2016 IL App (1st) 160950-U

FIRST DIVISION
September 19, 2016

Nos. 1-16-0950 & 1-16-1297
(Consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF:	)	Appeal from the
	)	Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	No. 15 JD 70092
v.	)	
	)	
SAMANTHA B., a Minor,	)	Honorable
	)	Stuart F. Lubin,
Respondent-Appellant,	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Connors concurred in the judgment.
Justice Mikva dissented.

ORDER

¶ 1 ***Held*:** The trial court erred when it failed to comply with section 5-22 of the Juvenile Court Act. The record does not contain a written social investigation report prepared within 60 days prior to the issuing of the disposition order as required under the statute. Accordingly, we reverse the dispositional order and remand the case for a new proceeding, which must include a recent social investigation report that complies with the statute.

¶ 2 Samantha B., the respondent-appellant, appeals from her dispositional order of commitment. On appeal, she contends (1) the trial court erred in issuing a dispositional order without reviewing a social investigation report completed within 60 days; (2) the trial court failed to comply with the statutory requirements of 705 ILCS 405/5-750; (3) whether her *mittimus* should be corrected to award her credit for additional time served. For the reasons set forth below, we reverse the dispositional order and remand for a new dispositional proceeding.

¶ 3 JURISDICTION

¶ 4 The circuit court entered a final judgment on March 30, 2016. On April 6, 2016 Respondent filed her notice of appeal. Accordingly, this court has jurisdiction over this matter pursuant to Article VI, Section 6 of the Illinois Constitution, and Illinois Supreme Court Rules 660, 603, and 606. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 660 (eff. Oct. 1, 2001); R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Dec. 11, 2014).

¶ 5 BACKGROUND

¶ 6 This action originated in Winnebago County, when the State's Attorney filed a petition of delinquency against Samantha B. (hereinafter Respondent) on February 14, 2014. The sole count in the petition was aggravated battery against Megan Lord, an employee of Rock River Academy in Rockford, Illinois. More specifically, the petition alleged that on or about February 14, 2014, Respondent committed "an offense based on injury, causing great bodily harm or permanent disability or disfigurement, in that the minor knowingly committed battery against Megan M. Lord with a flat iron, causing burns, in violation of 720 ILCS 5/12-3.05(a)(1)."

¶ 7 On October 8, 2014, Respondent admitted to committing the charged battery and was adjudged delinquent under the Juvenile Court Act (hereinafter the Act). She was sentenced to probation until March 10, 2018, her 21st birthday, and 30 hours of public service work.

¶ 8 Respondent's case was transferred to Lake County in March of 2015 because Respondent, who had been a ward of the Department of Children and Family Services (hereinafter DCFS) since the age of 10, was transferred to Allendale, a residential placement facility for DCFS wards located in Lake County. The Lake County State's Attorney filed a petition for a hearing on a violation of probation. The petition alleged that Respondent left Allendale without the permission of DCFS and was residing in an unauthorized living situation. The State withdrew the petition and Respondent's case was transferred to Cook County.[1]

¶ 9 The Cook County State's Attorney filed a petition for supplemental relief on August 25, 2015, alleging: (1) on August 13, 2015, Respondent failed to attend CIPP Staffing in violation of 705 ILCS 405/5-715; (2) on August 10, 2015, Respondent left Madden Parenting & Teen Shelter (her residential placement at the time) overnight without permission; and (3) on July 20, 2015, Respondent failed to attend intake for outpatient drug treatment.

¶ 10 On September 2, 2015, Respondent was placed on pre-adjudication electronic monitoring. She successfully completed the terms of this order. On September 22, 2015, Respondent admitted to the third count.

¶ 11 On October 1, 2015, a probation officer requested the case be *instantered* because Respondent was "consistently" leaving the Madden facility. The court issued a second order placing Respondent on pre-adjudication electronic monitoring. The electronic monitoring progress report stated that Respondent also successfully completed the terms of this order except for leaving Madden for 45 minutes on October 13, 2015.

¶ 12 The court issued a juvenile arrest warrant for Respondent on November 17, 2015 because Parole Officer Michalides reported that Respondent was "on the run" from the Madden facility.

[1] The record does not reflect why the case was transferred to Cook County, but it was presumably transferred because DCFS placed Respondent into a residential placement facility located in Cook County.

The warrant was executed on November 20, 2015. Respondent was held in custody until sentencing, which took place on November 24, 2015. Respondent was evaluated for intensive probation prior to the November 24, 2015 sentencing hearing. The Intensive Probation Supervision Intake sentencing report states that Respondent was absent from Prolouge (the group home that she was living in at the time) without permission on several occasions, including one incident where she was gone for 2 days. The report also stated that she was still associating with her 35 year old boyfriend, Dante Hawkins, even though she reported that they no longer had contact. The report concluded that Respondent, "has been through a lot in life already, she talks about change, but does nothing to act upon the changes she would like to make," and is not appropriate candidate for IPS.

¶ 13 A social services investigation (SSI) report was completed on October 20, 2015 and presented to the court in advance of the November 24, 2015 sentencing hearing. The SSI included a summary of Respondent's prior police and court contacts: a prior violation of probation petition in Cook County, a violation of probation from Lake County that was withdrawn, and two station adjustments (one for battery in 2013, and one for mob action and shoplifting in 2010). Respondent also self-reported an aggravated assault arrest from Michigan; the assault was committed against her brother, who had previously sexually abused Respondent. According to the SSI report, DCFS recommended that Respondent receive domestic violence services based on her relationship with her boyfriend, who Respondent reported had attempted to shoot her on August 20, 2015, because she tried to end their relationship.

¶ 14 The SSI report stated that Respondent was enrolled in the tenth grade at Prologue Early College High School for the 2015-16 academic year. Respondent decided to enroll in Prologue "so she may attend school on a consistent basis" and had expressed interest in getting caught up

on schooling as she was behind academically. The SSI report stated that Respondent had tested positive for marijuana on several occasions, and initially did not attend the recommended intake for outpatient drug treatment, but had been compliant with the ordered treatment and participated in the treatment on a weekly basis after intake. According to the physical and mental health section of the SSI report, Respondent has been diagnosed with "Conduct Disorder, Bipolar Disorder, Oppositional Defiant Disorder, and Posttraumatic Stress Disorder," depression, and has been hospitalized for mental health services on several occasions. The SSI report recommended that Respondent be recommitted to probation with additional terms, including but not limited to receiving psychological psychiatric evaluations and domestic violence services, and a referral to Intensive Probation Services.

¶ 15 At the November 24, 2015, sentencing hearing, Respondent was committed to intensive probation over the objection of Intensive Probation Services. The court ordered Respondent have no contact with Hawkins, cooperate with DCFS, TASC, and domestic violence services; and perform 60 hours of community service. The court warned Respondent that intensive probation was "the last step before you go to the Department of Corrections. Do you understand that? So after today you can't ask me for another chance. I am going to order intensive probation to take you . . . But you can't come back after today and say give me one more chance. This is your one more chance."

¶ 16 On December 15, 2015, the State filed a second petition for supplemental relief, alleging that Respondent's whereabouts were unknown, in violation of 720 ILCS 405/5-715(2) (i)(ii)(u) and the November 24, 2015 probation order. The court issued a second juvenile arrest warrant for Respondent on the same date. The warrant was executed on March 2, 2016. At the March 2,

2016 court date, Respondent pled not guilty to the violation of probation. The court ordered that Respondent be held in custody until the next court date.

¶ 17 At the March 9, 2016 court date, Respondent requested that she be placed on electronic monitoring. Respondent's attorney argued that she had previously done well on electronic monitoring, but the court ordered that Respondent be held in custody until the next court date.

¶ 18 The hearing on the probation violation took place on March 16, 2016. Sari March, Respondent's intensive probation officer, testified that she met with Respondent on November 24, 2015, presented her with the notice of home confinement, and explained the terms of the notice, including the requirement that for the first 30 days, Respondent could only leave her residential placement to attend school and medical appointments. Marsh testified that Respondent appeared to understand. Marsh also testified that she had no communications with Respondent in which she requested permission to leave her residential placement on December 15, 2015.

¶ 19 Tammy Gray testified that she is a caseworker at Columbia House, where Respondent was living on December 15, 2015. Gray testified that she worked from 9 a.m. to 5:30 p.m. on December 15, 2015, that Respondent was present when she arrived at work, but was not there when she left work. Gray also testified that she did not give Respondent permission to leave, that any staff member requesting permission for Respondent to leave would have to go through her for permission because Respondent was on intensive probation and that she is not aware of any medical emergency requiring Respondent to leave.

¶ 20 The State requested that the court take judicial notice of the November 24, 2015 sentencing order and the court's admonishments that Respondent must comply with IPS,

including home confinement. The court found that Respondent committed the violation and ordered that she remain in custody until the next court date.

¶ 21 Respondent's sentencing hearing took place on March 30, 2016. The evidence before the trial court consisted of a Supplemental Social Investigation (SSI) report that had been completed by probation officer Angela Michalides on October 16, 2015. This SSI report is the same one that had been filed with the trial court on October 20, 2015, and was re-filed during the proceedings relating to Respondent's second violation of probation without any additions or amendments. The SSI report contained no reference to her pregnancy. The court did not receive any other reports or testimony that would provide more recent information about Respondent's living situation, interpersonal relationships with the community and peers, and health status.

¶ 22 The State and Probation Officer Camacho from Intensive Probation Services both recommended that Respondent be committed to the DOJJ. Respondent's public defender requested that Respondent be placed in a transitional living program or a facility for pregnant teens. The public defender identified Merrillville Academy, the Eisenberg Campus in Bartlett, and the Wings Transitional Housing Programs as three possible placement options for the placement of Respondent. In the alternative, the public defender requested a four month bring back, so Respondent would not have to have her baby while in custody but "would still be under the care and custody of DCFS and then they could put her in an independent living program." The public defender also pointed out that "clearly, [Respondent] needs those skills and I think that would be the best thing possible for her in her future." In response, the trial court stated,

> [w]ell, you've been given a number of chances. You haven't taken advantage of any of them. You won't stay put anywhere. You can't receive services unless you're staying some place. The least restrictive alternative for you is the Department of Juvenile Justice and I told you when I put you on intensive probation that you couldn't ask for another chance.

The public defender again requested a four month bring back, and the court responded, "I'm not doing that. DCFS will place her when she's out." The court issued an order of commitment to the Department of Juvenile Justice for an indeterminable term with credit for 255 days in custody.

¶ 23 Respondent timely filed her notice of appeal.

¶ 24 ANALYSIS

¶ 25 On appeal, Respondent argues that the trial court erred in (i) failing to review a social investigation report completed within 60 days prior to sentencing; (ii) failed to comply with the statutory requirements of 705 ILCS 405/5-750 (West 2012) for committing children to the Department of Justice; and (iii) her mittimus should be corrected to award her credit for a minimum of 265 days in custody.

¶ 26 In her first argument, Respondent contends that the trial court did not review a social investigation report which had been completed within 60 days of her March 30, 2016 sentencing hearing. A trial court's decision to send a minor to DOJJ is reviewed for an abuse of discretion. *In re M.Z.*, 296 Ill. App. 3d 669, 674 (1998). However, the question of whether the court complied with statutory requirements is a question of law we review *de novo*. *In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 45. Because Respondent challenges the trial court's compliance with the Juvenile Court Act, our review of this issue is *de novo*.

¶ 27 Section 5-705 of the Juvenile Court Act states in part, "(1) At the sentencing hearing *** [n]o order of commitment to the Department of Juvenile Justice shall be entered against a minor before a written report of social investigation, *which has been completed within the previous 60 days*, is presented to and considered by the court." (emphasis added) 705 ILCS 405/5-705(1) (West 2012).

¶ 28 The record does not contain a written social investigation report prepared within 60 days of the March 30, 2016 hearing. This violates section 5-22 of the Act. The record does contain three SSI reports but none of them were completed within the required 60 days. The record shows an SSI report completed on in March 2014 by a juvenile probation officer from Winnebago County. The next SSI report was completed on October 16, 2015 and filed with Cook County court on October 20, 2015. The next SSI report bears a Cook County clerk file stamp of March 30, 2016, but is the same report dated October 16, 2015. This last report does not comply with the statute because it was not "completed within the previous 60 days" of the March 30 hearing. 705 ILCS 405/5-705 (West 2014).

¶ 29 In response, the State attaches an SSI report as part of its appendix to its brief it alleges was completed on March 22, 2016 and was before the trial court on March 30, 2016. The State argues the trial transcript from the March 30, 2016 hearing demonstrates that the report attached to its brief was the one before the court on that day. The State asks us to infer from the conversation between the various parties that the trial court did have this March 22 report before it. We reject the State's argument and its reliance on the document attached as part of its appendix.

¶ 30 Under Supreme Court Rule 321, "[t]he common law record includes every document filed and judgment and order entered in the cause and any documentary exhibits offered and filed by any party. Upon motion the reviewing court may order that other exhibits be included in the record." Ill. S. Ct. R. 321 (eff. Feb. 1, 1994). Following on Rule 321, Rule 329 commands that the record on appeal "shall be taken as true and correct unless shown to be otherwise and corrected in a manner permitted by this rule." Ill. S. Ct. R. 329 (eff. Jan. 1, 2006). Furthermore, an appendix to a party's brief on appeal incorporating documents that are not included in the

record are not properly before this court and may not be used to supplement the record on appeal. *McGee v. State Farm Fire & Casualty Co.*, 315 Ill. App. 3d 673, 679 (2000); see *Stutzke v. Illinois Commerce Commission*, 242 Ill. App. 3d 315, 317 (1993) (recognizing that a transcript included in the appendix of a party's brief does not make it a part of the record in compliance with Illinois Supreme Court Rule 321). Even if the report attached to the State's brief was not originally made a part of the record through an inadvertent error, the State has failed to take any step to try and rectify the situation in accordance with Rule 329. Unlike our dissenting colleague we will not compromise the Juvenile Court Act requirement of an SSI report completed within 60 days, presented and filed by the State and then considered by the court. Based on its absence from the record, we will not infer from a transcript that the document was before the trial court. Accordingly, we disregard the report attached as part of the State's appendix and the State's reliance on it.

¶ 31 This court has previously reversed dispositional orders where the record failed to show an SSI report completed within 60 days of a dispositional hearing. See *In re M.H.*, 85 Ill. App. 3d 385, 389 (1980) (finding the trial court erred in committing the minor without having considered the mandatory social investigation report); see also *In re D.B.*, 303 Ill. App. 3d 412, 421 (1999) (reversing a dispositional order where the record failed to contain a written social investigation report prepared within 60 days prior to the grant of the disposition order). In reversing the dispositional order, the court from *In re D.B.* stated "[a] juvenile court must have current social information about a juvenile as provided in the statute before making the important, life-affecting decision to commit a juvenile to the Department of Corrections." *Id.* at 423. We agree with the *In re M.H.* and *In re D.B.* courts and conclude the lack of a SSI report completed within 60 days of the dispositional hearing in the record requires a reversal of the dispositional order and

remand for new proceedings. On remand, a recent SSI report must be filed with the trial court as required by statute.

¶ 32 Finally, because we reverse the dispositional order and remand for further proceedings, we do not address Respondent's remaining arguments.

¶ 33 CONCLUSION

¶ 34 For the reasons stated above, we reverse the dispositional order and remand for further proceedings. On remand, the State shall file with the trial court an SSI report that complies with Section 5-705 of the Juvenile Court Act.

¶ 35 Reversed and remanded with directions.

¶ 36 JUSTICE MIKVA, dissenting.

¶ 37 I dissent because I do not think this court should be making a finding that that the trial court failed to comply with the Juvenile Court Act requirement that a written report of social investigation be completed within 60 days prior to Samantha B.'s commitment to the Department of Juvenile Justice.

¶ 38 The majority is quite correct that the Juvenile Court Act provides:

> "No order of commitment to the Department of Juvenile Justice shall be entered against a minor before a written report of social investigation, which has been completed within the previous 60 days, is presented to and considered by the court." 705 ILCS 405/5-705(1) (West 2012).

¶ 39 There is no dispute that Samantha B. was committed to the Department of Juvenile Justice ("DOJJ") on March 30, 2016, and that therefore the trial court was required to have before it a written report of social investigation, or an SSI, that had been completed within the 60

days before that. There is an SSI dated March 22, 2016, attached as part of the appendix to the State's brief, which is not a part of the certified appellate record in this case. But, if the trial court did consider that SSI, it would have clearly met this statutory requirement.

¶ 40 It has long been the rule that:

> "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 41 As the majority recognizes, the record is unclear as to whether this March 22 SSI was presented to and considered by the trial court when it sentenced Samantha B. to the DOJJ. The State says that the court did have this SSI and Samantha B. argues that it did not. However, the burden of putting together a complete record was on Samantha B. as the appellant in this case, and any doubts which might arise from a gap in the record must be construed against her.

¶ 42 The Illinois Supreme Court Rules also make clear that where, as here, there is a question as to what occurred in the trial court, the trial court should make that determination, not reviewing court. Illinois Supreme Court Rule 329 states: "Any controversy as to whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by that court[.]" Ill. S. Ct. R. 329 (eff. Jan. 1, 2006). There is ample precedent for remanding to the trial court to make such determinations. See, *e.g.*, *People v. Allen*, 109 Ill. 2d 177, 185 (1985)

(Remand for a hearing in the trial court under Rule 329 to see if transcript was an accurate version of court proceedings.)

¶ 43 The State argues in its brief that the March 22 SSI was actually before the trial court at the March 30 sentencing hearing. The State also tells this court in a footnote that, when it filed its brief on August 4, 2016, it was in the process of providing this court with a certified copy of this report for the record. Samantha B makes clear in her reply that she would not stipulate that the trial court had this March 22 report. To date, no motion to supplement the record with the March 22 SSI has been filed.

¶ 44 There is certainly evidence in the record to support the State's claim that the trial court had this March 22 SSI when it sentenced Samantha B. on March 30, 2016. The transcript of the March 16 hearing, which is where the court found that Samantha B. had violated her probation and set March 30, 2016, as the dispositional date, reflects that the court expressly said, "Supplemental Social is ordered." In addition, the March 22 SSI was the first SSI in which the probation department recommended that Samantha B. be committed to DOJJ. The transcript of the March 30 sentencing hearing reflects the probation officer stating "Social, stand by the recommendation of commit to DJJ." Also, the sentencing hearing transcript reflects Samantha B.'s lawyer stating, "I know that the Court and all the parties have read all the socials[.]"

¶ 45 Of course, none of this determinative. The fact that the trial court ordered an updated SSI does not necessarily mean that the court actually got and considered it. There were multiple SSIs, even before the March 22 SSI, which is what defense counsel could have been referring to when he said "all the socials." Samantha B. suggests that the probation officer, when he said "stand by" was referring to the court's prior assertion that it would commit Samantha B. to DOJJ if she violated her probation again. Samantha B. also suggests, while admitting that it is "theoretical

speculation," that since there are two copies of the earlier outdated October 2015 SSI in the record, one of which is file stamped March 30, 2016, the court got the October 2015 SSI again at the March 30 sentencing hearing "perhaps erroneously from a party attempting to tender [the] March 22 social investigation." In short, the record is far from clear. If we had to make a finding based on this record, we would need to resolve the ambiguity in favor of the State and in favor of the presumption that the trial court followed the statute, under the rule clearly set forth in *Foutch*.

¶ 46 However, we do not need to make a finding and, indeed, in my view we should not. If we were not under the strict timelines of Illinois Supreme Court Rule 660A (eff. July 1, 2013), which requires us to render this decision within 150 days of the notice of appeal, and the concerns reflected in Rule 660A regarding expedited decisions in delinquency cases, I would remand this for clarification of the record, as Rule 329 provides.

¶ 47 Given the time constraints, however, I would simply remand to the trial court with directions to resentence Samantha B. with a timely SSI if, and only if, the court did not have a timely SSI at the March 30 hearing. That way the trial judge would decide whether or not he had a timely SSI at the time he initially sent Samantha B. to the DOJJ. I would also direct the trial court, if it found that Samantha B. did not require a new sentencing hearing, to grant Samantha B. the additional ten days of credit for her pretrial custody that the State agrees that she is entitled to. I would also reject the additional arguments made by Samantha B., that the trial court failed to consider whether the services available in the DOJJ would meet her needs or whether the DOJJ was the least restrictive alternative, which are issues that the majority decision does not reach.

¶ 48 Because I believe that this court's decision decides a factual issue that should be decided by the trial court and inappropriately reads an unclear record against the appellee, contrary to the

presumption that this experienced juvenile court judge followed the dictates of the statute, I respectfully dissent.