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NO. COA08-176

NORTH CAROLINA COURT OF APPEALS

Filed: 21 October 2008

IN THE MATTER OF:

Iredell County
No. 07-JB-66

W.H.P., IV

Appeal by juvenile from disposition order entered 5 July 2007 by Judge Dale Graham in District Court, Iredell County District Court. Heard in the Court of Appeals 06 October 2008.

Attorney General Roy Cooper, by Assistant Attorney General Karen A. Blum, for the State.
Charlotte Gail Blase, for juvenile-appellant.

WYNN, Judge.

When a juvenile court counselor fails to file a juvenile petition within thirty days after receipt of the complaint, the trial court lacks jurisdiction and the trial court's disposition order must be vacated.¹ Here, because the juvenile petition was filed more than thirty days after receipt of the complaint, the trial court lacked jurisdiction; therefore, we must vacate the disposition order.

On 23 April 2007, a juvenile court counselor filed petitions

¹ *In re J.B.*, 186 N.C. App. 301, 303, 650 S.E.2d 457, 458 (2007); see N.C. Gen. Stat. § 7B-1703(b) (2007).

charging that the juvenile committed delinquent acts, namely possession of drug paraphernalia, possession of Darvocet, and sale or delivery of Darvocet. On 31 May 2007, the juvenile filed a motion to dismiss the petitions on the ground that the petitions were not filed within thirty days after receipt of a complaint. The trial court denied the motion in open court on the same date. The court then proceeded to accept the juvenile's admission to possession of drug paraphernalia. The trial court filed an order on 31 May 2007 adjudicating the juvenile as delinquent.

On 7 June 2007 the trial court entered an order striking the juvenile's admission made on 31 May 2007. The court found that the juvenile was under the influence of an intoxicant on the day he entered the admission. Finding that the juvenile was not under the influence of an intoxicant on 7 June 2007, the trial court accepted another admission by the juvenile to the offense. The trial court entered a second order on 7 June 2007 adjudicating the juvenile as delinquent and entered a disposition order on 5 July 2007. The juvenile filed notice of appeal on 13 July 2007 from the adjudication order entered 31 May 2007 and the disposition order entered on 5 July 2007.

Acknowledging that the notice of appeal erroneously refers to the adjudication order entered 31 May 2007 instead of the order entered 7 June 2007, the juvenile has filed a petition for writ of certiorari to permit review of the order in the event notice of appeal has not been properly given. Because we deem the notice of appeal from the disposition order as adequate to permit review of

the dispositive issue, we dismiss the petition for writ of certiorari.

On appeal to this Court, the juvenile argues the trial court erred by denying the motion to dismiss the juvenile petitions because they were not timely filed. We agree.

Article 17 of the Juvenile Code establishes procedures for the screening of complaints with regard to allegedly delinquent and undisciplined juveniles. N.C. Gen. Stat. § 7B-1700 *et seq.* (2007). When a complaint regarding a juvenile is received by intake services, the juvenile court counselor is required to make a preliminary determination as to whether the juvenile is within the court's jurisdiction as a delinquent or undisciplined juvenile and whether the facts alleged in the complaint are sufficient to state a case within the court's jurisdiction. *Id.* § 7B-1701. If the counselor determines that the complaint is legally sufficient, the counselor must then determine whether the complaint should be filed as a petition, whether the juvenile should be diverted pursuant to N.C. Gen. Stat. § 7B-1706, or whether the case should be resolved without further action. *Id.* § 7B-1702. The counselor must complete the evaluation process within fifteen days of receipt of the complaint, with an extension of fifteen additional days at the discretion of the chief court counselor. *Id.* § 7B-1703(a). If the juvenile court counselor determines that a complaint shall 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." *Id.* § 7B-1703(b).

We have construed the foregoing provisions as requiring the filing of the petition, at a maximum, within thirty days after receipt of the complaint. *In re J.B.*, 186 N.C. App. 301, 650 S.E.2d 457 (2007). When the petition is not filed within thirty days after receipt of the complaint, the trial court lacks jurisdiction and the court's disposition order must be vacated. *Id.*

Here, the trial court's findings of fact in the order denying the motion to dismiss state that: the complaint was received by the Department of Juvenile Justice and Crime Prevention on 1 March 2007; the decision to approve the petitions for filing was made on 26 March 2007; the approval of the petitions for filing was made on 10 April 2007; and the petitions were filed on 23 April 2007. In denying the juvenile's motion to dismiss, the trial court construed N.C. Gen. Stat. § 7B-1703 as creating a 30-day period within which to evaluate a complaint and an additional 30-day period for filing the petition after the decision to file a petition has been made. However, the trial court's construction of the statute ignores the express provision of section 7B-1703(b) requiring the counselor to file the petition "within [fifteen] days after the complaint is received, with an extension for a maximum of 15 extra days at the discretion of the chief court counselor." N.C. Gen. Stat. § 7B-1703(b).

Because the petition was filed more than thirty days after receipt of the complaint, the court lacked jurisdiction. The disposition order must be vacated.

Vacated.

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Judges ELMORE and GEER concur.

Report per 30(e).