Trial court provided specific reasons for waiving its jurisdiction and transferring case to district court. [In the Matter of D.L.C.](17-2-2B)

On March 21, 2017, the Texarkana Court of Appeals held that the juvenile trial court did provide “a sure-footed and definite basis from which appellate court could determine that its decision was in fact appropriately guided by the statutory criteria, principled, and reasoned.”

¶ 17-2-2B. **In the Matter of D.L.C.**, MEMORANDUM, No. 06-16-00058-CV, 2017 WL 1055680 (Tex.App.—Texarkana, 3/21/2017).

**Facts:** On November 4, 2015, Cindy and Joe Black arrived at the Hunt County Sheriff’s Office and spoke with Joel Gibson, an investigator. The purpose of the Blacks’ visit was to file a report alleging that D.L.C. had sexually assaulted their daughter, Jane,2 in July 2014. During their meeting, the Blacks provided Gibson with D.L.C.’s contact information, and Cindy prepared and signed an affidavit.3 Less than two weeks later, Jane met with Charlene Green, a forensic interviewer at the Hunt County Child Advocacy Center (CAC). Jane’s account of the incident was consistent with the facts contained in Cindy’s affidavit.

On December 2, Jane met with Kim Bassinger, a sexual assault nurse examiner, and she submitted to a sexual assault medical forensic examination. On that same day, Gibson attempted to contact D.L.C. for the purpose of interviewing him about the incident. Gibson also attempted to contact D.L.C. on December 11. After failing to contact D.L.C. by telephone, Gibson went to D.L.C.’s home to make contact and schedule an appointment with him. On January 6, 2016, Gibson spoke with D.L.C. at Gibson’s office. During the conversation, D.L.C. admitted he had had sexual relations with Jane but he claimed it was consensual.

On that same day, Gibson spoke with Seth Stevens, the young man who had received Jane’s text message explaining she had been sexually and physically assaulted.4 Stevens prepared an affidavit and provided it to Gibson on January 11. In addition to speaking with Stevens, Gibson interviewed Chad Cline on January 12, who also prepared an affidavit.5 Gibson concluded his investigation and, on January 14, submitted a paper referral to the Hunt County Juvenile Probation Office, alleging that D.L.C. had committed aggravated sexual assault. On January 27, the paperwork, along with a request for an adjudication petition, was sent to the County Attorney’s Office of Hunt County. Gibson conceded that he was aware at the time he began his investigation that D.L.C. was seventeen years old and would turn eighteen in three months.6

On February 18, 2016, the State filed its original adjudication petition against D.L.C., alleging that he had committed the offense of aggravated sexual assault.7 The petition stated that D.L.C. was sixteen years of age at the time of the alleged offense, but that he was seventeen years of age at the time the petition was filed. About a week later, the State filed its original adjudication petition seeking a determinate sentence setting forth substantially the same allegations as it had in its first petition; however, the offense charged was sexual assault.8 On April 16, 2016, the State filed its petition for discretionary transfer to criminal court, alleging that D.L.C. had committed aggravated sexual assault.9 The trial court then issued an order to complete a diagnostic study, a social evaluation, and a full investigation.

Approximately one month later, the trial court received the report of Robert Lackey, Ph.D., who had conducted a psychological evaluation of D.L.C. Lackey’s report stated, among other things,

With respect to [D.L.C.]’s Risk of Dangerous [sic], data collected in this evaluation revealed he is likely in the Moderate range of Risk as compared to other juvenile offenders. Results of this evaluation indicated [D.L.C] does not have a history of severe antisocial behavior. He noted that he has previously received “two or three” speeding tickets, a ticket for Disorderly Conduct –Fighting and was recently charged with possession of Alcohol and a “Marijuana pipe.” He noted that when he was younger, approximately twelve years of age, that he was placed in detention for “Assault. ... ”

[D.L.C] did not report a history of engaging in unprovoked violent behavior; however, records provided by Glen Oaks, a local psychiatric facility, noted [D.L.C.] was hospitalized for assaulting his father’s pregnant girlfriend by kicking her in the stomach. Throughout the psychiatric records are indications of “out of control behaviors, outbursts of anger, agitation and damage to property, reportedly “punching the walls of the home.”

....

[D.L.C.] appears to have demonstrated less serious violence toward individuals, noting the previous physical fight he was cited for and the previous “assault” which caused him to be placed in detention at twelve years of age. Reportedly these encounters were not serious and did not result in serious bodily injury. [D.L.C.] also appears to have previous minor criminal acts. Records revealed a history of reported suicidal and homicidal ideation and accompanying psychiatric hospitalization due to these thoughts of self [-]harm and intentions of harming others.

....

As compared to same aged peers who are also juvenile offenders or are also involved with the juvenile judicial system in some manner, [D.L.C.] is at the High range of Sophistication and Maturity.

....

As compared to other juvenile offenders, [D.L.C.] appears to be in the Low range as to his treatment amenability. [D.L.C.]’s responses to various questionnaires and other psychological tools revealed he currently is not reporting symptoms of any mental health disorder. ...

....

[D.L.C.]’s responses to the PAI-A revealed an interest in and motivation for treatment which is below average in comparison to adolescents who are not being seen in a therapeutic setting and his treatment motivation is a great deal lower than is typical of individuals being seen in treatment settings. His responses suggest that he is satisfied with himself as he is, that he is not experiencing marked distress, and that, as a result, he sees little need for changes in his behavior. However, [D.L.C.] does report a number of strengths, namely his family and boss; that augur well for a relatively smooth treatment process if he were willing to make a commitment to treatment. His responses revealed he may not be experiencing sufficient distress to feel that treatment is warranted.

On July 7, 2016, the State filed its first amended petition for discretionary transfer to criminal court alleging one count of aggravated sexual assault and one count of the lesser-included offense of sexual assault. On July 22, 2016, approximately six weeks after D.L.C.’s eighteenth birthday, the trial court held a hearing on the State’s first amended petition for discretionary transfer. The trial court considered, among other things, “written reports from the probation officer, professional court employees and professional consultants in addition to the testimony of witnesses ....” At the conclusion of the transfer hearing, the trial court granted the State’s amended petition, finding that, among other things, (1) “there [was] probable cause to believe that [D.L.C.] committed the offense as alleged based on testimony of Joel Gibson and Isaac Neal[10] and all the other evidence admitted during the hearing” and (2) “[f]or a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of [D.L.C.].” This appeal followed.

**Held:** Affirmed

**Memorandum Opinion:** D.L.C. contends that the trial court failed to state in its order the specific reasons for waiving its jurisdiction and transferring this case to district court. Not only must the record substantiate the juvenile court’s findings, but the court must make “case specific findings of fact” with respect to the appropriate factors. See Moon, 451 S.W.3d at 51.14 “With respect to the adequacy of the written order mandated by Section 54.02(h), the courts of appeals have generally agreed, first of all, that the written order must reflect the juvenile court’s ‘reasons’ for waiving jurisdiction.” Id. at 41 (citing In re J.R.C., 522 S.W.2d 579, 584 (Tex. App.—Texarkana 1975, writ ref’d n.r.e.) (“The reasons motivating the Juvenile Court’s waiver of jurisdiction must expressly appear.”)). “In addition to specifying ‘reasons,’ the order should also expressly recite that the juvenile court actually took [the appropriate] factors into account in making this determination.” Id. at 41–42 (citing In re W.R.M., 534 S.W.2d 178, 182 (Tex. Civ. App.—Eastland 1976, no writ)).

In cases under Section 54.02(a) where the trial court is required to consider the factors in Section 54.02(f), the courts have held that a juvenile court’s order may be adequate if it “discloses that the matters listed in Subsection (f) were considered.” In re W.R.M., 534 S.W.2d 178, 182 (Tex. Civ. App.—Eastland 1976, no writ). In fact, there may be no reversible error even when the juvenile court’s order seemingly restates the factors contained in Section 54.02, as long as the enumerated reasons were supported by the evidence. Appeal of B.Y., 585 S.W.2d 349, 351 (Tex. Civ. App.—El Paso 1979, no writ). “As long as the appellate court can determine that the juvenile court’s judgment was based upon facts that are supported by the record, it should refrain from interfering with that judgment.” Moon, 451 S.W.3d at 46.

Here, the juvenile court made the following findings:

1. There was probable cause to believe that D.L.C. violated penal laws of the State of Texas, to-wit, sexual assault, a second degree felony;

2. D.L.C. was sixteen years of age at the time the alleged offense(s) occurred, and at the time of the hearing, he was eighteen years of age;

3. No adjudication hearing had been conducted concerning the alleged offenses;

4. Prior to the hearing, the juvenile “Court obtained a Clinical Evaluation, complete Diagnostic Study, Social Evaluation, and full investigation of the child, his/her circumstances[,] and the circumstances of the alleged offense(s)”;

5. For a reason beyond the State’s control, it was not practicable for the State to proceed in juvenile court prior to the person attaining the age of eighteen;

6. The juvenile court considered written reports from the probation officer, professional court employees, and professional consultants, as well as the testimony of witnesses;

7. There was “probable cause to believe that [D.L.C.] committed the offense as alleged based on the testimony of Joel Gibson and Isaac Neal and all other evidence admitted during the hearing.”

D.L.C. contends that the trial court’s findings were inadequate due to their lack of specificity. We disagree.

**Conclusion:** The juvenile court provided “a sure-footed and definite basis from which [we] can determine that its decision was in fact appropriately guided by the statutory criteria, principled, and reasoned.” Moon, 451 S.W.3d at 49. We overrule D.L.C.’s second point of error