

Appeals

Speaker Information

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Biographical Information

Mike Brown is an attorney in private practice in Lubbock, Texas. Mr. Brown received his Doctor of Jurisprudence with honors from the University of Texas School of Law in 1973. He is currently a member of several professional organizations including the State Bar of Texas, Lubbock County Bar Association, Lubbock Criminal and Defense Lawyer's Association.

18th Annual Juvenile Law Conference

PROFESSOR ROBERT O. DAWSON
JUVENILE LAW INSTITUTE

February 1- 3, 2005 • Renaissance Hotel • Austin, Texas

TEXAS JUVENILE APPELLATE PRACTICE

Presented by

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This paper is presented as a review of basic information concerning the appeal of a juvenile case. This paper is not comprehensive and is not a substitute for legal research by a lawyer prosecuting an appeal.

I. Sources of Law

- A. TEXAS JUVENILE JUSTICE CODE (Title 3, TEX. FAMILY CODE, §56.01, *et seq.*);
- B. TEXAS RULES OF APPELLATE PROCEDURE;
- C. TEXAS RULES OF CIVIL PROCEDURE.
- D. TEX. JUV. J. CODE controls over TEX. R. APP. PROC.. *M.R.R. v. State*, 903 S.W.2d 49 (Tex.App.1995).

II. Entry of an appealable order

- A. Court must advise child and parent or guardian of right of appeal. TEX. JUV. J. CODE, §56.01(e).
- B. If desired, counsel must perfect appeal and notify court of representation. *Id.*, §56.01(f).
- C. Counsel is mandatory, including counsel for indigents. *Id.*, §56.01(d) & (f).
- D. Free record for indigent appeals; otherwise, counsel is responsible for procuring record.

III. Jurisdiction

- A. Appeal is as in civil cases generally. TEX. JUV. J. CODE, §56.01(a).
- B. Direct appeal lies in the Court of Appeals. *Id.*
- C. Writ of Error to Supreme Court. *Id.*
- D. Direct Appeal to Court of Criminal Appeals after certification & conviction. *See* TEX. JUV. J. CODE, §56.01(c); TEX. CODE CRIM. PROC., art., 44.07.
- E. Writ of Habeas Corpus to the Court of Criminal Appeals.

IV. Appealable Orders & Parties

- A. Parties who may appeal: TEX. JUV. J. CODE, §56.01(c)(1)
 - 1. By or on behalf of the child.
 - 2. Parents? *See Adair v. Kupper*, 890 S.W.2d 216 (Tex.App.--Amarillo, 1994);
 - 3. Guardian ad litem, *without cost bond*. *R. M. v. State*, 563 S.W.2d 853 (Tex.App., 1978).
 - 4. The State may not appeal. *See* TEX. JUV. J. CODE, §56.02(b).
- B. Appealable orders: TEX. JUV. J. CODE, §56.01(c)(1)
 - 1. Adjudication of delinquency or CINS;
 - 2. Disposition and Modification of Disposition;
 - 3. Mental health commitments pursuant to Chapter 55, TEX. JUV. J. CODE;
 - 4. Transfer to TDCJ-ID pursuant to TEX. JUV. J. CODE, §54.11(i)(2);
 - 5. Certification of child for trial as adult, appealable only as part of appeal from criminal conviction; *See* TEX. JUV. J. CODE, §56.01(c); TEX. CODE CRIM. PROC., art., 44.07;
 - 6. No appeal lies from a plea bargained plea of true; TEX. JUV. J. CODE, §56.01(n), *except*,
 - 7. Conditional appeal, based upon pretrial motions and rulings, is permissible. TEX. JUV. J. CODE, §56.01(n)(2).

V. Perfecting Appeal

- A. Advice of right of appeal upon entry of appealable order;
- B. Motion for New Trial
 - 1. Condition precedent to appeal of certain matters, *Matter of M.R.*, 846 S.W.2d 97 (Tex.App. 1992, rehearing den'd).
 - 2. Required to challenge factual sufficiency of the evidence. *Matter of J.K.R.*, 986 S.W.2d 278 (Tex.App. 1998)
- C. Written Notice of Appeal, TEX. JUV. J. CODE, §56.01(b);
- D. Affidavit in lieu of cost bond, *Id.*
- E. Order approving pauper's oath, within time. *V.C.H. v. State*, 662 S.W.2d 42 (Tex.App. 1983).
- F. Time to perfect appeal: within 30 days of disposition or other appealable order; TEX. R. APP. PROC., 25.1; *Matter of J.C.H., Jr.*, 12 S.W.2d 561 (Tex.App.--San Antonio, 1999).
- G. Timely filing is jurisdictional.
- H. Perfecting appeal does not supercede the judgment nor release the child from custody. TEX. JUV. J. CODE, §56.01(g);
- I. Personal bond is permissible on motion to the Court of Appeals. *Id.*
- J. Untimely brief may result in dismissal for want of prosecution. *Cano v. State*, 605 S.W.2d 736 (Tex.Civ.App. 1980).

VI. Standard of Review

- A. Contemporaneous objection rule applies. *Matter of B.D.A, v. State*, 524 S.W.2d 550 (Tex.App., 1975); *Barletta v. State*, 994 S.W.2d 708 (Tex.App. 1999).
- B. Legal sufficiency complaints (no evidence) are governed by the standard of *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *Matter of B.M., v. State*, 1 S.W.2d 204 (Tex.App.--Tyler, 1999); *Matter of J.S., v. State*, 35 S.W.3d 287 (Tex.App.--Fort Worth, 2001).
- C. Factual sufficiency complaints (contrary to weight) are governed by *Clewis v. State*, 922 S.W.2d 126 (Tex.Crim.App.1996); *In re Y.S., v. State*, 602 S.W.2d 402 (Tex.Civ.App.1980); *Matter of G.A.T., v. State*, 16 S.W.3d 818 (Tex.App.--Houston [14th], 2000).

- D. In a bench trial, the standard of appellate review is “abuse of discretion.” *Matter of E.F., v. State*, 535 S.W.2d 213 (Tex.Civ.App.1976).
- E. An *Anders* brief is acceptable in a juvenile appeal. Texas Supreme Court, in an unpublished opinion, overruled contrary opinion in *Matter of D.A.S.*, 951 S.W.2d 528 (Tex.App.--Dallas, 1999).

VERNON'S TEXAS STATUTES AND CODES ANNOTATED
FAMILY CODE
TITLE 3. JUVENILE JUSTICE CODE
CHAPTER 56. APPEAL

Current through End of 1999 Reg. Sess.

§56.01. Right to Appeal

(a) An appeal from an order of a juvenile court is to a court of appeals and the case may be carried to the Texas Supreme Court by writ of error or upon certificate, as in civil cases generally.

(b) The requirements governing an appeal are as in civil cases generally. When an appeal is sought by filing a notice of appeal, security for costs of appeal, or an affidavit of inability to pay the costs of appeal, and the filing is made in a timely fashion after the date the disposition order is signed, the appeal must include the juvenile court adjudication and all rulings contributing to that adjudication. An appeal of the adjudication may be sought notwithstanding that the adjudication order was signed more than 30 days before the date the notice of appeal, security for costs of appeal, or affidavit of inability to pay the costs of appeal was filed. A motion for new trial seeking to vacate an adjudication is timely if the motion is filed not later than the 30th day after the date on which the disposition order is signed.

(c) An appeal may be taken:

(1) except as provided by Subsection (n), by or on behalf of a child from an order entered under:

- (A) Section 54.03 with regard to delinquent conduct or conduct indicating a need for supervision;
- (B) Section 54.04 disposing of the case;
- (C) Section 54.05 respecting modification of a previous juvenile court disposition; or
- (D) Chapter 55 by a juvenile court committing a child to a facility for the mentally ill or mentally retarded; or

(2) by a person from an order entered under Section 54.11(i)(2) transferring the person to the custody of the institutional division of the Texas Department of Criminal Justice.

(d) A child has the right to:

- (1) appeal, as provided by this subchapter;
- (2) representation by counsel on appeal; and

(3) appointment of an attorney for the appeal if an attorney cannot be obtained because of indigence.

(e) On entering an order that is appealable under this section, the court shall advise the child and the child's parent, guardian, or guardian ad litem of the child's rights listed under Subsection (d) of this section.

(f) If the child and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney who represented the child before the juvenile court shall file a notice of appeal with the juvenile court and inform the court whether that attorney will handle the appeal. Counsel shall be appointed under the standards provided in Section 51.10 of this code unless the right to appeal is waived in accordance with Section 51.09 of this code.

(g) An appeal does not suspend the order of the juvenile court, nor does it release the child from the custody of that court or of the person, institution, or agency to whose care the child is committed, unless the juvenile court so orders. However, the appellate court may provide for a personal bond.

(h) If the order appealed from takes custody of the child from his parent, guardian, or custodian, the appeal has precedence over all other cases.

(i) The appellate court may affirm, reverse, or modify the judgment or order, including an order of disposition or modified disposition, from which appeal was taken. It may reverse or modify an order of disposition or modified order of disposition while affirming the juvenile court adjudication that the child engaged in delinquent conduct or conduct indicating a need for supervision. It may remand an order that it reverses or modifies for further proceedings by the juvenile court.

(j) Neither the child nor his family shall be identified in an appellate opinion rendered in an appeal or habeas corpus proceedings related to juvenile court proceedings under this title. The appellate opinion shall be styled, "In the matter of, " identifying the child by his initials only.

(k) The appellate court shall dismiss an appeal on the state's motion, supported by affidavit showing that the appellant has escaped from custody pending the appeal and, to the affiant's knowledge, has not voluntarily returned to the state's custody on or before the 10th day after the date of the escape. The court may not dismiss an appeal, or if the appeal has been dismissed, shall reinstate the appeal, on the filing of an affidavit of an officer or other credible person showing that the appellant voluntarily returned to custody on or before the 10th day after the date of the escape.

(l) The court may order the child, the child's parent, or other person responsible for support of the child to pay the child's costs of appeal, including the costs of representation by an attorney, unless the court determines the person to be ordered to pay the costs is indigent.

(m) For purposes of determining indigency of the child under this section, the court shall consider the assets and income of the child, the child's parent, and any other person responsible for the support of the child.

(n) A child who enters a plea or agrees to a stipulation of evidence in a proceeding held under this title may not appeal an order of the juvenile court entered under Section 54.03, 54.04, or 54.05 if the court makes a disposition in accordance with the agreement between the state and the child regarding the disposition of the case, unless:

- (1) the court gives the child permission to appeal; or
- (2) the appeal is based on a matter raised by written motion filed before the proceeding in which the child entered the plea or agreed to the stipulation of evidence.

§ 56.02. Transcript on Appeal

(a) An attorney retained to represent a child on appeal who desires to have included in the record on appeal a transcription of notes of the reporter has the responsibility of obtaining and paying for the transcription and furnishing it to the clerk in duplicate in time for inclusion in the record.

(b) The juvenile court shall order the reporter to furnish a transcription without charge to the attorney if the court finds, after hearing or on an affidavit filed by the child's parent or other person responsible for support of the child that the parent or other responsible person is unable to pay or to give security therefor.

(c) On certificate of the court that a transcription has been provided without charge, payment therefor shall be made from the general funds of the county in which the proceedings appealed from occurred.

(d) The court reporter shall report any portion of the proceedings requested by either party or directed by the court and shall report the proceedings in question and answer form unless a narrative transcript is requested.

IN THE MATTER OF [CLIENT'S NAME]	NO. § § § § § §	IN THE 72nd DISTRICT COURT OF LUBBOCK COUNTY, TEXAS sitting as a juvenile court
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CHILD RESPONDENT'S NOTICE OF APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW [CLIENT'S NAME] Child Respondent in the above entitled and numbered cause, by and through his appointed attorney of record, MIKE BROWN, and makes and files this, his NOTICE OF APPEAL, pursuant to RULES 4 and 25.1, TEX. R. APP. PROC., and hereby gives notice of his intent to appeal from the judgment in this case, entered April 16, 2002, to the COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS, sitting in Amarillo, Texas, and prays that the NOTICE OF APPEAL be entered on the docket sheet of this Court, and be filed and entered in the record in this case for all purposes.

Respectfully submitted,

MIKE BROWN
 Attorney-at-law
 1601 Broadway
 Lubbock, Texas 79501
 (806) 763-9493
 fax (806) 744-5411
 ATTORNEY FOR THE CHILD RESPONDENT,
 [CLIENT'S NAME]

Mike Brown
 State Bar of Texas No.03164750

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing NOTICE OF APPEAL was served upon the attorneys of record for all parties to the trial court proceeding, INCLUDING THE Office of the Criminal District Attorney of Lubbock County, Texas, counsel for the State, on this ___ day of February, 2005.

MIKE BROWN