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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-218

Filed 15 October 2024

Burke County, No. 23 JB 84

IN THE MATTER OF: T.O.C.

Appeal by Respondent from orders entered 16 October 2023 by Judge Mark L. Killian in Burke County District Court. Heard in the Court of Appeals 10 September 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Vanessa N. Totten, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Franke, for Respondent.*

GRIFFIN, Judge.

Respondent Thomas<sup>1</sup> appeals from the trial court's adjudication and disposition orders entered after the trial court found Respondent responsible for assault and battery and adjudicated him delinquent. Respondent argues the trial court erred by denying his Motion to Dismiss and by failing to state sufficient findings of fact in its dispositional order in accordance with the factors of N.C. Gen. Stat. § 7B-

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<sup>1</sup> We use a pseudonym for ease of reading and to protect the identity of the juvenile. See N.C. R. App. P. 42(b).

2501(c) (2023). After review, we affirm in part and remand in part for additional findings.

### **I. Factual and Procedural Background**

On 31 August 2023, the State filed two juvenile petitions alleging Respondent committed misdemeanor offenses of simple assault and injury to real property. The petitions were filed because of an incident that occurred on 5 August 2023. On the date of the incident, Respondent was residing with his mother when Respondent allegedly ripped a fan down from the ceiling. This led to an altercation between Respondent and his mother and resulted in Respondent running away from his mother's home late in the evening. Respondent's mother called 911 to report her son missing, and Respondent's brother called Mr. Fletcher, the mother's boyfriend, who helped them search for Respondent. Respondent's mother and Mr. Fletcher found Respondent walking down Washboard Road in Burke County. To prevent Respondent from walking further, Mr. Fletcher held Respondent in place until the police arrived. In response, Respondent kicked, bit, scratched, and spat on Mr. Fletcher. He also "hit [Mr. Fletcher] in the face with handfuls of gravel," and hit him in the head with a flashlight, busting its lens. Shortly thereafter, the police arrived at the scene and investigated the incident.

Respondent returned to his mother's home, but his stepmother picked him up to take him to his father's house. Respondent resided with his father until the adjudication hearing.

On 16 October 2023, the adjudication hearing was held before the Honorable Mark L. Killian in Burke County District Court. At the close of evidence, Respondent moved to dismiss arguing there was insufficient evidence for both offenses. The court denied both motions. The court adjudicated Respondent delinquent for simple assault, but did not adjudicate him delinquent for injury to real property. The adjudication order stated: “[t]he court did not find that the State met its burden of proof with respect to the charge of injury to real property. The court does find beyond a reasonable doubt that on or about 5 August 2023 the juvenile did, without lawful excuse, assault Mark Fletcher.” The court entered a level 1 disposition and placed Respondent on probation for six months with special conditions, including a change in parental custody. The court ordered Respondent to reside with his mother for the next three weekends, and then to resume the custody schedule pursuant to the parties’ underlying custody order. In the court’s disposition order, the findings indicated the court had received, considered, and incorporated by reference the contents of Respondent’s predisposition report, risk assessment, and needs assessment. It then stated the following in the “Other Findings” section of the disposition order:

Based on the risk and needs assessment reports submitted by the department of juvenile justice, the court finds that the juvenile has a pre-screen risk score of 41, which is high, a full assessment needs score of 74, which is moderate, and full assessment strengths score of 43, which is high moderate.

The court entered a separate “Juvenile Order” regarding the custody change but did not make any findings in that order.

Respondent filed a written notice of appeal on 16 October 2023 from both the adjudication and disposition orders entered on 16 October 2023 by the Honorable Mark L. Killian. Defendant timely appeals from both the adjudication and disposition orders.

## **II. Analysis**

### **A. Respondent’s Motion to Dismiss**

Respondent argues the trial court erred by denying his Motion to Dismiss for insufficient evidence. Specifically, Respondent contends the State failed to present substantial evidence of each element of simple assault because Respondent acted in self-defense.

We review a trial court’s denial of a defendant’s motion to dismiss *de novo*. *State v. Golder*, 374 N.C. 238, 249–50, 839 S.E.2d 782, 790 (2020). To survive a motion to dismiss for insufficient evidence, the State must present substantial evidence of (1) each essential element of the charged offense and (2) the defendant being the perpetrator of the offense. *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Smith*, 300 N.C. 71, 78–79, 265 S.E.2d 164, 169 (1980). Substantial evidence may be direct or circumstantial. *State v. Wright*, 275 N.C. 242, 249–50, 166 S.E.2d 681, 686 (1969). “Direct evidence

is that which is immediately applied to the fact to be proved, while circumstantial evidence is that which is indirectly applied, by means of circumstances from which the existence of the principal fact may reasonably be deduced or inferred.” *Id.* “Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence.” *State v. Thomas*, 350 N.C. 315, 343, 514 S.E.2d 486, 503 (1990) (quoting *State v. Stone*, 323 N.C. 447, 452, 373 S.E.2d 430, 433 (1988)).

“The test for sufficiency of the evidence on a motion to dismiss is the same whether the evidence is direct, circumstantial, or both,” and that is “whether a reasonable inference of the defendant’s guilt may be drawn from the evidence.” *State v. Bullard*, 312 N.C. 129, 160, 322 S.E.2d 370, 388 (1984); *State v. Powell*, 299 N.C. 95, 99, 261 S.E.2d 114, 117 (1980). “[I]t is not our duty to weigh the evidence, but to determine whether there was substantial evidence to support the adjudication, viewing the evidence in the light most favorable to the State, and giving it the benefit of all reasonable inferences.” *In re Heil*, 145 N.C. App. 24, 29, 550 S.E.2d 815, 819 (2001).

To convict a juvenile of simple assault, the State must prove two things beyond a reasonable doubt: (1) that the defendant assaulted the victim, and (2) that the defendant acted intentionally. *See* N.C.P.I. – CRIM. 208.41. Under North Carolina law, “[a]ssault is defined as ‘an overt act or attempt, with force or violence, to do some immediate physical injury to the person of another, which is sufficient to put a person

of reasonable firmness in fear of immediate physical injury.” *In re K.C.*, 226 N.C. App. 452, 458, 742 S.E.2d 239, 244 (2013) (quoting *State v. Bagley*, 183 N.C. App. 514, 526, 644 S.E.2d 615, 623 (2007)). The focus of this rule is on “the intent or state of mind of the person accused.” *State v. Roberts*, 270 N.C. 655, 658, 155 S.E.2d 303, 305 (1967). While “[s]elf-defense, when asserted in a criminal or a juvenile delinquency case,” is not dispositive for dismissing a juvenile case, evidence of self-defense should be considered along with other evidence to determine whether there is substantial evidence of each element of the offense. *In re Wilson*, 153 N.C. App. 196, 198, 568 S.E.2d 862, 863 (2002). “If the case does not involve a jury, as in a delinquency case, the trial court is to consider the evidence of self-defense and, if it finds the evidence persuasive, enter a finding that the allegations of the petition are ‘not proved.’” *Id.* See N.C. Gen. Stat. § 7B–2411 (2023).

Here, the State presented substantial evidence to support Respondent’s conviction of assault. Respondent’s mother testified Respondent kicked, bit, scratched, and spat on Mr. Fletcher. She also stated that Respondent “hit [Mr. Fletcher] in the face with handfuls of gravel,” and hit him in the head with a flashlight, busting the lens. Mr. Fletcher testified Respondent kicked him, hit him, threw gravel on his face, and hit him in the head with a flashlight. Additionally, Respondent admitted and testified he hit and kicked Mr. Fletcher. Thus, the testimony given by all three witnesses supports the simple assault offense. The

question is whether Respondent was acting in self-defense when he assaulted Mr. Fletcher.

“The theory of self-defense entitles an individual to use ‘such force as is necessary or apparently necessary to save himself from death or great bodily harm. . . . A person may exercise such force if he believes it to be necessary and has reasonable grounds for such belief.’” *State v. Moore*, 111 N.C. App. 649, 653, 432 S.E.2d 887, 889 (1993) (quoting *State v. Marsh*, 293 N.C. 353, 354, 237 S.E.2d 745, 747 (1977). “If an assault does not threaten death or great bodily harm, the victim of the assault may not use deadly force to protect himself from the assault.” *Id.* However, “in the absence of an intent to kill, a person may fight in his own self-defense to protect himself from bodily harm or offensive physical contact, even though he is not put in actual or apparent danger of death or great bodily harm.” *Id.* (citations and internal quotations omitted). The use of force, however, must still be reasonable under the circumstances. *State v. Anderson*, 230 N.C. 54, 56, 51 S.E.2d 895, 897 (1949). The right of self-defense only applies to the person who is “without fault in provoking, or engaging in, or continuing a difficulty with another.” *Id.*

Here, Respondent was not “without fault in provoking, or engaging in, or continuing a difficulty with another” because he was running away from home. Respondent left the home late at night, after engaging in a dispute with his mother. Once Respondent’s mother and Mr. Fletcher found him on the side of the road, Mr. Fletcher held him in place to prevent him from going further.

In *In re Pope*, this Court held that a juvenile's self-defense claim failed because the juvenile "engaged in and continued a difficulty" with the principal by attempting to run away from school after being told not to escape the building. 151 N.C. App. 117, 120, 564 S.E.2d 610, 613 (2002). This Court in *Pope* explained that the principal's actions of lifting the juvenile and carrying him to the office were reasonable "to protect [the] juvenile's safety and to prevent [him] from leaving the school premises." *Id.* at 118, 120, 564 S.E.2d at 611, 613. Further, the juvenile's response of hitting and scratching the principal was unreasonable as this was not a situation entitling him to use self-defense. *Id.*

Even more compelling than the facts in *Pope*, here, Respondent *did* escape his home, and Respondent's mother and Mr. Fletcher found him walking down a road late at night. Mr. Fletcher's actions of holding Respondent in place to prevent him from going further were reasonable to protect his safety, and Respondent's actions of kicking, hitting, spitting, scratching, and throwing gravel at Mr. Fletcher were unreasonable.

Additionally, Respondent contends he was experiencing a health issue during the incident as his blood sugar was over 700. Respondent argues that evidence regarding his diabetes on the night of the incident was relevant to the question of whether the State proved that he acted intentionally. However, Respondent presented no evidence to the trial court to support this contention. *See State v. Chapman*, 359 N.C. 328, 378, 611 S.E.2d 794, 829 (2005) (holding a defendant who



wishes to contest “he did not form a deliberate and premeditated intent to kill has the burden of producing evidence, or relying on evidence produced by the State, of his intoxication”); *See In re Pope*, 151 N.C. App. at 120, 564 S.E.2d at 613 (“[T]o prevail on a self-defense claim, *[the] juvenile must show* that he was without fault in ‘provoking, engaging in, or continuing a difficulty with another.’” *Anderson*, 230 N.C. at 56, 51 S.E.2d at 897) (emphasis added)). Here, Respondent did not present any medical information to prove he was experiencing extremely high blood sugar levels, nor did he present any expert testimony to demonstrate the adverse effects of high blood sugar. Thus, Respondent did not present sufficient evidence to the trial court to overcome the State’s evidence and prove he did not have the requisite intent to commit the assault.

Viewing the evidence in the light most favorable to the State, the trial court did not err in adjudicating Respondent delinquent and denying Respondent’s Motion to Dismiss.

#### **B. Findings of fact in the dispositional order**

Respondent argues the trial court erred by failing to make sufficient findings of fact in its dispositional order because it failed to consider each of the factors listed in N.C. Gen. Stat. § 7B-2501(c). Additionally, Respondent argues the trial court did not make any findings to support entering a new custody order. We agree with Respondent that the factors were not appropriately addressed in the findings of fact, and there were no findings to support entering a new custody order. We remand for

the trial court to consider the five factors set forth in N.C. Gen. Stat. § 7B-2501(c) and to make findings to support entering a new custody order.

***1. Findings regarding the disposition***

In a juvenile delinquency action, “[t]he dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law.” N.C. Gen. Stat. § 7B-2512(a) (2023). In the findings of fact section in a dispositional order, trial courts are instructed to consider the five factors enumerated in N.C. Gen. Stat. § 7B-2501(c).

The plain language of the statute reads:

(c) In choosing among statutorily permissible dispositions, the court shall select the most appropriate disposition both in terms of kind and duration for the delinquent juvenile. Within the guidelines set forth in G.S. 7B-2508, the 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;
- (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.

This Court has issued conflicting opinions on what is precisely required in the findings of fact section of a dispositional order. *See In re V.M.*, 211 N.C. App. 389, 392, 712 S.E.2d 213, 215–16 (2011) (holding the trial court’s written order contained

insufficient findings because it did not consider *all* of the factors required by N.C. Gen. Stat. § 7B-2501(c)); *Matter of D.E.P.*, 251 N.C. App. 752, 759, 796 S.E.2d 509, 514 (2017) (holding the findings considered all five factors enumerated in N.C. Gen. Stat. § 7B-2501(c), but stating “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)”).

Despite these differences, this Court has primarily required the findings in a dispositional order to consider all five factors enumerated in N.C. Gen. Stat. § 7B-2501(c). *See In re I.W.P.*, 259 N.C. App. 254, 264, 815 S.E.2d 696, 704 (2018) (“[W]e hold that a trial court must consider each of the factors in Section 7B-2501(c) when entering a dispositional order.”). The issue, though, is whether trial courts are required to state facts in the findings section of a disposition order that specifically support the five statutory factors or if the factors can be sufficiently addressed “elsewhere in the order or through incorporated documents.” *Id.* at 264, 815 S.E.2d at 704.

In one line of cases, this Court has held that the five factors can be sufficiently addressed through incorporated documents. *See In re I.W.P.*, 259 N.C. App. at 264, 815 S.E.2d at 704 (holding the dispositional order failed to address two of the factors in section 7B-2501(c) because there were no additional findings regarding the “seriousness of the offense and the culpability of the juvenile,” and the “supplemental reports and assessments” did not address them); *In re J.A.D.*, 283 N.C. App. 8, 24,

872 S.E.2d 374, 387 (2022) (holding the trial court did not make any findings addressing the factors in its disposition form, and the record on appeal which includes the juvenile’s “predisposition report, risks assessment, and needs assessment that were incorporated by reference into the trial court’s written disposition order, did not sufficiently address each of the N.C. Gen. Stat. § 7B-2501(c) factors”). Notably, in both cases, the disposition orders were deficient for lack of sufficient findings, *but* the incorporated documents were considered as part of the primary document in determining whether the trial court addressed all five factors. *See generally In re A.G.J.*, 291 N.C. App. 322, 331, 895 S.E.2d 870, 875 (2023) (Stroud, J., dissenting); *I.W.P.*, 259 N.C. App. at 264, 815 S.E.2d at 704; *J.A.D.*, 283 N.C. App. at 24–25, 872 S.E.2d at 387.

In another line of cases, this Court has held that the five factors cannot be sufficiently addressed through incorporated documents. *See In re N.M.*, 290 N.C. App. 482, 485, 892 S.E.2d 643, 646 (2023) (“Although the information regarding the statutory factors may be included in the reports given to the court . . . the trial court is vested with the responsibility of making oral and written findings showing its consideration of the five factors contained in N.C. Gen. Stat. § 7B-2501(c).”). Further, the holding in *N.M.* specifies that the “Other Findings” section of a disposition order “must be filled with findings made by the trial court regarding the five factors required by the statute, otherwise it is reversible error.” *Id.* at 485, 892 S.E.2d at 646. Following the holding in *N.M.*, this Court in *In re A.G.J.*, held that the findings

listed in the “Other Findings” section of the disposition order were insufficient, but also noted that even though the trial court had “received, considered, and incorporated the contents of the predisposition report, risk assessment, and needs assessment . . . [a]s in *N.M.*, incorporating the reports by reference is insufficient to meet the statutory requirements set forth in Section 7B-2501(c).” *In re A.G.J.*, 291 N.C. App. at 326, 895 S.E.2d at 873. Thus, in this line of cases, this Court rejected considering documents that were incorporated by reference in determining whether the trial court addressed all five factors. *N.M.*, 290 N.C. App. at 485, 892 S.E.2d at 646; *A.G.J.*, 291 N.C. App. at 326, 895 S.E.2d at 873.

In disagreeing with the majority opinion in *A.G.J.*, the dissent argues the majority prioritizes form over substance, and points to our Supreme Court’s instruction that “where there is a conflicting line of cases, a panel of this Court should follow the older of those two lines.” *A.G.J.*, 291 N.C. App. at 328–33, 895 S.E.2d at 873–76 (Stroud, J., dissenting). The dissenting opinion states it would rely on the older line of cases, specifically pointing to the case of *J.A.D.* instead of the more recent case of *N.M.* *Id.* at 332, 895 S.E.2d at 876.

We agree with the dissenting opinion of *A.G.J.* in that we are to follow the older line of cases, and we are a Court that reviews orders based upon their substance, not technical form. *See Matter of Civ. Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) (“Where 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.”); *see also State v. Gardner*, 225 N.C. App. 161, 169, 736 S.E.2d 826, 832 (2013) (“[O]ur Supreme Court has clarified that, where there is a conflicting line of cases, a panel of this Court should follow the older of those two lines.” *In re R.T.W.*, 359 N.C. 539, 542 n. 3, 614 S.E.2d 489, 491 n. 3 (2005)).

This Court is to prioritize substance over form. *See In re A.U.D.*, 373 N.C. 3, 11, 832 S.E.2d 698, 703 (2019) (holding that remanding a case to the trial court for it to make findings on uncontested issues would be an “elevation of form over substance”); *see also State v. Armstrong*, 232 N.C. 727, 729, 62 S.E.2d 50, 51 (1950) (“The law favors directness over indirectness; simplicity over complexity; brevity over prolixity; clarity over obscurity; substance over form.”).

Accordingly, we hold the five factors enumerated in N.C. Gen. Stat. § 7B-2501(c) can be sufficiently addressed in documents incorporated by reference in a trial court’s written order.

In this case, the trial court indicated in its findings that it had received, considered, and incorporated by reference Respondent’s predisposition report, risk assessment, and needs assessment. It then stated the following in the “Other Findings” section of the disposition order:

Based on the risk and needs assessment reports submitted by the department of juvenile justice, the court finds that the juvenile has a pre-screen risk score of 41, which is high, a full assessment needs score of 74, which is moderate, and full assessment strengths score of 43, which is high

moderate.

These findings merely state the scores on those assessments and direct us to the documents themselves. Stating a score on an assessment without further explanation is not a finding regarding the: (1) seriousness of the offense; (2) the need to hold the juvenile accountable; (3) the importance of protecting the public; (4) the degree of the juvenile's culpability; and (5) the juvenile's rehabilitative and treatment needs. N.C. Gen. Stat. § 7B-2501(c). Additionally, the documents themselves do not sufficiently address each of the five factors.

The present case is similar to the facts of *J.A.D.* In *J.A.D.*, the trial court indicated that it had “received, considered, and incorporated by reference [the juvenile’s] predisposition report, risks assessment, and needs assessment, and that it was required to order a Level 1 disposition.” *J.A.D.*, 283 N.C. App. at 24, 872 S.E.2d at 387. There, the trial court used the same Juvenile Level 1 Disposition form as in the present case, but did not list any findings in the “Other Findings” Section to support the five factors pursuant to N.C. Gen. Stat. § 7B-2501(c). *Id.* This Court noted that “[t]he record on appeal includes [the juvenile’s] predisposition report, risks assessment, and needs assessment that were incorporated by reference into the trial court’s written disposition order, but these documents also do not sufficiently address each of the N.C. Gen. Stat. § 7B-2501(c) factors.” *Id.* Thus, this Court did in fact consider the documents incorporated by reference in the trial court’s disposition order *but* held the documents did not sufficiently address each of the five factors, and as a

result held the disposition order to be deficient. *Id.*

While we recognize the trial court here did list some findings, the findings only state the risk and needs assessment scores. These findings direct us to the predisposition report, risk assessment, and needs assessment, which, as stated in *J.A.D.*, do not sufficiently address each of the five N.C. Gen. Stat. § 7B-2501(c) factors. *Id.*

## ***2. Findings regarding custody***

Additionally, the trial court, in contemplating Respondent's disposition, entered a supplemental custody order requiring Respondent to reside with his mother for the following three weekends. After completing that schedule, the parties were instructed to resume the custody schedule pursuant to their underlying custody order. The supplemental custody order did not contain any findings, and the findings in the dispositional order did not address a change in custody. *See In re Ferrell*, 162 N.C. App. 175, 175–77, 589 S.E.2d 894, 894–895 (2004) (holding that in transferring custody from mother to father, “the trial court failed to make findings of fact to support the change of custody” in the dispositional order). Here, Respondent's parents had an existing custody order in place but the trial court *sua sponte* changed the custody schedule and entered a new order. *See Jackson v. Jackson*, 192 N.C. App. 455, 460, 665 S.E.2d 545, 549 (2008) (quoting *Kennedy v. Kennedy*, 107 N.C. App. 695, 703, 421 S.E.2d 795, 799 (1992) (“The trial court may not *sua sponte* enter an order modifying a previously entered custody decree.”)); *but see Ferrell*, 162 N.C. App. at



175–77, 589 S.E.2d at 894–95 (“[T]he trial court has discretion under N.C. Gen. Stat. § 7B-2506 (2001) in determining the proper disposition for a delinquent juvenile . . . the trial court shall select a disposition . . . based upon the factors set forth under N.C. Gen. Stat. § 7B-2501(c).”). Even though this Court has established that a trial court cannot *sua sponte* enter a new custody order absent a motion from one of the parties, a trial court can, in a juvenile delinquency case, select a disposition, including a change in custody, if it is one that would serve to “protect the public and meet the needs and best interests of the juvenile,” based upon the factors of N.C. Gen. Stat. § 7B-2501(c). *Id.* at 176–77, 589 S.E.2d at 895.

In recognizing that trial courts have the ability make a custody change in a juvenile delinquency order, we note there also must be sufficient findings to support the trial court’s conclusions of law. *Id.* Like *Ferrell*, here, there were no findings in the disposition order that addressed custody, much less findings that would support a custody transfer. Thus, we remand the disposition order and instruct the trial court to consider evidence that would support entering a new custody order.

### **III. Conclusion**

We hold the trial court properly denied Respondent’s Motion to Dismiss but erred by failing to make sufficient findings of fact in the disposition order. The matter is remanded to address the lack of findings. The trial court may hear additional evidence on remand.

**AFFIRMED IN PART; REMANDED IN PART.**

IN RE: T.O.C.

*Opinion of the Court*

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).