

Juvenile Law Case Summaries

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Evidence is factually sufficient to support boot camp probation in school burglary case [In re J.C.C.] (02-3-24).

On July 25, 2002, the Corpus Christi Court of Appeals held that evidence of a school burglary was sufficient to support the juvenile court's order placing respondent in a long term boot camp.

02-3-24. In the Matter of J.C.C., UNPUBLISHED, No. _____, 2002 WL 1724010, 2002 Tex.App.Lexis ____ (Tex.App.-Corpus Christi 7/25/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: Appellant, J.J.C., a juvenile, pleaded true to the State's allegations that he committed the offenses of criminal trespass, theft, and two counts of burglary of a building. After hearing evidence, the trial court placed him on probation and ordered him to complete the J.U.S.T.I.C.E. Long Term Boot Camp Program. By a single point of error, appellant contends the evidence is factually insufficient to support the trial court's order that he be placed in the boot camp. [FN1] We affirm.

FN1. At the conclusion of his brief, appellant summarized his argument as follows:

J.J.C. challenges the factual sufficiency of the evidence to support the trial court's findings which permit J.J.C.'s placement outside his home. The trial court abused its discretion in committing him to the J.U.S.T.I.C.E. Long Term Boot Camp, rather than assigning him to a sanction level four (4) as provided for in section 59.007 of the Texas Family Code, because the evidence is insufficient to support the court's deviation from the progressive sanctions guidelines.

While this Court has the power to determine whether there is evidence to support removal from the child's home and to set aside the disposition if there is no evidence, or to set aside a disposition on abuse of discretion grounds, see *In re A.S.*, 954 S.W.2d 855, 861 (Tex.App.-El Paso 1997, no pet.), the family code prohibits a child from complaining on appeal about the court's deviation from the sanction level assignment guidelines. See Tex. Fam.Code Ann. § 59.014(3) (Vernon Supp.2002); see also *In re C.C.*, 13 S.W.3d 854, 857 (Tex.App.-Austin 2000, no pet.). Therefore, we will only address appellant's contention that the evidence was factually insufficient to support his placement outside his home.

Held: Affirmed

Opinion Text: A. Standard of review

A juvenile court's disposition order is reviewable both for sufficiency of the evidence supporting the necessary findings and an abuse of discretion. In *re M.A.C.*, 999 S.W.2d 442, 446 (Tex.App.-El Paso 1999, no pet.). The juvenile court's findings of fact are reviewable for factual sufficiency of the evidence to support them. In *re C.C.*, 13 S.W.3d 854, 858 (Tex.App.-Austin 2000, no pet.); In *re M.A.C.*, 999 S.W.2d at 446. In reviewing the factual sufficiency of the evidence, we consider and weigh all of the evidence and if the finding is so against the great weight and preponderance of the evidence that it is manifestly unjust, we set aside the disposition order and remand the case for a new disposition hearing. In *re C.C.*, 13 S.W.3d at 859; see In *re K.L.C.*, 972 S.W.2d 203, 206-07 (Tex.App.-Beaumont 1998, no pet.).

Section 54.04 of the Texas Family Code guides the juvenile court's exercise of discretion in making an appropriate disposition. In *re M.A.C.*, 999 S.W.2d at 446. Section 54.04(c) provides:

No disposition may be made under this section unless the child is in need of rehabilitation or the protection of the public or the child requires that disposition be made. If the court or jury does not so find, the court shall dismiss the child and enter a final judgment without any disposition. No disposition placing the child on probation outside the child's home may be made under this section unless the court or jury finds that 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 the probation.

Tex. Fam.Code Ann. § 54.04(c) (Vernon Supp.2002). Furthermore, section 54.04(i) provides, in relevant part:

If the court places the child on probation outside the child's home or commits the child to the Texas Youth Commission, the court: o shall include in its order its determination that:

- o it is in the child's best interests to be placed outside the child's home;
- o 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
- o 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;

Tex. Fam.Code Ann. § 54.04(i)(1) (Vernon Supp.2002).

The trial court has broad discretion to fashion an appropriate disposition after it has adjudicated a child to be a delinquent. In re T.K.E., 5 S.W.3d 782, 784 (Tex.App.-San Antonio 1999, no pet.); In re A.S., 954 S.W.2d 855, 861 (Tex.App.-El Paso 1997, no pet.); In re J.R., 907 S.W.2d 107, 110 (Tex.App.-Austin 1995, no writ). Absent an abuse of discretion, the appellate court will not disturb the juvenile court's findings. In re A.S., 954 S.W.2d at 861; In re J.P.O., 904 S.W.2d 695, 698 (Tex.App.-Corpus Christi 1995, writ denied).

B. Disposition Hearing

On December 1, 2000, appellant pleaded true to the State's allegations that he committed the offenses of criminal trespass, theft, and two counts of burglary of a building. The trial court determined that appellant was a juvenile in need of rehabilitation. The State offered the probation officer's report into evidence.

The probation officer's report described the following offenses committed by appellant:

- On July 27, 2000, appellant stole a bass guitar, snare drum, and two cymbals from the band hall at Calallen High School;
- On October 7, 2000, appellant smashed a classroom window at Annville Elementary and took a laptop computer;
- On October 17, 2000, appellant extensively vandalized the field house, athletic maintenance shed, and home press box of the football field at Tuloso- Midway High School, causing \$51,952.52 in damage; and
- On October 19, 2000, at 11:20 p.m., appellant and his two siblings were found prowling around Annville Elementary. The juveniles had jumped the 8-10 foot chain link fence surrounding the school and were discovered with a backpack, a pair of wire-cutting pliers and a wood-handle hammer.

After describing appellant's referrals, the probation officer's evaluation states:

Although [J.J.C.] and his mother have cooperated with this Department, providing this officer with needed information for Court, keeping all office visits, and allowing a home visit to be made, it is the opinion of the Department that [J.J.C.] is in need of additional supervision and direction in order to deter further delinquent behavior.... It is respectfully recommended for the Court's consideration that [J.J.C.] be placed on Court-ordered Intensive Supervision Probation for a period of one year. The juvenile was adjudicated on a Level IV Progressive Sanction offense. The Department is recommending a Level IV Progressive Sanction Plan due to the severity of the offense.

The following reasons were given for the probation department's recommendation:

- [J.J.C.] has two referrals to the Nueces County Juvenile Department;
- [J.J.C.] is in need of additional supervision by this Department due to the nature of his offenses;
- Probation will provide guidance and monitoring of [J.J.C.'s] home and school environment as well as peer association;
- [J.J.C.] should be held accountable for his actions within the community; and

The parent's participation in parenting classes will support her discipline practices and help build a closer relationship to her children. The State then called Gary Burnett, the Director of Student Services and Career Technology at Tuloso-Midway I.S.D. Burnett testified regarding the burglary of Tuloso-Midway High School and the losses and damages totaling \$51,952.52. Burnett stated:

[We are] very concerned about this situation. Our community is very proud of our facilities. They've worked very, very diligently to pass a bond several years ago to build a brand new field house that's been open less than one year. To have what we had happen to us on October the 17th was very harmful to our--not harmful, but it was a disrespect to our community. Our community's very concerned about this. I am very glad the system has worked. In fact, we have apprehended the people that were involved in this. I know that when it comes to consequences, sometimes the law also states that there's only certain things we can do. We're not necessarily wanting to make this an example, but this was a very, very serious offense that took place at Tuloso.

Appellant presented no evidence at the disposition hearing. The State then recommended that [J.J.C.]:

- be placed on official probation for a period of one year; that aside from the usual and customary requirements of probation, that he participate in the Intensive Supervision Probation Program; that he attend Operation Outreach as directed; that he attend and complete counseling at MH-MR; that he ingest all medication as prescribed by his doctor; and that he pay restitution in the amount \$3,652.23 and complete 40 hours of community service.

The trial court then stated:

I'm just not feeling real good about this recommendation and I'm not gonna follow it.... I--I just don't have any faith in our ability immediately, anyway, to supervise you at home. So I--I'm going to impose the Boot Camp to give us sort of a foothold to keep some

supervision after you've completed that program.

On December 1, 2000, the trial court signed an order placing appellant on official probation until his eighteenth birthday and ordered that the rules of probation include appellant's placement at the J.U.S.T.I.C.E. Long Term Boot Camp. In support of this disposition, the trial court found:

that reasonable efforts have been made to prevent or eliminate the need for the Respondent to be removed from his home and to make it possible for the Respondent to return to his home. The Court finds that 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 the probation without some assistance. The Court finds that the best interest of the Respondent and of the community will be served by placing the Respondent on probation outside his home at the J.U.S.T.I.C.E. Long Term Boot Camp Program until successfully completed. The Court further finds that the Respondent has been removed from his home and the Court approves the removal.

C. Conclusion

We conclude the trial court made the required findings to support its placement of appellant on probation outside the home. See Tex. Fam.Code Ann. § 54.04(c), (i) (Vernon Supp.2002). We further conclude the trial court's findings are not so against the great weight and preponderance of the evidence that they are manifestly unjust. Accordingly, we hold the evidence is factually sufficient to support the trial court's disposition, and the trial court did not abuse its discretion in making this disposition. We overrule appellant's sole point of error.

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