Juvenile Law Case Summaries

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Evidence supports juvenile court's removal from home findings in modification of disposition proceedings [In re. V.J.-C.] (02-2-20).

On May 15, 2002, the El Paso Court of Appeals held that under its ruling in In the Matter of L.R. there was sufficient evidence to support the juvenile court's modification of disposition removal from home findings.

02-2-20. In the Matter of V.J.-C., UNPUBLISHED, No. 08-01-00071-CV, 2002 WL 971801, 2002 Tex.App.Lexis ___ (Tex.App.-5/15/02) [Texas Juvenile Law (5th Edition 2000).

Facts: V.J.-C., a juvenile, appeals from an order modifying disposition and judgment committing him to the Texas Youth Commission.

V.J.-C. was adjudicated as a delinquent child on November 9, 1999, based upon him committing the offense of assault on June 21, 1999, and the offense of criminal mischief on October 28, 1999. On December 14, 1999, V.J.-C. stipulated to an additional offense of criminal trespass which he committed on December 3, 1999. After a disposition hearing, V.J.-C. was placed on probation with the El Paso County Juvenile Probation Department and he was required to be monitored electronically.

On February 11, 2000, V.J.-C. was adjudicated for the offense of assault committed on January 13, 2000. A disposition hearing was held on February 23, 2000, and V.J.-C. was placed on probation under the auspices of the Challenge Bootcamp Program. A hearing to review V.J.-C.'s probation was held on June 14, 2000. He was ordered to successfully complete the Southwest Keys Transitional Living Center Program. Another review hearing was held on August 9, 2000, and he was ordered to remain on probation.

On December 15, 2000, a Petition Based on Delinquent Conduct was filed alleging that V.J.-C. engaged in delinquent conduct by committing the offense of assault. On January 3, 2001, the State filed a Motion to Dismiss the Petition because he had stipulated to a modification filed on November 21, 2000. This Motion to Modify Disposition alleged that V.J.-C. violated his probation by committing assault and aggravated assault. It also alleged that he had used a controlled substance, benzodiazepines, had violated his curfew and was a truant. The court sustained this motion as V.J.-C. had pleaded true to all of the violations with the exception of the aggravated assault allegation. With regard to this charge, he was found "not delinquent" at a jury trial conducted on December 11, 2000.

A disposition hearing was held on January 10, 2001. Teresa Ann Woodruff, a probation officer with the El Paso County Juvenile Probation Department, recommended that V.J.-C. be committed to the care, custody, and control of the Texas Youth Commission. She related that V.J.-C. had been referred to her department about ten times for two criminal trespass offenses, burglary of a vehicle, aggravated assault, assault, criminal mischief, evading arrest, and detention as well as other offenses. In the past, he had experimented with drugs and alcohol although he had no drug problems while he was on probation until he testified positive for Benzodiazepine; otherwise known as Rohypnol.

Woodruff testified that she had considered other programs in lieu of sending V.J.-C. to the Texas Youth Commission. She considered the Challenge Bootcamp Program; however, he had already successfully completed that program and renewed attendance in that program would be redundant. Other available out-of-home placements were not considered as they involved treatment for mental health and drug dependency problems which would not address V.J.-C.'s particular behavior problems. Woodruff stated that his mother had little control over him and she allowed him to behave as he pleased. Further, she had failed to support his rehabilitation by not attending court-ordered counseling sessions. This precluded any form of home-based probation.

A psychological evaluation from Dr. Guido Barrientos was admitted into evidence. He diagnosed V.J.-C. as having Severe Conduct Disorder and Cannabis and Alcohol Abuse. He recommended that V.J.-C. be placed in a closed, secured facility in order to receive

strong behavior modification, drug counseling, anger management training, and work on his education. Barrientos stated that V.J.-C. had made no progress since his initial interview and he continued to be a violent adolescent who would be highly resistant to rehabilitative efforts. Woodruff testified that the Texas Youth Commission facilities would address these needs. The court took the matter under advisement and on January 21, 2001, ordered V.J.-C. committed to the Texas Youth Commission.

Held: Affirmed.

Opinion Text: In two related issues, V.J.-C. contends that the evidence is legally and factually insufficient to support the court's order that he be committed to the Texas Youth Commission. Specifically, V.J.-C. asserts that the court's findings in the judgment that "Reasonable efforts were made to prevent or eliminate the need for the child's removal from the home ...," and "The Court is of the opinion that no community-based intermediate sanction is available to adequately address the needs of the juvenile or to adequately protect the needs of the community" are not supported by the evidence.

A juvenile court which modifies a disposition and places a child on probation outside the child's home or commits the child to the Texas Youth Commission must state sufficient reasons to justify such a decision. These reasons must include but are not limited to, the findings stated in Tex. Fam.Code Ann. § 54.04(i) (Vernon Supp.2002). [FN1] In the Matter of L.R., 2001 WL 1587615, at *4 (Tex.App.-El Paso December 31, 2001, no pet.) (not yet released for publication) [Juvenile Law Newsletter 02-1-08]. On appeal, a juvenile may challenge both the juvenile court's finding that he violated a term or condition of probation and those reasons stated for disposition stated in the order pursuant to Sections 54.04(i), a disposition hearing, and 54.05(i), a hearing to modify disposition. [FN2] Id.

FN1. Section 54.04(i) provides in relevant part:

If the court ... commits the child to the Texas Youth Commission, the court shall include in its order its determination that:
(1) it is in the child's best interests to be placed outside the child's home;
(2) reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home; and
(3) the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation.

FN2. Tex. Fam.Code Ann. § 54.05(i) (Vernon Supp.2002) provides:

The court shall specifically state in the order its reasons for modifying the disposition and shall furnish a copy of the order to the child.

Further, Tex. Fam.Code Ann. § 54.04(f) (Vernon Supp.2002) also requires that:

The court shall state specifically in its order its reasons for the disposition and shall furnish a copy of the order to the child. If the child is placed on probation, the terms of probation shall be written in the order.

In its judgment of commitment, the court stated:

(1) It is in the child's best interest to be placed outside the home;
(2) Reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home; and
(3) The child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet conditions of probation.

The court further found that pursuant to Section 54.04(f) that:

1. The juvenile needs to be held accountable and responsible for his behavior.
2. The court is of the opinion that the juvenile poses a risk to the safety and protection of the community if no disposition is made.
3. The court is of the opinion that no community-based intermediate sanction is available to adequately address the needs of the juvenile or to adequately protect the needs of the community.
4. The court is of the opinion that the prior juvenile record of the juvenile requires that he be confined in a secure facility.

Appellant concedes that the court included in its judgment of commitment the mandatory determinations mentioned above. As stated, Appellant attacks only the court's findings that reasonable efforts were made to prevent the removal of the child from the home and that no community-based intermediate sanction is available to adequately address the needs of the juvenile and the community.

In reviewing a juvenile court's disposition order or its decision to modify disposition, we do not use the standard of review enunciated

in Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 2789-90, 61 L.Ed.2d 560 (1979). In the Matter of L.R., 2001 WL 1587615, at *4. Rather, we utilize the standard wherein juvenile courts are vested with broad discretion in determining the suitable disposition of children found to have engaged in delinquent conduct; this is especially true in hearings to modify disposition. In the Matter of L.R., 2001 WL 1587615, at *4; In the Matter of A.S, 954 S.W.2d 855, 861 (Tex.App.-El Paso 1997, no pet.). Absent an abuse of discretion, we will not disturb the juvenile court's determination. In the Matter of L.R., 2001 WL 1587615, at *4; In the Matter of A.S, 954 S.W.2d at 861. In conducting this review, we utilize a two-pronged analysis: (1) Did the trial court have sufficient information upon which to exercise its discretion; and (2) did the trial court err in its application of discretion? In the Matter of L.R., 2001 WL 1587615, at *4; In the Matter of M.A.C., 999 S.W.2d 442, 446 (Tex.App.-El Paso 1999, no pet.). The traditional sufficiency of evidence review, articulated below, comes into play when considering the first question. In the Matter of L.R., 2001 WL 1587615, at *4; In the Matter of M.A.C., 999 S.W.2d at 446. The reviewing court then proceeds to determine whether, based on the elicited evidence, the trial court made a reasonable decision or whether it is arbitrary and unreasonable. In the Matter of L.R., 2001 WL 1587615, at *4; In the Matter of M.A.C., 999 S.W.2d at 446. The question is not whether the facts present an appropriate case for the trial court's action, but whether the court acted without reference to any guiding rules and principles. In the Matter of L.R., 2001 WL 1587615, at *4; In the Matter of M.A.C., 999 S.W.2d at 446. The mere fact that a trial judge may decide a matter within his discretionary authority in a manner different from an appellate judge in the same circumstance does not demonstrate that an abuse of discretion has occurred. Southwestern Bell Telephone Company v. Johnson, 389 S.W.2d 645, 648 (Tex.1965); In the Matter of M.A.C., 999 S.W.2d at 446.

In considering a "no evidence," or legal sufficiency point, the reviewing court considers only the evidence that tends to support the jury's findings and disregard all evidence and inferences to the contrary. Garza v. Alviar, 395 S.W.2d 821, 823 (Tex.1965); Lindsay v. Lindsay, 965 S.W.2d 589, 591 (Tex.App.-El Paso 1998, no pet.). If there exists more than a scintilla of evidence to support the questioned finding, the "no evidence" point fails. Lindsay, 965 S.W.2d at 591.

A factual sufficiency point requires examination of all of the evidence in determining whether the questioned finding is so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 600, 661 (Tex.1951); Lindsay, 965 S.W.2d at 591. This Court does not pass upon the witnesses' credibility nor does it substitute its judgment for that of the jury, even if the evidence would clearly support a different result; rather, if competent evidence of probative force supports the challenged finding, we will sustain it. Maritime Overseas Corp. v. Ellis, 971 S.W.2d 402, 407 (Tex.1998); Gonzalez v. El Paso Hosp. Dist., 940 S.W.2d 793, 796-97 (Tex.App.-El Paso 1997, no pet.).

V.J.-C. challenges the legal and factual sufficiency of the court's findings that reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and that no community-based intermediate sanction is available to adequately address the needs of the juvenile or to adequately protect the needs of the community. Even if we were to determine that the evidence is legally or factually insufficient to support this reason for disposition, the remaining unchallenged reasons are sufficient to support the trial court's determination that V.J.-C. should be committed to the Texas Youth Commission. See In the Matter of L.R ., 2001 WL 1587615, at *5. Unchallenged findings of fact are binding on an appellate court. Id.; Wade v. Anderson, 602 S.W.2d 347, 349 (Tex.Civ.App.-Beaumont 1980, writ ref'd n.r.e.). Finding no abuse of discretion, we overrule Issues No. One and Two.

Having overruled each of Appellant's issues on review, we affirm the judgment of the trial court.

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