Affirmed and Opinion filed May 11, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-01094-CV

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IN THE MATTER OF C.P., A MINOR CHILD

On Appeal from the County Court at Law
Walker County, Texas
Trial Court Cause No. No. 96-26

O P I N I O N

Appellant, C.P., is a juvenile who was found to have engaged in delinquent conduct. Following a disposition hearing pursuant to the Texas Family Code, C.P. was given probation. After C.P. committed a series of violations of his probation, the State moved to modify the disposition. After a disposition hearing on the State's motion, the trial court ordered C.P. committed to the Texas Youth Commission ("TYC") until his twenty-first birthday. C.P. appeals the modified disposition, complaining that the trial court erred by admitting hearsay evidence of his poor attendance record at school. We affirm.

On March 26, 1996, C.P. was charged with two counts of engaging in delinquent conduct. The State alleged that C.P. had committed criminal mischief by breaking the windows of a home, and that C.P. had burglarized a habitation with the intent to commit theft of property, namely, guns. On May 16, 1996, C.P. was adjudicated to have engaged in delinquent conduct, as alleged in the State's petition. Following a disposition hearing pursuant to Section 54.05 of the Texas Family Code, C.P. was granted probation subject to, among other things, the following conditions: (1) he not violate any laws of the United States, of Texas or any other states, or of any county or city, including traffic laws; (2) he report to a juvenile probation officer at the Walker County Probation Department as required; (3) he follow all school rules and attend each and every school day, except when there is an excused absence; (4) he abide by a curfew requiring him to be at home between 9:00 p.m. and 6:30 a.m.; (5) he obey his parents and make them aware of his whereabouts at all times; (6) he perform 144 hours of community service through the Walker County Star Program; (7) he not operate a motorized vehicle without consent; (8) he pay restitution for the windows that he broke; and (9) he attend drug and alcohol counseling.

On June 27, 1997, the State filed a motion to modify C.P.'s original disposition. The motion to modify alleged that C.P. had violated a number of the conditions of his probation, including committing two new law violations, theft and receiving stolen property. As a result of these violations, the trial court modified the conditions of C.P.'s probation.

Following this modification, C.P. was detained on March 17, 1998, after the trial court found there was probable cause to believe that he had engaged in delinquent conduct by committing another theft. C.P. was released from custody but was detained again on July 20, 1998, after the trial court found there was probable cause to believe that he had engaged in delinquent conduct by burglarizing a habitation. Subsequently, the State filed a second motion to modify C.P.'s original disposition of probation and to commit him to TYC. In addition to C.P.'s two new infractions, the motion recited numerous other violations of the conditions of his probation. A disposition hearing was held on August 21, 1998. On August 24, 1998, the trial court entered an "Order Modifying Disposition and for Commitment to the

Texas Youth Commission." In that order, the court found that C.P. had committed eleven violations of the conditions of his probation, including not attending school regularly, in violation of the court's prior disposition order. After finding that efforts to allow C.P. to remain at home had failed, the trial court ordered C.P. committed to TYC to serve an indeterminate sentence not to exceed his twenty-first birthday. This appeal followed.

C.P.'s sole issue on appeal concerns whether the trial court erred by admitting, over his objection, school attendance records.[1] C.P. complains, in particular, that these documents were not accompanied by a proper self-authenticating business record affidavit. In response, the State maintains that the school records were properly admitted under the business records exception to the rule against hearsay found in Rule 803(6) of the Texas Rules of Evidence.

Under Rule 803(6), records of a regularly conducted business activity are admissible if they are made at or near the time of the activity, recorded as part of a regularly conducted business activity, made by, or from data provided by, a person with knowledge, unless the source of information or the method of preparation indicates a lack of trustworthiness. *See* TEX. R. EVID. 803(6) (Vernon Supp. 1999); *see also Brooks v. State*, 901 S.W.2d 742, 746 (Tex. App.—Fort Worth 1995, pet. ref'd) (citing TEX. R. CRIM. EVID. 803(6); *Mitchell v. State*, 750 S.W.2d 378, 379 (Tex. App.—Fort Worth 1988, pet. ref'd)). Accordingly, business records must be properly authenticated. To accomplish this, Rule 803(6) expressly provides that a custodian of records or other qualified witness may testify or swear to an affidavit pursuant to Rule 902(10), stating that the requirements of Rule 803(6) have been met. *See* TEX. R. EVID. 803(6). Rule 902(10)(b) provides a form affidavit for use in authenticating business records under Rule 803(6).

Here, C.P. contends that the State's self-proving affidavit accompanying the school records was insufficient to overcome a hearsay objection because it "allows the affiant to swear that all transmitted information included in the record was recorded at or near the time

[1] The school records in dispute show that C.P. failed to attend school 56.5 days out of the 143 days for which he should have been present, in violation of the conditions of his probation.

of transmission, without regard as to when the recorded event actually took place." C.P. claims that the affidavit's wording "allowed the trial court to consider recorded information of questionable trustworthiness.'" However, a review of the record in this case shows that the State tendered a self-proving affidavit along with C.P.'s school attendance records which follows the form found in Rule 902(10)(b) verbatim. Rule 902(10)(b) specifically provides that affidavits which follow or "substantially comply" with the form provided shall be sufficient. *See* TEX. R. EVID. 902(10)(b). Because the State followed the form provided by Rule 902(10)(b), the affidavit accompanying C.P.'s school attendance records was sufficient as a matter of law. *See, e.g., March v. Victoria Lloyds Ins. Co.*, 773 S.W.2d 785, 789 (Tex. App.—Fort Worth 1989, writ denied) (noting that, to properly authenticate a business record for purposes of Rule 803(6), an affiant is not required to testify as to elements not set out in the form affidavit provided by Rule 902(10)(b)).

Moreover, even if it was error to admit the school attendance records, C.P. has not shown that the admission of this evidence resulted in an improper judgment. To obtain reversal of a judgment based on error in the admission or exclusion of evidence, the appellant must show that the trial court did commit error and that this error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. *See* TEX. R. APP. P. 44.1(a)(1); *McCraw v. Maris*, 828 S.W.2d 756, 757 (Tex.1992). In making this determination, we must review the entire record. *See Kroger Co. v. Betancourt*, 996 S.W.2d 353, 363 (Tex. App.—Houston [14th Dist.] 1999, pet. denied). Reversible error usually does not result unless the appellant can demonstrate that the whole case turns on the particular evidence admitted. *See id.* (citing *Church & Dwight Co. v. Huey*, 961 S.W.2d 560, 570 (Tex. App.—San Antonio 1997, pet. denied)).

In this case, testimony from C.P.'s juvenile probation officer, Kimberly Greene, shows that, in addition to his failure to "attend each and every school day" as required by the court's order, C.P. was guilty of the following other violations of his probation: (1) he failed to report to his probation officer on October 8, 1997, November 13, 1997, December 11, 1997, and March 5, 1998; (2) he violated his curfew and also failed to notify his parents of

his whereabouts on November 24, 1997, January 26, 1998, January 29, 1998, and February 3, 1998; (3) he was delinquent in making restitution payments for property damages caused by his criminal mischief; and (4) he failed to attend alcohol and drug counseling as required by the court. Greene also related that C.P. admitted to using cocaine. Greene opined further that efforts had been made to allow C.P. to remain at home while on probation but that those efforts had not been successful. Emmett Perez of the Walker County STAR Program also testified that C.P. had not performed any of his community service. In addition, the State presented testimony from C.P.'s mother which showed that C.P. violated Texas law by committing burglary of a habitation on or about July 18, 1998, and that he took his parents' vehicle without their consent on another occasion.

Based on the entire record, the trial judge could have concluded that C.P. had violated the conditions of his probation and that a commitment to TYC was warranted. Even if C.P.'s school attendance record is not considered, there is more than sufficient evidence to support the trial court's finding that C.P. violated other terms and conditions of his probation. Accordingly, C.P. has not shown that the admission of the school records, even if erroneous, probably resulted in the rendition of an improper judgment. For this reason, and for those set out above, C.P.'s point of error is overruled.

PER CURIAM

Judgment rendered and Opinion filed May 11, 2000.
Panel consists of Justices Yates, Fowler and Edelman.
Do not publish. TEX. R. APP. P. 47.3(b).