
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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In determining the suitable disposition of children, particularly in hearings to modify a disposition, appellate courts will not disturb trial court's findings absent an abuse of discretion. [In the Matter of D.G.](06-2-11)

On April 5, 2006, the San Antonio Court of Appeals held that evidence was sufficient to support a commitment to the TYC pursuant to *Family Code section 54.05(f)* and *(k)*, the court was authorized and within its discretion to modify its previous disposition order and commit appellant to the TYC.

¶ 06-2-11. **In the Matter of D.G.**, MEMORANDUM, No. 04-05-00749-CV, 2006 Tex.App.Lexis 2692 (Tex.App.— San Antonio, 4/5/06).

Facts: In April 2004, appellant was charged with robbery by causing bodily injury, but he pled true to the lesser offense of, and subsequently was adjudicated as, having engaged in delinquent conduct, assault causing bodily injury. He was placed on probation for six months at the home of his aunt. In August 2004, following the State's motion to modify disposition, appellant pled true to violating the terms of his probation prohibiting the use of drugs and alcohol and setting his curfew restrictions. He was placed on probation for twelve months at the home of his aunt; with the first six months under an Intensive Supervision Program. Because of his continued drug use, appellant voluntarily submitted to inpatient drug treatment, which he successfully completed. However, since that time, he has four times relapsed into drug use, and his family has been threatened by his former gang. In June 2005, following the State's second motion to modify disposition, appellant stipulated to violating the terms of his probation prohibiting the use of drugs. The trial court committed appellant to the TYC.

Held: Affirmed.

Memorandum Opinion: A trial court may modify its original order of disposition to commit a juvenile to the TYC if, after a hearing, the court finds by a preponderance of the evidence that the child violated a reasonable and lawful order of the court. *TEX. FAM. CODE ANN. § 54.05(f)* (Vernon Supp. 2005); *In re T.W.K.*, 4 S.W.3d 790, 791 (Tex. App.—San Antonio 1999, no pet.). A trial court may modify a disposition under *section 54.05(f)* if the child has been adjudicated for a felony or misdemeanor "on at least one previous occasion before the adjudication that prompted the disposition that is being modified," and the conduct that gave rise to the adjudication being modified "occurred after the date of the previous disposition." *TEX. FAM. CODE ANN. § 54.05(k)* (Vernon Supp. 2005). Here, the State introduced evidence of appellant's April 2001 adjudication on the offense of arson.

On appeal, appellant does not contest the sufficiency of the evidence supporting the trial court's finding that he violated a lawful order of the court. Instead, he asserts that placing him on probation was the

more appropriate disposition because he is the victim of abuse; under the care of a psychiatrist and psychotherapist; prior to this latest hearing, he had already spent three months in detention; and he is trying to "make his life more normal." Appellant's probation officer testified that appellant had been under the care of a psychologist and psychiatrist for over two years; however, appellant continued his substance abuse. The probation officer recommended commitment to the TYC based on appellant's continued drug use and the continued threats by his former gang members against him and his family. Although appellant's probation officer testified it was not fair that appellant be sent to the TYC because he was apparently attempting to stay away from his gang, the probation officer also felt it was in appellant's best interest that he be sent to the TYC.

Juvenile courts have a great deal of discretion in determining the suitable disposition of children found to have engaged in delinquent conduct, particularly in hearings to modify a disposition. *In re H.G.*, 993 S.W.2d 211, 213 (Tex. App.--San Antonio 1999, no pet.). Absent an abuse of discretion, we will not disturb the trial court's findings. *Id.* Because the evidence was sufficient to support a commitment to the TYC pursuant to *Family Code section 54.05(f) and (k)*, the court was authorized and within its discretion to modify its previous disposition order and commit appellant to the TYC.

Conclusion: We overrule appellant's issue on appeal and affirm the trial court's judgment.