

Review of Recent Juvenile Cases (2007)

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

The authority of the juvenile court to commit a child to TYC is not limited by the Individuals with Disabilities Education Act.[In the Matter of L.A.M.](07-2-18)

On September 13, 2006, the San Antonio Court of Appeals held that the IDEA applies only to state or local school authorities and has no application to state court proceedings involving a juvenile who has been adjudicated delinquent.

¶ 07-2-18. **In the Matter of L.A.M.**, ___ S.W.3d. ___, No 04-05-00913-CV, 2006 Tex.App.Lexis 11249 (Tex.App.—San Antonio, 9/13/06) rel. for pub. 4/5/07.

Facts: On October 24, 2005, the State filed an original petition alleging that L.A.M., a thirteen year-old, engaged in delinquent conduct by committing aggravated assault with a deadly weapon. An adjudication hearing was held on November 4, 2005, at which L.A.M. pled true to the charge in an open plea. Subsequently, on November 18, 2005, the juvenile court held a disposition hearing at which he was committed to the Texas Youth Commission (TYC). L.A.M. timely filed this appeal.

On appeal, L.A.M. asserts that (1) the evidence was legally and factually insufficient to commit L.A.M. to TYC; (2) he retained rights under the Individuals with Disabilities Education Act ("IDEA") n1 though he was also subject to the jurisdiction of the juvenile court; and (3) the juvenile court abused its discretion in considering unadjudicated conduct subject to the IDEA without showing that the child's rights and remedies under IDEA were fulfilled and exhausted.

Held: Affirmed

Opinion: A juvenile court possesses broad discretion to determine a suitable disposition for a child who has been adjudicated as having engaged in delinquent conduct. *In re K.J.N.*, 103 S.W.3d 465, 465-66 (Tex. App. -- San Antonio 2003, no pet.). A court abuses its discretion when it acts in an unreasonable or arbitrary manner, or without reference to any guiding rules or principles. *In re K.J.N.*, 103 S.W.3d at 466. However, we review evidentiary challenges under an abuse of discretion standard divorced from legal and factual sufficiency standards. *In re K.T.*, 107 S.W.3d 65, 67 (Tex. App. -- San Antonio 2003, no pet.). While we must "defer to the trial court's findings of fact" we will decide *de novo* "whether the facts supported by the record justify the trial court's disposition order in light of the purposes of Texas' Juvenile Justice Code." *Id.* The Texas Family Code permits a trial judge to commit a child to TYC if: (1) it is in the child's best interest to be placed outside the home; (2) reasonable efforts were made to prevent or eliminate the need for the child's removal from the home; and (3) while in the home, the child cannot receive the quality of care and level of support and supervision needed to meet the conditions of probation. *TEX. FAM. CODE ANN. § 54.04(i)* (Vernon Supp. 2006).

Legal and Factual Sufficiency

In his first and fourth issues, L.A.M. contends that the evidence does not support the determinations made by the juvenile court pursuant to the *Texas Family Code § 54.04(i)*. Specifically, L.A.M. claims that the facts do not justify disposition "in light of the purposes of the Texas Juvenile Justice Code," and that "there was no evidence to support the trial court's finding that the child's needs were beyond the probation department's ability to rehabilitate." Further, L.A.M. asserts that his "behavioral problems" can be curbed with medication and it is only because his mother lost her Medicare benefits that he was not on the medication at the time of this offense. Accordingly, he claims the evidence was legally and factually insufficient to conclude that TYC commitment was necessary.

A juvenile court has specific authority to commit a juvenile to TYC if the child engaged in delinquent conduct considered a felony. TEX. FAM. CODE. ANN. § 54.04(d)(2)(Vernon Supp. 2006). Here, the record reflects that L.A.M. judicially confessed to committing a felony aggravated assault and entered a plea of true. At the conclusion of the disposition hearing, the trial court made several findings, including the following: (1) it was in L.A.M.'s best interest to be placed outside his home and reasonable efforts were made to prevent or eliminate the need for his removal and to make it possible for him to return; (2) the quality of care and the level of support and supervision he needs to meet the conditions of probation cannot be met in the home; (3) after considering the prospect of the public's adequate protection, it is in society's best interest for L.A.M. to be committed to TYC; and (4) L.A.M.'s "needs are beyond the probation department's ability to rehabilitate." See TEX. FAM. CODE. ANN. § 54.04(i). The court found that even though the purposes of the Juvenile Justice Code are to be achieved "in a family environment whenever possible," commitment in L.A.M.'s case was necessary. TEX. FAM. CODE ANN. § 51.01(5) (Vernon 2002). In making its findings, the juvenile court reviewed the stipulated evidence, including the Bexar County Juvenile Probation Department pre-disposition report, containing details of L.A.M.'s past conduct. In particular, L.A.M. was on probation for a prior assault at the time he committed the aggravated assault. The report also documented L.A.M.'s behavior problems both at home and at school. At home, L.A.M. was disrespectful, did not follow household rules or listen to his mother, and he had been "physically aggressive" toward his sisters. At school, L.A.M. received several citations in the 2004-05 school year due to his behavior; most significantly, he was suspended for approaching a teacher with a pencil "in a threatening manner." See *In re K.T.*, 107 S.W.3d at 75-76. Based on our review of the record, we conclude that the trial court had legally and factually sufficient evidence to support its finding that commitment to TYC was in L.A.M.'s best interest. Therefore, L.A.M.'s first and fourth issues are overruled.

Individuals with Disabilities Education Act

In his second and third points of error L.A.M. raises issues relating to the Individuals with Disabilities Education Act. Specifically, in his second issue, he asserts that he retained special educational rights under the IDEA even though he was subject to the jurisdiction of the juvenile court. Indeed, the record shows that prior to being adjudicated delinquent, L.A.M. was receiving special education instruction at Pickett Academy. L.A.M. was diagnosed with emotional disturbance, "attention hyperactivity disorder," and a learning disability. Yet L.A.M. has cited no authorities suggesting that the IDEA prevents a juvenile court from acting to commit a juvenile, who has been adjudicated delinquent, to TYC. The authority of the juvenile court to commit L.A.M. to TYC is not limited by the IDEA. *Honig v. Doe*, 484 U.S. 305, 327, 98 L. Ed. 2d 686 (1988); *In re P.E.C.*, No. 04-05-00859-CV, 2006 WL 1994223, at *3 (Tex. App.--San Antonio July 19, 2006, no pet. h.). IDEA applies only to state or local school authorities; it has no application to state court proceedings involving a juvenile who has been adjudicated delinquent. See 20 U.S.C.A. § 1415(j); *Honig*, 484 U.S. at 327; *In re P.E.C.*, 2006 WL 1994223, at *3. The proper avenue through which to challenge L.A.M.'s educational placement is by invoking the administrative procedures set forth in the IDEA, and by instituting a civil action in federal district court once the administrative remedies have been exhausted. 20 U.S.C.A. § 1415(f),(i); *In re P.E.C.*, 2006 WL 1994223, at *3. Moreover, L.A.M. would bear the burden of proving that his educational placement is inappropriate in such a proceeding. See *Schaffer*, 126 S.Ct. at 536-37. Accordingly, L.A.M.'s second issue based on his "retaining" rights under IDEA is overruled.

n2 The IDEA is a federal act that seeks "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." *20 U.S.C.A. § 1400(d)(1)(A)*; *Schaffer v. Weast*, 126 S.Ct. 528, 531, 163 L. Ed. 2d 387 (2005). Under the IDEA, a state or local educational agency must create an "individualized education program" (IEP) for each disabled child. *20 U.S.C.A. § 1414(d)*. If parents believe their child's IEP is inappropriate, they may request an "impartial due process hearing." *20 U.S.C.A. § 1415(f)*. At an administrative hearing challenging an IEP, the parents bear the burden of proving the IEP is inappropriate. *Schaffer*, 126 S.Ct. at 537. The IDEA authorizes any party aggrieved by the results of an administrative hearing to bring a civil action in a federal district court or state court of competent jurisdiction. *20 U.S.C.A. § 1415(i)(2)(A)*.

Additionally, L.A.M. claims in his third issue that "the juvenile court abused its discretion in considering the unadjudicated alleged threatening behavior toward a teacher in committing L.A.M. to TYC as it was a condition that [was] the subject of rights under the [IDEA] and the State failed to show that the child's rights and remedies provided under said act were fulfilled and exhausted." To preserve an error for review, a party must object in a timely and specific manner. *TEX. R. APP. P. 33.1*. Here, the disposition hearing record does not reflect any mention of the IDEA. The Bexar County Juvenile Probation Department predisposition report, containing the information challenged by L.A.M., was admitted into evidence after L.A.M.'s attorney announced he had "no objection." By failing to preserve error, L.A.M. waived his complaint that the court abused its discretion by admitting and considering his prior conduct. *TEX. R. APP. P. 33.1*. Moreover, the trial court is authorized to consider prior referrals and adjudications in determining whether to commit a juvenile. *In re K.T.*, 107 S.W.3d at 75-76; *see also In re A.W.*, 147 S.W.3d 632, 636-38 (Tex. App.--San Antonio 2004, no pet.).

Conclusion: Based on the record before us, we hold that the trial court did not abuse its discretion in committing L.A.M. to the Texas Youth Commission. The judgment of the trial court, therefore, is affirmed.