

Juvenile Law Case Summaries

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Removal from home findings not required for probation revocation [In re M.M.] (02-3-25).

On July 31, 2002, the San Antonio Court of Appeals held that the removal from home findings required for disposition by section 54.04(i) do not apply to modification of disposition and revocation of probation. It also held that revocation for leaving the county without permission is ok.

02-3-25. In the Matter of M.M., UNPUBLISHED, No. _____, 2002 WL 1758314, 2002 Tex.App.Lexis ____ (Tex.App.-San Antonio 7/31/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: M.M. appeals the trial court's order modifying his original disposition. In his sole issue, M.M. complains that the evidence is factually insufficient to support his commitment to Texas Youth Commission ("TYC") under section 54.04(i) of the Texas Family Code. Because the trial court was not required to make any findings under section 54.04(i) to modify M.M.'s disposition, we affirm the court's order.

On March 23, 2001, the trial court found that M.M. had engaged in delinquent conduct by committing the offense of indecency with a child. The trial court imposed a disposition of 19 months probation. The State moved to modify M.M.'s disposition, alleging M.M. had violated the terms of his probation by "leaving Bexar County without permission in advance from his probation officer or the court." Upon a finding that M.M. had violated the terms of his probation, the trial court modified its disposition, committing M.M. to TYC.

Held: Affirmed.

Opinion Text: STANDARD OF REVIEW

A trial court has broad discretion in determining a suitable disposition for a child found to have engaged in delinquent conduct. In re H.G., 993 S.W.2d 211, 213 (Tex.App.-San Antonio 1999, no pet.). Accordingly, we review the trial court's modification of a juvenile disposition for an abuse of discretion. Id. A trial court abuses its discretion when it acts arbitrarily or unreasonably, or without reference to any guiding rules and principles. Id.

In this case, M.M. complains that there is factually insufficient evidence to support his commitment to TYC under section 54.04(i) of the Texas Family Code. See Tex. Fam.Code Ann. § 54.04(i) (Vernon Supp.2002). M.M.'s reliance on section 54.04(i), however, is misplaced. We have previously held that section 54.04 applies only to a court's original disposition. In re H.G., 993 S.W.2d at 214. M.M. was before the court on the State's motion to modify his prior disposition. Such modification proceedings are governed by section 54.05 of the Family Code. Id. Section 54.05(f) permits a trial court to modify a disposition by ordering commitment to TYC if it 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 Supp.2002); In re H.G., 993 S.W.2d at 214. Section 54.05(f) does not require the trial court to make any findings under section 54.04(i). See Tex. Fam.Code Ann. § 54.05(f); In re H.G., 993 S.W.2d at 214. Because the "mandatory determinations" required by section 54.04(i) are inapplicable in this instance, our only consideration is whether there is sufficient evidence to support the trial court's finding that M.M. violated a reasonable and lawful order of the court. In re H.G., 993 S.W.2d at 214.

There is no dispute that M.M. violated the terms of his probation. Specifically, the record contains uncontroverted evidence that M.M. left Bexar County without first receiving permission from either the court or a probation officer as required under the terms of his probation. This evidence is sufficient to support the trial court's finding that M.M. violated a reasonable and lawful order of the court. Therefore, we hold that the trial court did not abuse its discretion and overrule M.M.'s sole issue. See id.

We affirm the trial court's modification of disposition committing M.M. to TYC.

