

Affirmed and Opinion filed March 2, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00208-CV

IN THE MATTER OF A.W.F., Appellant

**On Appeal from the County Court at Law No. 2
Galveston County, Texas
Trial Court Cause No. 97JV0247**

OPINION

A.W.F. appeals from his commitment by the trial court to the Texas Youth Commission with a possible transfer to the Texas Department of Criminal Justice for twenty years. TEX. FAM. CODE ANN. § 54.04(d)(3)(B) (Vernon 1996 & Supp. 2000). In one point of error, appellant contends the record at the disposition hearing fails to indicate he voluntarily waived his right to a jury trial. We affirm.

A recitation of the facts is unnecessary because appellant only contends that the record does not show he waived his rights to a jury trial at his disposition hearing as required by section 51.09 of the Texas Family Code.

At his adjudication hearing, a jury found appellant engaged in delinquent conduct, to wit: aggravated sexual assault of a child and aggravated kidnaping on June 22, 1997. Before the subsequent disposition hearing commenced, the trial court informed appellant that the jury had found he had engaged in delinquent conduct, and that a petition had been approved by the grand jury for possible transfer of appellant to the Texas Department of Criminal Justice. TEX. FAM. CODE ANN. § 53.045(d) (Vernon 1996 & Supp. 1997). The trial court specifically asked appellant and his trial counsel if he waived his right to a jury at his disposition hearing. Appellant's trial counsel stated that they "waived the right to a jury; and we want to proceed with the Court." The trial court then informed appellant that he could get up to 40 years imprisonment for the offense, and he asked appellant if he understood. Appellant answered: "Yes, sir." The trial court then further addressed appellant stating:

THE COURT: You didn't understand it when you were before Judge Cain, but you understand it now; is that correct?

APPELLANT: Yeah. (Nods head).

No written waiver was obtained for a waiver of a jury at the disposition hearing. Section 54.04(a), of the Texas Family Code, provides, in pertinent part:

There is no right to a jury at the disposition hearing unless the child is in jeopardy of a determinate sentence under Subsection (d)(3) or (m) of this section, in which case, the child is entitled to a jury of 12 persons to determine the sentence.

TEX. FAM. CODE ANN. § 54.04(a) (Vernon 1996 & Supp. 2000).

The State contends that section 54.03(i), Texas Family Code, requires an objection by appellant to preserve error for the alleged failure of the trial court to adequately admonish him of his right to a jury trial. Because appellant did not object to the trial court's warnings, the State contends he has waived this point of error.

Section 54.03(i) became effective on September 1, 1997, and did not apply to this offense which occurred on June 22, 1997. *See In the Matter of C.O.S.*, 988 S.W.2d 760, 767 (Tex.1999). Because the offenses occurred before the effective date of the 1997 amendment to section 54.03, appellant has not waived his complaint for review. *Id.*

The waiver of rights provisions of section 51.09, Texas Family Code, apply to the waiver of the jury trial in this case. The disposition hearing is controlled by section 54.04, which has no special waiver provisions. Therefore, the waiver provisions of section 51.09 apply to a waiver of a jury trial at the disposition hearing. *See* TEX. FAM. CODE ANN. § 51.09(a) (Vernon 1996) (51.09 waiver controls absent a special provision for waiver in the statute involved). Section 51.09(a) provides the right to a jury trial may be waived if: (1) the waiver is made by the child and the attorney for the child; (2) the child and the attorney waiving the right are informed of and understand the right and the possible consequences of waiving it; (3) the waiver is voluntary; and (4) the waiver is made in writing **or** *in court proceedings that are recorded* (emphasis added). *Id.* The record shows: (1) appellant and his attorney waived the right to a jury trial, (2) they were informed of and understood the right and the consequences of waiving it, (3) the waiver was voluntary, and (4) the waiver was recorded by the court reporter prior to the commencement of the disposition hearing. We find no error in the proceedings, and appellant's waiver of a jury trial at the disposition hearing was valid. We overrule appellant's sole point of error.

We affirm the judgment of the trial court.

PER CURIAM

Judgment rendered and Opinion filed March 2, 2000.

Panel consists of Justices Robertson, Sears, and Cannon.¹

Do Not Publish—TEX. R. APP. P. 47.3(b).

¹ Justices Sam Robertson, Ross A. Sears, and Bill Cannon sitting by assignment.

