

## Juvenile Law Case Summaries

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### ***Removal from home findings not required for modification of disposition [In re A.V.] (02-3-23).***

On July 24, 2002, the San Antonio Court of Appeals held that the removal from home findings required in disposition proceedings is not required in modification proceedings.

02-3-23. In the Matter of A.V., UNPUBLISHED, No. 04-02-00042-CV, 2002 WL 1625569, 2002 Tex.App.Lexis \_\_\_\_ (Tex.App.-San Antonio 7/24/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: Appellant, A.V., a juvenile, engaged in delinquent conduct resulting in the trial court placing him on probation. The State filed a motion to modify disposition, alleging appellant violated the terms of his probation. After a hearing, the juvenile court found that appellant had violated several conditions of his probation. As a result, the juvenile court committed appellant to the Texas Youth Commission (TYC). On appeal, appellant challenges the factual sufficiency of the evidence to commit him to TYC.

On May 23, 2000, A.V. was adjudicated a delinquent child for the offense of unauthorized use of a vehicle. The juvenile court ordered A.V. to be placed in the custody of his mother. The court further ordered appellant be placed on an 18 month probation period with conditions and ordered monthly restitution payments in the total amount of \$951.22. On October 4, 2001, the State moved to modify the juvenile court's disposition. In its motion, the State alleged that appellant violated several stipulated conditions of his 18 month probation, and therefore, requested that A.V. be committed to TYC. On October 16, 2001, a disposition hearing was held on the State's motion. To support this motion, the State introduced the testimony of Jesse Garces, appellant's probation officer. During his testimony, Garces stated that appellant personally told him that appellant had smoked a marijuana cigarette in September of 2000. Garces further testified that on three separate occasions prior to the hearing, A.V. failed to report to him as directed by the court. Garces also stated that A.V. failed on five occasions in the spring of 2001 to pay the required \$50.00 monthly installment for the \$951.22 restitution payment. As a result, the juvenile court found by a preponderance of the evidence that appellant, in fact, violated several conditions of his probation.

During the placement phase of the hearing, the State introduced additional factors for the court to consider when deciding placement. [FN1] Based on these factors and appellant's probation violations, the juvenile court revoked A.V.'s probation and committed him to TYC.

FN1. The State requested that the trial court also consider appellant's gang activity, referral history, alleged assaultive behavior at home, and repeated rule violations in the detention center.

In his sole point of error, appellant argues that the trial court erred in committing appellant to TYC because the evidence was factually insufficient to support the trial court's order of commitment. Appellant requests that this Court reverse and remand the cause for a new disposition hearing.

Held: Affirmed.

Opinion Text: Standard of Review

A juvenile court has broad discretion in determining a suitable disposition for a juvenile who has been adjudged to have engaged in delinquent conduct. See *In re H.G.* 993 S.W.2d 211, 213 (Tex.App. San Antonio 1999, no pet.); *Matter of T.A.F.*, 977 S.W.2d 386, 387 (Tex.App. San Antonio 1998, no pet.); *Matter of J.R.*, 907 S.W.2d 107, 110 (Tex.App. Austin 1995, no writ). Accordingly, we will not disturb the juvenile court's findings regarding disposition absent a clear abuse of discretion. See *T.A.F.*, 977 S.W.2d at 387; *Matter of C.C.*, 930 S.W.2d 929, 930 (Tex.App. Austin 1996, no writ). The juvenile court abuses its discretion when it acts arbitrarily or

unreasonably; that is, without reference to guiding rules and principles. See T.A.F., 977 S.W.2d at 387.

## Analysis

The juvenile court may modify its disposition based on a finding that the juvenile engaged in delinquent conduct so as to commit the juvenile to TYC 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 1996).

When reviewing a factual sufficiency challenge in a juvenile case, we consider the totality of the evidence to determine whether the evidence supporting the finding is so weak or the evidence contrary to the finding is so overwhelming that it is clearly wrong and unjust. In re H.G. 993 S.W.2d at 213. The trier of fact is the exclusive judge of the credibility of witnesses, and, as such, may believe or disbelieve any witness and may resolve any inconsistencies in the testimony of any witness. Id. at 213.

On appeal, A.V. contends that the order modifying disposition does not satisfy the elements necessary to commit a juvenile to TYC under section 54.04(i) of the Family Code. A.V. specifically contends that although the court attempted to fulfill the necessary elements under section 54.04(i) to commit him to TYC, the court abused its discretion because other remedies were available to assist him.

This Court has previously held that "mandatory determinations" required under section 54.04(i) for original disposition cases are not considered when modifying disposition. Id. at 214. Rather, the juvenile court should employ section 54.05(f) of the Texas Family Code when addressing modification cases. Id. at 214.

In the case at hand, A.V. was before the court on a motion to modify his prior disposition, which accordingly, is governed by section 54.05(f) of the Texas Family Code. Therefore, the "mandatory determinations" under section 54.04(i) are inapplicable. Consequently, the only inquiry before this Court is whether the evidence was factually sufficient to support the trial court's finding that A.V. violated a reasonable and lawful order of the court.

It is clear that A.V. did not comply with his probation conditions. By failing to report to his probation officer, using illegal drugs, and failing to make the required restitution monthly payments, the trial court found by a preponderance of the evidence that A.V. violated a reasonable and lawful order of the court. Even though efforts were made on behalf of A.V.'s mother to help, the record nevertheless contains uncontroverted evidence that A.V. did not comply with the terms of his probation. Moreover, there is no allegation that the disposition of the court imposing probation was not a reasonable and lawful order. As a result, the trial court did not abuse its discretion in committing A.V. to TYC. We overrule A.V.'s sole issue on appeal. We hold the evidence was factually sufficient to support the juvenile court's order of modification. Accordingly, we conclude the juvenile court did not abuse its discretion.

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