

## YEAR 2004 CASE SUMMARIES

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***The evidence supports finding of best interest of respondent in TYC commitment [In re M.A.F.] (04-3-23).***

On July 27, 2004, the Houston Fourteenth District Court of Appeals held that the evidence supports the juvenile court finding of best interest of the respondent by committing him to TYC for an assault on a teacher in a juvenile justice alternative education school.

04-3-23. In the Interest of M.A.F., UNPUBLISHED, No. 14-03-00698-CV, 2004 WL 1661009, 2004 Tex.App.Lexis \_\_\_\_ (Tex.App.-Houston [14th Dist.] 7/27/04) Texas Juvenile Law (5th Ed. 2000).

Facts: M.A.F. appeals his adjudication of delinquent conduct and resulting placement in the Texas Youth Commission ("TYC") on the grounds that the evidence was insufficient to support these determinations.

In reviewing legal sufficiency, we view all of the evidence in the light most favorable to the verdict to determine whether a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); Ross v. State, 133 S.W.3d 618, 620 (Tex.Crim.App.2004). In reviewing factual sufficiency, we view all of the evidence in a neutral light, and will set aside the verdict only if the evidence is so weak that the verdict is clearly wrong and manifestly unjust, or the contrary evidence is so strong that the standard of proof beyond a reasonable doubt could not have been met. Ross, 133 S.W.3d at 620.

In this case, appellant's three issues challenge the sufficiency of the evidence to support the trial court's findings that: (1) it was in appellant's best interest to remove him from his home and place him in the TYC; [FN1] and (2) any bodily injury he caused to Kevin Lee was intentional. [FN2]

FN1. See Tex. Fam.Code Ann. § 54.04(i)(1)(A) (Vernon Supp.2004).

FN2. The offense constituting appellant's delinquent conduct was assault against a public servant. See Tex. Pen.Code Ann. § 22.01(a)(1), (b)(1) (Vernon Supp.2004).

Held: Affirmed.

Opinion Text: Appellant was a student at a Harris County Juvenile Justice Alternative Education school (the "school"). The incident in question occurred while Lee, an instructor at the school, was attempting to physically remove appellant from the school's auditorium because appellant had behaved disruptively during a lecture. Lee and another faculty member testified that, during the altercation, appellant struck Lee with his fist, causing Lee's lower lip to bleed. This evidence is legally sufficient to support the finding of intent. Although other students testified that Lee had been the aggressor and had used excessive force, and that appellant either did not strike Lee or had justification if he did so, this conflicting evidence does not render the evidence factually insufficient.

Appellant's challenge to the best interest finding is based on: (1) the testimony of his mother and Prince, the teacher who was his mentor at the school, regarding the improvements he had made while living at home and attending the school; and (2) Prince's opinion that it was in appellant's and society's best interest to keep him at the school and not be committed to TYC. The trial court's judgment and commitment order states that the best interest of appellant and society will be served by committing appellant to the TYC because appellant needs a highly structured environment with constant supervision and control. In announcing this conclusion in open court, the trial court told appellant:

I want you to understand that a big part of my decision to send you to the TYC is the history that you have had here in Harris County. There comes a point in time when Harris County cannot continue to offer the type of services that you need. And I believe you have reached that point based upon your prior history and this current offense.

The trial court's best interest determination is supported by the following evidence in appellant's juvenile probation report: (1) from February of 2001 to October of 2002, appellant had been found to engage in four previous delinquent conduct offenses for theft, curfew violations, probation violations, and criminal trespass; (2) he had a history of aggressive behavior both in and out of the home; (3) he was suspected of recently using drugs; (4) he was previously affiliated with a gang; and (5) he had a history of behavioral problems in school. In addition, the report prepared by appellant's juvenile probation officer stated, in part:

[Appellant] has not made a good adjustment to supervision by [the juvenile probation officer]. [Appellant] has had the benefit of H-CAP services and yet, he still fails to comply with the instructions of this officer and the court.... [Appellant] admitted that he smoked marijuana in March 2003 and admitted using "handle bars" and alcohol.... Appellant failed to begin his 40 hours of community service as directed in March 2003.

This report also reflected that appellant was currently failing three classes, had been suspended from school for assault, had received tickets for fighting, and had admitted skipping school. The report recommended that appellant "be placed in a structural environment that could address his social and educational needs." Under these circumstances, the evidence is legally and factually sufficient to support the trial court's best interest finding. Accordingly, appellant's three issues are overruled, and the judgment of the trial court is affirmed.

LAST MODIFIED: AUGUST 02, 2004 10:30 AM

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