Review of Recent Juvenile Cases (2007)

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

Once child turns eighteen, appeal from disposition order placing child on probation becomes moot.[In the Matter of A.M.L.](07-2-20)

On May 3, 2007, the Houston Court of Appeals held that an appeal from the disposition order placing appellant on probation is rendered moot by the termination of appellant's probation.

¶ 07-2-20. In the Matter of A.M.L., MEMORANDUM, No. 14-06-00874-CV, 2007 Tex.App.Lexis 3394 (Tex.App.— Houston, 5/3/07).

Facts: Appellant, a juvenile, was adjudicated delinquent after pleading true to the charge of burglary of a habitation as alleged in the State's first amended petition. Appellant appeals from a disposition order signed September 25, 2006, placing him on probation until his eighteenth birthday. The record reflects that appellant's eighteenth birthday was April 28, 2007.

Held: Dismissed

Memorandum Opinion: On January 3, 2007, the State submitted a motion for negative termination of the juvenile's probation to the trial court in the presence of the juvenile, his guardian, guardian ad litem, and a representative of the Fort Bend County Juvenile Probation Department. The trial court signed an order terminating appellant's probation, and closing the case. In addition, the State withdrew its pending motion to revoke appellant's probation.

The State asserts that this appeal has been rendered moot. A case becomes moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. *Murphy v. Hunt, 455 U.S. 478, 481, 102 S. Ct. 1181, 1183, 71 L. Ed. 2d 353 (1982); In the Matter of G.E., S.W.3d, No. 08-05-00147-CV, 2006 Tex. App. LEXIS 7553, 2006 WL 2457069 (Tex. App.--El Paso Aug. 24, 2006, no pet.)* (applying rule to a juvenile appeal). An appeal from a juvenile disposition order is rendered moot by the termination of the juvenile's probation because there is no live controversy between the parties and resolution of the appeal would not have any effect on the underlying case. *2006 Tex. App. LEXIS 7553, at *3, [WL] at *1.*

There are two exceptions to the mootness doctrine: (1) capable of repetition yet evading review and (2) collateral consequences. *General Land Office of the State of Texas v. Oxy U.S.A., Inc., 789 S.W.2d 569, 571, 33 Tex. Sup. Ct. J. 488 (Tex. 1990)*. To invoke the "capable of repetition yet evading review" exception, a plaintiff must prove that: (1) the challenged action was too short in duration to be litigated fully before the action ceased or expired; and (2) a reasonable expectation exists that the same complaining party will be subjected to the same action again. *Williams v. Lara, 52 S.W.3d 171, 184, 44 Tex. Sup. Ct. J. 998 (Tex. 2001)*. Given that appellant's probation has been terminated and his case closed, there is no reasonable expectation that he would again be subjected to a modification or revocation of his probation. *See In re R.M., Jr., S.W.3d, No. 08*-

06-00008-CV, 2007 Tex. App. LEXIS 2243, 2007 WL 896502, *1 (Tex. App.--El Paso, Mar. 22, 2007, no pet. h.). Consequently, the first exception to the mootness doctrine does not apply.

The collateral consequences exception pertains to severely prejudicial events, the effects of which continue to stigmatize individuals long after the judgment has ceased to operate. *General Land Office, 789 S.W.2d at 571; In the Matter of J.P.D., No. 03-02-00425-CV, 2003 Tex. App. LEXIS 3466, 2003 WL 1922466 (Tex. App.--Austin April 24, 2003, no pet.)* (mem. op.). This exception was applied in *Carrillo v. State, 480 S.W.2d 612, 616-17, 15 Tex. Sup. Ct. J. 340 (Tex. 1972)*, where a juvenile was discharged from probation while his case was on appeal. Noting that juvenile adjudications carry deleterious collateral effects and legal consequences including the stigma attached to being adjudged a juvenile delinquent, the Supreme Court held that Carrillo's case was not moot because "a minor should have the right to clear himself by appeal" and this right should not disappear when the sentence given is so short that it expires before the appellate process is completed. *Id. at 617.* An appeal from the disposition order placing appellant on probation has been rendered moot by the termination of appellant's probation. While the collateral consequences exception to the mootness doctrine might apply to an appeal from an adjudication of delinquency in a juvenile case, appellant has not responded to this court's notices or otherwise expressed a desire to appeal the adjudication.

Moreover, appellant entered a plea of true and stipulated to the evidence, and the court entered a disposition order in accordance with appellant's agreement with the State. The Family Code limits a juvenile's right to appeal under these circumstances. "A child who enters a plea or agrees to a stipulation of evidence . . . may not appeal an order of the juvenile court entered under *Section 54.03*, *54.04*, or *54.05* if the court makes a disposition in accordance with the agreement between the state and the child regarding the disposition of the case, unless: (1) the court gives the child permission to appeal; or (2) the appeal is based on a matter raised by written motion filed before the proceeding in which the child entered the plea or agreed to the stipulation of evidence." *TEX. FAM. CODE ANN. § 56.01(n)*. Compliance with *section 56.01(n)* has been held to be jurisdictional and the failure to abide by its terms subjects an appeal to dismissal for want of jurisdiction. *In the Matter of R.J.D., 2006 Tex. App. LEXIS 10408, 2006 WL 3497671, *1 (Tex. App.--San Antonio 2006, no pet.)* (mem. op.); *In the Matter of B.N.C., No. 04-02-00788-CV, 2003 Tex. App. LEXIS 2299, 2003 WL 1232997, at *1 (Tex. App.--San Antonio 2003, no pet.)* (mem. op.); *In the Matter of A.E.E. 89 S.W.3d 250, 254 (Tex. App.--Texarkana 2002, no pet.)*.

The record before this court does not reflect that the trial court expressly granted appellant permission to appeal. In addition, our record contains no written motions filed before the juvenile's plea. Therefore, this court lacks jurisdiction to consider the appeal.

On March 16, 2007, and on April 5, 2007, notification was transmitted to the parties, including appellant's appointed counsel, the guardian ad litem, and appellant's grandmother, of this court's intention to dismiss the appeal for want of jurisdiction unless appellant filed a response demonstrating grounds for continuing the appeal. n2 *See TEX. R. APP. P. 42.3(a)*. No response to the court's notices has been filed by appellant or anyone on his behalf.

n2 A second notice was transmitted to ensure that appellant's guardian and the guardian ad litem received notice of the court's intention to dismiss the appeal.

Conclusion: Accordingly, the appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Memorandum Opinion filed May 3, 2007.

