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NO. COA06-494

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

IN THE MATTER OF:

K.M.M.,
Juvenile.

Gaston County
No. 05 J 180

Appeal by juvenile from order entered 17 November 2005 by Judge Dennis J. Redwing in Gaston County District Court. Heard in the Court of Appeals 16 April 2007.

Attorney General Roy Cooper, by Special Deputy Attorney General Jane Hautin, for the State.

D. Tucker Charns for defendant-appellant.

GEER, Judge.

K.M.M., a juvenile, appeals from a final disposition order committing him to the Department of Juvenile Justice for an indefinite term, a Level 3 disposition. K.M.M.'s sole contention on appeal is that the trial court abused its discretion by failing to find that K.M.M.'s extraordinary needs justified the imposition of a Level 2 disposition. As there is no basis to conclude that the trial court's decision to impose a Level 3 disposition was manifestly unsupported by reason, we affirm.

Facts

K.M.M. was initially adjudicated delinquent on 27 June 2005 following his admission to a misdemeanor breaking and entering

occurring on 28 April 2005. K.M.M. was placed on six months probation, to run from 25 July 2005 until 24 January 2006. The State subsequently filed juvenile petitions alleging three additional offenses occurring either while K.M.M.'s prior case was pending or while he was on probation.

First, the State alleged that on 20 June 2005, K.M.M. broke into an occupied residence in the middle of the night and stole a video game system along with several games. Second, on 5 August 2005, K.M.M. was purportedly discovered while in possession of an "explosive and incendiary" device called an "acid bomb." Third, on 17 August 2005, K.M.M. allegedly stole a pair of earrings from a store. At adjudication hearings on 22 August and 6 October 2005, K.M.M. admitted to all of the State's charges and was, accordingly, adjudicated delinquent for first degree burglary, possession of a weapon of mass destruction, and misdemeanor larceny.

The trial court conducted a disposition hearing on these new offenses on 17 November 2005. In the resulting disposition order, the court found that K.M.M. had three delinquency points, had a current offense level of medium, and had been adjudicated delinquent for a "violent" offense with respect to the first degree burglary charge. The court imposed a Level 3 disposition, committing K.M.M. to the Department of Juvenile Justice for an indefinite term. K.M.M. timely appealed to this Court.

Discussion

K.M.M. argues on appeal only that the trial court abused its discretion in failing to find that K.M.M. had extraordinary needs

that justified a Level 2 disposition. The trial judge in this case imposed a Level 3 disposition after finding that "there [was] no evidence of extraordinary needs which would allow the court to impose a Level 2 Disposition pursuant to 7B-2508(e)."

The Juvenile Code requires the court to "select a disposition that is designed to protect the public and to meet the needs and best interests of the juvenile" N.C. Gen. Stat. § 7B-2501(c) (2005). The court is required to impose a level of punishment, labeled disposition level 1, 2, or 3, 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).

If the delinquency history chart set out in N.C. Gen. Stat. § 7B-2508(f) (2005) prescribes a Level 3 disposition, the court is required to commit the juvenile for placement in a youth development center. N.C. Gen. Stat. § 7B-2508(e). Nevertheless, "a court may impose a Level 2 disposition rather than a Level 3 disposition if the court submits written findings on the record that substantiate extraordinary needs on the part of the offending juvenile." *Id.* The decision whether to impose Level 2 or Level 3 punishment is within the discretion of the trial judge, whose ruling will not be disturbed unless it is shown that it could not have been the product of a reasoned decision. *Robinson*, 151 N.C. App. at 737, 567 S.E.2d at 229.

At the disposition hearing, K.M.M.'s counselor, Wallace Owens, testified that he believed a prior Level 2 placement had been inadequate because K.M.M. required "more structure" and that

K.M.M.'s needs would be better met at a Level 3 facility. Additionally, the trial judge considered Mr. Owens' risk assessment report, which indicated that K.M.M. had repeatedly left his mother's home without permission, had been stealing from his foster care mother's home and children, had been repeatedly suspended from school for disruptive behavior, and was disrespectful towards authority. A psychological evaluation by psychologist Stephen C. Strzelecki "highly recommended" that K.M.M. see a psychiatrist to determine whether K.M.M. would benefit from medication to address his issues with "impulse control, explosive behavior, and aggression." Even though the family was offered assistance with psychiatric treatment, K.M.M.'s mother refused to go forward with it because of an objection to K.M.M.'s potentially being placed on medication.

We cannot conclude, based on this evidence, that the trial court abused its discretion by declining to order a Level 2 disposition. K.M.M.'s needs for a "structured environment, affection and therapy," while important, do not mandate a finding of extraordinary needs such that the trial court abused its discretion by failing to order a Level 2 disposition, particularly in light of Mr. Owens' testimony that the structure provided by a Level 3 was more appropriate for K.M.M.'s needs. Although defendant urges us to adopt a different interpretation of the evidence, it is the sole duty of the trial judge to determine the credibility of the witnesses, the weight to be accorded to their testimony, and what inferences shall be drawn from the evidence.

In re Gleisner, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000).

We, therefore, affirm.¹

Affirmed.

Judges WYNN and ELMORE concur.

Report per Rule 30(e).

¹K.M.M. has not brought forth his remaining assignments of error. They are, therefore, deemed abandoned. N.C.R. App. P. 28(b)(6).