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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-156

No. COA20-871

Filed 20 April 2021

Mecklenburg County, No. 18 JB 473

IN THE MATTER OF: S.M., JR.

Appeal by juvenile from order entered 13 August 2020 by Judge David Strickland in Mecklenburg County District Court. Heard in the Court of Appeals 9 March 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Kimberly N. Callahan, for the State.

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

CARPENTER, Judge.

¶ 1 Appellant S.M., Jr. (“S.M.”) age fifteen, appeals from a disposition and commitment order entered 13 August 2020, committing him to a youth development center (“YDC”). The trial court was presented with evidence of S.M.’s mental illness prior to its entry of a Level 3 disposition. After careful review, we hold the trial court erred in failing to refer S.M. to the area mental health services director, as statutorily

required.

I. Factual & Procedural Background

¶ 2

In pertinent part, the record reveals the following: on 10 June 2019, an adjudication hearing was held in the Mecklenburg County District Court before the Honorable David Strickland. S.M. admitted to one count of felony larceny, and the State dismissed the remaining four charges against him. The trial court entered a Level 2 disposition and placed S.M. on a twelve-month probation. Less than one month after S.M. was adjudicated a delinquent, the State filed a motion for review alleging that S.M. had violated the terms of his probation. The State also filed two petitions against S.M. alleging one count of conspiracy to commit felony larceny and one count of felony larceny.

¶ 3

On 10 August 2020, a second adjudication hearing was held in the Mecklenburg County District Court before Judge Strickland in connection with additional petitions filed by the State between July 2019 and January 2020. The petitions alleged, in sum, three counts of felony larceny; two counts of conspiracy to commit larceny; one count of misdemeanor larceny; one count of operating a motor vehicle without a license; and one count of failure to heed light or siren. Two other petitions were filed by the State, one alleging S.M. to be an undisciplined juvenile and another alleging S.M. violated his probation. Pursuant to a plea agreement, S.M. admitted to three counts of felony larceny and one count of misdemeanor larceny. In

exchange, the State agreed to dismiss all remaining charges and to forego filing additional charges. On the same day, Judge Strickland entered an order of delinquency and found S.M.'s delinquency history to be "high."

¶ 4

On 13 August 2020, Judge Strickland entered a Level 3 disposition pursuant to N.C. Gen. Stat. § 7B-2508, and committed S.M. to a YDC for a minimum period of six months and a maximum period until his eighteenth birthday. In its disposition and commitment order, the trial court included the following pertinent additional findings of fact and conclusions of law:

The court has read, considered, and incorporates into this order the following documents: the Division of Juvenile Justice Predisposition Report [{"Predisposition Report"}], and the Comprehensive Clinical Assessment [{"CCA"}] completed by Dr. Becky Smith at Thompson [Juvenile Court Assessment Program] completed on February 11, 2020 and dated March 5, 2020.

1. The Juvenile's adjudicatory history began in January 2019.
2. On January 22, 2019, Juvenile was adjudicated for
3. one count of misdemeanor shoplifting and two counts of felony shoplifting out of York County, South Carolina.
4. [O]n June 10, 2019, Juvenile was adjudicated for felony larceny in Mecklenburg County.
5. There are multiple offenses for which this commitment order is being entered [including offenses, which occurred on April 28, 2019, April 30, 2019, June 21, 2019, and September 10, 2019].
6. The Court also considered the approximately six months the Juvenile spent AWOL without any contact with the court or the Department of

Juvenile Justice.

7. . . . Juvenile has spent the majority of 2020 in detention either in North Carolina pending trial or in South Carolina due to probation violation.
8. The Juvenile was released from detention on June 5, 2020, and the Court notes the Juvenile has done well with conditions since that time.
9. In determining the appropriate dispositional level the Court has considered the fact the Juvenile has had a lack of family presence during his childhood due to his mother and father having their own issues with the criminal justice system, specifically that the Juvenile's mother spent almost a decade incarcerated.
10. The Court also considered the numerous, consistent offenses several of which occurred after having been placed on probation and being warned by the Court.
11. Finally, the [C]ourt considered the significant time the Juvenile spent AWOL, which, among other things, had a negative impact on the Juvenile's education.
12. The Court is concerned about the Juvenile's recent AWOL, the Juvenile's consistent criminal conduct, as well as the safety of the Juvenile and the safety of the community.
13. For all the reasons stated above, the Court orders The Juvenile be committed to the Youth Development Center [and] shall have a review hearing in approximately 90 days.

¶ 5

In the 5 August 2020 Predisposition Report, the court counselor indicated that S.M. was in need of substance abuse treatment as well as a mental health assessment. The Predisposition Report assigned S.M. a "Risk Score" of 17, which placed him in level 5, the highest of five ranges. It also assigned him a "Needs Score" of 19, which placed him in the "Medium Needs" level.

¶ 6 In her March 2020 Comprehensive Clinical Assessment (“CCA”), Dr. Smith with the Thompson Juvenile Court Assessment Program, diagnosed S.M. with “Unspecified Disruptive, Impulse-Control, and Conduct Disorder”; “Other Specified Trauma-and Stressor-Related Disorder”; and “Cannabis Use Disorder, Mild.” Although the “Disruptive, Impulse-Control, and Conduct Disorder” was categorized as “unspecified,” the CCA noted that the “symptoms [of the diagnosis] cause clinically significant distress or impairment in functioning”

¶ 7 On 17 August 2020, S.M. filed a timely written notice of appeal from the trial court’s disposition order entered on 13 August 2020. The initial appellate entries form, dated 20 August 2020, failed to indicate the trial court’s ruling on S.M.’s release under N.C. Gen. Stat. § 7B-2605. An amended appellate entries form, dated 26 August 2020, cited “safety to the community” as the compelling reason for the trial court’s denial of S.M.’s release.

¶ 8 On 31 August 2020, S.M. filed a motion for release pending disposition of his appeal. On 21 September 2020, a hearing was held in connection with S.M.’s motion for release. At the hearing, defense counsel informed Judge Strickland that S.M. had “attempted suicide by trying to hang himself” while in the custody of the YDC. Defense counsel further stated that S.M. was made “a target at the YDC” by older residents of the center due to his “age and personality,” and they pressured him to join a gang. On 29 September 2020, the trial court denied the motion for release

based on the court's 13 August 2020 additional findings.

¶ 9 While this appeal was pending, S.M. filed a petition for writ of certiorari with this Court to reverse the 13 August 2020 dispositional order committing him to a YDC. The petition was denied without prejudice on 18 December 2020.

II. Jurisdiction

¶ 10 This Court has jurisdiction to address the juvenile's appeal pursuant to N.C. Gen. Stat. § 7B-2602 (2019).

III. Issues

¶ 11 The issues on appeal are whether: (1) the trial court erred by not ordering an interdisciplinary evaluation pursuant to N.C. Gen. Stat. § 7B-2502(c) after being presented with evidence of mental illness; (2) the trial court abused its discretion by ordering a Level 3 disposition when no party requested it; (3) the trial court erred in denying release pending appeal.

IV. Statutory Mandate of Interdisciplinary Evaluation

¶ 12 In his first assignment of error, S.M. contends that the trial court erred by failing to order an interdisciplinary evaluation as prescribed by N.C. Gen. Stat. § 7B-2502(c), after he presented evidence of his mental illness. After careful review, we agree S.M. should have received an interdisciplinary evaluation prior to his commitment to the YDC.

A. Standard of Review

¶ 13 When a juvenile argues to this Court that the trial court failed to follow a statutory mandate, the error is preserved and is a question of law reviewed *de novo*. *In re G.C.*, 230 N.C. App. 511, 515–16, 750 S.E.2d 548, 551 (2013). “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (citations and quotations omitted).

B. Analysis

¶ 14 The Juvenile Code governs dispositions in juvenile proceedings. *See* N.C. Gen. Stat. §§ 7B-1500 to 7B-2827 (2019). Prior to disposition in a juvenile delinquency action, “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.” N.C. Gen. Stat. § 2502(a) (2019). “However, when evidence of mental health issues arise, the authority to order the evaluation of a juvenile by certain medical professionals is no longer discretionary, but is required[.]” *In re E.M.*, 263 N.C. App. 476, 480, 823 S.E. 2d 674, 677, *disc. rev. denied*, No. 46P19, 2019 N.C. LEXIS 880, at *1 (2019). Accordingly,

[i]f the court believes, or if there is evidence presented to the effect that the juvenile has a mental illness or a development disability, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. . . . The area mental health . . . 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) (2019). As the Court explained in *In re E.A.*, we recognize that the “area mental health services director” is now referred to as the “local management entity/managed care organization” consistent with N.C. Gen. Stat. § 122C-3(30b) (2019); however, we will continue to use the phrase “area mental health services director” since the General Assembly has not yet updated the language of the Juvenile Code. *In re E.A.*, 267 N.C. App. 396, 400, n.3, 833 S.E.2d 630, 633 n.3 (2019); *see also In re K.M.*, 2021-NCCOA-3, ¶ 13.

¶ 15 The State first contends that the trial court did not err because the history of N.C. Gen. Stat. § 7B-2502(c), and its predecessor statutes, demonstrates the legislative purpose of the statute was to “set forth the procedural due process requirements that a trial court must follow prior to institutionalizing a mentally ill juvenile”—not to impose a statutory duty to make referrals to the area mental health services director when presented with any evidence of mental illness. The State further argues that the mandatory referral under N.C. Gen. Stat. § 7B-2502(c) is not applicable to the case at bar because the legislature intended the term “mentally ill” to be “defined the same as under our commitment law in Chapter 122C”; therefore, it asserts S.M. has not presented sufficient evidence of mental illness. We disagree as to both arguments.

¶ 16 The State’s contentions run counter to this Court’s precedent surrounding N.C. Gen. Stat. § 7B-2502(c), including *In re E.M.*, in which we held that when a trial court is “[f]aced with *any amount* of evidence that a juvenile is mentally ill, [it] has a statutory duty to ‘refer the juvenile to the area mental health . . . services director for appropriate action.’” 263 N.C. App. at 480, 823 S.E. 2d at 677 (quoting N.C. Gen. Stat. § 7B-2502(c)) (emphasis added); see *In re Mosser*, 99 N.C. App. 523, 528, 393 S.E.2d 308, 311 (1990) (holding that a statement from the juvenile’s mother that he was “manicdepressive” was sufficient evidence of mental illness to “compel further inquiry by the trial court prior to entry of any final disposition”); *In re E.A.*, 267 N.C. App. at 399–400, 833 S.E.2d at 633 (holding that a predisposition report, a risk assessment, and a needs assessment indicating, *inter alia*, a diagnosis of conduct disorder was clear evidence of a juvenile’s mental illness, and the trial court erred in failing to refer the juvenile to the area mental health services director).

¶ 17 The juvenile in *In re E.M.* presented evidence of mental illness through various clinical assessments and his attorney’s and adoptive father’s testimonies. 263 N.C. App. at 480, 823 S.E.2d at 677. He was “diagnosed with Conduct Disorder, Attention Deficit Disorder, Unspecified Depressive Disorder, and Cannabis Use Disorder.” *Id.* at 480, 823 S.E.2d at 677. We held that the trial court’s failure to refer the juvenile to the area mental health director in accordance with the statutory mandate after being presented with evidence of the juvenile’s mental illness constituted reversible

error. *Id.* at 481, 823 S.E.2d at 678. We vacated the juvenile’s Level 3 disposition and remanded the case for a new dispositional hearing. *Id.* at 480, 823 S.E.2d at 678.

¶ 18 The facts here are similar to those of *In re E.M.* Evidence of S.M.’s mental illness was presented to the trial court before his disposition was entered. Subsequently, the trial court entered a Level 3 disposition and committed S.M. to a YDC for a minimum of six months and continuing until his eighteenth birthday.

¶ 19 S.M.’s evidence of mental illness was presented to the trial court in the Predisposition Report and the CCA, which the trial court reviewed and incorporated into its additional findings of the disposition and commitment order. The Predisposition Report indicated that S.M. needed treatment for substance abuse as well as an assessment for certain mental health issues. His behaviors in need of further assessment were characterized as “angry” and “risk-taking/impulsive.” The Predisposition Report also indicated that S.M. “regularly associates with others who are involved in delinquent/criminal activity,” and based on more than ten unexcused absences, he has “[s]erious problems” with his school behavior and adjustment.

¶ 20 The CCA stated S.M. was diagnosed with “Unspecified Disruptive, Impulse-Control, and Conduct Disorder”; “Other Specified Trauma-and Stressor-Related Disorder”; and “Cannabis Use Disorder, Mild.” Dr. Smith noted in her recommendations that S.M. met “medical necessity for Level III treatment services” if mental health system services were to be utilized. The CCA also included a Child

Behavior Checklist, a component of the Achenbach System of Empirically Based Assessment, which was completed by his mother. The ratings provided by his mother on “eight ‘syndrome’ scales” included two scores that fell within the clinical or highest range: Anxious/Depressed and Thought Problems. Additionally, three scores fell within the borderline, or elevated range: Somatic Complaints, Attention Problems, and Social Problems. For “diagnostically-related symptoms,” his mother’s ratings reported for him fell within the clinical range for Depressive Problems and Anxiety Problems.

¶ 21 The evidence presented in this case with respect to S.M.’s mental illness is also consistent with the evidence provided by the juvenile in *In re E.A.* who was diagnosed with conduct disorder which “causes clinically significant impairment in social, academic, or occupational functioning” 267 N.C. App. at 399, 833 S.E.2d at 633. The juvenile in *In re E.A.* was also found to be in need of substance abuse treatment and mental health assessment and treatment in his predisposition report and risk needs assessments. *Id.* at 399, 833 S.E.2d at 633.

¶ 22 We hold the trial court was presented with sufficient evidence of S.M.’s mental illness to trigger its statutory duty under N.C. Gen. Stat. § 7B-2502(c) to make a referral to the area mental health services director.

¶ 23 In the State’s final argument, it contends that even if S.M. did present evidence of mental illness, he was not “prejudiced by the trial court’s imposition of a Level 3

disposition without a referral to the area mental health services director for appropriate action” because the purpose of the statute was fulfilled when the court received recommendations from the CCA prior to entering its final disposition. We disagree.

¶ 24 This Court has rejected the proposition that a juvenile obtaining even “significant mental health services” prior to the final disposition is sufficient to satisfy the statutory duty of the trial court to refer the juvenile for an interdisciplinary evaluation. *In re E.M.*, 263 N.C. App. at 480, 823 S.E.2d at 677. This is because “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.’” *Id.* at 480, 823 S.E.2d at 677–78. Additionally, in *In re A.L.B.*, we held that the trial court was required to refer the juvenile for an interdisciplinary evaluation “regardless of the juvenile’s past mental health treatment or the availability of mental health services through commitment to a YDC.” ___ N.C. App. ___, ___, 849 S.E.2d 352, 356 (2020).

¶ 25 In this case, like in *In re E.M.*, S.M. did not receive the benefit of the area mental health services director’s recommendation and involvement in his disposition, although he received a clinical assessment through the Thompson Juvenile Court Assessment Program, which in turn made recommendations to the trial court. Also,

the Predisposition Report, completed after the CCA and eight days before the disposition and commitment order was entered, found that additional assessment and treatment for S.M. were necessary. Therefore, the trial court's failure to refer S.M. for an interdisciplinary evaluation was prejudicial to him.

¶ 26 In light of the Predisposition Report and the CCA, the trial court was faced with the threshold amount of evidence of mental illness required under N.C. Gen. Stat. § 7B-2502(c). *In re E.M.*, at 480, 823 S.E.2d at 677. Thus, it had a “statutory duty to ‘refer the juvenile to the area mental health . . . services director for the appropriate action’” before entering a disposition. *See id.* at 480, 823 S.E.2d at 677; N.C Gen. Stat. § 7B-2502(c). Therefore, we hold the trial court erred in failing to refer S.M. to the area mental health services director after it was presented with evidence of his mental illness. Accordingly, S.M.’s Level 3 disposition is vacated, and the case is remanded for a new dispositional hearing. Since we vacate the disposition, we need not reach S.M.’s remaining appellate arguments that the trial court erred in ordering a Level 3 disposition and in denying his release pending appeal.

V. Conclusion

¶ 27 For the foregoing reasons, we hold that the trial court erred in failing to refer S.M. to the area mental health services director, as prescribed by statute, after being presented with evidence that he was mentally ill. We vacate the disposition and commitment order and remand for a new hearing that includes a referral to the area

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Opinion of the Court

mental health services director.

VACATED AND REMANDED.

Judges STROUD and DIETZ concur.

Report per Rule 30(e).