
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

[2005 Summaries](#) [2004 Summaries](#) [2003 Summaries](#) [2002 Summaries](#) [2001 Summaries](#) [2000 Summaries](#) [1999 Summaries](#)

Retained appellate counsel allowed to withdraw once trial court makes a determination of whether appellate is indigent.[In the Matter of A.G.](06-3-20)

On July 26, 2006, the Waco Court of Appeal instructed the trial court to determine if child is indigent in allowing retained appellate counsel to withdraw. If indigent, appoint counsel, if not advise appellate of options.

¶ 06-3-20. **In the Matter of A.G.**, ___ S.W.3d ___, No. 10-06-00107-CV, 2006 Tex.App.Lexis 6564 (Tex.App.— Waco, 7/26/06).

Facts: A.G.'s retained appellate counsel has filed a motion to withdraw. Because it is unclear at this juncture whether A.G. and his parent are presently indigent, we will abate this appeal pending a hearing in the trial court to determine whether A.G. is indigent. We will withhold a ruling on counsel's motion to withdraw until this issue has been resolved.

Counsel's motion complies with the requirements of *Rule of Appellate Procedure 6.5* and appears to be meritorious. *See TEX. R. APP. P. 6.5*. In addition, counsel served a copy of the motion on A.G.'s parent. n1 *See In re D.A.S.*, 973 S.W.2d 296, 299, 41 Tex. Sup. Ct. J. 1148 (Tex. 1998) (orig. proceeding) (when counsel files motion to withdraw with *Anders* brief in juvenile delinquency appeal, the motion and brief should be "furnished to the juvenile client and the juvenile's parent or guardian"); *In re M.A.D.*, 167 S.W.3d 938, 939 n.2 (Tex. App.-Waco 2005, order) (per curiam) (same). However, the granting of counsel's motion would leave A.G. without representation.

n1 Neither A.G. nor his parent has filed an objection or response to counsel's motion to withdraw.

Held: Appeal abated

Opinion: A juvenile has a statutory right to counsel on appeal. *TEX. FAM. CODE ANN. § 56.01(d)(2)* (Vernon 2002); *see also D.A.S.*, 973 S.W.2d at 298. If the juvenile and his parents or guardians are indigent, the juvenile is entitled to (1) court-appointed counsel on appeal; and (2) preparation of the clerk's and reporter's records without charge. *See TEX. FAM. CODE ANN. § 56.01(d)(3), (m), § 56.02(b)* (Vernon 2002); *In re K. C. A.*, 36 S.W.3d 501, 502-03, 43 Tex. Sup. Ct. J. 909 (Tex. 2000) (per curiam).

It cannot be determined at this juncture whether A.G. and his parent are presently indigent. Therefore, we will abate this appeal pending a hearing in the trial court to determine whether A.G. and his parent are indigent.

If the trial court finds that they are indigent, the court shall appoint counsel to represent A.G. *See TEX. FAM. CODE ANN. § 56.01(d)(3)*. If the trial court determines that they are not indigent, the court shall advise them: (1) they may have the trial court's indigence ruling reviewed by filing a motion with this Court; *see K. C. A., 36 S.W.3d at 502; In re Arroyo, 988 S.W.2d 737, 738-39, 42 Tex. Sup. Ct. J. 64 (Tex. 1998)* (per curiam) (orig. proceeding); (2) A.G. may pursue the appeal without the assistance of counsel "through a parent, legal guardian, next friend, or guardian ad litem"; *see D.A.S., 973 S.W.2d at 299; see also Tex. Fam. Code Ann. § 51.11* (Vernon 2002), *§ 151.001(a)(7)* (Vernon Supp. 2005); (3) they may retain other counsel to represent A.G. on appeal; and (4) they must, within fourteen days after the date of the hearing, notify the Clerk of this Court in writing of which of these options they intend to pursue.

The trial court shall, within thirty days after the date of this Order: (1) conduct the hearing; (2) cause a court reporter to make a record of the hearing; (3) make appropriate orders and findings of fact and conclusions of law; and (4) deliver any orders and findings of fact and conclusions of law to the trial court clerk.

If the trial court determines that A.G. and his parents are indigent, then the clerk's record (including any orders and findings prepared in connection with the indigence hearing) and the reporter's record (including a transcription of the indigence hearing) shall be filed within fifty days after the date of this Order.

PER CURIAM

Conclusion: Retained counsel allowed to withdraw.