
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](#)

In Motion to Modify, trial court did not abuse its discretion in finding that appellant would not receive the quality of care and level of support and supervision needed to meet the conditions of his probation. [In the Matter of J.E.Z.](06-3-9)

On June 15, 2006, the Houston (1st Dist.) Court of Appeals held that the trial court did not abuse its discretion in finding that appellant would not receive the quality of care and level of support and supervision in his home that he would need to meet the conditions of his probation.

¶ 06-3-9. **In the Matter of J.E.Z.**, MEMORANDUM, No. 01-05-00116-CV, 2006 Tex.App.Lexis 5200 (Tex.App.— Houston (1st Dist.), 6/15/06).

Facts: On March 31, 2004, two teenage females got into a fight after [*2] getting off of their school bus. During the fight, 13-year-old F.V. got on top of 15-year-old C.R., appellant's friend. Appellant pulled F.V.'s hair, punched her eye, and kicked her in the back. F.V. was taken to the hospital by ambulance, and she missed two days of school. A jury found that appellant, J.E.Z., engaged in delinquent conduct, namely, class A misdemeanor assault. The trial court initially placed him on nine months probation and placed him in his mother's custody. Four days later, the trial court modified this disposition to require appellant to serve 30 days in boot camp and ordered him into the custody of a probation officer.

Held: Affirmed.

Memorandum Opinion: In four related points of error, appellant contends that (1) the evidence was legally and factually insufficient to support a finding that appellant be placed outside the home, (2) the trial court abused its discretion in modifying the disposition of the case, and (3) the trial court failed to "follow the law regarding dispositions that remove a child from the home."

Family Code section 54.04(i) states:

If the court places the child on probation outside the child's home or commits the child to the Texas Youth Commission, the court:

(1) shall include in its order its determination that:

(A) it is in the child's best interests to be placed outside the child's home;

(B) 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

(C) 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(i) (Vernon 2005); *In re J.P.*, 136 S.W.3d 629, 635 n.9, 47 Tex. Sup. Ct. J. 579 (Tex. 2004).

Appellant contends that there is no evidence and no explanation as to why the trial court withdrew its initial order and entered a new order giving custody to the chief juvenile probation officer. Specifically, appellant complains that there is no evidence in the record that he, "in his home, could not be 'provided the quality of care and level of support and supervision that the child needs to meet the conditions of the probation.'"

A juvenile court has broad discretion to determine the proper disposition of a child who has been adjudicated as engaging in delinquent behavior. *In the Matter of C.G.*, 162 S.W.3d 448, 452 (Tex. App.--Dallas 2005, no pet.). Absent an abuse of discretion, a reviewing court will not disturb the juvenile court's findings. *Id.* Under an abuse of discretion standard, legal and factual sufficiency are relevant factors in assessing whether the trial court abused its discretion. *Id.*

In a legal sufficiency review of a juvenile court's disposition, an appellate court considers only the evidence and inferences tending to support the court's findings and disregards all evidence and inferences to the contrary. *Id.*; *In the Matter of C.J.H.*, 79 S.W.3d 698, 702-03 (Tex. App.--Fort Worth 2002, no pet.). The reviewing court will set aside the judgment only if there is no evidence of probative force to support the finding. *Id.* Anything more than a scintilla of evidence is sufficient to support the finding. *Id.* at 703. In a factual sufficiency review, an appellate court considers and weighs all the evidence and sets aside the judgment only if the finding is so against the great weight and preponderance of the evidence as to be manifestly unjust. *C.G.*, 162 S.W.3d at 452.

The record indicates a lack of the requisite quality of care and level of supervision in the home. While living at home, appellant committed the offense of assault--he pulled the 13-year-old complainant's hair, punched her in the face, and kicked her in the back resulting in her hospitalization and her missing school. Nine days before the first disposition hearing and while living at home, appellant was placed on three days' suspension at school for fighting and talking back.

The juvenile probation report notes that the probation officer tried to contact appellant's parents but "was unsuccessful in interviewing the family." Appellant's parents' apparent disinterest in discussing his legal predicament with his probation officer tends to indicate a lack of the requisite quality of care and level of support and supervision in his home. Appellant's mother attended the first disposition hearing. His father did not. n1 Despite being given the opportunity to address the trial court, appellant's mother chose not to provide the trial court with any information regarding the quality of care or the level of support and supervision that appellant would receive in their home. The failure of appellant's parents to present any evidence about their ability to offer appellant quality care and supervision in their home raises questions about their ability to provide the necessary support. *See In the Matter of T.A.F.*, 977 S.W.2d 386, 388 (Tex. App.--San Antonio 1998, no pet.). The record also indicates that, while his mother was present at the disposition hearing, appellant exhibited some sort of in-court misbehavior. At the second disposition hearing, appellant's lawyer stated, "I know [J.E.Z.'s] attitude was not that good during the disposition and afterwards during court[,] . . . and I know he probably said some things that he should not have said." The trial court allowed appellant to apologize at the second disposition hearing. Appellant testified that he was "sorry for being disrespectful." Appellant also apologized to his probation officer and explained that he "was not in a good mood that day."

n1 The record does not reflect who was in attendance at the second disposition hearing.

We hold that, considering the totality of the circumstances, the trial court did not abuse its discretion in finding that appellant would not receive the quality of care and level of support and supervision in his home that he would need to meet the conditions of his probation.

We overrule points of error one through four.

Conclusion: We affirm the judgment of the trial court.

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