

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-1315

NORTH CAROLINA COURT OF APPEALS

Filed: 6 May 2008

In THE MATTER OF:

C.M.W.

Iredell County
No. 07 JB 67

Appeal by respondent-juvenile from adjudication and disposition orders entered 31 May 2007 and 14 June 2007 by Judge Mary Covington in Iredell County District Court. Heard in the Court of Appeals 21 April 2008

Attorney General Roy A. Cooper, III, by Assistant Attorney General Kathleen J. Baldwin, for the State.

Richard Croutharmel for respondent-appellant.

HUNTER, Judge.

On 23 April 2007, petitions were filed alleging that respondent was delinquent for committing the offenses of: (1) selling or delivering a controlled substance; (2) possession of a controlled substance; and (3) possession of drug paraphernalia. The case was scheduled for hearing on 31 May 2007. On 31 May 2007, respondent moved to dismiss the petitions, claiming that they were not timely filed. See N.C. Gen. Stat. § 7B-1703. The motion was denied. Respondent then entered an admission pursuant to a plea arrangement with the State. The two felony drug charges were

dismissed, and respondent admitted to misdemeanor possession of drug paraphernalia. The court accepted the admission and adjudicated respondent a delinquent juvenile. Disposition was set for 14 June 2007. On that date, the disposition was continued for three months with respondent's consent. A written order was entered on the denial of the motion to dismiss on 11 July 2007. On 24 July 2007, respondent gave notice of appeal, purportedly from the adjudicatory order and motion to dismiss entered in open court on 31 May 2007, and subsequent dispositional order entered on 14 June 2007.

On 10 December 2007, the State moved to dismiss the appeal on the basis that it was interlocutory and untimely. On 14 December 2007, respondent filed a petition for writ of certiorari.

Respondent argues that the trial court did not have subject matter jurisdiction to enter the adjudication and disposition orders because the petition alleging delinquency was not timely filed. We agree.

Citing N.C. Gen. Stat. § 7B-1703(a) and (b), this Court has stated:

When a juvenile court counselor receives a complaint regarding a juvenile, the counselor is required to evaluate the complaint and determine whether a petition should be filed. The counselor is required to make this determination within fifteen days of receipt of the complaint, with an extension for a maximum of fifteen additional days at the discretion of the chief court counselor, thereby giving the counselor a maximum total of thirty days. "[I]f the juvenile court counselor determines that a complaint should be filed as a petition, the counselor shall file the petition as soon as practicable, but

in any event within 15 days after the complaint is received, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor." Thus, the petition must be filed within, at a maximum, thirty days after receipt of the complaint.

In re J.B., ___ N.C. App. ___, ___, 650 S.E.2d 457, 458 (2007) (citations omitted) (alteration in original). In *In re J.B.*, the sheriff's office submitted a complaint to a juvenile court intake counselor on 9 May 2006 alleging that J.B. committed a misdemeanor offense. *Id.* at ___, 650 S.E.2d at 457. The juvenile petition was not filed until 24 July 2006. *Id.* Because the petition was not filed within thirty days after receipt of the complaint, this Court vacated the disposition order for lack of subject matter jurisdiction. *Id.* at ___, 650 S.E.2d at 458.

In the instant case, it appears from the record that the Iredell County Sheriff's Office submitted its investigatory report to juvenile services on 1 March 2007. The petitions alleging delinquency were filed on 23 April 2007, more than thirty days later. Therefore, we conclude the trial court lacked subject matter jurisdiction.

Accordingly, we grant respondent's petition for writ of certiorari, deny the State's motion to dismiss, and vacate the adjudicatory and dispositional orders entered.

Vacated.

Judges McCULLOUGH and STEELMAN concur.

Report per Rule 30(e).