

## Review of Recent Juvenile Cases (2010)

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

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### **Evidence was insufficient to support finding that mother contributed to delinquency of the juvenile in graffiti adjudication.[In the Matter of S.J.C.](10-1-3)**

**On January 6, 2010, the El Paso Court of Appeals reversed a portion of a judgment finding that the evidence was legally insufficient to support the trial court's finding that the juvenile's mother by willful act or omission, contributed to, caused, or encouraged the child's delinquent conduct.**

¶ 10-1-3. **In the Matter of S.J.C.**, No. 08-08-00284-CV, \_\_\_ S.W.3d \_\_\_, 2010 WL 23658 (Tex.App.-El Paso, 1/6/10).

**Facts:** S.J.C. was charged by petition with engaging in delinquent conduct in the form of marking with indelible marker on a bathroom sink, mirrors and tile walls in violation of Tex. Pen.Code Ann. § 28.08. An attorney was appointed to represent the child, and with his attorney's concurrence the child agreed to a hearing before the juvenile court referee without a jury. The child pleaded true to committing the offense of graffiti misdemeanor both in open court and by written waiver, stipulation and admission.

In her predisposition report, juvenile probation officer Dora Rodarte noted that the child's mother was a substitute teacher for El Paso I.S.D., and the father had not been in contact with the child for many years. The mother has no criminal history. She attended a PEACE meeting on August, 11, 2008. The child participated in school band and swim team and attended church with his mother on Wednesdays and Sundays. He had no curfew because he rarely went out, but when he did his mother would drive him to and from the event. It was the probation officer's opinion that the mother had not contributed to the child's delinquent behavior, as the mother made sure the juvenile was involved in positive activities and maintained contact with school officials. The officer noted that the delinquent behavior was attributable to negative associations and peer pressure.

A disposition hearing was held on August 27, 2008, before juvenile court referee Richard Ainsa. The predisposition report was entered in evidence at the hearing. Officer Rodarte testified that she believed that the child was in need of rehabilitation, and recommended that he be placed on supervised probation with a 5 p.m. curfew until he turned 18, with a review hearing in four months. Rodarte testified that the child had committed the graffiti offense because he wanted to be accepted into the "Crazy Azz Tagging Crew" (which she noted was not a gang). At home, the child's mother reported no problems with the child other than some "talking back" the year before, which was no longer a problem. The child complied with his mother's rules and did chores such as pulling weeds, cleaning his room and throwing out trash. Sometimes he would question these rules, but he did comply. Officer Rodarte further stated that the mother was able to provide proper control and supervision. She did not believe that the mother had contributed to the delinquency.

Officer Rodarte further testified that, in a conversation before the hearing, she had recommended to the mother that she be evaluated at El Paso MHMR, and the mother responded that if she was going to go then

the child had to go too. Ms. Rodarte asked if there were any problems, to which the mother replied, "Well, I'm the mother and there are a lot of problems." Upon hearing that statement, the mother (in the courtroom but not on the witness stand) stated, "No, I didn't say that." The referee admonished her not to speak out of turn. Later in Rodarte's testimony, she explained her reason for recommending that the mother attend counseling:

The reason for this was that during the interview, the juvenile was fine, we talked, he was very open. However, when I spoke to the mother, when I interviewed her, she seemed to be-I was a little concerned that maybe she was a little depressed. She was crying a lot about what had happened, stated that why were we opening up the case again, that we were going to break up her family. I told her to calm down and that everything would be okay because [the juvenile] appeared fine.

I was a little concerned also when I went to the home because it is a three bedroom home, two bath, however, they only use one of the bedrooms because the home has a lot of things, you know, stacks of books, clothes. She did indicate that she was trying to have a garage sale.

The juvenile's mother also testified at the disposition hearing. She explained that the child had a hard time in 2007 when they had moved to Nevada for a year. She also discussed her depression-as a teacher she is required to issue referrals on kids, and it was hard for her to accept that her own son was in trouble at school. She did not understand that the process would require her to come to court, and she had never been involved in anything like this before. The referee reassured her, saying, "Well, you didn't do this. You didn't do it so you shouldn't be upset about it." Upon questioning, she stated that she was willing to see a counselor. *In the judgment of probation, the court placed the juvenile on probation and also found that the child's mother, by willful act or omission, had contributed to, caused, or encouraged the child's delinquent conduct, and ordered her to participate in the juvenile's rehabilitation (Italics added).*

Some time after the hearing, but still on the same day, the case went back on the record because the mother and juvenile had refused to sign a copy of the referee's recommendations after having been ordered to do so. The juvenile had been returned to school by this time, but the mother was present<sup>FN1</sup> and the referee told her: "[Y]ou're going to have to sign it [the recommendations] or you're going to go to the county jail." The following exchange then occurred:

FN1. There is no indication in the record that the mother was represented, nor that the juvenile's attorney was present during this exchange.

**The Mother: Sir, I'm not refusing to sign it. What you-hopefully it was recorded in the hearing this morning. You had mentioned that I was not-I had not contributed to his delinquency. What you said and what she has written in the papers are not in agreement. Her paper reads that I have. So, therefore, for that reason, I-**

**The Court: I didn't comment on the record.**

**The Mother: I have asked her to go ahead and have you fix that.**

**The Court: No, because I didn't-.**

**The Mother: What you said-**

**The Court: Ms. Valdez, I didn't make that finding on the record, and whatever is in my Order-**

**The Mother: You mentioned it. Was it- was it recorded earlier?**

**The Court: Do you remember anything about me mentioning that?**

**Officer Rodarte: I don't know if you said it, Your Honor. I did say that we had not found that.**

**The Court: It was your recommendation.**

**Officer Rodarte: Right.**

**The Court: That's not my finding.**

**Officer Rodarte: However, I explained to her that that was based on what she reported to me at the interview. However, right before we walked in and I told her about the evaluation that I was going to have her submit to, she said that there was issues and that she would not turn her son in, therefore, she was not truthful with me in the interview.**

**The Mother: Well-**

**The Court: No, ma'am. You listen to me. That's her recommendation. I don't have to follow it, and I didn't follow it. I found that you contributed to the delinquency of your son. So that's my finding. If you don't like it, your remedy is to appeal my judgment. I'm not going to change it. So you either sign that acknowledging that you received the judgment or you're going to go to the county jail. If you don't like what it says in there, you're free to appeal it. You have a certain amount of time after today to appeal it to another court to have it reviewed.**

**...**

**The Court: Ma'am, I didn't say anything. I didn't say anything because I didn't agree with her recommendation, and I made a finding in there that you did contribute.**

**The Mother: Now you're changing your story.**

**The Court: No.**

**The Mother: Yes.**

**The Court: Ms. Valdez, you're going to make me lose my patience. You either sign it or you're going to the county jail.**

**The Mother: It doesn't matter. Do what you will with me. It doesn't matter to me.**

**The Court: Then the Court's finding you in contempt of court. You'll remain in the county jail until you sign it. You'll sit there as long as it takes until you sign that.**

**The Mother: Whatever.**

**The Court: All right. Take her into custody.**

### **The Mother: Good job, Dora.**

Still later, the referee brought the mother and juvenile back into the courtroom and presented them with a copy of the judgment of probation on the record. He then released the mother from custody. A review hearing was held on January 7, 2009, at which time the juvenile's probation was terminated.

**Held:** Judgment reversed as to the findings of the court that the child's mother, by willful act or omission, had contributed to, caused, or encouraged the child's delinquent conduct.

**Opinion:** With regard to legal sufficiency, we examine only the evidence supporting the finding that the mother contributed to her son's delinquency. We find the following: Officer Rodarte was concerned that the mother "was a little depressed," crying about what had happened, asked why the case was being opened again, and was concerned that the State was going to break up her family. Only one bedroom of the three bedroom home was in use (apparently by the juvenile) as the other bedrooms were filled with books and clothes. The mother was having a hard time dealing with the disposition hearing because the graffiti incident had occurred months before, and this was a new experience to her. She is a substitute teacher and it was hard for her to accept that her own son was in trouble. A new school year had begun before the case came to court. She agreed to see a counselor. No other evidence before the referee at the time of his finding even remotely supports the conclusion that this parent contributed to her child's graffiti offense, except the fact of the offense itself. We conclude this does not amount to a scintilla.

The State places some reliance on the events after the referee's finding, when the Appellant declined to sign the judgment and the referee threatened her with jail. We first note that the referee had already made his finding and events occurring afterward are therefore of doubtful relevance. The child was not present to witness the exchange between the parent and referee, and further there is nothing in the law which would require the mother's signature on recommendations or judgment. The Family Code simply requires that the court "furnish a copy of the order to the child." Tex. Fam.Code Ann. § 54.04(f) (Vernon 2008). Nor is there anything in Appellant's conduct that is discernable from this record which would constitute direct contempt, as argued by the State. Even her statement to the referee "[n]ow you're changing your story" was an apparent reference to his remarks "[w]ell, you didn't do this. You didn't do it so you shouldn't be upset about it." It is understandable that the Appellant would find this statement inconsistent with a finding that she had contributed to her son's delinquency, and we find nothing contumacious in her questions. Thus, even viewing the post-disposition exchange in the light most favorable to the challenged finding, we cannot conclude that it lends support to a determination of contribution to an act of graffiti.

Finally, the State argues that the court would have no authority to send Appellant for an evaluation and counseling unless she was found to have contributed to her son's delinquency. This is true, but it does not constitute any evidence supportive of the finding. Although the referee's motives may have been good, nevertheless his findings must be supported by sufficient evidence, and that simply does not exist here. The mother's issue on appeal is sustained. Because we find the evidence legally insufficient to support the finding, we need not reach the issue of factual sufficiency.

**Conclusion:** For the reasons set out above, we find that the issue before us is reviewable under the collateral consequences exception to the mootness doctrine. We further find that the evidence was legally insufficient to support the trial court's finding that the juvenile's mother by willful act or omission, contributed to, caused, or encouraged the child's delinquent conduct. We therefore reverse that portion of the trial court's judgment of probation, and order that finding vacated. As modified, the remainder of the judgment is affirmed.