

Review of Recent Juvenile Cases (2012)

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

Personal service is not required on a juvenile for a determinate sentence probation transfer to adult court.[J.C.O. v. State](12-1-7)

On January 11, 2012, the San Antonio Court of Appeals held that because Section 54.05(d) of the Family Code requires only reasonable notice of a hearing on a motion to transfer, personal service is not required.

¶ 12-1-7. **J.C.O. v. State**, MEMORANDUM, No. 04-11-00019-CR, 2012 WL 76968 (Tex.App.-San Antonio, 1/11/12).

Facts: The sole issue presented in this appeal is whether a juvenile must be personally served with a motion to transfer filed pursuant to section 54.051 of the Texas Family Code. Appellant argues that a district court to which a juvenile is transferred lacks jurisdiction absent personal service.

Held: Affirmed

Memorandum Opinion: Section 54.051 of the Texas Family Code permits the State to file a motion to transfer a juvenile, who is placed on probation that will continue after the juvenile's 18th birthday, to an appropriate district court. Tex. Fam.Code Ann. § 54.051(a) (West 2008). The hearing on the State's motion must be conducted "in the same manner as a hearing on a motion to modify disposition under Section 54.05." *Id.* at § 54.051(b). Section 54.05(d) requires that "reasonable notice" of a hearing to modify disposition be given to all parties. *Id.* at § 54.05(d).

Notwithstanding the statutory language requiring that only reasonable notice be given, appellant argues that personal service is required because a hearing to modify disposition is triggered by the filing of a petition, and Section 53.06 requires personal service of petitions. *Id.* at §§ 53.06, 54.05(d). Appellant's argument ignores that the Texas Legislature has "provided different rules for different stages of a juvenile proceeding." *In re J.P.*, 136 S.W.3d 629, 630 (Tex.2004). This court has previously recognized that reduced due-process requirements apply to a hearing to modify a juvenile's disposition. *In re S.J.*, 940 S.W.2d 332, 339 (Tex.App.-San Antonio 1997, no writ). Although personal service is required for petitions at the adjudication stage, only reasonable notice is required of a hearing to modify disposition. *In re T.E.*, No. 03-04-00590-CV, 2005 WL 1583463, at *2 (Tex.App.-Austin July 7, 2005, no pet.)(mem.op.); *In re D.E.P.*, 512 S.W.2d 789, 791 (Tex. Civ. App-Houston [14th Dist.] 1974, no writ); Tex. Fam.Code Ann. § 54.05(d) (West 2008). The only authority appellant cites to support his contention that he was entitled to personal service is *Franks v. State*, 498 S.W.2d 516, 518 (Tex.Civ.App.-Texarkana 1973, no writ). *Franks*, however, was decided prior to the effective date of the Juvenile Justice Code (contained in Title 3 of the Texas Family Code), which sets forth the different rules for the different stages of a juvenile proceeding and requires only reasonable notice of a

hearing to modify disposition. See Act of May 25, 1973, 63rd Leg., R.S., ch. 544, 1973 Tex. Gen. Laws 1460); In re J.P., 136 S.W.3d at 630.

Conclusion: Because Section 54.05(d) requires only reasonable notice of a hearing on a motion to transfer under Section 54.051, we overrule appellant's contention that personal service was required and affirm the trial court's judgment.