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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-65

Filed 4 June 2024

Forsyth County, No. 11JB140

IN THE MATTER OF: K.S.

Appeal by juvenile from order entered 30 August 2023 by Judge Thomas W. Davis V in Forsyth County District Court. Heard in the Court of Appeals 14 May 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Sarah Grace Zambon, for the State-appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender David W. Andrews, for juvenile-appellant.

GORE, Judge.

Kyle¹ appeals from a Juvenile Level 3 Disposition and Commitment Order (Based on Violation of Probation). Upon review, we affirm.

I.

Kyle was originally charged in juvenile court with three counts of felonious breaking or entering, two counts of felonious larceny, and one count each of resisting

¹ A pseudonym.

arrest, injury to real property, and possession of a stolen vehicle. At a dispositional hearing on 21 February 2023, the trial court imposed 12 months of probation (“February Order”).

On 13 March 2023 and 11 July 2023, a juvenile court counselor filed motions alleging that Kyle violated probation by removing his electronic monitoring device. At a hearing on 8 August 2023, Kyle admitted to violating probation. Then, on 29 August 2023, the trial court entered a Level 3 disposition (“August Order”) and placed Kyle in a youth detention center. Kyle timely filed written notice of appeal—this Court has jurisdiction pursuant to N.C.G.S. § 7B-2602 (2023).

II.

Kyle raises three issues on appeal: (i) whether the trial court erred by entering a Level 3 dispositional order; (ii) whether the trial court erred by entering a dispositional order without making any supporting findings of fact, without making a finding that a predisposition report was not needed, and without reviewing the comprehensive clinical assessment before choosing a disposition; and (iii) whether the trial court erred by imposing anticipatory secure custody orders.

As a preliminary matter, we lack jurisdiction to consider issues one and three. Regarding the first issue, Kyle argues the trial court erred by entering a Level 3 dispositional order because, in his view, the Level 2 dispositional order the trial court originally imposed in February 2023 lacked mandated dispositional alternatives. Thus, Kyle contends, the February Order was only Level 1, and the highest

disposition the trial court could then impose upon a probation violation was level 2.

Concerning issue three, Kyle asserts the trial court erred by imposing anticipatory secure custody orders, which he contends circumvented the procedures that govern the question of whether a juvenile should be placed in a juvenile detention center. To this effect, Kyle asks this Court to “reverse the portions of the trial court’s 21 February 2023, 6 July 2023, and 14 July 2023 orders stating that Kyle should be placed in secure custody if he violated the terms of electronic monitoring.”

The only order subject to this appeal, however, is the Amended Juvenile Level 3 Disposition and Commitment Order (Based on Violation of Probation) entered 30 August 2023 (August Order). Kyle did not appeal the February Order, or the two July custody orders, within the applicable time limit specified in N.C.G.S. § 7B-2602 (2023) (generally, “within 10 days after entry of the order.”). Because the February Order and July custody orders are not subject to immediate appellate review, we dismiss issues one and three for lack of appellate jurisdiction. *See In re A.L.*, 166 N.C. App. 276, 277 (2004) (cleaned up) (“It is well established that failure to give timely notice of appeal is jurisdictional, and an untimely attempt to appeal must be dismissed.”).

III.

We now address the second issue presented—whether the trial court violated multiple statutory mandates in entering its August Order. We “review a lower court’s alleged statutory errors *de novo*.” *In re K.C.*, 226 N.C. App. 452, 462 (2013) (citation

omitted). Kyle asserts: (i) the court imposed a dispositional order without a predisposition report and without finding that a predisposition report was not needed as required by N.C.G.S. § 7B-2413; (ii) the court did not review the comprehensive clinical assessments before imposing a dispositional order as required by N.C.G.S. § 7B-2502(a4); and (iii) the court failed to make required findings of fact under N.C.G.S. § 7B-2501(c). We address each argument in turn.

First, N.C.G.S. § 7B-2413 (2023) provides, in relevant part, “[i]n cases where no predisposition report is available and the court makes a written finding that a report is not needed, the court may proceed with the dispositional hearing.” In our case, the August Order specifies, “[t]he [c]ourt did not receive a predisposition report or a [r]isk and [n]eeds assessment prior to disposition being entered *per* [N.C.G.S. §] 7B-2413. That is why none of the above boxes are checked.” While this finding does not employ exact statutory language, “[w]e have previously noted that the trial court need not use ‘magic words’ in its findings of fact or conclusions of law, if the evidence and findings overall make the trial court’s basis for its order clear.” *In re B.C.T.*, 265 N.C. App. 176, 188 (2019). The trial court’s basis for proceeding without a predisposition report is clear—it was not available, and it was not needed. We, therefore, discern no violation of § 7B-2413.

Next, N.C.G.S. § 7B-2502(a4) (2023) provides, in part: “[t]he court shall review the [care review team’s] recommendation plan when determining the juvenile’s disposition in accordance with G.S. 7B-2501(c).” Kyle asserts he had a comprehensive

clinical assessment (“CCA”) in place, that it recommended placement in a psychiatric residential treatment facility, and that the trial court violated § 7B-2502(a4) by failing to review his recommendation plan before selecting a Level 3 disposition.

As previously discussed, the trial court did not receive a predisposition report or a risk and needs assessment prior to disposition being entered “per N.C.G.S. § 7B-2413.” While § 7B-2413 mandates that risk and needs assessments “shall be attached to the predisposition report[,]” it “is silent as to any requirement for findings of fact with regard to an unavailability of the risk and needs assessments. The statute only mandates that the assessments be ‘conducted’ and ‘attached.’” *In re E.K.H.*, 226 N.C. App. 448, 451 n.2 (2013) (cleaned up). Further, N.C.G.S. § 7B-2501(a) specifies “the court *may* consider written reports or other evidence concerning the needs of the juvenile.” N.C.G.S. § 7B-2501(a) (2023) (emphasis added). As we will further discuss, regardless of whether the trial court erred by failing to consider Kyle’s CCA prior to determining his disposition, we discern no prejudicial effect.

Under N.C.G.S. § 15A-1443 (2023), the Juvenile “is prejudiced by errors other than constitutional errors ‘when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.” *In re E.K.H.*, 226 N.C. App. at 451 (internal quotation marks and citation omitted). “The burden of showing such prejudice under this subsection is upon the [juvenile].” *Id.* (internal quotation marks and citation omitted).

In this case, the transcript of proceedings from the 29 August 2023 hearing is enlightening. Both the prosecutor and the court counselor recount Kyle’s recurrent behavioral pattern—refusal to comply with “any of the terms of his probation” and hinderance of his own assessments. Kyle refused to comply with any evaluation, and at least two psychiatric residential treatment facilities refused to accept him due to his noncompliance. Kyle “kind of sabotaged his CCA last week or the week before.” The guardian of the juvenile “is trying to take [Kyle] to these appointments and he is refusing to go along[.]” “[N]ot only is [Kyle] not adhering to electronic monitoring but also to the rules and conditions of the home.” Again, the court counselor states, “[Kyle] was sort of sabotaging the CCA.” The trial court observed, “It sounds like the [evaluation] appointment not happening was to [Kyle’s] fault[.]”

The record reveals that Kyle not only failed to comply with the terms of his probation, but also impeded his own care review team and “kind of sabotaged” his own assessments. The State requested Level 3 disposition and commitment to a youth development center as a means to “keep [Kyle] in one place and actually do the evaluations.” On appeal, he complains that the trial court reversibly erred by failing to consider the same assessments that he impeded. Thus, we discern no clear violation of § 7B-2502 in this case, or reasonable possibility that a different result would have occurred had his care review team’s written recommendations been considered. *See also* N.C.G.S. § 15A-1443(c) (2023) (“A defendant is not prejudiced . . . by error resulting from his own conduct.”).

Finally, Kyle argues the trial court failed to make sufficient findings of fact to demonstrate that it considered the factors listed in N.C.G.S. § 7B-2501(c). We disagree.

Upon a finding that a juvenile violated the terms of probation, the trial court may order a new disposition at the next higher level on the dispositional chart, as long as the trial court does not order a Level 3 disposition for a minor offense. N.C.G.S. § 7B-2510(e) and (f) (2023). The dispositional order entered after probation revocation “shall be in writing and shall contain appropriate findings of fact and conclusions of law.” N.C.G.S. § 7B-2512(a) (2023). Our courts have routinely held that “the trial court is required to make findings demonstrating that it considered the N.C.G.S. § 7B-2501(c) factors in a dispositional order entered in a juvenile delinquency matter.” *In re V.M.*, 211 N.C. App. 389, 391–92 (2011). The trial court’s August Order must, therefore, contain sufficient findings of fact demonstrating that it considered:

- (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.G.S. § 7B-2501(c) (2023).

Here, the trial court made a finding regarding the seriousness of the offense by specifying that “the juvenile has been adjudicated for a violent or serious offense and Level 3 is authorized” by statute. The trial court considered the need to hold the juvenile accountable, stating: “[Kyle] was on probation (Level 2 disposition) and continually violated the terms of his E.M., up to and including the night before the court date at which he admitted being in willful violation of his probation.” Regarding public safety, the trial court considered the offense for the basis of Level 3 was a Class H felony—“Aid and Abet Attempted Common Law Robbery[.]” For degree of culpability, the trial court noted Kyle’s admission of “willful violation” in open court. Concerning rehabilitative and treatment needs, the trial court found, as previously discussed, that a predisposition report was not considered because Kyle failed to comply with any of the evaluations he was required to complete. Due to Kyle’s “continu[ous]” and “willful” violations of probation, the risk and needs assessment could not take place. Presuming, and without deciding that the trial court did not sufficiently address the fifth factor, the omission of the predisposition report or risk and needs assessment was not prejudicial. *See In re E.K.H.*, 226 N.C. at 451.

IV.

For the foregoing reasons, we determine that the trial court’s Level 3 dispositional order entered 30 August 2023 contains sufficient findings of fact necessary to demonstrate that it considered all relevant statutory factors and is otherwise free of prejudicial error.

IN RE: K.S.

Opinion of the Court

AFFIRMED.

Judges MURPHY and GRIFFIN concur.

Report per Rule 30(e).