Review of Recent Juvenile Cases (2009)

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

Motion for New Trial need not be presented to preserve factual sufficiency error.[In the Matter of C.J.](09-2-7)

On February 5, 2009, the Houston Court of Appeals (1 Dist.), held that a complaint about factual sufficiency need not be presented in a motion for new trial in a juvenile adjudication of delinquency to preserve it for appeal.

¶ 09-2-7. **In the Matter of C.J.**, ___ S.W.3d ___, 2009 WL 276827 (Tex.App.-Hous. (1 Dist.), 2/5/09).

Facts: The State filed a petition alleging that C.J., a juvenile, had engaged in delinquent conduct by striking another boy with his hand. C.J. pleaded not true to the allegation. The trial court found the allegation true, and it placed C.J. on probation, in the custody of his mother, until his eighteenth birthday. C.J. contends that the evidence is legally and factually insufficient to support the trial court's finding of delinquency. C.J. did not challenge the legal or factual sufficiency of the evidence in his motion for new trial.

Held: Affirmed

Opinion: The rules of civil procedure govern juvenile delinquency cases. TEX. FAM.CODE ANN. § 51.17(a) (Vernon 1991); In re M.R., 858 S.W.2d 365, 365 (Tex.1993), cert. denied, 510 U.S. 1078, 114 S.Ct. 894 (1994); In re S.D.W., 811 S.W.2d 739, 749 (Tex.App.--Houston [1st Dist.] 1991, no pet.). Preservation Rule 324(b) provides that to preserve a factual insufficiency point of error, the party seeking relief must file a motion for new trial complaining of the insufficiency. S.D.W., 811 S.W.2d at 739; TEX.R. CIV. P. 324(b) (1998).

We hold that C.J. need not have raised his factual sufficiency complaint in the trial court to preserve it for our review. Whether or not a motion for new trial is necessary to preserve factual sufficiency review is somewhat contested. Based on In re M.R., many courts have found that factual sufficiency must be alleged in the motion for new trial to preserve the error. M.R., 858 S.W.2d at 366. However, the Supreme Court decided M.R. before the advent of factual sufficiency review in criminal cases. In Clewis v. State, decided after M.R., the Court of Criminal Appeals held that a criminal defendant has a right to factual sufficiency review of a conviction. Clewis v. State, 922 S.W.2d 126, 136 (Tex.Crim.App.1996). Thereafter, the Court of Criminal Appeals further held that an appellate claim concerning the sufficiency of the evidence did not need to be raised in a motion for directed verdict or motion for new trial before it could be raised on appeal. Moff v. State, 131 S.W.3d 485, 488-89 (Tex.Crim.App.2004). Thus, our sister court has determined that, because the juvenile justice system is more closely related to the adult criminal justice system than the civil system, juveniles should have the same right to appeal factual sufficiency now that the Court of Criminal Appeals has granted that right to adults, despite the fact that juvenile appeals are determined under civil law. In re J.L.H., 58 S.W.3d 242, 245-46 (Tex.App.--El Paso 2001, no pet.).

We use the criminal standard of review in juvenile cases, despite the fact that they are technically civil cases. See In re J.B.M., 157 S.W.3d 823, 826 (Tex.App.--Forth Worth 2005, no pet.) (holding that the criminal standard of review is appropriate for a legal sufficiency challenge). Recognizing the underlying constitutional principals at play, the Texas Supreme Court has held that juveniles don't need to first raise in the trial court the complaint that the trial court failed to give adequate admonishments because juvenile cases are "quasi-criminal." In re C.O.S., 988 S.W.2d 760, 763 (Tex.1999). Following Clewis and Moff, we hold that because of the quasi-criminal nature of juvenile cases, a complaint about factual sufficiency need not be presented in a motion for new trial in a juvenile adjudication of delinquency to preserve it for appeal. See Clewis, 922 S.W.2d at 136; Moff, 131 S.W.3d at 488-89. Thus, we consider both the legal and factual sufficiency of the evidence.

The only evidence presented at trial was the testimony of T.J., Officer Jackson, and C.J. C.J.'s testimony that he acted in self-defense is the evidence that most undermines the guilty verdict. However, viewing all of the evidence in a neutral light, we cannot say that the verdict was against the great weight and preponderance of the evidence, clearly wrong, or manifestly unjust. Even with C.J.'s testimony that he acted in self-defense, T.J. and Officer Jackson's testimony was factually sufficient to support the trial court's verdict.

Conclusion: We hold that C.J. need not have challenged the factual sufficiency of the evidence in the trial court to raise that challenge on appeal, and that legally and factually sufficient evidence exists to support the finding of delinquency based on assault. We therefore affirm.