
YEAR 2005 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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Decision to transfer determinate sentence probation from juvenile court to adult court is not appealable. [In The Matter of C.M.W.](05-2-10)

On February 17, 2005, the Fort Worth Court of Appeals held that the Family Code does not permit juvenile defendants to appeal from *section 54.051* (determinate sentence probation) transfers from juvenile court to district court.

05-2-10. In The Matter of C.M.W., MEMORANDUM, No. 2-04-087-CV, 2005 Tex.App.Lexis 1291 (Tex.App.– Fort Worth 2/17/05).

Facts: Appellant juvenile was adjudicated delinquent of intoxication manslaughter and placed on probation for a determinate sentence of five years. Thereafter, the juvenile trial court transferred appellant's probation status to the 323rd District Court of Tarrant County (Texas). Appellant filed a notice of appeal. The State contended that the court should dismiss the appeal for want of jurisdiction.

Held: Appeal dismissed for want of jurisdiction.

Memorandum Opinion: In 1999, the Legislature added a statutory provision that allowed the transfer of determinate sentence probation to the appropriate district court. n2 However, the family code does not permit juvenile defendants to appeal from *section 54.051* transfers from juvenile court to district court. [*2] *TEX. FAM. CODE ANN. § 56.01*; cf. *Small v. State*, 23 S.W.3d 549, 550 (Tex. App.--Houston [1st Dist.] 2000, pet. ref'd)(holding that *section 56.01(c)* does not authorize appeals from juvenile court's transferring a child to district court for criminal proceedings under *section 54.02 of the family code*); *Miller v. State*, 981 S.W.2d 447, 449 (Tex. App.--Texarkana 1998, pet. ref'd) (holding the 1995 amendment to *section 56.01(c)* removed all rights to appeal from a *section 54.02* ruling) (citing Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 48, sec. 56.01, 1995 Tex. Gen. Laws 2546). The Juvenile Justice Code provides the circumstances under which an appeal in a juvenile case may be taken. See *TEX. FAM. CODE ANN. § 56.01(c)* (Vernon 2002). This case is analogous to prior case law, disallowing appeals when the statutory provision is not listed. See *Small*, 23 S.W.3d at 550; *Miller*, 981 S.W.2d at 449. Because *section 54.051* is not specifically listed under *section 56.01(c)*, the complained of order is not appealable. Accordingly, we dismiss the appeal for want of jurisdiction. See *TEX. R. APP. P. 42.3(a)*, *43.2(f)*. [*3]

n2 Act of May 27, 1999, 76th Leg., R.S., ch. 1477, § 12, sec. 54.051, 1999 Tex. Gen. Laws 5067, 5071 (amended 2003) (current version found at *TEX. FAM. CODE ANN. § 54.051* (Vernon Supp. 2004-05)).

PER CURIAM

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