Juvenile Law Case Summaries

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No abuse of discretion in revocation of 13-year-old's probation for repeated burglaries [In re R.R.G.] (02-3-17).

On June 27, 2002, the El Paso Court of Appeals upheld the juvenile court's revocation of probation of a 13-year-old for repeated burglaries. It did so by applying, under its district precedent, the factors in Section 54.04 relating to removal from home.

02-3-17. In the Matter of R.R.G., UNPUBLISHED, No. 08-01-00434-CV, 2002 WL 1397149, 2002 Tex.App.Lexis ___ (Tex.App.-El Paso 6/27/02) [Texas Juvenile Law (5th Edition 2000).

Facts: R.G. appeals from the adjudication and commitment order of the juvenile court committing him to custody and care of the Texas Youth Commission.

On April 4, 2000, R.G. was adjudicated delinquent and was placed on juvenile probation after committing the burglary of a habitation in November 1999. At the time of the adjudication, R.G. had just turned twelve. R.G. was placed on probation in the home of his mother for one year, subject to extension, and required to report to the Midland County Juvenile Probation Department.

On March 19, 27, and April 9, 2001, the State filed a series of motions to modify the terms of R.G.'s probation. It is the Second Amended Motion to Modify Disposition ("the Motion") that is at issue in this appeal. It alleges that R.G. engaged in delinquent behavior by participating in a series of burglaries of habitations, by operating a motor vehicle without the consent of its owner, by testing positive for marijuana use, by associating with persons banned by the terms of his probation, by resisting arrest by a peace officer, by failing to report to his probation officer, and by failing to pay his probation fees. R.G. pleaded not true to the Motion.

On July 31, 2001, a contested hearing was held concerning the Motion. The State presented seven witnesses; R.G. presented one. At that time, the State dismissed several of the allegations against R.G. Instead, it proceeded on the allegations of the January 29, 2001 attempted burglary of a habitation; the December 15, 2000 and January 29, 2001 burglaries; the failure to report; and the failure to follow the terms of his probation by associating with another probationer.

The State's first witness was Michael Wallace, the justice of the peace who administered the Juvenile Magistrate's Warnings (the Warnings) to R.G. following his arrest for the burglary of a habitation on January 29, 2001, and his arrest for burglary of a residence and auto theft on January 30, 2001. Wallace testified that his written record of the Warnings given R.G. was accurate and that R.G. had understood the Warnings at the time they were administered. Wallace also testified that a peace officer was present in the room when the Warnings were administered. R.G. objected to the introduction of the written Warnings asserting that they did not conform with the admonitory language required by statute. The objection was overruled.

The State also called Detective Mark Wohleking who was present when R.G. was given the Warnings and to take R.G.'s statement concerning the January 29, 2001 burglary. Wohleking identified and authenticated a tape that was made of R.G.'s appearance before Wallace and R.G.'s inculpatory statement.

Over defense objection, the tape was played in its entirety. The tape includes both the Warnings as administered by Wallace and R.G.'s oral confession to Wohleking that he committed the burglary of a habitation on December 15, 2000 and January 29, 2001. R.G.'s confession was corroborated when detectives discovered items in R.G.'s bedroom that had been taken in the course of the burglaries. The tape was the State's only evidence with regard to the January 29, 2001 attempted burglary.

As part of his probation terms, R.G. was forbidden to associate with probationer J.P.R. J.P.R. testified he met with R.G. on two occasions after both he and R.G. were placed on probation.

Jeff Leyva, R.G.'s probation officer, testified that R.G. failed to report to him once during the course of his probation. He also testified that to the best of his knowledge, R.G. owed $40 in probation fees. Leyva's recommendation to the court was that R.G. should be sent to the Texas Youth Commission if any of the allegations in the Motion were found to be true.

The trial court held that the allegations against R.G. were proven true. Prior to modifying R.G.'s disposition, the trial court heard further testimony from Leyva, R.G.'s probation officer. Leyva again recommended that R.G. be sent to the Texas Youth Commission. Although he admitted that Boot Camp could have been an alternative setting for R.G., Leyva felt that the Texas Youth Commission was a better setting for R.G. because he could be supervised until age 21 and would be offered more services and supervision than other placements such as Boot Camp. A neighbor of R.G.'s also testified that he saw R.G. smoking pot with friends.

Based on the evidence adduced at the hearing, the trial court held that it was in R.G.'s best interest that he be sent to the Texas Youth Commission (TYC) for a minimum of nine months. In its Report of Progressive Sanctions Deviation, the trial court found basis in twelve out of a possible seventeen statutorily recognized reasons for deviating from the progressive sanctions guidelines.

On July 31, 2001, the trial court signed its adjudication and commitment order. R.G. timely filed a motion for new trial which was denied as a matter of law. This appeal timely followed.

Held: Affirmed.

Opinion Text: Presence of police officer during warnings

In R.G.'s first point of error, he maintains that the oral statement used against him at the contested hearing was improperly admitted because the Warnings given to R.G. by Wallace were tainted by the presence of a peace officer. Texas Rule of Appellate Procedure 33.1 mandates that an issue is properly preserved for appeal only when the record demonstrates the issue was raised with the juvenile court. In re C.C., 13 S.W.3d 854, 859 (Tex.App.- Austin 2000, no pet.); Tex.R.App. P. 33.1.

In this case, R.G.'s only objection at trial to the introduction of his oral statements was that Wallace's Warnings violated section 51.095(a)(1)(A)(iii). That section provides:

(a) Notwithstanding Section 51.09, the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if:
(1) the statement is made in writing under a circumstance described by Subsection (d) and:
(A) the statement shows that the child has at some time before the making of the statement received from a magistrate a warning that:
* * *
(iii) if the child is unable to employ an attorney, the child has the right to have an attorney appointed to counsel with the child before or during any interviews with peace officers or attorneys representing the state[.]

Tex. Fam.Code Ann. § 51.095(a)(1)(A)(iii) (Vernon Supp.2002). Specifically, R.G. objected to the introduction of his oral, not written, statement because the words "appointed to" which were contained in the statute, were not contained in Wallace's form Warnings. Putting aside the fact that R.G.'s statement was an oral statement and was therefore not covered by section 51.095(a)(1)(A)(iii), R.G.'s trial objection does not comport with the issue he now raises on appeal. Because R.G. did not object at the time of trial to the presence of a peace officer when R.G. was given the Warnings by Wallace, any error is waived. In re C.C., 13 S.W.3d at 859. Point of Error One is therefore overruled.

Deviations from progressive sanctions guidelines

R.G.'s second point of error concerns the factual sufficiency of the evidence used to support the trial court's decision to deviate from the progressive sanctions guidelines. This Court has held that the juvenile court's findings of fact are reviewable for legal and factual sufficiency of the evidence to support them by the same standards as are applied in reviewing the legal or factual sufficiency of the evidence supporting a jury's answers to a charge. In re M.A.C., 999 S.W.2d 442, 446 (Tex.App.-El Paso 1999, no pet.) (citing In the Matter of J.P.O., 904 S.W.2d 695, 699-700 (Tex.App.-Corpus Christi 1995, writ denied)). However, we will not disturb the juvenile court's disposition order in the absence of an abuse of discretion. In re M.A.C., 999 S.W.2d at 446 (citing In the Matter of E.F., 535 S.W.2d 213, 215 (Tex.Civ.App.-Corpus Christi 1976, no writ)).

Bearing these standards in mind, we conduct our review via 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 re M.A.C., 999 S.W.2d at 446; Leibman v. Grand, 981 S.W.2d 426, 429 (Tex.App.-El Paso 1998, no pet.); Lindsey v. Lindsey, 965 S.W.2d 589, 591 (Tex.App.-El Paso 1998, no pet.). With regard to the first question, the traditional sufficiency of the evidence review articulated below comes into play. Id. We then proceed to determine whether, based on the elicited evidence, the trial court made a reasonable decision or

whether it is arbitrary and unreasonable. Id.

The question before us then, is not whether, in the opinion of the reviewing court, 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 re M.A.C., 999 S.W.2d at 446; Downer v. Aquamarine Operators, Inc., 701 S.W.2d 238, 242 (Tex.1985), cert. denied, 476 U.S. 1159, 106 S.Ct. 2279, 90 L.Ed.2d 721 (1986); Leibman, 981 S.W.2d at 430; Lindsey, 965 S.W.2d at 591. Restated, the mere fact that a trial judge may decide a matter within his discretionary authority in a different manner than an appellate judge in a similar 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); Leibman, 981 S.W.2d at 430; Lindsey, 965 S.W .2d at 592.

In reviewing R.G.'s factual sufficiency challenge, we view all of the evidence but do not view it in the light most favorable to the challenged findings. In re M.A.C., 999 S.W.2d at 446. Only if the finding is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust will we conclude that the evidence is factually insufficient. Id.

An appropriate disposition of R.G.'s case required the juvenile court's exercise of discretion to be guided by the requirements of section 54.04 of the Family Code. In re M.A.C., 999 S.W.2d at 446-47. To commit a child to the Texas Youth Commission, the court must additionally find and state in its disposition order that placement outside of the child's home is in the child's best interest and that reasonable efforts were made to prevent or eliminate the need for the child's removal from the home. Tex. Fam.Code Ann. § 54.04(i) (Vernon Supp.2002). R.G. challenges the factual sufficiency of the evidence supporting each of the juvenile court's findings.

The juvenile court's first rationale for the TYC commitment was that he was experiencing problems in his home environment and community and that placement in an alternative situation was necessary for him to continue his education. There was ample evidence that R.G. was experiencing such problems. Leyva's second supplemental report to R.G.'s social history was before the juvenile court. In it, Leyva describes several incidents in which R.G. exhibited threatening behavior towards other students and his teacher. These problems were serious enough that R.G. was required to finish out the school year in a kindergarten classroom. That R.G. was having problems in his community is also demonstrated by the fact that the felony allegations made against him were found to be true. These burglary incidents involved his neighbors. Furthermore, at least one of his neighbors testified that R.G. had been smoking marijuana in his neighborhood.

The juvenile court's second stated reason for the TYC commitment was that probation at home was not feasible and did not serve R.G.'s best interest. Leyva testified that the TYC commitment was in R.G.'s best interest because he could be supervised until age 21 and would be offered more services and supervision than other placements such as Boot Camp. Leyva's report also indicates that home probation was not working and that his mother's attempts to discipline him resulted in R.G. leaving the house for long periods of time. Furthermore, R.G. continued to engage in serious acts of delinquency while on home probation. Leyva and the probation department thus concluded that TYC and its highly structured environment were therefore the only alternative presently available to the court to help R.G.

The juvenile court's third rationale for the TYC commitment was that his parent had no control or influence over R.G. as indicated by his past activities. In this regard, we emphasize that we can reverse the juvenile court's decision only if the finding is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. In re M.A.C., 999 S.W.2d at 446. The evidence in this record indicates that R.G.'s mother was quickly losing control over her son. Leyva found that she was unable to control his association with other friends who were probationers, and that observation was proven true at the contested case hearing. Stated another way, the overwhelming weight of the evidence did not demonstrate that R.G.'s mother had been able to prevent R.G. from engaging in delinquent and felonious conduct.

The trial court's final reason for the TYC commitment was that R.G. had been unable to adjust his behavior in the home environment and through the traditional juvenile justice system within the community and therefore a structured environment was in his best interest. The overwhelming weight of the evidence in this record demonstrates that R.G.'s delinquent behavior was getting worse despite previous methods of intervention. This finding is supported by the record.

We are unable to find any abuse of discretion. The juvenile court acted within its discretion to deviate from the progressive guidelines. R.G.'s second point of error is thus overruled.

[Editor's Comment: As to the first point of error, Section 51.095(a)(1)(B)(i) requires that the child sign the written statement in front of the judge without a law enforcement officer being present. It does not require that the earlier judicial administration of warnings must be made outside the presence of a law enforcement officer.]

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