

NO. COA14-762  
NORTH CAROLINA COURT OF APPEALS  
Filed: 31 December 2014

IN THE MATTER OF

Z.T.W.

Northampton County  
No. 13 JB 33

Review stemming from the allowance of a petition for the issuance of a writ of *certiorari* filed by juvenile for the purpose of challenging orders entered 18 March 2014 and 21 April 2014 by Judge Vershenia B. Moody in Northampton County District Court. Heard in the Court of Appeals 19 November 2014.

*Attorney General Roy Cooper, by Special Deputy Attorney General Stephanie A. Brennan, for the State.*

*Richard Croutharmel for the juvenile.*

ERVIN, Judge.

Juvenile Z.T.W. appeals from orders finding him to be in willful violation of his juvenile probation, ordering that he be placed in an out-of-home placement, and requiring that he be held in secure custody pending placement out of his home. On appeal, Juvenile contends that the trial court erred by finding that he had violated the terms and conditions of his probation based solely on hearsay evidence, finding that he had willfully violated the terms and conditions of his probation without adequately considering Juvenile's federally recognized disability, and ordering that Juvenile be held in secure custody

pending placement outside his home despite the fact that the evidence did not support the trial court's decision to place Juvenile in secure custody and the fact that the trial court's dispositional order lacked adequate findings of fact. After careful consideration of Juvenile's challenges to the trial court's orders in light of the record and the applicable law, we conclude that the trial court's orders should be affirmed.

### I. Factual Background

On 1 November 2013, the Department of Juvenile Justice and Delinquency Prevention filed petitions alleging that Juvenile should be adjudicated a delinquent juvenile based upon the commission of two simple assaults. On 19 November 2013, Judge W. Rob Lewis entered orders adjudicating Juvenile to be a delinquent juvenile based upon a finding that he had committed two simple assaults and placing Juvenile on juvenile probation for 12 months subject to certain terms and conditions. On 16 December 2013, DJJDP filed two more juvenile petitions alleging that Juvenile should be adjudicated a delinquent juvenile for committing the offenses of injury to real property and assault with a deadly weapon. On 20 December 2013, DJJDP filed a juvenile petition alleging that Juvenile should be adjudicated a delinquent juvenile for committing the offense of communicating threats. On 21 January 2014, Juvenile admitted to having committed the offenses of injury to real property and

communicating threats in return for the State's agreement to dismiss the petition alleging that he had committed the offense of assault with a deadly weapon. After accepting Juvenile's admission, Judge Lewis entered orders adjudicating Juvenile to be a delinquent juvenile based upon the commission of the offenses of injury to real property and communicating threats and placing Juvenile on juvenile probation for an additional period of 12 twelve months.

On 10 March 2014, DJJDP filed a motion for review alleging that Juvenile had willfully violated the terms and conditions of his probation by failing to regularly attend school, being suspended from school, and threatening a teacher. On 18 March 2014, the trial court entered an order finding that Juvenile had willfully violated the terms and conditions of his juvenile probation. On 21 April 2014, the trial court entered a supplemental order providing that Juvenile should be placed out of his home and that, pending his transition to the out-of-home placement, Juvenile should be held in secure custody. Juvenile noted an appeal to this Court from the 18 March 2014 order on 16 April 2014.

## II. Legal Analysis

### A. Appealability

N.C. Gen. Stat. § 7B-2602 provides that an appeal may be noted from an order entered in a juvenile delinquency proceeding

in open court following the rendition of judgment or in writing within ten days after the entry of judgment. The extent to which Juvenile noted his appeal from the 18 March 2014 order in a timely manner is not entirely clear, given that the lack of a file stamp on the 18 March 2014 order precludes us from being certain as to the exact date upon which the order in question was entered. Similarly, the absence of a file stamp on the 21 April 2014 order deprives us of any knowledge concerning the date by which Juvenile was required to note an appeal from that order. In apparent recognition of the jurisdictional issues raised by the procedural posture in which this case has come to us, Juvenile filed a petition simultaneously with his brief seeking the issuance of a writ of *certiorari* in order to permit us to examine the merits of his challenges to the trial court's orders in the event that he had failed to appeal from these orders in a timely manner, and we therefore need not address or resolve any issues that might otherwise arise with respect to the extent to which he noted his appeal from the trial court's orders in a timely fashion.

According to well-established North Carolina law, "[t]he writ of *certiorari* may be issued in appropriate circumstances . . . 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), with a

showing that "the right of appeal has been lost through no fault of the petitioner" being generally sufficient to support the issuance of a writ of *certiorari*. *Johnson v. Taylor*, 257 N.C. 740, 743, 127 S.E.2d 533, 535 (1962). As a result of the fact that the date upon which the orders that Juvenile seeks to challenge on appeal were entered is unclear, Juvenile may have lost his right to seek appellate review of the orders in question through no fault of his own. As a result, in the exercise of our discretion, we hereby grant Juvenile's *certiorari* petition and will consider his challenges to the trial court's orders on the merits.

#### B. Validity of the Trial Court's Orders

##### 1. Revocation of Probation Based on Hearsay Evidence

In his first challenge to the trial court's orders, Juvenile contends that the trial court erred by finding that he had violated the terms and conditions of his probation based solely on hearsay evidence. As Juvenile has candidly acknowledged in his reply brief, however, the Supreme Court has rejected the validity of the position upon which his argument rests in its recent decision in *State v. Murchison*, \_\_ N.C. \_\_, \_\_, 758 S.E.2d 356, 359 (2014) (holding that, since the formal rules of evidence do not apply in probation revocation hearings, the trial court did not err by relying solely on hearsay evidence in determining that the defendant had violated the

terms and conditions of his probation).<sup>1</sup> In view of the fact that the Supreme Court has clearly held that an adult offender's probation may be revoked solely on the basis of hearsay, we are not inclined to take Juvenile up on the unsupported suggestion advanced in his reply brief to the effect that we should make a generalized analysis of the extent to which the manner in which Juvenile's revocation hearing adequately protected his procedural rights and are not persuaded that the trial court's failure to advise Juvenile of the risks that he incurred by testifying at the revocation hearing necessitates an award of appellate relief given that the decision upon which Juvenile's argument relies applies to adjudication, rather than dispositional, hearings. *In re J.R.V.*, 212 N.C. App. 205, 209, 710 S.E.2d 411, 413 (2011) (stating that N.C. Gen. Stat. § 7B-2405(4), under which the trial court has a duty to protect a juvenile's due process right "against self-incrimination" at an adjudication hearing, "requires, at the very least, some

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<sup>1</sup>In view of the fact that the Supreme Court rejected the underpinnings of Juvenile's challenge to the trial court's determination that Juvenile had violated the terms and conditions of his probation, we need not address the validity of the State's contention that the conduct of a juvenile probation revocation hearing is governed by N.C. Gen. Stat. § 7B-2501(a) rather than by the statutory provisions governing adult probation revocation proceedings and that the evidence upon which the trial court based its revocation decision was, in fact, admissible under the exceptions to the prohibition against the admission of hearsay evidence applicable to public records and records of regularly conducted activities.

colloquy between the trial court and the juvenile to ensure that the juvenile understands his right against self-incrimination before choosing to testify at his adjudication hearing") (emphasis in original), *disc. review improvidently granted*, 365 N.C. 416, 720 S.E.2d 387 (2012). As a result, Juvenile is not entitled to relief from the trial court's orders on the basis of this contention.<sup>2</sup>

## 2. Willfulness of Violation

Secondly, Juvenile contends that the trial court erred by finding that he willfully violated the terms and conditions of his probation without accounting for the fact that Juvenile has a federally recognized disability. More specifically, Juvenile contends that he had a federally recognized disability that determined his behavior and that the existence of this disability should have precluded the revocation of his probation. In addition, Juvenile contends that the trial court

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<sup>2</sup>In addition to the argument discussed in the text, Juvenile contends that the trial court erred by allowing Juvenile's court counselor, Chris Langston, to read from a school report that had not been provided to Juvenile prior to the hearing. Juvenile has not, however, cited any authority requiring that evidence of this nature be provided to Juvenile before a probation revocation hearing. Although Juvenile does cite N.C. Gen. Stat. § 15A-1345(e), which provides that, "[a]t the hearing, evidence against the probationer must be disclosed to him," this statutory provision does not support the position that Juvenile has asserted before this Court given that the contents of the school report were disclosed to Juvenile at the hearing. Thus, Juvenile is not entitled to relief from the trial court's orders on the basis of this contention.

erred by revoking his probation given that the record contained evidence tending to show that any violation of the terms and conditions of his probation that he might have committed was not a willful one. Juvenile is not entitled to relief from the trial court's orders based on this set of contentions.

a. Standard of Review

"[A]ll that is required [in order for the trial court to revoke a juvenile's probation] is that there be competent evidence reasonably sufficient to satisfy the judge in the exercise of a sound judicial discretion that the [juvenile] had, without lawful excuse, willfully violated a valid condition of probation." *In re O'Neal*, 160 N.C. App. 409, 412, 585 S.E.2d 478, 481, *disc. review denied*, 357 N.C. 657, 590 S.E.2d 270 (2003) (quotation marks and citation omitted). As a result, the revocation of a juvenile's probation simply requires proof "by a preponderance of the evidence that a juvenile has violated the conditions of his probation under N.C. Gen. Stat. § 7B-2510(e)." *Id.* at 412-13, 585 S.E.2d at 481. In the event that the State establishes that a juvenile violated the terms and conditions of his probation, the juvenile bears the burden of demonstrating the existence of an inability to comply with the condition that he or she violated or some other lawful excuse for the juvenile's failure to comply with his or her obligations under the existing probationary judgment. *See State v. Crouch*, 74



N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985) (stating that "the burden is on the [juvenile] to present competent evidence of his inability to comply" and, in the event that the juvenile fails to adduce sufficient evidence of an inability to comply, "evidence of [juvenile's] failure to comply may justify a finding that [juvenile's] failure to comply was willful or without lawful excuse"). In the event that "a [juvenile] has presented competent evidence of his inability to comply with the terms of his probation, he is entitled to have that evidence considered and evaluated before the trial court can properly order revocation." *Id.* at 567, 328 S.E.2d at 834.

Assuming that the trial court finds that a juvenile has willfully violated the terms and conditions of his or her probation, N.C. Gen. Stat. § 7B-2510(e) provides that "the court may continue the original conditions of probation, modify the conditions of probation, or . . . order a new disposition at the next higher level on the disposition chart." In instances involving permissive statutory language, such as the language contained in N.C. Gen. Stat. § 7B-2510(e), the validity of the trial court's actual dispositional decision is reviewed on appeal using an abuse of discretion standard of review. *In re A.F.*, \_\_ N.C. App. \_\_, \_\_, 752 S.E.2d 245, 248 (2013). "[A]n abuse of discretion is established only upon a showing that a court's actions are manifestly unsupported by reason, or so

arbitrary that it could not have been the result of a reasoned decision." *In re E.S.*, 191 N.C. App. 568, 573, 663 S.E.2d 475, 478 (internal quotation marks and citation omitted), *disc. review denied*, 362 N.C. 681, 670 S.E.2d 231 (2008). As a result, a trial court's dispositional decision should be upheld on appeal unless the decision in question could not have been a reasoned one.

b. Validity of Dispositional Decision

The conditions of probation to which Juvenile was subject provided, in pertinent part, that he had to attend school regularly and obey all school-related rules and regulations. At Juvenile's probation violation hearing, the State presented evidence that, since he had been placed on probation, Juvenile had had numerous unexcused absences and had violated school rules by communicating threats to a teacher, an action that resulted in his suspension from school. As a result, the State clearly met its burden of establishing that Juvenile violated the terms and conditions of the probationary judgment to which he was subject.

In his brief, Juvenile argues that the fact that he had an Individualized Education Plan that was based on his inability to control his behavior provided competent evidence from which the trial court could have determined that Juvenile did not willfully violate the terms and conditions of his probation when

he threatened his teacher. However, instead of presenting evidence that he lacked the ability to comply with the conditions of probation to which he was subject at the hearing held before the trial court, Juvenile simply disputed the accuracy of the State's evidence concerning the events that transpired at the time that he allegedly threatened one of his teachers. For that reason, Juvenile does not appear to have properly preserved this contention for appellate review. N.C. R. App. P. 10(a)(1) (providing that, "[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context"). Moreover, even if we were to accept Juvenile's contention that the trial court's recognition in its initial disposition order that Juvenile had "an IEP from the school system" constituted evidence that Juvenile lacked the ability to control his behavior and comply with the applicable school rules, we note that the trial court, after hearing testimony from Juvenile and his mother, explicitly found that Juvenile was able to control his behavior and comply with the applicable school rules.<sup>3</sup> Juvenile has cited no authority requiring the

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<sup>3</sup>The fact that the trial court appears to have based this determination, at least in part, on Juvenile's behavior in court

trial court to make additional written findings relating to the effect of any disability from which Juvenile suffered on the willfulness determination in its order, and we have found none in the course of our own research.<sup>4</sup> As a result, even if this aspect of Juvenile's challenge to the trial court's orders were properly preserved for purposes of appellate review, we would find that it had no merit.

In addition, even if the trial court erred in finding that Juvenile had the ability to control his behavior and did not willfully violate the applicable school rules at the time that he communicated threats to a teacher, that fact would have no bearing on the extent to which he was willfully absent from school without a valid excuse on numerous occasions. The only justification that Juvenile has offered for his unexcused absences from school was that he left school when he was having

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does not, contrary to the argument advanced in Juvenile's brief, invalidate the trial court's decision since the differences in the environment that Juvenile faced in the courtroom and the academic environment goes to the weight to be given to the information available to the trial court rather than to its sufficiency to support a determination that Juvenile acted willfully when he threatened the teacher.

<sup>4</sup>Admittedly, Juvenile does cite two cases in which this Court reversed trial court orders that failed to account for any age-related disability under which a young parent labored in determining whether grounds to terminate that parent's parental rights existed. See *In re Matherly*, 149 N.C. App. 452, 455, 562 S.E.2d 15, 18 (2002); *In re J.G.B.*, 177 N.C. App. 375, 384, 628 S.E.2d 450, 456-57 (2006). However, these decisions, while relevant in termination of parental rights proceedings, have no application in the juvenile probation revocation context.

a bad day, an explanation that the trial court could have readily found to be inadequate. Thus, in view of the fact that the trial court had the authority to enter a new dispositional order based solely on the fact that Juvenile's unexcused absences from school constituted a violation of the terms and conditions of his probation and the fact that the trial court had ample justification for determining that the only explanation that Juvenile offered for these unexcused absences was completely inadequate, the trial court did not err by entering a new dispositional order providing for Juvenile's placement in an out-of-home setting even if the fact that Juvenile had an IEP somehow operated to render his conduct in communicating threats toward one of his teachers something other than willful. As a result, Juvenile is not entitled to relief from the trial court's orders on the basis of this set of contentions.

### 3. Placement in Secured Custody

In his final challenge to the trial court's orders, Juvenile contends that the trial court erred by ordering that Juvenile be held in secure custody pending placement in an out-of-home setting. More specifically, Juvenile contends that the facts did not warrant placing him in secure custody and that the trial court's order placing him in secure custody failed to include findings delineating the evidence upon which it relied

in reaching its decision to place him in secure custody and the purposes sought to be achieved by placing him in secure custody in violation of N.C. Gen. Stat. § 7B-1906(g). Juvenile's contention lacks merit.

a. Mootness

As an initial matter, the State contends that Juvenile's challenge to the trial court's decision to place him in secure custody pending his transfer to an out-of-home placement is not properly before us on mootness grounds given that the passage of time makes it likely that Juvenile is no longer in secure custody. Aside from the fact that the record contains no definitive information concerning Juvenile's current placement, we conclude that Juvenile's challenge to the trial court's temporary secure custody order is properly before us on the grounds that the issue that Juvenile seeks to raise "is capable of repetition, yet evading review." *Crumpler v. Thornburg*, 92 N.C. App. 719, 723, 375 S.E.2d 708, 711, *disc. review denied*, 324 N.C. 543, 380 S.E.2d 770 (1989). An order is reviewable pursuant to this exception to the general rule prohibiting the judicial system from addressing and resolving moot issues in the event that "(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party would be subjected to the same action

again.” *Id.* (alteration in original). In *In re D.L.H.*, 198 N.C. App. 286, 289, 679 S.E.2d 449, 452 (2009), *rev’d on other grounds*, 364 N.C. 214, 694 S.E.2d 753 (2010), this Court heard the juvenile’s challenge to the trial court’s decision that she be held in the Guilford County Juvenile Detention Center following her release from detention. In ruling that this Court could consider the juvenile’s challenge to the trial court’s detention order in spite of the fact that the underlying order had become moot, we stated that, “since the issues in this case concern the scope of statutory authority of the trial court, we address the merits of juvenile’s appeal as the matters in controversy are likely to recur.” *Id.* Similarly, Juvenile’s challenge to the trial court’s decision to have him held in secure custody pending his transfer to an out-of-court placement requests that we review an order implementing an inherently temporary measure that is likely to recur in other instances in the future. As a result, for both of these reasons, we will address the merits of the trial court’s decision to have Juvenile held in secure custody pending his placement outside the home.

b. Applicable Legal Principles

N.C. Gen. Stat. § 7B-1906(g) provides that:

If the court determines that the juvenile meets the criteria in [N.C. Gen. Stat. § 7B-1903] and should continue in custody, the

court shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

A careful review of the relevant statutory language establishes, contrary to Juvenile's contention, that N.C. Gen. Stat. § 7B-1906(g) has no application to the situation that is before us in this case.<sup>5</sup> Instead, N.C. Gen. Stat. § 7B-1906(g) applies when the trial court holds a hearing to determine whether to continue a juvenile's secure custody following an initial accusation of delinquency rather than when the trial court orders that a juvenile be held in secure custody pending the effectuation of a legally authorized out-of-home placement. The latter situation is addressed in N.C. Gen. Stat. § 7B-1903(c), which provides that, "[w]hen a juvenile has been adjudicated delinquent, the court may order secure custody pending the dispositional hearing

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<sup>5</sup>Juvenile's reliance on our holding in *In re V.M.*, 211 N.C. App. 389, 712 S.E.2d 213 (2011), is similarly misplaced. In that case, we reversed a dispositional order based upon the trial court's failure to make written findings as required by N.C. Gen. Stat. § 7B-2501(c) in support of an order placing the juvenile in secure custody until his 18th birthday. *Id.* at 391-92, 712 S.E.2d at 215-16. As a result of the fact that the order at issue in *In re V.M.* involved a challenge to the trial court's primary dispositional decision rather than to an interim measure that was taken in order to effectuate a longer-term dispositional decision and the fact that Juvenile has not challenged the trial court's dispositional decision in reliance on N.C. Gen. Stat. § 7B-2501(c), *In re V.M.* has no bearing on the validity of Juvenile's attack upon the trial court's order at issue here.



or pending placement of the juvenile pursuant to [N.C. Gen. Stat. § 7B-2506].” As a result, our review of Juvenile’s challenge to the trial court’s decision that he be held in secure custody pending his transfer to an out-of-home placement is limited to determining whether the applicable provisions of the trial court’s order violated N.C. Gen. Stat. § 7B-1903(c). Appellate review of a trial court order entered in reliance upon a statutory provision employing permissive language is reviewed to determine whether the trial court abused its discretion, *In re A.F.*, \_\_\_ N.C. App. at \_\_\_, 752 S.E.2d at 248, with such an abuse of discretion having occurred in the event “that a court’s actions are manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision.” *In re E.S.*, 191 N.C. App. at 573, 663 S.E.2d at 478 (internal quotation marks and citation omitted).

#### C. Validity of Secure Custody Decision

Although Juvenile asserts that the record did not support the trial court’s decision that he should be held in secure custody pending his transfer to an out-of-home placement, we do not find this contention persuasive. As we understand its provisions, N.C. Gen. Stat. § 7B-1903(c) allows a juvenile to be held in secure custody pending disposition or placement in the event that the “juvenile has been adjudicated delinquent.” As a result of the fact that Juvenile had been adjudicated delinquent

by the trial court and had also been found to be in violation of the terms and conditions of his probation, the trial court clearly had the authority to hold Juvenile in secure custody pursuant to the authority granted by N.C. Gen. Stat. § 7B-1903(c).

In addition, we have no difficulty determining that the trial court had ample justification for its decision to hold Juvenile in secure custody pending his transfer to an out-of-home placement. In its order, the trial court incorporated the report of Juvenile's court counselor, Mr. Langston, which spoke to Juvenile's suspension from school, his anger-related difficulties, and his disobedience while living at home, by reference. In light of these determinations, Mr. Langston recommended that Juvenile be placed in secure custody pending his placement out of the home. Based on Mr. Langston's recommendations and the testimony provided by Juvenile, Juvenile's mother, and Deputy Ray Lynch, who served as the resource officer at Juvenile's school, the trial court concluded that a decision to order that Juvenile be kept in secure custody pending placement in a group home was proper, noting that, "if [Juvenile is kept] in secure custody he goes to school, he gets his education . . . any medication he needs, any treatment he

needs.”<sup>6</sup> Thus, the trial court had ample support for a decision that Juvenile should be held in secure custody pending his transfer to an out-of-home placement.<sup>7</sup> As a result, Juvenile is not entitled to relief from the trial court’s secure custody order on the basis of the arguments advanced in his briefs.

### III. Conclusion

Thus, for the reasons set forth above, we conclude that none of Juvenile’s challenges to the trial court’s disposition orders have merit. As a result, the trial court’s orders should be, and hereby are, affirmed.

AFFIRMED.

Judges ELMORE and DAVIS concur.

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<sup>6</sup>In his reply brief, Juvenile argues that the trial court failed to make adequate findings of fact concerning the reason for requiring that Juvenile be held in secure custody pending his transfer to an out-of-home placement in violation of N.C. Gen. Stat. § 7B-2512 (providing that “[t]he dispositional order shall . . . contain appropriate findings of fact and conclusions of law”). However, Juvenile has not cited any authority in support of his contention that a trial court electing to place a juvenile in secure custody pending transfer to an out-of-home placement is required to make detailed findings in support of this decision, and we know of none.

<sup>7</sup>Although N.C. Gen. Stat. § 7B-1903(c) does not, as we have already held, require the trial court to make findings of fact in support of a decision to hold a juvenile in custody pending transfer to a longer-term placement, we believe that the trial court’s decision to incorporate Mr. Langston’s report into its order by reference would satisfy the finding requirement set out in N.C. Gen. Stat. § 7B-1906(g) in the event that that statutory provision had any application to the situation that is before us in this case, not to mention the findings requirement set out in N.C. Gen. Stat. § 7B-2512.