

Juvenile Law Case Summaries

By

Robert O. Dawson

Bryant Smith Chair in Law
University of Texas School of Law

[2001 Case Summaries](#)

[2000 Case Summaries](#)

[1999 Case Summaries](#)

Respondent waived disposition jury in writing before adjudication hearing [In re C.P.] (01-4-43).

On October 25, 2001, the Dallas Court of Appeals held that the respondent waived her right to a jury at disposition in writing before the adjudication hearing began, thereby mooting a possibly defective oral admonition given at the beginning of the adjudication hearing.

01-4-43. In the Matter of C.P., ___ S.W.3d ___, No. 05-00-01970-CV, 2001 WL 1289830, 2001 Tex.App.Lexis ___ (Tex.App.-Dallas 10/25/01) [Texas Juvenile Law (5th Edition 2000)].

Facts: C. P., a juvenile, appeals the trial court's adjudication that she engaged in delinquent conduct by committing two counts of aggravated assault. In one point of error, C.P. contends the trial court erred by conducting the disposition hearing without empaneling a jury.

C. P., who was fourteen years old at the time, was charged with aggravated assault after a fight. Two witnesses, Nathaniel and Fallon, testified that they were skipping school one day with some friends, including C. P., and were hanging out at Nathaniel's house watching tv and listening to music. C.P. and Fallon began arguing, when C.P. became angry and grabbed a knife, cutting Nathaniel on the hand and Fallon on the hand and arm.

Because C.P. was a minor, the State filed a petition alleging C.P. was a child who had engaged in delinquent conduct, and alleging two counts of aggravated assault. On October 4, 2000, an adjudication hearing was held, where the trial court made a finding of true to the two alleged offenses. The trial court then found that C.P. should be committed to the Texas Youth Commission for a term of two years. C.P. appealed.

Held: Affirmed.

Opinion Text: Waiver of Jury Trial

At an adjudication hearing, a child is entitled to a jury trial unless a jury is waived under section 51.09 of the family code. See Tex. Fam.Code Ann. § 54.03(b)(6) (Vernon Supp.2001). Pursuant to the family code, the waiver must be made by the child and his attorney, both the child and attorney must have been informed of and understand the right and the possible consequences of waiving it, the waiver must be voluntary, and the waiver must be made in writing or in court proceedings that are recorded. Id. § 51.09.

In her sole point of error, C.P. contends the trial court erred by conducting the disposition hearing without empaneling a jury. Specifically, C.P. contends her waiver was not voluntary because the trial court's oral admonishments at the hearing were faulty. She points to the trial court's statement that "[y]ou also additionally have the right to have a jury determine the disposition in this case if you were to have a jury to make a decision whether this charge is true or not. Do you understand that?" She argues the trial court gave her the mistaken impression that she could not choose a jury to decide disposition if she did not have a jury during the adjudication phase, and that therefore the record shows she never voluntarily waived her right to a jury during disposition. We disagree.

Although C.P. argues she did not clearly waive her right to a jury at the hearing, our review of the record shows that before the hearing, the trial court, in writing, admonished C.P. of her rights, including a statement that she had the right to have a jury decide any disposition in a determinate sentence case. C.P. signed the written waiver of rights,

specifically waiving her right to trial by jury. Her guardian and her attorney also signed the waiver. The trial court then signed the document, finding that her rights were knowingly, intelligently, and voluntarily waived. Further, the trial court orally admonished her of her right to a jury at the hearing. Contrary to C. P.'s contention, the record shows that C.P. voluntarily and knowingly waived her right to a jury at the disposition hearing. See *In re R. W.*, 694 S.W.2d 578, 579 (Tex.App.-Corpus Christi 1985, no writ).

[2001 Case Summaries](#)

[2000 Case Summaries](#)

[1999 Case Summaries](#)