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NO. 05-1684

NORTH CAROLINA COURT OF APPEALS

Filed: 19 September 2006

IN THE MATTER OF
C.M.H.

Forsyth County
No. 05 J 125

Appeal by Juvenile from order entered 18 August 2005 by Judge Laurie Hutchins in District Court, Forsyth County. Heard in the Court of Appeals 22 August 2006.

Attorney General Roy Cooper, by Assistant District Attorney Lizmar Bosques, for the State.

Moshera M. Mills for juvenile-appellant.

WYNN, Judge.

We dismiss Juvenile's initial issue challenging the trial court's finding that he was competent to stand trial because the Juvenile did not include in the record on appeal either a transcript of the adjudicatory hearing on that matter or a copy of the written report of the forensic evaluation of his competency to stand trial. Likewise, concerning Juvenile's other issue on appeal contending the trial court abused its discretion by ordering him to pay five hundred dollars (\$500) in restitution, we affirm because the record fails to show prejudicial error.

The facts pertinent to this appeal indicate that on 30 March 2005, a petition was filed against C.M.H., a juvenile, alleging

that he assaulted an exceptional children's substitute assistant, inflicting serious injury by throwing a large rock at him and striking him in the groin area. The petition was later amended to allege simple assault in violation of section 14-33(a) of the North Carolina General Statutes.

On 1 April 2005, another juvenile petition was filed against C.M.H., alleging that he assaulted a student on 10 February 2005 by grabbing his clothing and book bag, scratching his arm, biting him twice on the right arm, and twisting his right arm very hard.

Thereafter, a hearing scheduled for 16 June was continued to 9 August 2005 to allow time for a forensic evaluation of C.M.H.'s competency to stand trial. At the 9 August adjudicatory hearing, the trial judge found that C.M.H. admitted the allegations in the petitions; understood his rights, the nature of the charges, and the most restrictive disposition that could be imposed; and was satisfied with his representation. Thus, upon finding that there was a factual basis for the admission and that C.M.H.'s admission was the product of his informed choice, the trial court accepted his admission. The trial court continued disposition until 18 August 2005, under certain conditions, including the submission of C.M.H.'s grandmother and legal guardian, Janet H., to an immediate psychological evaluation.

At the 18 August dispositional hearing, evidence was presented to show that C.M.H. had nine previous hospitalizations for mental health intervention, and that he was currently receiving psychiatric treatment at the North Carolina Neuropsychiatry Clinic

in Chapel Hill. There was also evidence presented to show that, as a result of the groin injury caused by C.M.H., the substitute assistant incurred medical costs of one hundred dollars and missed eight days of work, accruing lost wages that exceeded five hundred dollars.

Based upon the evidence presented at the dispositional hearing, the trial court ordered C.M.H. to, among other terms: (1) be placed on juvenile probation for twelve months under the supervision of a Juvenile Court Counselor with certain conditions; (2) pay restitution in the amount of five hundred dollars (\$500.00) for the substitute assistant's lost wages; (3) cooperate with Case Management services and comply with recommendations for further treatment; and, (4) attend YWCA Youth Intervention Services Work and Earn It program. Though C.M.H. presents two issues on appeal from that order, we dismiss one and affirm the other for the following reasons.

I.

First, C.M.H. contends the trial court erred when it proceeded in the adjudication of this matter before ascertaining his mental capacity and competency to stand trial and plead to the offenses alleged in the petition.

Sections 15A-1001 and 15A-1002 of the North Carolina General Statutes apply to all cases in which a juvenile is alleged to be delinquent. See N.C. Gen. Stat. § 7B-2401 (2005) (providing, in part, that sections 15A-1001 and 15A-1002 of the North Carolina General Statutes apply to all cases in which a juvenile is alleged

to be delinquent). Section 15A-1001(a) of the North Carolina General Statutes provides:

No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.

N.C. Gen. Stat. § 15A-1001(a) (2005). Moreover, a defendant's capacity to proceed may be raised at any time on motion by the prosecutor, the defendant, defense counsel, or the court. N.C. Gen. Stat. § 15A-1002(a) (2005). The court may appoint one or more impartial medical experts to examine the defendant and return a written report describing the defendant's present state of mental health at a hearing to determine the defendant's capacity to proceed. N.C. Gen. Stat. § 15A-1002(b)(1). "[T]he issue of capacity (or competency) is within the 'trial court's discretion, and [the] determination thereof, if supported by the evidence, is conclusive on appeal.'" *State v. Staten*, 172 N.C. App. 673, 682 n.3, 616 S.E.2d 650, 657 n.3 (2005) (quoting *State v. Wolfe*, 157 N.C. App. 22, 30, 577 S.E.2d 655, 661, *disc. review denied*, 357 N.C. 255, 583 S.E.2d 289 (2003)).

In this case, the trial judge entered an order granting C.M.H.'s motion to continue the 16 June 2005 adjudicatory hearing until 9 August 2005, to provide time for a forensic evaluation of his competency to stand trial. The trial court found that the Office of the Juvenile Defender would choose who would perform the forensic evaluation and that a written report of the forensic

evaluation would be distributed to all parties involved. Furthermore, the trial court allowed that, if C.M.H. was not competent to stand trial, then the adjudicatory hearing would be continued until such time as he was competent.

However, C.M.H. did not include a copy of the transcript from the 9 August 2005 hearing in the record, nor did he include a copy of the written report of the forensic evaluation of his competency to stand trial. Indeed, nothing in the record reveals to this Court whether or not a written report of the forensic evaluation was in fact completed, much less whether such report was considered by the trial court.

"The appellant has the burden of providing a record which allows the appellate courts to properly review the assignment of error." *State v. Burnette*, 158 N.C. App. 716, 719, 582 S.E.2d 339, 342 (2003). Moreover,

[t]his Court's review on appeal is limited to what is in the record or in the designated verbatim transcript of proceedings. N.C. R. App. P. 9(a). An appellate court cannot assume or speculate that there was prejudicial error when none appears on the record before it.

State v. Price, 344 N.C. 583, 593-94, 476 S.E.2d 317, 323 (1996) (citing *State v. Alston*, 307 N.C. 321, 341, 298 S.E.2d 631, 645 (1983)).

Because we cannot determine based on the record presented whether the trial court abused its discretion in determining that C.M.H. had the capacity to proceed with adjudication, C.M.H.'s assignment of error must be dismissed.

II.

Second, C.M.H. contends the trial court erred when it ordered him to pay restitution to the substitute assistant for lost wages in the amount of five hundred dollars.

Section 7B-2501(a) of the North Carolina General Statutes allows the trial court to determine at a dispositional hearing, the amount, terms, and conditions of restitution up to \$500.00, payable within a twelve-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) (2005).

C.M.H. contends there was no competent evidence presented as to the accuracy of the restitution ordered to the substitute assistant for lost wages. However, the record on appeal includes only the transcription of "Tape 2" of the 18 August 2005 dispositional hearing, and we cannot discern from this portion the identity of the person who testified regarding the five hundred dollars incurred in lost wages. Indeed, the person who testified at the dispositional hearing regarding the lost wages is identified only as "MAN" in the transcript.

Nevertheless, based upon what C.M.H. has presented to this Court, the evidence reveals that there was testimony presented to the trial court that the substitute assistant was not a salaried employee but rather was paid based upon the number of days worked for the school system. As a result of the assault, the substitute assistant missed eight days of work, causing him to lose more than five hundred dollars in wages. C.M.H. did not present any evidence

on this issue and, in fact, objected to the amount of restitution ordered only on the grounds that he was not provided with copies of medical bills. Because we "cannot assume or speculate that there was prejudicial error when none appears on the record before [us]," *Price*, 344 N.C. at 593-94, 476 S.E.2d at 323, we affirm the trial court's order for C.M.H. to pay restitution in the amount of five hundred dollars (\$500.00) for lost wages.

Dismissed in part, Affirmed in part.

Judges HUDSON and TYSON concur.

Report per rule 30(e).