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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-321

No. COA20-270

Filed 6 July 2021

Pitt County, No. 16 JB 27

IN THE MATTER OF: D.K.

Appeal by Juvenile from order entered 6 November 2019 by Judge Brian DeSoto in Pitt County Juvenile Court. Heard in the Court of Appeals 24 March 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Janelle E. Varley, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Katz, for the Juvenile-Appellant.

DILLON, Judge.

¶ 1 D.K. ("Juvenile") appeals from a Disposition Order. D.K. was adjudicated delinquent for committing the offense of assault on a person under twelve (12).

I. Background

¶ 2 Juvenile was placed in Department of Social Services ("DSS") custody in 2018. On 26 August 2019, petitions were filed against Juvenile alleging two counts of assault on a minor under the age of twelve (12). Juvenile admitted to one count of assault in exchange for dismissal of the other count. The trial court entered a Level

2 disposition, ordering twelve (12) months of probation and cooperation with "any mental health services deemed appropriate" and approved by the court and her juvenile court counselor. Additionally, the trial court found that "the juvenile does have mental health needs and is currently in DSS custody." The trial court also incorporated Juvenile's predisposition report, risk assessment, and needs assessment in its Disposition Order. Juvenile timely appealed to our Court.

II. Analysis

¶ 3 On appeal, Juvenile argues that the trial court erred by failing to refer her to the area mental health, developmental disabilities, and substance abuse services director ("mental health services director")[1] for an evaluation under N.C. Gen. Stat. § 7B-2502(c) (2019). We agree.

¶ 4 We review a trial court's alleged failure to follow a statutory mandate *de novo*. *In re G.C.*, 230 N.C. App. 511, 515, 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." *Id*. at 516, 750 S.E.2d at 551 (citation omitted).

¶ 5 In cases of juveniles adjudicated delinquent, "the court *may* order that the

[1] Our Court has noted that the named position of "area mental health services director" no longer exists as referenced in this statute. *In re E.A.*, 267 N.C. App. 396, 400, n.3, 833 S.E.2d 630, 633, n.3 (2019). However, N.C. Gen. Stat. § 7B-2502(c) has not updated its terminology, so we will use "mental health services director" in this opinion to refer to its current equivalent, the local management entity director. *See* N.C. Gen. Stat. § 122C-3 (20c) (2019).

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. § 7B-2502(a) (emphasis added). However, our General Statutes *require* action on the trial court's part in specific cases:

> If 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. . . . 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) (emphasis added).

¶ 6 Our Court has held that "[t]he 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. 476, 478, 823 S.E.2d 674, 676 (2019). We have emphasized that "[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 (emphasis added).

¶ 7 Additionally, we have expressly rejected the theory that a trial court may escape the statutory mandate of N.C. Gen. Stat. § 7B-2502(c) by relying on the fact that the juvenile has received mental health treatment in the past or by simply

ordering treatment as a part of the juvenile's disposition. *Id.* at 480, 823 S.E.2d at 677-78 ("It 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 during his commitment. However, the statute envisions the area mental health services director's involvement in the juvenile's disposition[.]").

¶ 8 Here, not only was the trial court presented with evidence that Juvenile was mentally ill and had developmental disabilities, but the court specifically made a finding that Juvenile "does have mental health needs." The predisposition report noted that Juvenile had been diagnosed with post-traumatic stress disorder ("PTSD") and borderline intellectual functioning, and had been receiving therapy for depression, anxiety, and medication management. Juvenile's Needs Assessment Form noted her use of pornography on cell phones and sexually explicit language or gestures, and she was assigned a "Needs Score" of 14, a "Medium Needs" level.[2]

¶ 9 In similar cases, our Court has concluded that the correct remedy is to vacate the Disposition Order and remand to the trial court for a referral to the area mental

[2] Form CS 017 "North Carolina Assessment of Juvenile Needs" is prepared by the North Carolina Department of Public Safety, Juvenile Justice Section. A "Needs Score" ranges from 0-12 (Low Needs), 13-22 (Medium Needs), or 23+ (High Needs).

health services director. *See In re E.A.*, 267 N.C. App. 396, 400, 833 S.E.2d 630, 633 (2019) (vacating and remanding trial court's Level 2 disposition of twelve months of probation for juvenile when presented with evidence of juvenile's mental illness). Likewise, we conclude that the proper remedy here is to vacate the trial court's Disposition Order and remand for a referral to the area mental health, developmental disabilities, and substance abuse services director for an evaluation under N.C. Gen. Stat. § 7B-2502(c).

III. Conclusion

¶ 10 We conclude that the trial court erred by failing to refer Juvenile to the area mental health services director under N.C. Gen. Stat. § 7B-2502(c). Therefore, we vacate the trial court's Disposition Order and remand so that the trial court may make the proper referral.

VACATED AND REMANDED.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).