IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-685

Filed: 15 January 2019

Mecklenburg County, No. 17 JB 396

IN THE MATTER OF: E.M.

Appeal by juvenile from order entered 30 January 2018 by Judge Louis A. Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 13 November 2018.

*Attorney General Joshua H. Stein, by Assistant Attorney General Marie H. Evitt, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Hannah H. Love, for juvenile.*

ZACHARY, Judge.

Evan Miller[1] appeals from an order committing him to placement in a youth development center and transferring his legal custody to the Mecklenburg County Department of Social Services, Youth and Family Services Division. The trial court was presented with evidence that Evan was mentally ill and failed to refer him to the area mental health services director for appropriate action as prescribed by statute. As a result, we vacate the trial court's order and remand for further action.

**Background**

[1] We use a pseudonym to protect the identity of the minor involved in this case.

On 20 July 2017, the State filed petitions against Evan Miller for common-law robbery and being an undisciplined juvenile. The State filed two more petitions against Evan on 6 September 2017 alleging common-law robbery and conspiracy to commit common-law robbery. Evan admitted to the offense of conspiracy to commit common-law robbery in exchange for dismissal of all other charges at a delinquency hearing on 23 October 2017 in Mecklenburg County District Court before the Honorable David H. Strickland. Judge Strickland entered a Level 2 disposition and placed Evan on probation for 12 months. The conditions of Evan's probation were to: (1) "Remain on good behavior and not violate any . . . law"; (2) "Not violate any reasonable and lawful rules of the juvenile's parent, guardian, or custodian"; and (3) "Attend school each and every day, all classes, not have any unexcused tardies, and not be suspended or excluded from school."

A motion for hearing was filed on 14 November 2017 alleging that Evan violated his probation by being suspended from school, together with leaving his home without permission and being away for up to three days. The motion for review was continued until January 2018. The Honorable Louis A. Trosch heard the motion for review on 26 January 2018. At the hearing, Evan admitted the probation violations. That same day, Judge Trosch entered a Level 3 disposition and committed Evan to a Youth Development Center for a minimum period of six months, and continuing until his eighteenth birthday at the maximum. Judge Trosch also ordered

that the Mecklenburg County Department of Social Services, Youth and Family Services Division assume custody of Evan. Evan filed timely notice of appeal on 2 February 2018.

**Discussion**

Evan argues on appeal that the trial court erred by: (1) entering a disposition against Evan without referring him to the area mental health services director for appropriate action after being presented with evidence that Evan was mentally ill; (2) making a finding that Evan had been involved in criminal activity while on probation when no competent evidence supported that finding; and (3) transferring Evan's legal custody to the Department of Social Services. After review, we conclude that the trial court failed to refer Evan to the area mental health services director, as prescribed by statute, after being presented with evidence that Evan was mentally ill.

The Juvenile Code governs management of cases involving undisciplined and delinquent juveniles. *See* N.C. Gen. Stat. §§ 7B-1500 to 7B-2706 (2017). The purpose of these procedures is to, *inter alia*, "deter delinquency and crime, including patterns of repeat offending . . . [b]y providing appropriate rehabilitative services to juveniles." *Id.* § 7B-1500(2)(b). Disposition of cases involving juveniles should "[p]rovide the appropriate consequences, treatment, training, and rehabilitation to assist the juvenile toward becoming a nonoffending, responsible, and productive member of the

community." *Id.* § 7B-2500(3). When a juvenile comes before a trial court, "the court *may* order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert *as may be needed* for the court to determine the needs of the juvenile." *Id.* § 7B-2502(a) (emphasis added). However, when evidence of mental health issues arise, the authority to order the evaluation of a juvenile by certain medical professionals is no longer discretionary, but is required:

> If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court *shall* refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. . . . The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs.

*Id.* § 7B-2502(c) (emphasis added).

The use of the word "shall" indicates a statutory mandate that the trial court refer the juvenile to the area mental health services director for appropriate action, and failure to do so is error. *See In re J.R.V.*, 212 N.C. App. 205, 208, 710 S.E.2d 411, 413 (2011) ("The use of the word 'shall' by our Legislature [is] . . . a mandate, and failure to comply with this mandate constitutes reversible error."), *disc. review improvidently allowed*, 365 N.C. 416, 720 S.E.2d 387 (2012). When a juvenile argues to this Court that the trial court failed to follow a statutory mandate, the error is preserved and is a question of law reviewed *de novo*. *In re G.C.*, 230 N.C. App. 511,

515-16, 750 S.E.2d 548, 551 (2013). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *Id.* at 516, 750 S.E.2d at 551.

In *In re Mosser*, 99 N.C. App. 523, 393 S.E.2d 308 (1990), a juvenile was committed to confinement despite evidence presented to the trial court that he was mentally ill. At the juvenile's dispositional hearing, the trial court heard evidence that "the juvenile had been diagnosed as manic-depressive and was being treated with the drug lithium," *id.* at 524, 393 S.E.2d at 309, and the trial court included that evidence in its findings of fact. *Id.* at 525, 393 S.E.2d at 310. The only basis for this evidence was "a statement made to the trial court by the mother of the juvenile." *Id.* at 528, 393 S.E.2d at 311. While this Court in *Mosser* was applying the former juvenile code, the statute in that case and the one in this case are substantially similar. *Compare* N.C. Gen. Stat. § 7A-647(3) (1989) ("If the judge believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is mentally retarded the judge shall refer him to the area mental health, mental retardation, and substance abuse director for appropriate action.") *with* N.C. Gen. Stat. § 7B-2502(c) (2017) ("If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action."). The only difference between the two

statutes is the elimination of the gender-specific term "him" and more appropriate language referring to those with mental disabilities. Thus, *Mosser*'s analysis and reasoning are applicable to this case. This Court held that "the record does not reflect a genuine inquiry into the nature of the needs of the juvenile," *Mosser*, 99 N.C. App. at 528, 393 S.E.2d at 311, and that the "evidence of mental illness compels further inquiry by the trial court *prior to entry of any final disposition*." *Id.* (emphasis added). The trial court's failure to "gain the advice of a medical specialist . . . precludes commitment to the Division of Youth Services." *Id.* at 528, 393 S.E.2d at 311-12. As a result, this Court vacated the juvenile's commitment and remanded for another dispositional order. *Id.* at 529, 393 S.E.2d at 312.

Here, the record before the trial court revealed the following mental health issues with regard to Evan: 1) a Risk and Needs Assessment filed 19 October 2017 indicated that a facility holding Evan entertained the idea of having him involuntarily committed but decided against it and that Evan had received "a plethora of treatment services"; 2) a Risk and Needs Assessment filed 5 December 2017 stated that "[Evan] has been exposed to a number of services to address his mental health needs, development of appropriate social skills, [and] pro-social activities"; 3) a Risk and Needs Assessment filed 25 January 2018 advised that Evan's behavior indicated "a need for additional mental health . . . treatment"; and 4) a Clinical Disposition Report prepared by a specialist hired by Evan's counsel asserted

that Evan was "having major behavioral issues" and had been diagnosed with Conduct Disorder, Attention Deficit Disorder, Unspecified Depressive Disorder, and Cannabis Use Disorder.

At the hearing on the motion for review, substantial evidence was presented to the trial court establishing Evan's mental health issues. Evan's adoptive father testified that Evan had been "discharged from intensive therapy," and has "been in five different clinical homes. He's had therapists, outpatient, inpatient, [and] intensive in-home" services. Evan's attorney noted that "behavioral health and mental health services" were offered to Evan and that "his trauma [had] not [been] adequately treated." Evan's counsel also stated, "he has had a lot of treatment options at this point, but they just haven't worked." Even the trial court acknowledged that Evan had been to "twelve different mental facilities," and contemplated ordering the Youth Development Center to provide mental health services to Evan.

The trial court was presented with a plethora of evidence demonstrating that Evan was mentally ill—much more evidence than was presented in *Mosser*. Faced with any amount of evidence that a juvenile is mentally ill, a trial court has a statutory duty to "refer the juvenile to the area mental health . . . services director for appropriate action." N.C. Gen. Stat. § 7B-2502(c). It is possible that the trial court was under the misapprehension that such a referral was unnecessary, because

Evan had already received significant mental health services prior to this disposition and because the trial court recognized that it could order mental health services for Evan during his commitment. However, the statute envisions the area mental health services director's involvement in the juvenile's disposition and "responsib[ility] for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs." *Id.* That did not happen in this case, and the area director was unable to participate in crafting an appropriate disposition for Evan. Therefore, we vacate Evan's disposition and remand for a new dispositional hearing, and do not address his second and third assignments of error.

**Conclusion**

The trial court failed to refer Evan to the area mental health services director after being presented with evidence that Evan was mentally ill, as required by statute. Accordingly, we vacate Evan's disposition and remand for a new hearing that includes a referral to the area mental health services director. Evan's custody shall remain with the Department of Social Services.

VACATED AND REMANDED.

Judges BRYANT and DILLON concur.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-277

Filed: 17 September 2019

Wake County, No. 17 JB 488

IN THE MATTER OF: E.A.

Appeal by respondent-juvenile from order entered 12 October 2018 by Judge Robert Rader in Wake County District Court. Heard in the Court of Appeals 5 September 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Janelle E. Varley, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Amanda S. Hitchcock, for respondent-appellant juvenile.*

ZACHARY, Judge.

Respondent-juvenile "Evan"[1] appeals from a disposition and commitment order adjudicating him to be a Level 2 delinquent juvenile. Evan argues on appeal that, after being presented with evidence that he was mentally ill, the trial court erred by failing to refer him to the area mental health services director. After careful review, we vacate the disposition and commitment order and remand to the trial court for a referral to the area mental health services director.

**Background**

[1] We employ a pseudonym to protect the identity of Respondent, a minor.

The relevant facts are few. Between 14 December 2017 and 5 January 2018, a Wake County juvenile court counselor approved a petition alleging that Evan (1) committed an assault with a deadly weapon with intent to kill; (2) possessed stolen property; and (3) committed malicious conduct upon a government official by spitting on him. Evan admitted to the charges of assault with a deadly weapon with intent to kill and malicious conduct, and the State dismissed the charge of possession of stolen property. The Honorable Craig Croom adjudicated Evan as delinquent, entered a Level 2 disposition, and ordered twelve months' probation. One month later, a juvenile court counselor filed a motion for review, alleging that Evan violated his probation. On 9 October 2018, the motion for review came on for hearing before the Honorable Robert Rader in Wake County District Court. Judge Rader found Evan in willful violation of his probation, revoked his probation, and ordered that Evan be committed to a youth development center with the Division of Adult Correction and Juvenile Justice for an indefinite period, to end no later than Evan's eighteenth birthday.

**Grounds for Appellate Review**

Preliminarily, we address our jurisdiction to consider the merits of Evan's appeal. Evan filed written notice of appeal on 10 October 2018. Typed into the trial court's order at the bottom of the page is the date "10/9/2018." However, the order is

additionally—and quite noticeably—stamped with "2018 OCT 12 A 11:07," indicating that the order was filed *after* Evan filed his notice of appeal on 10 October.

Before a party may file notice of appeal, there must first be an entry of judgment. *See* N.C. Gen. Stat. § 1A-1, Rule 58 (2017) ("[A] judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court pursuant to Rule 5."). "When a defendant has not properly given notice of appeal, this Court is without jurisdiction to hear the appeal." *See State v. Webber*, 190 N.C. App. 649, 651, 660 S.E.2d 621, 622 (2008) (quotation marks omitted). Consequently, Evan would need to request—and we would need to issue—a writ of certiorari to have his case reviewed. *See* N.C.R. App. P. 21(a). No petition for writ of certiorari was ever filed. However, this Court has the discretionary authority, pursuant to Appellate Rule 21, to "treat the purported appeal as a petition for writ of certiorari and grant it in our discretion." *Luther v. Seawell*, 191 N.C. App. 139, 142, 662 S.E.2d 1, 3 (2008).

For reasons more fully explained below, we find the facts of Evan's case worthy of treating his brief as a petition for writ of certiorari. We also note that the State has not raised this jurisdictional issue in its brief, and we do not contemplate any resulting prejudice to the State. Thus, in our discretion, we invoke this Court's authority pursuant to our caselaw and Appellate Rule 21, and proceed to the merits of Evan's appeal.

**Discussion**

Evan argues on appeal that the trial court erred by failing to refer him to the area mental health services director, after being presented with evidence that Evan was mentally ill. We agree.[2]

Prior to disposition in a juvenile delinquency action, "the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile." N.C. Gen. Stat. § 7B-2502(a) (2017). When presented with evidence that the juvenile is mentally ill, the trial court is required to take further action:

> If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent, guardian, or custodian. If the parent, guardian, or custodian refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the court may be

[2] Because the trial court's failure to refer Evan to the area mental health services director is dispositive, we need not address his remaining arguments on appeal.

> substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by the court and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of the juvenile's treatment, the hospital shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

*Id.* § 7B-2502(c). Notwithstanding a party's failure to object at trial, the trial court's violation of a statutory mandate is reversible error, reviewed *de novo* on appeal. *In re E.M.*, ___ N.C. App. ___, ___, 823 S.E.2d 674, 676, *disc. review denied*, ___ N.C. ___, ___ S.E.2d ___ (2019).

"Faced with any amount of evidence that a juvenile is mentally ill, a trial court has a statutory duty to refer the juvenile to the area mental health services director for appropriate action." *Id.* at ___, 823 S.E.2d at 677 (quotation marks and ellipses omitted). Section 7B-2502(c) "envisions the area mental health services director's involvement in the juvenile's disposition and responsibility for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs." *Id.* at ___, 823 S.E.2d 677-78 (brackets and quotation marks omitted).

In *E.M.*, the trial court improperly committed the juvenile to a youth development center despite "a plethora of evidence demonstrating that [the juvenile] was mentally ill." *Id.* at ___, 823 S.E.2d at 677. The record before the trial court established that the juvenile had received—and still required—significant mental health treatment. *Id.* at ___, 823 S.E.2d at 677. A disposition report presented to the trial court revealed that the juvenile had been diagnosed with several mental disorders. *Id.* at ___, 823 S.E.2d at 677. Accordingly, this Court vacated the order and remanded to the trial court with instructions to include a referral to the area mental health services director. *Id.* at ___, 823 S.E.2d at 678.

The State concedes that the instant case is indistinguishable from *E.M.*, and agrees that the trial court erred in failing to refer Evan to the area mental health services director. The concession is well warranted. In its order, the trial court stated that it received and considered a predisposition report, a risk assessment, and a needs assessment. The predisposition report referred to a clinical assessment completed by Haven House Services, which diagnosed Evan with conduct disorder, and recommended intensive outpatient services. In addition, the Haven House Assessment stated that (1) Evan's conduct disorder "causes clinically significant impairment in social, academic, or occupational functioning"; (2) Evan needs substance abuse treatment; and (3) Evan's behavior indicates a need for additional mental health assessment and treatment.

## Conclusion

It is patently clear that the evidence before the trial court presented Evan as being mentally ill. Pursuant to N.C. Gen. Stat. § 7B-2502, the trial court's failure to refer Evan to the area mental health services director constitutes reversible error. Accordingly, we vacate the order and remand to the trial court for referral to the area mental health services director.[3]

VACATED AND REMANDED.

Judges ARROWOOD and HAMPSON concur.

[3] We recognize that the position of "area mental health, developmental disabilities, and substance abuse services director" no longer exists as referenced in N.C. Gen. Stat. § 7B-2502(c). *See* Jacquelyn Greene, *Mental Health Evaluations Required Prior to Delinquency Dispositions*, *On the Civil Side*, UNC School of Government (Jan. 22, 2019, 8:00 a.m.), [https://perma.cc/TN5N-HHQS]. In 1974, the General Assembly mandated referral to the "area mental health director" when the trial court was presented with evidence that the juvenile suffered from a mental illness. 1973 N.C. Sess. Laws 271, 271, ch. 1157. The area director referenced in § 7B-2502(c) is now identified as the "local management entity/managed care organization" found in N.C. Gen. Stat. § 122C-3(20b). Greene, *supra*. We strongly encourage the General Assembly to update the language of § 7B-2502(c) to reflect the current understanding and need for mental health treatment for juveniles. *See* K. Edward Greene, *Mental Health Care for Children: Before and During State Custody*, 13 CAMPBELL L. REV. 1, 54 (1990) ("[The child's] right to mental health care is derived, if at all, from statutes, and legislatures have been reluctant to mandate the delivery of such care.").

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 20-44

Filed: 6 October 2020

Gaston County, No. 17-JB-218

IN THE MATTER OF: A.L.B.

Appeal by juvenile from order entered 20 May 2019 by Judge Michael K. Lands in Gaston County District Court. Heard in the Court of Appeals 26 August 2020.

*Attorney General Joshua H. Stein, by Assistant Deputy Attorney General Melissa K. Walker, for the State.*

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

INMAN, Judge.

Amber,[1] a juvenile diagnosed with several mental disorders, appeals from an order committing her to a Division of Adult Correction youth development center after the district court found her responsible for six escapes from youth foster and group homes, at least five vehicle thefts (including two wrecks), and the removal of the ankle monitor that provided the only means for authorities to know her whereabouts.

[1] We refer to the juvenile by pseudonym to protect the identity of the minor.

She argues that the trial court erred in failing to refer her to the area mental health services director for appropriate action, as required by statute. After careful review, we agree, vacate the trial court's order, and remand for further proceedings.

## I. Facts and Procedural Background

The evidence of record tends to show the following:

Amber, born on 15 September 2003, was 15 years old at the time of the proceeding below. She had lived for some time with her father, but they had "physical conflicts," and she reported that he engaged in domestic violence and abused alcohol. Eventually Amber's father kicked her out of his home.

Amber then moved in with her mother, who struggled with her own mental health issues. She was unable to control Amber's behavior, and, after Amber stole a car, surrendered her to Gaston County Department of Social Services ("DSS") custody.

DSS initially placed Amber in a series of three Level Two therapeutic foster care homes. Amber ran away from the first two homes, stealing a car on one occasion. She was found responsible and placed on probation for running away and stealing the vehicle. Amber was later transferred out of the third therapeutic foster care home due to its location.

A mental health assessment of Amber in March 2018 noted several diagnoses including post-traumatic stress disorder, depressive disorder, and unspecified

disruptive, impulse-control, and conduct disorder. The mental health counselor who assessed Amber recommended that she be placed in a Level Three home, which would provide around the clock residential services including rules, routine, structure, therapeutic interventions, group activities, and additional therapy.

Amber's therapeutic care and placement was coordinated by Partners Behavioral Health Management ("Partners"), the Managed Care Organization ("MCO") for Gaston County.[2] Partners does not directly provide care, evaluate patients, or recommend appropriate treatments. Instead, licensed care providers conduct any necessary medical evaluations and make treatment recommendations; Partners then steps in, if needed, to identify facilities that provide the recommended treatment and coordinate patient placement with those facilities.

Consistent with the assessment and recommendation in March 2018, Partners authorized placement for Amber in a Level Three group home on 27 April 2018. Partners authorized Amber's placement so that she could receive care according to her Patient Centered Plan ("PCP"), which, per Partners' Care Coordination Supervisor Kendall Higgins, is "a treatment plan that's developed by a clinician and a family . . . that really outlines their treatment goals based on what's recommended in the comprehensive clinical assessment." The group home updated Amber's treatment plan in May, June, July, August, and October 2018.

[2] It is unclear from the record what, precisely, prompted Partners to begin coordinating Amber's care.

Amber stole a van from the group home and fled on 13 August 2018, leading to a juvenile petition for larceny of a motor vehicle. After a few days in detention, Amber returned to the group home. She ran away again, leading to another juvenile petition on 16 October 2018. On 5 November 2018, she admitted to delinquency in connection with the larceny petition and was placed on probation for 9 months.

Partners authorized placement in a different Level Three group home, Turn Around Group Home, on 13 November 2018. A different mental health entity, A New Place, took over responsibility for updating Amber's clinical assessment and treatment plan.

Although Amber's first few months at Turn Around seemed promising, she eventually violated the terms of her probation on 3 March 2019 when she failed to charge her ankle monitor, cut it off, and fled the home. She was located in Lincoln County in possession of her grandmother's car before being returned to Turn Around on 1 April 2019. The following morning, Amber stole a van and absconded again. She later crashed the van, stole a truck, and wrecked the truck before being apprehended on 4 April 2019. Juvenile petitions for speeding to elude arrest and felony possession of a stolen vehicle were filed on 4 April and 16 April 2019, respectively.

Amber admitted to possession of a stolen vehicle on 18 April 2019, leading the State to dismiss the petition for speeding to elude arrest. She admitted to her probation violations at a hearing on 6 May 2019. During that hearing, Amber

requested placement in a Level Five psychiatric residential treatment facility ("PRTF").[3] Amber had not previously been placed in a psychiatric facility.

At a disposition hearing on 20 May 2019, Amber's juvenile court counselor recommended that she be committed to the Juvenile Section Division of the Division of Adult Correction for placement in a youth development center ("YDC"), the most restrictive possible disposition. The counselor noted that while in State custody, Amber could receive the same individual and group therapy, medication management, and education available in a residential psychiatric facility. Unlike psychiatric facilities, YDCs are fenced.

Ms. Higgins also appeared at the disposition hearing to testify concerning Amber's mental health history and treatment. She testified that licensed clinical care providers with A New Place had assessed Amber and recommended commitment to a Level Five PRTF, and that Amber had outstanding referrals to several of those facilities. Ms. Higgins testified that she did not have a recent clinical assessment recommending that commitment, and that the most recent clinical assessment available to Partners—from March 2018 —was out of date and "wouldn't be relevant" to determine Amber's current treatment needs. She also testified that YDCs provide psychiatric care "if the juvenile requests it."

[3] A Level Five PRTF, unlike lower-level PRTFs, is a locked mental health treatment facility. It is the most restrictive form of therapeutic treatment short of inpatient care. Patients are monitored 24 hours a day and receive schooling, psychiatric therapy, and psychiatric medication management.

After the presentation of evidence, Amber's counsel argued for placement in a Level Five psychiatric residential treatment facility, while the State posited that commitment to a Level Three youth detention center was more appropriate. Amber's counsel also contended that, based on evidence Amber suffered from mental illness, N.C. Gen. Stat. § 7B-2502(c) required the trial court to refer her to the local mental health services director—in this case Partners[4]—who would then be responsible for conducting an interdisciplinary evaluation, mobilizing care, and meeting Amber's needs. The trial court rejected the argument without substantive discussion and ordered a Level Three YDC disposition. Amber entered oral notice of appeal.

## II. ANALYSIS

Amber contends, as she did before the trial court, that her evidence of mental illness required halting disposition for a referral to Partners for "appropriate action," namely, "an interdisciplinary evaluation and [the] mobiliz[ation] of resources to meet [her] needs." N.C. Gen. Stat. § 7B-2502(c). The State acknowledges that the statutorily mandated referral was not made but argues that Amber cannot show prejudice because Ms. Higgins, as a representative of Partners, testified at the

[4] The statute in question requires referral to the "area mental health, developmental disabilities, and substance abuse services director," N.C. Gen. Stat. § 7B-2502(c) (2019), a position that no longer exists. *In re E.A.*, ___ N.C. App. ___, ___ n.3, 833 S.E.2d 630, 633 n.3 (2019). A separate statute, N.C. Gen. Stat. § 122C-3, makes the local MCO the "area mental health . . . services director" for purposes of N.C. Gen. Stat. § 7B-2502(c). *See* N.C. Gen. Stat. §§ 122C-3(1) and (20b) (2019) (defining "[a]rea authority" as "[t]he area mental health, developmental disabilities, and substance abuse authority" and "[l]ocal management entity (LME)" as "[a]n area authority"); *E.A.*, ___ N.C. App. at ___ n.3, 833 S.E.2d at 633 n.3 (detailing the interplay of N.C. Gen. Stat. §§ 7B-2502 and 122C-3).

disposition hearing. In sum, the State contends remand is not warranted because Ms. Higgins participated in the hearing, and "[r]emand would only accomplish having the court receive and consider the same information it has already heard."

We hold that Amber has demonstrated reversible error. Consistent with this Court's prior decisions, the trial court was required to refer Amber to Partners for an interdisciplinary evaluation based on her numerous mental health diagnoses. Section 7B-2502(c) provides:

> If . . . there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court *shall* refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. . . . The area mental health, developmental disabilities, and substance abuse director *shall* be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs.

N.C. Gen. Stat § 7B-2502(c) (emphasis added).

In applying the statute, this Court has held that "[t]he use of the word 'shall' indicates a statutory mandate that the trial court refer the juvenile to the area mental health services director for appropriate action, and failure to do so is error." *In re E.M.*, 263 N.C. App. 476, 478, 823 S.E.2d 674, 676 (2019) (citations omitted); *see also E.A.*, ___ N.C. App. at ___, 823 S.E.2d at 632-33 (2019) (vacating and remanding a YDC commitment when the juvenile introduced evidence of mental illness but was not referred to the area mental health services director).

The referral is required if the trial court is "faced with *any* amount of evidence that a juvenile is mentally ill." *E.M.*, 263 N.C. App. at 480, 823 S.E.2d at 677. This is so regardless of the juvenile's past mental health treatment or the availability of mental health services through commitment to a YDC. *See id.* ("It is possible that the trial court was under the misapprehension that such a referral was unnecessary, because Evan had already received significant mental health services prior to this disposition and because the trial court recognized that it could order mental health services for Evan during his commitment."). Though a representative of Partners testified at the disposition hearing, the statute "envisions the area mental health services director's involvement in the juvenile's disposition *and* 'responsib[ility] for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs.' " *Id.* (quoting N.C. Gen. Stat. § 7B-2502(c)) (emphasis added). Consistent with *E.M.* and *E.A.*, we hold that the trial court erred in failing to abide by N.C. Gen. Stat. § 7B-2502(c)'s statutory mandate.

Turning to the State's argument that Amber has suffered no prejudice, we are unconvinced that remand would simply have the trial court "receive and consider the same information it has already heard" based on a close examination of the record below. We note that there was no testimony as to whether the "interdisciplinary evaluation . . . and mobiliz[ation of] resources" required by the statute is the same as or equivalent to the coordinated care assessment Amber had received through

Partners at the time of disposition, making any conclusion to that effect conjecture. And, although the State contends the trial court received "Ms. Higgins['s] . . . recommendations for disposition and placement," the transcript reveals that Ms. Higgins could not offer a recommendation herself:

> [MS. HIGGINS]: If I could clarify for the record, Your Honor, our—we do not make the recommendations. These clinical recommendations are made by a licensed provider. We help link and facilitate movement from that client to the recommended level of care. So I wouldn't actually be making the recommendations.
>
> . . . .
>
> I wouldn't determine what the best placement would be. I didn't write the recommendation for the best treatment.

Instead, all that Ms. Higgins relayed to the trial court was her understanding that Amber's licensed healthcare provider's most recent recommendation was—for the first time in Amber's treatment history—placement in a Level Five PRTF. She did not provide the clinician's rationale behind the recommendation, and testified that Partners had not received the latest clinical assessment on which the recommendation was based:

> [MS. HIGGINS]: I don't have any recommendations for placement.
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> . . . .
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> [The latest clinical assessment is] not in this packet of information that I have, that was part of our medical

> records, that to my understanding, it was part of what was subpoenaed.
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> . . . .
>
> We brought everything that was subpoenaed from our medical records that was available to us. . . . It just so happens that part of our medical record did not include this most recent assessment.[5]

In fact, Ms. Higgins testified that Amber's most recent clinical home, *not* Partners, had made and was responsible for pursuing the several referrals to PRTFs that were still outstanding. Ms. Higgins also confirmed that she had never spoken with the clinicians who had conducted the most recent assessment, let alone Amber.

The State notes that the trial court had the benefit of a clinical assessment of Amber dated to March of 2018. That assessment, however, was more than a year old and, according to Ms. Higgins, insufficient to support a current placement recommendation:

> [MS. HIGGINS]: These recommendations from 2018 are what recommended her for the level of care that she was most recently at, the Level Three group home.
>
> . . . .

[5] We note that when asked what additional documents besides the clinical assessment she reviewed to prepare for the disposition hearing, Ms. Higgins stated she had "briefly reviewed the addendum that we just got, that was provided to you by A New Place." She later testified that the only documents she reviewed concerning Amber's recommended placement in a psychiatric facility were the March 2018 clinical assessment and treatment plan, and that her testimony was based only on those two documents. It is unclear from the record whether the addendum that Ms. Higgins "just got" pertained to the clinical assessment, treatment plan, or some other healthcare-related document. In any event, the trial court did not receive any information about the most recent clinical assessment beyond Ms. Higgins's understanding that it contained a recommendation for Level Five PRTF placement.

> We would consider [the clinical assessment from] March 2018 to not be active . . . .
>
> . . . .
>
> It includes clinical information that we'd always want to consider, but the recommendations would not be to date. It wouldn't be relevant.
>
> [THE STATE]: Okay.
>
> [MS. HIGGINS]: In terms of a higher level of care.
>
> THE COURT: Let me make sure I understood that. So we should be considering a March [2019] evaluation?
>
> [MS. HIGGINS]: I think in terms of when we look at authorizing care, we would need a recommendation within the last 30 days.

In short, neither Ms. Higgins's testimony nor the documents introduced provided the trial court with evidence regarding why a Level Five PRTF placement, as opposed to commitment to a YDC, was appropriate for Amber based on any clinical evaluations of her mental health needs. The trial court lacked the opportunity to weigh any mental health care clinicians' reasoning against the State's recommendation for commitment to a YDC.

"Mental illness itself is not a unitary concept. It varies in degree. It can vary over time. It interferes with an individual's functioning at different times in different ways." *Indiana v. Edwards*, 554 U.S. 164, 175, 171 L. Ed. 2d 345, 356 (2008). It is possible, then, that an updated assessment could show new diagnoses or rationales

for specific treatment that would alter the trial court's ultimate disposition. A year is not insignificant in the mental development of an adolescent.

N.C. Gen. Stat. § 7B-2502(c) "envisions the area mental health services director's involvement in the juvenile's disposition and 'responsib[ility] for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs.' " *E.M.*, 263 N.C. App. at 480, 823 S.E.2d at 677-78 (quoting N.C. Gen. Stat. § 7B-2502(c)).[6] While Amber had received some services from Partners—the local mental health services director—and while Ms. Higgins testified about a recent clinical recommendation, it is not evident that the "interdisciplinary evaluation of the juvenile and mobiliz[ation of] resources" called for by the statute had been completed. Given Ms. Higgins's testimony regarding a clinical recommendation that was different than the recommendation a year earlier, and that supported Amber's request to be placed in a psychiatric facility, we hold that Amber has demonstrated a reasonable possibility that compliance with the statute and

[6] While the State argues on appeal that the purpose of the statute was vindicated by Ms. Higgins's participation in the hearing, we note that the State actively sought at various points to limit Ms. Higgins's participation considerably. When Amber called Ms. Higgins as a witness, the State protested on the grounds that Amber's counsel had not listed Ms. Higgins on a witness list she voluntarily provided to the State. The State objected to Ms. Higgins's testimony concerning Amber's mental health diagnoses and objected to having her qualified as an expert witness in licensed professional counseling. It later moved to strike all of Ms. Higgins's testimony concerning the March 2018 clinical assessment on the grounds that her expert testimony disclosed the immateriality of the assessment to the most recent Level Five PRTF placement recommendation. We further note that the rules of evidence are relaxed in juvenile delinquency disposition hearings. *See* N.C. Gen. Stat. § 7B-2501(a) (2019) ("The dispositional hearing 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 [N.C. Gen. Stat. §] 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.").

review of the required evaluation would have resulted in a different disposition. *See In re Bass*, 77 N.C. App. 110, 334 S.E.2d 779, 782 (1985) (holding a juvenile failed to show prejudice because he could not demonstrate "a reasonable possibility that a different result would have been reached at his adjudicatory hearing"); *see also* N.C. Gen. Stat. § 15A-1443(a) (2019) ("A defendant is prejudiced by errors relating to rights arising other than under the Constitution of the United States 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."). We therefore vacate the disposition order and remand to the trial court for the referral, interdisciplinary evaluation, and mobilization of resources called for by the statute.

## III. CONCLUSION

For the foregoing reasons, we vacate the disposition order committing Amber to a YDC and remand for further proceedings not inconsistent with this opinion.

VACATED AND REMANDED.

Judge COLLINS concurs.

Judger BERGER dissents by separate opinion.

No. COA20-44 *In the Matter of: A.L.B.*

BERGER, Judge, dissenting by separate opinion.

The majority correctly determined that the trial court erred when it entered a Level III disposition without first referring the juvenile to area mental health services pursuant to N.C. Gen. Stat. § 7B-2502(c). However, the juvenile has failed to show that she was prejudiced by this error, and I respectfully dissent.

N.C. Gen. Stat. § 7B-2502(c) states in part, "[i]f the court believes, or if there is evidence presented to the effect that the juvenile has a mental illness or a developmental disability, the court shall refer the juvenile to the area mental health . . . services director for appropriate action." N.C. Gen. Stat. § 7B-2502(c) (2019). N.C. Gen. Stat. § 7B-2502(c) "envisions the area mental health services director's involvement in the juvenile's disposition and responsibility for 'arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs.' " *In re E.M.*, 263 N.C. App. 476, 480, 823 S.E.2d 674, 678 (2019) (quoting N.C. Gen. Stat. § 7B-2502(c)).

Ms. Kendall Higgins testified for the juvenile at the disposition hearing. Ms. Higgins was the area mental health services director and the individual to whom the juvenile should have been referred to under Section 7B-2502(c). Ms. Higgins testified to the recommendations provided by licensed clinical care providers with "A New Place," the juvenile's current healthcare provider. Additionally, Ms. Higgins testified to the recommendations in the juvenile's person centered plan ("PCP"), and a 2018

clinical assessment of the juvenile was presented to the trial court. According to Ms. Higgins, a PCP is a treatment plan "developed by a clinician and a family. It's supposed to be a joint effort by the client, family [ ], and the provider that really outlines their treatment goals based on what's recommended in the comprehensive clinical assessment." Based on the juvenile's assessments, Ms. Higgins recommended to the trial court that the juvenile be placed in a Level V PRTV in-patient treatment facility.

The juvenile's court counselor testified that the juvenile was a flight risk and that the Department of Juvenile Justice had exhausted all efforts and available services. Based on the juvenile's disposition level, the court counselor recommended that she be placed in a secure Youth Development Center ("YDC").

According to the juvenile's court counselor, the juvenile would not be successful in an in-patient treatment facility as recommended by the area mental health services director. From the testimony of the court counselor, the juvenile's five prior documented incidents as a runaway, her three separate adjudications on new charges, and her admitted drug use, among other factors, were not compatible with the lax security at an in-patient treatment facility. Specifically, the court counselor testified that less restrictive options would not meet the juvenile's risks and needs because the juvenile had stated that "she doesn't care where we put her, she's going to take another car and run away."

The court counselor also testified that the juvenile had violated juvenile probation several times, and "[s]he could've gone to the YDC based on the violation I filed prior to her picking up this newest charge, but we wanted to put her on an ankle monitor and give her an opportunity to be successful." The juvenile cut off the ankle monitor.

The court counselor further testified that he did not recommend commitment to YDCs often. With this juvenile, however, YDC was recommended because "our biggest concern was the number of times she's stolen a car and the danger [to] herself and the community when she's running away, and the choices that she makes when she's not being supervised."

In addition, the court counselor testified that the juvenile would receive the same or similar services at a YDC that were available at in-patient treatment facilities. The primary difference between in-patient treatment and YDC, according to the court counselor, was that a YDC afforded the juvenile and the public greater protection because it was a gated facility. The juvenile's court counselor testified that at a YDC, the juvenile would have access to education, social skills classes, living skills, medication management, and mental health services including individual therapy, group therapy, and psychological evaluations.

After hearing these recommendations and weighing the difference between the in-patient treatment facility and a secure YDC, the trial court placed the juvenile in a secure YDC.

The trial court considered Ms. Higgins' testimony and recommendations for placement of the juvenile. Ms. Higgins, the area mental health services director, is the individual to whom the juvenile should be referred to under Section 7B-2502. If this matter were remanded to the trial court, the juvenile would be referred to the area mental health services director for evaluation. Thus, the majority seeks to send this case back to the trial court for referral to Ms. Higgins so the trial court can again decide between a secure YDC facility and that of the lax security of an in-patient treatment facility. Essentially, the majority seeks to have the trial court weigh the same options.

Further, a trial court is not bound by the recommendations of the area mental health services director. *See* N.C. Gen. Stat. § 7B-2501(c). While Section 7B-2502(c) references institutionalization based on consent, or lack thereof, that Section in no way removes or eliminates a trial court's discretion for dispositional alternatives under Section 7B-2501(c), or otherwise requires a trial court to delegate its authority to the area mental health services director. *See* N.C. Gen. Stat. § 7B-2502(c) ("If the parent, guardian, or custodian refuses to consent to institutionalization after it is

recommended by the area mental health [services] . . . director, the signature and consent of the court *may* be substituted for that purpose." (emphasis added)).

Pursuant to N.C. Gen. Stat. § 7B-2501(c), the court has the discretion to "select a disposition 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). That is precisely what the trial court did here based on the facts of the case, and the testimony provided by the area mental health services director and the juvenile's court counselor. YDC commitment was necessary to address the seriousness of the juvenile's persistent delinquent behavior, hold the juvenile accountable, protect public safety, and allow the juvenile to have rehabilitative treatment. After consideration of the factors in Section 7B-2501(c), the court placed the juvenile in a secure YDC as "the appropriate plan to meet the needs of the juvenile[.]"

Because the trial court was not required to delegate its authority to the area mental health services director, and because the trial court considered the same dispositional alternatives it will on remand, the juvenile has failed to demonstrate that she was prejudiced by the trial court's error.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-3

No. COA20-482

Filed: 2 February 2021

Cumberland County, No. 18 JB 141

IN THE MATTER OF: K.M.

Appeal by juvenile from order entered 19 February 2020 by Judge Cheri Siler-Mack in Cumberland County District Court. Heard in the Court of Appeals 12 January 2021.

*Attorney General Joshua H. Stein, by Assistant Attorney General Melissa K. Walker, for the State.*

*Appellate Defendant Glenn Gerding, by Assistant Appellate Defender Amanda S. Hitchcock, for juvenile-appellant.*

ARROWOOD, Judge.

¶ 1 K.M. appeals from a dispositional order entered committing him to a youth development center ("YDC"). K.M. contends that the trial court erred by entering a new dispositional order without first referring him to the area mental health services director pursuant to N.C. Gen. Stat. § 7B-2502(c). K.M. further argues that the trial court violated his due process rights by recommitting him to YDC without proper notice, and that K.M. received ineffective assistance of counsel due to the alleged lack

of notice. We hold that the trial court erred in failing to refer K.M. to the area mental health services director, vacate the dispositional order, and remand for a new hearing and referral to the mental health services director.

## I. Background

¶ 2 On 16 April 2018, a Cumberland County juvenile court counselor approved the filing of petitions against K.M. alleging that he committed two counts of first-degree statutory sex offense and two counts of second-degree forcible sex offense. The trial court adjudicated K.M. delinquent of all four offenses on 17 October 2018. On 3 December 2018, the trial court entered a "Juvenile Order for Mental Health Services," which included a finding of fact stating "[t]his case involves mental health issues and/or the need for mental health services," and ordered a "Sexual Offender Specific Evaluation" with a report to be provided to the court. On 28 March 2019, the trial court entered a Level III disposition and committed K.M. to a YDC and further ordered that if a Level III group home could be identified for K.M., he was to be brought back before the court for a hearing to consider adjusting his placement. A Cumberland County juvenile court counselor filed a motion for review on 29 April 2019 indicating a Level III placement had been identified for K.M. On 30 May 2019, the trial court approved a community commitment for K.M. at Level III group home Falcon Crest Residential Group Home ("Falcon Crest").

¶ 3 On 20 December 2019, a Cumberland County juvenile court counselor filed another motion for review "to review community commitment status." At a hearing on 27 January 2020, a representative from the Department of Juvenile Justice ("DJJ") testified that K.M. "started to have some issues" in early December 2019. These issues included an in school suspension "for being disrespectful, getting out of the classroom and walking out, because he didn't like something the teacher said[,]" and for being caught with an MP3 player on which K.M. had downloaded inappropriate sexual content; the DJJ representative expressed concern that K.M. had asked the group home manager "not to tell anyone" about the incident with the MP3 player. Additionally, staff members at the group home found a "vape" and "vaping liquid" in K.M.'s possession, and noted that K.M. was not present at a specified meeting spot after school on at least two occasions. Based on these incidents, the DJJ report recommended that K.M. be removed from his community commitment placement and returned to the YDC.

¶ 4 The trial court reviewed a Risk and Needs Assessment ("Assessment") completed by the court counselor on 5 December 2019. The Assessment noted that K.M. was rejected by pro-social peers, had received one short-term suspension from school, "[m]ay use sexual expression/behavior to attain power and control over others," had mental health needs that were being addressed, and experienced domestic discord resulting in emotional or physical conflict. The Assessment

assigned K.M. with a Risk Score of 12, which placed K.M. in the upper range of Risk Level 4 (out of five possible risk levels), and a Needs Score of 17, placing K.M. in the "Medium Needs" level.

¶ 5 The trial court also reviewed a report from Falcon Crest performed on 22 January 2020. The Falcon Crest report noted that K.M. had been participating in group therapy and weekly outpatient therapy for the purpose of assisting K.M. "with adjustment to daily routine and scheduled to decrease stress, anger, and promote independence, competence, and security." While the report described K.M. as showing "some progress with his impulsive behavior," K.M. "puts himself and others at risk by making poor choices." The report described K.M. as "quick to blame others or make excuses[,]" and as continuing to "be impulsive and does not think before acting." With regards to the long term goals for K.M.'s therapy, the report noted that K.M. "is still attempting to understand the relationship between positive behaviors, getting along with his peers, following staff/school official directives, [and] respecting authority figures," and occasionally "struggles with . . . processing that his past behaviors, manipulating, and compl[ying] with probation is still [a] very important part of his current situation." A therapist's addendum to the report stated that K.M. "continues to need supervision, structure, education, and role modeling to assist him with managing negative impulses and behaviors."

¶ 6 The trial court then reviewed a Rehabilitated Support Services report from an assessment performed on 21 January 2020. Falcon Crest had requested that Rehabilitative Support Services conduct the assessment shortly after the Motion for Review was filed. The report, which referred to K.M. by an incorrect first name, stated that K.M. was at very low risk for re-offending and still required intensive treatment individualized to address his specialized needs, and recommended that K.M. remain in the Level III group home. The trial court disregarded the report due to the incorrect name.

¶ 7 K.M.'s trial counsel argued that K.M. had not received adequate notice because the motion simply directed the trial court "to review Community Commitment status[,]" and because there was no violation report filed. The State's trial counsel asked that "whatever the Court's decision . . . [K.M.]'s current acts clearly show that . . . he can benefit there with further treatment whether that's back in YDC, if he's going to get that, or another program. But . . . really that he gets the best treatment to take care of these situations[.]"

¶ 8 The trial court heard additional testimony from Lakkiyah Sellers ("Ms. Sellers"), K.M.'s social worker, George Adam ("Mr. Adams"), a Falcon Crest staff member, and K.M.'s mother. Ms. Sellers expressed concern that K.M. was not adequately engaging in his monthly treatment team meetings, and that "he's always reporting that everything is going well, when it is not." Mr. Adam testified that K.M.

was "a likeable young man[,]" but that at times "his maturity level is not understanding how the severity of what his charges are[,] [a]nd the decisions that he makes is not, you know, reality based, because . . . his mind is not set to understand it, these serious charges." K.M.'s mother testified that K.M. did not have many incidents before December 2019, and that "the things that are being said in the courtroom, are not being said in the meetings. And they're not addressing [K.M.] about any of that. This is the first that I've [heard] something, and we go to every meeting."

¶ 9 At the close of testimony and argument, the trial court revoked K.M.'s community commitment and ordered him to return to YDC over the objection of K.M.'s trial counsel. The trial court noted that "initially there was [a] smooth transition with [K.M.'s] placement" at Falcon Crest, but that in the past month K.M. had "spiral[ed]" out. The trial court also expressed concern with K.M.'s "increase of impulsivity[,]" and that K.M. was "not engaging seriously in his treatment." The trial court noted K.M.'s trial counsel's objection and K.M. orally appealed.

## II. Analysis

¶ 10 K.M. contends that the trial court erred by entering a new dispositional order without first referring K.M. to the area mental health services director. We agree.

¶ 11 When a juvenile argues to this Court that the trial court failed to follow a statutory mandate, the error is preserved and is a question of law reviewed *de novo*.

*In re G.C.*, 230 N.C. App. 511, 515-16, 750 S.E.2d 548, 551 (2013). Under the *de novo* standard, the Court considers the matter anew and freely substitutes its own judgment for that of the lower court. *In re A.M.*, 220 N.C. App. 136, 137, 724 S.E.2d 651, 653 (2012).

¶ 12 "Disposition of cases involving juveniles should '[p]rovide the appropriate consequences, treatment, training, and rehabilitation to assist the juvenile toward becoming a nonoffending, responsible, and productive member of the community.' " *In re E.M.*, 263 N.C. App. 476, 478, 823 S.E.2d 674, 676 (2019) (quoting N.C. Gen. Stat. § 7B-2500(3)). When a juvenile comes before a trial court, "the court *may* order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert *as may be needed* for the court to determine the needs of the juvenile." N.C. Gen. Stat. § 7B-2502(a) (2019) (emphasis added). When evidence of mental health issues is presented to the trial court, the authority to order the evaluation of a juvenile by certain medical professionals is no longer discretionary, but is required:

> If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court *shall* refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. . . . The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs.

N.C. Gen. Stat. § 7B-2502(c) (emphasis added).

¶ 13 The use of the word "shall" indicates a statutory mandate that when the trial court is faced with any amount of evidence that a juvenile is mentally ill, the trial court must refer the juvenile to the area mental health services director for appropriate action, and failure to do so is error. *In re E.M.*, 263 N.C. App. at 478, 823 S.E.2d at 676 (citation omitted). This mandate requires the trial court to refer the juvenile to the area mental health services director regardless of whether the juvenile has already received mental health services prior to the disposition. *Id.* at 480, 823 S.E.2d at 677. This Court recently noted that the position of "area mental health services director" no longer exists as referenced in N.C. Gen. Stat. § 7B-2502(c) and is now identified as the "local management entity/managed care organization" found in N.C. Gen. Stat. § 122C-3(20b). *In re E.A.*, 267 N.C. App. 396, 400, n.3, 833 S.E.2d 630, 633, n.3 (2019). Because the General Assembly has not yet updated the language of N.C. Gen. Stat. § 7B-2502(c) to reflect this change, we will continue to refer to the position as the area mental health services director.

¶ 14 In this case, evidence was presented to the trial court establishing K.M.'s mental health issues. The trial court reviewed multiple reports that described K.M.'s continued need for mental health treatment, including the Risk and Needs Assessment that placed K.M. at Risk Level 4 and the "Medium Needs" level. The DJJ representative testified that K.M. had exhibited increasingly significant issues with impulse control and truthfulness in the months preceding the hearing, in addition to

K.M.'s social worker expressing concern that K.M. was not seriously engaging in his mental health treatment. This evidence required the trial court to refer K.M. to the area mental health services director, rather than revoke K.M.'s community status and order his return to YDC.

¶ 15 The State contends that this case is distinguishable from *In re E.M.* because prior to the hearing on the Motion for Review, K.M. was referred by Falcon Crest to Rehabilitated Support Services for evaluation. Rehabilitated Support Services is a provider for Alliance Health, the local management entity/managed care organization contemplated by the statute. The State argues that because the trial court considered the evaluation during the hearing, it was not required to refer K.M. to the area mental health services director. Additionally, the State argues that "[w]hile the statute envisions the area mental health services director's involvement in assisting the court with crafting a disposition . . ., nothing in [N.C. Gen. Stat. §] 7B-2502(c) allows the agency to usurp the court's discretionary authority in ultimately determining the appropriate disposition alternatives."

¶ 16 The State's argument incorrectly describes the trial court's statutory duty in this case. The text of N.C. Gen. Stat. § 7B-2502(c) plainly states that when there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the trial court "shall" refer the juvenile to the area mental health services director for appropriate action. The trial court does not have the discretionary

authority to disregard this statute in favor of "appropriate disposition alternatives." The trial court's failure to make the statutorily mandated referral was error, and accordingly the trial court's order must be vacated.

¶ 17 Because we vacate the trial court's order for statutory error, we do not reach K.M.'s arguments regarding notice and due process.

## III. Conclusion

¶ 18 For the foregoing reasons, we hold that the trial court erred in failing to refer K.M. to the area mental health services director, vacate the dispositional order, and remand for a new hearing and referral to the area mental health services director.

VACATED AND REMANDED.

Judges DILLON and INMAN concur.