

Review of Recent Juvenile Cases (2008)

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

In motion to modify appeal, trial court did not abuse its discretion in placing respondent on probation outside the home.[In the Matter of J.L.K.](08-3-6)

On June 4, 2008, the San Antonio Court of Appeals held that in a motion to modify disposition, trial court did not abuse its discretion in placing respondent on probation outside the home.

Note: Trial court allowed respondent to withdraw plea bargain in motion to modify plea. It is undetermined whether plea bargains apply in motions to modify dispositions.

¶ 08-3-6. **In the Matter of J.L.K.**, MEMORANDUM, No. 04-07-00588-CV, 2008 WL 2260746 (Tex.App.-San Antonio, 6/4/08).

Facts: The State alleged J.L.K. engaged in delinquent conduct by possessing less than two ounces of marijuana. See [Tex. Health & Safety Code Ann. § 481.121](#)(a), (b)(1) (Vernon 2003). In June 2006, J.L.K. pled true pursuant to a plea agreement, and the trial court placed him on probation for nine months in the custody of his "godparents/guardians," H.L.J and S.J. Approximately four months later, the State filed a motion to modify disposition, alleging J.L.K. violated the conditions of his probation by assaulting H.L.J. J.L.K. pled true to the allegation and his probation was extended for an additional eight months.

On March 19, 2007, the State filed a second motion to modify disposition, alleging in part that J.L.K. violated the conditions of his probation by violating curfew in November 2006. J.L.K. pled true to the allegation. Based on J.L.K.'s plea of true, the State agreed to recommend that J.L.K. be continued on probation in the custody of his grandmother. However, after reviewing the State's evidence and considering the recommendation of the probation department for outside placement, the court rejected the State's recommended disposition. J.L.K. was given an opportunity to withdraw his plea of true, but he declined. The trial court found J.L.K. violated the curfew condition of his probation terms and placed him on probation until his eighteenth birthday "in the care, custody and control" of the Chief Probation Office of Bexar County for the purpose of placement outside the home. On appeal, J.L.K. argues the trial court abused its discretion in placing him on probation outside the home.

Held: Affirmed

Memorandum Opinion: When a juvenile court modifies a disposition by placing a juvenile on probation outside the home, it must state its reasons for the disposition and must determine (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 to make it possible for the child to return home, and (3) the child, in his home, cannot be provided the quality of care and level of support and supervision the child needs to meet his probation conditions. [Tex. Fam. Code Ann. § 54.05](#)(i), (m) (Vernon Supp.2007). The trial court made the findings

required by [section 54.05\(m\) of the Family Code](#) and further found that placement outside the home was necessary because J.L.K.'s grandmother is not physically capable of controlling him, the services provided J.L.K. at home by the probation department had not helped him improve his behavior, and he is in need of services in a safe and secured environment.

The evidence produced at the hearing demonstrated J.L.K. had been referred to the Juvenile Probation Department seventeen times and had been twice placed on probation while in the custody of different family members. [\[FN1\]](#) The State placed into evidence a pre-disposition report filed by J.L.K.'s probation officer. The report demonstrates that J.L.K. first resided with his paternal grandparents, but his grandfather left, his grandmother became ill, and J.L.K. began exhibiting behavioral problems. As a result, he went to live with H.L.J. and S.J., his godparents. From time to time he would return to his grandmother's home, but while living with his grandmother he stole an aunt's debit card, took \$1,000.00 from her account, and fled to California. A California relative returned him to Texas where he once again resided with his godparents. It was during this period of time that he was placed on probation for possession of marijuana. After this first probation placement, J.L.K. lived with several relatives without success. While living with various family members he demonstrated "negative, intimidating and aggressive behavior." This behavior included running away, physical violence, cursing at relatives, urinating in the yard, threatening to kill family members, pulling down his pants, locking relatives out of the house, disregarding all rules, and demonstrating a complete absence of respect. The report also shows J.L.K. was unsuccessfully placed in several programs when his family members could not handle him, including the Baptist Children's Home, the Roy Maas Youth Emergency Shelter, and the Girls and Boys Town. According to his probation officer, the only time J.L.K. fared well was "in detention." The report pointed out that a psychological evaluation stated J.L.K. has been diagnosed with Attention Deficit Hyperactivity Disorder and exhibits characteristics of Oppositional Defiant Disorder. The report noted that if probation was continued in the home, J.L.K. would be returning to paternal grandmother, who is a single parent and a stroke victim. The probation officer concluded her report by stating J.L.K. is "highly immature" and exhibits "destructive behavior" that calls for a "structured restricted environment" and only under "constant and formal supervision" will J.L.K. receive the services that will help him curb his negative behavior. Her recommendation for secure placement outside the home was supported unanimously by the department's staffing committee.

[FN1.](#) J.L.K.'s father died before J.L.K.'s birth. J.L.K.'s mother reportedly gave him to relatives to raise.

The evidence shows that none of the previous measures taken by the family, the court, or the probation department in an effort to allow J.L.K. to remain in a home environment were successful. While in a home environment, J.L.K. exhibited violent and negative behavior, continuing to commit new offenses and violate conditions of probation. Accordingly, we overrule J.L.K.'s sole point of error and hold the evidence supports the trial court's findings and the court did not abuse its discretion in placing J.L.K. on probation outside the home.

Conclusion: We affirm the trial court's order.