

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-958

Filed: 5 September 2017

Yadkin County, No. 11 JB 39

IN THE MATTER OF:

O.S.R.

Appeal by juvenile from order entered 9 May 2016 by Judge David V. Byrd in District Court, Yadkin County. Heard in the Court of Appeals 23 March 2017.

*Attorney General Joshua H. Stein, by Assistant Attorney General Janelle E. Varley, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Amanda S. Zimmer, for juvenile-appellant.*

STROUD, Judge.

Juvenile appeals from the district court's order imposing a Level 3 disposition and ordering an indefinite commitment with release or extension to be evaluated after six months. Because the trial court made proper findings of fact but not all of these findings were included in the adjudication order, we remand the adjudication order for the trial court to enter additional written findings reflecting the oral findings made at the adjudication hearing. We find no error with the disposition

order, but since the trial court must first enter the additional findings in the adjudication order on remand, we must vacate the disposition order so that the trial court can enter a new disposition order after entry of the adjudication order on remand.

Facts

On 19 April 2016, the State filed three juvenile petitions alleging that Oscar<sup>1</sup>, age 14, had committed the following offenses: (1) operating a motor vehicle without a license, (2) speeding; and (3) failure to secure a child in a safety seat or seat belt. The underlying events occurred on 3 April 2016, while Oscar was on a home visit from the Timber Ridge Treatment Center, an out-of-home placement program. Oscar went to visit his 14-year-old girlfriend and their one-year-old child at her house. Oscar's 16-year-old sister came to pick everyone up and drive them from Jonesville to Yadkinville. At some point, Oscar took over driving, and he was subsequently pulled over by police for speeding. The one-year-old child was in the backseat without a safety seat and was not secured at all.

The case came on for adjudication on 5 May 2016. The State agreed to dismiss the petitions for the infractions of speeding and failure to secure a child in a safety seat or seat belt in exchange for Oscar's admission to operating a motor vehicle without a license, a Class 2 misdemeanor. Following his admission, a disposition

---

<sup>1</sup> A pseudonym is used to protect the identity of the juvenile.

*Opinion of the Court*

order was entered the same day imposing a Level 3 disposition and ordering an indefinite commitment with release or extension to be evaluated after 6 months. Oscar gave oral notice of appeal that same day.

The State requested that Oscar be in secure custody while the appeal was pending, and the secure custody hearing was continued until 9 May 2016 to consider alternative placements. On 9 May 2016, the trial court entered an order for secure custody and Oscar's release was not authorized pending appeal. An amended disposition order was also entered on 9 May 2016. Oscar timely appealed to this Court.

Discussion

Oscar argues that the disposition order must be reversed because the trial court failed to make written findings of fact demonstrating that it considered the factors listed in N.C. Gen. Stat. § 7B-2501(c) (2015) and that the adjudication order must also be reversed for failure to make sufficient findings. "We review a lower court's alleged statutory errors *de novo*." *In re K.C.*, 226 N.C. App. 452, 462, 742 S.E.2d 239, 246 (2013).

I. Adjudication Order

We will address Oscar's second argument first, since the trial court cannot enter a disposition order unless it has first adjudicated the juvenile as delinquent. Oscar argues that the adjudication order should be reversed because the trial court

failed to make sufficient findings to support it. On this issue, the State concedes that it is unable to distinguish this case from prior cases in which we have remanded to the trial court to add written findings to the adjudication order.

Under N.C. Gen. Stat. § 7B-2409 (2015), “[t]he allegations of a petition alleging the juvenile is delinquent shall be proved beyond a reasonable doubt.” N.C. Gen. Stat. § 7B-2411 (2015) describes the findings required for a juvenile adjudication order:

If the court finds that the allegations in the petition have been proved as provided in G.S. 7B-2409, the court shall so state in a written order of adjudication, which shall include, but not be limited to, the date of the offense, the misdemeanor or felony classification of the offense, and the date of adjudication.

In *In re J.V.J.*, 209 N.C. App. 737, 740, 707 S.E.2d 636, 638 (2011), this Court found the findings in an adjudication order to be insufficient where the order failed to address any of the allegations as required by N.C. Gen. Stat. § 7B-2411. This Court explained in *In re J.V.J.* that N.C. Gen. Stat. § 7B-2411 does not require that the trial court “delineate each element of an offense and state in writing the evidence which satisfies each element,” but nonetheless noted that “at a minimum, section 7B-2411 requires a court to state in a written order that the allegations in the petition have been proved beyond a reasonable doubt.” *In re J.V.J.*, 209 N.C. App. at 740, 707 S.E.2d at 638 (citation, quotation marks, and brackets omitted).

*Opinion of the Court*

Here, the trial court entered an adjudication order noting that Oscar admitted to the offense of driving without a license. The order contained an offense date, classification of a Class 2 Misdemeanor, and is dated as 5 May 2016 next to the trial judge's signature. The order, however, left box #3 -- which states "The following facts have been proven beyond a reasonable doubt:" -- completely blank and attached no additional findings to the order. Thus, while this order arguably met most of the requirements of N.C. Gen. Stat. § 7B-2411, since it failed to recite the facts that had been proven beyond a reasonable doubt, it is insufficient. The trial court's oral rendition of its ruling in relation to the adjudication order was as follows:

On the second page, the following facts have been proved beyond a reasonable doubt. The Court went over a Transcript of Admission with the Juvenile, and the Court finds that the Juvenile made a free and voluntary admission, and his admission was the product an informed choice [sic]. The State agreed that if the Juvenile would enter an admission to no operator's license petition, that the State would recommend dismissal of the other petitions, and the Court accepts that arrangement.

The Juvenile did operate a vehicle on a street or highway without having a valid North Carolina driver's license as set out in the juvenile petition which appears in the record. The Juvenile was operating a vehicle -- was operating a vehicle in which his one-year-old child was a passenger together with others.

The Court concludes that the Juvenile is within the jurisdiction of the Court as a delinquent juvenile and is subject to the Court's dispositional authority for committing an offense classified as a minor offense.

*Opinion of the Court*

It is, therefore, ordered that the case proceed to disposition.

These oral findings were made based on the proper standard of proof and support the adjudication order, but they were not all included in the written adjudication order. We therefore remand the adjudication order for the trial court to add these oral findings as rendered to the written order to comply with the statute. *See, e.g., In re B.E.*, 186 N.C. App. 656, 662, 652 S.E.2d 344, 348 (2007) (“Because the trial court has already made its determinations as to the credibility of the witnesses and has weighed the evidence, we do not require a new hearing. Rather, we remand to the trial court for clarification of the standard of proof used in the adjudication order.”).

II. Disposition Order

Oscar also argues that in the disposition order, the trial court failed to make written findings of fact to demonstrate that it considered the factors in N.C. Gen. Stat. § 7B-2501(c). “[T]he trial court is required to make findings demonstrating that it considered the [N.C. Gen. Stat.] § 7B-2501(c) factors in a disposition order entered in a juvenile delinquency matter.” *In re V.M.*, 211 N.C. App. 389, 391-92, 712 S.E.2d 213, 215 (2011). These factors include:

- (1) The seriousness of the offense;
- (2) The need to hold the juvenile accountable;
- (3) The importance of protecting the public safety;
- (4) The degree of culpability indicated by the circumstances of the particular case; and
- (5) The rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment.

N.C. Gen. Stat. § 7B-2501(c).

In this case, the trial court did make the necessary findings, as reflected on an additional page labeled “Other Findings (#5)” attached to the amended disposition order. The amended disposition order indicated that the trial court considered the predisposition report, risk assessment, and needs assessment and then incorporated by reference both the risk assessment and the needs assessment. Under section 5 of the amended disposition order -- labeled as “Other Findings” -- the trial court stated “\*\*See Attached page\*\*[.]” The court then included as an additional page a letter from the North Carolina Department of Public Safety labeled “Other Findings (#5)” which contained the following findings, which is a verbatim recitation of findings noted by the trial court at the disposition hearing:

[Oscar] has been involved with the Department of Public Safety, Division of Juvenile Justice since December 12, 2011. Since that time, he has graduated in offenses that have lead [sic] to continued supervision, including probation time periods. Services that have been put into place include outpatient counseling, curfew, drug screens, substance abuse therapy, Project Challenge Community Service, Restitution, Non-Association Orders, Electronic Monitoring, Intensive In Home Therapy Services, Strengthening Families Services, and Timber Ridge Treatment Center. These services have not been successful due to his non-compliance. He continues to get into trouble, break rules and not follow court orders.

His most recent charge occurred while on a home visit from his out of home placement, Timber Ridge Treatment Center, in which he was operating a motor vehicle without

*Opinion of the Court*

a license, speeding, and failed to use any type of safety restraint for an infant that was in his care. The infant was an occupant in the car. Upon return to Timber Ridge Treatment Center, he tested positive for Marijuana, bragged about the charges, and refused to accept the seriousness of his actions.

All available resources for this young man have been exhausted, and he continues to need consistent structure, therapy, and guidance to encourage him to make better decisions and prevent him from continued legal involvement.

The trial court also attached another letter from the Department of Public Safety which described Oscar as a “high flight risk” and recommended that he be kept in secure custody until placement in a Youth Development Center and noted findings supporting this recommendation, including that Oscar violated court-ordered curfew while on electronic monitoring; that he continued to test positive for marijuana; and that he “continues to make poor decisions that violate the law and put others at risk for injury and unsafe environments.”

Oscar argues that this case is similar to *In re V.M.*, where this Court held that the written order did not contain sufficient findings to indicate that the trial court properly considered the factors listed in N.C. Gen. Stat. § 7B-2501(c). *In re V.M.*, 211 N.C. App. at 392, 712 S.E.2d at 215. In *In re V.M.*, the trial court simply checked boxes on the disposition order indicating that it was incorporating by reference the predisposition report, risk assessment, and needs assessment, but the order did not contain any additional findings of fact. *Id.* The area designated “Other Findings”



was left blank, and no additional findings were attached. *Id.* Oscar claims that the trial court's order in this case similarly "contains insufficient factual findings to allow this Court to determine whether the trial court properly considered all the factors." We disagree.

Here, the trial court indicated in the "Other Findings" section that additional findings were attached, and the court included multiple documents, including the document clearly labeled "Other Findings (#5)" which further explained the court's rationale for its conclusions. Subsections (1) and (4) of N.C. Gen. Stat. § 7B-2501(c) require that the trial court include findings addressing both the seriousness of the offense and the juvenile's degree of culpability. Oscar admitted his guilt to the operating without a license charge in exchange for the other two infractions to be dismissed. The attached document labeled "Other Findings (#5)" described the facts surrounding the charges in this case, noting that while Oscar was on a home visit from the Timber Ridge Treatment Center, he was operating a vehicle without a license, speeding, and failed to use any safety restraint on an infant who was an occupant in the car. It also noted that the juvenile endangered the infant, "bragged about the charges," and "refused to accept the seriousness of his actions." These findings satisfy subsections (1) and (4) of N.C. Gen. Stat. § 7B-2501(c).

Under subsections (2) and (5) of N.C. Gen. Stat. § 7B-2501(c), the trial court should address the "need to hold the juvenile accountable" and "[t]he rehabilitative

*Opinion of the Court*

and treatment needs of the juvenile indicated by a risk and needs assessment.” The attached document described the many resources that have been used already in trying to help Oscar, including “outpatient counseling, curfew, drug screens, substance abuse therapy, Project Challenge Community Service, Restitution, Non-Association Orders, Electronic Monitoring, Intensive In Home Therapy Services, Strengthening Families Services, and Timber Ridge Treatment Center.” The court noted that “[a]ll available resources for this young man have been exhausted,” yet he “continues to need consistent structure, therapy, and guidance to encourage him to make better decisions and prevent him from continued legal involvement.” Thus, these additional findings satisfy subsections (2) and (5).

Finally, subsection (3) notes that the trial court should also include findings indicating that it has considered “[t]he importance of protecting the public safety[.]” N.C. Gen. Stat. § 7B-2501(c)(3). An additional attached document from the Department of Public Safety acknowledged that the juvenile “continues to make poor decisions that violate the law and put others at risk for injury and unsafe environments.” This satisfies N.C. Gen. Stat. § 7B-2501(c)(3). We therefore hold that these additional findings, combined with the information contained in the disposition order itself, demonstrate that the trial court considered all of the factors in N.C. Gen. Stat. § 15A-2501(c). Accordingly, respondent’s arguments regarding the disposition order are without merit. However, as discussed above, we must remand the

IN RE: O.S.R.

*Opinion of the Court*

adjudication order for additional findings of fact, so we must vacate the disposition order and remand for entry of a new disposition order.

Conclusion

We remand the adjudication order for the trial court to add written findings consistent with the oral rendition of findings made at the hearing on this matter. The disposition order included all of the required findings, but because there must be a valid adjudication order before the trial court can enter a disposition order, we vacate the disposition order and remand for the trial court to enter a new disposition order after entry of the corrected adjudication order.

VACATED IN PART AND REMANDED.

Judges DILLON and MURPHY concur.

Report per Rule 30(e).