Review of Recent Juvenile Cases (2010)

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

Granting of deferred prosecution by prosecutor must be in writing, signed and filed in the record of the cause to be enforceable.[In the Matter of R.C.](10-1-6)

On February 4, 2010, the Corpus Christi Court of Appeals held that while a prosecutor has the discretion to defer prosecution of a juvenile without court approval in certain circumstances, the agreement must comply with Tex.R. Civ. P. 11, to be enforceable.

¶ 10-1-6. **In the Matter of R.C.**, MEMORANDUM, No. 13-08-00334-CV, 2010 WL 411873 (Tex.App.-Corpus Christi, 2/4/10).

Facts: Appellant and his fraternal twin brother were born on March 19, 1991. On August 24, 2007, the juveniles were arrested and placed into custody. Identical petitions were filed on August 31, 2007, alleging that each brother intentionally or knowingly caused the penetration of the sexual organ of S.G. (also 16), who was younger than 17 years of age, and not the spouse of the respondent, by respondent's sexual organ. On August 29, 2007, an Order of Detention was entered and hearing set for September 10, 2007. That hearing was conducted and another Order of Detention was signed and entered. After another hearing September 24, 2007, the two juveniles were ordered released on house arrest. A pre-trial hearing was set October 1, 2007, where the juveniles and their attorney appeared, announced ready for trial, and demanded a trial by jury. Per local practice, the case was transferred from the County Court at Law to the District Court of San Patricio County. The case was set for jury trial on October 22, 2007. However on October 2, 2007, the county attorney's office requested the appointment of a special prosecutor who was board certified, which request was granted. The special prosecutor requested a continuance because of a conflicting setting, and to obtain additional time to prepare. The unopposed motion was granted.

The case was reset to January 11, 2008. At the January trial setting, a tentative settlement was reached between the special prosecutor and defense attorney deferring prosecution for a period of six months upon the juveniles agreeing to voluntary supervision by the San Patricio County probation officer and to abide by a list of specified conditions. No record was made of the agreement, and no written form of agreement was signed at that time. Later that day, an agreement was signed by appellant, his brother, their parent/guardian, and a probation officer. The agreement was not signed by the special prosecutor, defense counsel, or the judge. The form agreement, apparently prepared by a probation officer, provided for approval and signature of the judge, but not for the prosecutor. Two judges later refused to approve the agreement. The special prosecutor and defense counsel later professed ignorance of any requirement for the judge's signature or approval. A notice of setting for trial/dismissal/status was set for April 21, 2008. Defense counsel denied any knowledge that the agreement was not in force until April 2008. Defense counsel also asserted that the probation officer indicated that neither the prosecutor's nor the judge's signature was required.

On April 28, 2008, appellant filed a motion to enforce the agreement to defer prosecution and alternatively to dismiss for want of a speedy trial. Before that date, the case had already been set for a jury trial on May 19, 2008. At the trial setting, a jury was waived, and the case tried to the court.

Held: Affirmed

Memorandum Opinion: Appellant argues that under the family code, the prosecutor, without court approval, may agree to defer prosecution. *See* Tex. Fam.Code Ann. § 53.03(e), (g) (Vernon 2006). The family code does provide in pertinent part: "A prosecuting attorney may defer prosecution for any child." *Id.* at § 53.03(e). As appellant points out, this power is denied if the offense is under certain provisions of the penal code, or is a third or subsequent offense under certain provisions of the Texas Alcoholic Beverage Code. *Id.* at § 53.03(g).

Appellant acknowledges that the trial court may defer prosecution at any time for an adjudication that is: (1) to be decided by a jury trial before the jury is sworn; (2) for an adjudication before the court, before the first witness is sworn; and (3) for an uncontested adjudication before the child pleads to the petition or agrees to a stipulation of evidence. *Id.* at § 53.03(i). Appellant appears to concede in his brief that in the procedural context of a "demand or insist that a jury trial is to be conducted in the case that *the Court* may reject an agreement of the application for deferred prosecution." (Emphasis in original.) The appellant had demanded a jury trial twice in this proceeding.

Both appellant and the State agree, without citing authority, that the correct standard of review is abuse of discretion. In analogous situations, the abuse of discretion standard has been used in juvenile proceedings. *See In re B.P.H.*, 83 S.W.3d 400, 405 (Tex.App.-Fort Worth 2002, no pet.) (abuse of discretion review applies to motions to quash petitions in juvenile cases). An abuse of discretion standard is typically applied when a trial court has discretion either to grant or deny relief based on its factual determinations. *In re Doe*, 19 S.W.3d 249, 253 (Tex.2000) (citing *Bocquet v. Herring*, 972 S.W.2d 19, 20-21 (Tex.1998)). A trial court abuses its discretion when its decision is arbitrary, unreasonable, or without reference to any guiding rules or legal principles. *K-Mart Corp. v. Honeycutt*, 24 S.W.3d 357, 360 (Tex.2000). Even where a trial court gives an incorrect legal reason for its decision, the trial court's assignment of a wrong reason is not automatically reversible error. *Hawthorne v. Guenther*, 917 S.W.2d 924, 931 (Tex.App.-Beaumont 1996, writ denied); *Luxenberg v. Marshall*, 835 S.W.2d 136, 141-42 (Tex. App.-Dallas 1992, no writ). A trial court does not abuse its discretion if it reaches the right result, even where that result is based upon an incorrect legal reason; when a trial court gives an incorrect legal reason for its decision, we will nevertheless uphold that decision on any proper grounds supported by the record. *Luxenberg*, 835 S.W.2d at 142. A judge's decision whether a settlement agreement should be enforced as an agreed judgment or must be the subject of a contract action requiring additional pleadings and proof is subject to the abuse of discretion standard of review. *See Mantas v. Fifth Court of Appeals*, 925 S.W.2d 656, 659, (Tex.1996).

Appellant contends that the record supports his position that the deferred prosecution agreement, which was not executed by the prosecutor or approved by the judge, established his entitlement to enforcement of the agreement. We disagree. Family code section 51.17, entitled "Procedure and Evidence," provides: "(a) Except for the burden of proof to be borne by the state in adjudicating a child to be delinquent or in need of supervision under Section 54.03(f) or otherwise when in conflict with a provision of this title, the Texas Rules of Civil Procedure govern proceedings under this title." Tex. Fam.Code Ann. § 51.17 (Vernon 2006). For a settlement agreement to satisfy the requirements of rule 11 it must be: (1) in writing; (2) signed; and (3) filed with the court or entered in open court prior to a party seeking enforcement. Tex.R. Civ. P. 11; *Staley v. Herblin*, 188 S.W.3d 334, 336 (Tex.App.-Dallas, 2006, pet.denied) (citing *Padilla v. LaFrance*, 907 S.W.2d 454, 461, (Tex.1995)). This rule has existed since 1840 and has contained the filing requirement since 1877. *Padilla*, 907 S.W.2d at 461 (citing *Kennedy v. Hyde*, 682 S.W.2d 525, 526 (Tex.1984) (tracing the history of Rule 11)).

The rationale for the rule is straightforward: Agreements of counsel, respecting the disposition of causes, which are merely verbal, are very liable to be misconstrued or forgotten, and to beget misunderstandings and controversies; and hence there is great propriety in the rule which requires that all agreements of counsel respecting their causes shall be in writing, and if not, the court will not enforce them. They will then speak for themselves, and the court can judge of their import, and proceed to act upon them with safety. The rule is a salutary one, and ought to be adhered to whenever counsel disagree as to what has transpired between them. *Id.* at 460-61 (citing *Birdwell v. Cox*, 18 Tex. 535, 537 (1857)).

In support of his arguments, appellant cites *Santobello v. New York*, 404 U.S. 257, 262 (1971). This opinion holds that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled. *Id.* In *Santobello,* after negotiations, the assistant district attorney in charge of the case agreed to permit petitioner to plead guilty to a lesser-included offense, conviction of which would carry a maximum prison sentence of one year. *Id.* at 258. The prosecutor agreed to make no recommendation as to the sentence. *Id.* At the sentencing hearing, a second prosecutor, apparently unaware of the prior agreement, recommended the maximum sentence of one year, which the court then imposed.

Appellant also cites *Gibson v. State,* for the proposition that if for some reason the prosecutor does not carry out his side of the agreement, the defendant is entitled to have the agreement specifically performed or the plea withdrawn, whichever is more appropriate under the circumstances. *See Gibson v. State*, 803 S.W.2d 316, 318 (Tex.Crim.App.1991) (citing *Santobello*, 404 U.S. at 263; *Ex parte Adkins*, 767 S.W.2d 809, 810 (Tex.Crim.App.1989); *Shannon v. State*, 708 S.W.2d 850, 851 (Tex.Crim.App.1986)). Under the circumstances of *Gibson,* where appellant had already served a substantial portion of his sentence under the guilty plea, the only appropriate remedy is specific performance. *Id.*

Neither case is on point. Both cases were adult criminal proceedings and not juvenile proceedings. *Cf. Vasquez,* 739 S.W.2d at 42. Both cases involved a guilty plea made in open court, relying upon the representations of the prosecutor. Furthermore, as we discussed, to be enforceable in a civil context, the agreement must comport with rule 11. Tex.R. Civ. P. 11; *In the Interest of M.S.*, 115 S.W.3d 534, 543 (Tex.2003). In the instant case, not even the special prosecutor's signature appears on the agreement. Appellant's agreement was not a "plea bargain." *See* Tex.Code Crim. Proc. art. 26.13. (Vernon 2006). Finally, appellant actually received a full trial, one of the two remedies suggested in *Gibson. Gibson*, 803 S.W.2d at 318.

More recently, the supreme court has again emphasized the civil component of juvenile cases. *See In re Hall*, 286 S.W.3d 925, 927 (Tex.2009) (because juvenile proceedings are civil matters, the Court of Criminal Appeals has concluded that it lacks jurisdiction to issue extraordinary writs in such cases even in those initiated by a juvenile offender who has been transferred to the Texas Department of Criminal Justice because he is now an adult) (citing *Ex parte Valle,* 104 S.W.3d at 889); *see also Vasquez,* 739 S.W.2d at 42 (recognizing that delinquency proceedings are civil in nature).

Appellant does not contend that the trial court was without jurisdiction to reject the purported agreement to defer prosecution or enforce the same agreement. Indeed, section 53.03 of the family code authorizes trial court approval under the circumstances of this case. Tex. Fam.Code Ann. § 53.03(i).

Conclusion: While we agree with appellant that section 53.03(e) of the family code appears to grant the prosecutor discretion to defer prosecution of a juvenile without court approval in certain circumstances, we need not address this dichotomy because the agreement or settlement was not enforceable in that it did not comport with rule 11. *See* Tex. Fam.Code Ann. § 53.03(e); Tex.R. Civ. P. 11; *In re M.S.*, 115 S.W.3d at 543) ("Rule 11 of our rules of civil procedure requires agreements between attorneys or parties concerning a pending suit

to be in writing, signed and filed in the record of the cause to be enforceable."). We overrule appellant's first issue.