
YEAR 2005 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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Trial court did not abused its discretion in ordering appellant committed to TYC. [In the Matter of K.W.](05-2-28)

On April 14, 2005, the Dallas Court of Appeals (5th Dist.) held that the trial court did not abuse its discretion in committing child to TYC in light of aggressive behavior and no available placement facilities for the child.

05-2-28. In The Matter of K.W., MEMORANDUM, No. 05-04-01262-CV, 2005 Tex. App. Lexis 2882 [Tex. App-Dallas (5th Dist.) 4/14/05].SP

Facts: The 305th Judicial District Court, Dallas County, Texas, entered an order committing juvenile to Texas Youth Commission for a 5-year determinate sentence for the offense of Aggravated Assault with a Deadly Weapon. Juvenile appealed.

Held: Affirmed

Memorandum Opinion: In her sole issue, appellant contends the trial court abused its discretion in ordering her committed to the Texas Youth Commission for a five-year determinate sentence. A juvenile judge has broad discretion to determine the proper disposition of a child who has been adjudicated as engaging in delinquent behavior. *In re K.J.N.*, 103 S.W.3d 465, 465-66 (Tex. App.-San Antonio 2003, no pet.). We will not disturb the juvenile court's determination absent an abuse of discretion. *Id.* An abuse of discretion occurs when the trial court acts unreasonably or arbitrarily and without reference to guiding rules and principles. *Id.* The guiding rules and principles in juvenile cases involving commitment outside the child's home are found in the Texas Family Code. *Id.*

The family code permits a trial judge to commit a child to TYC if: (1) it is in the child's best interest to be placed outside the home; (2) reasonable efforts have been taken to prevent or eliminate the need for the child's removal from the home; and (3) while in the home, the child cannot receive the quality of care and level of support and supervision needed to meet the conditions of probation. TEX. FAM. CODE ANN. § 54.04(i) (Vernon Supp. 2004-05).

At the adjudication hearing, appellant pleaded true to the allegation. A disposition hearing followed. Evidence at the disposition hearing showed that appellant had been previously adjudicated on a delinquent conduct charge for threatening her mother with a knife. At the time, appellant was put on probation for one year and placed outside the home at Center for Success Independence. She was subsequently returned to her home under her mother's supervision. The incident at issue occurred two months after she returned home.

Appellant's probation officer, Mario Love, recommended that appellant be committed to TYC for the safety of the public and appellant. According to Love, the juvenile probation department looked at placement alternatives, but none of the placements would accept appellant because of the previous allegation of aggravated assault. Love characterized appellant's behavior in her mother's home as poor. Appellant did not respond to supervision at home and violated her probation by not reporting and not going to school. Love further stated appellant had a history of running away from home, associating with negative peers, had negative school issues, and had used marijuana. Love stated that a psychological assessment showed the appellant needed "higher structure." He testified that the department had exhausted all efforts and services that it had to prevent removing appellant from her home. However, he said the home was no longer able to support the level of supervision that appellant needed and that it was in appellant's best interest to be placed in TYC.

In her testimony, Appellant stated that all the problems in her home were not caused by her. She did not deny the attack on her brother, but explained that her brother had thrown a box of books at her during an argument over the use of the telephone. Appellant stated she grabbed a knife because "that's the only thing I could think of that was around for me to grab to protect myself." Appellant indicated she was not going to stab her brother, but she admitted he was cut in the incident. Appellant testified that she wanted to return home. Appellant's mother testified that appellant does not fully understand the consequences of her actions and does not know how to control her anger.

After hearing the evidence, the trial court found that the department had made all reasonable efforts to prevent the need to remove appellant from the home; appellant could not receive the quality of care, level of supervision, and support necessary to meet the terms and conditions of probation while living at home; and appellant needed a structured, secure environment. The trial court ordered that appellant be committed to TYC.

Having reviewed the record, we conclude it supports the removal findings. The record shows appellant has been physically aggressive in the home, threatening family members on two different occasions with a knife. She was previously placed outside the home for one of these attacks. She would not go to school, associated with negative peers, and had a history of running away from home. Placements considered by the department would not accept appellant because of her violent behavior. Under the record in this case, we cannot conclude the trial court abused its discretion in ordering appellant committed to TYC. We resolve Appellant's sole issue against her.

Conclusion: We affirm the trial court's order.