

Affirmed and Opinion filed December 13, 2001.



In The
Fourteenth Court of Appeals

NO. 14-00-01327-CV

IN THE MATTER OF D.W.A., a Juvenile

**On Appeal from the County Court at Law No. 2
Brazoria County, Texas
Trial Court Cause No. 7801S**

O P I N I O N

D.W.A., a juvenile now almost sixteen years old, appeals from an order committing him to the Texas Youth Commission (TYC) for an indeterminate period of time not to exceed his twenty-first birthday. He challenges the factual sufficiency of the evidence to commit him to TYC rather than place him on probation at home. Finding sufficient evidence and no abuse of discretion, we affirm.

The State's petition alleged that on May 22, 2000, when D.W.A. was fourteen years old, he engaged in delinquent conduct by committing the offenses of indecency with a child by exposure and by contact, and by aggravated sexual assault of a five year old girl who lived in his trailer park. At the adjudication hearing, D.W.A. stipulated to the evidence and the juvenile court found that he had engaged in delinquent conduct as alleged. At the

disposition hearing, the juvenile court found that D.W.A. was in need of rehabilitation and commitment to TYC.

In his sole point of error, D.W.A. challenges the factual sufficiency of the evidence to support the juvenile court's disposition finding that he should be placed outside his home. The trial court has broad discretion to fashion an appropriate disposition when a child has been adjudicated to be a delinquent. *In the Matter of T. K. E.*, 5 S.W.3d 782, 784 (Tex. App. – San Antonio 1999, no pet.). In the absence of a finding that the trial court abused its discretion, the appellate court will not intervene. *In the Matter of A.S.*, 954 S.W.2d 855, 861 (Tex. App.—El Paso 1997, no writ). The trial court abuses its discretion if it acts arbitrarily or unreasonably, without reference to any guiding rules and principles. *In the Matter of T.A.F.*, 977 S.W.2d 386, 387 (Tex. App.—San Antonio 1998, no pet.). Factual sufficiency of the evidence is a relevant factor in determining whether the trial court abused its discretion. *In the Matter of J.S.*, 993 S.W.2d 370, 372 (Tex. App.—San Antonio 1999, no. pet.).

We apply the civil standard of review when addressing the factual sufficiency of the evidence in support of a disposition order. *T.K.E.* at 785; *J.S.* at 292. As appellant argues factual insufficiency of the evidence, we examine the entire record and will set aside a finding only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986) (per curiam).

Section 54.04(i) of the Texas Family Code provides a child may not be committed to TYC unless the court finds and states in its order that (1) it is in the child's best interest to be placed outside the child's home; (2) reasonable efforts were made to prevent or eliminate the need for the child's removal from the home; and (3) the child's home cannot provide the quality of care and level of support and supervision the child needs. D.W.A. argues there is factually insufficient evidence to support the second and third of these findings. He does not challenge the first, and the evidence was undisputed that no local treatment center was able to supply the kind of intensive and effective in-patient treatment available at TYC.

Michelle Peden, D.W.A.'s probation officer, recommended that D.W.A. be

committed to TYC in order to receive the extensive in-patient counseling in a structured environment that he needed as a sex offender. She questioned the supervision he would receive at home, as his father worked two jobs and his mother was disabled and had been allegedly supervising him at the time the sexual assault occurred. She testified that D.W.A.'s parents were minimizing the seriousness of their son's offense, which suggested they might not follow through with the treatments and other requirements the probation department would place on him at home.

According to the Brazoria County Juvenile Probation Predisposition Report, during his pre-hearing detention at TYC, D.W.A. had fought with other juveniles, made explicit sexual threats against them, lied to and disobeyed staff members, and taken underclothes from a female TYC detainee and reportedly engaged in sexual activity with them. Investigative officers also submitted a report that the family home was in a trailer park with small children in close proximity.

In response, D.W.A.'s father testified that he and his church's pastor and staff were addressing the problem with church counseling and increased adult supervision. When asked how he would supervise D.W.A. in the future, he answered, "Just be a little more attentive knowing that there are certain triggers and elements, a little more supervision, a little more involved." D.W.A.'s mother testified she intended to be stricter with her son in the future, keeping him at home under constant supervision either personally or through the family's church, and getting whatever counseling he needed. Two church members also testified they would be available to watch D.W.A. when needed. The family presented no definite plans for psychiatric treatment.

We do not find that the great weight and preponderance of the evidence indicates the juvenile court was clearly wrong or unjust in its findings. A juvenile court is not required to place a juvenile on probation before sending him to TYC, *In the Matter of C.C.*, 13 S.W.3d 854, 859 (Tex. App.—Austin 2000, no pet.), nor is it required to give credence to assurances of supervision by a juvenile's parents when the evidence shows a lack of supervision in the past, *In the Matter of M.A.C.*, 999 S.W.2d 442, 448 (Tex. App.—El Paso

1999, no pet.). Violent acts that make a juvenile potentially dangerous can be taken into account in determining what alternative placements are reasonable. *See In the Matter of L.G.*, 728 S.W.2d 939, 945 (Tex. App.—Austin 1987, writ ref'd n.r.e.). Given the serious nature of D.W.A.'s offense, uncertainty about the level of supervision available, and the clear superiority of the treatment planned for him in TYC over anything else proposed, we cannot say the juvenile court's order was an abuse of discretion. *See T.K.E.* at 786 (holding serious nature of delinquent conduct and superiority of treatment in TYC sufficient to support commitment).

D.W.A.'s sole point of error is overruled, and the judgment is affirmed.

/s/ Scott Brister
 Chief Justice

Judgment rendered and Opinion filed December 13, 2001.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

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