

## YEAR 2004 CASE SUMMARIES

By

**Robert O. Dawson**

Bryant Smith Chair in Law  
University of Texas School of Law

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***Juvenile court did not abuse its discretion in placing a child on probation outside the home when the child was adjudicated for contempt of a justice court [In re E.T.] (04-4-19).***

On November 10, 2004, the San Antonio Court of Appeals held that the juvenile court did not abuse its discretion in placing a child on probation outside the child's home when the only offense adjudicated was contempt of a justice court.

04-4-19. In the Matter of E.T., UNPUBLISHED, No. 04-03-00796-CV, 2004 WL 2533552, 2004 Tex.App.Lexis \_\_\_\_ (Tex.App.-San Antonio 11/10/04) Texas Juvenile Law (6th Ed. 2004).

Facts: E.T. appeals the trial court's disposition order placing him on probation outside his home. E.T., a juvenile, was found to have engaged in delinquent conduct by violating a court order and was placed on probation outside of his home. He now appeals.

On December 11, 2002, the justice of the peace placed E.T., a sixteen-year-old boy, on deferred adjudication for being a minor in possession of tobacco and for failing to identify and ordered him to pay a monetary fine, perform twelve community service hours, attend school counseling, and attend a preparatory class for the high school equivalency examination. On April 2, 2003, the justice of the peace found that E.T. had violated its court order and referred E.T. to juvenile court for being in contempt of its order.

On August 13, 2003, E.T. was charged with delinquent conduct in three counts alleging contempt of court. In accordance with his plea-bargain agreement, E.T. waived his right to a jury trial and pled true to violating Count I. Count I charged E.T. with violating the order of the justice of the peace by failing (1) to pay a monetary fine, (2) to perform twelve hours of community service, and (3) to attend a preparatory class for the high school equivalency examination. Because E.T. pled true to the allegations in Count I, the State waived and abandoned Counts II and III. The trial court, in accordance with the plea-bargain agreement, found that E.T. had engaged in delinquent conduct for the offense of contempt of court and placed him on probation for eighteen months. However, instead of allowing him to remain in his home on probation, the trial court removed E.T. from his home and placed him in the custody of his probation officer. In doing so, the trial court found that for his protection and for the protection of the public, it was in the best interest of E.T.'s health, safety, morals and education to be placed in the custody of his probation officer for a period of eighteen months. The trial court also found that it was in E.T.'s best interest to be placed outside his home and that reasonable efforts were made to prevent or eliminate the need for E.T.'s removal from his home and to make it possible for him to return home. And, the trial court found that E.T., 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.

Held: Affirmed.

Opinion Text: STANDARD OF REVIEW

We review a trial court's disposition order under the criminal abuse of discretion standard divorced from evidentiary standards of legal and factual sufficiency. In re K.T., 107 S.W.3d 65, 74 (Tex.App.-San Antonio 2003, no pet.) (en banc). Under the criminal abuse of discretion standard, we "view the evidence in the light most favorable to the trial court's ruling,' affording almost total deference to findings of historical fact that are supported by the record." Id. at 75 (quoting Guzman v. State, 955 S.W.2d 85, 89 (Tex.Crim.App.1997)). "However, when the resolution of the factual issue does not turn upon an evaluation of credibility or demeanor, we review the trial court's determination of the applicable law, as well as its application of the appropriate law to the facts it has found, de novo." Id.

DISCUSSION

In his first issue, E.T. argues that the trial court abused its discretion in placing E.T. on probation outside of his home because the court made no reasonable efforts to avoid placing E.T. outside of his home. If a trial court places the child on probation outside the

child's home, the trial court shall include in its order its determination of the following:

- (1) it is in the child's best interests to be placed outside the child's home;
- (2) reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home; and
- (3) 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 probation.

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

According to E.T., the trial court did not consider more strict probation conditions "such as intensive supervision, electronic monitoring, boot camp for a specified period, intensive counseling with his mother, or other programs available through the probation department." And, E.T. emphasizes that this was his "first referral to the juvenile court system and no prior attempt had ever been made to supervise [E.T.] under the juvenile court's jurisdiction." Although this was E.T.'s first referral, he was before the juvenile court on a charge of contempt of court because he had been unable to comply with the terms of his probation ordered by the justice of the peace. He pled true to the charge of contempt of court, admitting that he had failed to comply with the terms of his probation. Further, at the hearing before the trial court, E.T.'s mother stated that she had been unable to make E.T. comply with the terms of his probation:

Court: And, Ms. [T], is there anything this Court can do to help you beyond what these recommendations are for probation?

Mother: I have a problem with [E.T.'s] behavior and his attitude toward me. And whatever you can help me with, I work at a[n] after-care place and he was suppose[d] to take some substance abuse classes there and he failed to do that. But I don't know how he can be forced to attend what is required of him.

Court: That is easy. We have a place that we can let [E.T.] go to placement and cool his heels and can stay there until he does. I don't want to send him back home and he will be disrespectful and not follow your instructions, which means you cannot get him the help he needs. All those things that he needs to do.

Mother: That is best for him.

Court: We can do that in a placement, if that helps you out. Do you think he needs to be placed?

Mother: I do.

Under the facts of this case, we hold that reasonable efforts were made to prevent E.T.'s removal from his home. E.T. had been placed on probation before. He pled true to contempt of court, admitting that he had violated the terms of his probation ordered by the justice of the peace. Moreover, E.T.'s mother told the trial court that she could not make him comply with the terms of the probation and thought it was best for him to be placed outside the home. We, therefore, hold that the trial court did not abuse its discretion. We overrule E.T.'s first issue.

In his second issue, E.T. argues that the trial court failed "to state the reasonable efforts that were made to eliminate the need for removal" in violation of section 54.04 of the Texas Family Code. Section 54.04(f) states that the "court shall state specifically in the order its reasons for the disposition." Tex. Fam.Code Ann. § 54.04(f) (Vernon Supp.2004). Specification of the reasons for the disposition in the order ensures that the child and his family will be advised of the reasons for commitment and will be in a position to challenge those reasons on appeal. In re K.T., 107 S.W.3d at 68. Here, the trial court found that the "child's behavior does not allow him to be adequately supervised by [his] parents in [his] home." We hold that the order specifically states the reasons for disposition and overrule E.T.'s second and final issue.