
YEAR 2005 CASE SUMMARIES

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Appeal challenging sufficiency of the evidence for disposition decision was untimely when filed after probation was later revoked [In re R.L.] (05-1-14).

On January 13, 2005, the El Paso Court of Appeals dismissed an appeal challenging the sufficiency of the evidence to support a disposition order because notice of appeal was filed more than 30 days after the juvenile was placed on probation.

¶ 05-1-14. In the Matter of R.L., UNPUBLISHED, No. 08-04-00082-CV, 2005 WL 82153, 2005 Tex.App.Lexis ____ (Tex.App.—El Paso 1/13/05) *Texas Juvenile Law* (6th Ed. 2004).

Facts: Pending before the Court is the State's motion to dismiss this appeal. The State contends that Appellant did not file a timely notice of appeal from the disposition order, and therefore, the appeal should be dismissed for lack of jurisdiction. We grant the State's motion and dismiss the appeal.

FACTUAL AND PROCEDURAL SUMMARY

The juvenile court determined that R.L. engaged in delinquent conduct and on April 7, 2003, placed him on intensive supervised juvenile probation in the Serious Habitual Offenders Comprehensive Action Program (SHOCAP). Three months later, the State filed a motion to modify disposition. Following a hearing, the juvenile court found that R.L. had violated the terms and conditions of his probation. Thus, the court sustained the State's motion to modify and set a hearing date for a disposition hearing. On August 1, 2003, the juvenile court entered a disposition order committing R.L. to the Texas Youth Commission. The disposition order contained the findings required by Section 54.04 of the Family Code. The court, however, suspended imposition of the TYC commitment and continued R.L. on juvenile probation (SHOCAP) with the warning that a violation of the court's order would result in him being sent to TYC. The court also provided R.L. with a written explanation of his right to appeal the disposition order. R.L. did not, however, file a notice of appeal.

On February 17, 2004, the State filed a motion to revoke the order suspending the imposition of the TYC commitment. Following a hearing, the court found that R.L. had violated the terms and conditions of juvenile probation and on February 27, 2004 entered an order sustaining the State's motion to revoke the prior order suspending imposition of the commitment. On that same date, the court signed a separate order committing R.L. to TYC. R.L. filed a notice of appeal on March 22, 2004. After R.L. filed his brief, the State filed a motion to dismiss for lack of jurisdiction. R.L. did not file a response.

Held: Appeal dismissed.

Opinion Text: JURISDICTION OF THE APPEAL

On appeal, R.L. does not raise any issues pertaining to the juvenile court's February 27, 2004 order. Instead, he challenges the legal and factual sufficiency of the evidence to support the trial court's findings stated in the August 1, 2003 commitment order. The State argues that this Court lacks jurisdiction to consider these issues because R.L. did not file a notice of appeal within thirty days after the juvenile court entered that order.

In juvenile cases, an appeal may be taken from an adjudication order, disposition order, or modification order. *See* Tex.Fam.Code Ann. § 56.01(c)(Vernon 2002). An appeal from an order of a juvenile court is to a court of appeals, and the requirements governing an appeal are as in civil cases generally. Tex.Fam.Code Ann. § 56.01(a), (b). In civil cases, the notice of appeal must be filed within thirty days after the judgment is signed unless a party timely files a motion for new trial, motion to

modify the judgment, a motion to reinstate under Rule 165a, or a request for findings of fact and conclusions of law. Tex.R.App.P. 26.1. The Family Code excepts adjudication orders from Rule 26.1's requirement that the notice of appeal be filed within thirty days.

The Family Code provides for the appeal of a disposition order and does not preclude appeal simply because the court suspends the order. Further, it does not provide an exception to Rule 26.1's requirement that the notice of appeal be filed within thirty days of the date on which the order is signed. Thus, we conclude that the August 1, 2003 disposition order was appealable at the time it was entered even though the juvenile court suspended the portion of the order which committed R.L. to TYC. Therefore, R.L.'s notice of appeal was due to be filed no later than August 31, 2003. Because R.L. did not file his notice of appeal until March 22, 2004, we lack jurisdiction of the issues raised in this appeal. R.L. does not raise any issues pertaining to the modification order entered on February 27, 2004. Consequently, we grant the State's motion and dismiss the appeal.

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