IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-754

No. COA22-157

Filed 15 November 2022

Cumberland County, No. 12 JB 301

IN THE MATTER OF: H.T.S.

Appeal by Cumberland County Department of Social Services from order entered 28 October 2021 by Judge Cheri Siler-Mack in District Court, Cumberland County. Heard in the Court of Appeals 23 August 2022.

Mariamarta Conrad and Patrick A. Kuchyt, for Cumberland County Department of Social Services.

Attorney General Joshua H. Stein, by Assistant Attorney General Caden William Hayes, for the State.

Blass Law, PLLC, by Danielle Blass, for defendant-appellee.

STROUD, Chief Judge.

¶ 1 Cumberland County Department of Social Services ("CCDSS") appeals the trial court's Juvenile Level 2 Disposition Order for a delinquent juvenile ("Disposition Order") filed 28 October 2021 which places the juvenile ("H.T.S.") in CCDSS's custody following H.T.S.'s admission of guilt to assault with a deadly weapon. CCDSS argues

"the trial court erred in awarding legal and physical custody of the juvenile to CCDSS" because the trial court failed to make findings of fact consistent with North Carolina General Statutes §§ 7B-2501, 7B-2506, and 7B-2512; the trial court failed to allow H.T.S. and H.T.S.'s mother the opportunity to present evidence consistent with North Carolina General Statutes §§ 7B-2501(b) and 7B-2506(1)(c); and that North Carolina General Statutes §§ 7B-1903(a)(2), 7B-2501(b), and 7B-2506(1)(c) are unconstitutional because they "fail[ ] to protect a parent's constitutional right to raise their child" by allowing appointed counsel to parents of juvenile delinquents after custody has already been taken from the parents and given to a department of social services. We hold the trial court erred by failing to make findings of fact, but the trial court did properly allow H.T.S and his mother the opportunity to present evidence. CCDSS did not preserve any constitutional argument for appellate review. The trial court's Disposition Order is vacated and remanded for additional findings of fact.

I. Background

¶ 2 On approximately 29 June 2021, H.T.S., a fourteen-year-old middle school student, got into an argument with his mother because his mother removed his PlayStation after she discovered H.T.S. smoking marijuana. H.T.S. proceeded to lock himself into his room, and when his mother attempted to enter his room she heard H.T.S. load "what she believed to be a shotgun." H.T.S.'s mother called a family friend for help.

¶ 3 H.T.S.'s mother and the family friend entered H.T.S.'s room, and after they entered H.T.S.'s room they "got into an altercation." During the altercation, H.T.S. "grabbed a shotgun from behind his bed and pointed it at his mother." The family friend "shoved the barrel of the shotgun upwards, and it discharged into the ceiling [and] upper corner of the wall." H.T.S. was taken into custody by the Cumberland County Sheriff's Office the same day.

¶ 4 A "Juvenile Petition (Delinquent)" was filed on 30 June 2021. (Capitalization altered.) This petition listed H.T.S.'s mother as the victim and alleged H.T.S. committed felony assault with a deadly weapon with intent to kill in violation of North Carolina General Statute § 14-32(c). On the same day, the trial court entered an order approving pre-adjudication detention of H.T.S. and ordered law enforcement to take H.T.S. into custody at a juvenile detention facility; H.T.S. was taken into custody that evening. The next day, 1 July 2021, H.T.S.'s mother was served with notices of hearings and summonses stating she must attend future hearings adjudicating the charges against H.T.S., including H.T.S.'s first appearance before the trial court and a hearing on continued secure custody of H.T.S.

¶ 5 While H.T.S. was in custody, the trial court ordered CCDSS placed on notice and ordered a "comprehensive mental health evaluation with psychological assessment, if necessary" on 8 July 2021. Our record does not show precisely when these assessments were completed. A YASI Full Assessment was completed on or

about 7 July 2021, and this assessment generally showed conflicts at home; H.T.S. had poor and worsening academic performance including a number of unexcused absences; H.T.S. had few friends or other positive relationships; and H.T.S suffered from "mood/affective disorders," "[t]hought/personality disorders," and ADHD. The assessment stated H.T.S.'s brother had a history of alcohol and drug problems as well as a criminal record and H.T.S. had anger-management issues. But the assessment also found that H.T.S. had a familial support network and he recognized he must accept responsibility for his behavior, was willing to cooperate in order to correct his behavior, and believed he was capable of positively changing his behavior.

¶ 6 Later, staff at Cumberland CommuniCare performed a Global Appraisal of Individual Needs (GAIN) assessment of H.T.S. The date on the GAIN assessment is listed as 8 July 2021, but the assessment appears to have been signed on 24 August 2021. Staff noted H.T.S. "appeared depressed or withdrawn; anxious or nervous" during the assessment. The assessment noted H.T.S. had been diagnosed with "Major Depressive Disorder, Single Episode, Moderate-Provisional"; "Generalized Anxiety Disorder"; and ADHD. The assessment discussed several factors contributing to H.T.S.'s behavior, including stress from the death of H.T.S.'s grandparents, academic problems, and his detention. The assessment also noted H.T.S. had a troubled relationship with his father, who had abused alcohol and left the home when H.T.S. was a young child. After his father left, H.T.S.'s stepfather

physically abused and beat him "almost daily" when he was four to five years old. Addendums to the GAIN assessment noted that as of 10 August 2021 a Level II therapeutic facility placement was recommended but CCDSS could not locate one; as of 24 August 2021 a Level III placement had become available with immediate availability.

¶ 7 It is not clear when precisely the trial court's ordered "comprehensive mental health evaluation with psychological assessment, if necessary" was completed. Our record contains the YASI and GAIN assessments detailed above, which were performed on 7 and 8 July, or possibly 7 July and 24 August, respectively. The trial court's orders note that as of 20 July 2021 no assessment had been made but as of 25 August 2021 the CCA had been completed. It appears that the GAIN assessment met this requirement, but that provision of the assessment was delayed due to the difficulty in finding a placement for H.T.S. The GAIN assessment is dated 8 July 2021, signed 24 August 2021, and a cover page shows the assessment was filed 25 August 2021.[1] Orders entered after August 25 find H.T.S. "completed a Comprehensive Clinical Assessment." No party takes issue with the timing of the GAIN assessment or the trial court's orders.

[1] We note that this cover page appears to be a Cumberland County Clerk of Superior Court document, initialed by the clerk, with a "Filed on" date of 25 August 2021. Neither assessment nor this cover page have a file stamp.

¶ 8 While in secure custody H.T.S. exhibited good peer interaction, he was generally pleasant to interact with, he related easily to adults, he respected authority, and he "followed facility rules and showed the ability to interact well with" North Carolina Department of Public Safety ("DPS") staff. DPS staff also noted H.T.S. regularly communicated with his mother and participated in academic activities and assignments. On 21 July 2021 the trial court ordered H.T.S. could be released to a nonsecure, temporary placement when a placement became available, but until then H.T.S. had to remain in secure custody. On 27 July 2021 the trial court entered an order for nonsecure custody ordering CCDSS to arrange a temporary placement for H.T.S. and to arrange any remedial, treatment, or evaluative actions CCDSS deemed necessary.

¶ 9 After the assessments were completed and a placement was identified, the trial court then entered orders on 31 August 2021 ordering H.T.S. be released to CCDSS on 3 September 2021; the trial court found releasing H.T.S. to go home was "not appropriate" but ordered H.T.S. may be released to a placement if one becomes available. In an order entered 10 September 2021 from a hearing on 31 August 2021 the trial court found H.T.S. had been in secure custody since 7 July 2021; H.T.S.'s mother was the victim of the assault and "the state still oppose[d] that [H.T.S. be] released from Secure Custody"; and a Level III placement, "Life Changes," was available to take H.T.S. This order also stated CCDSS had until the close of business

on 3 September 2021 to find a placement for H.T.S. and set H.T.S.'s non-trial juvenile disposition hearing for 14 September 2021. The case was heard again on 7 September 2021, and in an order entered 16 September 2021 the trial court found H.T.S. had been released to "Life Changes."

¶ 10 The petition was heard 14 September 2021 in a Juvenile Court session of the Cumberland County District Court. At the disposition hearing, H.T.S. admitted to misdemeanor assault with a deadly weapon, a lesser included offense of assault with a deadly weapon with intent to kill. H.T.S.'s mother was also appointed counsel for required future hearings.

¶ 11 Based upon the 14 September 2021 hearing, the trial court entered the Disposition Order on 28 October 2021. The Disposition Order was on a form entitled "Juvenile Level 2 Disposition Order (Delinquent)," specifically Form AOC-J-475, Rev. 12/19.[2] (Capitalization altered.) By marking blocks on the form, the trial court found the "juvenile delinquency history level" was "low" and noted that it received and considered a predisposition report, risk assessment, and needs assessment; it did not incorporate the contents of any of these reports. Below this section of the form is a section entitled "4. Other Findings: (continue on attached page(s) if necessary)." The

[2] This opinion notes several specific portions on the form dispositional order used by the trial court, Form AOC-J-475, Rev. 12/19. This form is promulgated by the North Carolina Administrative Office of the Courts and is available at https://www.nccourts.gov/assets/documents/forms/j475-en.pdf?Weish9NvTcZSe0sEZ0TJsKEHE0j6_xrU.

form also adds a "NOTE" under the "Other Findings" section that states:

> State any findings regarding the seriousness of the offense(s); the need to hold the juvenile accountable; the importance of protecting the public; the degree of the juvenile's culpability; the juvenile's rehabilitative and treatment needs; and available and appropriate resources. Also use this space for any findings that are required to support a particular disposition, such as a finding of the juvenile's ability to pay if the Court is ordering restitution.

The trial court made no "Other Findings" as suggested by the "NOTE." There are no findings of fact anywhere else on the form and none are attached.

¶ 12 On the second side of the form, under "Level 1. Community Dispositions," the third item involves the transfer of custody to CCDSS; there are several options with checkboxes. The first option has checkboxes for granting custody to "the juvenile's parents," "the juvenile's mother," "the juvenile's father," or "other." The trial court checked the last box, stating "the juvenile is hereby placed in the custody of: . . . Other: . . . Cumberland County Department of Social Services." The next option on the form specifically provides for custody to "[t]he County Department of Social Services" but continues to state, "as the Court finds that the juvenile's continuation in the juvenile's home would be contrary to the juvenile's best interest, as evidenced by: . . . ." The form then has a blank line for the trial court to state reasons for granting custody to the County Department of Social Services, but this line on the Disposition Order is blank also.

¶ 13 The court placed H.T.S. on a 12-month probation and imposed extensive conditions of probation. As conditions of probation H.T.S. was required to comply with North Carolina law; not violate any "reasonable and lawful rules" of his parent or guardian; attend school and maintain passing grades in a minimum of four courses, including meeting with court and school counselors to maintain those grades; not use or possess any alcohol or drugs and submit to random drug testing; abide by a 6 p.m. to 6 a.m. curfew when allowed home visits from his placement, in addition to whatever curfew was imposed by his therapeutic placement; submit to warrantless searches and not possess any firearm, explosive device, or other deadly weapon; meet regularly with his court counselor and undergo any "evaluation, counseling, or treatment recommended by" the court counselor; participate in substance abuse counseling; maintain a study log reflecting a minimum of one hour of study, Sunday through Thursday, while school is in session; and draft a three-page paper on "The Dangers of Using a Firearm and Using Illegal Drugs." The court also placed H.T.S. in CCDSS's custody and ordered he undergo a residential treatment program with "Life Changez (Logos)." H.T.S. was also required to be placed in intermittent confinement of 14 twenty-four-hour periods in an approved detention facility during his probation.

¶ 14 CCDSS appealed the Disposition Order on 5 November 2021.

II. Analysis

¶ 15 CCDSS presents two issues on appeal, but these issues are better discussed as three distinct issues. CCDSS contends "[t]he trial court erred in awarding legal and physical custody of the juvenile to CCDSS" and "[t]he right to counsel attaches after the Respondent Mother's constitutional right to parent the juvenile is infringed upon by the award of custody to CCDSS." Both issues are based upon the trial court's application of the statutes addressing Undisciplined and Delinquent Juveniles, North Carolina General Statutes §§ 7B-1500 *et. seq.* CCDSS argues the trial court failed to comply with several juvenile statutes and two sections of these statutes are unconstitutional.[3] CCDSS argues (1) the trial court failed to make findings of fact required by North Carolina General Statutes §§ 7B-2501(c), 7B-2506(1)(c), and 7B-2512; (2) the trial court failed to allow H.T.S. and his mother the opportunity to present evidence consistent with § 7B-2501(b); and (3) North Carolina General Statutes §§ 7B-1903(a)(2) and 7B-2506(1)(c) are unconstitutional because they required the appointment of counsel to H.T.S.'s mother only *after* she had lost custody of H.T.S., which infringed on her Fourteenth Amendment Due Process right to parent her child. H.T.S. agrees with and joins CCDSS's arguments, and the State agrees with CCDSS that the Disposition Order should be vacated and remanded based upon the lack of appropriate findings of fact. The State also argues the issue of the

[3] CCDSS does not state whether its challenge to the constitutionality of these statutes is a facial or as-applied challenge. Based upon the briefs, it appears this would be a facial challenge.

constitutionality of §§ 7B-1903(a)(2) and 7B-2506(1)(c) is moot since the Disposition Order should be vacated. We will address CCDSS's arguments in three parts.

A. Findings of Fact

¶ 16 CCDSS alleges the trial court failed to comply with North Carolina General Statutes §§ 7B-2501(c), 7B-2506(1)(c), and 7B-2512 because it failed to make required findings of fact to support its Disposition Order. Both H.T.S. and the State agree this was a fatal deficiency. We hold the trial court erred by failing to make findings of fact as required by North Carolina General Statutes §§ 7B-2501(c), 7B-2506(1)(c), and 7B-2512 in the Disposition Order.

1. Standard of Review

¶ 17 "An alleged violation of a statutory mandate is a question of law and reviewed *de novo*." *In re J.A.D.*, 2022-NCCOA-259, ¶ 41 (quoting *In re W.M.C.M.*, 277 N.C. App. 66, 2021-NCCOA-139, ¶ 29, 857 S.E.2d 875) (reviewing an adjudication order after Defendant alleged "the 'trial court erred by failing to make sufficient findings of fact required by [N.C. Gen. Stat. §] 7B-2411 in its written adjudication order."); *In re K.C.*, 226 N.C. App. 452, 462, 742 S.E.2d 239, 246 (2013) (reviewing *de novo* the trial court's alleged errors in making findings according to N.C. Gen. Stat. §§ 7B-2501(c) and 7B-2512).

2. Findings of Fact

¶ 18 CCDSS does not challenge the trial court's findings of fact as unsupported by

the evidence, because the trial court made no findings of fact. Instead, CCDSS contends, and all parties agree, the trial court failed to make findings of fact as required by North Carolina General Statutes §§ 7B-2501(c), 7B-2506(1)(c), and 7B-2512.

¶ 19 North Carolina General Statute § 7B-2512(a) states:

> (a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

N.C. Gen. Stat. § 7B-2512(a) (2021). North Carolina General Statute § 7B-2501(c) in turn states:

> (c) In choosing among statutorily permissible dispositions, the court shall select the most appropriate disposition in both terms of kind and duration for the delinquent juvenile. . . . [T]he court shall select a disposition that is designed to protect the public and to meet the needs and best interests of the juvenile, based upon:
>
> (1) The seriousness of the offense;
>
> (2) The need to hold the juvenile accountable;
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> (3) The importance of protecting the public safety;
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> (4) The degree of culpability indicated by the circumstances of the particular case; and
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> (5) The rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment.

N.C. Gen. Stat. § 7B-2501(c) (2021). North Carolina General Statute § 7B-2506 also requires a single finding of fact in subsection (1)(c), which states, "An order placing a juvenile in the custody or placement responsibility of a county department of social services shall contain a finding that the juvenile's continuation in the juvenile's own home would be contrary to the juvenile's best interest." N.C. Gen. Stat. § 7B-2506(1)(c) (2021).

¶ 20 We begin with §§ 7B-2501 and 7B-2512. Unlike the other cases discussed herein, the issue is not whether the trial court made sufficient findings of fact, since there were simply no findings of fact. The parties agree the trial court failed to make adequate findings of fact showing it considered these factors and the findings of fact do not support the trial court's Disposition Order. The parties do not entirely agree on how detailed the trial court's findings of fact should be to address the § 7B-2501(c) factors. CCDSS relies on *In re D.E.P.*, 251 N.C. App. 752, 796 S.E.2d 509 (2017), and argues that "[t]he trial court is not required to making findings of fact referencing all the listed factors[,]" and "there is no formula to determine the extent that the trial court must consider the statutory factors to make appropriate findings in support of the chosen disposition." *See In re D.E.P.*, 251 N.C. App. at 757-59, 796 S.E.2d at 514 ("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) . . . ."). H.T.S.

argues CCDSS is mistaken in its reliance on *In re D.E.P.* and argues, consistent with our holding in *In re I.W.P.*, 259 N.C. App. 254, 815 S.E.2d 696 (2018), "if a trial court fails to make findings of fact on each of the five factors, the dispositional order must be vacated." *See In re I.W.P.*, 259 N.C. App. at 261, 815 S.E.2d at 702 ("The plain language of Section 7B-2501(c) compels us to find that a trial court must consider each of the five factors in crafting an appropriate disposition."). But as noted above, the trial court made no findings as to any of these factors and left the section of the Disposition Order for findings under § 7B-2501(c) entirely blank. Nor do any of the trial court's supplemental orders have findings of fact.

¶ 21 We follow this Court's holding in *In re I.W.P.* This Court in *In re I.W.P.* addressed the parties' arguments about the application of § 7B-2501(c):

> The plain language of Section 7B-2501(c) compels us to find that a trial court must consider each of the five factors in crafting an appropriate disposition. The General Assembly mandated that trial courts "shall select a disposition" that protects the public and is in the best interest of the juvenile "based upon" consideration of a conjunctive list of factors. [N.C. Gen. Stat. § 7B-2501(c) (2017).] "It is a common rule of statutory construction that when the conjunctive 'and' connects words, phrases or clauses of a statutory sentence, they are to be considered jointly." *Harrell v. Bowen*, 179 N.C. App. 857, 859, 635 S.E.2d 498, 500 (2006), *aff'd*, 362 N.C. 142, 655 S.E.2d 350 (2008) (citation and quotation marks omitted).
>
> In fact, this Court has previously held the trial court must consider each of the factors in Section 7B-2501(c). *See In re Ferrell*, 162 N.C. App. 175, 177, 589 S.E.2d 894, 895

> (2004); *In re V.M.*, 211 N.C. App. 389, 391-92, 712 S.E.2d 213, 215 (2011); *K.C.*, 226 N.C. App. 452, 462, 742 S.E.2d 239, 246; and *In re G.C.*, 230 N.C. App. 511, 519, 750 S.E.2d 548, 553 (2013). However, this Court recently held, contrary to precedent, that the trial court does not need to consider all of the Section 7B-2501(c) factors when entering a dispositional order. *In re D.E.P.*, [251] N.C. App. [752], [759], 796 S.E.2d 509, 514 (2017). This inconsistency has created a direct conflict in this Court's prior jurisprudence and must be reconciled.

In re I.W.P., 259 N.C. App. at 261-62, 815 S.E.2d at 702-03. Then, after a review of the cases cited above, this Court held:

> Despite holding that the trial court does not need to engage in an exhaustive discussion of all Section 7B-2501(c) factors, the Court in *D.E.P.* did analyze the appealed dispositional order and held that the trial court did consider all of the Section 7B-2501(c) factors appropriately in that case. *Id.* at [762], 796 S.E.2d at 515-16. Furthermore, *D.E.P.* also held that this Court did not apply *Ferrell* correctly, and that this "mischaracterization of *Ferrell* was repeated in several later cases" holding that the trial court must consider each Section 7B-2501(c) factor. *Id.* at [757], 796 S.E.2d at 513. *G.C.* and *K.C.*, however, were not based on *Ferrell*, but rather this Court's interpretation of the plain language of Section 7B-2501(c).
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> More importantly, our Supreme Court has instructed this Court, "[w]here a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court." *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). *D.E.P.* created a direct conflict in this area of the law by deviating from precedent. "[W]here there is a conflicting line of cases, a panel of this Court should follow the older of those two lines." *Respess v. Respess*, 232 N.C. App. 611,

> 625, 754 S.E.2d 691, 701 (2014) (citation and quotation marks omitted). Accordingly, *Ferrell*, *V.M.*, *G.C.*, and *K.C.* are controlling, and we hold that a trial court must consider each of the factors in Section 7B-2501(c) when entering a dispositional order.

Id. at 263-64, 926 S.E.2d at 704.

¶ 22 We are bound by our decision in *In re I.W.P.* *See In re Civil Penalty*, 324 N.C. at 384, 379 S.E.2d at 37; *Respess v. Respess*, 232 N.C. App. at 625, 754 S.E.2d at 701. The trial court must consider all five factors under § 7B-2501(c), and the trial court's dispositional order must reflect that the trial court considered all five factors. The trial court may indicate its consideration of the statutory factors in both its findings of fact, *see In re D.E.P.*, 251 N.C. App. at 760-61, 796 S.E.2d at 515, and in the conditions of the disposition itself, *see In re I.W.P.*, 259 N.C. App. at 264, 815 S.E.2d at 704. Because the trial court made no findings of fact, we are limited to the conditions of probation imposed by the trial court and by the dispositions contained in the Disposition Order.

¶ 23 The conditions imposed by the trial court tend to reflect the seriousness of the offense. *See* N.C. Gen. Stat. § 7B-2501(c)(1). H.T.S. was charged with assault with a deadly weapon with intent to kill and admitted to misdemeanor assault with a deadly weapon. The trial court's Disposition Order and the supplemental order regarding probation imposed conditions reflecting the severity of this offense. For example, the conditions of H.T.S.'s probation and the Disposition Order require H.T.S. to submit

to intermittent confinement for 14 twenty-four-hour periods. Other conditions could be considered as addressing the second § 7B-2501(c) factor, the need to hold H.T.S. accountable for his behavior. But with no findings of fact at all regarding the trial court's consideration of the statutory factors, we are left to speculate as to why the trial court imposed any specific condition.

¶ 24 We can make inferences on how the conditions might relate to the third and fourth factors, for example. The public may be protected by H.T.S.'s strict curfew and intermittent confinement, and H.T.S.'s culpability is unchallenged. But it is not clear on the face of the Disposition Order or any supplemental order that the court contemplated these two factors in crafting the Disposition Order. The trial court could have decided on the disposition based wholly on the first two, or even just the first factor.

¶ 25 The final factor, "[t]he rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment," is certainly unmet. *See* N.C. Gen. Stat. § 7B-2501(c)(5). While the trial court checked item 2 on the form Disposition Order, indicating "[t]he Court received and considered" the predisposition report, risk assessment, and needs assessment, these reports and assessments were not incorporated into the Disposition Order and the terms of the Disposition Order and the supplemental order on probation do not link the conditions imposed by the trial court to the "rehabilitative and treatment needs of [H.T.S.] as indicated" by those

reports. It is not clear without additional findings how the trial court's order addresses H.T.S.'s needs. The trial court did not make findings sufficient to show it considered all five § 7B-2501(c) factors.

¶ 26 Next, we examine the Disposition Order for the sole finding required by § 7B-2506(1)(c). *See* N.C. Gen. Stat. § 7B-2506(1)(c) ("An order placing a juvenile in the custody or placement responsibility of a county department of social services *shall* contain a finding that the juvenile's continuation in the juvenile's own home would be contrary to the juvenile's best interest." (emphasis added)). The Disposition Order placed H.T.S. in CCDSS's custody. On the Disposition Order, the trial court left empty the space for a finding that would meet the requirement in § 7B-2506(1)(c). On the form disposition order, under "Level 1. Community Dispositions," the third item involves the transfer of custody to CCDSS. Should the trial court grant custody to a county department of social services, the second entry under the third item contains a checkbox, and an empty line preceded by "The County Department of Social Services, as the Court finds that the juvenile's continuation in the juvenile's home would be contrary to the juvenile's best interest as evidenced by: . . . ." The trial court left blank this empty line for a finding satisfying the requirement of § 7B-2506(1)(c), and because the trial court left this line empty and no other supplemental order addresses this requirement, the trial court failed to make a finding consistent with § 7B-2506(1)(c).

¶ 27 We therefore hold the trial court erred when it entered the Disposition Order which failed to make findings of fact showing the trial court considered all five factors in § 7B-2501(c) and the single factor in § 7B-2506(1)(c) as required by our holding in *In re I.W.P.* and by the plain language of § 7B-2506(1)(c). The Disposition Order is vacated and remanded for entry of a new order with findings of fact, but we must also discuss whether H.T.S. and his mother should be allowed to present evidence on remand.

B. Opportunity to Present Evidence

1. Standard of Review

¶ 28 As above, "[a]n alleged violation of a statutory mandate is a question of law and reviewed *de novo*." *In re J.A.D.*, ¶ 41 (quoting *In re W.M.C.M.*, ¶ 29).

2. Opportunity to Present Evidence

¶ 29 Dispositional hearings may be informal, but North Carolina General Statute § 7B-2501 clearly states a juvenile and his parents must be permitted to present evidence, although they can choose not to:

> (a) The dispositional hearings may be informal, and the court may consider written reports or other evidence concerning the needs of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.
>
> (b) The juvenile and the juvenile's parent, guardian, or custodian *shall* have an opportunity to present evidence,

> and they *may* advise the court concerning the disposition they believe to be in the best interest of the juvenile.

N.C. Gen. Stat. § 7B-2501(a)-(b) (2021) (emphasis added).

¶ 30 The plain language of § 7B-2501 is unambiguous and H.T.S. and his mother were entitled to present evidence at the dispositional hearing. *Id.* ("[T]he juvenile and the juvenile's parents . . . *shall* have an opportunity to present evidence . . . ."); *Appalachian Materials, LLC v. Watauga County*, 262 N.C. App. 156, 160, 822 S.E.2d 57, 60 (2018) ("A basic tenet of statutory construction is that '[w]here the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must construe the statute using its plain meaning.'" (quotation omitted)); *Multiple Claimants v. North Carolina Dept. of Health and Human Services, Div. of Facility Services, Jails and Detention Services*, 361 N.C. 372, 378, 646 S.E.2d 356, 360 (2007) ("It is well established that 'the word "shall" is generally imperative or mandatory.'" (quoting *State v. Johnson*, 298 N.C. 355, 361, 259 S.E.2d 752, 757 (1979))). Here, CCDSS argues "[t]he judge did not permit CCDSS or the Respondent Mother the opportunity to present evidence as N.C. Gen. Stat. § 2506(1)(c) and § 2501(b) intend. The CCDSS Attorney and the Respondent Mother were only allowed to provide argument, following the Juvenile Defender's closing statements." H.T.S. and the State do not make arguments addressing the opportunity for H.T.S. and his mother to present evidence.

¶ 31 We find *In re Powers* illustrative. *See* 144 N.C. App. 140, 546 S.E.2d 186. In *In re Powers*, a juvenile defendant's parents appealed from a disposition and commitment order committing the juvenile to a juvenile detention facility. *Id.* at 140, 546 S.E.2d at 187. The juvenile defendant had "admitted to the acts alleged in the petition and the trial court adjudicated the Juvenile delinquent." *Id.* at 141, 546 S.E.2d at 187. A dispositional hearing was held, and the juvenile, juvenile's attorney, and juvenile's parents were present. *Id.* After a few "brief remarks" the juvenile's attorney made a statement, "I would tender [the juvenile's parents] to the Court for any questions you may have of [them]." *Id.* (second alteration in original). The trial court made no inquiry of the parents and the hearing concluded. *Id.*

¶ 32 This Court noted:

> [t]he dispositive issue is whether the trial court denied [the juvenile's parents] their right to "present evidence" and "advise the court concerning the disposition they believe to be in the best interests of the juvenile" pursuant to N.C. Gen. Stat. § 7B-2501(b) when, after [the juvenile's parents] were tendered to the trial court, the trial court did not question [the juvenile's parents].

Id. This Court held "[t]he trial court's decision not to question [the juvenile's parents] did not constitute a refusal to allow [the juvenile's parents] to present evidence or to advise the trial court regarding the appropriate disposition, as section 7B-2501(b) places no affirmative duty on the trial court to question the parents of a juvenile." *Id.* at 142, 546 S.E.2d 187-88. The court also noted the record did not indicate the

juvenile's parents ever "attempted to offer evidence or to advise the trial court during the dispositional hearing[,]" then held the juvenile's parents were not denied the right to present evidence under § 7B-2501(b). *Id.* at 142, 546 S.E.2d at 188.

¶ 33 Here, at the disposition hearing, the trial court first examined H.T.S. to determine whether H.T.S. made the admission as to the lesser included offense of assault with a deadly weapon of his own free will. The State then provided a factual basis as to H.T.S.'s admission, then H.T.S.'s attorney was provided an opportunity to present "[a]ny objections, deletions, or corrections as to the factual basis" for H.T.S.'s admission. His attorney did not make any statements in connection with the factual basis for H.T.S.'s charge. H.T.S. was presented with an opportunity consistent with § 7B-2501(b) to present evidence, but his attorney elected not to take this opportunity. The trial court did not deny H.T.S. an opportunity to present evidence and thus complied with § 7B-2501(b).

¶ 34 H.T.S.'s mother also had an opportunity to provide evidence but elected not to, as in *In re Powers*. *See id.* at 142, 546 S.E.2d at 188. After hearing argument from counsel for the parties and from a CCDSS social worker, the trial court asked, "[A]nyone else want to be heard?" The transcript is not clear how, but H.T.S.'s mother was able to indicate to the trial court that she wished to be heard as to H.T.S.'s

disposition.[4] H.T.S.'s mother then expressed her thoughts as to the disposition and her hopes for H.T.S. and requested that she be able to communicate with her son, but the transcript does not indicate that she requested to present evidence or that she attempted to do so. Similar to *In re Powers*, H.T.S.'s mother did not attempt to present evidence and the trial court did not deny her an opportunity to present evidence. *See id.* at 142, 546 S.E.2d at 187-88.

¶ 35 "[S]ection 7B-2501(b) places no affirmative duty on the trial court to question the parents of a juvenile[,]" and because there is no indication H.T.S.'s mother attempted to present evidence or wanted to present evidence, the trial court did not deny her the opportunity to present evidence consistent with § 7B-2501(b). *Id.* H.T.S. and his mother were both provided an opportunity to present evidence, decided not to, and the trial court did not err under § 7B-2501(b).

C. Constitutionality of §§ 7B-1903(a)(2) and 7B-2506(1)(c)

1. Standard of Review

¶ 36 "The standard of review for alleged violations of constitutional rights is *de novo*." *In re W.C.T.*, 280 N.C. App. 17, 2021-NCCOA-559, ¶ 59 (quoting *In re L.C.*, 253 N.C. App. 67, 72, 800 S.E.2d 82, 87 (2017)).

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[4] The record indicates this hearing was held via WebEx. It appears that H.T.S.'s mother may have spoken up after the trial court asked, "anyone else want to be heard?" because the next line of the transcript reads "UNIDENTIFIED: *(Indiscernible)*." The trial court responded, "[Y]es, ma'am. I'll hear from you." The transcript then identifies H.T.S.'s mother as the subsequent speaker.

2. Analysis

¶ 37 CCDSS's final arguments address the constitutionality of North Carolina General Statutes §§ 7B-1903(a)(2) and 7B-2506(1)(c). CCDSS argues these sections are unconstitutional because they fail to protect a parent's constitutional right to parent their child. The State argues the issue is moot because H.T.S.'s mother has since been appointed counsel. The State also argues that "there are several, unaddressed, procedural concerns[,]" including that "CCDSS does not have standing to assert a supposed deprivation of the mother's rights" and the issue was not preserved for appellate review. We hold that this issue was not preserved and we are precluded from reviewing the constitutionality of these sections; we need not reach the merits of CCDSS's argument or the parties' arguments on standing and mootness.

¶ 38 No constitutional issue was presented at trial by any party. Even assuming that CCDSS would have standing to present an argument as to H.T.S.'s mother's constitutional rights, CCDSS was required to make "a timely request, objection, or motion" raising the issue of H.T.S.'s mother's constitutional right to parent H.T.S. at trial in order for us to review it now; the trial court must have also ruled on CCDSS's "request, objection, or motion." N.C. R. App. P. 10(a) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. It is also

necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion."); *State v. Lloyd*, 354 N.C. 76, 86-87, 552 S.E.2d 596, 607 (2001) (citing *State v. Benson*, 323 N.C. 318, 322, 372 S.E.2d 517, 519 (1988) ("Constitutional issues not raised and passed upon at trial will not be considered for the first time on appeal.").

¶ 39 CCDSS concedes "that this is a case of first impression. Rare would it be for a Department of Social Services to take up the mantle for parent's rights." In response to the State's contention CCDSS failed to preserve this issue for review, CCDSS argues its own and H.T.S.'s mother's rights are so "intrinsically intertwined" that CCDSS's objection to the trial court's ruling at the dispositional hearing "encompasses the issue of the Respondent Mother's counsel. CCDSS being awarded custody is interwoven with the Respondent Mother's lack of counsel at the dispositional hearing, so much so the appeal of both issues was preserved within the single objection." At the dispositional hearing, CCDSS objected when the trial court ordered CCDSS to retain custody of H.T.S.:

> [COUNSEL FOR CCDSS]: And if you'd just, respectfully, note our objection, Your Honor.
>
> THE COURT: For what?
>
> [COUNSEL FOR CCDSS]: Just for the record, of the child remaining in the Department's custody.
>
> THE COURT: Well, I'll note the Department's objection for the record.

Counsel for CCDSS did not expand upon the objection at the hearing. CCDSS did not offer any constitutional basis for its objection, and the trial court did not pass upon the objection on any constitutional basis. In fact, the only reference to any constitutional rights made at the disposition hearing occurred during the court's examination of the juvenile and his admission.

¶ 40 Because no constitutional issue was presented before the trial court and CCDSS did not offer any constitutional basis for its objection, we are precluded from reviewing the constitutionality of §§ 7B-1903(a)(2) and 7B-2506(1)(c). N.C. R. App. P. 10(a); *Lloyd*, 354 N.C. at 86-87, 552 S.E.2d at 607 (citation omitted).

III. Conclusion

¶ 41 We conclude the trial court failed to make findings of fact in its Disposition Order as directed by North Carolina General Statutes §§ 7B-2501(c), 7B-2506(1)(c), and 7B-2512. We also conclude the trial court complied with § 7B-2501(b) and allowed H.T.S. and his mother the opportunity to present evidence at the dispositional hearing, although they did not take this opportunity. We do not address the constitutionality of §§ 7B-1903(a)(2) and 7B-2506(1)(c) because CCDSS failed to preserve that issue for review. The trial court's Disposition Order is vacated and remanded for additional findings of fact and entry of a new order. On remand, if any party requests to present additional evidence regarding the disposition, the trial court shall hold a hearing to receive this evidence.

VACATED AND REMANDED.

Judges DIETZ and ZACHARY concur.

Report per Rule 30(e).