

## Juvenile Law Case Summaries

By

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### ***Cannot claim no service of adjudication petition and summons in an appeal from revocation of probation [In re B.J.E.] (01-3-22).***

On July 26, 2001, the Austin Court of Appeals said that a juvenile cannot in an appeal from a revocation probation that he was never served with a summons in the proceedings leading to his adjudication. Such an appeal must be filed within 30 days of the original disposition.

¶ 01-3-22. In the Matter of B.J.E., UNPUBLISHED, No. 03-00-00438-CV, 2001 WL 838409, 2001 Tex.App.Lexis \_\_\_ (Tex.App.—Austin 7/26/01) [Texas Juvenile Law (5th Edition 2000)].

Facts: This is an appeal from an order of the juvenile court modifying the juvenile's disposition.

In June 1999, B.J.E., a juvenile, was adjudicated to have engaged in the delinquent conduct of terroristic threat and placed on probation in his grandparents' custody. Thereafter, in February 2000, he was adjudicated to have committed the offense of escape while in legal custody. His first probation was modified and for both offenses he was placed on probation at Phoenix House. [FN1] Apparently, he did not successfully complete Phoenix House's program. On May 17, 2000, the district attorney filed a motion to modify B.J.E.'s disposition, and at a hearing on the motion on June 6, 2000, his disposition was again modified and he was committed to the Texas Youth Commission (TYC).

FN1. The record suggests that B.J.E. had other modifications or placements during his probation, but those are not pertinent here. B.J.E.'s probation placement was in Phoenix House's inpatient drug treatment program

Held: Affirmed.

Opinion Text: In three points of error on appeal, B.J.E. questions the juvenile court's jurisdiction over him. He contends that all proceedings against him are void because the record does not affirmatively reflect that he was served with proper summons as required by law. Tex. Fam.Code Ann. § 53.06(a), (e) (West 1996) (child must be served and cannot waive service). B.J.E. contends that he was not properly served because the record does not contain the documents reflecting that service. Specifically, he complains that the record does not reflect that he was served with a summons and the petition alleging terroristic threat, with a summons and the petition alleging escape, and with a summons and the motion to modify his disposition to commit him to TYC.

B.J.E. did not appeal from the two adjudications for terroristic threat and escape, and he did not appeal from the earlier disposition orders. He now attempts to appeal matters that could have been raised earlier. Although a 1997 amendment to Family Code section 56.01(b) resulted in a perception of ambiguity about the timetable for appealing issues relating to an adjudication, courts considering the issue have held that a juvenile cannot indefinitely delay the appeal of matters relating to the original adjudication. [FN3] In re J.C.H., Jr., 12 S.W.3d 561, 562 (Tex.App.—San Antonio 1999, no pet.) (statute could not have intended to give indefinite right of appeal for issues relating to adjudication; more logical construction is that issues concerning adjudication must be appealed within time provided for the timely appeal of disposition order, even if more than thirty days separates adjudication and disposition); accord In re G.C.F., 42 S.W.3d 194, 196 (Tex.App.—Fort Worth 2001, no pet.) (only issue raised in appeal from April 24, 2000 modification order was sufficiency of evidence to support February 1999 adjudication; following J.C.H., court held appeal attacking February adjudication needed to have been filed by thirty days after June 3, 1999 disposition). We agree with the above cases. B.J.E. cannot now appeal the earlier adjudication or disposition orders.

However, even if he could do so, his complaints fail.

FN3. Act of June 2, 1997, 75th Leg., R.S., ch. 1086, § 15, 1997 Tex. Gen. Laws 4186. The sentence in question says that an appeal of the adjudication may be sought notwithstanding that the adjudication order was signed more than thirty days before the perfecting instrument was filed. Tex. Fam.Code Ann. § 56.01(b) (West Supp.2001).

When B.J.E. filed his brief, the clerk's record did not contain copies of the summonses served upon him. After B.J.E. filed his brief, the district attorney filed a supplemental clerk's record containing documents showing service on B.J.E. along with a brief contending that the supplemental clerk's record cures any alleged defects. B.J.E. has not filed a reply brief responding to the district attorney's argument. See Tex.R.App. P. 38.3. [FN4]

FN4. The State has produced summonses regular on their face. That production shifts the burden to appellant to demonstrate affirmatively any irregularities. *Johnson v. State*, 725 S.W.2d 245, 247 (Tex.Crim.App.1987) (State produced pen packet, regular on its face, showing previous convictions; appellant claimed dates showed one was juvenile conviction and record contained no transfer order; court held that State made out prima facie case and appellant had burden to show no transfer order existed).

This appeal arises from the June 6, 2000, order modifying B.J.E.'s disposition. He does not challenge the merits of the court's order committing him to TYC. Again, he complains only that the record does not reflect that he was served with proper summons of the May 17, 2000, motion leading to that hearing and order. See Tex. Fam.Code Ann. § 54.05(d) (West Supp.2001) (reasonable notice for hearing on motion to modify disposition required). The supplemental clerk's record contains the summons showing that on May 22, 2000, B.J.E. and his grandparents were personally served. In any event, they all three appeared in person at the hearing. B.J.E.'s counsel informed the court that they had had more than ten days notice to prepare for the hearing. B.J.E. testified to facts supporting the trial court's ruling.

No issue other than lack of service having been raised, we overrule appellant's three points of error and affirm the order of the juvenile court.

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