

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA06-568

NORTH CAROLINA COURT OF APPEALS

Filed: 20 February 2007

IN THE MATTER OF:

A.J.Y.-E.,
Juvenile.

Mecklenburg County
No. 05 JB 446

Appeal by juvenile from order entered 12 December 2005 by Judge Hugh B. Lewis in Mecklenburg County District Court. Heard in the Court of Appeals 16 November 2006.

Attorney General Roy Cooper, by Assistant Attorney General Tina Lloyd Hlabse, for the State.

Nancy R. Gaines for defendant-appellant.

GEER, Judge.

A.J.Y.-E. ("Allison"),¹ a juvenile, appeals from an order of the district court finding her in violation of her probation, ordering her to continue to abide by the terms of her probation for an additional nine months, and placing her in her father's custody. On appeal, Allison argues that the trial court erred by failing to find sufficient facts to support either its conclusion that she violated her probation or its decision to remand Allison to her father's custody.

¹The pseudonym "Allison" will be used throughout the opinion to protect the child's privacy.

We hold that, although the trial court made sufficient findings of fact to support its conclusion that Allison violated her probation, it failed to make any findings to support its decision to place Allison in the custody of her father rather than her mother. Consequently, we affirm in part and remand in part for further findings of fact.

Facts

On 31 May 2005, Allison was adjudicated delinquent based upon her admission to a charge of second degree trespass. The trial court placed her on probation, imposing a number of conditions, including that she cooperate with a referral to Area Mental Health and follow its treatment recommendations. Allison's parents were also both ordered to comply with the court's disposition order and cooperate with any professionals or agencies involved with the juvenile.

On 24 October 2005, the State filed a motion for review alleging that Allison had violated the terms of her probation by failing to attend scheduled appointments with her therapist on 6 June, 15 July, 25 August, and 23 September 2005. Although Allison denied the allegations in the State's motion, her parents did not attend the scheduled 8 November 2005 hearing and, as a result, the trial court ordered that Allison be detained until trial pursuant to N.C. Gen. Stat. § 7B-1903 (2005). The trial court released Allison into her father's custody two days later.

Following a trial on 12 December 2005, the trial court found that Allison had violated her probation as alleged in the State's

motion for review. The court extended Allison's probationary period by nine months, requiring her to continue to abide by the previously-imposed conditions, and ordered that Allison remain in her father's custody. Allison timely appealed from that order.

Discussion

We note at the outset that the North Carolina Rules of Appellate Procedure are mandatory. *Viar v. N.C. Dep't of Transp.*, 359 N.C. 400, 401, 610 S.E.2d 360, 360 (2005) (per curiam). Consequently, violations of the rules subject a party and a party's attorneys to sanctions, up to and including dismissal of the appeal. *Id.* See also N.C.R. App. P. 25(b).

The appellate rules require that an appellant's brief include a "citation of the statute or statutes permitting appellate review," N.C.R. App. P. 28(b)(4), as well as "a concise statement of the applicable standard(s) of review for each question presented," N.C.R. App. P. 28(b)(6). The brief filed by Allison's appellate counsel contains neither. Additionally, the State notes that Allison's Appeal Information Statement, required by N.C.R. App. P. 41, was untimely filed and incomplete.

In this appeal, we choose not to impose a sanction of dismissal. The violations of the appellate rules have not impeded our review since it is apparent from the nature of the case that it is a proper appeal and because the standard of review is well established. Most importantly, however, dismissal would serve only to punish a child for the errors of her attorney.

We turn first to Allison's argument that the trial court's findings of fact were insufficient to support its conclusion that Allison violated her probation. In juvenile delinquency proceedings, a disposition order must "contain appropriate findings of fact and conclusions of law." N.C. Gen. Stat. § 7B-2512 (2005). The trial court is not, however, required to make written findings setting out all of the details of its decision-making process. See *Quick v. Quick*, 305 N.C. 446, 452, 290 S.E.2d 653, 658 (1982) (court is required to make ultimate findings of fact, but is not required to include recitations of evidentiary or subsidiary findings of fact).

In the present case, the trial court found as fact that "[t]he juvenile is in violation of his/her probation as to the following MOTION(S) FOR REVIEW Filed: 10-24-05." The State's motion for review, in turn, stated that Allison's failure to attend scheduled therapy appointments violated her probationary requirements. While more specific findings of fact might be preferable, we hold that by finding that Allison had violated her probation in the manner set forth in the State's verified motion for review, the trial court made a sufficient finding of fact to support its conclusion that Allison had violated her probation. See *In re D.J.M.*, ___ N.C. App. ___, ___, 638 S.E.2d 610, 611 (2007) (affirming probation revocation where trial court found delinquent juvenile had admitted the allegations of probation violation "as alleged" in State's motion for review); *In re O'Neal*, 160 N.C. App. 409, 412-13, 585 S.E.2d 478, 481 (court is required to find only that juvenile

violated the conditions of his probation), *disc. review denied*, 357 N.C. 657, 590 S.E.2d 270 (2003). See also *State v. Henderson*, ___ N.C. App. ___, ___, 632 S.E.2d 818, 822 (2006) (when adjudicating allegations of probation violations, trial court's findings of fact are sufficient when they "incorporate[] by reference" State's probation violation report).

We further review the findings of fact to determine whether they are supported by competent evidence. *Pineda-Lopez v. N.C. Growers Ass'n*, 151 N.C. App. 587, 589, 566 S.E.2d 162, 164 (2002). "If the [trial] court's factual findings are supported by competent evidence, they are conclusive on appeal, even though there is evidence to the contrary." *Id.*

Here, Allison's prior case manager, Bonita Gail Stredrick, testified that she discussed the requirement that Allison attend her scheduled therapy appointments with both Allison and her mother. Allison's social worker, Candace Killian, testified that Allison nevertheless missed therapy appointments on 6 June, 15 July, and 23 September 2005. We hold that this is sufficient competent evidence to support the trial court's finding that, as alleged in the State's motion for review, Allison missed her therapy appointments on those dates despite knowing that she was required to attend them. See *State v. Gamble*, 50 N.C. App. 658, 661-62, 274 S.E.2d 874, 876 (1981) (verified probation violation report constituted competent evidence in support of probation revocation). Because attending therapy was a condition of Allison's probation and competent evidence established Allison

violated that condition, the trial court could properly conclude that Allison had violated her probation.

II

Allison next argues that the trial court made inadequate findings of fact to support its order that she remain in her father's custody. Our Court has held that when, in a juvenile delinquency case, the trial court elects in a disposition order to transfer custody of a juvenile from one parent to the other, the court must make findings of fact to support its decision, including a finding supported by evidence that it is in the juvenile's best interests to transfer custody. *In re Ferrell*, 162 N.C. App. 175, 177, 589 S.E.2d 894, 895 (2004). See also *id.*, 589 S.E.2d at 895-96 ("Since the transfer of custody was not supported by appropriate findings of fact in the dispositional order, we set aside that part of the trial court's order changing custody of the juvenile from his mother to his father.").

This case is materially indistinguishable from *Ferrell*. The record indicates that Allison's mother had primary custody until Allison was detained when neither parent attended the scheduled 8 November 2005 motion for review hearing, after which Allison was released to her father's custody. As part of its 12 December 2005 disposition order, the trial court simply stated, without any explanation, that Allison was to "[r]emain in [f]ather[']s custody."

Although the State argues that Allison's mother was in secured custody at the time of the probation violation hearing, and,

therefore, that Allison's father was "in a much better position" to care for Allison, these facts are not reflected in the trial court's order. Accordingly, we remand to the trial court for the entry of further findings of fact to support its decision to transfer custody to Allison's father. *Id.* (remanding when findings in disposition order did not support trial court's decision to transfer custody from mother to father).

Affirmed in part; remanded in part.

Judge LEVINSON concurs.

Judge JACKSON concurs in a separate opinion.

Report per Rule 30(e).

NO. COA06-568

NORTH CAROLINA COURT OF APPEALS

Filed: 20 February 2007

IN THE MATTER OF:

A.J.Y.-E.

Mecklenburg County
No. 05 JB 446

JACKSON, Judge concurring in a separate opinion.

I concur fully with the result reached by the majority, however I disagree with the majority's analysis regarding our rules of appellate procedure. As stated by the majority, *Viar v. N.C. Dep't of Transp.*, 359 N.C. 400, 610 S.E.2d 360 (2005) is mandatory, and violations of our appellate rules will subject a party and a party's appeal to sanctions. *Id.* at 401, 610 S.E.2d at 360. I disagree with the majority's analysis regarding the rules violations found in the juvenile's appeal. The fact that the rules violations did not impede our review of the appeal is immaterial, based upon *Viar*. Therefore, based upon the violations of our appellate rules, including the omission of the grounds for appellate review and the applicable standards of review for each question presented, I would impose sanctions pursuant to rule 25(b) of our appellate rules. See N.C. R. App. P. 25(b) (2006).