

Review of Recent Juvenile Cases (2007)

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

Section 54.04(i) of the Family Code , is inapplicable to Motion's to Modify.[In the Matter of G.O.](07-2-7)

The Corpus Christi Court of Appeals held that in a modification order, a trial court can provide for a commitment to TYC if (1) the original disposition was for conduct constituting a felony or multiple misdemeanors, and (2) the court finds the child violated a reasonable and lawful order of the court.

¶ 07-2-7. **In the Matter of G.O.**, MEMORANDUM, No. 13-05-286-CV, 2007 Tex.App.Lexis 1309 (Tex.App.—Corpus Christi - Edinburg, 2/22/07).

Facts: The State filed a petition for indeterminate sentence against G.O. on July 11, 2003. The petition alleged that G.O. had committed the crime of aggravated sexual assault. n3 G.O. pled true and he was subsequently placed on community supervision. On March 14, 2005, the State filed a motion to modify disposition; the motion alleged that G.O. had violated numerous terms of his probation. On April 14, 2005, the trial court conducted a hearing on the State's motion to modify disposition. After G.O. entered a plea of not true to the State's allegations, the trial court heard testimony from three witnesses: Yvonne Rossman, Nora Brosnig, and John Ledesma.

n3 *TEX. PEN. CODE ANN. 22.021* (Vernon 2004).

Yvonne Rossman was employed as an attendance officer by Victoria I.S.D. According to her testimony, G.O. had violated the terms of his probation by (1) failing to attend school each day unless properly excused, (2) disobeying school rules and regulations, (3) failing to perform in accordance with his ability, and (4) wearing or possessing an article of clothing which is considered drug related or contains offensive material. Nora Brosnig, a probation officer with Victoria County Juvenile Services, testified that G.O. had further violated the terms of his probation by (1) failing to meet, visit, call, or contact his probation officer at any time and place at his or her request, and (2) failing to avoid being in the presence of, or engage in the use of, any drugs or inhalant of any type. At the conclusion of Brosnig's testimony, the trial court found that the State had proven, by a preponderance of the evidence, that G.O. violated the terms of his probation.

The trial court then proceeded to the disposition phase of the hearing. In her testimony, Brosnig recommended that the court commit G.O. to TYC. John Ledesma, a teacher at a juvenile detention center, testified that G.O. had been a student of his for about two months, and that G.O. had been an excellent student during this time. At the close of all the evidence, the trial court committed G.O. to the custody of TYC.

Held: Affirmed

Memorandum Opinion: We begin by first addressing G.O.'s third issue: whether the trial court erred in committing him to TYC without fully investigating all available treatment options. G.O.'s argument is premised on the applicability of *section 54.04(i) of the family code*,ⁿ⁴ which if applicable, would have required the trial court to determine if "reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home."ⁿ⁵ The Texas Supreme Court has held, however, that the "plain language of the Juvenile Justice Code requires different findings in initial orders committing a juvenile to TYC than in modified orders to do so."ⁿ⁶ *Section 54.04(i)* is only applicable if an *initial* disposition order places a child in TYC or on probation outside the home; a modification order, on the other hand, is governed by *subsections (f) and (k) of family code section 54.05*.ⁿ⁷ In dealing with a modification order, as in this case, a trial court "can provide for commitment to TYC if (1) the original disposition was for conduct constituting a felony or multiple misdemeanors, and (2) the court finds the child violated a reasonable and lawful order of the court."ⁿ⁸ Because G.O.'s third issue attacks the trial court for its failure to comply with *section 54.04(i)*, and because we find this section to be inapplicable to the instant case, we overrule G.O.'s third issue.

ⁿ⁴ *TEX. FAM. CODE ANN. § 54.04(i)* (Vernon Supp. 2006).

ⁿ⁵ *Id.*

ⁿ⁶ *In re J.P.*, 136 S.W.3d 629, 633, 47 Tex. Sup. Ct. J. 579 (Tex. 2004).

ⁿ⁷ *TEX. FAM. CODE ANN. § 54.05(f), (k)* (Vernon Supp. 2006); see *In re J.P.*, 136 S.W.3d at 630-31.

ⁿ⁸ *In re J.P.*, 136 S.W.3d at 631.

Conclusion: Accordingly, we affirm the judgment of the trial court.