

Juvenile Law Case Summaries

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Respondent's failure to participate in sex offender treatment justified probation revocation [In re C.C.] (02-3-10).

On June 20, 2002, the Dallas Court of Appeals upheld revocation of probation and commitment to the TYC for failure of the respondent to participate in a sex offender treatment program. Respondent refused to participate after his father angrily departed a family therapy session.

02-3-10. In the Matter of C.C., UNPUBLISHED, No. 05-01-01882-CV, 2002 WL 1340319, 2002 Tex.App.Lexis ____ (Tex.App.-Dallas 6/20/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: C.C., a juvenile, appeals the order modifying disposition and committing him to the Texas Youth Commission (TYC). In three issues, C.C. contends: (1) the complained-of order is void because he did not enter a plea at the adjudication hearing; and (2) the trial court abused its discretion by committing him to the TYC.

After C.C. was adjudicated a child engaged in delinquent conduct, the trial court placed C.C. on probation in the custody of his parents. The terms and conditions of his probation required C.C. to attend school each day and to attend the Dallas County Sex Offender Family group with his parents. The State later filed a motion to modify disposition, alleging C.C. had not attended school each day in violation of his probation conditions. C.C. pleaded true, and after accepting C.C.'s plea, the trial court continued the disposition. Three months later, the trial court modified the terms and conditions of C.C.'s probation. In particular, the trial court ordered C.C. to successfully complete the Grayson County Sex Offender Program.

Subsequently, the State filed a motion to modify disposition, alleging C.C. violated the conditions of his probation by failing to participate in the sex offender program on August 28, 2001. After a hearing, the trial court found C.C. failed to participate in the sex offender program and that C.C.'s home could not provide the level of support and supervision needed for C.C. to meet the conditions of his probation. The trial court modified the prior disposition order and ordered C.C. committed to the TYC. This appeal followed.

Held: Affirmed.

Opinion Text: In his first and second issues, C.C. contends that the adjudication, disposition, and all subsequent proceedings are void because C.C. did not enter a plea at the adjudication hearing or later at the second modification hearing. We disagree.

The code of criminal procedure requires a plea to be entered in every criminal case. See Tex.Code Crim. Proc. Ann. art. 26.12, 26.13 (Vernon 1989 & Supp.2002). If no plea is entered, the trial is a nullity. *Lumsden v. State*, 384 S.W.2d 143, 144 (Tex.Crim.App.1964). However, except for discovery and evidentiary matters, the trial of a juvenile case is governed by the Texas Rules of Civil Procedure, not the Texas Code of Criminal Procedure. See Tex. Fam.Code Ann. § 51.17 (Vernon Supp.2002); *In re D.I.B.*, 988 S.W.2d 753, 756 (Tex.1999). There is no such requirement for a plea to be entered in the rules of civil procedure. Nor does the Texas Family Code contain such a requirement. Consequently, we conclude C.C.'s argument that his failure to enter a plea at the adjudication hearing or the second modification hearing rendered the proceedings a nullity lacks merit. We overrule C.C.'s first and second issues.

In his third issue, C.C. contends the trial court abused its discretion by committing C.C. to the TYC. In particular, C.C. argues that the State alleged he violated his probation conditions by not participating in his sex offender treatment program on August 28, 2001, but the evidence shows that he did participate on that date.

Juvenile courts are vested with a great amount of discretion in determining the suitable disposition of children found to have engaged in delinquent conduct. This is especially so regarding hearings to modify disposition. *In re J.M.*, 25 S.W.3d 364, 367 (Tex.App.-Fort Worth 2000, no pet.). In determining whether a trial court abused its discretion, we determine only whether the trial court acted in an

unreasonable or arbitrary manner. In re J.R.W., 879 S.W.2d 254, 257 (Tex.App.-Dallas 1994, no writ).

At the hearing on the motion to modify, Terry Bower testified that she provided therapy for C.C. while he was in the Grayson County sex offender program. According to Bower, C.C. was unsuccessfully discharged from the program on August 29, 2001. C.C.'s discharge was, in part, because of his father's hostility, but also due to C.C.'s failure to complete certain assignments. Bower explained that the night before C.C. was discharged from the program, C.C. and his parents came to the group therapy session. C.C.'s father became "very aggressive and very hostile," causing others in the group to be uncomfortable. C.C.'s father began to "escalate" to the point that Bower felt "unsafe." Eventually, C.C.'s father cursed and left the room, telling C.C. and his mother to follow him. After a short time, C.C. and his mother left the session. James Bateman, a Grayson County juvenile probation officer, testified that he supervised C.C. in Grayson County. In Bateman's opinion, C.C. and his father were "equally a problem: [his father] for not supervising [C.C.] and then [C.C.] for not putting forth the effort to work--work the program."

After reviewing this testimony as well as all of the evidence in the record, we cannot conclude that the trial court abused its discretion by finding C.C. violated condition 11 of his probation. We recognize that C.C. and his parents initially attended the group therapy session on August 28, 2001. However, C.C.'s father was hostile and aggressive, finally cursing and leaving the session early with C.C. and his mother. Thus, the trial court could reasonably conclude that C.C. did not meaningfully participate in the August 28, 2001 group therapy session. Moreover, the evidence clearly shows C.C. failed to successfully complete the sex offender program as required by condition 11 of the terms and conditions of C.C.'s probation. Under these circumstances, we conclude the trial court acted within its discretion by modifying C.C.'s disposition. We overrule C.C.'s third issue.

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