

Review of Recent Juvenile Cases (2009)

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

Evidence was sufficient to justify the exercise of the trial court's discretion in modifying disposition.[In the Matter of J.M.](09-2-4)

On February 10, 2009, the Amarillo Court of Appeals held that the trial court's decision to modify disposition was not arbitrary and unreasonable and thus, did not amount to an abuse of discretion.

¶ 09-2-4. **In the Matter of J.M.**, MEMORANDUM, No. 07-08-0215-CV, 2009 WL 322895 (Tex.App.-Amarillo, 2/10/09)

Facts: On November 26, 2007, when J.M. was sixteen, he entered pleas of true to two allegations: (1) on March 16, 2007, he caused bodily injury to his mother, E.M., by pushing her with his hands; and (2) on October 23, 2007, he intentionally obstructed a person whom he knew was a peace officer from effecting his arrest by using force against the peace officer. After a stipulation of evidence was admitted during the adjudication phase of the hearing, the trial court found that J.M. had engaged in delinquent conduct and was in need of supervision and rehabilitation. After the disposition phase of the hearing, J.M. was placed on probation for a period of one year, subject to certain terms and conditions, including a term that he "commit no offense against the laws of the State of Texas or any other state or of the United States or penal ordinances of a subdivision."

On April 18, 2008, the State filed a petition to modify J.M.'s disposition alleging that on March 17, 2008, he violated the terms and conditions of probation by causing bodily injury to his mother, E.M., by striking her with a closed hand. After receiving evidence at the modification hearing, the trial court found that J.M. had violated the terms and conditions as alleged by the State and it entered an order modifying J.M.'s juvenile disposition. The court announced that by committing J.M. to the Garza County Regional Juvenile Facility, a boot camp facility, it was not only protecting him, but also the public.

By issues one and two, J.M. maintains the evidence is legally and factually insufficient to show that he violated the terms and conditions of probation by causing bodily injury to E.M. by striking her with a closed hand. By issues three, four, five, six, and seven, J.M. contends the evidence is legally and factually insufficient to show that reasonable efforts were made to prevent his removal from the home, placement outside his home was not in his best interest, and the trial court's decision was arbitrary and unreasonable.

Held: Affirmed

Memorandum Opinion: The trial court's modification order recites:

[t]he Court finds that it is in the best interest of the child, [J.M.], to be placed outside his home; that all reasonable efforts were made to prevent or eliminate the need for the child's removal from the home

and to make it possible for the child to return to his home, and the child, in the child's home, cannot be provided the quality of care and the level of support and supervision that the child needs to meet the conditions of probation.

When questioned during cross-examination what effort had been made to prevent or eliminate J.M.'s removal from his home, juvenile probation officer, Ken Brock, testified that J.M. was offered every program available in Vernon. In fact, J.M. had previously participated in and completed two separate counseling programs. Brock also testified that placement with other relatives was considered but that J.M.'s mother claimed no other family members would take him.

Brock testified at the adjudication and disposition hearing that several years earlier, J.M. had assaulted a peace officer resulting in a referral. At the conclusion of that hearing, the trial court expressed to J.M. its concern for his lack of respect for authority and "the fact you've gotten in fights with police officers on two different occasions." At the modification hearing, the court had sufficient evidence before it that J.M.'s best interests would be served by committing him to the boot camp program at the Garza County Regional Juvenile Facility.

Although the evidence established that J.M.'s mother and sister were not afraid of him and that no other acts of violence occurred following the March 17, 2008 episode resulting in the State's petition to modify disposition, there was sufficient evidence to justify the exercise of the trial court's discretion in modifying J.M.'s disposition.

Conclusion: We conclude the trial court's decision was not arbitrary and unreasonable and thus, did not amount to an abuse of discretion. Issues three, four, five, six, and seven are overruled. Having overruled J.M.'s seven issues, the trial court's order modifying his disposition is affirmed.