

Review of Recent Juvenile Cases (2007)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

Length of time child can be placed on probation may be a factor in court's decision to commit child to TYC.[In the Matter of B.R.](07-2-3)

On July 12, 2006, the San Antonio Court of Appeals affirmed a TYC commitment were the trial court found that the child's eighteenth birthday was just over two months from the disposition hearing, and that this was not enough time for rehabilitation to occur and that it was too short a probation period for a felony conviction.

¶ 07-2-3. **In the Matter of B.R.**, No. 04-06-00018-CV, 2006 Tex.App.Lexis 5964, Tex.App.— San Antonio, 7/12/06) rel. for pub. 2/2/07

Facts: On January 8, 2005, B.R., along with seven other individuals, went "carjacking." They managed to break into several vehicles and take several items. Eventually, B.R. was apprehended and charged with: 1) theft of a firearm; 2) theft \$ 1500-\$ 20,000; and 3) burglary of a vehicle. The State waived count one and proceeded at trial on counts two and three. B.R. was found to have engaged in delinquent conduct pursuant to his plea of true on both counts. The trial court held that commitment to TYC was necessary. On appeal, B.R. argues that the trial court abused its discretion when it ordered commitment to TYC because the record indicates that probation was the appropriate disposition.

Held: Affirmed

Disposition: A juvenile judge has broad discretion to determine the proper disposition of a child who has been adjudicated as engaging in delinquent behavior. *In re K.L.C.*, 972 S.W.2d 203, 206 (Tex. App.-Beaumont 1998, no pet.). "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 E.T.*, No. 04-03-00796-CV, 2004 Tex. App. LEXIS 9929, 2004 WL 2533552, at *1 (Tex. App.-San Antonio Nov. 10, 2004, no pet.) (mem. op.) (citing *In re K.T.*, 107 S.W.3d 65, 74 (Tex. App.-San Antonio 2003, no pet.)). This standard requires that we view the evidence in a light most favorable to the trial court's judgment. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). Thus, we will afford almost total deference to the trial court's findings of fact which are supported by the record. *In re K.T.*, 107 S.W.3d at 74. On the other hand, when the trial court's resolution of a factual issue is not dependant 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.*

The guiding rules and principles in juvenile cases involving commitment outside the child's home are found in the Family Code. The Family Code permits a trial judge to commit a child to TYC if: 1) it is in the child's best interest to be placed outside the home; 2) reasonable efforts have been taken to prevent or eliminate the need for the child's removal from home; and 3) while in the home, the child cannot receive the quality of care

and level of support and supervision needed to meet the conditions of probation. *TEX. FAM. CODE ANN. § 54.04(i)* (Vernon Supp. 2006).

Here, the facts illustrate that B.R. was considered a fugitive from the law. In fact, it took law enforcement months to locate B.R. The evidence suggests that people were helping to hide B.R. and that his parents were also non-cooperative. Eventually law enforcement found B.R. hiding in a closet at a friend's house. Additionally, B.R. had not been living with his parents for nearly nine months, he was not attending school, and he admitted to previous alcohol and marijuana abuse. B.R.'s pre-disposition report stated that B.R. had previously been charged with assault for slapping and punching his mother.

Another concern at trial was that B.R.'s eighteenth birthday was just over two months from the hearing, thus allowing only two possible months of probation. The judge expressed that this was not enough time for rehabilitation to occur and that it was too short a probation period for a felony conviction. The trial court concluded that commitment to TYC was in the best interest of B.R. The trial court was required to include reasons for the juvenile's commitment in the court's orderⁿ¹; thus, the order reads:

THE CHILD HAS TWO MONTHS AND A FEW DAYS FROM TURNING 18 YEARS OLD, ADJUDICATED ON A FELONY OFFENSE, NOT CURRENTLY IN SCHOOL, NOT LIVING AT HOME, THE COURT FOLLOWED THE RECOMMENDATION OF THE PROBATION DEPARTMENT AND THE DISTRICT ATTORNEY AND THE PROBATION DEPARTMENT WOULD NOT HAVE SUFFICIENT TIME TO REHABILITATE.

ⁿ¹ See *TEX. FAM. CODE ANN. § 54.04(i)* (Vernon Supp. 2006).

Conclusion: The record supports the trial court's conclusion that commitment is in B.R.'s best interest, and that B.R. could not receive the needed level of care, support, and supervision in the home, despite prior efforts to keep B.R. in his family's home. Because the trial court did not abuse its discretion when it ordered B.R.'s commitment to TYC, we will not disturb this determination. See *In the Matter of K.L.C., 972 S.W.2d at 206*. B.R.'s sole issue is overruled and the judgment of the trial court is affirmed.