

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-604

NORTH CAROLINA COURT OF APPEALS

Filed: 19 November 2013

IN RE: E.L.F.

Wilkes County
No. 12 JB 109

On writ of certiorari to review Order entered 19 December 2012 by Judge Michael D. Duncan in District Court, Wilkes County. Heard in the Court of Appeals 22 October 2013.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Kimberly N. Callahan, for the State.

Peter Wood, for defendant-appellant.

STROUD, Judge.

Juvenile E.L.F. ("respondent") appeals from a disposition order entered 19 December 2012 finding that her delinquency history level is low and that she committed the offense of simple assault. The trial court adjudicated respondent delinquent for simple assault by order entered 19 December 2012. The court entered a Level 2 disposition and placed respondent on one year of probation. Respondent gave written notice of appeal on 19 December 2012.

Respondent acknowledges that her notice of appeal is deficient in that she failed to serve it on opposing counsel and failed to list the disposition order as one from which she appeals. Respondent filed a petition for writ of certiorari with this Court. The State does not oppose the petition. In our discretion under N.C.R. App. P. 21, we allow respondent's petition and proceed to consider the merits of her appeal.

Respondent only argues on appeal that the trial court's failure to ensure the entire hearing was recorded and transcribed was reversible error, in violation of N.C. Gen. Stat. § 7B-2410 (2011) and her right to effective assistance of counsel under the state and federal constitutions. Respondent's appellate counsel unsuccessfully attempted to secure a narrative summary of the proceedings.¹ Respondent is correct that portions of the trial judge's statements during the adjudication hearing, including its ultimate adjudication, were not recorded because the microphone was either malfunctioning or not turned on and that none of the disposition hearing was recorded. The testimony

¹ Respondent's counsel actually argues not that respondent had ineffective assistance of counsel at trial but that he himself is the one providing ineffective assistance of counsel on appeal because there is not a complete transcript. We would note that respondent's counsel made admirable efforts to obtain a full transcript and the fact that the transcript is incomplete due to a malfunction in the recording equipment certainly does not render his representation on this appeal ineffective.

of the witnesses and the arguments of the attorneys during the adjudication hearing were recorded. Respondent does not challenge the trial court's findings in the adjudication order, but does challenge the trial court's findings in the disposition order.

"The unavailability of a verbatim transcript does not automatically constitute error. To prevail on such grounds, a party must demonstrate that the missing recorded evidence resulted in prejudice. General allegations of prejudice are insufficient to show reversible error." *State v. King*, ___ N.C. App. ___, ___, 721 S.E.2d 336, 340 (2012) (citations and quotation marks omitted). "A new trial is appropriate if the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review." *In re D.W.*, 171 N.C. App. 496, 502, 615 S.E.2d 90, 94 (2005) (citation and quotation marks omitted).

Contrary to respondent's argument, there is enough information in the record to conduct meaningful appellate review and to sustain the disposition order. Respondent has failed to show that she was prejudiced by the failure to record the disposition hearing or the trial judge's statements during the adjudication hearing. The trial court only made two findings in

its disposition order: (1) that respondent's delinquency history level is low; and (2) that "the juvenile did commit the offense of Simple Assault." Both findings are supported by the evidence in the record.

As to the first finding, the trial court was presented with a juvenile risk assessment that indicated respondent had no prior adjudications, no prior assaults, no prior runaways, a total risk score of 5, and an overall risk level of "low." The trial court was also presented with a needs assessment and a predisposition report. All three documents are in the record on appeal. Respondent has not explained how the transcript could have revealed that she was entitled to a lower risk level—the trial court found that she had the lowest possible risk level. There is sufficient record evidence to support this finding.

As to the second finding, respondent has not challenged the adjudication order, where the trial court adjudicated her delinquent because she committed "the offense of Simple Assault[] by grabbing her mother by the leg and pulling her off the sofa to the floor." Additionally, the transcript does include the entirety of the witnesses' testimony upon which the trial court based its adjudication. Respondent's mother testified that she was laying on the couch when respondent came

up, grabbed her leg, and "yanked [her] [o]nto the floor." Respondent did not object to this statement.

Respondent fails to demonstrate how recording the trial judge's comments during the adjudication hearing or any discussion during the disposition hearing could have undermined this finding. The trial court's statements that were not recorded mostly concerned its rulings on objections made by trial counsel. The key testimony by respondent's mother was not objected to. The trial court's ultimate rulings on both adjudication and disposition were memorialized in series of written orders. Nothing necessary to conduct adequate appellate review appears to be missing from the record.

We conclude that respondent has failed to demonstrate that she was prejudiced by incomplete recordation of the adjudication and disposition hearings. Therefore, we affirm the juvenile disposition order.

AFFIRMED.

Judges MCGEE and BRYANT concur.

Report per Rule 30(e).