NO. COA06-960

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 2007

IN THE MATTER OF:

T.A.B.

Mecklenburg County
No. 02 J 286

Appeal by defendant from judgment entered 4 April 2006 by Judge Hugh Lewis in Mecklenburg County District Court. Heard in the Court of Appeals 19 March 2007.

Roy Cooper, Attorney General, by Bertha L. Fields, Assistant Attorney General, for the State.

Kathleen Arundell Widelski for defendant-appellant.

MARTIN, Chief Judge.

On 7 April 2005, defendant juvenile T.A.B. was charged in a juvenile petition with possession of a Schedule II controlled substance with intent to manufacture, sell, or deliver and possession of a Schedule VI controlled substance. On 1 July 2005, defendant was adjudicated delinquent and ordered to be placed on probation. A condition of the probation was that defendant comply with a previous order, a condition of which was that defendant "[a]ttend school each and every day, all classes, not have any excused tardies, and not be suspended or excluded from school." On 28 February 2006, a motion for review was filed. The review hearing was held on 4 April 2006, after which the trial court found

by the greater weight of the evidence that the juvenile was in violation of the terms and conditions of his probation. On the same day, the trial court entered a disposition and commitment order committing defendant to the Department of Juvenile Justice and Delinquency Prevention for placement in a training school for a minimum of six months and a maximum term until his eighteenth birthday. Defendant juvenile appeals.

Defendant first argues that there was insufficient evidence for the trial court to find that respondent willfully violated his probation. Our standard of review of the trial court's findings is whether they are supported by competent evidence. *Pineda-Lopez v. N.C. Growers Ass'n, Inc.*, 151 N.C. App. 587, 589, 566 S.E.2d 162, 164 (2002).

N.C.G.S. § 7B-2510(e) states:

> If the court, after notice and a hearing, finds by the greater weight of the evidence that the juvenile has violated the conditions of probation set by the court, the court may continue the original conditions of probation, modify the conditions of probation, or, except as provided in subsection (f) of this section, order a new disposition at the next higher level on the disposition chart in G.S. 7B -2508.

N.C. Gen. Stat. § 7B-2510(e) (2005). The statute requires only that the court find that the juvenile has violated a condition of probation.

In the present case, the trial court found that defendant was in violation of his probation as to the motion for review on 28 February 2006. The motion for review alleged that defendant had

violated a condition of probation from the 28 June 2005 order (filed 1 July 2005), which required defendant to "[a]ttend school each and every day, all classes, not have any excused tardies, and not be suspended or excluded from school." The order from the 28 June 2005 hearing required compliance with this condition where the court checked off number 3c on the form and wrote "comply with previous order," and where the previous order from 10 May 2005, under 3c, showed a mark next to the condition. The evidence showed that on 26 January 2006 defendant was suspended from school for ten days for fighting and on 14 February 2006 defendant was tardy. Because these incidents constituted violations of defendant's probation, the court did not err in its finding.

Defendant next argues that the trial court erred in determining which of the statutorily permissible disposition alternatives was the most appropriate for the juvenile. The State agrees that the court failed to make necessary findings of fact before entering the disposition. Defendant cites N.C.G.S. § 7B-2501(c), which states:

> In choosing among statutorily permissible dispositions, the court *shall* select the most appropriate disposition both in terms of kind and duration for the delinquent juvenile. Within the guidelines set forth in G.S. 7B-2508, the court *shall* select a disposition that is designed to protect the public and to meet the needs and best interests of the juvenile, based upon:
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> (1) The seriousness of the offense;
>
> (2) The need to hold the juvenile accountable;
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> (3) The importance of protecting the public safety;

> (4) The degree of culpability indicated by the circumstances of the particular case; and
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> (5) The rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment.

N.C. Gen. Stat. § 7B-2501(c) (2005) (emphasis added). "This Court has held that use of the language 'shall' is a mandate to trial judges, and that failure to comply with the statutory mandate is reversible error." *In re Eades*, 143 N.C. App. 712, 713, 547 S.E.2d 146, 147 (2001). Thus, the trial court is statutorily required to select the most appropriate disposition based upon the designated factors.

In the present case, the trial court made only two findings of fact. First, it noted that the court received and considered a predisposition report, but the court did not incorporate it by reference or attach a copy of the report to the order. Second, under the heading "Other Findings", the trial court indicated "See attached." The trial court failed to attach any document to the order. The trial court's failure to make any findings of fact with respect to any of the statutory factors contravenes the statutory requirement to enter the most appropriate disposition and is error. Therefore, we remand the case for a new dispositional hearing.

Reversed and remanded for a new dispositional hearing.

Judges WYNN and GEER concur.

Report per Rule 30(e).