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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-674

No. COA21-363

Filed 7 December 2021

Wake County, No. 19-JB-592

In the Matter of: V.W.-J.

Appeal by Respondent from order entered 3 December 2020 by Judge Eric Chasse in Wake County District Court. Heard in the Court of Appeals 20 October 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Daniel O'Brien, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Candace Washington, for the Respondent-Appellant Juvenile.

GRIFFIN, Judge.

¶ 1 Respondent V.W.-J. ("Vincent"[1]) appeals from the trial court's order adjudicating Vincent delinquent for assault on a government employee. Vincent

[1] We use a pseudonym to protect the identity of the child and for ease of reading. *See* N.C. R. App. P. 42(b).

argues that the trial court erred by (1) failing to exercise discretion over his disposition based on a misapprehension that it was required to order a Level 2 disposition; and (2) failing to make statutorily required findings in its dispositional order demonstrating it considered the factors listed in N.C. Gen. Stat. § 7B-2501(c). We hold the trial court failed to make the required N.C. Gen. Stat. § 7B-2501(c) findings. We vacate the trial court's order and remand.

I. Factual and Procedural History

¶ 2 On 13 September 2019, Vincent was a student at Southeast Raleigh High School and enrolled in Floyd Johnson's broadcasting class. During class, Mr. Johnson repeatedly asked Vincent to put his cell phone away. Mr. Johnson asked Vincent to leave the classroom because Vincent refused to comply. Vincent stood up, walked up to Mr. Johnson, and hit Mr. Johnson above the left eye with his cell phone. Mr. Johnson pushed Vincent out of the classroom and escorted him to the front office. On the way to the front office, a "struggle ensued[,]" and Vincent was "cussing and being verbally abusive." Mr. Johnson put Vincent on the ground and told him to calm down so that they could get to the front office. At that time, the principal approached them and escorted Vincent to the front office. Mr. Johnson did not require medical treatment.

¶ 3 On 22 July 2020, the trial court adjudicated Vincent delinquent for assault on a government employee, a class A1 misdemeanor. During the dispositional hearing

on 3 December 2020, Vincent's counsel did not wish to be heard, and the State requested that it would "ask for 14 [intermittent confinement] days" if the court was going to enter a Level 2 disposition. An unidentified male asked the court whether the court was entering a Level 1 or a Level 2 disposition, and the court stated, "It is a level 2." The trial court entered a dispositional order concluding "the [c]ourt is required to order a Level 2 disposition[,]" which included nine months of probation and fourteen days of intermittent confinement. Vincent timely appealed.

II. Analysis

¶ 4 Vincent contends the trial court erred because it failed to exercise discretion in determining the level of his disposition and because it failed to make statutorily required findings of fact. We first address Vincent's argument that the trial court erred by failing to make findings of fact showing that it considered the factors set forth in N.C. Gen. Stat. § 7B-2501(c). "Alleged statutory errors are questions of law," and on appeal are "reviewed de novo." *In re A.M.*, 220 N.C. App. 136, 137, 724 S.E.2d 651, 653 (2012).

¶ 5 Section 7B-2501(c) directs the court to select an "appropriate disposition both in terms of kind and duration for the delinquent juvenile . . . that is designed to protect the public and to meet the needs and best interests of the juvenile." N.C. Gen. Stat. § 7B-2501(c) (2019). The trial court's selection must be based upon the following factors:

> (1) the seriousness of the offense;
>
> (2) the need to hold the juvenile accountable;
>
> (3) the importance of protecting the public safety;
>
> (4) the degree of culpability indicated by the circumstances of the particular case; and
>
> (5) the rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment.

N.C. Gen. Stat. § 7B-2501(c).

¶ 6 The court must enter a written dispositional order containing appropriate findings of fact and conclusions of law, N.C. Gen. Stat. § 7B-2512(a) (2019), and "a trial court must consider each of the factors in Section 7B-2501(c) when entering a dispositional order," *In re I.W.P.*, 259 N.C. App. 254, 264, 815 S.E.2d 696, 704 (2018). Our Court has repeatedly held that we must remand a trial court's dispositional order where the trial court fails to make written findings of fact, particularly written findings regarding all five of the factors set forth in section 7B-2501(c). *In re I.W.P.*, 259 N.C. App. at 264, 815 S.E.2d at 704 (remanding "deficient" dispositional order that addressed only three of the five section 7B-2501(c) factors); *In re K.C.*, 226 N.C. App. 452, 462–63, 742 S.E.2d 239, 246 (2013) (remanding dispositional order that addressed only two of the five section 7B-2501(c) factors); *In re J.J.*, 216 N.C. App. 366, 372, 717 S.E.2d 59, 64 (2011) (vacating and remanding dispositional order because the trial court "fail[ed] to include the requisite findings of fact in its

dispositional order").

¶ 7 In *In re V.M.*, the trial court entered a dispositional order committing the juvenile to a youth confinement center. *In re V.M.*, 211 N.C. App. 389, 390, 712 S.E.2d 213, 215 (2011). On the dispositional order, the court "checked boxes indicating that it had received, considered, and incorporated by reference the predisposition report, risk assessment, and needs assessment, and that '[t]he juvenile has been adjudicated for a violent or serious offense and Level III is authorized by G.S. 7B-2508[,]'" but did not make any additional written findings of fact regarding the juvenile's circumstances. *Id.* at 390, 712 S.E.2d at 215. This Court remanded the matter back to the trial court for a new dispositional hearing, holding that the trial court's dispositional order contained "insufficient findings" to determine "whether it properly considered all of the factors required by N.C.G.S. § 7B-2501(c)." *Id.* at 392, 712 S.E.2d at 216.

¶ 8 Vincent argues, and the State concedes, that the present case is indistinguishable from *In re V.M.* We agree. On the dispositional order in this case, the trial court checked boxes indicating that it received, considered, and incorporated by reference a predisposition report, a risk assessment, and a needs assessment, but otherwise made no written findings of fact describing its consideration of the section 7B-2501(c) factors, or regarding the juvenile's circumstances at all.

¶ 9 We recognize that a single case from our Court has held that a trial court is

not required to make findings of fact concerning the section 7B-2501(c) factors. *See In re D.E.P.*, 251 N.C. App. 752, 759, 796 S.E.2d 509, 514 (2017) ("Upon careful review of the statutory language and our prior jurisprudence, we find no support for a conclusion that in every case the 'appropriate' findings of fact must make reference to all of the factors listed in N.C. Gen. Stat. § 7B-2501(c)[.]"). However, as this Court subsequently recognized in *In re I.W.P.*: "*D.E.P.* created a direct conflict in this area of the law by deviating from precedent. Where there is a conflicting line of cases, a panel of this Court should follow the older of those two lines." *In re I.W.P.*, 259 N.C. App. at 263, 815 S.E.2d at 704. Further, in this case, the trial court not only failed to make written findings showing its consideration of the section 7B-2501(c) factors, but failed to make any written findings of fact at all in compliance with section 7B-2512(a).

¶ 10 We hold the trial court failed to make the statutorily required written findings of fact in its dispositional order. Accordingly, we must vacate the trial court's dispositional order and remand the matter to the trial court.

¶ 11 Vincent also contends the court acted on a misapprehension of law when it entered a Level 2 disposition in this case, rather than exercising its discretion to enter either a Level 1 or a Level 2 disposition. When determining disposition, the trial court considers both offense classification and the juvenile's delinquency history pursuant to N.C. Gen. Stat. § 7B-2508(f) (2019). It is in the discretion of the court to

choose either a Level 1 or Level 2 disposition when the juvenile has a low delinquency history and has been adjudicated delinquent of a serious offense. N.C. Gen. Stat. § 7B-2508(f).

¶ 12 In the present case, Vincent was adjudicated delinquent based on commission of an A1 misdemeanor. An A1 misdemeanor is classified as a serious offense, N.C. Gen. Stat. § 7B-2508(f), and the Record shows Vincent had no known prior delinquency history. The trial court had the discretion, therefore, to order a Level 1 or Level 2 disposition. N.C. Gen. Stat. § 7B-2508(f).

¶ 13 Vincent argues the trial court was unaware that it had discretion to enter either a Level 1 or Level 2 disposition because the court checked the incorrect box on the dispositional order. The court checked the box on the dispositional order indicating it had concluded, "The court is *required* to order a Level 2 disposition." (Emphasis added). In circumstances where the trial court has discretion over its disposition but chooses to enter the stricter disposition, the more correct box on the dispositional order states: "The court is required to order either a Level 1 disposition or a Level 2 disposition, and is entering a Level 2 disposition." We agree with Vincent that it would have been correct for the court to check the latter box in this case. However, it appears from the Record, and the brief discussion that occurred during the dispositional hearing, that the trial court's error was purely clerical. We caution the trial court to mark the most correct box when entering its disposition on remand.

III. Conclusion

¶ 14 We hold the trial court failed to make statutorily required written findings of fact in its dispositional order showing that it considered the factors set forth in N.C. Gen. Stat. § 7B-2501(c) and as required by N.C. Gen. Stat. § 7B-2512(a). We vacate and remand the trial court's dispositional order for a new disposition hearing. On remand, the trial court is free to hear additional evidence regarding Vincent's circumstances as necessary to consider the N.C. Gen. Stat. § 7B-2501(c) factors.

VACATED AND REMANDED.

Judges CARPENTER and JACKSON concur.

Report per Rule 30(e).