

Review of Recent Juvenile Cases (2009)

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

Juvenile modifications of disposition hearings based on violations of conditions of probation have reduced due process protections.[In the Matter of J.A.S.](09-1-8)

On December 18, 2008, the Corpus Christi Court of Appeals held that a petition to modify disposition that informed appellant that his discharge from Gulf Coast was unsuccessful and provided the date in which the violation occurred, gave adequate notice.

¶ 09-1-8. **In the Matter of J.A.S., III**, MEMORANDUM, No. 13-06-00280-CV, 2008 WL 5248967 (Tex.App.-Corpus Christi, 12/18/08).

Facts: Appellant, J.A.S. III, a juvenile, pleaded guilty to the offenses of possession of marihuana, a third-degree felony, and possession of marihuana in a drug-free zone, a class A misdemeanor. See [Tex. Health & Safety Code Ann. § 481.121](#)(a), (b)(4) (Vernon 2003); § 481.134(f) (Vernon Supp.2008). On October 13, 2005, the trial court placed appellant on probation with outside placement at the Gulf Coast Trades Center ("Gulf Coast").

On December 5, 2005, the State filed a petition to modify the trial court's October 13, 2005 disposition. In this motion, the State alleged that appellant "violated Condition No. 22 of his probation which read, 'The child shall abide by the rules and regulations of Gulf Coast Trade[s] Center.', [sic] in that the said [appellant] on or about the 28TH day of NOVEMBER, A.D., 2005, was unsuccessfully terminated from Gulf Coast Trade[s] Center" The State requested that the trial court commit appellant to the Texas Youth Commission ("TYC") for a period of time not to exceed his twenty-first birthday. On January 12, 2006, appellant filed a motion to set aside the State's petition to modify disposition, asserting that the State failed to state, with reasonable particularity, the time, place, and manner of the alleged probation violations and that the motion did not provide him with sufficient notice to prepare a defense.

Held: Affirmed

Memorandum Opinion: "The [Texas] Legislature [has] provided different rules for different stages of a juvenile proceeding." [In re J.P., 136 S.W.3d 629, 630 \(Tex.2004\)](#). The Legislature has provided that a petition at the adjudication stage of a juvenile proceeding must state "with reasonable particularity the time, place, and manner of the acts alleged." [Tex Fam.Code Ann. § 53.04\(d\)\(1\)](#). The allegations in a petition at the adjudication phase of a juvenile proceeding need not be as particular as a criminal indictment so long as the allegations are reasonable and definite. See [M.A.V. v. Webb County Court at Law, 842 S.W.2d 739, 745 \(Tex.App.-San Antonio 1992, writ denied\)](#); see also [In re F.C.](#), No. 03-02-00463-CV, 2003 Tex.App. LEXIS 4709, at *4 (Tex.App.-Austin June 5, 2003, no pet.) (mem.op.). Additionally, a petition at the adjudication phase of a juvenile proceeding need not recite evidentiary facts unless they are essential to proper notice. See [In re B.P.H., 83 S.W.3d 400, 405 \(Tex.App.-Fort Worth 2002, no pet.\)](#); see also [In re F.C.](#), 2003 Tex.App. LEXIS 4709, at *4.

In contrast to the pleading requirements at the adjudication stage, the Legislature has not imposed specific requirements on a petition at the disposition modification stage of a juvenile proceeding. See [Tex. Fam. Code Ann. § 54.05\(d\)](#) (Vernon Supp. 2008); see also *In re J.P.*, No. 04-07-00612-CV, 2008 Tex.App. LEXIS 7780, at *7 (Tex.App.-San Antonio Oct. 15, 2008, no pet. h.) (mem.op.). The relevant statute, [section 54.05\(d\) of the family code](#), provides that "[a] hearing to modify disposition shall be held on the petition of the child ... or on the petition of the state, a probation officer, or the court itself." [Tex. Fam. Code Ann. § 54.05\(d\)](#). "Reasonable notice of a hearing to modify disposition shall be given to all parties." *Id.* Therefore, the pleading requirements for a petition to modify disposition are less stringent than the pleading requirements for a petition for adjudication. See *id.*; see also *In re J.P.*, 2008 Tex.App. LEXIS 7780, at *8.

In determining whether a party received reasonable notice, several Texas courts have held that when a child's attorney appears, does not file a motion for continuance, and the child and parents are present and fully advised by the court as to the issues before the court, reasonable notice is presumed. See, e.g., *In re J.M.*, No. 2-05-180-CV, 2005 Tex.App. LEXIS 9708, at *7 (Tex.App.-Fort Worth Nov. 17, 2005, no pet.) (mem.op.); *In re T.E.*, No. 03-04-00590-CV, 2005 Tex.App. LEXIS 5266, at *5 (Tex.App.-Austin July 7, 2005, no pet.) (mem.op.) (citing *In re B.N.*, No. 03-98-575-CV, 1999 Tex.App. LEXIS 6331, at *2 (Tex.App.-Austin Aug. 26, 1999, no pet.) (mem.op.); *In re D.E.P.*, 512 S.W.2d 789, 791 (Tex.Civ.App.-Houston [14th Dist.] 1974, no writ)). Texas courts have also held that a juvenile is only entitled to reduced due process protections at a disposition modification hearing based on a violation of a probation condition. [FN2] *In re S.J.*, 940 S.W.2d 332, 339 (Tex.App.-San Antonio 1997, no writ); *In re J.K.A.*, 855 S.W.2d 58, 61-62 (Tex.App.-Houston [14th Dist.] 1993, writ denied); *Murphy v. State*, 860 S.W.2d 639, 643 (Tex.App.-Fort Worth 1993, no pet.). This is constitutional because the juvenile was already provided a hearing with complete due process protections when the juvenile was adjudicated delinquent. [Murphy, 860 S.W.2d at 643](#).

[FN2]. The violation of a court order or rule of probation allows the trial court to modify the prior disposition without a new adjudication of delinquent conduct. See [In re J.K.A.](#), 855 S.W.2d 58, 62 (Tex.App.-Houston [14th Dist.] 1993, no writ) (noting that [section 54.05\(d\) of the family code](#) "does not mandate a separate, full due-process adjudication hearing under 54.03" and that the 54.05(d) hearing is nothing more than the "hearing on the merits or facts"); see also *In re R.J.M.*, No. 05-99-015540-CV, 2000 Tex.App. LEXIS 5759, at *4 (Tex.App.-Dallas Aug. 25, 2000, pet. denied) (mem.op.). Therefore, appellant is incorrect in arguing that the requirements for notice contained in [section 54.03 of the family code](#) should apply to the petition to modify disposition in this case because the trial court did not commence a new adjudication hearing to determine whether appellant engaged in additional delinquent conduct. See [Tex. Fam. Code Ann. § 54.03\(d\)\(2\)](#) (Vernon 2002) (requiring a petition for an adjudication or transfer hearing of a child alleged to have engaged in delinquent conduct to 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 ..."). In fact, appellant admitted in his supplemental motion to set aside the State's petition to modify disposition that the family code does not specify the contents to be included in a petition to modify disposition and stated that "the safest course of action is to follow the guidelines of [Texas Family Code Section 53.04](#)." See *id.* Considering appellant has not cited any binding authority addressing this contention, we decline to find that [section 53.04 of the family code](#) applies to petitions to modify a prior disposition.

2. Discussion

Here, the State's live pleading, stated that: "The circumstances regarding the conditions of probation have materially changed in that the said child was unsuccessfully terminated from placement on November 28, 2005." [FN3] The State did not provide any additional facts pertaining to the reason or reasons why appellant

was terminated from Gulf Coast. However, the record demonstrates that: (1) appellant's attorney announced ready at the hearing on the petition to modify disposition; (2) appellant's attorney did not file a motion to continue the hearing; and (3) the child and his parents were present at the hearing and fully apprised about the details of the disposition hearing. [\[FN4\]](#) Given these facts, reasonable notice is presumed. See *In re D.E.P.*, [512 S.W.2d at 791](#); see also *In re J.M.*, 2005 Tex.App. LEXIS 9708, at *7; *In re T.E.*, 2005 Tex.App. LEXIS 5266, at *5; *In re B.N.*, 1999 Tex.App. LEXIS 6331, at *2.

[FN3](#). Condition twenty-two of the trial court's probation order provided that appellant "shall abide by the rules and regulations of Gulf Coast Trade[s] Center." The record contains: (1) a report from the Hidalgo County Juvenile Probation Department and a November 21, 2005 report from Penny Locke, a Gulf Coast caseworker, both indicating that appellant was unsuccessfully discharged from Gulf Coast because appellant had attempted to harm himself on three separate occasions, appellant attempted to escape from the facility, and Gulf Coast no longer believed that it could meet appellant's needs; and (2) documentation demonstrating that appellant is currently detained at the Hidalgo County Juvenile Detention Facility.

[FN4](#). In fact, appellant's father testified about appellant's past problems and that he was worried about appellant being committed to the TYC at the hearing on the State's motion to modify disposition.

We are mindful that the San Antonio Court of Appeals recently concluded that the following statements contained in the State's amended petition to modify disposition were sufficient to provide notice:

[] Respondent violated Condition Number TWENTY-THREE (23) of the Conditions of Probation which states I WILL COOPERATE FULLY AND OBEY ALL OF THE RULES OF PLACEMENT, when on or about the 14th day of DECEMBER, A.D., 2006, in Hays County, Texas, the said [J.P.] FAILED TO OBEY THE RULES OF PLACEMENT WHEN RESPONDENT DISRUPTED CLASS.

[] Respondent violated Condition Number TWENTY-THREE (23) of the Conditions of Probation which states I WILL COOPERATE FULLY AND OBEY ALL OF THE RULES OF PLACEMENT, when on or about the 22nd day of JANUARY, A.D., 2007, in Hays County, Texas, the said [J.P.] FAILED TO OBEY THE RULES OF PLACEMENT WHEN RESPONDENT DISRUPTED CLASS.

[] Respondent violated Condition Number TWENTY-THREE (23) of the Conditions of Probation which states I WILL COOPERATE FULLY AND OBEY ALL OF THE RULES OF PLACEMENT, when on or about the 16th day of MARCH, A.D., 2007, in Hays County, Texas, the said [J.P.] FAILED TO OBEY THE RULES OF THE PLACEMENT WHEN RESPONDENT WAS DISCHARGED FROM PLACEMENT AS UNSUCCESSFUL.

In re J.P., 2008 Tex.App. LEXIS 7780, at * 8-9. In concluding that the previous statements constituted sufficient notice, the court of appeals stated that "the State's amended petition specifically identified: (1) the condition of probation violated; (2) the date the violation occurred; (3) the county in which the violation occurred; and (4) the manner in which the violation was committed, *i.e.*, 'disrupted class' or 'discharged from placement as unsuccessful.'" *Id.* at *9 (emphasis in original).

It is clear that the State's petition to modify disposition in the present case is not as specific as the petition referenced in *In re J.P.* See *id.* However, like the petition in *In re J.P.*, the State's petition to modify disposition in the present case did inform appellant of the probation violation--the discharge from Gulf Coast as unsuccessful--and provided the date in which the violation occurred--November 28, 2005. See *id.* Furthermore, the State's original petition to modify and various reports--namely Locke's "Summary of Adjustment" and several reports issued by the Hidalgo County Juvenile Probation Department--informed appellant of the

specific condition of probation that he had violated--condition number 22. Clearly, the issue at the disposition hearing centered on the circumstances of appellant's discharge from Gulf Coast, of which appellant was adequately notified. [\[FN5\]](#)

Conclusion: Given that (1) the facts in this case give rise to a presumption that reasonable notice occurred, (2) juveniles are only entitled to reduced due process protections at the disposition modification hearing, and (3) appellant was adequately notified, we conclude that the State's motion to modify was not unconstitutionally vague and that the trial court did not abuse its discretion in denying appellant's supplemental motion to set aside the State's petition to modify disposition. See [In re S.J., 940 S.W.2d at 339](#); [In re J.K.A., 855 S.W.2d at 61-62](#); [Murphy, 860 S.W.2d at 643](#). Accordingly, we overrule appellant's first issue on appeal.

[FN5.](#) In arguing that the State's petition to modify disposition did not allow him to adequately prepare a defense, appellant relies heavily on [Franks v. State, 498 S.W.2d 516, 518 \(Tex.App.-Texarkana 1973, no writ\)](#). In *Franks*, the court held that "[i]n a revocation of probation case ... it is necessary that the notice of the hearing set out the manner or terms of the probation which have been violated in order that the child and his attorney can be apprised of the alleged violations and prepare such defense as may seem necessary." *Id.* However, we find this case to be distinguishable because: (1) unlike the present case, the child in *Franks* was never provided any notice of the revocation proceeding and no guardian ad litem was appointed to represent the child's best interests; and (2) the appellate court failed to cite any provisions of the family code to support its conclusion. See *id.* [Section 54.05](#) clearly addresses the situation (the child failing to receive notice of the disposition hearing) found in *Franks*. See [Tex. Fam.Code Ann. § 54.05\(d\)](#). A juvenile is entitled to reasonable notice, and we have concluded that such notice was provided. *Id.*