

Review of Recent Juvenile Cases (2011)

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

New trial mandated by rules of appellate procedure where electronically recorded proceedings are inaudible.[In the Matter of K.G.](11-1-2)

On December 9, 2010, the Waco Court of Appeals held that under rule of appellate procedure 34.6(f), when a significant portion of the electronically recorded proceedings are inaudible through no fault of the respondent, he is entitled to a new trial.

¶ 11-1-2. In the Matter of K.G., No. 02-10-00057-CV, --- S.W.3d ----, 2010 WL 5019198 (Tex.App.-Waco, 12/09/10).

Facts: This is a juvenile case in which the State alleged that Appellant K.G., a ten-year-old minor, engaged in one count of delinquent conduct. An adjudication hearing was held before the trial court, and the trial court adjudged K.G. delinquent. After a disposition hearing before the trial court, the trial court signed an order of no disposition on February 17, 2010.

In an affidavit, the court reporter advised this court that the proceedings in this case were recorded electronically, that the audiotape was changed during the first witness's testimony, and that the replacement tape--spanning the rest of the first witness's testimony and the remainder of the proceedings--was "of such low volume that, although some sound could be heard, words and even speakers were not distinguishable."

Held: Reversed and remanded

Opinion: Rule 34.6(f) of the rules of appellate procedure states: Reporter's Record Lost or Destroyed. An appellant is entitled to a new trial under the following circumstances:

- (1) if the appellant has timely requested a reporter's record;
- (2) if, without the appellant's fault, a significant exhibit or a significant portion of the court reporter's notes and records has been lost or destroyed or--if the proceedings were electronically recorded—a significant portion of the recording has been lost or destroyed or is inaudible;

In his brief, K.G. has established each of rule 34.6's requirements. Indeed, the State concedes error concerning K.G.'s first issue and agrees that K.G. is entitled to a new trial.

Conclusion: We therefore sustain K.G.'s first issue, and we reverse the trial court's judgment and remand this case for a new trial.