

Review of Recent Juvenile Cases (2008)

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

No record of object to the trial court's failure to give statutory admonishments, does not properly preserved complaint for appellate review. [In the Matter of R.R.F.](08-1-10)

On January 10, 2008, the Corpus Christi-Edenburg Court of Appeals held that in a bench trial, if the record reflects no objection to the trial court's failure to give statutory admonishments, the complaint was not properly preserved for appellate review.

¶ 07-1-10. **In the Matter of R.R.F.**, MEMORANDUM, No. 13-06-645-CV, 2008 Tex.App.Lexis 269 (Tex.App.—Corpus Christi-Edinburg, 1/10/08).

Facts: The State charged R.R.F. with two counts of aggravated sexual assault of a disabled person. At trial, R.R.F. waived his right to have a jury consider the allegations and entered a plea of "not true" to the allegations. At the conclusion of a bench trial, the court found that R.R.F. had committed the offenses alleged in the State's petition. At the conclusion of the disposition hearing that followed, the court ordered that R.R.F. be committed to the Texas Youth Commission for an indeterminate period not to exceed his twenty-first birthday.

Held: Affirmed

Memorandum Opinion: By his sole issue, R.R.F. contends that the trial court erred by failing to give the proper admonishments pursuant to *section 54.03(b) of the Texas Family Code. TEX. FAM. CODE ANN. § 54.03(b)* (Vernon Supp. 2007). That section provides:

(b) At the beginning of the adjudication hearing, the juvenile court judge shall explain to the child and his parent, guardian, or guardian ad litem:

- (1) the allegations made against the child;
- (2) the nature and possible consequences of the proceedings, including the law relating to the admissibility of the record of a juvenile court adjudication in a criminal proceeding;
- (3) the child's privilege against self-incrimination;
- (4) the child's right to trial and to confrontation of witnesses;
- (5) the child's right to representation by an attorney if he is not already represented; and

(6) the child's right to trial by jury. *Id.*

Although the record reflects that the trial court inquired whether the child was aware of the alleged charges against him and advised him of his right to trial by jury, the record also reflects that R.R.F. is correct that the trial court did not advise him of the remaining requirements of *section 54.03(b)*. *See id.* Instead, after the plea of "not true" was entered, the court immediately began to hear testimony at trial. The State concedes in its brief that the trial court did not properly give R.R.F. all of the statutorily required admonishments, but points to *section 54.03(i) of the Texas Family Code*, which provides:

(i) In order to preserve for appellate or collateral review the failure of the court to provide the child the explanation required by subsection (b), the attorney for the child must comply with *Rule 33.1, Texas Rules of Appellate Procedure*, before testimony begins, or if the adjudication is uncontested, before the child pleads to the petition or agrees to a stipulation of evidence. *Id.*, § 54.03(i).

Rule 33.1 of the Texas Rules of Appellate Procedure entitled "Preservation of Appellate Complaints" requires, as a prerequisite for presenting a complaint for appellate review, the record must show that:

(1) the complaint was made to the trial court by a timely request, objection, or motion that:

(A) stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context; and

(B) complied with the requirements of the Texas Rules of Civil or Criminal Evidence or the Texas Rules of Civil or Appellate Procedure; and

(2) the trial court:

(A) ruled on the request, objection, or motion either expressly or implicitly; or

(B) refused to rule on the request, objection, or motion, and the complaining party objected to the refusal.

TEX. R. APP. P. 33.1.

Conclusion: Because the record reflects that no objection was made to the trial court's failure to give R.R.F. his statutory admonishments, we hold that he has not properly preserved this complaint for appellate review. We overrule the issue and, accordingly, affirm the trial court's judgment.