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## YEAR 2005 CASE SUMMARIES

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By  
**The Honorable Pat Garza**

Associate Judge  
386th District Court  
San Antonio, Texas

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### **In Motion to Modify Hearing, trial court did not abuse its discretion in ordering appellant to TYC.[In the Matter of I.R.](05-3-32)**

**On June 28, 2005, the Dallas Court (5<sup>th</sup> Dist.) of Appeals did not agree that the trial court committed appellant to TYC because he refused to attend church.**

05-3-32. In the Matter of I.R., \_\_\_ S.W.3d.\_\_\_, No. 05-04-01417-CV, 2005 Tex.App.Lexis 4954 (Tex.App.— Dallas (5<sup>th</sup> Dist.), 6/28/05] rel. for pub. 7/20/05.

Background: Appellant, a juvenile, challenged a decision of the 305th Judicial District Court, Dallas County (Texas), which modified his prior disposition and committed him to the Texas Youth Commission (TYC) pursuant to *Tex. Fam. Code Ann. § 54.05(f)*. Appellant argued that the trial court abused its discretion and that the order modifying disposition had to be reformed.

Held: Affirmed.

Facts: In January 2004, Garland police arrested appellant, who was fifteen years old, for aggravated assault with a deadly weapon, a knife, during his placement in a foster home. In March, appellant pleaded true to the charge, and the trial court found that appellant was a child engaged in delinquent conduct. Following a disposition hearing, the trial court put appellant on probation for one year with placement at Cedar Crest, RTC.

Four months later, the State filed a motion to modify disposition, alleging appellant violated the conditions of his probation by (1) engaging in conduct that caused him to be discharged unsatisfactorily from his court-ordered placement and (2) failing to obey all the rules of Cedar Crest RTC. At the hearing, appellant pleaded true to the allegations, and the trial court found the allegations true.

Evidence showed that appellant had been a ward of the State in the custody of Child Protective Services since he was ten years old because his biological mother abused him. During that time, he incurred two charges related to delinquent conduct. The State dismissed one charge, graffiti; appellant was adjudicated on the second charge, aggravated assault, but no formal disposition was made.

At the time of the hearing on the current case, appellant was being held in the Dallas County Juvenile Center. Don Roberts, court liaison officer, testified that appellant was a child in need of rehabilitation and the protection of the public and appellant required a disposition be made. According to Roberts, the juvenile department recommended appellant be assigned to Progressive Sanction Level 4, remain in the custody of CPS, and be placed at the Texas Adolescent Center. Roberts testified there were no other less restrictive placement centers for appellant. Under questioning by the trial court, Roberts also

acknowledged that appellant had been placed at sixteen different facilities by CPS over five years and that appellant had "extreme behavioral problems at all of the programs."

Edwina Tiggs of CPS testified she had worked appellant's case for less than four months. During that time, appellant had been at the one placement from which he had been recently discharged. Tiggs testified that Texas Adolescent Center was a similar facility, and had a small client population to adult staff. When asked if she had any reason to believe appellant would do better at TAC than he did at other facilities, Tiggs replied, "I am always optimistic. I hope that he does." Under questioning by the judge, Tiggs acknowledged that appellant had not abided by the rules of any placement since she had been assigned his case.

The judge then noted that appellant currently was in detention and still not abiding by the rules. The judge explained that she was inclined to send appellant to TYC because "he's gone to almost every placement in the State of Texas" and she had no reason to believe that sending him to another placement "is going to make any difference regarding his outcome."

Tiggs testified that appellant had a continuing history of being physically abused, not just in his biological home but also while in foster care. She testified that some of these experiences, coupled with the fact he had bipolar disorder, may have contributed to his aggressive behavior. Tiggs explained that the number of placements and the history of abuse and neglect have caused appellant to have a difficult time trusting people. She also said appellant had a mild level of understanding and functioned at a "mild or a moderate MR." Tiggs did not want to see appellant go to TYC, where she believed he would be "swallowed up." Rather than punishment, Tiggs said she believed appellant needed "a loving and supportive environment that would allow him to flourish with his disability."

The judge then addressed appellant, asking if he understood what a juvenile prison was. Appellant said a juvenile prison is "locked down with more structure and stuff." The judge told appellant her "biggest problem" with sending him to a new placement was that appellant [\*5] was continuing to misbehave in the detention center. She told appellant if he could not do any better than a Level 1 in juvenile detention, she would not send him to another placement because he had already been given numerous opportunities. Appellant told her he could improve his behavior to a Level 2 in two to four days, and the trial court continued the hearing for six days.

Six days later, the hearing resumed. A predisposition report addendum was admitted into evidence. The report showed that appellant received an "unacceptable" rating in each of sixteen areas. It also provided as follows:

[Appellant continues in Level S with difficulties following the rules. His behavior is unacceptable in the center. The subject uses foul language, he disrespects his peers and staff. He also causes disharmony in the Detention Unit by constantly banging on the doors. He has also been placed on mechanical restraints. The subject refuses to follow rules and regulations of the Detention Center.]

The juvenile department continued to recommend that appellant be placed at Texas Adolescent Center.

Appellant testified he had been improving his behavior level until he told juvenile detention staff, at the last minute and at some inconvenience to the staff, that he did not want to go to church. Ultimately, he said points were taken from him, and he got mad, demanded to see the supervisor, and began "talking loud." After hearing the evidence, the trial court ordered appellant committed to TYC.

In his first issue, appellant complains the trial court abused its discretion in ordering him committed to TYC. He argues he was penalized for asserting his constitutional right not to attend church. Having

reviewed the record in this case, we cannot agree the trial court committed appellant to TYC because he refused to attend church.

Memorandum Opinion: Juvenile courts have broad power and discretion in determining the suitable disposition of children found to have engaged in delinquent conduct, and this is especially so in hearings to modify disposition. *In re J.P.*, 150 S.W.3d 189, 191 (Tex. App.-Fort Worth 2003) (per curiam), *aff'd*, 136 S.W.3d 629, 633, 47 Tex. Sup. Ct. J. 579 (Tex. 2004). In assessing whether the trial court abused its discretion, the reviewing court looks to whether the court acted arbitrarily or unreasonably. *In re P.L.*, 106 S.W.3d 334, 337 (Tex. App. -Dallas 2003, no pet.). We review the entire record to determine if the trial court acted without reference to any guiding rules or principles. *J.R.W. v. State*, 879 S.W.2d 254, 257 (Tex. App.-Dallas 1994, no writ).

Here, there was evidence that appellant had been in sixteen placements in five years, had a history of physical and verbal aggression toward staff and peers, and had failed to abide by rules and regulations and control his behavior. In fact, the trial judge voiced her reluctance to consider another placement. Nevertheless, in response to the pleas of appellant's CPS worker, the judge continued the hearing to give appellant an opportunity to improve his behavior level at the detention center. Appellant did not. The addendum showed that appellant used foul language, disrespected his peers and staff, constantly banged on the doors, required mechanical restraints, and refused to following the center's rules and regulations. Although appellant's refusal to attend church might have cost him points, the evidence suggests it was the circumstances regarding how appellant made his decision, not the decision itself. The evidence showed that appellant heard another resident tell a staff member on Saturday that he did not want to attend church. Appellant said, at that time, he did not say anything and instead waited until he was going to church the next day to tell a staff member that he did not want to go. Appellant's last-minute decision not to go to church created a supervision problem for staff members, who told appellant that he would lose points. Appellant said he became angry and began "talking loud." Given these circumstances coupled with the evidence that appellant would not control his behavior, we conclude the trial court did not abuse its discretion in ordering appellant committed to TYC. We reject appellant's first issue.

In his second issue, appellant identifies several incorrect recitations in the judgment. In particular:

- (1) the modification hearing was held on August 18, 2004, not March 24, 2004 as stated in the judgment;
- (2) appellant was adjudicated delinquent on March 17, 2004, not August 18, 2004 as stated in the judgment;
- (3) the recitation in the judgment stating "The attorney for the Respondent Child was instructed to inform the child and the parent(s) or guardian of the right to appeal as required by *Section 56.01(e)* of the Juvenile Justice Code" should be modified to reflect, "The Court advised the child and the parent(s) or guardian of the right to appeal as required by *Section 56.01(e)* of the Juvenile Justice Code."
- (4) the recitation stating "the Court proceeded to consider the reports referred to in *Section 54.05(f)* of the Juvenile Justice Code" should be modified to reflect *Section 54.05(e)*;
- (5) the judgment states appellant was committed to TYC pursuant to *54.04(s)* when it should state *54.05(f)*.

This Court has the power to correct and reform the trial court's judgment to make the record speak the truth when it has the necessary information to do so. *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.-Dallas 1991, *pet. ref'd*). We sustain the second issue and order the judgment to be corrected as set out above.

Conclusion: We affirm the trial court's order as reformed.

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