Review of Recent Juvenile Cases (2009)

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

An order transferring a case to another county for disposition is not appealable.[In the Matter of M.A.O.](09-1-4B)

On December 10, 2008, the San Antonio Court of Appeals concluded that Section 51.07 of the Texas Family Code, does not authorize an appeal from an order transferring a disposition to another county.

¶ 09-1-4B. **In the Matter of M.A.O.**, MEMORANDUM, No. 04-07-00658-CV, 2008 WL 5170297 (Tex.App.-San Antonio, 12/10/08).

Facts: A jury found M.A.O. had engaged in delinquent conduct as alleged in the State's petition. Based on the jury's findings, the juvenile court entered an adjudication order and found a need for disposition, but did not proceed to disposition. Instead, after noting M.A.O. had previously been adjudicated of delinquent conduct in Harris County and had already been placed on probation in that county, the juvenile court transferred M.A.O.'s case to Harris County for disposition. M.A.O. then perfected this appeal.

M.A.O. argues the trial court abused its discretion by transferring his case to Harris County for disposition.

Held: Dismissed for lack of jurisdiction.

Memorandum Opinion: M.A.O. argues the trial court abused its discretion in transferring his case to Harris County for disposition under Section 51.07 of the Texas Family Code. [FN1] *See* Tex. Fam.Code. Ann. 51.07 (Vernon Supp.2008).

> FN1. Section 51.07, entitled "Transfer to Another County" provides:
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> When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Section 54.03, the juvenile court may transfer the case and transcripts of records and documents to the juvenile court of the county where the child resides for disposition of the case under Section 54.04. Consent by the court of the county where the child resides is not required.
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> Tex. Fam.Code Ann. § 51.07 (Vernon Supp.2008).

As a threshold matter, we consider our jurisdiction to review the challenged order. A juvenile's right to appeal in juvenile proceedings is controlled by Section 56.01(c) of the Texas Family Code. Tex. Fam.Code Ann. § 56.01(c) (Vernon 2008); *see In the Matter of R.J.M.,* 211 S.W.3d 393, 394 (Tex.App.-San Antonio 2006, pet. denied). However, section 56.01(c) does not authorize an appeal from a transfer order issued under Section

51.07 of the Texas Family Code. *See* Tex. Fam.Code Ann. § 56.01(c) (Vernon 2008). When a legislative enactment says a juvenile may appeal orders delineated in the statute, there is no right to appeal orders not so included. *R.J.M.,* 211 S.W.3d at 394; *In the* *Matter of J .H.,* 176 S.W.3d 677, 679 (Tex.App.-Dallas 2005, no pet).

Because the controlling statute does not authorize an appeal from a transfer order issued under Section 51.07 of the Texas Family Code, we conclude the order transferring M.A.O.'s case to another county for disposition is not an appealable order. *See R.J.M.,* 211 S.W.3d at 394-95 (dismissing appeal for lack of jurisdiction because the Texas Family Code did not authorize an appeal from a juvenile court order denying motion to appoint counsel for post-adjudication DNA testing); *J.H.,* 176 S.W.3d at 679 (dismissing juvenile's appeal for lack of jurisdiction because juvenile court order transferring determinate sentence probation to criminal district court was not appealable). Because the transfer order is not an appealable order, we are without jurisdiction to consider M.A.O.'s third issue and must dismiss this portion of the appeal for lack of jurisdiction. *See In re Estate of Munoz,* No. 04-06- 00850-CV, 2007 WL 4547558, at *3 (Tex.App.-San Antonio 2007, no pet.) (dismissing corresponding portion of the appeal for lack of jurisdiction when venue transfer order was not appealable).

Conclusion: The portion of the appeal challenging the trial court's transfer order is dismissed for lack of jurisdiction.