

Year 2004 Case Summaries

By

Robert O. Dawson

Bryant Smith Chair in Law
University of Texas School of Law

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El Paso Court says TYC commitment for misdemeanor probation violation requires three adjudications [In re C.E.T.] (04-2-08).

On March 26, 2004, the El Paso Court of Appeals joined five other courts of appeal in holding that a TYC commitment for a misdemeanor probation violation requires three separate adjudications.

04-2-08. In the Matter of C.E.T., UNPUBLISHED, No. 08-03-00124-CV, 2004 WL 596219, 2004 Tex.App.Lexis ____ (Tex.App.-El Paso 3/26/04) Texas Juvenile Law (5th Ed. 2000).

Facts: This is an appeal from an order of commitment committing the juvenile C.E.T. to the care and custody of the Texas Youth Commission.

On March 1, 2000, the State filed a petition based on delinquent conduct alleging that C.E.T. committed the misdemeanor offense of possession of marihuana under two ounces. On August 7, 2000, C.E.T. admitted culpability and the court signed an order of adjudication on the same day. On August 21, 2000, a disposition hearing was held and C.E.T. was placed on probation.

On May 2, 2001, the State filed a second petition based on delinquent conduct alleging that C.E.T. committed a family violence misdemeanor assault. A motion to modify the first adjudication was also filed. On May 8, 2001, the court granted the State's motion to dismiss the second petition, and the court subsequently entered an order modifying the first disposition by placing C.E.T. on intensive supervision.

On November 8, 2001, another petition based on delinquent conduct was filed alleging the juvenile committed a Class A misdemeanor assault. The conduct was alleged to have occurred on October 31, 2001. On January 10, 2002, the court entered an order adjudicating C.E.T. delinquent by finding that she committed the assault. After a disposition hearing, the juvenile was placed on probation in the Challenge Out-of-Home Placement.

On January 28, 2003, the State filed a motion to modify the disposition, alleging that the juvenile had violated probation by being "unsuccessfully discharged" from the Challenge Program boot camp. On February 6, 2003, the court entered a modification order. On February 14, 2003, the court conducted a disposition hearing, and entered an order and judgment of commitment sending C.E.T. to the Texas Youth Commission (TYC).

Held: Reversed and remanded.

Opinion Text:

In Issue No. One, C.E.T. contends that the orders modifying the prior disposition and committing the juvenile to the TYC were void because there were only two prior misdemeanor judgments adjudicating her delinquent. Modifications of disposition proceedings are governed by Section 54.05 of the family code. Tex. Fam.Code Ann. § 54.05 (Vernon Supp.2004). At the time the trial court modified its order, Section 54.04 provided that the trial court could modify a disposition based on a finding the child engaged in delinquent conduct that violates a penal law of the grade of misdemeanor to commit a child to TYC if: (1) the child has been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony or misdemeanor on at least two previous occasions; and (2) of the previous adjudications, the conduct that was the basis for one of the adjudications occurred after the date of another previous adjudication. [FN1]

FN1. See Act of May 18, 2001, 77th Leg., ch. 1297, § 28, 2001 Tex. Gen. Laws 3142, 3175. The Legislature has amended Section 54.05(k) to require only one previous adjudication. See Act of June 2, 2003, 78th Leg., R.S., ch. 283 § 21, 2003 Tex. Gen. Laws 1227. However, because the bill did not take effect until September 1, 2003, the above cited version is controlling in this case. We will refer to Section 54.05(k) throughout this opinion

C.E.T. maintains that there must be two previous adjudications separate and in addition to the adjudication on which the modification is based. C.E.T. reasons that as the adjudication upon which the commitment to TYC was based was the assault adjudication of January 10, 2002, the court lacked authority to modify the disposition due to the lack of two prior adjudications in addition to the adjudication upon which the modification was based. In its response, the State utilizes various rules of statutory construction to urge the interpretation that the disposition upon the modification of the second adjudication can serve as one of the two previous adjudications. We disagree.

Under either the state or federal constitutions, a sentence assessed to a criminal defendant not authorized by law is void. *Heath v. State*, 817 S.W.2d 335, 339 (Tex.Crim.App.1991). If the language of a statute is clear, it is not for the judiciary to add to or subtract from the statute. *Miller v. State*, 33 S.W.3d 257, 260 (Tex.Crim.App.2000); *In re Q.D.M.*, 45 S.W.3d 797, 802 (Tex.App. Beaumont 2001, pet. denied)(opinion on rehearing). In *Tune v. Texas Department of Public Safety*, 23 S.W.3d 358, 363 (Tex.2000), the court stated: "[Reviewing courts] must enforce the plain meaning of an unambiguous statute. If a statute is clear and unambiguous, we need not resort to rules of construction or other extrinsic aid to construe it." See also *RepublicBank Dallas, N.A. v. Interkal, Inc.*, 691 S.W.2d 605, 607 (Tex.1985). Whether a statute is ambiguous is a question of law. *Retama Dev. Corp. v. Tex. Workforce Comm'n*, 971 S.W.2d 136, 139 (Tex.App. Austin 1998, no pet.). Five Texas courts of appeals have held that the two previous adjudications must necessarily be separate and in addition to the adjudication upon which the modification is based. See *In re J.W.*, 118 S.W.3d 927, 929 (Tex.App. Dallas 2003, pet. filed); *In re S.B.*, 94 S.W.3d 717, 719 (Tex.App. San Antonio 2002, no pet.); *In re A.I.*, 82 S.W.3d 377, 380 (Tex.App. Austin 2002, pet. denied); *In re N.P.*, 69 S.W.3d 300, 302 (Tex.App. Fort Worth 2002, pet. denied); *In re Q.D.M.*, 45 S.W.3d at 802. We agree with these courts holdings that the "clear and unambiguous" language of Section 54.04(k) does not allow the modification of a disposition to commit a juvenile to TYC when a juvenile violates a lawful court order that is based on a disposition of one of the two previous adjudications. See *In re S.B.*, 94 S.W.3d at 719; *In re A.I.*, 82 S.W.3d at 381; *In re N.P.*, 69 S.W.3d at 302; *In re Q.D.M.*, 45 S.W.3d at 801. A total of three adjudications are necessary in order to modify a disposition to commit a juvenile to the TYC.

In holding that the clear and unambiguous language of Section 54.04(k) mandated a total of three adjudications, the Fort Worth Court of Appeals held that the word "previous" means "going or existing before in time." Therefore, the requirement that the two adjudications be on "previous occasions" necessarily implies that there must exist a present adjudication, or one that is subsequent to the two other adjudications required. This present adjudication is the "finding that the child engaged in delinquent conduct that violates a penal law of the grade of misdemeanor," referenced in the first sentence of the statute upon which the modification of disposition is based. *In re A.N.*, 54 S.W.3d 487, 491 (Tex.App. Fort Worth 2001, pet. denied). As C.E.T had only one previous adjudication separate and apart from the adjudication to be modified, Section 54.05 does not authorize the TYC commitment. We sustain C.E.T.'s first issue. Thus, we need not address C.E.T.'s second issue. See *Tex.R.App. P.* 47.1.

Having sustained the first issue on review, and having further found that we need not address any remaining issues, we reverse the trial court's order modifying C.E.T.'s disposition and remand to the trial court for further proceedings consistent with this opinion.

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