

Juvenile Law Case Summaries

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The certification study was not deficient; it was incomplete because the juvenile refused to cooperate with the psychologist [Ortega v. State] (02-1-15).

On January 7, 2002, the Dallas Court of Appeals held that a certification study was not fatally incomplete because the missing information could have come only from the respondent and his family who, on advice of counsel, refused to cooperate with the psychologist.

02-1-15. Ortega v. State, UNPUBLISHED, No. 05-00-00086-CR, 2002 WL 14163, 2002 Tex.App.Lexis ____ (Tex.App.-Dallas 1/7/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: Following a transfer from juvenile to district court, appellant pleaded guilty to aggravated sexual assault of a child. On March 31, 1998, appellant was sentenced to ten years deferred adjudication community supervision and fined \$1,000. Subsequently, the State filed a motion to revoke appellant's probation and adjudicate his guilt alleging that appellant violated three conditions of his probation. On October 29, 1999, the trial court revoked appellant's probation, adjudicated him guilty, and assessed a sentence of eighteen years confinement and a \$5,000 fine. Appellant appeals his conviction, contending in three issues that the evidence is legally and factually insufficient to support the juvenile court's waiver of jurisdiction and transfer to district court and that the juvenile court erred in transferring appellant's case to district court absent a full investigation.

Held: Affirmed.

Opinion Text: In his first and second issue, appellant contends the evidence is legally and factually insufficient to support the juvenile court's waiver of jurisdiction and transfer to district court. At the time of appellant's offense, juvenile court transfers were governed by section 56.01(c)(1)(A) of the Texas Family Code [FN1]. See Act of May 23, 1999, 72nd Leg. R.S., ch. 680 § 1, 1991 Tex. Gen. Laws 2466, 2466. Under this provision, any appeal of a transfer order was to be taken to a court of appeals with possible review by the Texas Supreme Court. See *id.* The requirements governing appeal are "as in civil cases generally." Tex. Fam.Code Ann. § 54.01(b) (Vernon 1996). Thus, the evidentiary standards applied in civil cases are applied to discretionary transfers from juvenile to district court. See *In re J.J.*, 916 S.W.2d 532, 536 (Tex.App.—Dallas 1995, no writ). However, the ultimate question is whether the trial court abused its discretion. *Id.*

FN1. We recognize that in 1995, the legislature added article 44.47 to the Code of Criminal Procedure and amended the family code to provide that an appeal of a juvenile court transfer order waiving jurisdiction and transferring a juvenile to district court for trial as an adult may be taken only in conjunction with the appeal of a conviction of the offense for which the juvenile was transferred. The 1995 amendments apply only to conduct occurring on or after January 1, 1996. Appellant's conduct in this case occurred on December 19, 1995.

At the time of appellant's offense, the family code provided that a juvenile court could waive its exclusive original jurisdiction and transfer a child to the appropriate district or criminal district court if:

- (1) the child is alleged to have violated a penal law of the grade of felony;
- (2) the child was 15 years of age or older at the time he is alleged to have committed the offense and no adjudication hearing has been conducted concerning that offense; and
- (3) after full investigation and hearing the juvenile court determines that there is probable cause to believe that the

child before the court committed the offense alleged and that because of the seriousness of the offense or the background of the child the welfare of the community requires criminal proceedings.

Tex. Fam.Code Ann. § 54.02 (Vernon 1996).

At the time of appellant's transfer, the family code provided that a juvenile court could waive its exclusive original jurisdiction and transfer a child to the appropriate district or criminal district court if:

- (1) the child is alleged to have violated a penal law of the grade of felony;
- (2) the child was:
 - (A) 14 years of age or older at the time he is alleged to have committed the offense, if the offense is a capital felony, an aggravated controlled substance felony, or a felony of the first degree, and no adjudication hearing has been conducted concerning the offense; or
 - (B) 15 years of age or older at the time the child is alleged to have committed the offense, if the offense is a felony of the second or third degree or a state jail felony, and no adjudication hearing has been conducted concerning that offense; and
- (3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

Tex. Fam.Code Ann. § 54.02 (Vernon 1996).

Appellant asserts that the evidence is legally and factually insufficient to establish that because of the seriousness of the alleged offense or the background of the child, the welfare of the community requires criminal proceedings. Whether we review appellant's complaint by employing the statute in effect at the time of appellant's offense or the time of the transfer, we conclude the evidence is sufficient to support the juvenile court's waiver of jurisdiction and transfer to district court.

During the transfer hearing, the State presented the testimony of child protective services worker Jennifer Ellis. Ellis performed a social evaluation of appellant. After interviewing the victim's family and appellant's girlfriend, Ellis determined that on the night that the victim was sexually assaulted, appellant had been watching her. Moreover, appellant's girlfriend told Ellis and Dallas Police Detective Thomas that appellant admitted he had assaulted the child. Detective Thomas further testified that in his opinion, based upon his investigation and the seriousness of the offense, the public would be better protected if appellant was tried as an adult. We conclude the evidence is legally and factually sufficient to support the trial court's waiver of jurisdiction and transfer of appellant's case. The trial court did not abuse its discretion by finding that appellant met the standards for waiver of jurisdiction and transfer. We resolve appellant's first and second issues against him.

In his third issue, appellant argues the juvenile court erred in waiving its jurisdiction absent a full investigation prior to transfer as required under section 54.02(d) of the family code. Specifically, appellant complains the trial court failed to have a psychological evaluation completed. The record establishes that the trial court ordered a complete social and psychological evaluation be completed, but on the advice of counsel, appellant and his family refused to submit to such an evaluation. The Dallas County Juvenile Department report states that an investigator attempted to contact the family, but the family refused to release any information. The juvenile department did, however, investigate the circumstances surrounding the assault based upon medical records and contact with the victim's family. Moreover, the department investigated appellant's previous criminal history and reported he had none, as well as contacted his school.

The phrase "full investigation" is not defined by the family code; however, "it is a matter of common knowledge that the course and scope of an investigation will vary according to the circumstances surrounding the events." *Turner v. State*, 796 S.W.2d 492, 497 (quoting *In re I.B.*, 619 S.W.2d 584, 586 (Tex.App.—Amarillo 1981, no writ). The completeness of an investigation is to be determined by the court that ordered it. *Id.*

Appellant complains the investigator should have included more information in the investigative report. However, the Dallas County investigator was unable to obtain most of the missing information because appellant's attorney instructed appellant and his family not to reveal any information to the investigator. Appellant's decision to not cooperate with the investigator will not serve to provide appellant with a complaint of his own making on appeal. See *Matter of C.C.*, 930 S.W.2d 929, 934 (Tex.App.—Austin 1996, no writ). We resolve appellant's third issue against him and affirm the trial court's judgment.

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