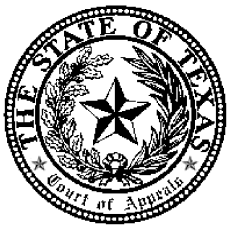
Affirmed as Reformed, and Opinion filed October 18, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00797-CV

In the Matter of M.R.L.

On Appeal from the County Court at Law
Austin County, Texas
Trial Court Cause No. 00J-579

O P I N I O N

Appellant M.R.L. pleaded true to the State's petition alleging delinquent conduct of aggravated robbery. The court assessed a determinate sentence of five years and committed appellant to the Texas Youth Commission ("TYC"). We reform the judgment, and affirm the judgment as reformed.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant, then a fifteen-year-old, left his home in Florida and purchased a bus ticket to Texas, where he had previously lived. Appellant left a note with his parents, explaining he was leaving for an "adventure." Appellant took with him $300.00, a mask, and a BB gun.

After arriving in Texas, appellant stayed with a family in Bellville. The family knew appellant because he was a friend of the family and had been their neighbor. Five days after leaving his home, appellant took the family's truck to the Industry State Bank in New Ulm. Wearing a dark sweat suit, gloves, and mask, appellant entered the bank. Waving the gun, he announced, "This is a hold up." Appellant ordered everyone, including a 70-year-old assistant cashier, to the floor. Appellant then took almost $11,000.[1] At the time of the robbery, there were four employees and one customer in the bank.

A grand jury indicted appellant, a juvenile, with two counts of aggravated robbery—the first, for use of a deadly weapon; the second, for placing a person 65 years of age or older in fear of imminent bodily injury or death. The State filed a petition seeking to adjudicate appellant a delinquent child. Appellant signed a stipulation of evidence and pleaded true to the second count. The trial court adjudicated appellant a delinquent and held a disposition hearing.[2]

After hearing the evidence, the trial court assessed a determinate sentence of five years and committed appellant to TYC. In issuing its decision from the bench, the trial court stated:

> It is in the juvenile's best interest to be placed outside the juvenile respondent's home. Reasonable efforts were made to prevent or eliminate the need for the juvenile respondent's removal from the home and to make it possible for the juvenile respondent to return to his home.
>
> The juvenile respondent in the juvenile's home cannot be provided the quality care and level of support and supervision that the juvenile respondent needs to meet the conditions of probation.

---

[1] Although the State, in its brief, represents appellant took $13,500, this amount reflects an inaccurate reporting of the amount initially recovered from appellant. A bank employee testified $10,818 was taken during the robbery.

[2] We set forth the evidence adduced at the disposition hearing in the context of discussing appellant's points of error directed at the legal and factual sufficiency of the evidence supporting that order.

The written order read:

> The Court finds the child is in need of rehabilitation and the protection of the public and the child require that a disposition be made, and that commitment to the Texas Youth Commission is the appropriate disposition for the child for the following reasons: the nature of the offense, the history, background and the environment of the child.
>
> The Court finds that reasonable efforts have been made to prevent or eliminate the need for the child to be removed from his home and to make it possible for the child to return to his home.

DISCUSSION

In points of error one through three, appellant argues (1) the trial court abused its discretion in committing appellant to TYC, and (2) the evidence was legally and factually insufficient to support the disposition.[3] In point of error four, appellant contends the trial court erred by failing in the disposition order to recite the findings required by Texas Family Code section 54.04(i)(3).

Points of error one through three

Standards of review and Legal Standards. The trial court has broad discretion to fashion an appropriate disposition after it has adjudicated a child to be a delinquent. *In re T.K.E.*, 5 S.W.3d 782, 784 (Tex. App.—San Antonio 1999, no pet.); *see Echols v. State*, 481 S.W.2d 160, 161 (Tex. Civ. App.—Houston [14th Dist.] 1972, no writ) (in context of case involving modification of disposition order, stating it is within court's sound discretion to

---

[3] Appellant also suggests the trial court abused its discretion in deviating from the progressive sanctions guidelines. *See* TEX. FAM. CODE ANN. § 59.003 (Vernon Supp. 2001). At the disposition hearing, Chief Juvenile Probation Officer Melissa Weiss at one point conceded the appropriate sanction level was level five, which does not include commitment to TYC. *See* TEX. FAM. CODE ANN. § 59.008 (Vernon Supp. 2001). Although a court that deviates from the guidelines is to provide the juvenile board with a written statement of the reasons for doing so, nothing in chapter 59 prohibits imposition of appropriate sanctions different from those provided at any sanction level. TEX. FAM. CODE ANN. § 59.003(e) (Vernon Supp. 2001). A juvenile may not bring an appeal based on failure of a court to make a sanction level assignment as provided in section 59.003. TEX. FAM. CODE ANN. § 59.014(2) (Vernon Supp. 2001); *In re C.C.*, 13 S.W.3d 854, 858 (Tex. App.—Austin 2000, no pet.).

determine whether it will be for best interest of child to commit him to institutional custody). The trial court abuses its discretion if it acts arbitrarily or unreasonably, *i.e.*, without reference to any guiding rules and principles. *In re T.A.F.*, 977 S.W.2d 386, 387 (Tex. App.—San Antonio 1998, no pet.). Absent a determination the trial court abused its discretion, this court will not intervene. *See In re A.S.*, 954 S.W.2d 855, 861 (Tex. App.—El Paso 1997, no writ). Under an abuse of discretion standard, legal and factual insufficiency are not independent reversible grounds of error but are relevant factors in assessing whether the trial court abused its discretion. *See Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991); *In re J.S.*, 993 S.W.2d 370, 372 (Tex. App.—San Antonio 1999, no pet.).[4]

In reviewing a "no evidence" or legal sufficiency of the evidence point, we consider only the evidence and reasonable inferences that tend to support the findings, and we disregard all evidence and inferences to the contrary. *See Responsive Terminal Sys., Inc. v. Boy Scouts of Am.*, 774 S.W.2d 666, 668 (Tex. 1989); *Penick v. Christensen*, 912 S.W.2d 276, 292 (Tex. App.—Houston [14th Dist.] 1995, writ denied). If we find any evidence to support the finding, we overrule the point and uphold the finding. *See S. States Transp., Inc. v. State*, 774 S.W.2d 639, 640 (Tex. 1989); *Penick*, 912 S.W.2d at 292.

When reviewing a challenge to the factual sufficiency of the evidence, we must examine all of the evidence in the record, both supporting and contrary to the judgment. *Plas-Tex, Inc. v. U.S. Steel Corp.*, 772 S.W.2d 442, 445 (Tex. 1989); *Marsh v. Marsh*, 949 S.W.2d 734, 739 (Tex. App.—Houston [14th Dist.] 1997, no writ). After considering and weighing all the evidence, we will sustain the challenge only if the finding is so contrary to

[4] We apply the civil standard of review when addressing the legal and factual sufficiency of the evidence in support of a disposition order. *See In re T.K.E .*, 5 S.W.3d 782, 785 (Tex. App.—San Antonio 1999, no pet.); *In re K.L.C.*, 972 S.W.2d 203, 206 (Tex. App.—Beaumont 1998, no pet.)*; In re A.S.*, 954 S.W.2d 855, 861 (Tex. App.—El Paso 1997, no writ); *see also In re J.S.*, 35 S.W.3d 287, 292 n.3 (Tex. App.—Fort Worth 2001, no pet.) (limiting application of criminal standard to review of adjudication phase); *but see C.C.*, 13 S.W.3d at 858 (applying criminal standard of review to sufficiency of the evidence challenges to trial court's findings).

the overwhelming weight of the evidence as to be clearly wrong and unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986) (per curiam); *see Marsh*, 949 S.W.2d at 739.

If a court places a child on probation outside the child's home or commits the child to TYC, the court must include the following three determinations in its order: (1) that it is in the child's best interests to be placed outside the home, (2) that reasonable efforts have been taken to prevent or eliminate the need for the child's removal from home and to make it possible for the child to return to the child's home, and (3) that the child cannot receive the quality of care and level of support and supervision the child needs in the child's own home to meet the conditions of probation. TEX. FAM. CODE ANN. § 54.04(i) (Vernon Supp. 2001). These determinations are mandatory. *See W.D.A. v. State*, 835 S.W.2d 227, 230 (Tex. App.—Waco 1992, no writ) (stating rule and reversing on other ground for new trial). If the juvenile court does not make one of these findings, it abuses its discretion. *See In re J.T.H.*, 779 S.W.2d 954, 960 (Tex. App.—Austin 1989, no writ) (reversing and holding, under earlier version of section 54.04, that trial court failed to comply with section when it omitted a finding concerning efforts to keep child in home).

Several types of evidence support the requisite section 54.04(i) findings in the present case. The State adduced evidence regarding the seriousness of the crime and its impact. There were five persons present during the robbery. Four, including the assistant cashier, testified. One observed the robber enter the bank, swing the firearm around, and holler, "This is a hold-up." Two of the victims testified the robber was "big," and one estimated his size at six feet three inches. One victim testified she had been "scared . . . to death" because of the gun. Another testified the robbery had an effect on her entire family. A third testified he was "still pretty fearful when some strangers walk in." The seriousness of the offense can be a factor in determining whether a juvenile needs the best treatment possible. *See T.K.E.*, 5 S.W.3d at 786 (stating, given serious and repeated nature of appellant's conduct, best treatment possible is in order).

Evidence indicated the crime was not committed on impulse, but was planned—an aspect of the offense with ramifications for the kind of treatment that might be in appellant's best interests. A Bellville teenager, who knew appellant through church, testified appellant had told her in advance he was going to rob a bank because he needed money. Melissa Weiss, a juvenile probation officer, testified appellant had been planning the robbery for several months. Weiss believed appellant had a sophisticated way of thinking not usually found in juveniles and this trait played a significant part in the planning of the robbery. In Weiss's opinion, appellant's capacity for planning the crime was unlike the impulsive juvenile behavior she usually sees and which results in action "you can work with." Weiss agreed appellant's problem was more complex than appearances would suggest. She testified the complexity indicated treatment for rehabilitation could not be offered through probation. Weiss opined there were some "mental health issues that . . . cannot be addressed in the magnitude that they need to be with this young man in the home." Robert Sarmiento, the psychologist who evaluated appellant, testified the drama involved in the bank robbery was one indication there could be some deeper psychological problems and that diagnosing those problems probably would require some long-term treatment.

The State introduced evidence regarding appellant's home environment. Appellant was being home-schooled in Florida just before the offense. Appellant's mother was not actually in the home when appellant was doing his assignments, but was in her office about five miles away. She would return between 1:30 and 2:00 to transport him to weight lifting and would check at that time to see whether appellant had completed his work. Weiss testified, if appellant had been attending regular classes, he would not have had the same opportunity to leave Florida. Weiss also believed appellant's absence from a regular classroom setting could be an obstacle to his successful rehabilitation. Sarmiento agreed it was possible appellant requested home-schooling to have more freedom.

In Weiss's opinion, the best way to rehabilitate appellant and to address the mental issues involved is to place appellant in a structured, supervised, residential type setting.

Sarmiento concluded appellant's treatment would require "some fairly long-term treatment and possibly treatment with medication as well."

The State points to two types of evidence to support a finding concerning the efforts it undertook to prevent appellant's removal from the home. First, it points to Weiss's testimony that available probation programs are not designed for someone from a home and family background like appellant's, *i.e.*, one in which both natural parents are in the home, the juvenile gets along with his siblings, the family is close-knit, and the juvenile received a religious upbringing. Instead, the available probation programs were mainly for youths with substance abuse problems, who come from broken homes, or lack significant guidance in their lives; and appellant would not have benefitted from these programs. According to Weiss, there was nothing to work with in the home; all of the attention needed to be focused toward appellant.

Second, the State points to the danger appellant represented to the community, a danger the State argues arises from the unpredictability of appellant's conduct. Weiss testified appellant "could be a danger that . . . really no one else could perceive him to be with the information that we now have before us, with the planning of the offense, the actual commission of the offense, and all of the factors that we have considered from his home situation, his prior school situation there in Florida." Sarmiento described appellant as having "an outward front" and "some . . . more inner things that . . . really don't jive very much with the outer." Sarmiento also described appellant's conduct as arising "from being dependent and angry and being sort of overly controlled emotionally because if . . . your parents are very strict and authoritarian with you, you might be angry but you probably wisely would be afraid to express your anger in a very direct way." Gary Lacina, an employee at the juvenile facility where appellant was detained, agreed the phrase, "still waters run deep," would apply to appellant.

Looking only at the evidence supporting the juvenile court's findings, we conclude the evidence was legally sufficient to support the commitment to TYC. Although there was

contrary evidence, that evidence was not so overwhelming to make the court's findings clearly wrong and unjust.

Appellant had never been involved in abuse of drugs, alcohol or other offenses. Lacina testified appellant was quiet and followed all of the instructions of the drill instructors. Although Lacina was concerned that the seriousness of appellant's offense did not fit appellant's personality, Lacina believed, with the support of appellant's family, appellant could be successful on probation.

Sarmiento agreed that the requisite therapy could be accomplished on the agreement of the parents and appellant if that is what they wanted to do. Sarmiento's knowledge about the family, however, was limited to a conversation with appellant's mother.

Appellant's mother testified she had already contacted a therapist in Florida to take over appellant's case. Appellant's father and mother expressed a willingness to do whatever was necessary to enable appellant to complete probation successfully. Appellant's father testified he would move his business into their home and he and appellant's mother would not let appellant out of their sight. Appellant's grandmother believed there was enough love, support, and family structure that appellant would meet any term of probation the court required. None of these witnesses, however, appears to have anticipated appellant's conduct that led to the present charge.

Appellant's case is distinguishable from cases in which an appellate court has reversed a trial court's decision to commit a juvenile to TYC. In *In re L.G.*, the probation report was the only evidence at the disposition hearing, and it recommend probation. 728 S.W.2d 939, 945-46 (Tex. App.—Austin 1987, writ ref'd. n.r.e.). In *A.S.*, the probation officer testified the juvenile's mother had adequate control over her children and the juvenile would be provided with the quality and level of care required to meet the terms of juvenile probation. 954 S.W.2d at 862. In *In re K.L.C.*, the probation officer was specifically asked whether her agency ever worked with the juvenile in any type of program to see whether the

agency could rehabilitate the juvenile, and the officer responded, "No." 972 S.W.2d 203, 205 (Tex. App.—Beaumont 1998, no pet.). Finally, in *J.S.*, there was evidence the juvenile was already in individual, family, and group therapy and was responding well. 993 S.W.2d at 374. In addition, the probation officer testified that, given the structure in the father's home, where the juvenile was residing, the juvenile should be placed on probation. *Id.* at 373.

The evidence was legally and factually sufficient to support the trial court discretionary decision to commit appellant to TYC. We overrule points of error one through three.

Point of error four

In its oral rendition of judgment, the trial court found (1) it was in appellant's best interest to be placed outside his home, (2) reasonable efforts were made to prevent or eliminate the need for appellant's removal from the home and to make it possible for the juvenile respondent to return to his home, and (3) appellant in his home cannot be provided the quality care and level of support and supervision that appellant needs to meet the conditions of probation.[5] Under Family Code section 54.04(i), a court committing a child to TYC "shall" include those three determinations in its disposition order. TEX. FAM. CODE ANN. § 54.04(i) (Vernon Supp. 2001); *see W.D.A.*, 835 S.W.2d at 230.

The court in the present case included only the second determination.[6] We can, however, reform the judgment to reflect the oral findings of the court. *Cf. Martinez v. State*,

---

[5] The Family Code requires only that the court include in its order the determination that the requirements are met; the Code does not require the court to explain the evidentiary support for its conclusions in its order. *See In re M.S.*, 940 S.W.2d 789, 792 (Tex. App.—Austin 1997, no writ)

[6] The court also found that appellant was in need of rehabilitation, the protection of the public and the child required that a disposition be made, and commitment to TYC was the appropriate disposition for the following reasons: the nature of the offense, the history, background and the environment of the child. *See* TEX. FAM. CODE ANN. § 54.04(c) (Vernon Supp. 2001) (regarding the requirements for making a disposition).

833 S.W.2d 188, 198 (Tex. App.—Dallas 1992, pet. ref'd) (reforming judgment to reflect correctly jury's affirmative *de facto* finding defendant used deadly weapon during commission of offense).

We overrule point of error four.

We reform the judgment, and affirm it as reformed.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed October 18, 2001.
Panel consists of Justices Anderson, Hudson, and Frost.
Do Not Publish — TEX. R. APP. P. 47.3(b).