

## YEAR 2004 CASE SUMMARIES

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***There was no abuse of discretion in placing the juvenile in a treatment center as a condition of probation [In re S.S.] (04-4-10).***

On October 13, 2004, the Waco Court of Appeals held that the juvenile court did not abuse its discretion in removing respondent from his home and placing him in a treatment center following adjudication for aggravated sexual assault.

04-4-10. In the Matter of S.S., UNPUBLISHED, No. 10-03-00270-CV, 2004 WL 2306771, 2004 Tex.App.Lexis \_\_\_\_ (Tex.App.-Waco 10/13/04) Texas Juvenile Law (6th Ed. 2004).

Facts: S.S. pled true to the allegation that he engaged in delinquent conduct by committing the offense of aggravated sexual assault. The victim was his 2 year old cousin. The juvenile court adjudicated S.S. delinquent. After a disposition hearing, the court placed S.S. on probation for two years. The first 9 months to a year of that probation was to be spent outside his home at a residential treatment facility for sex offenders.

Held: Affirmed.

Opinion Text: In S.S.'s sole issue, he contends the trial court erred in placing him on probation outside his home because his mother established that she could control her child and that she would provide the support and supervision necessary to insure that S.S. complied with the terms of probation.

The Family Code provides that to be placed on probation outside the home, the court must find that "the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of the probation." Tex. Fam.Code. Ann. § 54.04(c) (Vernon Supp.2004). S.S. initially claims that the evidence was legally insufficient to support the juvenile court's finding but then ends his argument with a determination that the evidence was factually insufficient. But after a juvenile has been adjudicated delinquent, the standard for reviewing the juvenile court's decision on disposition is whether the court abused its discretion. In re C.J .H., 79 S.W.3d 698, 702 (Tex.App.-Fort Worth 2002, no pet.). We will review the issue for an abuse of discretion.

S.S. had lived with his mother in Illinois. They moved many times. He repeated the sixth grade, but did not complete it. He was a disciplinary problem in school. S.S. was accused of vandalism at the apartment complex in Illinois. As a result, his mother sent him to live with his maternal grandmother and uncle in Corsicana, Texas. The aggravated sexual assault of his cousin occurred within one month of his arrival in Texas while the cousin was under S.S.'s supervision. The child also sustained a severe head injury while in S.S.'s supervision which required a life-flight to a major hospital and surgery.

The juvenile probation officer believed the mother could provide suitable supervision for S.S. after his completion of the residential treatment facility program. S.S.'s mother said she could provide the support and supervision necessary to ensure that S.S. complied with his terms of probation. She provided the court with the names of two juvenile justice centers near her home. She also provided a phone book listing of counselors that she called to inquire into what services each offered for sexual abuse and family counseling.

The juvenile court found evidence from the psychological evaluation troubling. The troubling evidence included 1) that S.S. never knew his father; 2) that the mother lived with an unemployed man who was involved in drug trafficking and is now in prison; 3) that S.S. was sexually abused by homosexual friends of his mother; 4) that S.S. did not believe what he did to his cousin was wrong because he was doing what had been done to him; and 5) that he was not living with his mother when the delinquent conduct occurred. The juvenile court also found,

... that her [S.S.'s mother] suggestions with respect to psychological and emotional counseling in another state are not fully developed at this time. I don't think she's offered any clear definition of the services that she believes would be appropriate for her child. And I

would agree with the State's counsel that unless this sort of behavior is effectively and appropriately addressed it's very likely that he, the juvenile will re-offend either while he's a juvenile or while he's an adult.

These findings are well supported by the record. Thus, the juvenile court did not abuse its discretion in placing S.S. on probation, outside his home, while he resided in a treatment facility for sex offenders. S.S.'s sole issue is overruled.

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