
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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In TYC commitment, disposition was not completed until trial court resolved issue of restitution at later hearing.[In the Matter of S.G.](06-2-12)

On April 4, 2006, the Dallas (5th Dist.) Court of Appeals concluded that an Order of Restitution after the trial court had committed the child to TYC completed the child's disposition with respect to the unresolved issue of restitution.

¶ 06-2-12. **In the Matter of S.G.**, MEMORANDUM, No. 05-05-00606-CV, 2006 Tex.App.Lexis 2665 [Tex.App.— Dallas (5th Dist.), 4/4/06].

Facts: Seventeen year-old S.G. pleaded true to committing two offenses of burglary of a habitation, two offenses of burglary of a building, and one offense of aggravated robbery with a deadly weapon. Prior to his disposition hearing, he signed a restitution agreement in which he agreed to pay Sarah Galindo, one of the victims, the amount of \$ 226. On October 6, 2004, the trial court held the disposition hearing, which was then continued for the sole purpose of considering possible restitution to another victim, Barbara Sloan, with whom S.G. had been unable to reach an agreement. Two days later, the court signed an Order of Adjudication and Judgment of Disposition with T.Y.C. Commitment, in which the trial court adjudicated S.G. a child engaged in delinquent conduct, ordered him committed to the Texas Youth Commission for a period of fifteen years, and ordered him to pay the agreed upon restitution of \$ 226.

Over the objection of S.G., who argued that the trial court no longer had plenary power over the issue of restitution, the trial court continued the hearing regarding restitution to Sloan on December 29, 2004. After hearing testimony and receiving evidence on the issue, the trial court found that S.G., his mother Donna McCoy, and S.G.'s accomplices jointly and severally owed Sloan the amount of \$ 21,444.60. McCoy appeals only the trial court's Order Regarding Restitution and argues that (1) the trial court erred in conducting the restitution hearing; (2) the Order Regarding Restitution was void; and (3) the trial court should not have awarded restitution based on the evidence presented.

Held: Affirmed

Memorandum Opinion: Juvenile proceedings are considered to be civil proceedings. *C.E.J. v. State*, 788 S.W.2d 849, 852 (Tex. App.-Dallas 1990, writ denied). Thus, the Texas Rules of Civil Procedure generally govern proceedings under the Juvenile Justice Code (title 3 of the Family Code). *TEX. FAM. CODE ANN. § 51.17(a)* (Vernon Supp. 2005).

On the other hand, juvenile proceedings are also considered quasi-criminal in nature. *C.E.J.*, 788 S.W.2d at 852. With respect to evidence in juvenile proceedings, the Texas Rules of Evidence applicable to

criminal cases and Chapter 38, Code of Criminal Procedure ("Evidence in Criminal Actions") apply. *TEX. FAM. CODE ANN. § 51.17*(c) (Vernon Supp. 2005). The rules of restitution for criminal cases apply to restitution ordered by a court in conjunction with juvenile delinquency proceedings. *In re D.S.*, 921 S.W.2d 860, 861 (Tex. App.-San Antonio 1996, no writ). The amount of restitution must be supported by a factual basis within the record. *In the Matter of J.R.*, 907 S.W.2d 107, 109 (Tex. App.-Austin 1995, no writ).

ISSUES ONE AND TWO:

THE HEARING AND ORDER REGARDING RESTITUTION

In her first two issues, McCoy argues that the trial court had no authority to conduct the hearing addressing restitution to Sloan, and, as a result, the Order Regarding Restitution was void. McCoy bases both issues on her contention that the Order of Adjudication and Judgment of Disposition With TYC Commitment signed by the trial court on October 8, 2004, was the final judgment. According to McCoy, on December 29, 2004, the trial court no longer had plenary power to address restitution to Sloan or to amend the final judgment to include the restitution. See *TEX. R. CIV. P. 329b(d)* (when a trial court signs a final appealable judgment, it retains plenary power to vacate, modify, correct or reform the judgment for thirty days after the judgment is signed).

We agree that judicial action taken after a trial court's plenary power has expired is a nullity. See *State ex rel. Latty v. Owens*, 907 S.W.2d 484, 486, 38 Tex. Sup. Ct. J. 784 (Tex. 1995) (per curiam). However, we do not agree with McCoy's contention that the October 8, 2004 order was the final judgment that established the parameters of the trial court's plenary power in this case. The record before us clearly shows that the October 6, 2004 disposition hearing was continued by agreement for the sole purpose of considering restitution to Sloan, whose claim was large and complex. See *TEX. FAM. CODE ANN. § 54.048* (Vernon 2002) (the trial court may order restitution in a disposition hearing). The trial court then signed the Order of Adjudication and Judgment of Disposition With TYC Commitment to avoid undue delay in providing S.G. with necessary treatment at T.Y.C., but, with the understanding of those involved, the judgment did not dispose of all the issues in the case at that time. Thus, we conclude that Order of Restitution completed S.G.'s disposition with respect to the unresolved issue of restitution to Sloan, rather than amending a final judgment as McCoy suggests. We have found nothing to suggest that the trial court's procedure of bifurcating unresolved restitution issues from the remainder of the disposition was in any way improper under the circumstances. See *TEX. FAM. CODE ANN. § 54.041* (Vernon Supp. 2006), § 54.048 (Vernon 2002).

Because we conclude that the disposition was not final until it was completed by the order of restitution, we cannot agree that the trial court's plenary power had expired at the time of the December 29, 2004 hearing. Accordingly, we overrule McCoy's first and second issues.

ISSUE THREE: SUFFICIENCY OF THE EVIDENCE

In her final issue, McCoy argues that the trial court should not have awarded restitution to Sloan for two reasons. First, she asserts that the evidence was legally and factually insufficient to enable the trial court to determine restitution. Secondly, she appears to contend that the award of restitution did not fulfill the requirements of *section 54.041 (b)* of the Juvenile Justice Code.

Sufficiency

Trial courts in juvenile justice proceedings have broad powers and discretion. *J.R.W. v. State*, 879 S.W.2d 254, 257 (Tex.App.-Dallas 1994, no writ). Absent an abuse of discretion, we will not disturb the

findings of the juvenile court. *In the Matter of K.L.C.*, 972 S.W.2d 203, 206 (Tex.App.-Beaumont 1998, no pet.). Under an abuse of discretion standard, legal and factual insufficiency are relevant factors in assessing whether the trial court abused its discretion. *Doyle v. Doyle*, 955 S.W.2d 478, 479 (Tex.App.-Austin 1997, no writ). In our legal sufficiency review, we consider only the evidence and inferences tending to support the findings, and we set aside the judgment only if there is no evidence of probative force to support the findings. *In the Matter of C.G.*, 162 S.W.3d 448, 452 (Tex. App.-Dallas 2005, no pet.). In our factual sufficiency review, we consider and weigh all the evidence and set aside the judgment only if the finding is so against the great weight and preponderance of the evidence as to be manifestly unjust. Id.

At the hearing, Sloan testified about the items stolen and/or damaged when S.G. and his accomplices burglarized her home. The State presented as evidence lists prepared by Sloan on her computer identifying jewelry and other items stolen or damaged during the offense and the estimated cost to replace or repair each of the items. Sloan testified that her estimates for the jewelry were based upon Jim Barnett's market value estimates for each piece of jewelry. For the most part, Sloan adopted Barnett's estimates. However, she did decrease the value of several pieces. The State entered into evidence Barnett's handwritten estimates for the stolen jewelry as well as Sloan's list.

Although Barnett was employed as a teacher at the time of trial, he testified that he is a certified gemologist with no less than thirty years of experience. Over the objection of S.G., the trial court qualified Barnett as an expert witness. n1 Barnett further testified that, over the years, he probably handled every piece of jewelry listed by Sloan. According to Barnett, his estimates were conservatively based on his memory of each piece's appearance and on his knowledge of the current diamond and gold markets. The State recalled Sloan to testify regarding pieces of jewelry that had been broken since Barnett had seen them. According to Sloan, there had been no major damage to any jewelry, and all minor damage had been repaired.

n1 McCoy does not specifically complain on appeal that the trial court erred in allowing Barnett to testify as an expert.

The State also introduced into evidence documentation from Sloan's insurance company. Copies of check stubs showed that the insurance company paid Sloan a total of \$ 7059.29 for the stolen and damaged property. Sloan admitted that there were differences between some of her estimates and the insurance company's valuations, but she pointed to several instances in the insurance company's documentation that reflected that the insurance company had depreciated the value of items. With respect to the jewelry, Sloan testified that, regardless of the total value of items lost or stolen, the insurance policy provided for a maximum recovery of \$ 5000. The trial court noted that the insurance company provided no valuations of the jewelry after it reached the \$ 5000 cap on the coverage for the jewelry. S.G. called only McCoy as a witness, and she testified to her medical conditions and inability to pay restitution. In final argument, S.G. pointed to the differences between the valuations of the insurance company and those of Sloan. Based on this and the objection to Barnett's ability to value Sloan's jewelry, S.G. argued that there was not enough evidence to allow the trial court to assess the value of the damaged or stolen property. S.G. requested that the trial court award no restitution to Sloan.

The State asked the court to award one of two amounts based on the evidence before it: either \$ 32,117.39, which included Sloan's estimates for the jewelry, or \$ 34,517.62, which included Barnett's estimates for the jewelry. After examining and comparing the various lists of estimates entered into evidence, the trial court actually awarded \$ 21,444.60 after disregarding "speculative" amounts such as Sloan's claim of \$ 6000 in cash.

McCoy complains that the trial court did not have competent evidence before it to determine the value of

the stolen and damaged property. Specifically, she contends that the trial court should not have awarded any restitution at all based on the evidence before it.

First, McCoy indicates that the evidence prepared by Sloan could not serve as a basis for restitution. We disagree. Although Sloan used Barnett's estimates in preparing her own list of jewelry values, the trial court could have determined from her testimony that she had her own opinions of the value of her property and that she did not necessarily blindly accept Barnett's opinion. It has long been the rule in this state that the owner of property is competent to testify as to the value of his own property. *Sullivan v. State*, 701 S.W.2d 905, 907 (Tex. Crim. App. 1986). After considering Sloan's testimony and prepared lists of values, we conclude that there was evidence of probative force to support the trial court's award of restitution.

Secondly, McCoy indicates that the trial court could not determine the amount of restitution from the conflicting State's evidence (the insurance company's valuations and total reimbursement versus Sloan's estimates).ⁿ² However, it is apparent that the trial court carefully considered the differing values and awarded a reduced amount of restitution based on the values that the trial court found were supported by the evidence before it. The trial court's finding of restitution was not manifestly unjust in light of the entire record.

ⁿ² S.G. offered no controverting evidence regarding the value of Sloan's property at the hearing.

The record before us reflects that the evidence was both legally and factually sufficient with respect to the value of the stolen and damaged property. Accordingly, we conclude that the trial court did not abuse its discretion in awarding Sloan restitution. *Section 54.041 (b)*

McCoy further argues: "whether or not such finding of legal and factual sufficiency can be sustained, the amount of restitution should not have been ordered by the trial court under the requirements of § 54.041 (b) of the Juvenile Justice Code." However, McCoy provides no substantive legal arguments, analysis, or cites to authorities (other than a brief synopsis of § 54.041 (b)) to support her assertion of error. *See TEX. R. APP. P. 38.1 (h)* (requiring appellate briefs to contain clear and concise arguments for the contentions made with appropriate citations to authorities and to the record). We conclude that this sub-issue is inadequately briefed and presents nothing for our review. *See Kang v. Hyundai Corp. (USA)*, 992 S.W.2d 499, 503 (Tex. App.-Dallas 1999, no pet.) (bare assertions of error without citations to authority are insufficient to preserve error for our review); *see also, Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284, 37 Tex. Sup. Ct. J. 843 (Tex. 1994) (appellate courts have discretion to waive points of error due to inadequate briefing).

Conclusion: Because we have decided against McCoy with respect to both sub-issues, we overrule her final issue. Having overruled all of McCoy's issues, we affirm the trial court's order of restitution.