Juvenile Law Case Summaries

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Juvenile court did not abuse its discretion in modifying disposition and committing child to TYC [In re J.D.B.] (01-2-18).

On April 25, 2001, the Amarillo Court of Appeals upheld the sufficiency of the evidence to support a modification of disposition and held that the juvenile court did not abuse its discretion in committing the child to the TYC.

¶ 01-2-18. In the Matter of J.D.B., UNPUBLISHED, No. 07-99-0047-CV, 2001 WL 421588, 2001 Tex.App.Lexis ____ (Tex.App.—Amarillo 4/25/01)[Texas Juvenile Law (5th Edition 2000)].

Facts: This is an appeal from a trial court order modifying its prior disposition by committing appellant, J.D.B., a juvenile, to the Texas Youth Commission (T.Y.C.) for an indeterminate period not to exceed her 21st birthday. In presenting her appeal, she lists 13 issues of asserted error. Those issues will be dealt with seriatim in our ensuing discussion. Finding no error in the trial court's action, it is affirmed.

In relevant part, section 54.05(f) of the Family Code provides that a prior disposition based upon a finding that a child engaged in delinquent conduct may be modified to commit the child to T.Y.C. if the court, at a hearing to modify disposition, finds by a preponderance of the evidence that the child violated a reasonable and lawful order of the court. Tex.Fam.Code Ann. § 54.05(f) (Vernon Supp.2001).

On March 10, 1998, appellant was adjudged to have engaged in delinquent conduct and was placed on probation for a period of one year. On October 30, 1998, the State filed a petition alleging that appellant had committed 18 violations of the conditions of her probation and, because of those violations, should be committed to the custody of T.Y.C. Following a hearing, on November 17, 1998, the trial court found beyond a reasonable doubt that appellant had committed eight violations of the conditions of her probation, revoked her probation, and committed her to the custody of T.Y.C.

Held: Affirmed.

Opinion Text: In the first six of her issues, appellant argues that the evidence is factually and legally insufficient to support the trial court's commitment. In considering those challenges, we bear in mind the rule that a juvenile judge has broad discretion to determine a suitable disposition for a child who has been adjudicated as having engaged in delinquent conduct and, because of that discretion, in our review, we must determine if the trial court abused its discretion in modifying its prior disposition. A trial court abuses its discretion when it acts arbitrarily, unreasonably or without reference to guiding rules or principles. In re H.G., 993 S.W.2d 211, 213 (Tex.App.--San Antonio 1999, no pet.).

When a juvenile challenges the sufficiency of the evidence with a no evidence point, we consider only that evidence and those inferences which tend to support the challenged findings, and disregard any and all inferences to the contrary. Id. When reviewing a factual sufficiency challenge in a juvenile case, we consider the totality of the evidence to determine whether the evidence supporting the finding is so weak or the evidence contrary to the finding is so overwhelming that it is clearly wrong and unjust. See Matter of S.H., 846 S.W.2d 103, 106 (Tex.App.--Corpus Christi 1992, no writ); see also Cain v. Bain, 709 S.W.2d 175, 176 (Tex.1986). The trier of fact is the exclusive judge of the credibility of the witnesses and, as such, may believe or disbelieve any witness and may resolve any inconsistencies in the testimony of any witness. In re H.G., 993 S.W.2d at 213; Matter of S.H., 846 S.W.2d at 107.

Appellant's first issue challenge to the sufficiency of the evidence concerns the trial court's finding at the hearing on the motion to modify that she committed the offense of telephone harassment. This finding arises primarily from the testimony of Monica Zuniga (Monica). Monica testified she had known appellant for some four or five years, or "maybe longer," and that she knew her well enough to recognize her voice. Monica averred that on or about August 5, 1998, beginning about 10:00 p.m., she received threatening telephone calls from appellant, talked to her "more than ten" times, and the calls continued until about 3:00 a.m. Monica finally turned her phone off around 3:30 or 4:00 a.m. She thought appellant identified herself over the telephone and she was able to recognize appellant's voice. During the telephone conversations, appellant called Monica such things as a "stupid Mexican" and told her that "she was going to come to ... [her] house and kick ... [her] butt." Monica also averred that at times there were other people on the phone, but she would always hear appellant's voice first. Each time Monica would hang up, appellant or some of the others would repeatedly call back. Monica swore that she was offended, annoyed, tormented, and harassed by the telephone calls. Monica finally called the police, because she did not feel comfortable due to the threats. Appellant did not testify at the hearing on the motion to modify.

Although an attempt was made upon cross-examination to discredit Monica's testimony, the resolution of the credibility and the weight to be given Monica's testimony was within the trial judge's prerogative to determine the credibility of the witness. The evidence is both legally and factually sufficient to sustain the trial court's conclusion that appellant committed the offense of telephone harassment. Appellant's first issue is overruled.

Because a finding that the evidence is sufficient to sustain a finding of a single probation violation is sufficient to uphold a probation revocation, it is not necessary to discuss in detail appellant's legal and factual sufficiency challenges to other findings by the trial court of additional probation violations. See Matter of S.H., 846 S.W.2d at 106. However, in the interest of justice, we have reviewed the evidence produced in connection with each of the other trial court's findings that appellant violated her probation. With the exception of a trial court finding that appellant was guilty of a curfew violation on September 25, 1998, our review of the evidence reveals that although it is conflicting, it is sufficient to sustain the decision of the trial court. With the exception of that portion of appellant's second issue which challenges the sufficiency of the evidence to find a curfew violation by appellant on September 25, 1998, which is sustained, appellant's second through sixth issues are overruled.

In appellant's next seven issues, she challenges the propriety of the trial court's decision to remand her to the custody of T.Y.C. In issues seven through ten, appellant posits such conclusions as that the trial judge's placement was an abuse of his discretion because he failed to consider her need for psychiatric evaluation or treatment, failed to follow "guiding rules and principles of juvenile law as set out by the Supreme Court of the United States," he failed "to follow the guiding rules and principles of the Progressive Sanctions Guidelines as set forth by the Legislature of the State of Texas," he "appeared to have made a prejudgment," the State's petition included as many as ten unsubstantiated allegations for which no probative evidence was introduced, and "the State's witnesses testified with ambivalence and ambiguity and joked and jested with the State's Attorney, although a serious matter--the [j]uvenile's liberty interest--was to be determined at the close of the hearing."

Our disposition of appellant's first six issues foreshadows our disposition of the remainder of these issues. We determined above that the evidence was sufficient to sustain the trial court's finding that appellant violated the conditions of her probation on numerous occasions. The record does not sustain any allegations that the trial court and witnesses did not conduct themselves in a proper and judicial manner. There is also nothing in the record to indicate that any Progressive Sanctions Guidelines have been adopted in Hutchinson County. Moreover, section 59.014 of the Family Code at the time of this disposition hearing specifically directed that a child might not bring an appeal based upon the failure of the court or any person to make a sanction level assignment as provided by the Progressive Sanctions Guidelines. See Tex.Fam.Code Ann. § 59.014(3) (Vernon Supp.2001).

As we have noted, section 54.05(f) of the Family Code specifically authorizes the trial judge to modify a previous disposition to commit a juvenile to the custody of T.Y.C. if it finds by a preponderance of the evidence that the child violated a reasonable and lawful order of the court. Our inquiry is therefore limited to whether the evidence supports a finding that appellant violated a reasonable and lawful order of the court. See In re H.G., 993 S.W.2d at 214. The trial court has complied with the statute and there is nothing in the record that shows it abused its discretion in arriving at its decision. Appellant's seventh through tenth issues are overruled.

The gist of appellant's eleventh and twelfth issues is that remanding her to T.Y.C. for an indeterminate time violated her federal constitutional rights because she could possibly lose her liberty for years longer than an adult or another juvenile similarly situated. However, juveniles and adult criminals are not similarly situated for equal protection purposes, until and if, the juvenile is certified for trial as an adult, and there is a rational basis for treating them differently. See Vasquez v. State, 739 S.W.2d 37, 43 (Tex.Crim.App.1987); Cornealius v. State, 870 S.W.2d 169, 174 (Tex.App.-- Houston [14th Dist.] 1994), aff'd, 900 S.W.2d 731 (Tex.Crim.App.1995); Smith v. State, 444 S.W.2d

941, 947-48 (Tex .Civ.App.--San Antonio 1969, writ ref'd n.r.e.). There is nothing in the record to support an argument that appellant might be treated differently from any other juvenile similarly situated. If appellant's argument is based upon some difference in the application of progressive sanction guidelines, we have answered that argument above.

In her thirteenth and final issue, appellant argues that the order remanding her to the custody of T.Y.C. constituted cruel and unusual punishment "when the overwhelming weight and preponderance of the evidence showed she needed psychiatric and/or psychological help." In the case of In re D.L.S., 520 S.W.2d 442, 444-45 (Tex.Civ.App.--San Antonio 1975, no writ), the court was presented with a similar argument. In overruling the argument, the court commented, "[a]s a basis for this argument, appellant assumes that she would receive no treatment or rehabilitation from the Texas Youth Council. There is no evidence in the record regarding the program of the Texas Youth Council and, in particular, the status or classification to which appellant was assigned." Id. at 445. That being so, the court noted it could not assume appellant would not receive any treatment or rehabilitation and concluded that appellant's commitment to T.Y.C. was not cruel and unusual punishment. Id. Likewise, under this record, there is no showing that appellant would not receive psychiatric or rehabilitation treatment. Appellant's thirteenth issue is overruled.

In final summary, all of appellant's issues are overruled, and the judgment of the trial court is affirmed.

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