Review of Recent Juvenile Cases (2011)

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

Trial court did not abuse its discretion by failing to hold a hearing on juvenile's motion for new trial based upon newly discovered evidence.[In the Matter of A.C.](11-2-8)

On April 7, 2011, the Eastland Court of Appeals held that juvenile's motion for new trial did not establish that his failure to discover new evidence was not owing to a want of due diligence.

¶ 11-2-8. In the Matter of A.C., No. 11-09-00164-CV, 2011 WL 1326275 (Tex.App.-Eastland, 4/7/2011).

Facts: T.N. lived in the same neighborhood as A.C. One evening, T.N. was riding his bicycle home when he went down an alley behind A.C.'s house. T.N. testified that A.C. and A.C.'s brother knocked him off his bicycle and hit him repeatedly. Eventually, A.C. and his brother stopped and went away. T.N. testified that he was bleeding a lot from his nose and mouth and that he was missing a few teeth. T.N. got back on his bicycle and rode home.

At home, T.N. told his grandmother that his injuries were caused by a bicycle accident. T.N. explained that he lied to his grandmother because he was afraid of being beaten up again but that his grandmother did not believe him. She took him to the emergency room in Brownwood. Hospital staff told them that T.N. would have to go to another hospital. They then drove to Cook Children's Medical Center in Fort Worth. From there, he was sent to John Peter Smith Hospital for surgery. As a result of the assault, T.N. lost three teeth and had a broken nose and a cracked jaw. T.N. told medical personnel at all three hospitals that he had been in a bicycle accident.

A few days later, T.N. revealed to his family that A.C. and A.C.'s brother assaulted him. They contacted the police. Officer Robert Mullins of the Brownwood Police Department investigated. Although he could not rule an accident out, Mullins did not think T .N.'s injuries were consistent with a bicycle accident because they were too centralized. T.N. told Officer Mullins that he was afraid of retaliation from A.C.

T.N. claimed that there were three other people in the alley at the time of the assault. Two of these people testified at the adjudication hearing. Both stated that they saw T.N. in the alley that night, but they also testified that they did not see or hear T.N. being assaulted.

The defense called several witnesses to testify that T.N. had given differing stories about the incident. T.N. admitted that he told several people that his injuries were caused by a bicycle accident. He also admitted telling people that his family forced him to say that his injuries were caused by an assault. Finally, there was testimony that T.N. was mentally slow and easily manipulated.

The jury found that A.C. engaged in delinquent conduct by intentionally, knowingly, or recklessly causing serious bodily injury to T.N. by striking him in the face.

A.C. alleged he was entitled to a new trial because of newly discovered evidence and provided three supporting affidavits. A.C. alleged that this evidence was unknown to him at the time of trial, that his failure to discover the evidence was not owing to a lack of due diligence, that the evidence would probably bring about a different result at a new trial, and that it was not cumulative, corroborative, impeaching, or collateral.

Held: Affirmed

Memorandum Opinion: First, David Franklin Chamberlain, a neighbor of A.C., testified by affidavit that, on the evening of the alleged assault, he saw T.N. have a bicycle accident in the alley in which he flew over the bicycle's handlebars and hit the ground face first. Chamberlain stated that he did not come forward sooner because he learned only after the adjudication hearing that A.C. was on trial for causing T.N.'s injuries.

Second, Arely Guadalupe Sandoval, a student at Brownwood High School and a defense witness at the adjudication hearing, submitted an affidavit alleging that, while he was waiting to testify, he saw T.N. exiting the courthouse. T.N. met his brother at the door. Sandoval stated that T.N.'s brother asked, "Did you lie?" T.N. responded, "Yes, but it's not working." Sandoval believed that T.N. meant that he had lied in court. Sandoval immediately told A.C.'s father what he had heard but did not tell the county attorney or A.C.'s attorney because he did not know that he was allowed to do so.

Third, Anthony Sanchez Sr., the father of a defense witness, submitted an affidavit stating that his former girlfriend, Sherry Nichols, was T.N.'s aunt. Sanchez and Nichols have a daughter. Their daughter is married and has a daughter of her own. After Sanchez separated from Nichols, he claimed that she accused him of molesting their daughter. Sanchez met with Brownwood Police Department officers and established that he had no access to his daughter during the time period in which the molestation allegedly occurred. Sanchez claimed that he learned Nichols accused him of molestation because her mother, T.N.'s grandmother, told her to do so. Thus, while he had no knowledge of the case, he was wary of any allegations coming from T.N.'s family. Moreover, just before trial, his daughter threatened to prohibit any visitation with his granddaughter if he allowed his son to testify at A.C.'s adjudication hearing. This threat reinforced his belief that T.N. may have been influenced to make false allegations against A.C.

In 2009, the legislature amended TEX. FAM.CODE ANN. §§ 51.17(a) and 56.01 (Vernon Supp.2010) to provide that motions for new trials are governed by Tex.R.App. P. 21. Act of June 19, 2009, 81st Leg., R.S., §§ 1-2, 2009 Tex. Gen. Laws 642 (relating to the rules governing a motion for new trial in juvenile cases). This amendment applies to all juvenile proceedings whose disposition takes place after September 1, 2009. Id. §§ 3-4. A.C.'s disposition order was signed on March 6, 2009. His motion for new trial is, therefore, not subject to the amendment. Under prior law, a motion for new trial was governed by the Texas Rules of Civil Procedure. See In re M.R., 858 S.W.2d 365, 366 (Tex.1993) (juveniles are required to file a motion for new trial to assert evidentiary and procedural errors, including factual sufficiency and jury misconduct).

When a motion alleges facts that, if true, would entitle the movant to a new trial, a trial court is obligated to hear such evidence. Hensley v. Salinas, 583 S.W.2d 617, 618 (Tex.1979). To obtain a new trial based on newly discovered evidence, a defendant must show that (1) the evidence was unknown to the defendant at the time of trial, (2) the failure to discover the evidence was not due to defendant's want of diligence, (3) the evidence has materiality in that it would probably bring about a different result in another trial, and (4) the evidence is admissible and not merely cumulative, corroborative, collateral, or impeaching. Jackson v. Van Winkle, 660 S.W.2d 807, 809 (Tex.1983), overruled on other grounds by Moritz v. Preiss, 121 S.W.3d 715, 720-21 (Tex.2003). Each of these elements must be established by an affidavit of the party. In re Thoma, 873 S.W.2d 477, 512 (Tex. Rev. Trib.1994, no appeal); Rivera v. Countrywide Home Loans, Inc., 262 S.W.3d 834, 844 (Tex.App.-Dallas 2008, no pet.). Except when jury misconduct is alleged, the trial court's decision to hold an

evidentiary hearing on a motion for new trial is reviewed for abuse of discretion. See Tex.R. Civ. P. 327(a); Hamilton v. Williams, 298 S.W.3d 334, 338 (Tex.App.-Fort Worth 2009, pet. denied). To determine whether the trial court abused its discretion, we must decide ultimately whether the trial court acted without reference to any guiding rules or principles. Goode v. Shoukfeh, 943 S.W.2d 441, 446 (Tex.1997).

A.C.'s motion for new trial did not establish that his failure to discover the evidence was not owing to a want of due diligence. While Chamberlain stated that he did not come forward earlier because he did not know about the allegations against A.C., the motion for new trial did not explain why A.C. could not have discovered Chamberlain's testimony earlier with the exercise of due diligence. Likewise, there is no explanation why the evidence provided by Sanchez, whose son was a witness for A.C. at the adjudication hearing, could not have been discovered before trial. In the absence of a showing of due diligence, the trial court was not required to hold a hearing. See Neyland v. Raymond, 324 S.W .3d 646, 652-53 (Tex.App.-Fort Worth 2010, no pet.). Moreover, the facts alleged in Sandoval's and Sanchez's affidavits primarily impeached the credibility of T.N. and, thus, would not be grounds for a new trial. See Ski River Dev., Inc. v. McCalla, 167 S.W.3d 121, 132 (Tex.App.-Waco 2005, pet. denied) (newly discovered evidence alleging that a witness committed perjury was cumulative, impeaching, and not grounds for a new trial).

We cannot say that the trial court abused its discretion by failing to hold a hearing on A.C.'s motion for new trial based upon newly discovered evidence. A.C.'s first issue is overruled.

Conclusion: The judgment of the trial court is affirmed.