

Review of Recent Juvenile Cases (2008)

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

Motion to Quash in juvenile case is not a Special Exception.[In the Matter of R.R.](08-3-10)

On June 18, 2008, the Tyler Court of Appeals held that it could not apply the rules governing special exceptions on appeal, where juvenile filed and only referred to his Motion to Quash during trial.

¶ 08-3-10. **In the Matter of R.R.**, MEMORANDUM, No. 12-07-00041-CV, 2008 WL 2440229 (Tex.App.-Tyler, 6/18/08).

Facts: At approximately 6:30 p.m. on August 27, 2005, R.R., a fourteen year old juvenile, and two other juveniles, P.B. and J.A., left R.R.'s father's residence in a GMC Suburban sport utility vehicle. It was "dusky dark" at the time and R.R., the driver, was not licensed to drive a motor vehicle. Storm clouds "knock[ed] out the sunlight" and "accentuated the darkness." R.R. was driving on a wet, muddy dirt road at a high rate of speed. The road did not have a shoulder, instead dropping off into a ditch. R.R. noticed a tree limb in the road and attempted to avoid it, losing control and causing the Suburban to strike a tree. As a result of the wreck, J.A. suffered injuries that lead to his death.

The State filed a petition in the juvenile court alleging that R.R. had engaged in delinquent conduct by committing the offense of criminally negligent homicide. Following a bench trial, the juvenile court found that R.R. had engaged in delinquent conduct by committing the offense. The juvenile court subsequently issued an order placing R.R. on probation until the age of eighteen. This appeal followed.

PETITION

In his third issue, R.R. complains that the juvenile court erred in denying his motion to quash the State's petition, arguing that the petition failed to allege an offense under the Texas Penal Code. He further complains that the State's petition did not allege with sufficient particularity, as required by the Due Process Clause of the Fourteenth Amendment and by [Texas Family Code section 53.04\(d\)\(1\)](#), the "substantial and unjustifiable risk" necessary as a predicate for criminally negligent homicide. See [U.S. Const. amend. XIV](#); [Tex. Fam.Code. Ann. § 53.04\(d\)\(1\)](#) (Vernon 2002); see also [Tex. Penal Code Ann. § 6.03\(d\)](#) (Vernon 2003) (defining criminal negligence); [In re Gault, 387 U.S. 1, 33, 87 S.Ct. 1428, 1446-47, 18 L.Ed.2d 527 \(1967\)](#) (setting forth the minimum due process requirements necessary to afford accused juveniles adequate notice of the allegations against them). Finally, R.R. claims that his motion to quash should have been considered and granted under the rules governing civil special exceptions.

Held: Affirmed

Memorandum Opinion: R.R. asserts that the juvenile court erred by denying his motion to quash the State's petition, arguing that the petition failed to allege an offense under the Texas Penal Code. As such, the question R.R. first raises is whether an offense is stated, not whether an offense is sufficiently stated. The petition ruled upon by the trial court reads, in pertinent part, as follows:

[O]n or about the 27th day of August, 2005, [R.R.] violated a penal law of this State punishable by confinement in jail, to-wit: [\[Section\] 19.05, \[of\] the Penal Code](#) of Texas, in that he did then and there, in Cherokee County, Texas, by criminal negligence, cause the death of an individual, [J. A.], by: [R.R.], age 14, an unlicensed driver, operated a motor vehicle on a wet dirt road, swerved to miss a tree limb which was on the wet dirt road, lost control of said motor vehicle and struck a tree. (emphasis in original)

At its essence, the petition alleged that R.R. operated a motor vehicle, and that during that operation, "by criminal negligence," caused the death of J.A. [Section 19.05 of the Texas Penal Code](#) states that "[a] person commits an offense if he causes the death of an individual by criminal negligence." [Tex. Penal Code Ann. § 19.05\(a\)](#) (Vernon 2003). Therefore, the petition stated an offense. [\[FN1\]](#)

[FN1.](#) This action is in juvenile court; therefore, it is the Texas Family Code that is controlling, not the Texas Code of Criminal Procedure. [In re S.B.C., 805 S.W.2d 1, 3-4 \(Tex.App.-Tyler 1991, writ denied\)](#). We also note that, except when in conflict with a provision of the Texas Family Code, the Texas Rules of Civil Procedure govern the proceedings. [Tex. Fam.Code Ann. § 51.17\(a\)](#) (Vernon 2002); [S.B.C., 805 S.W.2d at 4 n. 3](#).

Due Process

R.R. also asserts that the State's petition did not allege with sufficient particularity the "substantial and unjustifiable risk" necessary as a predicate for the existence of criminal negligence. See [Tex. Penal Code Ann. § 6.03\(d\)](#). The Fourteenth Amendment's Due Process Clause requires that pleadings in juvenile cases "set forth the alleged misconduct [of the juvenile] with particularity." [Gault, 387 U.S. at 33, 87 S.Ct. at 1446](#). However, a petition need not allege an offense with the particularity of a criminal indictment so long as the charge is reasonable and definite. [M.A.V. v. Webb County Ct. at Law, 842 S.W.2d 739, 745 \(Tex.App.-San Antonio 1992, writ denied\)](#). Here, the State alleged that, on August 27, 2005, while driving a motor vehicle in Cherokee County, Texas, R.R. violated [section 19.05 of the penal code](#) when, by criminal negligence, he caused the death of J.A. According to [section 6.03 of the penal code](#),

[a] person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint. [Tex. Penal Code Ann. § 6.03\(d\)](#).

In the context of the statutory definition of criminal negligence provided by the penal code, the State's petition set forth the alleged misconduct of R.R. with particularity, as required by the Fourteenth Amendment. See [C.F. v. State, 897 S.W.2d 464, 470-71 \(Tex.App.-El Paso 1995, no writ\)](#) (reaching a similar conclusion). *But see* [In re W.H.C., 580 S.W.2d 606, 608 \(Tex.Civ.App.-Amarillo 1979, no writ\)](#) (implicitly holding the opposite).

Family Code

The Texas Family Code places additional requirements on such pleadings. See [W.H.C., 580 S.W.2d at 608](#). According to [section 53.04 of the family code](#), a "petition must state[,] ... with reasonable particularity[,] the time, place, and manner of the acts alleged and the penal law or standard of conduct allegedly violated by the acts." [Tex. Fam.Code. Ann. § 53.04\(d\)\(1\)](#). However, "[w]hen a term is defined by statute, it need not be further alleged in the charging instrument; the State need not plead evidence it intends to rely upon." [In re F.C., No. 03-02-00463-CV, 2003 WL 21282766, at *2 \(Tex.App.-Austin June 5, 2003, no pet.\)](#) (mem.op.); see [C.F., 897 S.W.2d at 470-71](#). Therefore, by alleging that R.R. acted with criminal negligence, a term defined in detail by the penal code, in combination with the specifically pleaded allegations listed above and the citation to [section 19.05 of the penal code](#), the State alleged, with reasonable particularity, the time, place, and manner of the acts alleged and the penal law or standard of conduct allegedly violated. See *id.* But see [W.H.C., 580 S.W.2d at 608](#) (implicitly holding the opposite).

Special Exceptions

R.R. claims that, because the Texas Rules of Civil Procedure generally apply to juvenile proceedings, see [Tex. Fam.Code. Ann. § 51.17\(a\)](#), his motion to quash should have been considered and granted under the rules governing civil special exceptions. See [Tex.R. Civ. P. 90, 91](#) (governing special exceptions); see also [A.N. v. State, 683 S.W.2d 118, 120 \(Tex.App.- San Antonio 1984, writ dismiss'd\)](#) (implicitly holding that special exceptions may be filed by defendants in juvenile cases). However, R.R.'s motion was titled "Motion to Quash" and requested only one remedy, the quashing of the State's petition. Further, at the hearing on R.R.'s motion, counsel for R.R. referred to the motion solely as a motion to quash. In this context, we cannot hold that the juvenile court had before it a matter of special exceptions, nor can we arbitrarily apply the rules governing special exceptions where those rules had not been invoked. Instead, we hold that R.R. failed to preserve error, if any, for appellate review. See [Tex.R.App. P. 33.1\(a\)](#) (defining the steps necessary to preserve error). Further, such error, if any, would not constitute fundamental error, which would absolve R.R. from the need to properly present it to the trial court. See [Wal-Mart Stores, Inc. v. Alexander, 868 S.W.2d 322, 328 \(Tex.1993\)](#) (Fundamental error exists "in those rare instances in which the record shows the court lacked jurisdiction or that the public interest is directly and adversely affected as that interest is declared in the statutes or the Constitution of Texas."). And, because of the sufficiency of the State's petition, the only rights adversely affected by our holding regarding preservation are rights that are generally forfeitable by inaction. See [Marin v. State, 851 S.W.2d 275, 277-80 \(Tex.Crim.App.1993\)](#) (discussing forfeitable rights), *overruled on other grounds*, [Cain v. State, 947 S.W.2d 262, 264 \(Tex.Crim.App.1997\)](#).

Conclusion: The juvenile court properly denied R.R.'s motion to quash and, therefore, did not abuse its discretion. See [Honeycutt, 24 S.W.3d at 360](#); [Bocquet, 972 S.W.2d at 21](#). R.R. failed to preserve the issue of special exceptions for appellate review. See [Tex.R.App. P. 33.1\(a\)](#). We overrule R.R.'s third issue.