

## Juvenile Law Case Summaries

By

**Robert O. Dawson**

Bryant Smith Chair in Law  
University of Texas School of Law

[2002 Case Summaries](#)   [2001 Case Summaries](#)   [2000 Case Summaries](#)   [1999 Case Summaries](#)

### ***El Paso Court says removal from home findings required to modify probation by placing the child outside his home [In re S.R.R.] (02-3-33).***

On August 15, 2002, the El Paso Court of Appeals held that the removal from home findings required by Section 54.04 apply to modification of disposition to place a child outside his or her home.

02-3-22. In the Matter of S.R.R., UNPUBLISHED, No. 08-01-00365-CV, 2002 WL 1874853, 2002 Tex.App.Lexis \_\_\_\_ (Tex.App.-El Paso 8/15/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: Appellant S.R.R., a juvenile, appeals from the trial court's judgment modifying and extending his probation for delinquency. Appellant brings one issue: (1) the trial court abused discretion in finding count three of the allegations in the State's motion to modify disposition true.

S.R.R. tried to burglarize an elementary school in October 1999. After the juvenile stipulated to the facts and waived certain rights, including his right to a jury trial, the trial court placed S.R.R. on in-home probation on November 29, 1999. In March 2000, S.R.R. carried a gun he had stolen into his elementary school, and the judgment was modified on May 9, 2000, to require him to enter into Intensive Supervision Program for three to six months. A year later, on May 8, 2001, the State brought a second motion to modify the judgment and alleged that S.R.R. had sexually assaulted T.R., a child less than fourteen years old, by penetrating her mouth, anus, and sexual organ with his sexual organ. The trial court found that S.R.R. violated the juvenile court order by committing aggravated sexual assault on T.R. by penetrating her mouth with his sexual organ and also that probation outside of his home would best serve the child's and the community's interests. The disposition order contains the findings required by Section 54.04(i) of the Texas Family Code and also the reasons for the disposition as required by Section 54.05(i). [FN1]

FN1. Section 54.04(i)(1) provides, in relevant part, as follows:

(i) If the court ... commits the child to the Texas Youth Commission, the court:

(1) shall include in its order its determination that:

(A) it is in the child's best interests to be placed outside the child's home;

(B) 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

(C) 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).

Section 54.05(i) provides:

The court shall specifically state in the order its reasons for modifying the disposition and shall furnish a copy of the order to the child.

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

Held: Affirmed.

Opinion Text: Before a juvenile court can modify disposition to place a child on probation outside the child's home or to commit the child to the Texas Youth Commission, the juvenile court must state sufficient reasons, including but not limited to those found in

Section 54.04(i) of the Family Code, to justify such a decision. Tex.Fam.Code Ann. § 54.04(i); In the Matter of L.R., 67 S.W.3d 332, 337 (Tex.App.-El Paso 2001, no pet.). Therefore, on appeal, a juvenile may challenge (1) the juvenile court's finding that he violated a term or condition of probation, and (2) the reasons for the disposition stated in the order pursuant to the Family Code. Tex.Fam.Code Ann. §§ 54.04(i), 54.05(i); L.R., 67 S.W.3d at 337.

S.R.R. challenges the factual sufficiency of the evidence to support the trial court's finding that he violated a condition of the probation but does not contend the evidence was legally insufficient to find a violation of the condition of probation or that evidence was insufficient to support the reasons behind the disposition.

Juvenile courts are vested with broad discretion in determining the suitable disposition of children found to have engaged in delinquent conduct, and this is especially true in hearings to modify disposition. L.R., 67 S.W.3d at 338. Absent an abuse of discretion, we will not disturb the juvenile court's determination. Id. In conducting this review, we engage in 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? Id. The traditional sufficiency of the evidence review, articulated below, comes into play when considering the first question. 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 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. Id. 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. L.R., 67 S.W.3d at 339.

A factual sufficiency point requires examination of all of the evidence in determining whether the finding in question is so against the great weight and preponderance of the evidence as to be manifestly unjust. *Lindsey v. Lindsey*, 965 S.W.2d 589, 591 (Tex. App.-El Paso 1998, no pet.). We may not pass upon the witnesses' credibility nor will we substitute our judgment for that of the jury, even if the evidence would clearly support a different result; rather, if competent evidence of probative force supports the challenged finding, we will sustain it. *Gonzalez v. El Paso Hosp. Dist.*, 940 S.W.2d 793, 796-97 (Tex.App.-El Paso 1997, no writ).

A trial court may modify any disposition, except a commitment to the Texas Youth Commission, until the child reaches his eighteenth birthday or is discharged by the trial court or by the operation of law. Tex.Fam.Code Ann. § 54.05(a). To modify the disposition to commit a child outside the home, the trial court must find that the child violated a reasonable and lawful order of the court by a preponderance of the evidence. Tex.Fam.Code Ann. § 54.05(f), (j); L.R., 67 S.W.3d at 337-38.

A person commits aggravated sexual offense if the person intentionally or knowingly causes the penetration of the mouth of another child by the sexual organ of the actor and the child is younger than fourteen years of age. Tex.Pen.Code Ann. § 22.021(a)(1)(B)(ii) & (2)(B)(Vernon Supp.2002).

S.R.R. lives with his grandmother and has two siblings, a twin brother and a younger sister; the sister had been friends with T.R. since they were in first grade.

In April 2000, the third grade children at Burnett Elementary school began circulating a note, which stated, in part, "T---sucked one of K---'s brothers' dick for two Pokemon cards." Concerned, the school's counselor, Sue Hardy, met with T.R. T.R. at first denied the allegations in the note then admitted that she had put her mouth on a boy's private parts and that S.R.R.'s sister had seen what had happened. There was no testimony on where the act had occurred.

T.R. said that she was ten years old at the time of the hearing and was also able to identify the private parts on a girl and a boy, including the penis. She said that she lied when she admitted to the two different counselors that she had done various sexual deeds.

When she and T.R. played at their home, S.R.R.'s sister never saw anything bad happen between T.R. and her brothers. However, she once heard her other brother, S.R.R.'s twin, tell T.R. that she "can't get by unless you suck my private" when they were playing in the backyard. T.R. was standing by the shed at the time. Also, she had seen S.R.R. take T.R. into the shed once, and afterwards, when T.R. said S.R.R. had been trying to rape her, S.R.R. told her that T.R. put her mouth on his private area for some Pokemon cards.

S.R.R.'s twin remembered finding his brother and T.R. together inside the shed at an unknown time. T.R. was wearing a dress, and she was bending over with her underwear pulled down to her knees. S.R.R.'s pants and underwear were down at his knees as well, and he was standing behind her. S.R.R. and T.R. were not touching each other, and S.R.R. said T.R. had pulled his pants and her underwear down. S.R.R. said nothing more to explain the situation to his brother.

The trial court need have found only by a preponderance of the evidence, not by beyond a reasonable doubt, that S.R.R. had intentionally and knowingly penetrated the mouth of a child younger than fourteen years old with a sexual organ, a violation of law and of a condition of the probation. Tex.Fam.Code Ann. § 54.05(f) & (j); Tex.Pen.Code Ann. § 22.021(a)(1)(B)(ii) & (2)(B). Since T.R.

recanted her statement that S.R.R. had touched her sexually, no direct testimony of the alleged incident exists, and we cannot know what had actually occurred. However, testimony from S.R.R.'s twin and sister overwhelmingly placed S.R.R. with T.R. in a compromising position and location. S.R.R. was with T.R. at a shed at his home's backyard, and not only did his brother observe both children with their underwear down by their knees and standing close together but S.R.R. also told his sister that T.R. had touched his sexual organ with her mouth after his sister saw him take T.R. into the shed. The evidence is not so overwhelming that the trial court could not find by the preponderance of the evidence that S.R.R. penetrated T.R.'s mouth with his sexual organ and that T.R. was younger than fourteen years of age at the time. The evidence is factually sufficient to find S.R.R. violated a condition of his probation. Since S.R.R. does not challenge the trial court's modification of the disposition to place him on probation outside his home, we do not reach the second prong of the analysis. The trial court did not abuse discretion in modifying the disposition. We overrule S.R.R.'s sole issue.

[Editor's Comment: The El Paso Court says that modification of disposition requires that the juvenile court make a finding that a reasonable and lawful condition of probation has been violated. Other courts have held to the contrary-that a juvenile court can following notice and hearing, or with consent of the juvenile, modify disposition (other than by revocation and TYC commitment) without finding a violation of probation.]

---

[2001 Case Summaries](#)   [2000 Case Summaries](#)   [1999 Case Summaries](#)