

Review of Recent Juvenile Cases (2011)

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

An order transferring a juvenile's probation to an adult district court is not an appealable order. [In the Matter of W.E.H.](11-3-1)

On May 16, 2011, the Fort Worth Court of Appeals held that the TFC § 56.01(c) specifically lists the orders from which a child may appeal in juvenile court, but an order transferring a child's determinate sentence probation to an appropriate district court is not one of the orders enumerated in the statute.

¶ 11-3-1. In the Matter of W.E.H., MEMORANDUM, No. 02-10-00234-CV, 2011 WL 1901986 (Tex.App.-Fort Worth, 5/16/11).

Facts: Appellant W.E.H. attempts to appeal the trial court's order transferring his determinate sentence probation from juvenile court to an appropriate adult district court. W.E.H. was adjudicated delinquent on July 7, 2008, for the offense of aggravated sexual assault of a child and was given a determinate sentence of five years' probation. Before W.E.H.'s eighteenth birthday, the State filed a motion to have W.E.H.'s probation transferred to an adult district court pursuant to family code section 54.051(d), and the trial court granted the State's motion. W.E.H. then filed notice of this appeal.

Held: Dismissed for lack of jurisdiction

Memorandum Opinion: W.E.H. contends in his sole issue that section 54.051(d) is unconstitutionally vague because it does not include affirmative standards for the trial court to follow in deciding whether to transfer a juvenile's probation to an adult court. However, this and other Texas appellate courts have held that an order transferring a juvenile's community supervision to an adult district court is not an appealable order. See *In re J.H.*, 176 S.W.3d 677, 679 (Tex.App.-Dallas 2005, no pet.) (dismissing appeal for lack of jurisdiction, holding limitation of right to appeal did not violate due process or equal protection, and stating that "the trial court's order transferring determinate sentence probation to an appropriate criminal district court is not an appealable order"); see also *In re B.L.C.*, No. 08-10-00186-CV, 2010 WL 3784972, at (Tex.App.-El Paso Sept. 29, 2010, no pet.) (dismissing appeal for lack of jurisdiction); *In re C.M.W.*, No. 02-04-00087-CV, 2005 WL 375183, at (Tex.App.-Fort Worth 2005, no pet.) (same).

Section 56.01 of the Texas Family Code sets out a child's right to appeal a juvenile court's order and describes which of those orders are appealable. See Tex. Fam.Code Ann. § 56.01 (Vernon Supp.2010). Section 56.01(c) specifically lists the orders from which the child may appeal, but an order transferring a child's determinate sentence probation to an appropriate district court is not one of the orders enumerated in the statute. See *id.* § 56.01(c); *In re J.H.*, 176 S.W.3d at 679. Thus, the order transferring W.E.H.'s determinate sentence probation to the appropriate adult district court is not an appealable order. See *In re J.H.*, 176 S.W.3d at 679; *In re B.L.C.*,

2010 WL 3784972, at; In re C.M.W., 2005 WL 375183, at 1. We therefore dismiss this appeal for lack of jurisdiction. See Tex.R.App. P. 42.3(a), 43.2(f).

Conclusion: Based on the foregoing, we dismiss this appeal for lack of jurisdiction.