

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-669

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 2007

IN THE MATTER OF:  
P.A.B.

Pitt County  
No. 05 JB 229

Appeal by juvenile from a disposition order entered 9 December 2005 by Judge Charles M. Vincent in Pitt County District Court. Heard in the Court of Appeals 9 April 2007.

*Attorney General Roy Cooper, by Assistant Attorney General Lisa H. Graham, for the State.*

*Lisa Skinner Lefler for respondent-appellant.*

ELMORE, Judge.

On 9 December 2005, the juvenile court entered an order adjudicating P.A.B. delinquent for injuring the personal property of another and entered a disposition order placing P.A.B. on probation and ordering him to pay restitution. P.A.B. appeals from the disposition order only. On 3 July 2006, P.A.B. filed a petition for writ of certiorari with this Court. For the reasons discussed below, we dismiss the petition for writ of certiorari as moot and we vacate, in part, and affirm, in part, the disposition order.

On or about 3 October 2005, a juvenile petition was filed alleging that P.A.B., age 9, was delinquent in that he "did

unlawfully, wantonly and willfully injure [the] personal property" of Fred Suggs in violation of N.C. Gen. Stat. § 14-160. The petition further alleged that P.A.B. injured two vehicles owned by Mr. Suggs "by busting out all of the windows, painting a Blue stripe completely around the vehicle[s] and smearing oil/grease on the exterior of the vehicle[s]."

The adjudication and disposition hearings were held on 1 November 2005. At the adjudication hearing, P.A.B. admitted that he committed the acts alleged in the petition. The trial court accepted P.A.B.'s admission and adjudicated him delinquent.

At the disposition hearing, the trial court was informed that P.A.B. was too young to participate in Pitt County's Community Service Restitution Program. After rendering its order requiring P.A.B. to, *inter alia*, make restitution to Mr. Suggs by paying \$25.00 per month for eight months, for a total restitution amount of \$200.00, the trial court inquired about the ability of P.A.B.'s parents to pay the restitution. The trial court was informed that P.A.B.'s mother received disability payments in the amount of \$579.00 per month and P.A.B.'s father earned \$50.00 per day as a mechanic.

After the trial court rendered its order in open court, P.A.B., through his counsel, gave oral notice of appeal. On 2 November 2005, P.A.B. filed a written notice of appeal from the trial court's disposition order. The trial court's disposition order was reduced to writing and entered on 9 December 2005. On 3 July 2006, P.A.B. filed a petition for writ of certiorari with this

Court as an alternative basis for appellate review in the event this Court determined that P.A.B.'s appeal should be dismissed for failing to properly give notice of appeal from the disposition order.

We first address whether P.A.B. properly gave notice of appeal from the disposition order. Section 7B-2602 of the North Carolina General Statutes provides in relevant part:

Upon motion of a proper party as defined in G.S. 7B-2604, review of any final order of the court in a juvenile matter under this Article shall be before the Court of Appeals. Notice of appeal shall be given in open court at the time of the hearing or in writing within 10 days after entry of the order.

N.C. Gen. Stat. § 7B-2602 (2005). Here, P.A.B., through counsel, gave oral notice of appeal in open court at the time of the hearing. P.A.B. also gave written notice of appeal on 2 November 2005, the day after the disposition order was rendered in open court. Because we conclude P.A.B. properly and timely gave notice of appeal from the disposition order, we dismiss the petition for writ of certiorari as moot.

In P.A.B.'s sole assignment of error, he contends that the trial court erred by ordering him to pay restitution. In support, P.A.B. argues that the trial court failed to make any findings of fact or conclusions of law showing the following: (1) restitution is in his best interest; (2) he has the ability to pay restitution; or (3) it was fair and reasonable for him to pay restitution. Further, P.A.B. asserts that the trial court incorrectly considered the ability of his parents to pay restitution.

Juvenile dispositions in delinquency proceedings are controlled by N.C. Gen. Stat. § 7B-2500 *et seq.* Once a juvenile has been adjudicated delinquent, the juvenile court is required to "select the most appropriate disposition," one that is designed to "protect the public and to meet the needs and best interests of the juvenile," based on a list of enumerated statutory factors. See N.C. Gen. Stat. § 7B-2501(c) (2006). Pursuant to Section 7B-2506 of the North Carolina General Statutes, the juvenile court is authorized to require that a delinquent juvenile make restitution. N.C. Gen. Stat. § 7B-2506(4) (2006). The juvenile court, however, "shall not require the juvenile to make restitution if the juvenile satisfies the court that he does not have, and could not reasonably acquire, the means to make restitution." *Id.* Section 7B-2506(4) emphasizes that the focus of the restitution award should be the ability of the juvenile, not his parents, to pay restitution. See *In re McKoy*, 138 N.C. App. 143, 147-48, 530 S.E.2d 334, 336-37 (2000) (interpreting same provision previously codified at N.C. Gen. Stat. § 7A-649(2)); *In re Heil*, 145 N.C. App. 24, 550 S.E.2d 815 (2001). In these cases, this Court determined that the statute "'does not authorize the juvenile court to consider the parents' ability to pay restitution when ordering the juvenile to make restitution to the victim as a condition of [his] probation.'" *Heil*, 145 N.C. App. at 31-32, 550 S.E.2d at 821 (quoting *McKoy*, 138 N.C. App. at 148, 530 S.E.2d at 336).

Here, after learning that P.A.B. was too young to participate in Pitt County's Community Service Restitution Program, the

juvenile court inquired about the ability of P.A.B.'s parents to make restitution. In its order, that the juvenile court stated the following:

That the juvenile is not able to participate in the Juvenile Restitution Program due his age [sic] young age of (9) nine. It is therefore ordered that the juvenile pay \$25.00 per month for (8) eight months to Mr. Fred Suggs based upon the juvenile's parents' income which consist of his mother's disability for the amount of \$579.00 per month and his father's job at a garage in which he makes approximately \$50.00 per day.

This order reveals the juvenile court's paramount concern was the ability of the juvenile's family to pay restitution, not the juvenile's best interest. Indeed, recognizing that P.A.B. was too young to participate in the Juvenile Restitution Program, the juvenile court specifically ordered P.A.B. to pay restitution based upon his parents' ability to pay. Accordingly, we conclude that the trial court erred in ordering P.A.B. to pay restitution. See *McKoy*, 138 N.C. App. 143, 530 S.E.2d 334 (vacating the special condition of probation requiring the juveniles to make restitution where there was insufficient evidence that the juveniles could reasonably acquire the means to pay restitution in the amount ordered within twelve months and where the juvenile court incorrectly considered the ability of the juveniles' parents to pay restitution); see also *Heil*, 145 N.C. App. 24, 550 S.E.2d 815 (holding that the juvenile court erred in failing to consider or make findings concerning whether the restitution award was in the juvenile's best interest and whether the juvenile, and not his family, had the ability to pay).

For the reasons set forth above, we vacate that portion of the 9 December 2005 disposition order in 05 JB 229 requiring P.A.B. to make restitution by the payment of \$25.00 per month for eight months. We affirm the disposition order in all other respects.

Vacated in part and affirmed in part.

Judges WYNN and GEER concur.

Report per Rule 30(e).