

Review of Recent Juvenile Cases (2011)

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

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In a determinates sentence transfer hearing, the trial court does not lose jurisdiction because the release and transfer hearing is held more than sixty days after the referral was received by the court.[In the Matter of B.T.](11-3-14)

On July 20, 2011, the Dallas Court of Appeals held that a trial court does not lose its jurisdiction in a determinate sentence transfer because the release or transfer hearing is held more than sixty days after the referral was received by the court as required by §54.11(h).

¶ 11-3-14. In the Matter of B.T., MEMORANDUM, No. 05-10-00977-CV, 2011 WL 2860107 (Tex.App.-Dallas, 7/20/11).

Facts: Appellant B.T., a juvenile, complains of the trial court's order to transfer her from the Texas Youth Commission to the Texas Department of Criminal Justice (TDCJ) for the completion of her sentence. Appellant asserts the trial court lacked jurisdiction because her release or transfer hearing was held more than sixty days after the referral was received by the court, which was on May 3, 2010, in violation of section 54.11(h) of the family code. See Tex. Fam.Code Ann. § 54.11(h) (West Supp.2010).

Held: Affirmed

Memorandum Opinion: Appellant's argument fails for any of three reasons. First, the trial court actually began its hearing on June 22, 2010, within the time period mandated by the statute, although appellant's counsel requested a "reset" to a later date (in order to subpoena several witnesses), and the hearing was held on July 8, 2010. Thus, the trial court complied with the statute. See *In re K.H.*, No. 12-01-00342-CV, 2003 WL 744067, at *2 (Tex.App.--Tyler Mar. 5, 2003, no pet.) (mem.op.) (failure to hold hearing within time specified, even if error, does not deprive the trial court of jurisdiction, citing Tex. Fam.Code Ann. § 51.0411 (West 2008)).

On this point appellant attempts to distinguish *In re K.H.* by arguing that, unlike the situation there, no evidence was adduced here before the statutory deadline. This brings up the second reason appellant's argument fails, namely, no evidence was adduced when the hearing was first called because appellant requested a delay. Appellant cannot complain of actions she requested the trial court make. See *Tittizer v. Union Gas Corp.*, 171 S.W.3d 857, 862 (Tex.2005) (per curiam) (explaining "invited error" doctrine).

Third, appellant presents no authority--and we have found none--supporting the argument that failure to comply with section 54.11(h) deprives the trial court of jurisdiction. Rather, we agree with the Tyler Court of Appeals to the contrary. See *In re K.H.*, 2003 WL 744067, at *2.

We resolve appellant's first issue against her.

Conclusion: We affirm the trial court's order to transfer to the TDCJ.