

Children's Law Center of Indiana



Delinquency

04/16/2007

In **T.W. v. State**, 864 N.E.2d 361 (Ind. Ct. App. 2007), the Court affirmed the juvenile court's finding that the juvenile had violated her probation. The juvenile had been adjudicated delinquent on two separate occasions in 2005. The dispositions were placement on probation with special conditions for the first and suspended commitment to the Indiana Department of Correction (DOC) for the second. In January 2006, the State filed an information alleging violations of the probation and the suspended commitment because she tested positive for marijuana and she left her foster home and two days later her whereabouts were still unknown. The juvenile admitted the allegations pursuant to a plea agreement and was placed on probation requiring residential placement at Gerrard House and compliance with Gerrard House rules, including keeping Gerrard House informed of her whereabouts at all times. On May 24, 2006, the juvenile had permission to leave Gerrard House to attend G.E.D. classes and then to report to work. That day, the juvenile's employer informed Gerrard House that the juvenile had not reported to work. Gerrard House reported the juvenile as a runaway. Later, when the juvenile phoned to say she had been at her sister's home, she was instructed to return to Gerrard House immediately, but she did not return for several hours. The State filed an Information of Delinquent Child, Violation of Probation/Suspended Commitment, alleging the juvenile to be a delinquent child because she violated the conditions of her suspended commitment by "commit[ting] the act of Runaway" and requesting the revocation of her probation and imposition of an alternative disposition. Following a denial hearing and a dispositional hearing, the juvenile court found that the State had "met its burden by a preponderance of the evidence and viewed [the juvenile] to be delinquent and violate[d] the probation." Because the juvenile was to turn eighteen years old in the following days, the trial court ordered her to continue on informal probation, ordered her to pay fees, and released her to the custody of her mother. The juvenile appealed.

The juvenile court proceeding was one to determine whether the juvenile had violated her probation by committing the act of leaving home as defined by I.C. 31-37-2-2, rather than to determine whether she was a delinquent child for committing the act of leaving home. *Id.* at 364. On appeal, the juvenile framed the proceeding below as an action determining her to be a delinquent child and contended that the evidence was insufficient to support the delinquency adjudication. The State contended that the information alleged a delinquent act only as the basis for its request that the juvenile's probation and suspended commitment be revoked. The Court reviewed the content and title of the information and concluded that the pleading did not request an independent adjudication of delinquency under I.C. 31-37-2-1 based on the leaving home allegation except as such would be a violation of the terms of her probation and suspended commitment. *Id.*

The evidence was sufficient to support the trial court's finding by a preponderance of the evidence that the juvenile violated her probation and suspended commitment in two prior cases by committing the act of leaving home as defined by I.C. 31-37-2-2. Id. at 366. The Court noted that a probation revocation proceeding such as this one is in the nature of a civil proceeding, and, therefore, the alleged violation need be proved only by a preponderance of the evidence, and that a violation of a single condition of probation is sufficient to revoke probation. J.J.C. v. State, 792 N.E.2d 85, 88 (Ind. Ct. App. 2003). Here it was alleged that the juvenile violated the terms of her probation and suspended commitment by committing the act of leaving home. The Court quoted I.C. 31-37-2-2 which states: "A child commits a delinquent act if, before becoming eighteen (18) years of age, the child leaves home: (1) without reasonable cause; and (2) without permission of the parent, guardian, or custodian, who requests the child's return." The Court individually addressed the juvenile's three contentions – that the State failed to show that (1) she left without permission; (2) she failed to return; and (3) she was in need of care, treatment or rehabilitation. T.W. at 364-65.

Using statutory construction, the Court held that, in the context of I.C. 31-37-2-2, permission to leave that is given for a particular destination limits that permission, at least by implication, to that particular destination, and thus, the juvenile did not have permission to leave Gerrard House as contemplated by I.C. 31-37-2-2. Id. at 365. Further, the Court did not agree with the juvenile's contention that "implicit [in the statute] is a notion that a child has not left home if the child returns after being asked." Accordingly, the Court held, "the fact that [the juvenile] returned to Gerrard House hours after [their] request does not render nugatory the permission element or [the juvenile's] meeting of that element." Id. The Court noted that: (1) a finding that the juvenile requires care, treatment and rehabilitation, is necessary for a court to adjudicate a child to be a delinquent child; (2) because the allegation that the juvenile violated her probation/suspension was based on an allegation that she had committed a delinquent act, the State was required to show that the juvenile required care, treatment, or rehabilitation; (3) the State was only required to make such a showing by a preponderance of the evidence; and (4) the juvenile court took judicial notice of all orders entered in the two prior delinquency adjudications. Based on the orders issued in the two prior delinquency adjudications, the Court concluded that the evidence was sufficient to support the juvenile court's finding, by a preponderance of the evidence, that the juvenile was in need of care, treatment, or rehabilitation. Id. at 365-66.