

Review of Recent Juvenile Cases (2007)

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

When a juvenile court gives an incorrect reason for its decision, it does not abuse its discretion if it reaches the right result.[In the Matter of L.D.](07-2-12)

On March 7, 2007, the Tyler Court of Appeals held that the juvenile court did not abuse its discretion in committing respondent to TYC even though the court based its decision to commit, at least in part, on a lack of available county funds.

¶ 07-2-12. **In the Matter of L.D.**, MEMORANDUM, ___S.W.3d ___, No. 12-06-00193-CV, 2007 Tex.App.Lexis 1714 (Tex.App.—Tyler, 3/7/07).

Facts: On November 29, 2005, L.D., a sixteen year old female, assaulted Tanikqua Bolton. This was but one of a number of acts of bad conduct committed by L.D. between February 20, 2004ⁿ¹ and her commitment to TYC on April 24, 2006. L.D.'s bad acts included assaulting a school teacher (February 20, 2004), a police officer (August 18, 2004), a mentally disabled juvenile (January 27, 2005), an aunt (July 27, 2005), and another individual (January 20, 2006); attempting to escape detention by kicking out the window of a police car (August 18, 2004); trespassing in an apartment complex (July 13, 2005); violating a municipal curfew law (January 20, 2006); verbally abusing a law enforcement officer (March 6, 2006); stating to a law enforcement officer that she planned to resist any effort to detain her (March 6, 2006); and announcing to her schoolmates that she planned to assault a teacher's aide for confiscating her lip gloss (March 29, 2006). During much of this period, L.D. was on probation for delinquent conduct. She repeatedly violated the conditions of her probation, often ignoring the juvenile court's condition that she remain at home unless authorized to leave. She also repeatedly failed to comply with the juvenile court's condition that she attend school regularly.

ⁿ¹ The date of her first known delinquent conduct.

On April 11, 2006, a jury found that L.D. had engaged in delinquent conduct by committing the assault on Tanikqua Bolton. The juvenile court held a disposition hearing at which it took into consideration L.D.'s other bad acts as well as her direct failures to comply with authority, including her repeated failures to comply with orders of the juvenile court. The court also heard testimony from Tom Streetman, L.D.'s probation officer during the time she had been on probation. Streetman testified that it was in L.D.'s best interest that she be placed outside the home. He stated that L.D.'s parents or relatives would not provide suitable supervision and that probation was not in her best interest.

The court questioned Streetman regarding the application of the Juvenile Justice Code's Progressive Sanction Guidelines. ⁿ² Streetman acknowledged that commitment to TYC was technically a deviation from the guidelines. He stated, however, that the Code allowed commitment to TYC based upon L.D.'s criminal history ⁿ³ and that a deviation from the guidelines was permitted. The court also questioned Streetman regarding other placement options besides TYC, ordering him to investigate available placement options and then report

his findings to the court. Following his investigation, Streetman testified that there were not sufficient available county funds to place L.D. in a facility other than TYC.

n2 See *TEX. FAM. CODE ANN. §§ 59.001-59.015* (Vernon 2002 & Supp. 2006).

n3 See *TEX. FAM. CODE ANN. § 54.04* (Vernon Supp. 2006).

Following the disposition hearing, the juvenile court committed L.D. to TYC for an indeterminate period of time. This appeal followed.

Held: Affirmed

Memorandum Opinion: A juvenile court may commit a juvenile to TYC without a determinate sentence for

delinquent conduct that violates a penal law of the grade of misdemeanor if: (1) the child has been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony on at least one previous occasion; and (2) the conduct that is the basis of the current adjudication occurred after the date of that previous adjudication.

TEX. FAM. CODE ANN. § 54.04(t).

Even then, commitment is not required, but is merely an option for consideration by the juvenile court. See *id.* If a juvenile court "arbitrarily removes a child from home for a trivial infraction, nothing . . . prohibits the appellate judges of Texas from doing something about it." *In re J.P.*, 136 S.W.3d at 632. As Justice Schneider observed, the legislature has expressed its intent that commitment to TYC be reserved for serious juvenile offenders. *Id.* at 634 (Schneider, J., concurring).

The primary concern of the Juvenile Justice Code is that of public safety. See *id.* at 632. In other parts of the Texas Family Code, the best interests of children are often paramount; but in the Juvenile Justice Code, the best interests of children who engage in serious and repeated delinquent conduct are superseded to the extent they conflict with public safety. *Id.* at 633. Generally, a commitment to TYC is not an abuse of discretion when the delinquent juvenile has engaged in some type of violent activity that makes the juvenile potentially dangerous to the public or when the juvenile has been given a negative recommendation for probation. See *In re L.G.*, 728 S.W.2d 939, 945 (Tex. App.-Austin 1987, writ ref'd n.r.e.).

L.D. was a serious offender with a significant history of bad acts, including repeated, and often violent, delinquent conduct. She was not committed for a trivial offense; she was committed for assault after her probation officer testified that probation was not in her best interest. The juvenile court did not abuse its discretion in committing L.D. to TYC. Nonetheless, L.D. argues that the juvenile court's order must be reversed because the court based its decision to commit, at least in part, on a lack of available county funds.

In support of this argument, L.D. cites *In re S.G.*, No. 04-04-00475-CV, 2005 Tex. App. LEXIS 2560 (Tex. App.-San Antonio April 6, 2005, no pet.) (mem. op.). L.D. argues that *In re S.G.* stands for the proposition that a commitment based, in part, upon a lack of available funds automatically warrants reversal. In that case, the court of appeals stated that the fact that a TYC committal utilizes state rather than county resources was an improper reason for the committal of a juvenile to TYC. *Id.*, 2005 Tex. App. LEXIS 2560 at *11. Because there was no other evidence in the record to support the trial court's order, the appellate court reversed the order and remanded the cause for a new disposition hearing. *Id.*, 2005 Tex. App. LEXIS 2560 at *11-13. However, the record in the instant case includes sufficient evidence to support the juvenile court's order. Moreover, even

where a juvenile court gives an incorrect reason for its decision, it does not abuse its discretion if it reaches the right result. See *Hawthorne*, 917 S.W.2d at 931.

L.D. also argues that the juvenile court did not make a finding in its disposition order that she was a danger to the public. This allegation is unsupported by the record. The juvenile court's disposition order specifically states that protection of the public required that a disposition be made. We note that, in reaching its decision to commit L.D. to TYC, the juvenile court chose to deviate from the Progressive Sanction Guidelines. L.D. has not complained that this deviation was improper but has, instead, alleged that the juvenile court did not give these guidelines proper consideration when reaching its disposition decision. The juvenile court admitted extensive testimony on the issue of the guidelines, even personally questioning Streetman. L.D.'s allegation is not supported by the record.

Conclusion: We overrule L.D.'s sole issue.