

Review of Recent Juvenile Cases (2008)

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

Previous promise to commit to TYC by court not error in Motion to Modify.[In the Matter of R.S.](08-3-13)

On July 3, 2008, the Austin Court of Appeals held that there was no error where the record contained evidence independent of an earlier court's admonishment and on which the trial court appears to have relied in reaching its disposition of commitment to TYC.

¶ 08-3-13. **In the Matter of R.S.**, MEMORANDUM, No. 03-06-00336-CV, 2008 WL 2609221 (Tex.App.-Austin, 7/3/08).

Facts: R.S. was sixteen in May 2006, when she committed the offense of possession of hydrocodone within 1000 feet of Westlake High School. As part of a plea agreement, the State abandoned the school-zone allegation, and R.S. pled true to the State's allegations. After adjudicating R.S. delinquent, the trial court proceeded to disposition. The court took judicial notice of R.S.'s file, which reflects that she had been in trouble with the law since 2003 and had been referred to the probation department several times for theft and violation of court orders. She had been placed on probation twice for assault and criminal trespass, and at the time of this offense, was on probation for assault. The probation department's report stated that child protective services had received three referrals on R.S.'s parents for neglectful supervision, her mother was arrested for assaulting R.S., and her two brothers have had legal and drug troubles.

According to the department's report, R.S. had a history of behavior problems at school and skipping classes and she had tested positive for drugs at least once. From December 2005 to January 2006, R.S. "had a total positive turn around," reporting to her probation officer as required, completing community service hours and required classes, and testing negative for drugs. In late January, however, she again tested positive for drugs and got into a fight with her mother. In late February, R.S.'s mother was arrested for assaulting R.S. Because R.S.'s father was in residential drug treatment at the time, R.S. was sent to live with her grandparents in Lampasas. During her time in Lampasas, R.S. "did exceptionally well." She decided to return to her parents, however, against the advice of her grandparents and the probation department. She was warned by another trial court in an earlier proceeding that "if her positive progress made a change for the worse, then she would be sent to TYC." R.S. "stated she would do well at home," and the trial court allowed her to return to Austin. Things seemed to be going well until she was taken into custody less than one month later, returning to her campus in possession of five hydrocodone pills after having skipped classes without permission. The department concluded that R.S. was not an appropriate candidate for ISP staffing because of her "chaotic home environment," her history of non-compliance and "continuing to re-offend," her parent's lack of cooperation and "minimizing behaviors," and R.S.'s need for a structured environment.

Held: Affirmed.

Memorandum Opinion: When viewed in the light most favorable to the court's findings, the evidence is sufficient to show that TYC commitment is in R.S.'s best interest, that the department made all reasonable efforts to avoid removing her from her home, and that she cannot receive in her home the support, care, and supervision she needs. See [In re C.C., 13 S.W.3d at 858](#). The same is true when all the evidence is viewed in a neutral light. See [id. at 859](#). Although R.S. improved her behavior markedly, less than one month after returning from Lampasas, she again skipped classes and was caught in possession of a controlled substance. She was cautioned about the track she was on, and her grandparents, another trial court, and the probation department all recommended that she stay in Lampasas, but she decided to return to Austin, promising to stay out of trouble. Very shortly after returning to Austin and her parents' care, while on probation for an earlier offense, she was again taken into custody, this time for possession of hydrocodone. The probation department recommended TYC commitment, and her probation officer testified that due to R.S.'s history of criminal offenses and her family's tumultuous circumstances, the department believed she needed the structure that TYC could provide and that the department did not have many options to offer her other than TYC commitment or drug treatment. There is no evidence that the trial court based its decision on the other court's admonishments rather than considering the entire record before it, which included the department's report and recommendations. [\[FN1\]](#)

[FN1](#). This record differs from that discussed in *Ex parte Brown*, [158 S.W.3d 449, 451-52, 456-57 \(Tex. Crim. App. 2005\)](#), in which the trial court reminded the defendant of the court's earlier "promise" to sentence the defendant to twenty years in prison, the maximum penalty available, and then followed through on that promise. The court of criminal appeals held that the record supported another trial court's habeas finding that the sentencing court had pre-judged Brown's punishment. [Id. at 457](#). In our case, the record contains evidence independent of the earlier court's admonishment and on which the trial court appears to have relied in reaching its disposition decision; and the court did not remind R.S. of the earlier promise made by a different judge.

Conclusion: We cannot hold that the trial court abused its discretion in determining that R.S. would be best served by being committed to TYC custody. See [In re A.I., 82 S.W.3d at 379-80](#). We affirm the trial court's order of disposition.