

Review of Recent Juvenile Cases (2008)

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

Three to six months in residential placement, is not necessarily three to six months residential placement.[In the Matter of M.A.H.](08-4-2)

On August 28, 2008, the Corpus Christi Court of Appeals held that a commitment to residential placement for a period of not less than three (3) months, but no more than six (6) months, or until said child is successfully discharged by the facility, does not restrict the commitment to less than six (6) months.

¶ 08-4-2. **In the Matter of M.A.H.**, MEMORANDUM, No. 13-07-426-CV, 2008 WL 3971351 (Tex.App.-Corpus Christi,8/28/08).

Facts: M.A.H., a juvenile, pleaded true to the offense of indecency with a child by exposure [\[FN1\]](#) and was placed on probation for one year. During his probation, the State filed a motion to modify disposition, and the court extended his probation for an additional six months and committed him to the Pegasus School, which discharged him without a successful completion of the treatment program. During his extended probationary period, the State filed a second motion to modify disposition, and after a hearing, the court revoked his probation and committed him to the Texas Youth Commission (T.Y.C.). By two issues, M.A.H. argues the trial court erred in revoking his probation because the revocation resulted from the violation of a condition too vague for enforcement, and the evidence was legally insufficient to support revocation.

Held: Affirmed

Memorandum Opinion: In issue one, M.A.H. contends the trial court erred in revoking his probation because the revocation resulted from the violation of a condition too vague for enforcement. In *Rickels*, the court of criminal appeals restated it's holding that "a defendant must complain at trial to the [community supervision] conditions he finds objectionable." [Rickels v. State, 108 S.W.3d 900, 902 \(Tex.Crim.App.2003\)](#) (internal quotations omitted). By failing to object to the terms and conditions of probation at trial, a defendant affirmatively waives any complaints he or she may have had. *Id.*; [Speth v. State, 6 S.W.3d 530, 534 \(Tex.Crim.App.1999\)](#). Here, the record does not reflect M.A.H. objected to the complained-of probation condition at any time other than on appeal.

Concurring Memorandum Opinion by Justice Yañez

I agree with the majority opinion in all respects. I write separately, however, to make a few additional observations.

In their briefs and at oral argument, the parties in this cause argued over whether M.A.H. violated a condition of probation by failing to be *successfully* discharged from Pegasus. According to the State's brief, "It was

abundantly clear that Juvenile Services was requiring successful completion of the Pegasus program by Appellant for treatment purposes and that Appellant was unsuccessfully discharged from the program." [\[FN2\]](#) M.A.H., on the other hand, argued that he was not required to successfully complete the Pegasus program, but was only required to remain at the program for three to six months--a requirement he more than satisfied.

[FN2.](#) State's Brief at 7.

The source of the parties' debate stems from the following provision of M.A.H.'s probation order:

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that [M.A.H.] is hereby committed to Pegasus in accordance with Chapter 61 of the Texas Human Resources Code, and [Section 54.04 of the Texas Family Code](#), for a period of not less than three (3) months, but no more than six (6) months, or until said child is successfully discharged by the facility. [M.A.H.] is ordered placed in the custody of the Calhoun County Juvenile Probation Department pending transportation the [sic] proper facility. [\[FN3\]](#)

[FN3.](#) Emphasis added.

Despite the State's contention that it is "abundantly clear" that successful completion of the Pegasus program is required, I question whether the probation order actually compels M.A.H. to be successfully discharged in order to remain compliant with his probation's conditions.

If meaning is to be given to all the terms in the above provision, one is compelled to read the provision and the conditions therein as being satisfied if M.A.H. either (1) remains in Pegasus for six months, or (2) remains in Pegasus until successfully discharged. Though I doubt that the State and the trial court intended for the provision to afford M.A.H. such flexibility, their intent must surrender to the plain meaning of the provision's text. The fact of the matter is that M.A.H. was in Pegasus for over six months; accordingly, M.A.H. satisfied the above provision.

It should further be noted, however, that M.A.H.'s placement at Pegasus for six months only satisfied the aforementioned provision--it did not satisfy the entirety of the probation order. The order also contains the following provisions:

IT IS ALSO CONSIDERED, ORDERED AND ADJUDGED BY THE COURT that the child, [M.A.H.], now comes under guidance, and control for one (1) year, subject to extensions not to exceed one (1) year each until the child becomes eighteen (18) years of age unless discharged prior thereto subject to subsequent and additional proceedings under the provisions made by the statute in such cases, and that the said the child [sic], [M.A.H.] be and is hereby placed on probation in accordance with Title 3, Texas Juvenile Justice Code and upon the following reasonable and lawful terms and conditions:

CONDITIONS OF PROBATION

You are hereby advised that under the laws of Texas, the court determines the terms and conditions of our [sic] probation. If you do not follow all these rules, the Court can take away your probation.

IT IS THE ORDER OF THIS COURT that beginning November 16, 2005, you shall comply with and obey the following conditions of probation:

....

H. REHABILITATION AND TREATMENT:

1. You will participate in any diversion program supervised or sponsored by the Calhoun County Juvenile Department as directed by your probation officer.
2. You are required to attend any counseling or treatment in which the Juvenile Services Department feels is necessary for your best interest in your rehabilitative efforts.

Under these provisions, it would appear, despite M.A.H.'s arguments to the contrary, that M.A.H. can be compelled to attend counseling and treatment at Pegasus for more than six months, should the Juvenile Services Department feel it "necessary for [his] best interest in [his] rehabilitative efforts." Though the first provision discussed appears to limit the amount of time M.A.H. has to stay in Pegasus (i.e., "no more than six (6) months"), that apparent limitation is subtly swallowed by the latter provisions discussed herein.

Conclusion: Therefore, the State was at liberty to argue that M.A.H. had violated his probation by failing to attend counseling or treatment at Pegasus--as a result of his unsuccessful discharge--even though M.A.H. had already remained there for over six months.