

Juvenile Law Case Summaries

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Appeal from modification dismissed as moot when respondent discharged from probation upon becoming 18 years old [In re N.N.D.W.] (02-3-13).

On June 20, 2002, the El Paso Court of Appeals held that an appeal from a modification but not revocation of probation was mooted when the juvenile was discharged from probation upon her 18th birthday.

02-3-13. In the Matter of N.N.D.W., UNPUBLISHED, No. 08-01-00244-CV, 2002 WL 1341108, 2002 Tex.App.Lexis ____ (Tex.App.-El Paso 6/20/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: Appellant brings this appeal alleging ineffective assistance of counsel. Because the juvenile reached her eighteenth birthday prior to submission of the cause and issuance of an opinion, and because no other relief is available to the juvenile through this appeal, we dismiss as moot.

On September 13, 2000, Appellant, a juvenile then sixteen years old, was adjudicated a delinquent child for the offense of assault. She was placed on supervised probation with electronic monitoring until her eighteenth birthday. The juvenile violated her probation on several occasions, including leaving the electronic monitoring premises. The State filed a motion to modify the disposition but it was dismissed after the juvenile completed an attitude adjustment program. Shortly thereafter, the juvenile again violated her probation by leaving the electronic monitoring premises and the juvenile court sustained the State's motion to modify the disposition. The State filed another motion to modify the disposition and it was sustained by the juvenile court. A disposition hearing was held and the record of that hearing is the basis of this appeal.

Tracy Gorman of the El Paso County Juvenile Probation Department testified about the modification-disposition report she prepared for the court. Gorman recommended that the juvenile be removed from her present home and placed in the care, custody, and control of the Challenge Program of El Paso County until her eighteenth birthday. Gorman discussed the problems between the juvenile and her mother while living together, the juvenile's performance in school, and her history of substance abuse. The juvenile's mother no longer wanted the juvenile in the house. Gorman also included in her disposition report the statement that the juvenile mentioned she wanted to have her case heard by a particular judge because she heard he was "easy ." Counsel for the juvenile asked Gorman whether her inclusion of this statement in the report was an attempt to influence the presiding judge to follow her recommendation. Gorman denied the allegation. Counsel also questioned Gorman about the possibility of an alternative program, the Serious Habitual Offenders Comprehension Act Program (S.H.O.C.A.P.). Gorman responded that she believed the juvenile would not have benefited from that program because the juvenile had indicated that she could not complete it, and the program involved in-home counseling, which had already been attempted. Gorman explained that her main reason for recommending the Challenge Program was the fact that the juvenile had problems in the home with her mother and that sending her back into the home would not address her needs. The trial court followed the probation department's recommendation and found that it was in the juvenile's best interest that she be removed from her mother's home and sent to the Challenge boot camp. Counsel for the juvenile made no argument urging an alternative arrangement.

Following the judge's finding, counsel for the juvenile made the following statement to the court:

Yes, sir, if you wouldn't mind let me just make a comment for the record. I think it is necessary that I do this possibly because there is such a departure in the sanction level in the recommendation of the department, of the probation department. Normally, as you know, the policy of the juvenile system is to be the least restrictive as possible, and S.H.O.C.A.P. and Project Spotlight probably would have been the least restrictive in this case. However, the reason that I don't argue for that, and didn't argue for that, and basically going along and give consent with the recommendation of the department is that we are quickly running out of time for this young juvenile. She's going to be 18 here pretty quick and she's got some problems at home that I think require immediacy to give her some skills

that will allow her to live on her own. I think she has some anger problems that this Court can see from the report that was given, that I think can be addressed by Challenge and I think Challenge is a very good program.... So in the sense I'm telling the Court that I don't want the Court to believe that I'm being faulty in my duty representing the juvenile, I do believe that this recommendation is in the best interest, even though it is quite a jump up.

Following the hearing, the juvenile filed a grievance form stating that she wanted a new attorney. She also inquired whether it was possible for her to join the Army reserves rather than attend boot camp. The juvenile filed a notice of appeal on June 25, 2001.

Held: Appeal dismissed as moot.

Opinion Text: MOOTNESS

In her sole point of error, the juvenile contends that she was provided ineffective assistance of counsel at her disposition hearing. She claims that counsel failed to adequately represent her when he acquiesced in the probation department's recommendation that she be sent to the Challenge Program. Because the juvenile preferred to enter the military, counsel should have argued in accordance with her preference instead of acting on his personal belief that the program was in her best interest. Appellant also complains that defense counsel failed to object to the admission of the modification-disposition report that contained prejudicial statements concerning the juvenile's request to have her case heard by a specific judge because he was an "easy" judge.

Because of the timing of this appeal, we cannot address the merits. The issues for review are moot since the trial court's order expired on March 12, 2002, prior to submission and issuance of this opinion. Appellate courts do not have authority under the Texas Constitution or by statute to render advisory opinions. See Tex. Const. art. II, 1; *Speer v. Presbyterian Children's Home and Service Agency*, 847 S.W.2d 227, 229 (Tex.1993); *In re Salgado*, 53 S.W.3d 752, 757 (Tex.App.-El Paso 2001, orig. proceeding). The mootness doctrine limits courts to deciding cases in which an actual controversy exists. *Federal Deposit Insurance Corporation v. Nueces County*, 886 S.W.2d 766, 767 (Tex.1994); *Salgado*, 53 S.W.3d at 757. When there has ceased to be a controversy between the litigating parties due to events occurring after judgment has been rendered by the trial court, the decision of an appellate court would be a mere academic exercise and the court may not decide the appeal. *Olson v. Commission for Lawyer Discipline*, 901 S.W.2d 520, 522 (Tex.App.-El Paso 1995, no writ); *Salgado*, 53 S.W.3d at 757. If a judgment cannot have a practical effect on an existing controversy, the case is moot. *Olson*, 901 S.W.2d at 522; *Salgado*, 53 S.W.3d at 757.

The judgment entered by the juvenile court ordered that the juvenile be placed on probation under various terms and conditions, including attendance in the Challenge Program, until her eighteenth birthday. At the entry of judgment, the juvenile was seventeen years old. Appellant perfected appeal on June 25, 2001. She was born on March 12, 1984 and March 12, 2002 marked her 18th birthday. The order that placed the juvenile in the Challenge Program was not suspended by reason of the filing of this appeal and remained in effect during the appellate process. The Texas Family Code provides:

An appeal does not suspend the order of the juvenile court, nor does it release the child from the custody of that court or of the person, institution, or agency to whose care the child is committed, unless the juvenile court so orders. However, the appellate court may provide for a personal bond.

Tex.Fam.Code Ann. 56.01(g)(Vernon Supp.2002). The juvenile has completed her probationary period. Because the prayer for relief requested only that the judgment be set aside and the case remanded for a new disposition, the issues presented for review are moot.

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