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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-540

Filed: 1 December 2020

Pitt County, No. 17 JB 101

IN THE MATTER OF J.S.

Appeal by Juvenile from order entered 27 January 2020 by Judge W. Brian DeSoto in Pitt County District Court. Heard in the Court of Appeals 17 November 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Ameshia Cooper, for the State-Appellee.

Law Office of Kellie Mannette, PLLC, by Kellie Mannette, for Juvenile-Appellant.

COLLINS, Judge.

Jason,¹ a juvenile, appeals from the trial court's disposition and commitment order. Jason argues that (1) the trial court erred by not ordering and considering a

¹ To protect the identity of the juvenile, the parties have agreed to use the pseudonym "Jason" when referring to him. N.C. R. App. P. 42(b).

mental health evaluation before committing him, (2) the trial court erred by considering the behavior of Jason's guardians as a basis for committing him, and (3) the trial court abused its discretion when it committed him. We vacate and remand the order.

I. Procedural History

In November 2019, when Jason was almost sixteen years old, he admitted responsibility in district court to felony larceny of a motor vehicle. The trial court adjudicated him delinquent, entered a Level 2 disposition, and ordered him to serve 12 months of probation subject to certain conditions including 90 days of house arrest with electronic monitoring.

In December 2019, Jason's court counselor filed a motion alleging that Jason had violated the terms of his probation by cutting off his electronic monitor. The trial court held a juvenile hearing, during which Jason admitted to having violated his probation. On 14 January 2020, the trial court entered and filed a Temporary Juvenile Level 3 Disposition and Commitment Order, wherein it committed Jason to a youth development center for a minimum of six months but no later than Jason's 18th birthday.

Jason filed notice of appeal on 17 January 2020.

The trial court entered a Juvenile Level 3 Disposition and Commitment Order on 22 January 2020, which was file stamped on 27 January 2020. In its order, the

trial court noted that it had considered a predisposition report, a risk assessment, and a needs assessment. The trial court incorporated the contents of these documents by reference.

The reports and assessments in Jason's court file included the following:

- a Comprehensive Clinical Assessment dated 12 June 2017, indicating that Jason had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD);
- a risk and needs assessment report dated 7 November 2019, indicating that there was a “[h]istory or evidence of physical, sexual, or emotional abuse or neglect or other criminal victimization,” that Jason's behavior “indicate[d] a need for additional mental health assessment or treatment,” and that Jason had been subjected to “[m]arital or domestic discord resulting in emotional or physical conflict”; and
- other risk and needs assessments completed prior to 12 November 2019, indicating that Jason had mental health needs that were being addressed.

In its disposition and commitment order, the trial court committed Jason to a youth development center for a minimum of six months but no later than Jason's 18th birthday.

II. Grounds for Appellate Review

Jason concedes that his notice of appeal was filed prematurely, as it was filed after the trial court’s oral order and temporary commitment order—but before the trial court’s official written order.

Notice of appeal of a juvenile disposition order “shall be given 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 (2020). A final order includes “[a]ny order of disposition after an adjudication that a juvenile is delinquent or undisciplined.” *Id.* In other words, before the juvenile may give notice of appeal, there must first be an entry of judgment by the trial court. *In re E.A.*, 267 N.C. App. 396, 397, 833 S.E.2d 630, 631 (2019) (quoting N.C. Gen. Stat. § 1A-1, Rule 58 (2017) (“[A] judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court”)).

“When a defendant has not properly given notice of appeal, this Court is without jurisdiction to hear the appeal.” *Id.* (internal quotation marks and citation omitted). However, Jason has submitted a petition for writ of certiorari contemporaneously with his brief, wherein he asks this Court to review the disposition and commitment order, because (1) it is clear that Jason intended to appeal his adjudication and commitment, and (2) the State could not have been prejudiced by the early notice.

It is within our discretion to issue a writ of certiorari to review an order when the right to appeal has been lost by failure to take timely action. N.C. R. App. P. 21(a)(1). In our discretion, we allow Jason's petition for writ of certiorari to review the order, for the reasons Jason has articulated. *See State v. Jackson*, 234 N.C. App. 80, 84, 758 S.E.2d 39, 42 (2014), *rev'd on other grounds*, 368 N.C. 75, 772 S.E.2d 847 (2015) (granting certiorari to review the merits of appeal where defendant's right to appeal had been lost by failure to take timely action, and State neither moved to dismiss appeal nor opposed review by writ of certiorari).

III. Discussion

Jason first argues that the trial court violated its statutory mandate under N.C. Gen. Stat. § 7B-2502(c) to order and consider a mental health evaluation before committing Jason to a youth development center. The State concedes error.

When a juvenile alleges that a trial court failed to follow a statutory mandate, the juvenile's "right of appeal is preserved and the failure to follow a statutory mandate is a question of law." *In re G.C.*, 230 N.C. App. 511, 515-16, 750 S.E.2d 548, 551 (2013) (citation omitted). "Conclusions of law are reviewed de novo and are subject to full review." *Id.* at 516, 750 S.E.2d at 551 (citations omitted). "Under a de novo review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *Id.* (citation and italics omitted).

“When a juvenile comes before a trial court, ‘the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert *as may be needed* for the court to determine the needs of the juvenile.” *In re E.M.*, 263 N.C. App. 476, 478, 823 S.E.2d 674, 676 (2019) (quoting N.C. Gen. Stat. § 7B-2502(a)). “However, when evidence of mental health issues arise[s], the authority to order the evaluation of a juvenile by certain medical professionals is no longer discretionary, but is required” *Id.* (citing N.C. Gen. Stat. § 7B-2502(c)).

Under the Juvenile Code,

[i]f the court believes, or if there is evidence presented to the effect that the juvenile has a mental illness or a developmental disability, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or State developmental center, and orders purporting to commit a juvenile directly to a State hospital or State developmental center, except for an examination to determine capacity to proceed, are void and of no effect. The area mental health, developmental disabilities, and substance abuse director is responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile’s needs.

N.C. Gen. Stat. § 7B-2502(c) (2020).

“The use of the word ‘shall’ indicates a statutory mandate that the trial court refer the juvenile to the area mental health services director for appropriate action, and failure to do so is error.” *In re E.M.*, 263 N.C. App. at 478, 823 S.E.2d at 676 (citation omitted).

In *In re E.M.*, a juvenile appealed a disposition and commitment order, arguing that the trial court erred by entering a disposition against the juvenile without referring him to the area mental health services director for appropriate action, after being presented with evidence that the juvenile was mentally ill. *Id.* This Court determined that the trial court had been presented with “a plethora of evidence demonstrating that [the juvenile] was mentally ill,” including (a) risk and needs assessments indicating that the juvenile had received various treatment services to address his mental health needs; (b) a Clinical Disposition Report asserting that he was “having major behavioral issues” and had been diagnosed with ADD, Conduct Disorder, Unspecified Depressive Disorder, and Cannabis Use Disorder; (c) testimony by the juvenile’s adoptive father that the juvenile had been discharged from intensive therapy, had been in five clinical homes, and had received inpatient, outpatient, and intensive in-home services; and (d) summarization by the juvenile’s counsel that he had received behavioral and mental health services that had not worked and had not adequately treated his trauma. *Id.* at 479-80, 823 S.E.2d at 677.

As this Court explained in *In re E.M.*, when “[f]aced with any amount of evidence that a juvenile is mentally ill, a trial court has a statutory duty to ‘refer the juvenile to the area mental health services director for appropriate action.’” *Id.* at 480, 823 S.E.2d at 677 (ellipsis omitted) (citing N.C. Gen. Stat. § 7B-2502(c)). As the Court further explained,

[i]t is possible that the trial court was under the misapprehension that such a referral was unnecessary, because [the juvenile] had already received significant mental health services prior to this disposition and because the trial court recognized that it could order mental health services for [the juvenile] during his commitment. However, the statute envisions the area mental health services director's involvement in the juvenile's disposition and "responsib[ility] for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs." That did not happen in this case, and the area director was unable to participate in crafting an appropriate disposition for [the juvenile]. Therefore, we vacate [the juvenile's] disposition and remand for a new dispositional hearing, and do not address his second and third assignments of error.

Id. at 480, 823 S.E.2d at 677-78 (citation omitted).

As in *In re E.M.*, in this case there was evidence before the trial court at the disposition hearing of Jason's mental illness, including the following: (1) several risk and needs assessment reports indicating that Jason had mental health needs being addressed; (2) a risk and needs assessment report indicating that Jason had been subjected to "[m]arital or domestic discord resulting in emotional or physical conflict," that he had a "[h]istory or evidence of physical, sexual, or emotional abuse or neglect or other criminal victimization," and that his behavior indicated a need for additional mental health assessment or treatment; and (3) a Comprehensive Clinical Assessment indicating that Jason had been diagnosed with ADHD and ODD.

When faced with this evidence of Jason's mental illness, the trial court had a statutory duty to refer Jason to the area mental health services director for

appropriate action, *see id.* at 480, 823 S.E.2d at 677, which was to refer Jason to the “area mental health, developmental disabilities, and substance abuse director [who] is responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile’s needs,” N.C. Gen. Stat. § 7B-2502(c).

Because the trial court did not fulfill its statutory mandate to refer Jason to the area mental health services director for the purpose of arranging an interdisciplinary evaluation, the trial court erred. *See In re E.M.*, 263 N.C. App. at 478, 823 S.E.2d at 676. Accordingly, we vacate the disposition and commitment order and remand the matter to the trial court for a new dispositional hearing. *See id.*

For preservation purposes, the State maintains that “the plain language of N.C. [Gen. Stat.] § 7B-2502(c), when read in its entirety, and the legislative history surrounding its enactment indicate that this section is intended to apply prior to the institutionalization of a juvenile in a State hospital . . . [and] does not refer to placement in a youth development center.” However, we are bound by *In re E.M.* to vacate the order. *See In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) (Where a panel of this Court has decided an issue, “a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court”).

Because we vacate the disposition and commitment order on the basis of Jason’s first argument, we need not reach the second and third issues presented in this appeal, which are rendered moot.

IV. Conclusion

The trial court failed to refer Jason to the area mental health services director after being presented with evidence that Jason was mentally ill, as required by statute. Accordingly, we vacate the disposition and commitment order and remand for a new hearing that includes a referral to the area mental health services director.

VACATED AND REMANDED.

Judges DIETZ and ZACHARY concur.

Report per Rule 30(e).