

Juvenile Law Case Summaries

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[2001 Case Summaries](#) [2000 Case Summaries](#) [1999 Case Summaries](#)

Revocation of probation on court's own oral notice without petition okay; case remanded for written statement of reasons for TYC commitment. (01-2-13)

On April 11, 2001, the San Antonio Court of Appeals held that a revocation of probation without a written petition or motion was authorized under Section 54.05 on the court's own oral notice to the parties; the Court of Appeals abated the appeal and remanded the case for a written statement of reasons.

¶ 01-2-13. In the Matter of S.S., UNPUBLISHED, No. 04-99-00806-CV, 2001 WL 356963, 2001 Tex.App.Lexis ____ (Tex.App.--San Antonio 4/11/01) [Texas Juvenile Law (5th Ed. 2001)]

Facts: S.S. was found to have engaged in delinquent conduct. The juvenile court, sua sponte, modified its original disposition of probation to include removal from the home for a two-year period. S.S. appeals the disposition, arguing it violates due process notice requirements. Further, S.S. argues the disposition order fails to satisfy the specificity requirements of Section 54.04 of the Texas Family Code.

On September 13, 1999, the juvenile court entered S.S.'s plea of true, finding S.S. had engaged in delinquent conduct by committing aggravated sexual assault. The court found there was a need for disposition for S.S.'s rehabilitation and for the protection of the public. The State recommended probation, requesting removal from the home and placement in a residential sexual offenders facility until S.S. reached age 18. At the urging of S.S., the juvenile court did not remove S.S. from the home, but rather, granted probation in the custody of S.S.'s parents.

After reconsidering the matter, the juvenile court, sua sponte, called a hearing on September 17, 1999. Over the objection of S.S., the juvenile court, after hearing evidence, modified the disposition, removing S.S. from the home and placing S.S. in the residential facility for two years. The juvenile court found removal necessary to serve "the best interests of the child" and because "the child in the child's home cannot be provided the quality of care and level of support and supervision to meet the conditions of probation." S.S. appeals the disposition.

Held: Abated and remanded.

Opinion Text: Standard of Review

In determining the disposition for a child adjudicated of engaging in delinquent conduct, the juvenile judge has broad discretion. In the Matter of T.A.F., 977 S.W.2d 386, 387 (Tex.App.--San Antonio 1998, no pet.). We do not disturb the juvenile judge's determination absent an abuse of discretion. Id. An abuse of discretion occurs when the court acts arbitrarily, unreasonably, or without guiding rules and principles. Id.

Due Process Notice Requirements

S.S. contends the juvenile court violated the due process notice requirements of the Texas Constitution, the United States Constitution, and Section 54.05 of the Texas Family Code by holding a hearing for modification without petitioning for modification. As far as practical, the Texas Rules of Civil Procedure govern juvenile proceedings. Tex.Fam.Code Ann. § 51.17 (Vernon 2001); In the Matter of T.K.E., 5 S.W.3d 782, 785 (Tex.App.--San Antonio 1999, no pet.); J.R.W. v. State, 879 S.W.2d 254, 256 (Tex.App.--Dallas 1994, no pet.). A trial court has discretion to modify or reform the judgment within thirty days after it is signed. Tex.R.Civ.P. 329b(d). Section 54.05 of the Family Code provides a "hearing to modify disposition shall be held ... on the petition of the state, a probation officer, or the

court itself." Tex.Fam.Code Ann. § 54.05(d) (Vernon 2001). Section 54.05 also contains a notice requirement, providing "[r]easonable notice of a hearing to modify disposition shall be given to all parties." Id .

S.S. argues the juvenile court abused its discretion because it did not petition for the hearing, but rather, simply notified the parties of the hearing. S.S. complains the absence of a petition by the juvenile court denied S.S. notice of the court's allegations supporting modification and denied S.S. a fair opportunity to defend against such allegations. However, S.S. was aware from the initial disposition hearing that the State sought removal from the home. In the plea agreement, the State recommended removing S.S. from the home, and the juvenile court's initial disposition at the September 13 hearing ordered removal during the probationary period. The juvenile court left S.S. within his parent's custody only after S.S. requested the court to reconsider its acceptance of the State's recommendation.

Further, although the juvenile court did not petition for the modification hearing, it did provide all parties the "reasonable notice" required by Section 54.05 by contacting all parties and informing them of the modification hearing. At the modification hearing, S.S., represented by counsel, was present and testified. S.S. also presented the testimony of his mother, his father, and cross-examined a probation officer. We hold the juvenile court did not abuse its discretion by failing to provide S.S. the requisite notice of Section 54.05 of the Family Code and the Due Process Clauses of the Texas and United States Constitutions. Further, any failure of the juvenile court to "petition" for modification was harmless. We overrule S.S.'s first point of error.

Section 54.04 Requirements

In his second point of error, S.S. complains the disposition order fails to satisfy the specificity requirements of Section 54.04 of the Texas Family Code. To make a disposition removing the child from the home, Section 54.04(i) requires the juvenile court find: (1) the removal is in the child's best interest; (2) reasonable efforts were made to eliminate the need for removal; and (3) the home does not provide the quality of care and level of support and supervision necessary to meet the conditions of probation. Tex.Fam.Code Ann. § 54.04(i) (Vernon 2001).

Further, Section 54.04(f) provides "[t]he court shall state specifically in the order its reasons for the disposition." Tex.Fam.Code Ann. § 54.04(f) (Vernon 2001). The use of the word "specifically" emphasizes the legislature's intent that the juvenile court do more than merely track the statutory language. In the Matter of A.N.M., 542 S.W.2d 916, 919 (Tex.Civ.App.--Dallas 1976, no writ). Therefore, in its disposition order, the juvenile court must articulate clear, specific reasons for selecting one of the several dispositions authorized by the Family Code. Compare In re J.T.H., 779 S.W.2d 954, 959 (Tex.App. --Austin 1989, no writ) (upholding order specifying the Section 54.04(i) statutory reasons and the seriousness of the offense warrant removal) and In the Matter of J.D., 773 S.W.2d 604, 606 (Tex.App.--Texarkana 1989, writ dismissed w.o.j.) (upholding order finding removal necessary because of "the violent nature of the offense, the use of a deadly weapon, the instability of the child in the child's home, and the threat of future family violence by the juvenile"), with K.K.H. v. State, 612 S.W.2d 657, 658 (Tex.Civ.App.--Dallas 1981, no writ) (holding order merely tracking statutory requirements failed to satisfy specificity requirements of Section 54.04(f)) and J.L.E. v. State, 571 S.W.2d 556, 557 (Tex.Civ.App.--Houston [14th Dist.] 1978, no writ) (holding order requires more than details of delinquent conduct to satisfy Section 54.04(f)).

In this case, the disposition order removing S.S. from his home tracks the three statutory requirements of Section 54.04(i), however, it provides no more detail with regard to why removal was necessary. During the hearing, the juvenile judge discussed in detail her concerns in not removing S.S., [FN1] however, the juvenile court failed to include any of these concerns in its disposition order as required by Section 54.04(f).

FN1. In the hearing, the juvenile judge remarked:

I think it would be foolhardy on the part of this Court to not be concerned about the safety of the small children in the community if there were no bells, whistles or something going off in this young man's head when he took it upon himself to place his penis in a five-year-old's mouth, that to me is unconscionable, that this is wrong, I should not do this, with his parents nearby. So to me, I just don't know the parents, even though I believe they want to provide proper supervision, it is just not possible to be with this young man all of the time everyday.

When a juvenile court does not comply with Section 54.04(f), we do not reverse for a new trial, but instead remand with instructions for the juvenile judge to render a proper disposition order specifically stating the reasons for such disposition. Tex.R.App.P. 44.4; K.K.H., 612 S.W.2d at 658; A.Y. v. State, 554 S.W.2d 805, 806-08 (Tex.App.--San Antonio 1977, no writ). We hesitate to modify the disposition order under Tex.R.App.P. 43.2 because, although the juvenile court discussed some reasons it found removal necessary during the hearing, we cannot speculate

regarding the formal findings it may choose to include in the order to support removal.

Conclusion

We overrule S.S.'s first point of error. By separate Order, under Tex.R.App.P. 44.4, we remand to the juvenile court, instructing it to correct its disposition order by including specific findings supporting S.S.'s removal. The juvenile court is ordered to forward a copy of its corrected disposition order to this Court by May 11, 2001.

[2001 Case Summaries](#)

[2000 Case Summaries](#)

[1999 Case Summaries](#)