Review of Recent Juvenile Cases (2009)

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

Appellant was not denied the right to meaningful review even though the record failed to show evidence the trial court considered at the disposition hearing.[In the Matter of J.L.H.](09-2-5)

On January 28, 2009, the Waco Court of Appeals found that they had a full record for review even where two exhibits listed as support for the required trial court's findings were not actually attached as stated in the order.

¶ 09-2-5. **In the Matter of J.L.H.,** MEMORANDUM, No. 07-11-00973 JV, 2009 WL 201354 (Tex.App.-Waco, 1/28/09).

Facts: A juvenile, was adjudicated delinquent in Harris County, Texas based on a charge of assault on a public servant. TEX. FAM.CODE ANN. § 54.03 (Vernon Pamp.2008); TEX. PENAL CODE ANN. § 22.01(a), (b)(1) (Vernon Supp.2008). The case was transferred for a disposition hearing to the child's home county of Robertson County where the child was being detained on another offense. After a hearing, the trial court committed J.L.H. to the Texas Youth Commission. We affirm. INEFFECTIVE ASSISTANCE OF COUNSEL J.L.H. contends in her first issue that her counsel at the disposition hearing was ineffective. She points to a variety of "failures" by counsel to support her claim. A juvenile has the right to effective assistance of counsel. See In re Gault, 387 U.S. 1, 41, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). This record, however, is undeveloped and cannot adequately reflect the motives behind counsel's alleged failures to take certain actions. See Goodspeed v. State, 187 S.W.3d 390, 392 (Tex.Crim.App.2005). Counsel should ordinarily be afforded an opportunity to explain his actions. Id. Absent such an opportunity, an appellate court should not find deficient performance unless the challenged conduct was "so outrageous that no competent attorney would have engaged in it." Id. (citing Garcia v. State, 57 S.W.3d 436, 440 (Tex.Crim.App.2001)). No. 10-08-00126-CV Court of Appeals of Texas, Waco.

The disposition hearing was conducted in an informal manner. Neither J.L.H.'s counsel nor her ad litem objected to the informality of the proceeding. Based upon this record, we cannot conclude J.L.H. established that counsel's performance was "so outrageous" that it fell below the objective standard of reasonableness, and thus, satisfied the first prong of *Strickland*. S*ee id.; see also Strickland v. Washington,* 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Her first issue is overruled.

In her second issue, J.L.H. argues she was denied the right to a meaningful review on appeal because the record fails to show what evidence the trial court considered at the disposition hearing. Specifically, J.L.H. contends the documents named by the State that it "offered" to the court do not appear in the clerk's or reporter's records.

Held: Affirmed

Memorandum Opinion: Section 54.04(b) of the Texas Family Code allows the court to consider "written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses." Tex. Fam.Code Ann. § 54.04(b) (Vernon Pamp.2008). J.L.H. relies on *In re M.S.* as support for the proposition that "without a full record, appellant has been denied the right to a meaningful review of the trial court's order." Appellant's brief at 12; *In re M.S.*, 940 S.W.2d 789 (Tex.App.--Austin 1997, no pet.). But *M.S.* is distinguishable. In that case, the appellate court was contemplating whether to allow the late filing of a statement of facts when the rules of appellate procedure did not provide for such in the context of a civil appeal. *In re M.S.*, 940 S.W.2d at 790-791. That is not the scenario presented here. As stated earlier, this was an informal hearing, about which no one complained at trial or has complained on appeal. The State offered the social history report, which it believed was in the court's file, any documents from the detention center, any testimony that had already been presented to the court, the offense reports from the pending charge in Robertson County, and "everything about [J.L.H.]." Granted, there are no documents from the detention center and no offense reports in the record. But contrary to J.L.H.'s assertion, the record does contain some of what the State offered. In the clerk's record is a Juvenile Probation Report which appears to have been prepared by the Harris County Juvenile Probation Department. There is also a two-page report with a cover letter by a juvenile probation officer for Falls, Milam, and Robertson Counties. Both reports contain information, such as family background, a criminal history, and a recommendation by the probation department, which the trial court might need in making a disposition determination. Thus, either of these reports could be the "social history report" [FN1] mentioned by the State. Additionally, the reporter's record contains testimony of the juvenile probation officer, recollections by the trial court as to what had happened earlier in J.L.H.'s case, and statements by the State, counsel for J.L.H., and the ad litem for J.L.H. We find J.L.H. has a full record available for review on appeal. J.L.H. further complains that the trial court's Dispositional Order of Commitment to the Texas Youth Commission lists two exhibits as support for the required findings which are not actually attached as stated in the order. *See* Tex. Fam.Code Ann. § 54.04(i) (Vernon Pamp.2008). The trial court need not state any reasons or provide support for why it made the required findings. *See In re M.S,* 940 S.W.2d at 792.

Conclusion: Therefore, the fact that documentation mentioned is missing from the order does not mean there is no ability to have a meaningful review of her appeal. Because J.L.H. has a full record on appeal, she has not been deprived of a meaningful appellate review. Her second issue is overruled.