

Review of Recent Juvenile Cases (2010)

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

Trial Court did not abuse its discretion removing the child from the home for violating a CHINS probation.[In the Matter of B.L.B.](10-3-2)

On May 20, 2010, the Austin Court of Appeals concluded that the juvenile court did not abuse its discretion in finding that the child, who had been adjudicated a child in need of supervision, had already been given an opportunity to complete her probation at home, tested dirty for marijuana, and that a different placement was now appropriate.

¶ 10-3-2. **In the Matter of B.L.B.**, MEMORANDUM, No. 03-09-00264-CV, 2010 WL 2010805 (Tex.App.-Austin, 5/20/10).

Facts: On January 21, 2009, the district court, sitting as a juvenile court, adjudged B.L.B. a child in need of supervision and placed her on probation in the custody of her grandmother. See Tex. Fam.Code Ann. § 51.03(b) (West Supp.2009). On February 27, the State filed a motion to modify B.L.B.'s disposition, alleging that B.L.B. had violated her probation by testing positive for tetrahydrocannabinol (THC). At the hearing on the motion to modify, B.L.B. admitted to violating the terms of her probation by testing positive for marijuana, and the juvenile court modified her disposition. In two points of error, B.L.B. asserts that the juvenile court abused its discretion by finding that she violated her probation as alleged and by placing her in the Intermediate Sanctions Center (ISC) to complete her probationary term.

B.L.B. asserts that the juvenile court abused its discretion by placing her in the ISC rather than allowing her to complete her probation at home. According to B.L.B., "the decision of the trial court to place appellant in a residential treatment program violated the guidelines set out in the Family Code."

Held: Affirmed

Memorandum Opinion: The family code provides that one of the "public purposes" of the juvenile justice system is to achieve its stated goals, including rehabilitation of the juvenile, "in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interest of public safety...." Tex. Fam.Code Ann. § 51.01(5) (West 2008). The juvenile court would not have abused its discretion in finding that in this case, the removal of B.L.B. from her home was "necessary for the child's welfare."

The sole witness for the State at the modification hearing was B.L.B.'s probation officer, LaKeisha Whitley. Whitley testified that the Probation Department's recommendation for B.L.B. was placement in the Intermediate Sanctions Center and that this placement was in B.L.B.'s best interest. When asked why this particular placement is "better than any other placement," Whitley testified that B.L.B. has a history of running away from home. Whitley explained, "[B.L.B.] has never been at home, according to [her] grandmother. She's always arguing with her and she just takes off.... [B.L.B.] was stating that she was at home, but [her] grandmother told me she wasn't at home." Whitley also testified that B.L.B. "hasn't been doing well at school at all." Running down the halls, yelling, screaming, leaving the school without permission. She just wasn't going to school at all. Whitley added that B.L.B. "would get drug treatment at ISC" and benefit from "positive peer interactions" there.

After the State rested its case, B.L.B. addressed the juvenile court. She acknowledged her "history of running" and admitted that her behavior was "wrong." B.L.B. then asked the court to give her "two weeks at home" prior to placing her in the ISC so that she could prove that she was capable of changing her behavior.

B.L.B.'s grandmother, Alice Crenshaw, also addressed the juvenile court. Crenshaw informed the court that she approved of the proposed placement outside of her home. She explained,

As much as I would like for B.L.B. to come home [for] two weeks, I still don't quite understand that. Me and my husband both feel that [B.L.B.] would do better in placement, even if it's short-term for four to six months. Simply because that would give her an opportunity to understand that there's rules that everybody has to live by.

....

We're fearful for [B.L.B.] because she's 13. And you know, we--we have become stressed out because of her behavior. But--but we still want to give her that opportunity to come home, but we feel that a short-term placement would be ... more appropriate for her.

We cannot conclude on this record that the juvenile court abused its discretion in placing B.L.B. outside her home. The probation officer testified that placement in the ISC was in B.L.B.'s best interest, and B.L.B.'s grandmother approved of the placement. Although B.L.B. claimed that she could change her behavior at home, the juvenile court would not have abused its discretion in concluding otherwise. Probation at home had already been attempted and, according to B.L.B.'s probation officer, it had not been successful because B.L.B. had a tendency to run away from home. Also, by B.L.B.'s own admission, she had tested positive for marijuana during her placement at home. The juvenile court would not have abused its discretion in finding that B.L.B. had already been given an opportunity to complete her probation at home, that she had not succeeded, and that a different placement was now appropriate. See *In re J.P.*, 136 S.W.3d 629, 633 (Tex.2004) (observing that modification statute "allows a trial court to decline third and fourth chances to a juvenile who has abused a second one"). We overrule B.L.B.'s second issue.

Conclusion: We affirm the order of the juvenile court.