.E.2d 891. Obviously, the statute applies in the same manner regardless of the race of the defendant. *In State v. Ramsay*, 78 N.C. 448, in affirming a conviction for the similar offense of disturbing public worship, this Court, speaking through Smith, C.J., said:
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> > 'It is not open to dispute whether the acts of the defendant were a disturbance in the sense that subjects him to a criminal prosecution, and that the jury was warranted in so finding, when they had the admitted effect of breaking up the congregation and frustrating altogether the purposes for which it had convened.'
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> Giving the words of G.S. 14—273 their plain and ordinary meaning, it is apparent that the elements of the offense punishable under this statute are: (1) Some act or course of conduct by the defendant, within or without the school; (2) an actual, material interference with, frustration of or confusion in, part or all of the program of a public or private school for the instruction or training of students enrolled therein and in attendance thereon, resulting from such act or conduct; and (3) the purpose or intent on the part of the defendant that his act or conduct have that effect.

Id. at 154, 158 S.E.2d at 42-43.

Another case that illustrates an intentional interruption of a school is *State v. Midgett*, wherein the defendants

> entered the office of the secretary while the principal, Mr. Simmons, was away from the school; the secretary knew or recognized most of the boys who were there; they informed her that 'they were going to interrupt us that day' and she could either leave or stay in the room, but that she could not pass in and out as she normally did; and that if she stayed she could make such telephone calls as she wished. The secretary telephoned Mr. Simmons and then went to get Mr. Hunter, who normally was in charge in Mr. Simmons' absence. While she was gone, her room was locked, and she was not permitted to return to her office. According to the testimony, filing cabinets and tables were moved against the doors and interior windows to further bar entry.
>
> Daniel Williams testified that he was teaching a class across the hall from the office at the time of the incident He stated that he left that class to investigate the incident at the office and did not resume teaching that day.
>
> Principal Simmons testified that when he returned to the school a little before 12 noon, he found that the office doors were locked and the bell system was being actuated manually from within the office. He determined that the 'presence of persons who were not enrolled' and 'commotion' necessitated the dismissal of school, and therefore he ordered the children walked to the buses and sent them home a little after noon and prior to the usual closing.

8 N.C. App. at 231, 174 S.E.2d at 126. This Court determined that this evidence showed a substantial interference with the school. *Id.* at 233-34, 174 S.E.2d at 127-28.

Here, the State has two deficiencies in its evidence: both the intention to disturb and an actual disturbance. *See* N.C. Gen. Stat. § 14-288.4(a)(6). First, there is no evidence that Thomas's behavior – "cussing" – was intended to disturb school as his brief "cussing" was a response to being attacked. *See id.* Thomas stopped "cussing" when Mr. Wooten told him to; if his intent was to disrupt the school he likely would have gone on "cussing." Thomas was the victim here, and thus this case stands in stark contrast to *In re M.J.G.,* where a student cursed at teachers and the disposition against him was affirmed. *Contrast In re M.J.G.*, 234 N.C. App. at 351-52, 759 S.E.2d at 362-63 ("The juvenile began shouting, 'I'm tired of this f'ing school, these teachers lying on me, they're always lying on me.' The juvenile put his finger less than an inch away from Long's face, 'postured up chest to chest' and said '[e]specially you you mother-f***ing b****[.]' Thereafter, the juvenile backed Ms. Potts against a wall and 'did the exact same thing to her.'").

Second, there was no evidence of disruption or interruption of the school by Thomas's cursing. Thomas was accompanied by Mr. Wooten, the behavioral specialist, to the office. Thomas did not take Mr. Wooten away from his work duties; helping Thomas was Mr. Wooten's work duty. There was no evidence of involvement by any teachers, other than the one who helped to pull Thomas's attacker off of him and the principal who dispersed students who wanted to see the "fight" Brad started when he attacked Thomas. Mr. Wooten testified that the incident occurred "as the

bell rung for them to begin to go to first period" so it appears that classes had not even begun yet which is why so many students were still in the hallway. Thus, at best for the State, some students or others in the school may have heard Thomas cursing in the hall, but there is no evidence of interruption of any class or school activity. In this regard, this case is similar to *In re Eller*, in which our Supreme Court determined there was no evidence of disorderly conduct at school when the juvenile made an aggressive move toward another student and later banged on a radiator in the classroom:

> Greer ma[d]e a move toward another student, who was separated by an aisle, causing the other student to dodge Greer's move. Ms. Weant finished relating the assignment, then approached Greer and asked Greer to show her what was in Greer's hand. Greer thereupon "willingly" and without delay gave Ms. Weant a carpenter's nail. The other students observed the discussion and resumed their work when so requested by Ms. Weant[, and on a later date,]
>
> . . . Greer and Eller were seated at the rear of the classroom with their peers in a single, horizontal row parallel to the rear wall situated near a radiator located on the wall. During the course of their instruction time, Greer and Eller "more than two or three times" struck the metal shroud of the radiator. Ms. Weant testified that she saw each child strike the radiator at least once. Each time contact was made, a rattling, metallic noise was produced that caused the other students to look "toward where the sound was coming from" and caused Ms. Weant to interrupt her lecture for fifteen to twenty seconds each time the noise was made. Ms. Weant did not intervene other than to silently stare at Greer and Eller for fifteen to twenty seconds and then resume her teaching. She did, however, report the incident to the school principal that afternoon or the following day.

331 N.C. 714, 715-16, 417 S.E.2d 479, 480–81 (1992).

The Supreme Court determined that this evidence did not support a finding of disruption of the school:

> Respondents' behavior in the instant case pales in comparison to that encountered in *Wiggins* and *Midgett*, and those cases are readily distinguishable on their facts. Here, even the small classes in which respondents perpetrated their disruptive behavior were not interrupted for any appreciable length of time or in any significant way, and the students' actions merited only relatively mild intervention by their teacher. We agree with respondents that while egregious behavior such as that condemned in *Wiggins* and *Midgett* is not required to violate N.C.G.S. § 14–288.4(a)(6), more than that present in the case at bar is necessary.

Id. at 719, 417 S.E.2d at 482–83.

Thomas's behavior here "pales in comparison to that encountered in *Wiggins* and *Midgett*" and even *Eller*. *Id.* at 715-16, 417 S.E.2d at 480-81. There is no evidence that Thomas's cursing in the hall caused *any* disruption. Thus, even assuming the petition had been signed invoking jurisdiction, the adjudication and disposition orders would necessarily need to be reversed. Furthermore, as to the disposition order specifically, even the State concedes that the disposition order is in error since it has no findings whatsoever to support the disposition.

For the reasons noted above, I concur with the majority opinion vacating the adjudication and disposition orders for lack of subject matter jurisdiction, but even

assuming the lower court had jurisdiction to hear this case, I would reverse since there was no evidence Thomas violated North Carolina General Statute § 14-288.4(a)(6).