N.C. Court of Appeals: Disposition Orders Do Not Require Written Findings on the G.S. 7B-2501(c) Factors

In multiple cases, the Court of Appeals has found reversible error when a trial court has entered a disposition in a delinquency case without including written findings on the factors set out in G.S. 7B-2501(c). The number and frequency of reversals on this ground has even caused the State to concede error on appeal. *See, e.g.*, *In re V.M.*, 211 N.C. App. 389, 391 (2011). Yesterday, the court surprisingly changed course in a published decision, *In re D.E.P.*, __ N.C. App. __ (Feb. 7, 2017), which held that the Juvenile Code does ***not*** require the trial court to "make findings of fact that expressly track[] each of the statutory factors listed in [G.S.] 7B-2501(c)." The decision raises some obvious questions. Can one panel of the Court of Appeals overrule another on the same issue? And, how will future cases be impacted?

The "Old" Rule Established by Prior Cases

G.S. 7B-2512(a) mandates that a disposition order in a delinquency case "shall be in writing and shall contain *appropriate findings of fact* and conclusions of law." G.S. 7B-2501(c) also requires the trial court to select a disposition "that is designed to protect the public and to meet the needs and best interests of the juvenile *based upon*" consideration of five, specific factors. These factors include:

(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 case, and

(5) the juvenile's rehabilitative and treatment needs.

Prior published decisions of the Court of Appeals have interpreted the language in G.S. 7B-2512 to require the trial court to make written findings of fact demonstrating that it considered these factors when selecting an appropriate disposition. *See, e.g., In re K.C.*, 226 N.C. App. 452 (2013) (disposition order reversed and remanded for insufficient findings as to the G.S. 7B-2501(c) factors); *In re J.J., Jr.*, 216 N.C. App. 366 (2011) (same); *In re V.M.*, 211 N.C. App. 389 (2011) (same). Even before issuing a published decision on this issue, the court had reached the same conclusion in several unpublished cases. *See, e.g., In re J.C.*, __ N.C. App. __ (March 17, 2009) (unpublished); *In re K.D.A.*, __ N.C. App. __ (June 17, 2008) (unpublished); *In re M.A.R.*, __ N.C. App. __ (March 4, 2008) (unpublished).

The Court of Appeals has indicated that to comply with G.S. 7B-2512, the trial court must do more than simply check boxes beside the pre-printed findings on the juvenile disposition order, including the box indicating that the court "had received, considered, and incorporated by reference the predisposition report, risk assessment, and needs assessment[.]" *V.M.*, 211 N.C. App. at 392. Instead, the court has instructed trial courts to include additional findings in the area of the form designated for "Other Findings" related to the factors in G.S. 7B-2501(c). *See* Form AOC-J-462, side one ("Juvenile Level 3 Disposition and Commitment Order").

Prior decisions also invalidated disposition orders that included findings which addressed some but not all of the statutory factors. *See, e.g.*, *K.C.*, 226 N.C. App. at 462-63 (assuming *arguendo*, that the trial court's characterization of the offense as "minor" and its statements that the juvenile needs to learn the significance and consequences of victimizing people addressed the first two factors, the record failed to show the trial court considered the last three factors). Given the rigid requirements imposed by the appellate court, this has become an important training issue for judges who preside over juvenile delinquency courts. After *D.E.P.*, judges will likely have even more questions about the requirements for entering a valid disposition order.

The "New" Rule Established by *D.E.P.*

In *D.E.P.*, the juvenile challenged his Level 3 disposition based on the trial court's alleged failure to include appropriate findings of fact in the disposition order to address all of the factors in G.S. 7B-2501(c). Instead of conceding the error, the State argued that nothing in G.S. 7B-2512 requires the trial court to make written findings specifically referencing these factors. Despite its prior decisions to the contrary, the court agreed with the State.

The court acknowledged that it has no authority to overrule another panel of the Court of Appeals on the same issue, *see In re Appeal from Civil Penalty*, 324 N.C. 373 (1989), but concluded that its prior decisions do not directly hold that it is reversible error if the trial court's findings do not address the statutory factors. Instead, the court explained that many of those prior decisions resulted from a mischaracterization of the holding in *In re Ferrell*, 162 N.C. App. 175 (2004), and subsequent repetition of this error.

In *Ferrell*, the court set aside the portion of a disposition order that transferred custody of the juvenile from his mother to his father. The opinion discussed the requirements of G.S. 7B-2501(c) and G.S. 7B-2512 before concluding that "the transfer of custody was not supported by appropriate findings of fact in the dispositional order[.]" *Id.* at 177. However, *Ferrell* did not involve any consideration of the court's determination of the appropriate disposition level nor did it discuss the extent to which a disposition order must reference the factors in G.S. 7B-2501(c).

In *V.M.*, the first published case to address this issue, the court stated that it was reversing the disposition because "we have *previously held* (emphasis added) that the trial court is required to make findings demonstrating that it considered the [G.S.] 7B-2501(c) factors in a dispositional

order[,]" and cited *Ferrell* as the relevant authority. Although *Ferrell* did not actually decide the issue of the trial court's duty to make findings referencing the G.S. 7B-2501(c) factors, this "mischaracterization" has been repeated in multiple cases. Based on its conclusion that neither *Ferrell* nor *V.M.* decided the issue, the court concluded that its ruling does not overrule *Ferrell* or any of the later cases that relied upon *Ferrell*.

After reviewing the statutory requirements and case law related to disposition orders, the court held that it found "no support for a conclusion that in every case the 'appropriate' findings of fact must make reference to all of the factors listed in [G.S.] 7B-2501(c), including those factors that were irrelevant to the case or in regard to which no evidence was introduced." In any event, the court reviewed the actual findings and determined that the order did in fact demonstrate consideration of these factors.

The Impact on Future Cases

Since one panel of the Court of Appeals cannot overrule another panel on the same issue, there appears to be a conflicting line of cases regarding the trial court's duty to enter written findings on the G.S. 7B-2501(c) factors. *V.M.* holds that it is reversible error for the trial court not to make the findings and *D.E.P*. holds that it is not reversible error. Which decision is controlling?

The North Carolina Supreme Court has emphasized that a subsequent panel of the Court of Appeals is bound by a prior panel's interpretation of North Carolina law, even when it disagrees with the earlier panel's opinion. *State v. Jones*, 358 N.C. 473, 487 (2004) ("While we recognize that a panel of the Court of Appeals may disagree with, or even find error in, an opinion by a prior panel and may duly note its disagreement or point out that error in its opinion, the panel is bound by that prior decision until it is overturned by a higher court."). Thus, if a true conflict exists, the earlier line of cases should control, which means findings of the five G.S. 7B-2501(c) factors must be made.

However, because the court in *D.E.P.* expressly distinguishes its holding from prior decisions, which it contends "mischaracterized" the law, some practitioners may dispute that there is an actual conflict. In that case, findings as to each of the G.S. 7B-2501(c) factors are not required. At some point, the Supreme Court may need to resolve the issue, if these decisions cannot be reconciled.

What we know from both cases is that the order must contain "appropriate findings of fact and conclusions of law" to support the disposition, and the court must consider the five factors found at G.S. 7B-2501(c). Without knowing how to read these cases together, as a best practice, trial court judges may want to continue to make findings demonstrating its consideration of each of the G.S. 7B-2501(c) factors. But, failure to do so under *D.E.P*. is not reversible error.

I will continue to think about how the holdings of *V.M.* and *D.E.P.* can be reconciled. If you have

thoughts, please share!