

Juvenile Law Case Summaries

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The juvenile court has no duty to order a fitness hearing without a motion to do so [In re E.M.R.] (01-4-18).

On August 31, 2001, the Corpus Christi Court of Appeals held that the juvenile court under Family Code Section 55.31 has no duty to order a fitness to stand trial hearing in the absence of a motion from a party requesting it.

01-4-18. In the Matter of E.M.R., ___ S.W.3d ___, No. 13-00-100-CV, 2001 WL 1020914, 2001 Tex.App.Lexis ____ (Tex.App.-Corpus Christi 8/31/01)[Texas Juvenile Law (5th Edition 2000)].

Facts: A jury found E.M.R. guilty of delinquent conduct by committing the offense of murder. The trial court assessed a determinate sentence of twenty- two years with a possible transfer to the Texas Department of Criminal Justice- Institutional Division. E.M.R. was thirteen at the time of the offense and fourteen at the time of adjudication. In five points of error, appellant challenges the admissibility of two written statements, contends the trial court erred in failing to order a fitness hearing, and complains that his trial counsel rendered ineffective assistance of counsel.

[See 01-4-17 for a statement of the facts.]

Held: Affirmed.

Opinion Text: In his third point of error, appellant complains that the trial court erred in failing to sua sponte conduct a hearing regarding appellant's mental competency pursuant to Texas Family Code sections 55.01 and 55.04(c). We do not agree that the trial court erred by failing to conduct such a hearing.

Family code section 55.01 does not describe a procedure for a competency hearing, but merely states that "[f]or purposes of this chapter, a child who is described as having a mental illness means a child who suffers from mental illness as defined by Section 571.003, Health and Safety Code." Tex. Fam.Code Ann. § 55.01. We presume that appellant's reference is actually to family code section 55.11. That section provides a procedure whereby, upon a motion by a party, the juvenile court may determine whether a child who is alleged to have or found to have engaged in delinquent conduct has a mental illness. Id. § 55.11.

We also believe the appellant's second family code section reference is inaccurate. Family code section 55.04 has been renumbered, and is now located at section 55.31. That section provides a procedure whereby a trial court must, upon motion of a party, determine whether probable cause exists to believe that a child is unfit to proceed as a result of mental illness or mental retardation. Id. § 55.31. Under that section, "[i]f the court determines that probable cause exists to believe that the child is unfit to proceed, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section 51.20." Id. § 55.31(c).

However, neither of those statutes requires a judge to hold such a hearing sua sponte. We refuse to impose such a duty on the trial court in the absence of such a statutory mandate. The case cited to by appellant, Matter of B.J., may indicate that when an issue of mental illness is clearly raised in the record, the trial court has the power to order a mental competency hearing sua sponte. See Matter of B.J., 960 S.W.2d 216, 220-21 (Tex.App.--San Antonio 1997, no pet.). However, in that case, the San Antonio court did not go so far as to hold the trial court erred by failing to hold such a hearing. We likewise refuse to make that holding. We overrule appellant's third point of error.

Dissenting opinion by Justice YANEZ.

Concurring opinion by Justice CASTILLO.

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