

Year 2004 Case Summaries

By

Robert O. Dawson

Bryant Smith Chair in Law
University of Texas School of Law

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Evidence supports removal from home findings in modification proceedings [In re J.K.R.] (04-2-16).

On April 15, 2004, the El Paso Court of Appeals applied its requirement that the removal from home findings control in probation revocation proceedings but found that the evidence supported the findings.

04-2-16. In the Matter of J.K.R., UNPUBLISHED, No. 08-03-00406-CV, 2004 WL 805004, 2004 Tex.App.Lexis ____ (Tex.App.-El Paso 4/15/04) Texas Juvenile Law (5th Ed. 2000).

Facts: J.K.R. appeals an order committing him to the Texas Youth Commission (TYC). In two issues, he argues that the evidence is legally and factually insufficient to support the order.

In October 2002, when he was fifteen-years-old, J.K.R. was adjudicated delinquent for cutting his sister on the shoulder with a clothes hanger. He was placed on supervised probation until his eighteenth birthday. In November 2002, the trial court sustained the State's motion to modify disposition, finding that J.K.R. had violated probation by being truant, being suspended from school, and failing to submit to urinalysis. The court placed J.K.R. in the Challenge Boot Camp Program. In April 2003, he successfully completed that program, and the trial court allowed him to return home on supervised probation.

In July 2003, the State filed a second motion to modify disposition. The trial court sustained this motion, finding that J.K.R. had violated probation by using marijuana and running away from home. After a disposition hearing, the court signed an order committing J.K.R. to TYC. It is from this order that J.K.R. appeals.

At the time of the disposition hearing, J.K.R. was sixteen-years-old. His probation officer, Sonia Solis, recommended that he be committed to TYC. She testified that J.K.R. did well in the behavioral aspect of the Challenge Boot Camp Program; he followed the rules and became more respectful of Solis and his parents. But he never really focused in the counseling aspect of the program. His attitude was, " 'I'll change when I'm ready to change.' "

J.K.R. initially did well after he was released from the program. Then, on May 29th, slightly more than a month after his release, he left home and returned the next day. His mother reported his absence to the probation department. On June 2nd, Solis and her supervisor admonished him. That day, he tested positive for marijuana use. He was referred to Aliviane for intensive out-patient drug treatment, but on June 6th he ran away again before starting that program. He was detained on June 25th and again tested positive for marijuana use. He told Solis that one of the reasons he ran away was because he could not stay away from drugs.

Solis testified that she did not believe J.K.R.'s parents have contributed to his delinquency. She believed that they tried to control and supervise him but they have been unable to because J.K.R. runs away, continues to use drugs, and "is not lending himself to any type of control in the home." Solis stated, "The need to remove him from the home is based on the fact that the juvenile does not remain in the home. He ... runs away to use drugs." According to Solis, J.K.R. uses inhalants, cocaine, marijuana, and alcohol. J.K.R. has expressed "a conscious need to use" drugs.

Solis stated that electronic monitoring was never considered for J.K.R. because his parents always report when he leaves. Regarding the services that J.K.R. has received, Solis stated that when he was initially placed on supervised probation, he was referred to El Paso Community MHMR for individual and family counseling and to Texas Serenity for drug counseling, but he violated his probation and was removed from his home so quickly that he never received those services. While he was in the Challenge Boot Camp Program, he participated in four months of individual, group, and family counseling to address his behavior, drug use, and discord in

the home. Solis admitted on cross examination that he would not have been released from that program unless they believed that he had addressed his drug problem. Providence worked with J.K.R. for about a month after he was released from the Challenge Boot Camp Program and before he ran away. According to Solis, a month was not enough time for the counseling to be successful. She testified that several other drug abuse programs were available Texas Serenity, Aliviane, New Beginnings, and Project Libertad.

Solis testified that J.K.R.'s parents told her that he previously was very active in sports and they do not "understand why all the sudden he stopped wanting to do all of that stuff that he loved." She also mentioned that one of J.K.R.'s friends had committed suicide, but J.K.R. did not talk about that with anyone. Solis said that she told J.K.R. that she was recommending that he be committed to TYC. According to her, J.K.R. "at this point doesn't care."

A psychological assessment by Dr. Basurto and a psychiatric assessment by Dr. Rodriguez Chevres were admitted into evidence without objection. Dr. Basurto's report states that J.K.R. told him that he uses cocaine, as well as marijuana. Dr. Basurto found that J.K.R. had a "significant rating of anxiety," suggesting substance abuse withdrawal. Dr. Basurto recommended that J.K.R. be placed in a long term, structured substance-abuse treatment facility. Dr. Rodriguez Chevres found that J.K.R. has abused cocaine, marijuana, and alcohol. He had previously prescribed an antidepressant for J.K.R. to help him with impulse control and drug cravings, but J.K.R. would not take the medicine. Dr. Rodriguez-Chevres continued to believe that J.K.R. would benefit from the medicine. He determined that J.K.R. was "greatly in need of drug rehabilitation treatment even if it means sending him out of town." In reference to the doctors' reports, Solis testified that TYC can address J.K.R.'s depression and drug problems.

J.K.R.'s mother testified that he is a "good kid," but he gets into trouble with his friends. When J.K.R. leaves, she and her husband do not physically try to stop him, but they tell him that they will report him to the probation department. She believed that he ran away from home the first time because it was the last day of school "and he wanted to go out and party." She testified that J.K.R. has had a drug problem since he was thirteen and that getting him into a secure facility might help, but she did not want him to go to TYC. As an alternative to TYC, someone had recommended a six-month drug-treatment program called Everchange and she thought her insurance would cover that program.

In her closing argument, J.K.R.'s counsel asked the court not to "give up" on him by sending him to TYC. The prosecutor pointed out that being sixteen, J.K.R. only had a year left before his drug offenses would land him in the adult criminal justice system. He argued that TYC was J.K.R.'s last chance to avoid ending up in that system.

Held: Affirmed.

Opinion Text: STANDARD OF REVIEW

The trial court is vested with broad discretion to determine a suitable disposition for a juvenile who has been adjudicated delinquent, and this is especially true of a decision to modify a disposition. *In re L.R.*, 67 S.W.3d 332, 338 (Tex.App.-El Paso 2001, no pet.). Unless the trial court abuses this discretion, we will not disturb the court's decision. *Id.* To determine whether the trial court abused its discretion, we engage in a two-pronged analysis. First, did the trial court have sufficient information upon which to exercise its discretion? To answer this question, we apply the traditional sufficiency review standards. Second, did the trial court err in its application of discretion? To answer this question, we consider whether, based on the record evidence, the trial court made an arbitrary or unreasonable decision. *Id.* The mere fact that the trial court may have reached a different decision than the one this Court would have reached does not demonstrate an abuse of discretion. *Id.* at 339.

A trial court's findings are reviewable for legal and factual sufficiency in the same way as a jury's answers to questions in a charge. *In the Interest of B.R.G.*, 48 S.W.3d 812, 817 (Tex.App.-El Paso 2001, no pet.). To determine whether the evidence was legally sufficient, we consider only the evidence and inferences that support the trial court's findings and disregard all evidence and inferences to the contrary. The evidence is legally sufficient if more than a scintilla of evidence supports the challenged finding. *L.R.*, 67 S.W.3d at 339. To determine whether the evidence was factually sufficient, we consider all of the evidence to determine whether the challenged finding is so against the great weight and preponderance of the evidence as to be manifestly unjust. *Id.*

DISCUSSION

The Juvenile Justice Code provides that if a court commits a juvenile to TYC, the court must state in its order that: (1) it is in the juvenile's best interests to be placed outside his home; (2) reasonable efforts were made to prevent or eliminate the need for the juvenile's removal from the home and to make it possible for him to return home; and (3) the juvenile, in his home, cannot be provided the quality of care and level of support and supervision that he needs to meet the conditions of probation. *Tex. Fam.Code Ann. § 54.04(i)(1)* (Vernon Supp.2004). The Code also provides that when a court modifies a previous disposition, it must specifically state in the order its reasons for doing so. *Id.* § 54.05(i). This Court has held that when a court modifies a disposition by committing a juvenile to TYC, it must make the findings required by section 54.04(i)(1). *L.R.*, 67 S.W.3d at 337.

In this case, the court included the required section 54.04(i)(1) findings in its order. The court stated that it was in J.K.R.'s best interest to be placed outside his home because he does not lend himself to suitable supervision, control, or discipline. The court additionally cited the following reasons for committing J.K.R. to TYC: (1) the juvenile needs to be held accountable and responsible for his delinquent behavior; (2) the juvenile poses a risk to the safety and protection of the community if no disposition is made; (3) no community-based intermediate sanction is available to adequately address the needs of the juvenile or to adequately protect the needs of the community; (4) the gravity of the offense requires that the juvenile be confined to a secure facility; and (5) the prior juvenile record of the juvenile requires that he be confined in a secure facility.

On appeal, J.K.R. challenges the sufficiency of the evidence to support most of the trial court's findings, but he does not challenge the sufficiency of the evidence to support the court's findings that he needs to be held accountable and responsible for his delinquent behavior and that he poses a risk to the safety and protection of the community if no disposition is made. These unchallenged findings are binding on this Court. *Id.* at 339.

J.K.R. argues that the evidence is legally and factually insufficient to support the trial court's finding that in his home he could not be provided the quality of care and level of support and supervision he needed to meet the conditions of probation. He points out that Solis testified that his parents had not contributed to his delinquency and that they had been active in his rehabilitation. Additionally, on cross-examination, J.K.R.'s counsel asked Solis, "And you indicated the parents can control him when he is at home. He behaves when he is at home. At home when he is at home with his parents, that is not a problem?" Solis answered, "The problem is not that the juvenile's parents can't control him."

Despite this testimony, we conclude that the evidence is legally and factually sufficient to support the court's finding that in his home J.K.R. could not be provided the quality of care and level of support and supervision he needed to meet the conditions of probation. J.K.R. was at home on probation before and after he was in the Challenge Boot Camp Program. During both periods, he violated his probation. And although Solis's testimony indicated that J.K.R.'s parents had not contributed to his delinquency and had attempted to participate in his rehabilitation, she also testified that J.K.R. does not lend himself to their efforts. Instead, he runs away and continues to use drugs. Dr. Basurto recommended a long term, structured substance abuse facility. From all this evidence, the trial court could have found that J.K.R. needs to be in a secure facility such as TYC.

J.K.R. also argues that the evidence is legally and factually insufficient to support the trial court's findings that no community-based intermediate sanction is available to adequately address his needs and that reasonable efforts were made to prevent or eliminate the need to remove him from his home. He relies in part on Solis's testimony that several community based programs were available. But Solis also testified that the probation department had referred him to some of these programs, such as Providence and Aliviane, but he either failed to complete the program or ran away before he could even start.

J.K.R. also relies on his mother's testimony to argue that the Everchange Program would have been a viable alternative to TYC. However, his mother's testimony about that program was vague. She did not indicate that she had taken any steps to get J.K.R. into Everchange, which is apparently not publicly funded. At first, she testified that she did not know what her insurance would cover, but later testified that she thought her insurance would cover the program.

J.K.R. argues that the system has failed him. Solis testified that his basic problem is drug abuse. She also stated that it was a surprise to everyone when he ran away because he seemed to be progressing in his treatment and that it is a mystery to everyone why he uses drugs. One of J.K.R.'s friends had committed suicide and he seemed to be depressed, but he was not counseled about the suicide or, his counsel asserts, treated for depression. This evidence does not indicate that the system has failed J.K.R. Solis detailed the efforts that were made to treat J.K.R.'s drug problems without sending him to TYC. Furthermore, Dr. Rodriguez-Chevres prescribed an antidepressant, but J.K.R. refused to take it.

We conclude that the evidence is legally and factually sufficient to support the trial court's findings that no community-based intermediate sanction is available to adequately address J.K.R.'s needs and that reasonable efforts were made to prevent or eliminate the need to remove J.K.R. from his home, as well as the court's finding that in his home J.K.R. could not be provided the quality of care and level of support and supervision he needed to meet the conditions of probation. Based on these findings, along with the unchallenged findings that J.K.R. needs to be held accountable and responsible for his delinquent behavior and that he poses a risk to the safety and protection of the community, the trial court did not abuse its discretion in committing J.K.R. to TYC. [FN1]

FN1. J.K.R. argues that the evidence is legally and factually insufficient to support the trial court's findings that the gravity of the offense and his prior juvenile record require that he be confined to a secure facility. Because the findings discussed above are sufficient to support the trial court's decision to commit J.K.R. to TYC, we need not address the sufficiency of the evidence to support these two findings. See *L.R.*, 67 S.W.3d at 339 & n.4.

CONCLUSION

For the reasons stated herein, J.K.R.'s two issues on appeal are overruled, and the judgment of the trial court is affirmed.

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