

## Review of Recent Juvenile Cases (2010)

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

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### **Neither a determinate sentence probation transfer order nor a court's refusal to amend the conditions of probation (once transferred) is appealable.[In the Matter of B.L.C.](10-4-3)**

**On September 29, 2010, the El Paso Court of Appeals agreed with juvenile's counsel when he stated that a juvenile court's order transferring a determinate sentence probation to an adult district court or the court's refusal to amend the conditions of probation when transferred were not appealable orders.**

¶ 10-4-3. **In the Matter of B.L.C.**, MEMORANDUM, No. 08-10-00186-CV, 2010 WL 3784972 (Tex.App.-El Paso, 9/29/10).

**Facts:** On September 19, 2007, the State file a petition alleging Appellant engaged in delinquent conduct by committing indecency with a child by sexual contact. By its petition, the State sought a determinate sentence. A jury found that Appellant engaged in delinquent conduct as alleged in the petition. The jury found that Appellant was in need of rehabilitation, sentenced him to five years in the Texas Youth Commission with possible transfer to the Texas Department of Criminal Justice Institutional Division, and recommended that he be placed on probation outside of his home.

Shortly before Appellant's eighteenth birthday, the State filed a motion to transfer the determinate sentence probation to an adult district court. The trial court signed an order on March 5, 2010 transferring Appellant's juvenile determinate sentence probation to a criminal district court pursuant to Section 54.051 of the Texas Family Code. TEX.FAM.CODE ANN. § 54.051 (Vernon 2008). The transfer became effective on Appellant's eighteenth birthday, April 2, 2010. See TEX.FAM.CODE ANN. § 54.051(d). On May 14, 2010, the trial court held a hearing on Appellant's written objections to changes in the conditions of probation, but the court declined to amend the conditions. Appellant thereafter filed notice of appeal stating an intention to challenge matters raised by written motion and ruled on by the trial court on May 14, 2010.

**Held:** Dismissed for want of jurisdiction

**Conclusion:** On July 19, 2010, we sent Appellant notice of our intent to dismiss the appeal for want of jurisdiction. Appellant's counsel has filed a written response conceding that Appellant did not file notice of appeal from the transfer order, and even if he had, the transfer order is not appealable. We agree. See *In the Matter of J.H.*, 176 S.W.3d 677, 679 (Tex.App.-Dallas 2005, no pet.). Additionally, counsel correctly states that the trial court's refusal to amend the conditions of probation is not appealable. See *Basaldua v. State*, 558 S.W.2d 2, 5 (Tex.Crim.App.1977).