

Review of Recent Juvenile Cases (2007)

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

Trial court did not abuse it's discretion in committing child to TYC, even in light of the purposes provision of the Juvenile Justice Code. [In the Matter of S.A.G.](07-2-13)

On March 14, 2007, the San Antonio Court of Appeals held that because respondent violated a condition of her probation in trying to escape, the trial court did not abused its discretion in committing her to TYC and was justified in light of the purposes of the Juvenile Justice Code.

¶ 07-2-13. **In the Matter of S.A.G.**, MEMORANDUM, No. 04-06-00503-CV, 2007 Tex.App.Lexis 1929 (Tex.App.— San Antonio, 3/14/07).

Facts: In the Original Petition Alleging Delinquent Conduct filed on August 4, 2000, S.A.G., who was eleven years old at the time, was alleged to have committed the offense of burglary. S.A.G. pled true and was placed on probation for one year in her mother's custody. The conditions of probation included a requirement that restitution be paid to the complainant.

On November 7, 2001, based on S.A.G.'s failure to pay restitution, the State filed its first Motion to Modify Disposition. After hearing the motion, on December 6, 2001, the trial court extended S.A.G.'s probation for one year. On November 20, 2002, the State filed a second Motion to Modify Disposition, alleging that S.A.G. had been expelled from school and had failed to pay restitution. As a result of this motion, on December 10, 2002, the trial court again extended S.A.G.'s probation for another year. On December 10, 2003, the State filed its third Motion to Modify Disposition, again alleging a failure to pay restitution. Once again, on January 27, 2004, the trial court extended S.A.G.'s probation for another nine months. On April 26, 2004, the State filed a fourth Motion to Modify Disposition, alleging that S.A.G. had failed to cooperate with the electronic monitoring program and with day treatment. Thus, on May 4, 2004, the trial court revoked S.A.G.'s probation and committed her to TYC.

S.A.G. appealed from this order, and her TYC commitment was reversed by this Court. On remand, the trial court placed S.A.G. on probation in the custody of the Chief Juvenile Probation Officer of Bexar County. As a result, S.A.G. was placed in the Krier Center, a residential treatment facility. However, on April 26, 2006, the State filed a fifth Motion to Modify Disposition, alleging that S.A.G. had failed to follow the rules of placement by attempting to escape and had failed to pay restitution and fees.

On May 25th and 30th of 2006, the trial court conducted a hearing on the State's fifth motion to modify. The State's evidence consisted of testimony from five employees of the Krier Center, the facility S.A.G. had been placed in for residential treatment. According to the State's witnesses, S.A.G. had been in the cafeteria waiting to be served a meal when she and two other residents were sent to Security to get haircuts. When S.A.G. arrived at Security, she was told that her hair could not be cut that day because it was already short. S.A.G. was then told to return to the cafeteria. S.A.G. did not return to the cafeteria and could not be located

immediately. One of the teachers reported having seen her behind the gym. A Code Green was then called out on the radio, indicating a possible escape attempt. For about twenty minutes, S.A.G. and another resident could not be located. They were then seen running into the cafeteria. One of the officers grabbed S.A.G., who told the officer that she would not run again. When she was released, however, she did try to run away again, running from the cafeteria to the tip of the chapel grass, about fifty feet. As S.A.G. continued to try to get away, one of the officers struggled with her. After they both fell to the ground, another officer handcuffed S.A.G. and escorted her to Security. Following this incident, S.A.G. received an ice pack and Tylenol; however she continued to be oppositional and non-compliant with the officers.

According to the campus coordinator at the Krier Center, S.A.G. was trying to escape. The coordinator testified that the staff at the Center consider an action an attempted escape when a resident leaves through a door that she is not authorized to leave through and is not where the staff can see her. Also, although there is a fence with razor wire surrounding the Krier Center, there is also a sally port area through which, if open, residents could run. This sally port is located near the kitchen area where S.A.G. and the other resident were seen running.

S.A.G. presented testimony from the clinical supervisor at the Krier Center. The clinical supervisor identified a copy of counseling notes, which indicated that S.A.G. had stated, when asked about the escape attempt, that she had not been thinking and did not mean to do it.

S.A.G.'s mother, Jacqueline, also testified, informing the trial court of her very poor financial condition and inability to pay S.A.G.'s court-ordered restitution. S.A.G.'s mother testified that when S.A.G. had been committed to TYC before, she had not done well. Thus, S.A.G.'s mother asked the court to return S.A.G. to her custody.

S.A.G. also presented a letter from the Longorias, the victims of the burglary she committed at age eleven. In that letter, the Longorias requested that the court place S.A.G. on probation.

After hearing all the evidence, the trial court found the violation of the placement rules to be "true," but found the failure to pay restitution "not true" due to indigency. The trial court then committed S.A.G. to TYC, stating her reasons on the record: (1) S.A.G. violated a condition of her probation by failing to follow the rules of placement by attempting to escape from the placement facility; (2) although the probation office has provided S.A.G. with numerous services, S.A.G. has continued to return to court for various reasons other than the failure to pay fees, including possession of a dangerous drug and not complying with electronic monitoring and day treatment; n1 (3) it is in S.A.G.'s best interest to be placed outside the home; and (4) reasonable efforts have been made to prevent removal from the home, but S.A.G.'s home cannot provide the quality of care and level of support and supervision she needs to meet the conditions of probation. It is this commitment order from which S.A.G. appeals.

n1 The possession of a dangerous drug incident involved S.A.G. taking an asthma inhaler to school. The failure to comply with electronic monitoring and day treatment involved S.A.G. spending the day at the mall with her boyfriend rather than waiting for transportation to the day treatment facility.

Held: Affirmed

Memorandum Opinion: The purpose of the Juvenile Justice Code is "to provide for the protection of the public and public safety." *TEX. FAM. CODE ANN. § 51.01(1)* (Vernon 2002). Further, if consistent with the protection of the public and public safety, the purpose of the Code is to promote the concept of punishment for criminal acts; to remove, where appropriate, the taint of criminality from children committing certain unlawful acts;

and to provide treatment, training, and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct. *Id.* § 51.01 (2)(A-C). Also, according to the Juvenile Justice Code, its purpose is to provide for the care, protection and development of children; to protect the welfare of the community and to control the commission of unlawful acts by children; and to achieve these purposes in a family environment whenever possible and through the use of a simple and fair judicial procedure. *Id.* § 51.01(3) - (6).

In one issue on appeal, S.A.G. argues that her commitment to TYC was not justified in light of the purposes of the Juvenile Justice Code. Specifically, S.A.G. emphasizes that she has spent more than one-third of her life in the juvenile justice system; that her underlying offense was non-violent; that her probation has been extended, in large part, because her mother could not pay restitution; that she has deteriorated into "a very sad, sometimes-suicidal, wreck"; that she suffers from major depressive disorder and attention deficit hyperactivity for which she is taking medication; that her prior drug violation involved an asthma inhaler; that her prior failure to comply with day treatment and electronic monitoring arises from a single incident in which she, instead of attending day treatment, went with her boyfriend to the mall; and that, although she tried to run away from the Krier Center, she could not have gotten very far because of the fence topped with razor wire.

S.A.G. urges that the "public safety" issue in this case concerns only the Longoria family, the victims of the burglary, who, in a letter to the court, requested that she be placed on probation. And, with regard to "the concept of punishment" set forth in the Juvenile Justice Code, S.A.G. emphasizes that, based on her last commitment to TYC, if she is sent back to TYC, she will not be provided with treatment, training, or rehabilitation.

We do not find S.A.G.'s arguments persuasive. The record shows that S.A.G. committed the offense of burglary at age eleven. Her probation was extended numerous times, not only for her mother's inability to make full restitution, but also, in part, due to her own actions in violating the terms of her probation. Her most recent violation involved an attempted escape from a residential treatment facility. Although she presented evidence that, during the escape attempt, she was not thinking and did not "mean to do it," and that an escape would have been difficult because of the fence topped with razor wire, she nevertheless did try to run away. Furthermore, when she was apprehended, she continued to try to run away and was oppositional and non-compliant.

Conclusion: Thus, because S.A.G. violated a condition of her probation in trying to escape from the Krier Center, we cannot say the trial court abused its discretion in committing her to TYC.

Concurring Opinion (by Steve Hilbig): I concur in the result reached by the majority; however, I write separately to address the propriety of using *section 51.01* of the Juvenile Justice Code n1, which is entitled "Purpose and Interpretation," as a standard for determining whether a trial court has abused its discretion in placing a juvenile on probation outside the home or in the Texas Youth Commission. *See TEX. FAM. CODE ANN. § 51.01* (Vernon 2002).

n1 I will refer to this provision throughout the concurrence as either *section 51.01* or the purposes section.

On appeal, S.A.G. raises only one issue:

The trial court abused its discretion when it committed Appellant to the Texas Youth Commission, **because the commitment was not justified in light of the purposes of the Texas Juvenile Justice Code.**

(emphasis added).

Notably, she does not challenge the findings made by the trial court pursuant to *section 54.05(m)*. So the question is, does the purposes section of the Juvenile Justice Code afford a juvenile offender substantive rights upon which appellate relief can be sought? According to the majority opinion, as well as other opinions from this court, it does. This is where I must differ with the majority in this case and the court generally. I believe a complaint that the trial court "violated" the purposes section of the Juvenile Justice Code does not, in either a modification or an original disposition, create a viable ground for appellate review because that section does nothing more than state the goals the Juvenile Justice Code was enacted to achieve. *See TEX. FAM. CODE ANN. § 51.01* (Vernon 2002). While the goals expressed in *section 51.01* are laudable, it is axiomatic that no relief should be available for an alleged violation of a mere goal.

Prior Opinions from this Court

It is easy to understand why appellant has based her issue on the purposes section. Beginning with *In re K. T.*, the court has converted *section 51.01* from a statement of goals to a purported standard by which the court of appeals reviews the trial court's exercise of its discretion. *See In re S.A.G.*, Majority Opinion, No. 04-06-00503-CV, S.W.3d , (Tex. App.-San Antonio 2007, no pet. h.); *In re M.J.A.*, 155 S.W.3d 575, 577 (Tex. App.-San Antonio 2004, no pet.) (en banc); *In re K. T.*, 107 S.W.3d 65, 74 (Tex. App.-San Antonio 2003, no pet.) (en banc). More specifically, the court is using the purposes section as a purported standard to determine if the trial court abused its discretion in: (1) removing a juvenile offender from the home; and (2) committing a juvenile offender to TYC. *See id.*; *see also TEX. FAM. CODE ANN. §§ 54.04(i); 54.04(m)* (Vernon Supp. 2006). As stated previously, I believe using the purposes section as a purported standard is improper, but more importantly, is unnecessary in either instance.

Removal from the Home

This court in *K. T.* suggested *section 51.01* of the Juvenile Justice Code contains the standard courts should use to determine whether the trial court abused its discretion in removing a juvenile offender from the home. *K. T.*, 107 S.W.3d at 74. The court has since adopted the suggested standard. *See, e.g., In re M.J.A.*, 155 S.W.3d at 577. It is my opinion that the proper legal standards by which an appellate court determines whether a trial court has abused its discretion in removing a juvenile offender from the home are contained in *sections 54.04(i)* and *54.05(m)* of the Texas Family Code. According to these sections, to order placement outside the home, the trial court must make three findings: (1) it is in the child's best interests to be placed outside the home; (2) reasonable efforts were made to prevent or eliminate the need for removal from the home and to make it possible for the child to return home; and (3) in the home the child cannot be provided the necessary care, support, and supervision to meet probation conditions. *See TEX. FAM. CODE ANN. §§ 54.04(i)(1); 54.05(m)(1)* (Vernon Supp. 2006). There is absolutely no need to refer to the purposes section or use it as a standard even though reviewing courts may and have referred to it as a justification for their decisions. *See, e.g., In re J.P.*, 136 S.W.3d 629, 632-33, 47 Tex. Sup. Ct. J. 579 (Tex. 2004). If a juvenile offender believes the evidence does not support the trial court's decision to remove the juvenile from the home based on findings made pursuant to *section 54.04(i)* or *54.05(m)*, he is free to allege an abuse of discretion based upon a lack of evidence to support the necessary findings. *See, e.g., In re J.G.*, 195 S.W.3d 161, 186-87 (Tex. App.-San Antonio 2006, no pet.) (holding trial court did not abuse its discretion in finding that reasonable efforts were made to prevent or eliminate need for removal from home and that home could not provide necessary quality of care, support, and supervision to allow appellant to meet probation conditions). On appeal, the court reviews the evidence in the light most favorable to the trial court's ruling to determine if it supports the challenged finding or findings made pursuant to *sections 54.04(i)* or *54.05(m)*. *See J.G.*, 195 S.W.3d at 187. There is absolutely no basis for either a complaining juvenile offender or the court to rely upon the purposes section as the standard for review.

n2 *Section 54.04(i)*, which applies to original dispositions, states, in pertinent part:

(i) If the court places the child on probation outside the child's home or commits the child to the Texas Youth Commission, the court:

(1) shall include in its order its determination that:

(A) it is in the child's best interests to be placed outside the child's home;

(B) 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; and

(C) the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation.

TEX. FAM. CODE ANN. § 54.04(i)(1) (Vernon Supp. 2006). *Section 54.05(m)*, which applies to modifications, states, in pertinent part:

(m) If the court places the child on probation outside the child's home or commits the child to the Texas Youth Commission, the court:

(1) shall include in its order a determination that:

(A) it is in the child's best interests to be placed outside the child's home;

(B) reasonable efforts were made to prevent or eliminate the need for the child's removal from the child's home and to make it possible for the child to return home; and

(C) the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation.

TEX. FAM. CODE ANN. § 54.05(m)(1) (Vernon Supp. 2006).

Commitment to TYC

This court has also relied on its reasoning in *K.T.* to determine whether a trial court has abused its discretion in placing the juvenile offender in TYC rather than on probation outside the home - the real complaint raised by Appellant in this case. *See In re S.A.G.*, Majority Opinion, No. 04-06-00503-CV, S.W.3d , (Tex. App.-San Antonio 2007, no pet. h.). This determination is independent of a review of the trial court's decision to place the offender outside the home, and relates to those situations in which the evidence supports placement outside the home based upon the standards in *sections 54.04(i)* or *54.05(m)*, but the appellant complains the trial court abused its discretion in committing him or her to TYC. The majority apparently believes that just as there is no standard by which to review the trial court's exercise of discretion in placing a juvenile outside the home (thereby requiring the creation of a standard based on the purposes section), there is no standard by which to review the trial court's exercise of discretion in committing a juvenile to TYC, thereby requiring reliance on the

previously created standard. I disagree. In my opinion the Texas Supreme Court has held not only that such review is permissible, but has provided reviewing courts the appropriate standard by which to determine if there has been an abuse of discretion in such a commitment. *See J.P., 136 S. W.3d at 632-33.*

Opinion from Texas Supreme Court

J.P., decided after this court's decision in *K.T.*, addressed the issue of whether the findings required by *section 54.04(i)* to remove a child from the home in an original disposition should be required, despite their absence from the statute, when a trial court modifies a disposition. *Id. at 630-31.* At the time the supreme court decided *J.P.*, the legislature had not mandated that the findings required for an original disposition be required for a subsequent modification. ⁿ³*Id. at 631.* The supreme court held, based on a plain reading of the statute, such findings were not required for a modification and to imply that they were would completely rewrite the statute. *Id. at 631-32.* In response to the suggestion that failing to require such findings would give trial courts unfettered discretion to remove children from their homes, the supreme court held that even in the absence of an apparent statutory standard, appellate courts had the inherent authority to reverse a trial court's arbitrary decision to remove a child from a home for a trivial infraction. *Id. at 632.* The court, summarizing the statutory provisions and the evidence it considered relevant to the trial court's decision to commit *J.P.*, stated:

Commitment to TYC by modification order is proper only if a juvenile originally committed a felony or multiple misdemeanors, and subsequently violated one or more conditions of probation. In such circumstances, the statute allows a trial court to decline third and fourth chances to a juvenile who has abused a second one.

Here, the evidence at the modification hearing showed that *J.P.* assaulted detention center officers, created a flood by plugging his toilet, assaulted other residents, and on several occasions threatened to commit suicide. On the other hand, there was evidence the death of his father shortly after he entered the detention center contributed to the deterioration of his behavior, and a grandfather from New Hampshire indicated willingness to raise *J.P.* there. The trial judge's comments indicate careful consideration of *J.P.*'s circumstances, of possible alternatives to commitment, and of potential dangers each option provided. Given *J.P.*'s original adjudication of delinquency for serious offenses (which he does not contest), the previous commitment to the Hood County Detention Center for further delinquent conduct (which he does not contest), and the many offenses at the Center (which he excuses but does not contest), we hold the trial court did not abuse its discretion in modifying the previous disposition orders to commit *J.P.* to TYC.

J.P., 136 S. W.3d at 633.

Although the supreme court did not expressly articulate a standard for reviewing the trial court's decision to commit a juvenile offender to TYC, I believe the court's analysis reveals the standard: commitment of a juvenile offender to TYC is arbitrary, and therefore an abuse of discretion, if the violation of probation is trivial and the trial court failed to consider and attempt reasonable, appropriate alternatives. *See id. at 631-33.* ⁿ⁴

ⁿ³ *Section 54.05(m)* was added by the legislature in 2005 -- apparently in response to the suggestion of the concurrence in *J.P.* *See J.P., 136 S. W.3d at 634* (Schneider, J., concurring).

ⁿ⁴ I recognize the supreme court quoted the purposes section in *J.P.* *See id. at 632-33.* It is clear, however, the court was not holding or even suggesting the section was a standard by which to determine whether the trial court had abused its discretion in committing *J.P.* to TYC. Rather, the court was merely referring to the purposes section as a justification for its holding that the *section 54.04(i)* findings were not required to be made when the trial court modified a disposition. *See id.*

Conclusion

I concur with the result reached by the majority because, using the standard found in *J.P.*, I do not believe the trial court abused its discretion in committing S.A.G. to TYC. However, because I believe this court has created a purported standard of review that is based on what are no more than legislative goals, a standard the supreme court declined to adopt, and a standard that is simply unnecessary, I cannot join its opinion. I urge the court to reconsider the continued viability of reviewing a trial court's decision based on purported violations of *section 51.01* in light of the supreme court's opinion in *J.P.*.

Dissent (by Catherine Stone): The essence of this case has been succinctly stated by S.A.G.'s attorney: "If Appellant's mother had had the ability [in] 2001 to pay the restitution that the trial court ordered, this case would have been closed then." The record shows, however, that S.A.G.'s mother was financially destitute and could not pay the thousands of dollars of restitution ordered by the court. Had S.A.G. been the child of a more financially stable parent -- perhaps the child of a lawyer or a judge - she would have completed her probation in 2001 without incident. Instead, she has remained in a juvenile justice system that has failed her. By all accounts, S.A.G. was not well served by her prior commitment to TYC; a commitment which was overturned by this court. There is no evidence in the record that S.A.G. will be any better served by a second commitment. If anything, the record reveals that S.A.G. is more emotionally fragile now than ever before. When reviewing the trial court's order of commitment in light of the entire record and in light of the purposes of the Juvenile Justice Code, I remain convinced that the trial court abused its discretion. Accordingly, I dissent.