

Review of Recent Juvenile Cases (2010)

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

Where assertions of violations of constitutional rights in juvenile's motion for new trial were vague and untimely, no error was preserved for appeal. [In the Matter of J.R.N., III.](10-2-10)

On April 1, 2010, the Beaumont Court of Appeals held that constitutional challenges to the trial court's evidentiary rulings should be raised at trial and at the time the trial court sustained the State's objections to the admission of the proffered evidence.

¶ 10-2-10. In the Matter of J.R.N., III., MEMORANDUM, No. 09-08-00029-CV, 2009 WL 6312273 (Tex.App.-Beaumont, 4/1/10).

Facts: In August of 2006, S.W., who was eight years of age, was living with her mother, M.N., sister, B.W., brother, A.W., stepfather, B.N., and her stepbrothers, J.R.N. and J.N. S.W. and B.W. were at their grandparents' home when S.W. asked to speak with her biological father, T.W., on the telephone. T.W. lived in Georgia at that time. S.W.'s grandparents called T.W. so that S.W. could speak with him. While speaking with T.W. on the telephone, S.W. told him that her stepbrother, J.R.N., had been touching her "privates." T.W. immediately called the Texas Child Protective Services ("CPS") and reported S.W.'s allegations of molestation. T.W. also told his parents about S.W.'s allegations, and that CPS would contact them.

S.W.'s grandfather, E.W., called the Montgomery County Sheriff's Department and reported S.W.'s allegations of molestation, and an officer was sent out to investigate. CPS gave S.W.'s grandparents temporary custody of S.W., B.W. and A.W., and arranged for the children to go to Children's Safe Harbor to be interviewed.

Kari Prihoda, a forensic interviewer with Children's Safe Harbor, testified at trial that she interviewed S.W. on August 8, 2006, and that S.W. told her about the alleged sexual abuse. Prihoda provided details of the allegations as relayed to her by S.W. S.W. claimed J.R.N. performed both oral and anal sex on her. S.W. also claimed that the sexual abuse started when she was in kindergarten and continued through August 1, 2006, at which time she was eight years of age. S.W. reported to Prihoda that she told her dad and mom about the abuse, but that her mom did not believe her. S.W.'s interview was videotaped, admitted into evidence at trial, and played for the jury.

Following the interview at Children's Safe Harbor, Karen Trevino, a Sexual Assault Nurse Examiner ("SANE") with Children's Safe Harbor performed a SANE exam on S.W. Nurse Trevino testified at trial that S.W. reported that her stepbrothers, J.R.N. and J.N., touched her butt and privates with both their "fingers and dingaling." S.W. told nurse Trevino this happened from kindergarten through the second grade. Nurse Trevino's physical exam of S.W. indicated "clear evidence of blunt force, of penetrating trauma," to S.W.'s vagina. Nurse Trevino also found scarring on S.W.'s anus which could only be indicative of "a very traumatic assault" or "chronic abuse over and over, which is mostly the case with kids." Nurse Trevino testified that she reviewed her findings with S.W.'s mother, M.N., immediately following the exam, and that M.N. was extremely angry and told S.W. "that she had messed the whole family and everything up." Nurse Trevino's written findings were admitted into evidence at trial.

At trial, S.W. recanted. S.W. testified that she remembered meeting with Prihoda at Children's Safe Harbor and telling her that J.R.N. abused her. However, she testified that J.R.N. had not abused her, and that she made it up because her grandmother, father, and stepmother promised her "a horse and two dogs" to "lie on the boys." When questioned further regarding the details of the abuse she had provided to Prihoda, S.W. claimed she did not remember making those statements to Prihoda. Specifically, she did not remember telling Prihoda the following: that she woke up to J.R.N. touching her, that he had pulled off her pants, that he moved his finger around, that he put his dingaling in her butt, that he touched the inside of her butt, that he was lying on top of her and she was on her belly, that he licked her thing, that he told her he was doing it because it was a "medical thing," that he made her touch his "dingaling" and that it felt nasty, and that she told her mother first because she didn't want it to happen over and over again. Further, at trial, S.W. did not remember sitting in the prosecutor's office prior to trial and telling him that she did remember saying these things to Prihoda.

S.W. testified that she remembered writing letters about her grandfather, E.W., her grandmother, J.W., and her father, T.W. The two letters, which were dated December 20 and December 30 of 2006, stated that it was her grandfather, E.W., who had abused her and not her stepbrothers. The letters stated specifically that "[E.W.] put his finger up my pee pee." S.W. testified that her grandfather touched her in her privates with his "fingers" and "with his thing." The letters further stated that her grandfather, E.W., grandmother, J.W., stepmother, C.W., and her father, T.W., told her to lie "because they wanted [B.N.], [J.R.N.] and [J.N.] out of the [h]ouse." The two letters were admitted into evidence at trial. When questioned by the State about the spelling of the names in the letters, S.W. admitted that at the time of her Safe Harbor interview with Prihoda she did not know how to spell J.R.N.'s last name. However, she testified that she learned how to spell it while the boys were still living with them, which was before the interview.

Detective Lisa Pickering testified that she investigated the allegations made by S.W. against J.R.N. and later, against the grandfather. Pickering testified that on December 8, 2006, she called S.W.'s mother, M.N., to get J.R.N.'s father's phone number so that she could call him and give him an opportunity to bring J.R.N. to the police station, prior to his arrest. Pickering further testified that on December 12, M.N. called Pickering and said she filed a report on December 10 because of a note her daughter wrote to her. Specifically, Pickering testified that according to M.N., S.W. brought a note to M.N. saying her grandfather was the one who touched her, not her stepbrothers. J.R.N. was arrested on December 14, 2006. Pickering testified that she spoke with the grandfather about the subsequent allegations S.W. had asserted against him, but found the new allegations not to be credible. Pickering took the information to the district attorney's office for review, but they refused to file criminal charges against the grandfather based on S.W.'s allegations.

After the State rested, J.R.N. put on testimony from several witnesses, including S.W.'s mother, M.N. After deliberation, the jury returned a verdict against appellant committing him to the Texas Youth