Review of Recent Juvenile Cases (2007)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

In Motion to Modify, the Family Code does not require that the trial court order that reports be generated and then have to consider them for disposition.[In the Matter of V.J.](07-1-4)

On July 12, 2006, the Tyler Court of Appeals held that in a Motion to Modify, the Code does not require the trial court to do anything in particular and certainly does not require it to order that reports be generated in order to consider them.

¶ 07-1-4. **In the Matter of V.J.**, ___S.W.3d___, No. 12-05-00324-CV, 2006 Tex.App.Lexis 6063 (Tex.App.—Tyler, 7/12/06) rel. for pub. 9/21/06.

Facts: On July 6, 2004, the juvenile court found beyond a reasonable doubt that V.J. had engaged in delinquent conduct. Specifically, V.J. committed what would have been a terroristic threat, had he been an adult, by threatening one of his teachers with serious bodily injury. *See TEX. PEN. CODE ANN. § 22.07* (Vernon 2005). The court ordered that V.J. be placed on probation with certain terms and conditions. *See TEX. FAM. CODE ANN. § 54.04(d)* (Vernon 2005).

In January 2005, the State filed to modify the court's earlier disposition of the matter. The State alleged that V.J. had violated the laws of the State of Texas by operating a motor vehicle without the permission of the owner and that he had violated curfew restrictions. V.J. stipulated to the unauthorized use of a motor vehicle allegation, and the juvenile court modified the terms of his probation to include more stringent monitoring.

In February 2005, the State again filed to modify the earlier disposition alleging that V.J. had committed what would be a criminal offense had he been an adult, specifically, a terroristic threat. The court found this allegation to be true and returned V.J. to probation.

In June 2005, the State filed another motion to modify the earlier disposition alleging that V.J. operated a motor vehicle without the permission of the owner and left the Methodist Boys Home in Waco, Texas, without finishing the program. Two amended motions were filed alleging that V.J. had tested positive for marijuana, gotten into a fight, and gone to a location without the permission of his parents.

A hearing was held, and V.J. pleaded "true" to the allegation that he tested positive for marijuana and "not true" to the other allegations. The court found that V.J. had tested positive for marijuana, that he had left the Methodist Boys Home against the wishes of his parents, and that he visited a location in Grapevine, Texas, also against his parent's wishes. The court committed V.J. to the Texas Youth Commission. This appeal followed.

Held: Affirmed

Opinion: In his first issue, V.J. contends that the trial court erred when it did not "request and use" any reports before it determined that he would be committed to the Texas Youth Commission. As support for this argument, V.J. directs us to *Texas Family Code Sections 54.04* and *54.05*, which provide that the trial court may consider written reports at a disposition hearing or a hearing to modify disposition. ***Id***. *§§ 54.04(b)*, *54.05(e)* (Vernon 2005).

V.J. took no action to preserve this complaint in the court below, and it is raised for the first time on appeal. Generally, and with some exceptions that do not apply here, a complaint must be raised in the court below as a prerequisite to our consideration. *See TEX. R. APP. P. 33.1(a)(1)(A)*. In this case, the trial court called for the submission of any reports for its consideration. The State offered a report, which the trial court received over V.J.'s objection. V.J. offered no reports and did not request that additional reports be prepared. The trial court did not refuse to consider any report. Even if the complaint had been preserved, there is no error. *Family Code Sections 54.04* and *54.05* provide a hearsay exception to allow a trial court to consider otherwise inadmissible information. *See* ***In re C.J.H.****, 79 S.W.3d 698, 705 (Tex. App.-Fort Worth 2002, no pet.)*. The statutes do not require the court to do anything in particular and certainly do not, as V.J. suggests, require the court to order that reports be generated and then consider them. The court considered every report that was presented. We overrule V.J.'s first issue.

Issue Omitted.

Conclusion: We ***affirm*** the judgment of the trial court.