

Juvenile Law Case Summaries

By

Robert O. Dawson

Bryant Smith Chair in Law
University of Texas School of Law

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Failure to report allegation in motion to modify sufficient; hearsay objection to drug test result made too late [In re C.O.] (02-2-12).

On April 17, 2002, the San Antonio Court of Appeals upheld a probation revocation against a challenge that the motion to modify did not contain sufficient notice of the failure to report violation it alleged and that the probation officer should not have been permitted over a hearsay objection to testify as to the result of a drug test.

02-2-12. In the Matter of C.O., UNPUBLISHED, No. 04-01-00630-CV, 2002 WL 562184, 2002 Tex.App.Lexis ____ (Tex.App.-San Antonio 4/17/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: C.O. appeals the trial court's order modifying his disposition and committing him to the Texas Youth Commission. C.O. contends that he was denied due process and that the trial court erred in allowing a probation officer to testify regarding the results of a drug test.

Held: Affirmed.

Opinion Text: A trial court may modify a juvenile's disposition if the court, after a hearing to modify disposition, finds by a preponderance of the evidence that the child violated a reasonable and lawful order of the court. Tex. Fam.Code Ann. § 54.05(f) (Vernon Supp.2001); In re H.G., 993 S.W.2d 211, 213 (Tex.App.-San Antonio 1999, no pet.). We review a trial court's modification of a juvenile's disposition under an abuse of discretion standard. See *id.* The trial court abuses its discretion when it acts arbitrarily or unreasonably, or without reference to guiding rules and principles. *Id.*

In his first point of error, C.O. contends that he "was denied the rudiments of due process." Specifically, C.O. asserts that the motion to modify did not provide sufficient notice of the alleged violation because the motion stated that C.O. failed to report to his probation officer "as directed."

The paragraph in the motion to modify about which C.O. complains reads as follows:

That Movant alleges that Respondent violated Condition Number FIVE (5) of the Conditions of Probation which states I WILL REPORT TO MY PROBATION OFFICER ON THE SPECIFIC DATES AND TIMES PROVIDED TO ME, when on or about the 28TH day of SEPTEMBER, A.D., 2000, in Bexar County, Texas, the said [C.O.], FAILED TO REPORT TO HIS PROBATION OFFICER AS DIRECTED.

C.O. relies on *Graham v. State*, 502 S.W.2d 809 (Tex.Crim.App.1973), to contend that the motion did not provide adequate notice. However, in *Graham*, the motion to revoke simply stated, "Defendant failed to report to the Probation Office as directed." *Id.* at 810. In holding that the notice provided insufficient notice, the court stated:

The motion was couched in such general terms as to give the appellant no notice as to when he had violated his probationary conditions or to enable him to prepare a defense or to determine what witnesses to subpoena. No dates or other details were alleged. While the allegations in a motion to revoke probation do not require the same particularity of an indictment or information, in all fairness, the allegations as to a violation of probation should be fully and clearly set forth in the revocation motion and a copy timely served on the probationer so that he might be informed as to that upon which he will be called to defend.

Id. at 811 (citations omitted). Unlike the motion in *Graham*, the motion to modify in this case provided the specific date on which C.O. was alleged to have failed to report to his probation officer. Therefore, unlike the motion in *Graham*, the allegation in the motion in this

case fully and clearly informed C.O. of the alleged violation.

DRUG TEST

In his second point of error, C.O. contends that the trial court erred in overruling his objection and allowing the probation officer to testify as follows regarding the results of a drug test he administered to C.O.:

Q. I'm sorry. Mr. Almaguer, can you go ahead and--condition number three. Let me back up, what was condition number three again so we're clear what we're talking about.

A. To abstain from any type of drug use, alcoholic beverages or any possession of any drug paraphernalia.

Q. And in regard to this condition, how did the respondent violate this condition?

A. During a home visit on September 27th of 2000, [C.O.] was asked to submit to a random drug test which he failed to pass showing positive for marijuana.

Q. And how is this test administered?

A. It's administered through a--we test for four drugs. It's a little plastic container. Within five or ten minutes it gives you the test results.

Q. Okay. And what is the specimen that you are testing?

A. Urine.

Q. Okay. And were you present during the whole test?

A. Yes, I was.

Q. Okay. And did you receive a sample from the respondent?

A. Yes, I did.

Q. Okay. And again, it tested positive for what?

MR VALDES: Your Honor, may I object? This man has not been qualified as an expert in testing for any kind of drugs. And that's one of the--that would be hearsay, Your Honor, and that's why we respectfully request the Court to strike his testimony in that respect.

As a prerequisite to presenting a complaint on appeal, the appellant must make a timely and specific objection to the trial court. See Tex.R.App. P. 33.1(a); In re D.T.C., 30 S.W.3d 43, 46 (Tex.App.-Houston [14th Dist.] 2000, no pet.); In the Matter of T.R.S., 931 S.W.2d 756, 758 (Tex.App.-Waco 1996, no writ). In this case, C.O.'s objection was untimely; therefore, his complaint regarding the probation officer's testimony has not been preserved for our review. Even if the objection had been timely, the probation officer further testified without objection that C.O. admitted having used marijuana which is sufficient evidence to prove the alleged violation. Finally, other than his complaint regarding the sufficiency of the notice as to his alleged failure to report to his probation officer, C.O. does not challenge the evidence that was admitted to prove that he failed to report. A violation of one condition of probation is sufficient to support a trial court's order modifying a juvenile's disposition. Tex. Fam.Code Ann. § 54.05(f) (Vernon Supp.2001); In re Rodriguez, 687 S.W.2d 421 (Tex.App.-Houston [14th Dist.], no writ) (upholding modification where single probation condition was held to be violated).

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