

Review of Recent Juvenile Cases (2007)

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

Once a trial court's plenary power ends, it has no authority to rule on motions filed after that time.[In the Matter of A.M.](07-4-5)

On August 22, 2007, the San Antonio Court of Appeals held that a trial court's plenary power ended thirty days after the first filed motion for new trial was overruled, and any motions filed after that date were of no effect.

¶ 07-4-5. **In the Matter of A.M.**, MEMORANDUM, No. 04-06-00483-CV, 2007 Tex.App.Lexis 6676 (Tex.App.—San Antonio, 8/22/07).

Facts: A.M., a juvenile, was charged with aggravated sexual assault of a child. The State sought determinate sentencing and, following a jury trial, the trial court entered an Order of Adjudication finding that A.M. did engage in delinquent conduct, specifically, aggravated sexual assault of a child. After holding a disposition hearing, the trial court signed an order sentencing A.M. to a determinate sentence of forty years. A.M. contends on appeal that (1) the trial court erred in refusing his request for an evidentiary hearing on his motion for new trial; and (2) he received ineffective assistance of counsel under the United States and Texas Constitutions. The Order of Disposition was signed on March 31, 2006. On April 19, 2006, A.M.'s trial counsel, Gloria Early, filed a "Motion to Withdraw as Counsel, a Motion for New Trial, and a Notice of Appeal." Early's motion to withdraw as counsel was granted on April 19, 2006, and the motion for new trial was overruled on April 20, 2006. An order substituting new counsel, Kenneth Baker, was entered on April 27, 2006. Before the order substituting Baker was even entered, however, on April 21, 2006, Baker apparently filed an "Amended Motion for New Trial" containing the wrong cause number. Because of this error, the motion was filed in the wrong cause number.¹ And, because it was not filed in the cause number which is now on appeal, the "Amended Motion for New Trial" is not contained in the appellate record.

¹ Baker has provided a copy of the amended motion for new trial, which he contends was filed on April 21, 2006, under the wrong cause number, in an appendix to his brief.

On June 27, 2006, A.M.'s new counsel, Baker, filed a second "Amended Motion for New Trial," which was overruled on July 3, 2006. Also on June 27, 2006, Baker filed "Defendant's Motion to Set Aside Order Denying Motion for a New Trial, Striking the First Filed Motion for New Trial and Deeming Respondent's Motion for a New Trial Timely Filed." This motion was likewise denied on July 3, 2006. Now, on appeal, A.M. contends the trial court was required to hold a hearing on his amended motion for new trial and that he received ineffective assistance of counsel.

Held: Affirmed

Memorandum Opinion: In his first issue, A.M. argues that the trial court should have granted his request for an evidentiary hearing on his motion for new trial. He contends that the "Amended Motion for New Trial," which he filed on April 21, 2006, under the wrong cause number, was timely and, therefore, the trial court was required to consider it.

As a general rule, juvenile appeals proceed under the rules governing civil cases. *TEX. FAM. CODE ANN. § 56.01(b)* (Vernon 2002) ("The requirements governing an appeal are as in civil cases generally."); *In re J.C.H., 12 S.W.3d 561, 562 (Tex. App.--San Antonio 1999, no pet.)* (applying Rules of Appellate Procedure governing civil cases in juvenile case); *J.E.S. v. State, No. 05-95-00834-CV, 1995 Tex. App. LEXIS 2638, 1995 WL 634154, at *1 (Tex. App.--Dallas 1995, no writ)* (applying in juvenile case motion for new trial rules set forth in *Texas Rule of Civil Procedure 329b*). In a juvenile case, the rules require that a motion for new trial be filed within thirty days after the order of disposition is signed. *See In re J.C.H., 12 S.W.3d at 562; see TEX. R. CIV. P. 329b(a)*. *Texas Rule of Civil Procedure 329b(b)* allows a party to file an amended motion for new trial without leave of the trial court as long as the trial court has not yet overruled an earlier new trial motion, and the amended motion is filed within thirty days after the trial court signs the judgment. *Moritz v. Preiss, 121 S.W.3d 715, 719-20 (Tex. 2003); see TEX. R. CIV. P. 329b(b)*.

In this case, A.M.'s trial attorney, Early, filed a motion for new trial within thirty days of the disposition order, and the trial court overruled it the following day. The subsequently filed amended motion for new trial, filed on April 21, 2006, by Baker, was timely in the sense that it was filed within thirty days of the disposition order. But, regardless of whether the amended motion was filed in the correct cause, the trial court was not required to consider it because the trial court had already overruled a previously filed motion for new trial. *See TEX. R. CIV. P. 329b(b); Moritz, 121 S.W.3d at 719-20*. Once the first motion for new trial was overruled, the rules do not allow the filing of an amended motion without leave of court. *TEX. R. CIV. P. 329b(b)*. Furthermore, the amended motion for new trial filed by Baker on April 21, 2006, is not properly before us because it is not contained in the record on appeal.

A.M. emphasizes that he eventually filed a "Second Amended Motion for New Trial" in the correct cause number on June 27, 2006. Also on June 27, 2006, he filed "Defendant's Motion to Set Aside Order Denying Motion for a New Trial; Striking the First Filed Motion for a New Trial and Deeming Respondent's Motion for a New Trial Timely Filed." In that motion, he contended that Early had not been authorized to file a motion for new trial.

Conclusion: Because the trial court's plenary power ended thirty days after the first filed motion for new trial was overruled, none of these motions filed on June 27, 2006, were timely. *See TEX. R. CIV. P. 329b(e)*. The first filed motion for new trial was overruled on April 20, 2006, and, therefore, the trial court's plenary power expired on May 22, 2006. Thus, any motions filed after May 22, 2006, were of no effect.

A.M.'s first issue on appeal is overruled.

Other Issues Omitted.