

Juvenile Law Case Summaries

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Evidence was factually and legally sufficient to support home removal findings in modification and TYC commitment [In re W.J.W.] (02-4-17).

On October 31, 2002, the El Paso Court of Appeals held that the evidence was sufficient to support the juvenile court's finding that adequate efforts had been made to prevent the need for removal of the respondent from his home.

02-4-17. In the Matter of W.J.W., UNPUBLISHED, No. 08-01-00440-CV, 2002 WL 31429812, 2002 Tex.App.Lexis ____ (Tex.App.-El Paso 10/31/2002) Texas Juvenile Law (5th Ed. 2000).

Facts: W.J.W., a juvenile, appeals his commitment to the Texas Youth Commission. On appeal, he challenges the legal and factual sufficiency of the juvenile court's findings. We affirm.

On May 9, 2000, W.J.W. was found to have engaged in delinquent conduct by committing the offense of Criminal Trespass. After a disposition hearing, W.J.W. was placed on supervised probation with the El Paso County Juvenile Probation Department. On September 5, 2000, the juvenile court found that W.J.W. had violated the terms of his probation in July 2000 by running away from home. After a disposition hearing, the juvenile court placed W.J.W. in an out-of-home placement at the Campbell Griffin Residential Treatment Center.

On February 6, 2001, at a modification hearing, the juvenile court found that W.J.W. was unsuccessfully discharged from the Campbell Griffin facility. The Juvenile Probation Department recommended that W.J.W. be placed in an out-of-home placement at Meadow Pines Residential Treatment Center and the juvenile court judge ordered that placement on March 15, 2001. While at the Meadow Pines facility, W.J.W. was charged with and adjudicated on May 3, 2001 with having committed the offense of Indecent Exposure, Class "B" misdemeanor. The disposition was transferred to El Paso County and a disposition hearing was held on June 1, 2001.

At the June 1, 2001 disposition hearing, the juvenile court ordered that W.J.W. be placed in the Grayson County Boot Camp Sex Offender Treatment Center. On August 16, 2001, the State filed a motion to modify disposition, alleging that W.J.W. had been unsuccessfully discharged from the sex offender treatment program for noncompliance with the rules and regulations of the facility. At a contested modification hearing held on September 5, 2001, the juvenile court found that W.J.W. had violated at least one of the terms of his probation. At a disposition hearing on September 20, 2001, the juvenile court heard testimony from witnesses and ordered that W.J.W. be committed to the Texas Youth Commission. The juvenile court's modification-disposition order contains the findings for the disposition as required under Sections 54.04(i) and 54.05(i) of the Texas Family Code. W.J.W. now brings this appeal.

Held: Affirmed.

Opinion Text: In two issues, W.J.W. contends that the evidence is legally and factually insufficient to support the juvenile court's order that he be committed to the Texas Youth Commission. Specifically, W.J.W. asserts that the court's findings that reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and that no community-based intermediate sanction is available to adequately address the needs of the juvenile or to adequately protect the needs of the community are not supported by the evidence.

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, that court must state sufficient reasons, including but not limited to those stated in Section 54.04(i) of the Family Code, to justify such a decision. [FN1] Tex.Fam.Code Ann. § 54.04(i)(Vernon 2002); 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 both the juvenile court's finding that he violated a

term or condition of probation and the reasons for the disposition stated in the order pursuant to Sections 54.04(i), a disposition hearing, and 54.05(i), a hearing to modify disposition. [FN2] Tex.Fam.Code Ann. §§ 54.04(i), 54.05(i); L.R. , 67 S.W.3d at 337.

FN1. Section 54.04(i) provides in pertinent part:

(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).

FN2. 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. § 54.05(i). Further, Section 54.04(f) also requires that: "The court shall state specifically in the order its reasons for the disposition and shall furnish a copy of the order to the child. If the child is placed on probation, the terms of probation shall be written in the order." Tex.Fam.Code Ann. § 54.04(f).

Standard of Review

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 apply 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? L.R., 67 S.W.3d at 338. The traditional sufficiency of the evidence review, articulated below, comes into play when considering the first question. *Id.* The reviewing court then proceeds 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.

In considering the legal insufficiency point, we consider only the evidence that tends to support the jury's findings and disregard all evidence and inferences to the contrary. *Lindsey v. Lindsey*, 965 S.W.2d 589, 591 (Tex.App.-El Paso 1998, no pet.). If more than a scintilla of evidence exists to support the questioned finding, the legal insufficiency point fails. *Id.*

In reviewing W.J.W.'s factual sufficiency challenge, we examine all of the evidence in determining whether the finding in question is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. In the *Matter of M.A.C.*, 999 S.W.2d 442, 446 (Tex.App.-El Paso 1999, no pet.); *Lindsey*, 965 S.W.2d at 591. We may not pass upon the witnesses' credibility nor 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 pet.).

Sufficiency of the Evidence

W.J.W. does not challenge the juvenile court's determination that he violated a reasonable and lawful order of the juvenile court. Instead, he challenges the legal and factual sufficiency of the court's findings, specifically, "that reasonable efforts were made to prevent or eliminate the need for the child's removal from the home" and "that no community-based intermediate sanction is available to adequately address the needs of the juvenile or to adequately protect the needs of the community." W.J.W. argues that the probation department failed to explore other alternative treatment programs and options available in the community that would have been better suited to his individual needs than placement at the Texas Youth Commission.

At the September 20, 2001 disposition hearing, the State called one witness to testify, Ms. Liliana Manqueros, W.J.W.'s probation officer. She recommended that W.J.W. be placed in the care, custody, and control of the Texas Youth Commission. With respect to W.J.W.'s home, Ms. Manqueros testified that his biological parents were divorced in 1988, at which time his father was reportedly using controlled substances and alcohol and had physically abused W.J.W.'s mother in front of the children. W.J.W.'s mother relocated to El Paso from Austin and remarried in 1990. W.J.W.'s mother encountered problems in the second marriage due to the stepfather's alcohol abuse and physical aggression towards her. W.J.W.'s mother was presently residing in a battered women's shelter.

In the modification-disposition report entered into State's evidence, Ms. Manqueros stated that W.J.W.'s mother has had problems with W.J.W.'s behavior since he was age five. He has been defiant and has displayed aggressive behaviors toward his sisters. W.J.W.'s mother sought assistance through various programs, however, W.J.W.'s behavior worsened. Every method of discipline, including verbal reprimands, removal of privileges and physical discipline, was ineffective as W.J.W. continued to misbehave. W.J.W.'s mother finally sent W.J.W. to live with his biological father in 1996. W.J.W.'s father reportedly was still abusing drugs, was homeless, and taught W.J.W. to steal and panhandle. It was also reported that W.J.W.'s father sexually abused W.J.W. for approximately one year. Child Protection Services took W.J.W. into custody and transferred him to El Paso.

Ms. Manqueros testified that several efforts had been made to rehabilitate W.J.W. at home. She stated that her department had attempted to provide W.J.W. with supervision in the home, home-based intervention services through the First Offenders Program, and supervised probation. In addition, W.J.W. had been provided with three out-of-home placements and two therapeutic foster care placements, but remained unresponsive to any of the department's efforts. Ms. Manqueros stated that the department did not examine other alternatives to commitment at Texas Youth Commission because the department believed that it had exhausted its resources. Ms. Manqueros explained that the department had provided W.J.W. with every type of treatment the department was capable of providing, which included foster care, therapeutic care, residential care, psychiatric care, and a boot camp setting, to all of which W.J.W. had not been receptive. Ms. Manqueros also stated that Dr. Barrientos, who conducted a psychological evaluation of W.J.W., recommended that W.J.W. be placed outside of the home in a structured program of psychiatric care, behavior modification, and continue his education, all of which Texas Youth Commission could provide, along with recreational, vocational, and adult living skills services. [FN3]

FN3. Specifically, Dr. Barrientos' September 17, 2001 psychological evaluation of W.J.W., which was submitted into evidence states, "W.J.W. is an emotionally and behaviorally disturbed adolescent who is in need of both psychiatric treatment and a high degree of supervision and structure. Since his home life appears to be in chaos, it is recommended that he be placed outside the home in a structured program of psychiatric care, behavior modification, and continued education."

On cross-examination, Ms. Manqueros testified that W.J.W. remained in the home for approximately one month after his first adjudicated offense during which time he continued to defy his mother and then ran away from home. According to the September 5, 2000 modification-disposition report on the incident which was submitted as State's evidence, W.J.W. had an extensive history of running away and was experiencing discord between himself and his stepfather. At the time, W.J.W.'s mother felt that he needed a structured facility as she could no longer address his issues and had already tried many out-patient resources.

Ms. Manqueros admitted that after W.J.W. was taken out of the home, the department did not consider placing him back at home, though W.J.W. requested that he would like to go back. The department considered, but did not recommend, therapeutic foster care because they felt that with W.J.W.'s constant defiance within a controlled structured setting without improving any of his behaviors, he was in need of a more intensive level of care. Ms. Manqueros also stated that W.J.W. was offered two therapeutic foster placements prior to coming on to probation and both placements had failed.

The department had attempted to reunify W.J.W. with his family through family therapy via teleconference while he was at the Campbell-Griffin Residential Treatment, but the effort was unsuccessful. There was also an attempt while W.J.W. was at the Meadow Pines Residential Treatment Center. Ms. Manqueros testified that there was no option available in which W.J.W. could be placed in a controlled environment for psychiatric care in El Paso or through the Juvenile Probation Department. She further stated that there was no type of individual counseling that W.J.W. could receive in El Paso at the level of care he needed, but that Texas Youth Commission could provide this option.

W.J.W. offered his own testimony at the September 20, 2001 disposition hearing. W.J.W. testified that he no longer had drug and alcohol abuse problems. W.J.W. explained that he had some problems with behavior during the therapeutic foster care program prior to probation, but nothing major. W.J.W. denied threatening his foster care families. With respect to family reunification, W.J.W. stated that he and his mother never received counseling together at the Campbell-Griffin facility, but he did have one request at the Meadow Pines facility. When questioned about the probation department's recommendation, W.J.W. stated that he did not think he needed to go to the Texas Youth Commission facility because he knew he could be good. Further, he stated that he still had some problems managing his anger, but he was trying to work it out. W.J.W. thought a foster home or other placement and therapy offered locally would help him. He also thought more contact with his mother would help him overcome his problems.

We have considered all of the evidence in the instant case, and given the evidence detailed above, we find that there was sufficient evidence to support the juvenile court's findings that the probation department made reasonable efforts to prevent or eliminate the need for W.J.W.'s removal from his home. There is ample evidence that the probation department offered an array of services in an attempt to rehabilitate W.J.W.'s behavior. W.J.W.'s probation officer also offered sufficient evidence that at this time there is no community-based intermediate sanction available that would adequately address all of W.J.W.'s needs. Further, we find that the juvenile court's order of commitment and findings are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Finding no abuse of discretion, we overrule Issues One and Two and affirm the judgment of the trial court.

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