

Juvenile Law Case Summaries

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Revocation of probation for failure to attend school and for school rules violations affirmed [In re T.R.B.] (01-3-27).

On August 16, 2001, the Texarkana Court of Appeals held that the juvenile court did not err in revoking probation for failure to attend school and for school rules violations.

01-3-27. In the Matter of T.R.B., UNPUBLISHED, No. 06-00-00162-CV, 2001 WL 928775, 2001 Tex.App.Lexis ____ (Tex.App.-Texarkana 8/16/01) [Texas Juvenile Law (5th Edition 2000)].

Facts: T.R.B. appeals the trial court's order modifying her juvenile disposition and committing her to the Texas Youth Commission (TYC). On February 18, 2000, the trial court found that she engaged in delinquent conduct under Tex.Fam.Code Ann. § 51.03(a)(1) (Vernon Supp.2001) by carrying an illegal knife to school, an act constituting a felony. See Tex.Pen.Code Ann. § 46.03(a)(1), (g) (Vernon Supp.2001). The trial court adjudicated T.R.B. delinquent and placed her on one year's probation. As requirements of her probation, T.R.B. was ordered to (1) obey the laws of the United States and of any state, county, and city; (2) attend every class every day school is in session, unless she had an excused absence according to her school's rules; and (3) obey the rules and regulations of her school.

Seven months later, the State moved to modify T.R.B.'s disposition, alleging that she violated two requirements of her probation. The State alleged T.R.B. made a terroristic threat against a school employee. The State also alleged T.R.B. was absent from the Alternative Education Program (AEP) from August 21, 2000 through September 11, 2000, and that she was suspended from the Behavioral Adjustment Class (BAC) for "continuous engagement in persistent, and threatening, noncompliance with the District's Student Code of Conduct...." [FN1]

FN1. The testimony is conflicting about the nature and functions of the programs T.R.B. attended. The testimony indicates that the BAC is for students who have been diagnosed as emotionally disturbed and/or have exhibited some behavioral problems. The AEP is for students who have exhibited serious behavioral problems such as having drugs at school or committing other felonies. However, the testimony also indicates that "AEP" is an umbrella term encompassing all of the school system's alternative programs for students with discipline problems, including the BAC. For simplicity, we will use BAC and AEP to describe the two programs in which T.R.B. was placed.

After a hearing, the trial court explicitly refused to make a finding regarding the State's allegation that T.R.B. made a terroristic threat against a school employee. However, the trial court found that she failed to attend school and that she failed to obey school rules. On appeal, T.R.B. contends the trial court abused its discretion in modifying her disposition to commit her to TYC.

Held: Affirmed.

Opinion Text: When T.R.B. was first placed on probation in February 2000, she was assigned to the AEP. Glenda Lockaby, T.R.B.'s teacher at the BAC, testified that T.R.B. was supposed to continue in the AEP at the beginning of the 2000-2001 school year, but some administrative confusion led to her placement in the BAC at that time. The testimony shows that three days later, on August 15, 2000, T.R.B. was suspended from the BAC.

Lockaby testified that on the day T.R.B. was suspended, she and another student became involved in a heated

dispute with two teacher's aids. Lockaby testified that T.R.B. used profanity toward the aids, that she disobeyed both their instructions and her instructions, and that she said she was going to "bring a knife and kill" one of the aids.

[FN2] These were violations of school rules for which she was suspended. FN2. The State's pleadings alleged that T.R.B. made a threat against a different teacher's aid than the aid Lockaby testified T.R.B. threatened. As mentioned previously, the trial court declined to make a finding that T.R.B. committed the offense of making a terroristic threat.

Lockaby testified that after the time for T.R.B.'s suspension had ended, Lockaby spoke with her several times on the telephone and once at school, and told her she was supposed to come back to school. Lockaby also testified that the one time T.R.B. came to the school, she told Lockaby she had a car waiting for her and could not stay.

T.R.B.'s probation officer, Mark Colley, testified that she was placed in the AEP after her suspension ended, but that she did not attend from August 18, 2000 until September 11, 2000. However, Kathy Denton, the principal at the Alternative Education Center, testified that T.R.B. was not assigned to the AEP until around August 23, 2000. In either event, the testimony shows that she did not return to either the BAC or the AEP from August 18, 2000 to September 11, 2000.

On cross-examination of Colley, testimony was elicited that after T.R.B. was placed on probation and before the State moved to modify her disposition, her mother passed away. Colley also testified that T.R.B. has six brothers and sisters; that she also lives among a large extended family, including several cousins under the age of eighteen years; that the family lives about ten miles outside of town; that the whole family has only one vehicle, which T.R.B.'s father uses to get to work; and that there are only two other adults living with the family, an elderly grandmother and an aunt. Lockaby testified that T.R.B. was able to ride a bus to the BAC, but was not allowed to ride a bus to the AEP.

A child may be found to have engaged in either delinquent conduct or conduct indicating a need for supervision only after an adjudication hearing. Tex.Fam.Code Ann. § 54.03(a) (Vernon Supp .2001). After finding that the child engaged in either delinquent conduct or conduct indicating a need for supervision, the trial court must hold a separate disposition hearing. Tex.Fam.Code Ann. § 54.04(a) (Vernon Supp.2001). No disposition may be made unless the trier of fact finds that the child is in need of rehabilitation or that the protection of the public or the child requires that a disposition be made. Tex.Fam.Code Ann. § 54.04(c) (Vernon Supp.2001).

For a child found to have engaged in delinquent conduct, the trial court may later modify a disposition to commit to TYC if it finds by a preponderance of the evidence that the child violated the trial court's reasonable and lawful order. Tex.Fam.Code Ann. § 54.05(f) (Vernon Supp.2001). The controlling issue when a juvenile court modifies a disposition based on a finding of delinquent conduct is whether the record shows that the court abused its discretion in finding, by a preponderance of the evidence, a violation of a condition of probation. *In re M.A.L.*, 995 S.W.2d 322, 324 (Tex.App.--Waco 1999, no pet.).

T.R.B. cites *In re D.E.P.*, 512 S.W.2d 789, 790-91 (Tex.Civ.App.--Houston [14th Dist.] 1974, no writ), in which the trial court modified the juvenile's disposition to commit him to the Texas Youth Council after finding that he violated the terms of his probation by (1) being out after 9:00 p.m. without permission, and (2) failing to attend the school at which he was regularly enrolled at the time of the initial disposition. The court of appeals first held there was no evidence to show that the child did not have permission to be out past 9:00 p.m. *Id.* at 792. The court then observed the evidence showed that the child's guardian moved and that the child was forced to live with his parents, who lived in a different school district. *Id.* Thus the court held that the trial court abused its discretion in finding that the child violated a reasonable court order because the change in the child's circumstances, which were beyond the child's control, made the trial court's order unreasonable. *Id.*

T.R.B. contends that changes in her circumstances and factors beyond her control made the trial court's order unreasonable. She contends the BAC has lax rules, which she argues she could not be held accountable for violating. She points to Lockaby's testimony that children in the BAC all have individualized curriculums and that they are "free to eat and drink when they get ready to." As a further illustration, she points to Lockaby's testimony that on the day T.R.B. was suspended, T.R.B. obtained a mop which she was not supposed to have, but which was acceptable for her to have if she had first sought permission.

T.R.B. also points to evidence that the school system did not know where she was supposed to be assigned when she arrived at school on the first day for the 2000-2001 school year. She observes that her mother died after she was placed on probation, that her family had only one vehicle, and that she was not allowed to take a bus to the

AEP.

However, Lockaby testified that T.R.B. was suspended from school on August 15, 2000, for violations of school rules (i.e., not following instructions, using profane language, and making threats to school employees). This evidence shows a violation of the trial court's lawful order to obey the rules and regulations of her school. She was aware of the school's rules, as Lockaby testified that T.R.B. was given a copy of the rules on the first day of school. Further, the circumstances of T.R.B.'s life after the trial court placed her on probation did not make compliance with this requirement impossible.

The evidence also shows that T.R.B. did not attend school from August 18, 2000 to August 23, 2000 (four school days), when, according to Denton's and Lockaby's testimonies, she was still assigned to the BAC and could have ridden the bus. The evidence also showed that at least one time she was able to get a ride to the school to talk to Lockaby, but did not stay.

It is true that Lockaby testified T.R.B. was supposed to begin the school year in the AEP. However, she also testified that school administrators allowed her placement in the BAC. Thus, on the day she was suspended from school, the evidence shows T.R.B. was assigned to the BAC and had attended three days there. From this evidence, the trial court could have rationally concluded that T.R.B. violated the terms of her probation.

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