
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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Trial court did not abuse its discretion in committing child to TYC after hearings to modify a disposition. [In the Matter of J.V.M.](06-3-10)

On June 14, 2006, the San Antonio Court held that in hearings to modify a disposition, absent an abuse of discretion, appellate courts will not disturb trial court's findings in determining the suitable disposition of children.

¶ 06-3-10. **In the Matter of J.V.M.**, MEMORANDUM, No. 04-05-00664-CV, 2006 Tex.App.Lexis 5142 (Tex.App.— San Antonio, 6/14/06).

Facts: Appellant was initially placed on probation in December 2004. The terms of his probation included a requirement that he "cooperate fully and obey all rules of the residential facility (or foster home) where" he was to be placed. Appellant was placed in the custody of the Chief Juvenile Probation Officer of Bexar County. In July 2005, Rene Ardila and Andy Garcia, two staff members at the Cyndi Krier Center, went to the center's gym to assist in a situation involving appellant. Apparently, appellant was angry because he was not permitted to earn any daily points that day. Because appellant was upset, Ardila wanted to take appellant to the Security Unit for a fifteen-minute cooling-off period. Appellant did not want to go, became uncooperative, and struck Garcia in the face. Based on this incident, the State moved to modify appellant's disposition.

Held: Affirmed.

Memorandum Opinion: A trial court may modify its original order of disposition to commit a juvenile to the TYC if, after a hearing, the court finds by a preponderance of the evidence that the child violated a reasonable and lawful order of the court. *TEX. FAM. CODE ANN. § 54.05(f)* (Vernon Supp. 2005); *In re T.W.K.*, 4 S.W.3d 790, 791 (Tex. App.--San Antonio 1999, no pet.). A trial court may modify a disposition under *section 54.05(f)* if the child has been adjudicated for a felony or misdemeanor "on at least one previous occasion before the adjudication that prompted the disposition that is being modified," and the conduct that gave rise to the adjudication being modified "occurred after the date of the previous disposition." *TEX. FAM. CODE ANN. § 54.05(k)* (Vernon Supp. 2005).

In the instant case, the appellant was placed on probation in December 2004, for evading arrest. The State introduced evidence of appellant's January 2003 adjudication on the offense of assault-bodily injury and appellant's March 2003 adjudication on the offense of assault-bodily injury. The court also considered a predisposition report listing 18 referrals for various offenses. Appellant's mother testified appellant had behavioral problems since pre-kindergarten; and she felt the current medication prescribed for appellant was not helping him. Appellant's mother said she wanted him at home and not sent to the TYC.

On appeal, appellant does not contest the sufficiency of the evidence supporting the trial court's finding that he violated a lawful order of the court. Instead, he asserts that placing him on probation was the more appropriate disposition because he is thirteen years old, his mother was committed to helping him, and his problems appear to stem from "an unwise change in prescription medication."

Juvenile courts have a great deal of discretion in determining the suitable disposition of children found to have engaged in delinquent conduct, particularly in hearings to modify a disposition. *In re H.G.*, 993 S.W.2d 211, 213 (Tex. App.--San Antonio 1999, no pet.). Absent an abuse of discretion, we will not disturb the trial court's findings. *Id.* Because the evidence was sufficient to support a commitment to the TYC pursuant to *Family Code section 54.05(f)* and *(k)*, the court was authorized and within its discretion to modify its previous disposition order and commit appellant to the TYC.

Conclusion: We overrule defendant's issue on appeal and affirm the trial court's judgment.