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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-756

No. COA22-524

Filed 15 November 2022

Richmond County, No. 21JB127

IN THE MATTER OF:

J.M.M.C.

Appeal by juvenile from order entered 25 February 2022 by Judge Christopher W. Rhue in Richmond County District Court. Heard in the Court of Appeals 18 October 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Hilary R. Ventura, for the State-appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Candace Washington, for juvenile-appellant.

GORE, Judge.

¶ 1 Respondent-juvenile J.M.M.C. (“James”)¹ appeals from the trial court’s level one disposition order. On appeal, James argues the trial court erred by failing to make the required findings demonstrating that it considered the factors listed in N.C. Gen. Stat. § 7B-2501(c). We remand for further findings of fact not inconsistent with

¹ We use a pseudonym to protect the identity of the juvenile and for ease of reading. See N.C.R. App. P. 42.

this opinion.

I.

¶ 2

On 19 October 2021, the juvenile court counselor filed a juvenile petition accusing James of simple misdemeanor possession of marijuana. Following a hearing held on 22 February 2022, the trial court found James responsible and adjudicated him delinquent. The trial court entered a level one disposition and placed James on probation for six months. In its written dispositional order filed on 25 February 2022, the trial court indicated it received, considered, and incorporated the contents of the predisposition report, risk assessment, and needs assessment. The order does not contain any additional findings of fact. James gave oral notice of appeal prior to entry of the dispositional order.

II.

¶ 3

We first address whether this Court has jurisdiction on direct appeal from the trial court's juvenile disposition order pursuant to N.C. Gen. Stat. §§ 7B-2602, -2604. James concedes his "trial counsel arguably provided premature notice of appeal because the trial court had not entered disposition" and "trial counsel did not cure his error by filing a written notice of appeal within 10 days of the entry of the dispositional order." In the event this Court determines that James's notice of appeal was defective, appellate counsel for James also petitions this Court to issue our writ of certiorari to permit appellate review.

¶ 4 Under N.C. Gen. Stat. § 7B-2602, a juvenile may seek appellate “review of any *final order* . . . [by giving] [n]otice of appeal . . . in open court at the time of the hearing or in writing within 10 days after entry of the order.” N.C. Gen. Stat. § 7B-2602 (2022) (emphasis added). “A final order shall include . . . [a]ny order of disposition after an adjudication that a juvenile is delinquent or undisciplined . . .” § 7B-2602(3). “While N.C. Gen. Stat. § 7B-2602 permits oral notice of appeal at the hearing, the statute only provides for appellate review upon any ‘final order.’ Thus, . . . oral notice of appeal given at the time of the hearing must be from a final order.” *In re D.K.L.*, 201 N.C. App. 443, 445, 689 S.E.2d 508, 510 (2009) (quotation marks and citation omitted).

¶ 5 Here, the trial court adjudicated James delinquent on 22 February 2022. A dispositional hearing was held the same day, and James was placed on six months of probation. Following the dispositional hearing, but prior to the trial court’s entry of judgment, James’s attorney gave oral notice of appeal in open court. The trial court noted James’s intent to appeal on the disposition order.

¶ 6 We conclude that James’s notice of appeal was untimely because the trial court “had not ruled on all recommendations for disposition and did not address all matters included in the [final] written order.” *Id.* Pursuant to Rule 21(a)(1) of the North Carolina Rules of Appellate Procedure, a “writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the

judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action” N.C.R. App. P. 21(a)(1). In the exercise of our discretion, we grant James’s petition and issue our writ of certiorari to consider the sole issue before us: whether the trial court erred by failing to make findings demonstrating it considered the factors listed in N.C. Gen. Stat. § 7B-2501(c).

III.

¶ 7 An alleged statutory error is a question of law; questions of law are reviewed de novo. *In re K.C.*, 226 N.C. App. 452, 462, 742 S.E.2d 239, 246 (2013); *In re A.M.*, 220 N.C. App. 136, 137, 724 S.E.2d 651, 653 (2012). Under a de novo standard of review, this Court “considers the matter anew and freely substitutes its own judgment for that of the lower court.” *In re A.M.*, 220 N.C. App. at 137, 724 S.E.2d at 653 (quotation marks and citation omitted).

¶ 8 James’s sole argument on appeal is that the trial court erred because it did not make the required findings demonstrating it considered the § 7B-2501(c) factors. We agree.

¶ 9 In a juvenile proceeding, the trial court has discretion in choosing a permissible dispositional alternative for a delinquent juvenile “in accordance with the dispositional structure set forth in G.S. 7B-2508” § 7B-2506 (2022). However, the trial court must:

select a disposition that is designed to protect the public

and to meet the needs and best interests of the juvenile, based upon:

- (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.

§ 7B-2501(c) (2022). “The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law.” § 7B-2512(a) (2022). “The plain language of Section 7B-2501(c) compels us to find that a trial court must consider each of the five factors in crafting an appropriate disposition.” *In re I.W.P.*, 259 N.C. App. 254, 261, 815 S.E.2d 696, 702 (2018).

¶ 10 The State refutes James’s argument, primarily relying on this Court’s decision in *In re D.E.P.* for our holding that a “trial court [i]s not required by N.C. Gen. Stat. § 7B-2512 to make findings of fact that expressly track[] each of the statutory factors listed in N.C. Gen. Stat. § 7B-2501(c).” *In re D.E.P.*, 251 N.C. App. 752, 762, 796 S.E.2d 509, 515-16 (2017). However, subsequent panels of this Court have criticized *In re D.E.P.* for its divergence from precedent and have since determined that prior decisions requiring appropriate findings on all § 7B-2501(c) factors are controlling. *See In re I.W.P.*, 259 N.C. App. at 264, 815 S.E.2d at 704 (first citing *In re Ferrell*, 162

N.C. App. 175, 589 S.E.2d 894 (2004); then citing *In re V.M.*, 211 N.C. App. 389, 712 S.E.2d 213 (2011); then citing *In re G.C.*, 230 N.C. App. 511, 750 S.E.2d 548 (2013); and then citing *In re K.C.*, 226 N.C. App. 452, 742 S.E.2d 239 (2013)) (holding that “a trial court must consider each of the factors in Section 7B-2501(c) when entering a dispositional order.”).

¶ 11 In this case, the trial court used the preprinted dispositional order form and checked boxes indicating it considered and incorporated the contents of the predisposition report, risk assessment, and needs assessment. Although the dispositional order form instructs the trial court to make additional findings addressing each of the § 7B-2501(c) factors, there are no such findings appearing on the order, and the incorporated documents do not sufficiently address each of the § 7B-2501(c) factors. Contrary to the State’s position on this issue, whether evidence in the record could support such additional findings is a hypothetical beyond the scope of our standard of review. “What the evidence does in fact show is a matter the trial court is to resolve, and its determination should be stated in appropriate and adequate findings of fact.” *In re D.E.P.*, 251 N.C. App. at 762, 796 S.E.2d at 516 (quotation marks and citation omitted). “Accordingly, the dispositional order is deficient, and we remand for further findings of fact to address [each of the N.C. Gen. Stat. § 7B-2501(c) factors].” *In re J.A.D.*, ___ N.C. App. ___, ___, 2022-NCCOA-259, ¶ 51 (alteration in original) (quoting *In re I.W.P.*, 259 N.C. App. at 264, 815 S.E.2d at

704).

IV.

¶ 12

For the foregoing reasons, we remand the dispositional order for further findings of fact not inconsistent with this opinion. On remand, the trial court may, in its discretion, hold a new dispositional hearing and hear additional evidence if deemed appropriate and necessary to make the required findings regarding the § 7B-2501(c) factors.

REMANDED.

Judges DIETZ and CARPENTER concur.

Report per Rule 30(e).