



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-19-00328-CV

IN THE MATTER OF B.R., A JUVENILE

On Appeal from the 323rd District Court
Tarrant County, Texas
Trial Court No. 323-109141-18

Before Kerr, Womack, and Wallach, JJ.
Memorandum Opinion by Justice Kerr

MEMORANDUM OPINION

The State filed a petition for adjudication in which it alleged that B.R.¹ committed 18 counts of aggravated robbery and obtained grand jury approval to seek determinate sentencing on all 18. *See* Tex. Fam. Code Ann. § 53.045(a)(7). If tried as an adult, B.R. would have been facing 18 first-degree felonies. *See* Tex. Penal Code Ann. § 29.03(b). As a juvenile, B.R. faced a determinate sentence of up to 40 years. *See* Tex. Fam. Code Ann. § 54.04(d)(3)(A)(ii).

As part of a charge bargain, B.R. agreed to plead true to ten counts of aggravated robbery, and the State agreed to waive the other eight counts. Without a sentence bargain, B.R. then went before the trial court for disposition. *See id.* § 54.04. After considering a social-history report, a psychological evaluation, and testimony, the trial court ordered B.R. committed for eight years to the Texas Juvenile Justice Department (TJJD) with a possible transfer to the Institutional Division of the Texas Department of Criminal Justice. *See id.* § 54.04(b), (d)(3)(A)(ii). B.R. filed a notice of appeal, and the trial court certified that it was giving B.R. its permission to seek appellate review. *See id.* § 56.01(n).

¹We refer to B.R. by his initials and to his family members by their relation to him. *See* Tex. R. App. P. 9.8(c).

In one issue,² B.R. argues that the trial court abused its discretion by committing him to the TJJD because the evidence is legally and factually insufficient to support the trial court's finding that "reasonable efforts were made to prevent or eliminate the need for [B.R.'s] removal from [the] home and to make it possible [for B.R.] to return [to his] home." *See id.* § 54.04(i)(1)(B). This finding is one of three prerequisites to committing a child to the TJJD. *See id.* § 54.04(i)(1)(A)–(C) (requiring express findings that child's best interests call for placement outside the child's home; that reasonable efforts were made to keep the child at home; and that in the child's home, the child cannot get the support and supervision needed to meet the conditions of probation).

More particularly, B.R. argues that "[t]he record evidence and testimonial evidence is devoid of any evidence that reasonable efforts were made to prevent B.R.'s commitment to [the] TJJD. There was not any evidence introduced that other placement options short of [the] TJJD were explored or sought by any party." "Every Juvenile Probation Department," he contends, "should be under an obligation to inform the Court and each party to the proceedings what specific services, if any, the department can offer any juvenile who is adjudicated of delinquent conduct." In his

²B.R.'s brief uses the old term *ground of error*, but current procedural rules provide that a brief must "state concisely all issues or points presented for review." Tex. R. App. P. 38.1(f); *see Knox v. State*, 722 S.W.2d 793, 794 n.1 (Tex. App.—Amarillo 1987), *pet. dismiss'd*, 769 S.W.2d 244 (Tex. Crim. App. 1989).

case, B.R. complains that “the Juvenile Probation Department did not inform the Court what other facilities outside the home were available to B.R.”

But as we will explain, before the trial court ruled to remove B.R. from his home, more than reasonable efforts were made to

- determine B.R.’s personal background and needs;
- determine his familial background;
- determine his family’s ability to meet his needs; and
- identify dispositional options that would best serve B.R.’s needs.

Far from being legally or factually insufficient, copious evidence supports the trial court’s finding and disposition.

Standards of Review

A trial court has broad discretion to determine a suitable disposition for a child who has been adjudicated as having engaged in delinquent conduct. *In re V.L.T.*, 570 S.W.3d 867, 869 (Tex. App.—El Paso 2018, no pet.); *In re W.Z.*, No. 02-17-00305-CV, 2018 WL 3763914, at *1 (Tex. App.—Fort Worth Aug. 9, 2018, no pet.) (mem. op.). An abuse of discretion occurs when the trial court acts unreasonably or arbitrarily without reference to any guiding rules or principles, but it does not abuse its discretion simply by basing its decision on conflicting evidence. *See V.L.T.*, 570 S.W.3d at 869; *W.Z.*, 2018 WL 3763914, at *1; *In re C.J.H.*, 79 S.W.3d 698, 702 (Tex. App.—Fort Worth 2002, no pet.). And we will not find an abuse of

discretion as long as some evidence of substantive and probative character exists to support the trial court's decision. *C.J.H.*, 79 S.W.3d at 702.

Legal and factual sufficiency are relevant factors in assessing whether the trial court abused its discretion. *Id.* When addressing sufficiency complaints during the disposition phase of a juvenile proceeding, we apply the civil standards of review. *See id.* at 703.

When determining whether there is legally sufficient evidence to support the finding under review, we consider evidence favorable to the finding if a reasonable factfinder could and disregard evidence contrary to the finding unless a reasonable factfinder could not. *In re M.E.*, No. 02-14-00051-CV, 2014 WL 7334990, at *2 (Tex. App.—Fort Worth Dec. 23, 2014, no pet.) (mem. op.) (per curiam). Anything more than a scintilla of evidence supporting a finding renders the evidence legally sufficient. *Id.*; *C.J.H.*, 79 S.W.3d at 703.

When reviewing an argument that the evidence is factually insufficient to support a finding, we set aside the finding only if, after considering and weighing all of the evidence in the record pertinent to that finding, we determine that the credible evidence supporting the finding is so weak or so contrary to the overwhelming weight of all the evidence that the answer should be set aside and a new trial ordered. *M.E.*, 2014 WL 7334990, at *2; *C.J.H.*, 79 S.W.3d at 703.

Evidence

A. September 2018: B.R. commits multiple offenses at a tender age.

At the time of B.R.'s disposition hearing, he was 14 years old. Despite his youth, B.R. already sported tattoos on both arms. At the time of all 18 alleged offenses, which occurred within about a three-week span in September 2018, B.R. was 13 years old. B.R. had no prior referrals and thus had never been on probation before.

B.R. committed the robberies with four other people. During one, the robbers shot someone, and the victim spent about a month in the hospital recovering. Although B.R. himself was not accused of holding a gun or pulling the trigger, his role in this robbery, as in all the robberies, was to hold the door open. This offense was among the ten to which B.R. pleaded true.

B. November 2018: Probation Officer Paxton learns about B.R. and his family.

Assigned to B.R.'s case in November 2018, Patsy Paxton was B.R.'s juvenile-probation officer and, in the course of her work, learned about B.R. and his family. The trial court admitted her written social history and a psychologist's written evaluation into evidence at the disposition hearing.

Roughly ten years earlier, when B.R. was about four years old, he and his family had immigrated from Thailand to the United States. B.R., his parents, and his three older sisters spoke only Karenni, which is a Thai dialect. Within a year after immigrating, B.R.'s father died.

At home, B.R.'s mother had trouble with B.R.'s behavior as he grew older. For example, while interacting with his sisters, B.R. had once threatened them by displaying a knife "to show that he was in charge." B.R. disregarded his mother's instructions, "did [just] what he wanted to do," and would leave the house for several days at a time without permission. To the psychologist, B.R. described his home life as being full of conflict, described himself as being very argumentative with his mother and sisters, and admitted running away from home "five or more times in the past." When home, B.R. was destructive and disrespectful. Despite being the youngest sibling, as the only male member of the household, B.R. considered himself the man of the house and within his rights to assert his authority. And because B.R. was the only one in his family who spoke English, he leveraged that to his advantage. Mother complained that she was afraid of B.R. and not able to control him.

Drugs and alcohol created additional concerns; B.R. had experimented with marijuana, crack cocaine, vodka, and beer.

School attendance was a problem, too. Before being brought into detention in November 2018, B.R. had missed four or five weeks of school. Up to that point, he had attended school that year for only 11 days.

The psychological evaluation, which was attached to Paxton's social history, provided insight into B.R.'s thinking:

[B.R.] added that he and his family have always lived in low-income and high-crime neighborhoods in overcrowded and impoverished conditions where violence and drugs are commonplace. At the age of twelve, he

became affiliated with members of [a] local gang (i.e. “Latin Kings”) who taught him that lying, cheating, stealing, and fighting are basic survival skills on the streets. He expressed having adopted their drug habits and antisocial attitudes, such as a lack of respect for authority, a lack of empathy for others, and a lack of remorse. He indicated that his affiliation with this group provides him with a sense of acceptance and belongingness that he had always felt he lacked as a foreigner in this country.

Finally, [B.R.] acknowledged that he has smoked marijuana on a frequent and regular basis for approximately two years, along with occasional use of other drugs (e.g. crack cocaine). However, [B.R.] dismissed the significance of his drug habits, indicating that he considers marijuana to be a relatively harmless vice and that drug abuse is normal and condoned behavior in the neighborhood where he lives. In sum, [B.R.] glibly indicated that he has become desensitized to hardship and socialized to accept criminality as a way of life. In all, records indicated that [B.R.] presented with a record of eighteen juvenile referrals for aggravated robbery.

The psychologist also noted the power that B.R.’s English skills gave him over his family: “[G]iven that he is the only one in his family who can fluently speak English, his mother and sisters are dependent upon him to translate and read for them, which he believes gives him an authoritative role in the family and the ability to censor what he does not want them to know.”

Paxton testified that B.R. had several friends or peers in his neighborhood who had connections to gangs. Other than going to church, B.R. had no extracurricular activities. Paxton stated that B.R. had left the psychologist with the impression that B.R. intended to continue socializing with a bad peer group and smoking marijuana.

C. March to May 2019: First release from detention; second detention

After the trial court released B.R. from detention to his mother's home in March 2019, he attended school. B.R. was placed on an electronic monitor, and Paxton had no reports of any behavioral problems. And after B.R.'s initial detention, every time the probation department tested him for drugs, the results were negative. But in May 2019, after violating the terms of his monitored supervision by leaving his mother's home, B.R. found himself back in detention.

D. Later in May 2019: Second release from detention

The trial court released B.R. from detention to his mother's home a second time several days later. Upon this second release, B.R. attended summer school and caught up with his studies. By doing so, Paxton noted, B.R. showed that he was intellectually capable. But despite that success, Paxton also noted that B.R. did not like school because he believed that he was smart enough already and did not need additional schooling.

E. June 2019: Adjudication hearing; disposition hearing set for later date

In June 2019, B.R. entered his ten-count charge bargain, and at the adjudication hearing, the trial court found that B.R. had engaged in delinquent conduct. But rather than proceed to disposition, the trial court set that hearing for a later date so that the juvenile-probation department could complete its social history.

At the close of the adjudication hearing, B.R. requested that the court order a placement search based on the psychological evaluation, which had already been

completed. The prosecutor noted that placement searches had already been attempted for two other juveniles involved in the same aggravated robberies as B.R. but that—due to the offenses’ violent nature and those juveniles’ psychological histories—the probation department “came up with zero placement opportunities.” Despite thinking that a search would be a waste of time for B.R. as well, the prosecutor did not oppose one because B.R. had not been charged in a juvenile court before. After asking Paxton about B.R.’s behavior since his second release from detention and getting a favorable response, the trial court declined to order a placement search at that time but left open the possibility of ordering one after hearing more evidence at the disposition hearing:

I’m not inclined to do a placement search now. If things come up during disposition where it seems like placement is a viable alternative, since [B.R.] seems to be doing well in the community, I can -- I can just defer my finding on disposition to do a placement search. So instead of ordering it now before we need it, let’s find out [if] we actually need it before I order it. I’m not shutting the door on it. I’m just saying I don’t think the door necessarily needs to be open now.

F. Mid-July 2019: Shortly before his disposition hearing, B.R. is brought back into detention a third time

Despite Paxton’s favorable report in June, in mid-July 2019, slightly more than a week before the scheduled disposition hearing, B.R. was brought back into detention again after having his 13-year-old girlfriend spend the night with him—something his mother was “not okay with.” According to Paxton, B.R. was again

developing an attitude with his family and was accused of using his sister's phone and threatening to break it.

G. July 26, 2019: Disposition hearing

1. Paxton discusses available services

At the disposition hearing, Paxton addressed such services as TCAP,³ a program the probation department often used to help young men without a male role model by having TCAP workers meet with them several times a week. Paxton thought that B.R., who had lost his father when he was about five years old, would benefit greatly from having a positive role model in his life.

For B.R.'s drug issues, Paxton acknowledged that B.R. had not yet had a substance-abuse evaluation but that the probation department could do one. If the court placed B.R. on probation, B.R. would likely be evaluated for drugs and alcohol. Paxton agreed that the community offered drug-treatment services, even inpatient services, and that in keeping with the psychologist's recommendation that B.R. have a psychiatric consultation, the probation department could also refer B.R. for mental-health treatment. Ultimately, though, Paxton recognized that if the court placed B.R. on probation, he would be returning to his mother's home. In that situation, B.R.'s primary disciplinarians would continue to be his mother and sisters.

³Tarrant County Advocate Program, <https://www.nationalgangcenter.gov/SPT/Programs/125> (last visited May 27, 2020).

Paxton also acknowledged that if the court placed B.R. on probation, another option—as a condition of probation—was placement outside his home at a boys’ ranch. Although the probation department had not conducted a placement search for B.R., Paxton testified that it could if the court were to order such a search.

2. The psychologist weighs in on B.R.’s many needs

In the earlier psychological evaluation, the psychologist had written that B.R. needed help in many areas, needed long-term care in a secured facility, and needed a strict behavioral program. Without a successful intervention, the psychologist opined that B.R. posed a high risk for (1) recidivism, (2) addictions, and (3) additional antisocial personality traits:

Overall, [B.R.’s] psychosocial and behavioral history, along with his intellectual deficits, maladaptive personality, poor literacy, and limited supports all combine to form a poor prognosis given a natural course of his condition. Although [B.R.] has never received lesser restrictive mental health treatment, it is likely that his needed level of care exceeds the natural limits of short-term or community-based programming and requires the more structured and comprehensive treatment that is indicative of a long-term therapeutic milieu setting.

Moreover, given his limited supports and his extensive history of truancy, violating curfews, skipping classes, and running away from home, it is likely that his needs require a secured residential program where his safety, attendance, and active participation may be strictly monitored and enforced. Fortunately, evidence suggests that he has the cognitive capacity to benefit from conventional modes of treatment, such as cognitive-behavioral therapy.

Therefore, it is recommended that [B.R.] be considered for placement in a long-term and secure residential treatment program where he might achieve a lasting sobriety and receive strict supervision and comprehensive dual substance abuse treatment. However, it is

important that his plan of treatment not be solely focused upon substance abuse, as his antisocial attitudes and habits are significant factors in perpetuating his addictive behaviors and in putting him at further risk of relapse and development of other functional impairments and mental disorders. Therefore, he may benefit from exposure to a strict behavioral program that reinforces prosocial attitudes in community living.

....

.... Without successful intervention, [B.R.] is at a high risk for recidivistic behaviors and further development of addictions and antisocial personality traits as he matures into later stages of adolescence and adulthood.

3. B.R.’s mother wanted him to return home—she needed an interpreter and a babysitter

Through an interpreter, B.R.’s mother testified that she wanted B.R. to return to her household. B.R. was “the only man at home.” Because no one else in the home spoke English, she needed him there as the family’s interpreter. She also wanted him to babysit his one-year old niece, which she admitted had not been an option before his arrest because she had feared that he would just walk off with his friends. B.R.’s mother also said that following his detention he had behaved better and no longer talked back or yelled. She acknowledged that before B.R. had been detained, she was afraid of him, but that was no longer true now that the court was involved. After B.R. returned from detention, he listened to and respected her. She wanted B.R. returned to her home and reassured the court that if B.R. did not behave or if he committed a new offense, she would report him.

Discussion

At a disposition hearing, in addition to witness testimony, the juvenile court may consider written reports from probation officers, professional court employees, or professional consultants. Tex. Fam. Code Ann. § 54.04(b). The trial court here considered such evidence and had a wealth of information before it.

A prominent piece of information was the offenses themselves. B.R. had pleaded true to committing ten aggravated robberies, one of which involved a shooting victim. The offenses were both serious and numerous. Generally, a trial court does not abuse its discretion in rendering a commitment order when a delinquent juvenile has engaged in some type of violent activity that makes the juvenile potentially dangerous to the public. *See In re L.D.*, No. 12-06-00193-CV, 2007 WL 677828, at *2 (Tex. App.—Tyler Mar. 7, 2007, no pet.) (mem. op.); *In re L.G.*, 728 S.W.2d 939, 945 (Tex. App.—Austin 1987, writ ref'd n.r.e.). Apart from public-safety concerns, B.R.'s conduct raised the specter of potential danger even within his family. Using a knife, B.R. had intimidated his sisters, and B.R.'s own mother was, at least at times, afraid of him.

B.R. complains that he was not offered any services. Implicitly, he correlates Section 54.04(i)(1)(B)'s call for “reasonable efforts” with “services.” But the statute requires a finding only that “reasonable efforts were made”; it does not specify that those efforts must include services. *In re H.C.*, No. 02-18-00230-CV, 02-18-00231-CV, 02-18-00232-CV, 2019 WL 1185089, at *16 (Tex. App.—Fort Worth Mar. 14, 2019,

no pet.) (mem. op.) (per curiam). Because the statute is clear and unambiguous on its face, we decline to read words into the statute that the legislature did not include. *See id.* In any event, the trial court here was not oblivious to or dismissive of considering services; indeed, at the end of the adjudication hearing, the court articulated wanting to use the disposition hearing to develop a comprehensive approach to address B.R.'s needs.

Further, a trial court is not required to exhaust all possible alternatives before sending a juvenile to the TJJD. *See In re T.D.*, No. 12-19-00259-CV, 2020 WL 1528062, at *2 (Tex. App.—Tyler Mar. 31, 2020, no pet.) (mem. op.); *In re J.R.C.*, 236 S.W.3d 870, 875 (Tex. App.—Texarkana 2007, no pet.); *see also In re A.M.C.*, No. 04-11-00116-CV, 2011 WL 6090077, at *4 (Tex. App.—San Antonio Dec. 7, 2011, no pet.) (mem. op.) (not requiring trial court to first exhaust probation and outside placements before ordering child committed, given the severe pattern of delinquent conduct). The psychological evaluation showed that B.R.'s needs were not few and minor but, instead, were many and profound.

Allowing B.R. to return to his mother's home pending the adjudication and disposition hearings allowed the court to see how B.R. behaved while home with her, something that can play a part in the reasonable-efforts analysis. *See H.C.*, 2019 WL 1185089, at *17. And being released to his mother's home proved helpful—it showed the court that removing B.R. was in fact necessary. At home, B.R. considered himself the authority. Mother exercised no personal influence over B.R.,

and although the control she exercised vicariously on behalf of the probation department and the court led to some qualitative improvement in B.R.'s behavior, this improvement did not prevent B.R. from returning to detention before his adjudication hearing and again shortly before his disposition hearing. In both instances, his timing could not have been more inauspicious. His home could not provide the level of support needed for him to successfully complete probation. *See In re V.A.G.*, 528 S.W.3d 172, 176 (Tex. App.—El Paso 2017, no pet.); *In re C.C.B.*, No. 02-08-00379-CV, 2009 WL 2972912, at *4 (Tex. App.—Fort Worth Sept. 17, 2009, no pet.) (mem. op.) (per curiam); *In re D.W.*, No. 02-08-00243-CV, 2009WL 1815779, at *2 (Tex. App.—Fort Worth June 25, 2009, no pet.) (mem. op.) (per curiam).

Admittedly, B.R.'s behavior improved while at home: he went to school and did well, he stayed off drugs, and he committed no new offenses. But even improved behavior is not necessarily enough. *See In re J.M.*, 433 S.W.3d 792, 794–96 (Tex. App.—Dallas 2014, no pet.). In that case, the Dallas Court of Appeals held that even though both parents testified that their juvenile daughter had improved during the 30-day trial period at home and that they wanted their daughter to stay at home, the trial court did not abuse its discretion by finding that reasonable efforts had been made to keep the juvenile in her home but that if she remained there, she could not be provided the quality of care and level of support and supervision that she needed to

meet the conditions of probation. *Id.*⁴ In B.R.’s case, the psychologist opined that B.R. would benefit from a “strict behavioral program that reinforces prosocial attitudes.” On this record, with B.R.’s being the “only man at home” and the person on whom the rest of the family depended to interact with the outside world, the evidence showed that home was part of the problem and not part of the solution.

We conclude that more than a scintilla of evidence supports the trial court’s finding that reasonable efforts were made to prevent or eliminate the need for B.R.’s removal from the home and to make it possible for B.R. to return to his home. *See* Tex. Fam. Code Ann. § 54.04(i)(1)(B); *V.L.T.*, 570 S.W.3d at 869. Further, based on our review of the record, we cannot conclude that the credible evidence supporting the trial court’s finding is so weak or so contrary to the overwhelming weight of all the evidence as to be manifestly wrong. *See* Tex. Fam. Code Ann. § 54.04(i)(1)(B); *V.L.T.*, 570 S.W.3d at 870. Therefore, we hold that the trial court did not abuse its discretion by assessing determinate sentences and ordering B.R. committed to the TJJD.

We overrule B.R.’s sole issue.

⁴The juvenile in *J.M.* was not committed to the TJJD but was placed on probation for one year, in the custody of the chief probation officer, for placement at a residential-treatment facility. *Id.* at 794–95.

Conclusion

Having overruled B.R.'s only issue, we affirm the trial court's judgment for determinate sentencing.

/s/ Elizabeth Kerr
Elizabeth Kerr
Justice

Delivered: June 18, 2020