

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-897

Filed: 7 April 2015

Mecklenburg County, No. 12 SPC 4138

IN THE MATTER OF:

M.B.

Appeal by Respondent-juvenile from order entered 22 October 2013 by Judge Donald Cureton, Jr., in Mecklenburg County District Court. Heard in the Court of Appeals 22 January 2015.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Kathleen M. Joyce, for Respondent-juvenile.

Deputy County Attorney Cathy L. Moore, for Durham County Department of Social Services.

Attorney General Roy Cooper, by Assistant Attorney General M. Elizabeth Guzman, for the State.

Parker Poe Adams & Bernstein LLP, by Matthew W. Wolfe, for petitioner Thompson Child & Family Focus.

STEPHENS, Judge.

Respondent-juvenile appeals from the Mecklenburg County District Court's 22 October 2013 order concurring in and ordering his readmission to a Level IV psychiatric residential treatment facility. Respondent-juvenile also seeks *certiorari* review of the court's subsequent 23 May 2014 order recognizing the Durham County

Department of Social Services as a *de facto* party to the matter. After careful consideration, because we conclude that the court did not err in its 22 October 2013 order and that its 23 May 2014 order has not been properly preserved for our review, we affirm.

I. Facts and Procedural History

On 16 August 2012, Michael¹ was voluntarily admitted to Thompson Child and Family Focus (“Thompson”), a 24-hour psychiatric residential treatment facility (“PRTF”) by the consent of his legal guardian, the Durham County Department of Social Services (“DSS”). Michael’s admission was reviewed one week later by the Mecklenburg County District Court, which concurred in his initial admission and subsequently authorized his readmission to Thompson at six hearings between November 2012 and October 2013.

Michael was admitted to Thompson at the age of eleven following several incidents of inappropriate sexual behavior with other children. He suffered from a history of neglect by his biological parents, and was also sexually abused by several unidentified adult males, before being taken into DSS custody at the age of eight. Michael’s treatment plan at Thompson called for reducing his physical and verbal aggression and decreasing his post-traumatic stress disorder symptoms through a combination of medication and individual and group therapy, with the goal of

¹ In accordance with Rule 3.1 of our Rules of Appellate Procedure, we refer to the juvenile by a pseudonym throughout this opinion to protect his privacy.

eventually stepping down his treatment to a lower level of care and transferring him to a therapeutic foster home upon discharge.

As documented in the court summaries prepared by his therapist, Julia Sotile, Michael initially struggled to adjust to life at Thompson but gradually made progress toward attaining his treatment goals. Sotile's reports also documented her growing concerns with Michael's DSS guardian, Teresa Autry.

A. Michael's pre-October 2013 readmission hearings

In her court summary for Michael's uncontested January 2013 readmission hearing, Sotile noted that Michael had displayed great improvement in his behavior since she began working with him the previous October. Sotile described Michael as calm, compliant, and improving in his interactions with Thompson's staff and his peers there. In his therapy sessions, Michael remained reluctant to take responsibility for his sexual behaviors, displayed a preoccupation with and hyperawareness of sexual issues, and struggled to process his traumatic history. While his mother and siblings made supervised visits, DSS informed Michael's treatment team at Thompson that his permanent plan upon discharge had been changed to adoption with a preferred placement with his previous foster family, whom he visited once during Christmas. Sotile noted she had encouraged Autry to be clear with Michael so as not to set up any false expectations regarding his mother's role in his life.

In her court summary for Michael's uncontested April 2013 readmission hearing, Sotile noted that Michael had struggled since his last review. She explained that Michael was engaging in sexual behaviors with his peers, had difficulty taking ownership of his actions, and was increasingly defiant and disrespectful to Thompson's staff. In therapy, Michael expressed a great deal of anxiety and confusion regarding his sexual behaviors and his family situation and traumatic history. Sotile noted that he seemed deeply worried about whether he would be allowed to return to his mother's care, blamed himself for the majority of his family's problems, and had disclosed to Autry that some inappropriate discipline had taken place at the foster home where he had stayed before his admission to Thompson. Autry's response was to tell Michael that she did not believe his allegations but had told his previous foster parents about them, and that as a result, they had decided that they no longer wanted to be considered as a placement option for him. Sotile noted her dismay to Autry that sharing these opinions with Michael and blaming him for the disruption of his previous foster placement might cause him damage, given his struggles with isolation and loneliness. Autry also requested that Michael's phone contact with his mother, against whom DSS had recently moved for a TPR, be limited to once a week during therapy sessions to monitor for inappropriate conversations. Michael had previously asked that Autry contact him weekly by phone, but Sotile's report explained that Autry had been inconsistent in her communications with him and expressed concern

that Michael's "sexual behaviors and other shows of defiance seem to be increasing in response to an overall sense of instability."

In her court summary for Michael's uncontested July 2013 readmission hearing, Sotile noted that Michael seemed to be benefiting from the opportunity to establish meaningful, healthy relationships with Thompson's staff and his peers, but was struggling with his attitude and behavior. Specifically, Michael was acting increasingly defiant and disrespectful and making inappropriate, hypersexual comments toward female staff members. He also struggled to follow directions at school and became distracted and easily frustrated when he did not understand his assignments. In therapy, Michael presented as hypersexual with his therapist by asking inappropriate questions and violating personal boundaries. He also seemed depressed and expressed feelings of hopelessness and helplessness regarding his family situation. However, Sotile also noted that Michael had recently taken tremendous steps toward acknowledging his past behaviors. Sotile further explained that Michael continued to express a desire for increased outside support and connection, and had repeatedly asked that Autry call him once a week, but that despite assuring him she would call weekly and establishing times to do so, Autry had consistently failed to call, which typically left Michael very upset. Sotile noted that Michael's treatment team at Thompson had repeatedly asked Autry not to commit to making these calls "as she is very clearly unwilling to uphold this

[commitment].” By contrast, Michael’s guardian *ad litem* offered to call him every weekend and had done so on a regular basis, and Sotile noted that Michael seemed to benefit from this contact. Michael’s treatment team at Thompson also asked Autry to give Michael notice if she would not be able to attend certain meetings in person or take him off campus as previously scheduled, given that “[s]he has also not been able to adhere to this and at times will give [Michael] little to no notice” that she will not be coming. Michael’s discharge plan continued to call for stepping down to a lower level of care upon completion of his treatment goals at Thompson, with an anticipated date of discharge in late August pending an updated psychological evaluation. Autry had stated that she was looking for a foster placement but that she did not feel it would be feasible to identify a family to begin working with while Michael remained in a PRTF. In the section of her court summary designated “Concerns Noted,” Sotile reported that “[] Autry’s ongoing inconsistency and lack of communication with [Michael] is of great concern to his [Thompson treatment] team. [Michael] is a child with very minimal outside support. [] Autry is a vital figure in his life, and her lack of involvement and contact is concerning.”

In her court summary for Michael’s September 2013 readmission hearing, Sotile reported that although Michael struggled at times with defiant and disrespectful behavior toward Thompson’s staff, especially when faced with tasks he did not like, he had not displayed any verbal or physical aggression, or made any

threats to harm himself or others, since his last review. However, as Sotile noted, there had been incidents when Michael acted flirtatiously toward his peers, and in therapy, he continued to present as hypersexual by asking her inappropriate questions, and expressed anger over his family situation. Nevertheless, Sotile explained that Michael was making progress toward taking ownership of his past sexual behaviors, improving at acknowledging his struggles with behaving respectfully, and getting better at expressing and tolerating frustration. Sotile also reported that, given Michael's ongoing struggles with emotion regulation and sexual preoccupation, his discharge plan had been amended. After noting Michael had recently undergone a psychosexual evaluation, Sotile recommended that Michael be stepped down to a Level III facility "specific to adolescents with sexual behavior problems," with an identified discharge date of 30 September 2013. However, Sotile continued to express concern over Autry's "ongoing inconsistency and lack of communication with [Michael]."

After a hearing held 12 September 2013, the Mecklenburg County District Court adopted Sotile's summary into its findings of fact; entered conclusions of law that Michael was mentally ill, in need of continued treatment, and that less restrictive measures would not be sufficient; and concurred in Michael's readmission to Thompson for up to 30 days so that adequate plans could be made for his discharge to a Level III facility. The court set Michael's next hearing date for 10 October 2013.

B. Michael's October 2013 readmission hearing

In her court summary for Michael's October 2013 readmission hearing, Sotile reported that although Michael continued to struggle with disrespectful and defiant behavior toward Thompson's staff and required frequent redirection from engaging in attention-seeking behavior during structured activities, he had not displayed any aggressive, self-harming, or overt sexual behavior toward his peers. However, Sotile noted that in therapy, Michael remained sexually preoccupied, struggled with feelings of guilt over his family situation, and expressed frustration with the plan to discharge him to a Level III facility instead of a foster home. Sotile explained that while both Thompson and Autry had made efforts since the last hearing to secure a Level III placement for Michael, their attempts had proven unsuccessful so far. Moreover, after receiving the results of Michael's psychosexual evaluation by Dr. Keith Hersh, who found that Michael's IQ fell in the Extremely Low range and consequently recommended that he remain in a highly structured and supervised environment, Autry decided that upon discharge, Michael should transition to another Level IV PRTF. Sotile noted that Michael's IQ score was significantly lower than anticipated and theorized that the actions she had previously considered defiant may have in fact been the result of a genuine lack of understanding and comprehension. Further, Sotile reiterated that, despite Dr. Hersh's recommendation, she believed Michael would be best served by treatment in a Level III facility, and

that a lateral transfer to another PRTF would be very discouraging for him at this point in his treatment. As Sotile explained,

[a]lthough [Michael] continues to struggle to take ownership of his past behaviors, he has not engaged in any aggressive or self-harming behaviors during his time at [Thompson]. He has proven that he can remain physically safe, even while angry or agitated. It is clear that [Michael] is in need of ongoing therapeutic services. However, it is recommended that these services reflect his individual needs. Another PRTF that does not target treatment of children with intellectual disabilities would not seem to be an effective change in venue. If [Michael] is placed in a Level III facility, he can be enrolled in therapeutic services more specific to his needs, with a clinician experienced in serving a similar population of client.

Ultimately, Sotile recommended that although she believed Michael

has earned the opportunity to step down to a lower level of care[, i]t is strongly recommended that [Michael] not discharge until his placement is secure within a facility that will provide adequate supervision and structure. It is not recommended that [Michael] discharge into respite care or emergency placement prior to transitioning to a Level III facility. More time is being requested in an effort to ensure [Michael's] ongoing success and safety.

Sotile again noted her concerns regarding Autry's lack of involvement in Michael's case.

At the ensuing 10 October 2013 readmission hearing in Mecklenburg County District Court, Michael contested his readmission to Thompson. Before the hearing, Michael's appointed counsel had contacted DSS to inquire into Autry's availability to testify, and had been informed by DSS's counsel, Cathy L. Moore, that she would need

to obtain a subpoena to secure Autry's participation. Pursuant to that subpoena, Autry appeared at the 10 October hearing via telephone, accompanied by Moore, who identified herself as "deputy attorney for Durham or DSS" and declined to be sworn in as a witness because, as she informed the court, "I don't think I'm—I'm going to be testifying. I'm going to be a lawyer." After indicating this would be allowed, the court called for testimony from Sotile.

Sotile informed the court that Michael had not displayed any aggressive, self-harming, or overtly sexual behavior since the previous hearing and had been working to accept her discharge recommendation to step down to a Level III facility. She also reported that Dr. Hersh had completed an updated psychosexual evaluation of Michael, which she explained is generally standard procedure prior to discharge, and that everyone had agreed Michael needed to have one in this case. However, Sotile further explained that, given the complications in finding a post-discharge placement for Michael, her recommendation "at this time" was for him to "remain with Thompson until we have a clearer understanding of where he will be discharged to." When Michael's counsel asked Sotile whether he met the criteria for a Level IV facility, Sotile responded that while Michael still needed continued structure and supervision, his behavior since the last hearing did not reflect the need for a Level IV facility, and that her discharge recommendation of stepping down to a Level III

facility, assuming one was available and would accept Michael, had not changed since September.

The court then allowed DSS's counsel to cross-examine Sotile about Dr. Hersh's psychosexual evaluation and recommendation that Michael be transferred to a Level IV PRTF. Sotile stated that she disagreed with Hersh's recommendation because she believed that transferring Michael to another Level IV PRTF would be "detrimental not only to his motivation in treatment but also just sort of his overall sense of hope and well being," and that it would therefore be much better to transfer him to a Level III facility capable of addressing both his sexual behavior and his low IQ. Although Sotile was unaware of any available placements at Level III facilities suited to Michael's specific needs, she explained this problem could be alleviated by placing him in one and then "identifying [an] outpatient clinician [who] can provide those targeted services while allowing for the structure and supervision of a [Level III] facility."

After Sotile's testimony, the court noted it had not yet reviewed or been aware of Dr. Hersh's psychosexual evaluation, but expressed concern over the differing recommendations as to what level of facility Michael should be placed in after his discharge from Thompson. The court then called for testimony regarding discharge planning from Michael's case manager, Valisha Vanderpool, who explained that the process is "pretty much driven by the guardian," and that while her job was to look

for placement at appropriate facilities based on recommendations by clinicians at Thompson, she could not actually contact any facilities until she had consent from the child's legal guardian. In Michael's case, Vanderpool explained, she had been looking for Level III placements pursuant to Sotile's recommendation, which had proven difficult because many Level III facilities within Thompson's coverage network do not address sexualized behaviors; however, Vanderpool had found at least one opening at a facility that employed an outpatient therapist who could address Michael's issues, and had sent a consent form to Autry for her consent as Michael's guardian, but Autry never followed up with her. As Vanderpool noted, it was Autry's responsibility to look for placements outside Thompson's network in the hopes of setting up an out-of-network placement, but at some point after the September hearing, Autry switched gears and started focusing on Level IV PRTF placements for Michael, which "took away from us pursuing an appropriate [L]evel [III] placement" and "kind of just prolonged [the] process." The court then allowed DSS's counsel to cross-examine Vanderpool about whether her pursuit of a Level III placement for Michael was complicated by his dual diagnosis of sexualized behavior and intellectual disability; Vanderpool acknowledged that it had been, but also explained that Autry had "switched gears" to focusing on placement at another Level IV PRTF even before Dr. Hersh made his psychosexual evaluation and recommendations.

When the court called Autry to testify, she admitted that despite the September recommendation that Michael be discharged to a Level III facility, she had begun looking into Level IV PRTF placements before receiving Dr. Hersh's evaluation because she thought one might be available sooner. Autry also testified that, after receiving Dr. Hersh's evaluation, her focus switched entirely to Level IV placements, in part because the care coordinator from DSS's managed care organization had instructed her that before applying to any Level III facilities, she would first need to apply and get denied by all available Level IV PRTFs. This led the court to remark that Autry did not appear to be following proper procedures, and when the court inquired whether a Care Review had been conducted to address the conflicting recommendations for Michael's placement upon discharge in light of the new information from Dr. Hersh's evaluation, Autry replied in the negative. However, Autry explained that she had recently found a placement for Michael at a Level IV PRTF in South Carolina, and that the only thing holding up his transfer was Thompson's refusal to sign a certificate of need, based on its recommendation that Michael be transferred only to a Level III facility.

The court then allowed DSS's counsel to examine Autry about an instance when Michael displayed sexualized behavior that Sotile had previously mentioned in her August court summary. Autry further testified that she believed the Level IV PRTF she had located in South Carolina would best fit Michael's needs, and that she

was exploring ways to secure his placement there without Thompson's approval, but also opined that he should stay in Thompson until a new discharge plan could be agreed upon because "[i]f [Michael] were to be discharged today, we would have to put him in a rapid response bed. That supervision may not be the level that he needs right now, and it may cause more problems than what he's already facing right now." When DSS's counsel asked Autry whether it would be possible to hold a Care Review to resolve the differing recommendations of Sotile and Dr. Hersh by the end of the month if the court concurred in readmitting Michael to Thompson for an additional thirty days, Michael's counsel objected that DSS was not a party to the matter and consequently had no standing to make recommendations. In overruling this objection, the court explained that it would be appropriate for Autry to make a recommendation given her status as Michael's legal guardian. Autry then testified that "[i]f we had an extra 30 days, yes, we could definitely get a Care Review."

Toward the end of the hearing, the court expressed its concerns over the conflicting recommendations for Michael's treatment and the lack of progress in finding an appropriate post-discharge placement for him, stating:

THE COURT: I really don't think I have much of a[n] option because I think if I discharge [Michael], that means he goes back into [DSS's] authority.

[DSS's counsel]: That's correct.

THE COURT: And then he just goes wherever. And that can't be good for him right now. I mean, I just don't think

that's—that's going to help him out. Could it possibly put some pressure on you guys to find a place? Yes. But I could also see that that could result in maybe a rash judgment as well. Or that in haste because you're looking for the first available facility, and that's not what he needs either. He needs the facility that's really going to treat his needs and the services that are really going to treat his needs.

After Michael's counsel subsequently objected to his continued stay at Thompson due to his failure to meet the criteria for remaining in a Level IV PRTF based on Sotile's report, the court noted that even Sotile recognized that simply discharging him "is just not an option right now . . . because we just don't have [the appropriate facility where Michael could obtain a] lower level of care identified yet." In the summation it provided at the close of the hearing, and in the written order it subsequently filed on 22 October 2013, the court concluded—based on findings of fact incorporating Sotile's court summary and additional findings of fact describing the testimony taken during the 10 October hearing—that Michael was mentally ill and in need of continued treatment at Thompson until a lower level of care could be identified, and thus ordered that Michael remain at Thompson for up to another 30 days. The court further noted that it could not ignore the conflict between Sotile's recommendation and Hersh's evaluation, and thus ordered that a Care Review be conducted in order to resolve that conflict, with instructions to look first for an appropriate Level III facility before exploring options for transfer to another Level IV PRTF.

Michael was discharged from Thompson on 7 November 2013 and his counsel filed notice of appeal the following day to challenge the court's order concurring in his readmission, but mistakenly stated that the court's order was filed on 13 October 2013. On 9 December 2013, Michael's counsel filed an amended notice of appeal to correct the filing date of the order appealed from to 22 October 2013. Although Michael's counsel served the first notice of appeal on both Thompson and DSS, the amended notice of appeal was served only on Thompson.

On 30 April 2014, DSS filed a motion to dismiss Michael's appeal for failure to serve a necessary party—namely, DSS. In the alternative, DSS requested that it be served with appellate filings. On 7 May 2014, Michael replied by filing a motion to strike DSS's motion to dismiss, arguing that: (a) DSS lacked standing to bring such a motion because it was not a party to the matter; (b) DSS's motion did not comply with Rule 25 of our Rules of Appellate Procedure and was thus not properly before the court; and (c) DSS's motion to dismiss did not identify any substantial violations of our Rules of Appellate Procedure. After hearings held on 5 May 2014 and 22 May 2014, the court entered an order on 23 May 2014 denying DSS's motion to dismiss the appeal, but granting the alternative relief requested by ordering Michael to serve DSS with appellate filings because it had treated DSS as a party during the 10 October 2013 readmission hearing when it permitted its counsel to present evidence, cross-examine witnesses, and make arguments. Although Michael's appellate counsel

failed to file a notice of appeal from that order, she did file an emergency motion with this Court on 23 May 2014 seeking a temporary stay of the district court's order recognizing DSS as a party and also applied for writs of *supersedeas* and *mandamus* to vacate that order. On 27 May 2014, this Court dismissed Michael's motion for a temporary stay. On 9 June 2014, this Court denied Michael's motion for writs of *supersedeas* and *mandamus*.

On 8 August 2014, the parties filed a stipulation with this Court to settle the record on appeal. In his appellant brief filed 17 October 2014, Michael sought to challenge both the district court's 22 October 2013 order concurring in his readmission and its 23 May 2014 order denying DSS's motion to dismiss but recognizing DSS as a party. In its appellee brief filed 17 November 2014, DSS argued that neither of these two issues was properly preserved for this Court's review in light of the errors contained in Michael's original notice of appeal and the fact that Michael failed to file any notice of appeal regarding the district court's 23 May 2014 order. On 12 December 2014, out of an abundance of caution, Michael filed a petition for writ of *certiorari* asking this Court to permit full appellate review of both orders.

After careful consideration, we conclude first that Michael's petition for a writ of *certiorari* as to the 22 October 2013 order is unnecessary, and thus is dismissed, because the issue was properly preserved for our review. Although Michael's original notice of appeal listed an incorrect filing date for the order appealed from, this Court's

prior holdings make clear that a notice of appeal is not defective if “intent to appeal can be fairly inferred.” *Phelps Staffing, LLC v. S.C. Phelps, Inc.*, 217 N.C. App. 403, 410, 720 S.E.2d 785, 791 (2011). Clearly, Michael’s intent to appeal from the order entered in connection with the 10 October 2013 hearing can be fairly inferred. Moreover, any potential defect was cured when Michael filed his amended notice of appeal. DSS argues further that Michael’s notice of appeal was defective because he failed to serve DSS with his amended notice. This argument fails because DSS was not formally recognized as a proper party to this matter until the court’s 23 May 2014 order, and because DSS already had notice of Michael’s intent to appeal based on the original notice he provided as a courtesy to his legal guardian.

We deny Michael’s petition for *certiorari* review as to the district court’s 23 May 2014 order recognizing DSS as a proper party. Instead of filing notice of appeal from this order and moving to consolidate it with the already-pending appeal of the 22 October 2013 order, Michael’s appellate counsel elected to pursue relief by petitioning for extraordinary writs from this Court. Consequently, Michael has failed to meet the requirements of N.C.R. App. P. 3, which means this Court lacks jurisdiction to review the 23 May 2014 order. *See, e.g., Von Ramm v. Von Ramm*, 99 N.C. App. 153, 156, 392 S.E.2d 422, 424 (1990) (“Without proper notice of appeal, this Court acquires no jurisdiction.”) (citation omitted). Michael’s appellate counsel attempts to invoke our jurisdiction through Rule 21, which provides in relevant part

that “[t]he writ of *certiorari* may be issued in appropriate circumstances . . . when the right to prosecute an appeal has been lost by failure to take timely action,” and Rule 2, which allows this Court to suspend the requirements of Rule 3 “to prevent manifest injustice.” *See* N.C.R. App. P. 2; *see also* N.C.R. App. P. 21. However, “[t]he provisions of Rule 2 are discretionary, and cannot be used to confer jurisdiction upon this Court in the absence of jurisdiction.” *Carolinas Med. Cntr. v. Emp’rs & Carriers Listed in Exhibit A*, 172 N.C. App. 549, 554, 616 S.E.2d 588, 592 (2005). Further, while Michael argues that his notice of appeal from the 22 October 2013 order sufficiently conveyed his intent to appeal the district court’s *de facto* recognition of DSS as a party during the readmission hearing, which he contends was prejudicial error, we do not believe Michael’s notice of appeal of an order from October can be “fairly inferred” to include an order that was not entered until seven months later. *Cf. Von Ramm*, 99 N.C. App. at 156, 392 S.E.2d at 424. Moreover, while this appears to be an issue of first impression, we conclude for the reasons discussed *infra* that denying Michael’s petition will not result in manifest injustice because this issue’s determination is not relevant to our resolution of Michael’s appeal of the district court’s 22 October 2013 order, which is the only issue that is properly before us. Accordingly, Michael’s petition for a writ of *certiorari* is denied.

In addition, both Michael and DSS subsequently filed motions with this Court seeking to supplement the record on appeal. First, Michael sought to add the district

court's 31 October 2013 order discharging him from Thompson. Although Michael never filed a timely notice of appeal from that order, he argued that it would better contextualize both his clinical condition and the unavailability of an alternative placement in a less restrictive setting as of the 10 October 2013 readmission hearing. For its part, DSS sought to supplement the record with two orders from Michael's abuse, neglect, and dependency proceeding in Durham County entered in April and October 2014. After careful consideration, this Court denied both motions to supplement the record in written orders filed 20 January 2015, reasoning that neither the 31 October 2013 order nor the subsequent A/N/D orders were available to or relied upon by the district court when it concurred in Michael's readmission to Thompson after the 10 October 2013 hearing.

II. Analysis

A. The district court exercised proper subject matter jurisdiction

At the outset, we must address DSS's argument that the Mecklenburg County District Court lacked subject matter jurisdiction to concur in Michael's readmission to Thompson. Specifically, DSS contends that this Court must vacate and dismiss the district court's 22 October 2013 order because Michael's case arose in Durham and Chapter 7B of our General Statutes: (a) confers exclusive original and continuing jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent on the trial court of the county where the case arises until the cause is

fully and completely determined; (b) automatically stays the issue of custody in any other civil action involving the juvenile; and (c) provides an extensive statutory scheme to review the custody, placement, and treatment of juveniles, which typically supersedes both our rules of civil procedure and other statutory schemes if they conflict. Although DSS failed to raise this argument during the 10 October 2013 hearing or either of the hearings held in May 2014, “[t]he question of subject matter jurisdiction may be raised at any point in the proceeding.” *Sloop v. Friberg*, 70 N.C. App. 690, 692, 320 S.E.2d 921, 923 (1984). Nevertheless, in light of our prior holding in *In re Phillips*, 99 N.C. App. 159, 162, 392 S.E.2d 407, 409 (1990) (holding that where a juvenile is ordered into the custody of one county department of social services and then admitted to a PRTF in another county, the district court in the second county has jurisdiction over the admission as long as it does not conflict with the order of the prior court), we conclude DSS’s argument is without merit.

B. This appeal is not moot

Because the district court’s 22 October 2013 order only continued Michael’s readmission to Thompson for up to 30 days and Michael was subsequently discharged before its expiration, this appeal would normally be dismissed as moot. *See In re A.N.B.*, __ N.C. App. __, __, 754 S.E.2d 442, 445 (2014) (“The general rule is that an appeal presenting a question which has become moot will be dismissed.”) (citation and internal quotation marks omitted). However, despite the general rule, this Court

“may review cases that are otherwise moot but are capable of repetition, yet evading review” and further “has a duty to address an otherwise moot case when the question involved is a matter of public interest.” *Id.* (citations and internal quotation marks omitted). Indeed, this Court has previously recognized that orders of voluntary admission of a minor to a 24-hour facility are “capable of repetition, yet evading review” given their short duration, and that the State has a “great interest in preventing unwarranted admission of juveniles into these treatment facilities.” *Id.* We therefore hold that Michael’s appeal is properly before us.

C. The district court did not err in concurring in Michael’s readmission to Thompson

Michael argues that the district court erred in concurring in his readmission to Thompson, and thus violated his constitutionally protected liberty interest in being free from unlawful restraint, because certain additional findings of fact contained in the court’s 22 October 2013 order do not support its ultimate finding that he needed continued treatment at Thompson in its restrictive environment. Citing our prior decisions holding that, in the context of civil commitments, it is reversible error for a district court to make insufficient factual findings in support of its legal conclusions, *see, e.g., id.* at ___, 754 S.E.2d at 451, Michael argues that this Court must vacate the trial court’s 22 October 2013 order. We disagree.

This Court recently indicated that voluntary commitment orders should be reviewed under the same standard used for involuntary commitments. *See In re*

C.W.F., __ N.C. App. __, __, 753 S.E.2d 736, 738 (2014), *disc. review improvidently allowed*, __ N.C. __, 768 S.E.2d 292 (2015). In reviewing commitment orders, we “determine whether there was *any* competent evidence to support the facts recorded in the commitment order and whether the trial court’s ultimate findings . . . were supported by the facts recorded in the order.” *In re Allison*, 216 N.C. App. 297, 299, 715 S.E.2d 912, 914 (2011) (citation and internal quotation marks omitted; emphasis in original).

Section 122C-2 of our General Statutes provides that

[t]he policy of the State is to assist individuals with needs for mental health, developmental disabilities, and substance abuse services in ways consistent with the dignity, rights, and responsibilities of all North Carolina citizens. Within available resources, it is the obligation of State and local government to provide mental health, developmental disabilities, and substance abuse services through a delivery system designed to meet the needs of clients in the least restrictive, therapeutically most appropriate setting available and to maximize their quality of life.

N.C. Gen. Stat. § 122C-2 (2013). In the context of voluntary commitments, section 122C-224.3(f) provides in relevant part that, for a minor to be readmitted to a PRTF, the court must find by clear, cogent, and convincing evidence that the minor is “(1) mentally ill or a substance abuser and (2) in need of further treatment at the 24-hour facility to which he has been admitted.” *Id.* § 122C-224.3(f). Moreover, the statute

provides that “[f]urther treatment at the admitting facility should be undertaken only when lesser measures will be insufficient.” *Id.*

Here, Michael contends that the district court’s concurrence in his readmission was driven more by DSS’s bureaucratic failings than the evidence before the court and was therefore unsupported by the additional findings of fact contained in its 22 October 2013 order that: (1) Sotile believed Michael did not meet the clinical conditions to remain in a PRTF; (2) DSS and Thompson failed to adequately pursue placement at a less restrictive Level III facility; and (3) the search for an appropriate Level III placement should be exhausted before considering transferring Michael to another Level IV PRTF. Based on these findings, Michael argues that he did not meet the statutory requirements for continued admission provided by section 122C-224.3. Specifically, Michael argues that although there was no question that he was mentally ill at the time of the 10 October 2013 hearing, Sotile’s recommendation that he be discharged to a Level III facility showed that he no longer needed treatment at Thompson and that “less restrictive measures” for his treatment would have been sufficient. While acknowledging that Sotile also recommended that he remain at Thompson until his next placement at a lower level facility could be secured, Michael emphasizes the plain language of section 122C-224.3, which he contends clearly and unambiguously deals with clinical requirements only and does not permit

readmission for purely administrative reasons, such as Autry's failure to timely and adequately pursue a post-discharge placement for him.

Michael's argument fails, however, because it rests upon a literal interpretation of section 122C-224.3(f)'s provision that "[f]urther treatment at the admitting facility should be undertaken only when lesser measures will be insufficient," which ignores the fact that in this case, there were no sufficient, less restrictive measures available for Michael's continued treatment. In the context of statutory construction, our Supreme Court has long held that "where a literal interpretation of the language of a statute will lead to absurd results, or contravene the manifest purpose of the Legislature, as otherwise expressed, the reason and purpose of the law shall control and the strict letter thereof shall be disregarded." *See, e.g., Frye Reg'l Med. Cntr., Inc. v. Hunt*, 350 N.C. 39, 45, 510 S.E.2d 159, 163 (1999). In the present case, Chapter 122C makes clear our General Assembly's intent to provide "within available resources" mental health services that are "designed to meet the needs of clients in the least restrictive, therapeutically most appropriate setting *available*." N.C. Gen. Stat. § 122C-2 (emphasis added). Here, because there were no other placements available at the time of the 10 October 2013 hearing, the court was essentially faced with the option of either readmitting Michael to Thompson or else allowing a 12-year-old boy with a history of unmanaged sexual deviance problems and a newly discovered intellectual disability to be sent to a non-

existent Level III placement or to an emergency placement that neither Sotile nor DSS believed would provide sufficient supervision and support for his needs. Under these circumstances, we conclude that the district court's decision to concur in Michael's readmission to Thompson was more in keeping with the legislative intent behind section 122C-224.3 than either of the aforementioned alternatives.

We also reject Michael's argument that the ultimate finding in the court's 22 October 2013 order was unsupported by adequate factual findings. On the one hand, each of the cases Michael cites in support of this argument addressed situations that are easily distinguishable from the present case. See *In re A.N.B.*, __ N.C. App. at __, 754 S.E.2d at 451 (reversing the trial court's order authorizing readmission of a minor to a PRTF because it failed to make a finding that the minor was "in need of further treatment" at the facility); *In re Allison*, 216 N.C. App. at 300, 715 S.E.2d at 915 (reversing the trial court because it failed to make any of the statutorily required findings); *In re Whatley*, __ N.C. App. __, __, 736 S.E.2d 527, 532 (2012) (reversing the trial court's involuntary commitment order because it failed to make any finding on the required element of dangerousness). Here, by contrast, the district court's order satisfied the requirements of section 122C-224.3 by indicating that it incorporated into its factual findings "all matters set out in [Sotile's court summary]," which it in turn relied on for its conclusions that Michael was mentally ill and in need of continued treatment at Thompson and that less restrictive measures would not be

sufficient. On the other hand, Michael's argument that the court's findings of fact do not support its conclusions relies on selective quotations from the court's additional findings, most notably that Sotile did not believe Michael met the clinical conditions to remain in a PRTF. But this argument conveniently ignores the fact that in both her court summary and her testimony—which the court expressly incorporated into its findings of fact—Sotile strongly recommended that Michael remain at Thompson until an appropriate Level III post-discharge placement could be obtained. In light of the preceding analysis, we conclude that this evidence provided sufficient factual support for the court's conclusion concurring in Michael's readmission.

Finally, we address what appears to be the central thrust of Michael's complaint: namely, that his readmission to Thompson was less the result of his own condition than it was the product of a pattern of consistent failure and neglect by the adults charged with his care and custody to take the steps required to secure his transfer to a less restrictive facility. This Court does not take lightly the violation or deprivation of any juvenile's constitutionally protected liberty interest. We therefore strongly admonish DSS and Michael's legal guardian Autry for their lackluster performance here, and we also specifically caution DSS not to interpret our holding in this case as an excuse for future failures to take timely action in securing post-discharge placements. Nevertheless, this is not an action against DSS, and we are limited in this case to reviewing whether or not the district court erred based on the

evidence that was before it during the 10 October 2013 hearing. Accordingly, we hold that the district court did not err in concurring in Michael's readmission to Thompson.

D. Michael was not prejudiced by DSS's participation in the 10 October 2013 hearing

As explained *supra*, the issue of whether the trial court erred in its 23 May 2014 order by recognizing DSS as a *de facto* party to Michael's readmission hearing is not properly before us. But even if it were, we are not persuaded by Michael's argument that DSS's participation as a party during the 10 October 2013 hearing resulted in the admission of incompetent and prejudicial evidence against him.

Specifically, Michael claims that because he received no notice that DSS would offer testimony and evidence against him, he was unable to adequately prepare for the hearing. Michael takes particular exception to the fact that DSS's counsel was allowed to cross-examine Sotile about Dr. Hersh's report, which was never formally introduced into evidence and could not have been properly admitted without giving Michael the opportunity to confront and cross-examine Dr. Hersh. *See* N.C. Gen. Stat. § 122C-224.3(c).

This argument fails for several reasons. First, Michael's assertion that he was essentially ambushed by a lack of notice that DSS would participate during the hearing in an adverse manner is undermined by the fact that Autry only appeared after Michael compelled her to by subpoena. Thus, regardless of Michael's motivation

for subpoenaing Autry, his doing so essentially “opened the door” for adverse testimony from her. More importantly, it appears from our careful review of the record that Dr. Hersh’s report and the other allegedly prejudicial evidence DSS attempted to introduce during the hearing were already before the court as a direct result of Sotile’s court summaries and her testimony during the hearing.

In her court summary, Sotile noted the results of the psychosexual evaluation Dr. Hersh had performed as well as his recommendation that Michael be transferred to another Level IV PRTF and the conflict this created for post-discharge placement planning. Moreover, in her testimony during the 10 October 2013 hearing, Sotile had already answered questions from the court and from Michael’s counsel about Dr. Hersh’s evaluation before DSS’s counsel ever cross-examined her about it. Under these circumstances, regardless of whether or not DSS had participated as a party during the hearing, it was inevitable that the court would consider Dr. Hersh’s evaluation, which raised substantial questions concerning Michael’s diagnosis and the propriety of his prior discharge plan that had not yet been addressed by the date of the hearing. Even though Sotile’s recommendation was sufficient by itself to support the court’s concurrence in Michael’s readmission to Thompson, certainly this information was also highly relevant. Had Michael wanted to challenge Dr. Hersh’s conclusions, he could have compelled Dr. Hersh to appear at the hearing as a witness, by subpoena if necessary, just as he did with Autry. In any event, we are wholly

unpersuaded by the argument Michael now makes on appeal, especially given its implication that the district court would have reached a different result if only Michael's counsel had done a better job of concealing this highly relevant information. Therefore, we conclude that Michael suffered no prejudice as a result of DSS's participation during the 10 October 2013 hearing. Because the issue of whether or not the court erred by recognizing DSS as a *de facto* party in its 23 May 2014 order is unnecessary to this determination and was not properly preserved for our review, we decline to reach it.

AFFIRMED.

Judges DILLON and DIETZ concur.