

COURT OF APPEALS  
EIGHTH DISTRICT OF TEXAS  
EL PASO, TEXAS

	§	No. 08-09-00073-CV
	§	Appeal from
IN THE MATTER OF R.A.,	§	65th District Court
A JUVENILE	§	of El Paso County, Texas
	§	(TC # 07,01209)
	§	

**MEMORANDUM OPINION**

R.A., a juvenile, filed notice of appeal from an order of the juvenile court waiving jurisdiction and transferring the case for prosecution in a criminal court. Pending before the Court is the State's motion to dismiss the appeal for jurisdiction. We grant the motion and dismiss the appeal.

The State filed a petition to waive juvenile court jurisdiction and to transfer the case to criminal court. *See* TEX.FAM.CODE ANN. §54.02 (Vernon 2008)(providing for waiver of juvenile court's exclusive original jurisdiction and transfer to criminal court). The petition alleges that R.A. committed two counts of aggravated sexual assault of a child. Following a hearing, the juvenile court entered an order waiving the court's exclusive jurisdiction and transferring the case to a district court for prosecution. The County Attorney's Office forwarded the case to the District Attorney's Office. R.A. filed notice of appeal. The State has filed a motion to dismiss the attempted appeal from the transfer order.

A juvenile has the right to appeal as provided for by the Family Code. TEX.FAM.CODE ANN. § 56.01(d)(Vernon 2008). The Family Code authorizes an appeal by or on behalf of a child from an

order entered under: Section 54.03 with regard to delinquent conduct or conduct indicating a need for supervision; Section 54.04 disposing of the case; Section 54.05 respecting modification of a previous juvenile court disposition; or Chapter 55 by a juvenile court committing a child to a facility for the mentally ill or mentally retarded. TEX.FAM.CODE ANN. § 56.01(c). A person may also appeal an order entered under Section 54.11(i)(2) transferring the person to the custody of the institutional division of the Texas Department of Criminal Justice. TEX.FAM.CODE ANN. § 56.01(c)(2). The Family Code does not authorize an interlocutory appeal of a transfer order entered pursuant to Section 54.02.

The Code of Criminal Procedure provides for an appeal of an order of a juvenile court certifying the defendant to stand trial as an adult and transferring the defendant to a criminal court under Section 54.02 of the Family Code. TEX.CODE CRIM.PROC.ANN. art. 44.47(a)(Vernon 2006). However, such an appeal may be taken “only in conjunction with the appeal of a conviction of or an order of deferred adjudication for the offense for which the defendant was transferred to criminal court.” TEX.CODE CRIM.PROC.ANN. art. 44.47(b). The record establishes that the criminal prosecution of R.A. remains pending. Consequently, he does not have a right to appeal the transfer order at this stage of the proceedings. We grant the State’s motion and dismiss the appeal.

November 24, 2009

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ANN CRAWFORD McCLURE, Justice

Before Chew, C.J., McClure, and Rivera, JJ.