

## Review of Recent Juvenile Cases (2007)

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

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### **Any one probation violation will support a juvenile court's order to revoke probation.[In the Matter of E.B.R.](07-4-12)**

**On October 4, 2007, the Houston (1<sup>st</sup> Dist) Court of Appeals held that one probation violation (even a "technical" condition) will support a juvenile court's order to revoke probation.**

¶ 07-4-12. **In the Matter of E.B.R.**, No. 01-06-00955-CV, 2007 Tex.App.Lexis 7885 [Tex.App.— Houston(1st Dist), 10/4/07].

**Facts:** On September 1, 2006, the State filed a petition to modify E.B.R.'s disposition. In the petition, the State sought to revoke E.B.R.'s probation and requested that E.B.R. be committed to the TYC. In support of its request, the State alleged 20 violations of the conditions of E.B.R.'s probation. Specifically, the State alleged 20 separate instances of E.B.R.'s failure to comply with the rules of either the JJAEP or the residential center.

At the modification hearing, Belinda Gaines, principal of the JJAEP, testified for the State. Gaines testified that she met with E.B.R. three to five times in response to staff reports that E.B.R. had violated JJAEP rules. In conjunction with Gaines's testimony, eight disciplinary forms were admitted into evidence detailing E.B.R.'s rule-violative behavior at the JJAEP and at the residential center. When the first three of these forms were offered into evidence, the defense objected on hearsay grounds. The juvenile court sustained the objection for the first two forms, which had been authored by JJAEP staff other than Gaines, but overruled the hearsay objection regarding a disciplinary form authored by Gaines ("the Gaines disciplinary form"). Ultimately, in addition to the the Gaines disciplinary form, seven other disciplinary forms were admitted as JJAEP business records through Gaines.

The Gaines disciplinary form described E.B.R.'s insubordinate behavior directed at Gaines and personally observed by her on August 23, 2006. Gaines testified that the reason she wrote the discipline report was because E.B.R. was rude and disrespectful toward her while she was in the process of correcting him for another rule infraction that had been reported by the staff. Although she did not witness the behavior that caused E.B.R. to be sent to her, Gaines personally observed the behavior she identified on the disciplinary form. The disciplinary form authored by Gaines's provides,

When correcting [E.B.R.] and another student he proceeded to tell me that the reason he is in trouble is because I always come in and scream at him like another teacher. He is rude and disrespectful. To my knowledge [E.B.R.] has been escorted from the class on 2 previous incidents today. He is chronically refusing to do what is asked without compliance. I had previously tried to assist him with math and he refused to comply.

In addition to the written explanation, Gaines also checked the following infractions on the form: "Insubordination/Disrespect towards staff or peers" and "Talking without permission." At the modification hearing, Gaines testified that E.B.R.'s conduct toward her, as described in the disciplinary form, violated the JJAEP's rules.

At the conclusion of the hearing, the juvenile court verbally identified seven violations of E.B.R.'s probation conditions. Specifically, the juvenile court found that E.B.R. had, in seven separate instances, violated either the JJAEP's rules or the residential center's rules.

The juvenile court signed an order modifying E.B.R.'s disposition. The court revoked E.B.R.'s probation and committed him to the TYC until his twenty-first birthday. In the modification order, the juvenile court identified the following five probation violations:

- (1) On August 23, 2006, [E.B.R.] failed to comply with the rules of the Juvenile Justice Alternative Education Program by insubordination, disrespect towards staff or peers and talking without permission.
- (2) On August 23, 2006, [E.B.R.] failed to comply with the rules of the Juvenile Justice Alternative Education Program by insubordination, disrespect towards staff or peers and gang activity.
- (3) On August 11, 2006, [E.B.R.] failed to comply with the rules of the Juvenile Justice Residential Center by carving letters into the plaster on the wall.
- (4) On August 23, 2006, [E.B.R.] failed to comply with the rules of the Juvenile Justice Residential Center by cursing, disrespect to staff and disrespect to juvenile.
- (5) On August 27, 2006, [E.B.R.] failed to comply with the rules of the Juvenile Justice Residential Center by horse playing.

**Opinion:** Here, the the Gaines disciplinary form was not the proper subject of a *Confrontation Clause* objection because Gaines testified at the modification hearing.<sup>4</sup> See *Grant v. State*, 218 S.W.3d 225, 232 n.3 (Tex. App.-Houston [14th Dist.] 2007, pet. ref'd) (clarifying that court's holding concerning testimonial statements is concerned only with descriptions made by non-testifying witnesses). The record reflects that the disciplinary form authored by Gaines, along with her testimony regarding E.B.R.'s insubordinate conduct toward her, supports the juvenile court's first written finding of a probation violation: "On August 23, 2006, [E.B.R.] failed to comply with the rules of the Juvenile Justice Alternative Education Program by insubordination, disrespect towards staff or peers and talking without permission." This one finding of a probation violation alone is sufficient to support the juvenile court's revocation of E.B.R.'s probation. See *In re T.R.S.*, 115 S.W.3d 318, 321 (Tex. App.-Texarkana 2003, no pet.) ("When the state's proof of any of the alleged violations of probation is sufficient to support a revocation of probation, the revocation should be affirmed."); see also *Sanchez v. State*, 603 S.W.2d 869, 871 (Tex. Crim. App. 1980) (holding in adult criminal case that probation may be revoked for violation of single condition).

As mentioned, on August 23, 2006, Gaines met with E.B.R. to address E.B.R.'s rule-violative behavior in the classroom. Gaines did not witness E.B.R.'s conduct in the classroom. E.B.R. argues that the first probation violation found by the juvenile court was partly based on hearsay because Gaines did not witness the incidents in the classroom that led E.B.R. to be sent to Gaines for corrective measures. Contrary to E.B.R.'s assertion, Gaines testified that the reason she wrote the August 23, 2006 disciplinary report was because appellant was rude and disrespectful toward her while she was in the process of correcting him for the classroom violations.

Although she did not witness the behavior that caused E.B.R. to be sent to her, Gaines personally observed the rude and disrespectful behavior she detailed in the disciplinary form, which supports the juvenile court's first probation--violation finding.

E.B.R. acknowledges that, "it is true that the State's proof of any of the alleged violations is sufficient to support a revocation of probation" but questions whether there is a reasonable probability that, but for such errors, the juvenile court would have revoked his probation based only on evidence that he was rude and disrespectful to Gaines. E.B.R. makes no argument that such conduct was not a violation of the JJAEP's rules and thus a violation of his probation. Rather, E.B.R. implies that the juvenile court would not have revoked his probation based on such a technical or minor violation alone.

The juvenile court has broad discretion to determine a suitable disposition of a child found to have engaged in delinquent conduct; this is especially true in hearings to modify a disposition. *In re D.R.A.*, 47 S.W.3d 813, 815 (Tex. App.-Fort Worth 2001, no pet.). More particularly, in a juvenile probation revocation hearing, the decision whether to revoke rests within the discretion of the trial court. *T.R.S.*, 115 S.W.3d at 320. When reviewing a court's modification of a juvenile's disposition on appeal, the controlling issue is whether the evidence is sufficient to support the court's finding, by a preponderance of the evidence, that the juvenile violated a condition of probation. *Id.* Here, the evidence, namely Gaines's testimony and the disciplinary form she authored, sufficiently support the juvenile court's first written finding.

We find no current law prohibiting a juvenile court from revoking juvenile probation for a technical violation. By analogy, courts have held, in criminal cases, that community supervision may be revoked for a violation of any condition, including violations of any single "technical" condition. *Nurridin v. State*, 154 S.W.3d 920, 924 (Tex. App.-Dallas 2005, no pet.).

Here, the probation revocation was supported by the juvenile court's first written finding. This finding was supported by evidence not subject to a *Confrontation Clause* objection. Thus, we conclude that, even if E.B.R.'s counsel erred by failing to lodge a *Confrontation Clause* objection to the disciplinary forms containing statements of non-testifying witnesses, appellant has not shown that there is a reasonable probability that, but for any such errors, the outcome of the modification hearing would have been different. *See Andrews*, 159 S.W.3d at 102.

In his first point of error, E.B.R. contends that two of the juvenile court's oral findings made at the conclusion of the modification hearing, describing E.B.R.'s probation violations, "cannot be used as support for the revocation" of E.B.R.'s probation because they were "deleted" from the juvenile court's written findings in the modification order. In his third point of error, E.B.R. asserts that the juvenile court abused its discretion when it found, "On August 27, 2006, [E.B.R.] failed to comply with the rules of the Juvenile Justice Residential Center by horseplaying."

As discussed, there is one sufficient ground for revocation: E.B.R.'s failure to follow the JJAEP's rules on August 23, 2006 by being insubordinate and disrespectful towards Gaines and by talking without permission. Thus, because one probation violation will support the juvenile court's order to revoke probation, we need not address E.B.R.'s contentions raised in points of error one and three. *See Sanchez*, 603 S.W.2d at 871.

**Conclusion:** We affirm the judgment of the juvenile court.