

Review of Recent Juvenile Cases (2008)

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

Transfer hearing allowed where child over 19 years of age at time of hearing.[In the Matter of T.G.](08-3-9)

On June 19, 2008, the Austin Court of Appeals held that because the Texas Family Code provides for the juvenile court to retain jurisdiction for transfer or release "without regard to the age of the person," it had jurisdiction and did not abuse its discretion in ordering the transfer of T.G. to the custody of the TDCJ to serve the remainder of his determinate sentence.

¶ 08-3-9. In the Matter of T.G. MEMORANDUM, No. 03-07-00543-CV, 2008 WL 2468697 (Tex.App.-Austin, 6/19/08).

Facts: T.G., a juvenile, was adjudicated delinquent, given a determinate sentence, and remanded to the custody of the Texas Youth Commission (TYC or Commission). This is an appeal from a juvenile court order transferring T.G. from the TYC to the custody of the Institutional Division of the Texas Department of Criminal Justice (TDCJ). With the passage of Senate Bill 103, [\[FN1\]](#) effective June 8, 2007, which reduced the age of youth who are eligible for confinement at the TYC from twenty-one to nineteen years of age, the question presented is whether the juvenile court retained jurisdiction to hold a transfer hearing for a juvenile's transfer to the TDCJ for confinement if the juvenile (i) had been held pursuant to a determinate sentence felony adjudication, (ii) had not completed a minimum length of stay, and (iii) had not yet reached twenty-one years of age but was nineteen years of age when the statute became effective. In two issues on appeal, T.G. urges that the juvenile court was without authority to hold a transfer hearing and, upon the effective date of the statute, the Commission had no discretion but to transfer him to the custody of the TDCJ to serve the remainder of his sentence on parole.

[FN1.](#) Act of May 25, 2007, 80th Leg., R.S., ch. 263, 2007 Tex. Gen. Laws 421 (effective June 8, 2007) (hereafter "SB 103"). Because several provisions of the family code and the human resources code have been amended, we cite to the current version of the statute, unless a particular amendment is relevant to the disposition of this appeal.

Held: District Court had jurisdiction and did not abuse its discretion in ordering the transfer of T.G. to the custody of the TDCJ to serve the remainder of his determinate sentence.

Memorandum Opinion: A review of the trial court's decision as to whether the court had authority to hold a transfer hearing upon the TYC's request--after the change of law and after T.G. became nineteen years of age--presents a matter of statutory construction, which we review *de novo*. [City of San Antonio v. City of Boerne, 111 S.W.3d 22, 25 \(Tex.2003\)](#). When construing a statute, our primary goal is to determine and give effect to the legislature's intent. *Id.* To determine legislative intent, we look to the statute as a whole, as opposed to isolated provisions. [State v. Gonzalez, 82 S.W.3d 322, 327 \(Tex.2002\)](#).

We review the trial court's decision to transfer a juvenile from the TYC to the TDCJ under an abuse of discretion standard. *In re D.L.*, 198 S.W.3d 228, 229 (Tex.App.-San Antonio 2006, pet. denied). In determining whether the trial court abused its discretion, we must consider the entire record to determine if the trial court acted without reference to guiding rules and principles. *Id.*

Juvenile Court Procedure

During the time a person is committed to the TYC, the Commission may request the court to release the person to supervision or transfer the person to the TDCJ. See [Tex. Fam.Code Ann. § 54.11\(a\)](#). [Section 54.11](#) provides that when a juvenile is given a determinate sentence, upon the TYC's request to transfer the juvenile to the TDCJ, the trial court is required to hold a hearing. *Id.* At the conclusion of the hearing, the trial court may either order the return of the juvenile to the TYC or the transfer of the juvenile to the custody of the TDCJ for the completion of his sentence. *Id.* [§ 54.11\(i\)](#). If the Commission requests that the person be released to adult parole, the trial court may return the person to the TYC with or without approval to release that person under supervision. *Id.* [§ 54.11\(j\)](#). If the Commission requests that a person be transferred to the TDCJ, the trial court may return the person to the TYC or order that he be transferred to the TDCJ. *Id.* [§ 54.11\(i\)](#). [\[FN6\]](#) A child committed to the TYC on a determinate sentence must remain at the TYC for a minimum period of time before release or transfer. See [Tex. Hum. Res.Code Ann. § 61.081](#) (West Supp.2007); Former HR Code [§ 61.084](#). The minimum length of stay depends upon the seriousness of the offense for which the child was committed. See [Tex. Hum. Res.Code Ann. § 61.081](#).

[FN6](#). In making a determination regarding transfer of a juvenile offender to the TDCJ, a trial court may consider: (1) the experiences and character of the person before and after commitment to the TYC; (2) the nature of the penal offense and the manner in which it was committed; (3) the abilities of the person to contribute to society; (4) the protection of the victim or the victim's family; (5) the recommendations of the TYC and the prosecuting attorney; (6) the best interests of the person; and (7) any other factor relevant to the issue to be decided. See [Tex. Fam.Code Ann. § 54.11\(k\)](#) (West Supp.2007).

For those who were committed to the Commission under a determinate sentence, as T.G. was here, transfer was automatic on the person's twenty-first birthday--now his nineteenth birthday with the amendment--if the person had not already been discharged or transferred. See SB 103, 2007 Tex. Gen. Laws at 449 (amending human resources code to provide for automatic transfer at age nineteen instead of twenty-one).

The Statutes

This appeal concerns the interplay primarily between the amendments to two statutory provisions--sections [61.079](#) and [61.084 of the Texas Human Resources Code](#)--by the enactment of SB 103, "an act relating to the Texas Youth Commission and the prosecution of certain offenses and delinquent conduct in the Texas Youth Commission and certain other criminal agencies," which was passed and became effective on June 8, 2007. Providing for the referral of violent juvenile offenders for transfer to the TDCJ, before it was amended, [section 61.079\(a\)](#) provided in relevant part:

(a) After a child sentenced to commitment under [Section 54.04\(d\)\(3\)](#), [54.04\(m\)](#), or [54.05\(f\)](#), [Family Code](#), becomes 16 years of age *but before the child becomes 21 years of age*, the commission may refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to the institutional division of the Texas Department of Criminal Justice if:

(1) the child has not completed the sentence; and

(2) the child's conduct, regardless of whether the child was released under supervision under [Section 61.081](#), indicates that the welfare of the community requires the transfer....

Former HR Code [§ 61.079\(a\)](#) (emphasis added). Effective June 8, 2007, [section 61.079\(a\)](#) was amended to require the Commission to make a transfer referral to the juvenile court "before the child becomes 19 years of age." See SB 103, 2007 Tex. Gen. Laws at 446-47 (emphasis added).

[Section 61.084\(g\)](#) was also amended by SB 103 in 2007. Prior to its amendment, [section 61.084\(g\)](#) provided:

The commission shall transfer a person who has been sentenced under a determinate sentence to commitment under [Section 54.04\(d\)\(3\)](#), [54.04\(m\)](#), or [54.05\(f\)](#), [Family Code](#), or who has been returned to the commission under [Section 54.11\(i\)\(1\)](#), [Family Code](#), to the custody of the pardons and paroles division of the Texas Department of Criminal Justice on the person's 21st birthday, if the person has not already been discharged or transferred, to serve the remainder of the person's sentence on parole as provided by [Section 508.156](#), [Government Code](#).

Former HR Code [§ 61.084\(g\)](#) (emphasis added). As with [section 61.079\(a\)](#), [section 61.084\(g\)](#) was amended to change "21st birthday" to "19th birthday." See SB 103, 2007 Tex. Gen. Laws at 449.

As reflected in a December 2007 report prepared at the direction of the Commission's acting executive director, Dimitria Pope, the parties agree that one purpose of SB 103 was to reduce the population of youth in the TYC. See Tex. Youth Comm'n, *State Leaders, Legislators, Parents, Employees, and Communities are Making a Difference at the Texas Youth Commission: A Report on the Progress & Impact of Senate Bill 103*, at 4 (Dec. 1, 2007). The report also addressed the effect the change in age would have on the institution population. *Id.* at 8-10. Youths who committed a misdemeanor were no longer to be eligible for placement in the TYC. *Id.* at 6, 10. As to the effect of the age change on its population, the report stated:

[Y]outh who are 19 years of age or older who committed their offense prior to the effective date of the law change *and who have also completed their minimum length of stay* may be eligible for release consideration from the TYC.

Id. at 10 (emphasis added). Later in the report when it expressly addressed offenders serving a determinate sentence and the effect of the reduction of eligibility age for confinement at TYC, the report concluded:

With the passage of the bill on June 8, 2007, an unintended consequence was that there were 159 sentenced youth confined in TYC that appeared to be eligible for immediate release. However, in reviewing the case files of these youth, many had not reached their minimum period of confinement.

Id. at 23.

Jurisdiction

Appellant urges that he "should never have been the subject of a transfer hearing" and that [section 61.084](#) required a mandatory transfer to the TDCJ on parole for any child in the custody of the TYC who was under a determinate sentence and over the age of nineteen. Appellant fails to acknowledge the jurisdictional provision in juvenile cases that gives the juvenile court "exclusive original jurisdiction over proceedings under this title." See [Tex. Fam. Code Ann. § 51.04\(a\)](#).

In construing a statute, our primary objective is to give effect to the legislature's intent. [City of San Antonio, 111 S.W.3d at 25](#). We are to construe a statute according to its plain language, unless the language is ambiguous or the interpretation would lead to absurd results that the legislature could not have intended. *Williams v. State*, Nos. PD-1948-06, 1949-06, & 1950-06, 2008 Tex.Crim.App. LEXIS 639, at *11 (Tex.Crim.App. May 14, 2008) (citing [Boykin v. State, 818 S.W.2d 782, 785 \(Tex.Crim.App.1991\)](#)). "Whether or not the statute is considered ambiguous on its face," we may consider the "object sought to be obtained," the "circumstances under which the statute was enacted," the "legislative history," and the "consequences of a particular construction." [Tex. Gov't Code Ann. § 311.023](#)(1)-(3), (5) (West 2005). We presume that "a just and reasonable result is intended," and the "public interest is favored over any private interest." *Id.* § 311.021(3), (5) (West 2005). Against this background, we must determine whether the legislature in SB 103 sought to divest the juvenile court of jurisdiction when the juvenile turned nineteen and require a mandatory transfer of individuals still in the custody of the TYC who had reached the age of nineteen under the amended statute.

We conclude that the juvenile court retained jurisdiction of juveniles committed to the custody of the TYC under chapter 51 of the family code. The family code squarely addresses the jurisdiction of the juvenile court in [sections 51.04](#) and [51.0411](#). See [Tex. Fam.Code Ann. §§ 51.04](#), .0411. [Section 51.04](#)(a) provides for the juvenile court to exercise jurisdiction over juvenile cases as follows:

(a) This title covers the proceedings in all cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a child within the meaning of this title at the time the person engaged in the conduct, and, ... the juvenile court has exclusive original jurisdiction over proceedings under this title.

Id. § 51.04(a). [Section 51.0411](#) then speaks to the court's retention of jurisdiction in transfer proceedings:

The court retains jurisdiction over a person, *without regard to the age of the person*, who is referred to the court under [Section 54.11](#) for transfer to the Texas Department of Criminal Justice or release under supervision.

Id. § 51.0411 (emphasis added). [Section 51.0411](#) makes clear that the court had jurisdiction over T.G. for purposes of the transfer hearing, even though he turned nineteen years of age before the referral occurred.

Other related provisions provide for the retention of jurisdiction by the juvenile court "without regard to the age of the person." See, e.g., [Tex. Fam.Code Ann. §§ 51.041](#), .0412 (West Supp.2007). For example, [section 51.041](#) provides for the court to retain jurisdiction if the court's order "is reversed or modified and the case remanded to the court by the appellate court." *Id.* § 51.041. Likewise, section 51.0412 provides for the court to retain jurisdiction if the adjudication or disposition proceeding or proceeding to modify disposition was not completed as long as the petition, motion to modify, or motion for transfer was filed while the juvenile was younger than eighteen years of age and the prosecutor exercised due diligence in an attempt to complete the proceedings. *Id.* § 51.0412. Each of these provisions applies "without regard to the age of the person." *Id.* §§ [51.041](#), .0412. We find it significant that SB 103 did not amend any of these jurisdictional provisions. See SB 103, 2007 Tex. Gen. Laws at 424-27 (providing for amendments to the family code).

We thus conclude that SB 103 did not alter the juvenile court's jurisdiction over transfer proceedings because it did not address these provisions. Even after the passage of SB 103, the juvenile court's jurisdiction in transfer proceedings remains governed by chapter 51 of the family code. See [Tex. Fam.Code Ann. § 51.0411](#).

Do the Provisions of Senate Bill 103 Apply Retrospectively?

T.G. contends that, because the provisions of SB 103 are to be immediately effective, he must either be discharged or transferred to the TDCJ to serve the remainder of his sentence on parole. *See* SB 103, § 53, 2007 Tex. Gen. Laws at 449 (amending [human resources code section 61.084\(g\)](#)); [Tex. Gov't Code Ann. § 508.156](#) (West Supp.2007). He contends that the TYC's referral request is governed by the new versions of [sections 61.079\(a\)](#) and [61.084\(g\)](#) rather than by the versions in existence when his determinate sentence was initially imposed. We disagree.

"A statute is presumed to be prospective in its operation unless expressly made retrospective." [Tex. Gov't Code Ann. § 311.022](#) (West 2005); *see also* [Tex. Const. art. I, § 16](#) ("No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made."). Statutes are only applied retroactively if the statutory language provides that the legislature intended that the statute be retroactive. [Merchants Fast Motor Lines, Inc. v. Railroad Comm'n](#), 573 S.W.2d 502, 504 (Tex.1978); [State v. Humble Oil & Ref. Co.](#), 169 S.W.2d 707, 708-09 (Tex.1943).

In addition to the constitution and the general presumption that statutes apply only prospectively, we are informed by the plain language of SB 103. Certain provisions of SB 103 specify that it applies only prospectively. *See, e.g.*, SB 103, § 67, 2007 Tex. Gen. Laws at 455. Section 67, relating to [family code section 54.052](#) (credit for time spent in detention facility for child with determinate sentence) and [human resources code section 61.0841\(c\)](#) (determinate sentence parole), specifies that the changes in those sections "appl[y] only to conduct for which a child is adjudicated on or after the effective date of this Act." *See id.* Thus, [family code section 54.052](#) and the addition of the language in [section 61.0841\(c\)](#) that the TDCJ "shall grant credit for sentence time served by a person at the commission and in a juvenile detention facility, as recorded by the commission ... in computing the person's eligibility for parole and discharge from the department" are to be applied only prospectively. *See id.* Section 67 further provides:

A child who is adjudicated on or after the effective date of this Act is governed by the law in effect when the child was adjudicated, and the former law is continued in effect for that purpose.

Id.

Likewise, the legislature expressly made one provision of SB 103 retrospective. Section 65 provides:

A person committed to the Texas Youth Commission on the basis of conduct constituting the commission of an offense of the grade of misdemeanor under Subdivision (2), Subsection (d), [Section 54.05, Family Code](#), as it existed before the effective date of this Act, *must be discharged from the custody of the Texas Youth Commission not later than the person's 19th birthday.*

Id., § 65, 2007 Tex. Gen. Laws at 455 (emphasis added). That the legislature knew how to make a provision retrospective is clear. It is equally clear that the legislature sought only to effect an immediate discharge from the TYC for those persons who had committed a misdemeanor. It necessarily follows that the legislature did not intend to discharge or release to parole a person such as T.G. who had committed a felony and had received a determinate sentence. [FN7](#) We conclude that the legislature intended for the amendments to [human resources code sections 61.079](#) and [61.084](#) to operate only prospectively.

[FN7](#). To the extent T.G. argues that the legislature intended for all of SB 103 to apply retrospectively merely because the legislature made one provision in SB 103 apply retrospectively, *see* SB 103, § 65, 2007 Tex. Gen. Laws at 455, we reject that argument. Nowhere in SB 103 did the legislature expressly provide that the amendments to [human resources code sections 61.079](#) and [61.084](#) apply retrospectively. *See In re M.C.C.*, 187 S.W.3d 383, 384-85 (Tex.2006) (following general rule that statute is to be applied retrospectively only

if statutory language demonstrates legislative intent to do so); *Ex parte Mangrum*, 564 S.W.2d 751, 758 (Tex.Crim.App.1978) (general rule of prospective application applies in the absence of express statement to the contrary by the legislature).

Conclusion: We overrule T.G.'s issues and affirm the trial court's order of disposition.