

NO. 12-16-00197-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN THE MATTER OF R.X.W., § *APPEAL FROM THE*
A JUVENILE § *COUNTY COURT AT LAW NO. 1*
§ *HENDERSON COUNTY, TEXAS*

MEMORANDUM OPINION

R.X.W. appeals the juvenile court’s order transferring his case to adult criminal court. He presents two issues on appeal. We reverse and remand.

BACKGROUND

R.X.W. is accused of participating in the aggravated robbery of the “Game XChange” store in Athens, Texas. On or about March 16, 2016, four assailants entered the store and demanded money from the register. One of the assailants had a firearm. An employee pressed the panic button to alert the authorities as he fell to the floor. A customer, who was an off-duty police officer, announced himself and shot two of the assailants. After the police arrived, R.X.W. was identified as one of the individuals who had been shot. He was transported to the hospital and then held in a juvenile detention center following his release. R.X.W. was charged with aggravated robbery in juvenile court.

The State filed a motion for discretionary transfer, asking the court to waive its exclusive jurisdiction and transfer R.X.W.’s case to adult criminal court. The juvenile court ordered the “Required Studies for Discretionary Transfer” and set the motion for hearing. Following the hearing, the court granted the motion, waived its exclusive jurisdiction, and transferred the case to district court. This appeal followed.

WAIVER OF JUVENILE JURISDICTION

In his second issue, R.X.W. contends the juvenile court abused its discretion when it granted the State's motion for discretionary transfer.

Applicable Law

The transfer of a juvenile offender from a juvenile court to criminal court for prosecution as an adult should be regarded as the exception, not the rule. *Moon v. State*, 451 S.W.3d 28, 36 (Tex. Crim. App. 2014). Therefore, the Juvenile Justice Code allows a juvenile court to waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court only under specific circumstances. *See generally* TEX. FAM. CODE ANN. § 54.02 (West 2012). As applicable to the facts of this case, a juvenile court "may" waive its jurisdiction and transfer a child to an adult criminal court under the following conditions: (1) the child is alleged to have committed a felony; (2) the child was fourteen years of age or older, if the alleged offense was a first degree felony, and no adjudication hearing has been conducted on that offense; and (3) after a full investigation and hearing, the juvenile court determines that there is probable cause to believe the child committed the offense alleged, and that because of the seriousness of the offense or the background of the child, the welfare of the community requires criminal proceedings. *Id.*

In determining whether to waive its jurisdiction, the court must consider, among other factors, (1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person; (2) the sophistication and maturity of the child; (3) the record and previous history of the child; and (4) the prospects of adequate protection of the public and the likelihood of rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court. *Id.* § 54.02(f).

If the court decides to waive its jurisdiction, it must "state specifically its reasons for waiver and certify its action, including the written order and findings of the court." *Id.* § 54.02(h). The order must contain both the juvenile court's reasons for waiving its jurisdiction and the findings of fact that undergird those reasons. *Moon*, 451 S.W.3d at 49.

Standard of Review

When reviewing a juvenile court's written order waiving its jurisdiction under Section 54.02, an appellate court must perform a two-step analysis. *See id.* at 47. First, the court should review the juvenile court's specific findings of fact regarding the Section 52.04(f) factors under

“traditional sufficiency of the evidence review.” *Id.* at 47. Under a legal sufficiency challenge, we credit evidence favorable to the challenged finding and disregard contrary evidence unless a reasonable fact finder could not reject the evidence. *Moon v. State*, 410 S.W.3d 366, 371 (Tex. App.—Houston [1st Dist.] 2013), *aff’d*, *Moon*, 451 S.W.3d 28 (Tex. Crim. App. 2014). If there is more than a scintilla of evidence to support the finding, the challenge fails. *Id.* Under a factual sufficiency challenge, we consider all of the evidence presented to determine if the court’s finding is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. *Id.* The reviewing court must limit its sufficiency review to the facts that the juvenile court expressly relied upon and are explicitly set out in the transfer order under Section 54.02(h). *Moon*, 451 S.W.3d at 50. The appellate court should not have to review the entire record for facts that the juvenile court may have found, given the evidence developed at the transfer hearing, but did not include in its written order. *Id.*

After completing its sufficiency review, the appellate court should then review the juvenile court’s ultimate waiver decision under an abuse of discretion standard. *Id.* at 47. In doing so, the court should ask, in light of its own analysis of the sufficiency of the evidence to support the Section 54.02(f) factors and any other relevant evidence, whether the juvenile court acted without reference to guiding rules or principles. *Id.* “In other words, was its transfer decision essentially arbitrary, given the evidence on which it was based, or did it represent a reasonably principled application of the legislative criteria?” *Id.*

Analysis

R.X.W. contends the juvenile court abused its discretion by failing to address all of the factors listed in Section 54.02(f). He urges that the court did not “show its work” as required in *Moon* because it made findings regarding only whether the alleged offense was against a person and whether R.X.W. is sophisticated and mature enough to be tried as an adult. The State argues the order is distinguishable from the order at issue in *Moon*.

In *Moon*, the only reason stated in the transfer order to explain the juvenile court’s waiver of jurisdiction was that the alleged offense was a serious one. *Id.* at 50. And the only fact specified in the order in support of that reason was that the alleged offense was an offense against the person. *Id.* The order made no findings about the specifics of the alleged offense. *Id.* at 48. The court of criminal appeals held that waiver of juvenile jurisdiction based on the seriousness of the offense, supported by a fact that did not relate to the alleged offense,

constituted an abuse of discretion. *Id.* at 50. The court also determined that the other findings of fact, which would have supported waiver based on the child’s background, were superfluous because the juvenile court did not cite the child’s background as a reason for its order. *Id.* at 51. Therefore, the court of criminal appeals agreed with the appellate court that the trial court abused its discretion in waiving its juvenile court jurisdiction. *Id.* at 51-52.

The juvenile court’s written order in this case cites only “the prior history of the child” as its reason for waiving its jurisdiction and transferring R.X.W. to adult criminal court. *See* TEX. FAM. CODE ANN. § 54.02(f)(3). However, the order does not include findings regarding the child’s record and previous history. Instead, the trial court’s findings relate to the sophistication and maturity of the child. *See id.* § 54.02(f)(2).

In other findings, the juvenile court described the particulars of the alleged offense and stated that the alleged offense was against a person. These findings would have supported waiver based on the seriousness of the offense. *See* TEX. FAM. CODE ANN. § 54.02(f)(1). But, because the court did not cite the seriousness of the offense as a reason for the transfer, these findings are superfluous. *See Moon*, 451 S.W.3d at 50-51.

The State argues that this case is significantly different from *Moon* because the juvenile court had substantial evidence upon which to base its decision to waive jurisdiction. Therefore, the State invites us to review the record to evaluate that evidence. However, we are limited to the facts expressly relied upon by the juvenile court and decline to review the entire record. *See id.* at 50.

Moon requires that the juvenile court’s order waiving jurisdiction specifically state the reason for its waiver and the fact findings supporting that reason. *Id.* at 50-51. Like the order at issue in *Moon*, the juvenile court’s order does not contain case-specific facts supporting its stated reason for waiving jurisdiction. As a result, the order is not sufficiently specific and is deficient. We therefore hold that the juvenile court abused its discretion when it waived jurisdiction and transferred R.X.W.’s case to adult criminal court. We sustain R.X.W.’s second issue.¹

¹ R.X.W. contends in his first issue that the evidence is legally and factually insufficient to support the juvenile court’s transfer order. Because the court’s transfer order is deficient even if the findings were supported by legally and factually sufficient evidence, we do not address this issue. *See Guerrero v. State*, 471 S.W.3d 1, 3-4 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (only addressing whether the trial court abused its discretion under *Moon*).

DISPOSITION

Having sustained R.X.W.'s second issue, we *reverse* the order of discretionary transfer and *remand* the case to the juvenile court for further proceedings.

GREG NEELEY
Justice

Opinion delivered November 30, 2016.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

NOVEMBER 30, 2016

NO. 12-16-00197-CV

IN THE MATTER OF R.X.W., A JUVENILE

Appeal from the County Court at Law No 1
of Henderson County, Texas (Tr.Ct.No. JUV16-0012-CC1)

THIS CAUSE came to be heard on the appellate record and the briefs filed herein, and the same being considered, because it is the opinion of this court that there was error in the judgment of the court below, it is ORDERED, ADJUDGED and DECREED by this court that the judgment be **reversed** and the cause **remanded** to the trial court **for further proceedings** in accordance with the opinion of this court; and that this decision be certified to the court below for observance.

Greg Neeley, Justice.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.