ORAL ARGUMENT – 02/04/04
03-0266
J. P. V. STATE OF TEXAS

KERSEY: This is a statutory construction case involving two sections of the juvenile code. Section 54.04 is entitled "Disposition Hearings". The next section is entitled "Hearings on Modification." We have a juvenile who was put on probation for some couple of acts of delinquent conducts that met the technical requirements of felony.

O'NEILL: If we're to find as you argue that the TC is required to make these findings, the 54.04 findings, and that the TC erred in failing to do so, would we engage in a harmless error analysis and determine from the record that there would be implied findings in favor of the judgment and they are supported by the record? What if we agree with you legally. What's the resolve?

KERSEY: I think you would have to remand to the Ft. Worth CA, where they would have to review the record once again to look at harmless error. But I think it would be inevitable they would have to find harmless error, because these determinations that are set out in 54.04(i) are very specific. I can tell you now the record doesn't contain those determinations.

BRISTER: Which one was not in the order?

KERSEY: (A), that the decision with the commitment was in the best interest of the child was not in the order. And I believe (c) also, that the child could not be provided the quality of care and ____ support he needed.

BRISTER: Maybe I'm looking at the wrong order. This is the one signed April 22, 2002.

KERSEY: That is the TC order.

BRISTER: It says the court finds that the best interest of the juvenile and the community would be served by committing him to TYC. And then it also X'd off that local resources with the court are inadequate to properly rehabilitate the juvenile. That's exactly what you're arguing should be in the order. Right?

KERSEY: Right. That was dealing with the specifics and I dealt with that in the CA.

BRISTER: Assume with me that's in the order, then this order complies with either one. Right?

KERSEY: It would be in partial compliance in that way. But the order does not contain all three of those determinations does it?

BRISTER: Which one does it not contain? You said best interest and inadequate resources.

KERSEY: I believe it contains a statement that local resources have been exhausted. But that's really a reason for the judge's decision. It's not one of the criteria under 54.04(i). I believe I complained about the absence of two of these determinations in the court's order. There are three determinations under 54.04(i) that are required for a commitment to TYC.

HECHT: All three of them focus on whether the child should be left at home, and that makes sense in a 54.04 hearing because he hadn't been removed yet except perhaps temporarily. But what sense does that make in a 54.05 hearing when he's already been taken from the home?

KERSEY: These are criteria you have to meet if you're going to use the option of last resort, that is the TYC. We don't want you to send kids to TYC unless things are so bad that you can basically make what amount to these findings.

HECHT: But the findings you say, you should make findings that basically it is okay to take them out of the home. There are variations on that theme. Isn't it true that in a 54.05 hearing he's already gone?

KERSEY: He may or may not be out of the house. He may be on probation in the parent's home at the commencement of a 54.05 hearing.

HECHT: So there would be some circumstances. It could be either way I guess.

KERSEY: Yes. In addition to that the 54.04(i) criteria, our main concern is to look at those with a view toward committing children to TYC, that this should be a threshold under any circumstances that must be delineated and crossed consciously by a court before they send a child to TYC. And our argument is that there was no need for the legislature to say this twice. We all know that a modification is _____ if logical and practical point of view just a redisposition. It's just a disposition after the first disposition.

HECHT: The legislature has met though twice since J. Ricter's concurrence and once since J. McClure's opinion, and has had a dozen or maybe two dozen bills modifying these sections of the family code, and none of them deal with this. Assume that that's correct. Do you have any explanation about why that's not a legislative endorsement?

KERSEY: They may not at this point see it as a pressing problem. And the truth is most of our judges in Texas are lawyers. And if you let a lawyer read through 54.04 and 54.05, most of them are going to look at the standards. If they think they've got to send a child to TYC for the sake of their own conscience, they are going to look at those 54.04(i) criteria before they send a child to TYC. And I would bet you a lot of them are putting these determinations in those orders because they think that's the right thing to do. And a lot of them are refraining from sending children to TYC

because of this criteria.

PHILLIPS: Are there any of these criteria that the judge did not discuss in the course of his soliloquy prior to announcing his determination?

KERSEY: I did not get a chance to go back over the trial record and the language of the judge. I objected to the missing criteria in my brief to the CA and that's where this all started. He didn't put those in his written order.

PHILLIPS: If the judge announced, if he read them word for word from the bench and a record was made of that, but he didn't put it in the order, is that fatal?

KERSEY: Upon a remand to the CA that would could very easily end up...

PHILLIPS: Cause of the harmless error?

KERSEY: Harmless error decision. Yes.

O'NEILL: Why would we not determine harmless error?

KERSEY: That is possible in an individual case. Of course today the issue that I've been instructed to frame is am I interpreting the section correctly. There is nothing to prevent this court from rendering a construction of the statute – I really think that's the CA's job. You folks have other things to do.

I do want to point out to the court the reason why we think these criteria apply to both sections and it begins with the introduction to the Title 3. It shows a list of purposes and then 5 says, this title shall be construed to achieve the foregoing purposes in a family environment, separating the child the parents, necessary for the child's welfare or in the interest of the public.

Government code 311.026 says that we are supposed to construe statutes in such a manner as to give effect to the entire statute. And the implication of that being if we have sections that appear to have some inconsistency if we can reconcile them so as to give effect to both of them we're supposed to do it. It wasn't necessary for the legislature to put these criteria in both 54.04 and 54.05. 54.05 from a logical point of view it is a subsection of 54.04.
First you started .04 with disposition matters, then you go to 54.05 which should be interpreted to say and when you have to go back and look at this again here are the additional rules you used. You do not abandon 54.04 entirely just because you're in a modification context. We've got criteria. Let's continue them over into the modification process.

Further, Gov't Code 311.023 allows this court to look at the consequences of these construction statutes. At this point the construction of these statutes by most of the CA's results in pretty much meaningless review. In my brief I cited a review by one of the CA's of a case

like this, and I believe it was two sentences. This is an abuse of discretion case. When we looked at the record we don't think the judge abused his discretion. End of discussion. There's no standards for us here.

BRISTER: This only applies to felons, and people who commit jailable misdemeanors. Right?

KERSEY: Child can be vulnerable to its TYC commitment if he commits multiple misdemeanors or one felony.

BRISTER: Let's say it's a felony. We found this delinquent juvenile committed a felony. We give him/her a chance and say here's the conditions. You must follow these conditions. If you do not, then I'm going to send you where I could send you today. No question if you commit the felony the trial judge as an initial matter could have sent them to TYC. Right?

KERSEY: Yes.

BRISTER: So if they don't follow the conditions why is it an abuse of discretion whatever the condition is? Give me an example of where it would be an abuse of discretion to commit them to TYC?

KERSEY: Where a child was on a probation for say - take this case. Felony - he kicked his school teacher. He's committed a felony. He's on probation. He breaks a curfew. He gets caught smoking cigarettes. Something like this. The judge ends up sending him to TYC. As the judge from the San Antonio CA's decision said, the young violator can be sent to TYC on a minor probation violation. And these are not the kind of kids we want to put in TYC.

BRISTER: But the abuse there would be setting a condition of probation that was minor. Would it not?

KERSEY: I think it would be an abuse of discretion to - I don't think it would be in the child's best interest to go to TYC because he was smoking cigarettes or he broke a curfew. There's another section of the family code. Under 54.04 the disposition section deals with violent and habitual offenders and reverses back to 53.05 where we deal with kids that are charged and adjudicated in things like: murder; capital murder; manslaughter; aggravated kidnaping aggravated assault; aggravated robbery. Serious offenses. These people very often previously have been sentenced.

JEFFERSON: If we construe the statute and decide the conditions don't have to be stated again in the modification hearing, that that's the decision of the court, then it becomes truly a legislative _____. Right? The legislature can come back and determine whether or not the TC needs to make additional findings. If it's slightly ambiguous put it up to the legislature to clarify if it wants to.

KERSEY: One practical reason is that the legislature is - we have a part time legislature. Those people deal with thousands and thousands of bills. They are lucky to get as much done as they can. If we can make a clarification that we believe is consistent with their intent, that's a good thing.

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LAWYER: The CA and TC decision in this case should be reversed for two reasons: 1) the TC failed to comply with §54.05(i) of the Family Code; and 2) because the TC abused its discretion. In this case the TC failed to comply with 54.05(i), which requires that the court in its order state a specific reasons for the modification of disposition.

HECHT: It stated them didn't it?

LAWYER: No. All the court said was that the child violated (A). The court did not state the findings required by 54.04(i). It stated two out of three. It did not state (c), that the child in the child's home was not provided with the resources necessary...

O'NEILL: But you would agree that the evidence at the hearing supported an implied finding to that effect/

LAWYER: I would agree that the facts in the TC record did support that. But 54.04(i) requires that those three particular findings be stated in the order. Particularly leaving out (c), the court did not comply with 54.04(i).

O'NEILL: If we find the TC erred as you claim by failing to state it in the order, why don't we apply our jurisprudence that says you imply all findings in support of the judgment and determine that this was harmless error?

LAWYER: Because that does not support the rationale of Title 3 of the Family Code, which is preservation of the family environment. In this case those three findings are required to be there for the protection of the child. Commitment of the child to TYC should be a last resort.

BRISTER: I thought it was required to be there because of federal law.

LAWYER: That is true.

BRISTER: Does the federal law require it to be there in modification orders?

LAWYER: It requires it to be there when the child is removed from the home. And that is true whether the child is removed at a general disposition hearing or whether the child is removed at the modification of the disposition hearing.

BRISTER: So your understanding is if an order doesn't have these findings in it, a

modification order, even if it complies with the state's statute, you can't get any federal funding for it?

LAWYER: That's correct.

BRISTER: What case or authority do you have to back that up?

LAWYER: I was unable to find any case supporting 42 USC §675(a)(15) which requires that...

SMITH: In the TC the judge entered this order on April 22. After that order was entered was there any motion to modify to point out to the judge it's error in not making this required finding?

LAWYER: I don't believe so.

HECHT: What's your best argument for how you can read a part of 54.04 and 54.05?

LAWYER: 54.05(i) corresponds with 54.04(f) and they both require that the court state in its order the specific reasons for its findings. If you read 54.04(f), like some CA's have, to require that all that is required in the court's order is that the child violated a reasonable and lawful order of the court, then you've now rendered 54.05(i) meaningless.

HECHT: But 54.05(i) as J. McClure pointed out could mean that the trial judge has to say something about his reasons for doing it without incorporating the three particular factors in 54.04.

LAWYER: Not in this case because we're talking about commitment of a child to TYC. Commitment to TYC should be a last resort. Therefore, in order to comply with 54.05(i) specific statement of the reasons in his order, the statement at 54.04(i) requirement should be also stated.

HECHT: In the certain respect limiting it to the factors in 54.04(i) is not reading 54.05(i) as broadly as the court might do.

LAWYER: Well it's not limited to just those three findings. It's including but not limited to those findings. Those findings must be there and the court can make additional findings in support of the record that justifies the modification of the dispositions, court commitment.

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RESPONDENT

BULL: What we have here is correct to a certain degree when we're basically dealing with a statutory interpretation of two statutes in the Texas Family Code between 54.04 and 54.05.

Our contention obviously is that 54.05 in dealing with the modification hearings is clearly self sufficient and black and white when it comes to what is required in those orders and what is required of the court in making those determinations as to whether or not, not just modifying the juvenile's disposition, but also if that modification were to in fact send him to the TYC.

BRISTER: Do you agree that the federal statute requires these three findings to be in a modification order or you lose federal funding?

BULL: No. I don't agree. Because I haven't seen anything that specifically spells that out. And that's why I won't agree to that. There's absolutely nothing in the Texas case laws than the Texas law that even cites that.

BRISTER: I suppose that if the federal authorities were refusing to send money to the TYC under modification circumstances, TYC would speak up.

BULL: Especially nowadays with funding being so hard to get. I would definitely see that they would speak up. Because they wouldn't want to risk that. They need their money.

BRISTER: But you don't have any cases saying one way or the other?

BULL: The Texas cases that are cited in our brief and the brief of appellants and the amicus curiae brief, including the El Paso case, they make no specific reference as to the federal law requiring that those three conditions be included in an order modifying disposition.

HECHT: The concern of the El Paso court and J. Rickoff seems to be that under 54.05(f), all the TC has to do is "find that the child violated a reasonable lawful order of the court", and the court can send the child to TYC. And maybe that's not enough. And J. McClure specifically pointed to (i) and said that's got to mean something for the court to make findings and maybe if the findings weren't good enough the simple violation of an order under (f) wouldn't be enough to justify sending the child to TYC. What's your view of that?

BULL: I assume you're talking about how they're making the statement that would render 54.05 meaningless because it's basically stating the reasons as to why the modification...

HECHT: The question is should a reviewing court look at those findings and say, well even though you're there under (f), these findings are not good enough.

BULL: Yes. That's why I don't think that their claim - they claim that certain parts of the statute are rendered meaningless, therefore, in contradiction to the section that they cited in the gov't code, §311.021 when it comes in the enactment of statutes that the entire statute is intended to be effective. And they in fact specifically cite in the amicus per curium brief, Robert O. Dawson in his book on Texas juvenile law, he's citing a case KWH v. State. There he basically states under 54.05(i) the reasons for the modification that contemplates more than merely just stating in the order

that the juvenile was found to have violated a reasonable and valid order of the court., or using other general terms that they require that the modifying order must specifically recite the conduct of the offense which prompted the court to make the modification. So right there, I think you're showing that in the statute you must show that first of all they have violated a reasonable and lawful order of the court.

HECHT: You've got an order, the childs on probation. Part of the probation is he has to obey the school dress code. The school dress code says no black shoelaces. That was J. Rickoff's example. He wears black shoelaces. The trial judge says I find you violated a reasonable and lawful order of the court. Probation. He said, Obey the school dress code. He didn't. No question about it. So he makes a finding and says this, this and this. Off to TYC. Should that order be affirmed?

BULL: I think the question would be is that considered a reasonable and lawful order of the court? Obviously requiring that a juvenile on probation abide by the rules of school or whatever, that would be considered a reasonable and lawful order. That would definitely be a subject that the CA would have the right, or a juvenile would have the right to have them look at on a case-by-case basis.

WAINWRIGHT: Let's take an example that is clearly not a reasonable - where the order is clearly reasonable and lawful. Instead of wearing black shoelaces to school let's say the probation order said no littering, and the findings under 54.04 were made with the probation order. Let's say the youth then throws his bubble gum wrapper paper on the sidewalk. He/she littered. Without any other findings as to best interest of the child and simply a determination that the probation order was violated, is it appropriate to commit the youth for the first time without going back through the 54.04 findings? That's the concern the El Paso CA raises.

BULL: I can understand as J. Rickhoff also stated in the San Antonio case the concerns that juveniles - or the claim that juveniles could be sent to TYC for minor probation violations.

BRISTER: Well the trial judge doesn't have to send them if they violate the order. So the trial judge has discretion and the CA could review that discretion to see if it was an abuse to send them to TYC for littering. Right?

BULL: Clearly. And that's the standard that we are dealing with is yes it is an abuse of discretion standard but that would go to the review of what you're talking about. Did the TC basically abuse its discretion...

WAINWRIGHT: Let's put the discretion to the side. The question is should the TC be able to send that youth to incarceration or type of incarceration for throwing the bubblegum wrapper on the sidewalk without the findings on best interest, whether the home can provide the regulation and supervision and rehabilitation, those other findings under 54.04. The question we're presented with is should the TC be able to do that?

BULL: The legislature says yes. That's what the legislature has said.

WAINWRIGHT: Based on your interpretation of the statute. Because you know we have a contrary interpretation before us.

BULL: In 54.04. I understand that.

WAINWRIGHT: Let me ask it a different way. Does it make sense to allow for the first time incarceration of that youth for throwing the bubble gum wrapper on the sidewalk without the findings being made?

BULL: If you're asking me to commit to that one way or the other maybe. Maybe not. It would depend on the particular circumstance of the case, the particular juvenile. For a first time maybe that would be questionable.

PHILLIPS: When you say the juvenile is protected because there is an abuse of discretion review if the TC acts blatantly unreasonably, and you don't want to commit to what would be blatantly unreasonable, but you recognize it could be out there. But what is the standard which the CA is going to conduct that review? Is it purely subjective - just this is ridiculous. Or, is there some standard that says the punishment is disproportionate to the crime? Is there something we can borrow from adult criminal law where a violation of probation can be so ____ that the revocation is truly an abuse of discretion?

BULL: I don't know when it comes to adult criminal law if that would be the case, because technically you have, and I've seen district judges send people to the penitentary for not doing their community service. To some people that may be considered completely unreasonable. They've completed every other condition.

PHILLIPS: Is the trial judge's revocation of probation, if it follows the letter of the law, is it reviewable by the appellate courts on an abuse of discretion standard or not?

BULL: I would believe that it is.

PHILLIPS: And this is something we don't know about.

BULL: In a criminal matter of this nature it would also be an abuse of discretion standard because you are basically - as in a modification hearing when it comes to a motion to revoke probation, which let's say for argument say they are very similar in what you're doing. You have somebody that's had a previous disposition in a case. They've either been placed on probation, be it regular probation, or deferred adjudication probation, and then they have done something to violate that probation. And so they come back and they have a hearing on it. And the decision as to whether or not they violated that probation is based on a preponderance of the evidence standard. Just like in a modification hearing. Granted this is a juvenile case and in juvenile cases you come out under

the family code. You're dealing with criminal offenses and so it's kind of quasi criminal in nature.

In criminal cases where you're going on a preponderance of the evidence standard as to whether or not this person violated the offenses, yes, the CA would review the TC's decisions in the matter and look at whether or not they abused their discretion in deciding if this person violated it by a preponderance of the evidence.

PHILLIPS: Following up on J. Brister's question. Is the discretion come in setting the probation standards or is it in determining whether there's a violation of those probations standards, or is it in the conclusion of what to do if they violate it? Can there be an abuse of discretion in all of those?

BULL: I believe so because those are all integral parts in making the decision. When it comes to the evidence that's presented as to whether or not the person violated their probation, you have to have evidence presented be it through them pleading true and agreeing to the allegations occurring or bringing in witnesses to testify as to certain conditions that were violated. And so the judge has to make decisions as to whether certain evidence would be permissible, or whether it would not be permissible, and then coupled with that in making his decision on the evidence that was presented to him. What if there was a lot of evidence that was presented on one side and very minimal evidence on the other, and the judge sides with the side that there's very minimal evidence. You would then look at that. Based on his decision on that. Was his decision so overwhelmingly against the evidence that it was considered abuse of discretion. So I would say it's all integral. You could look at everything.

SCHNEIDER: You were just mentioning awhile ago using as a parallel adults and the juvenile proceeding. Could you tell me what the major difference is when you go and take a plea of the juvenile case and a regular criminal case. The difference in what the judge or the adjudication.

BULL: They are similar in certain respects in the sense that it just isn't adult cases. The juvenile is admonished as to his constitutional rights.

SCHNEIDER: But there's no final order. It's not a sentence so to speak in the juvenile matter. Is that correct?

BULL: Well he is in the sense that there is an order of disposition which spells out specifically what it is, which obviously in 54.04 under certain circumstances during disposition you can send them to a TYC straight off if these certain things are met.

SCHNEIDER: What is the very youngest a child could receive this adjudication?

BULL: Off the top of my head I believe it's going to be around 10 years old.

SCHNEIDER: What's the maximum length that they could stay?

BULL: Well they can be placed on probation until their 18th birthday.

SCHNEIDER: So if a person went from 11 to 18, don't you think there might be an issue about changing conditions. There might be an issue about what's in the best interest of the child.

BULL: Definitely. And in this particular case, the statute 54.05 does not specifically require that those conditions be specifically enumerated in the order. Concerning this particular case and the judge reaching his decision, I think it was quite clear that those considerations were taken into account in reviewing the past history of the child, his home history, his parents, any other alternatives to residing with his mother, and the judge clearly took all this into account. And it was a difficult decision for him to make. But there were numerous instances as to things occurring and there was a serious question as to not just the child's well being and safety, but the safety of the public in addition. And that's another one of the underlying purposes of Title 3 is safety to the public.

SCHNEIDER: In other words you think the legislature probably thinks that it doesn't matter if a person could stay there 7 years and there would be no change in what's the best interest of the child? You don't think that they would have taken that into account?

BULL: Because they didn't include it in 54.05, I think they took into account, Well those problems are addressed during the disposition phase, the actual adjudication and disposition phase. And that's not implying that therefore those things aren't even considered in them making their determinations under 54.05 in their modification. It's just something that's not be statute legally required of them to include in their order in reaching the decision to commitment in the TYC.

O'NEILL: So your argument is just strictly plain language. You don't have any policy problem with the judge making those findings. You don't see anything wrong with it and actually think it could be a good idea. The legislature just hasn't required it and we shouldn't create it.

BULL: What I am asserting is, is I feel if there were any changes to be made, then the legislature should be the ones to address it. Reviewing the cases that have come down concerning these types of situations these aren't cases really where - the cases that are cited by our brief in support of 54.05 and the lack of the requirements of 54.04(i)'s assertions in being placed in the order. The fact situations are pretty similar in connection with our situation. This isn't a situation where this is the first time that they've been brought forward for like a modification hearing or something of that nature. There have been repeated violations of the juvenile's probation. And so we're not talking about a situation where the person is being sent to TYC for violating the court ordered rule of say not littering or something of that nature.

Yes there are some pitfalls. There may be when it comes to certain fact scenarios as is I think the case when you're dealing with almost any statute. And I feel like if that were to become a significant problem, if there was evidence that you did have say kids that were placed on a juvenile probation and they had never had a modification to their probation before, and

the only violation of their probation they committed was the littering, then maybe that would need to be addressed if it appeared to be a widespread problem. But up to this point we haven't - no fact scenario of that case has even come up before the CA.

WAINWRIGHT: Is it accurate that under 54.04 a child could never be taken from their home without the findings being made?

BULL: Under the disposition hearing and under 54.04, if they've been adjudicated and its disposition based on that adjudication, if they are to be sent to TYC, yes those specifics under 54.04(i) have to be incorporated in that order for their first time.

WAINWRIGHT: Is it possible for the child to be removed from the home under 54.05 without these findings having even been made? Because in this case the child agreed to probation outside of the home before the 54.05 issue came up. So let's put that to the side. So is it possible under 54.05 for a child to be removed from the home without the findings under 54.04, the A,B,C findings we're talking about being made?

BULL: Under certain circumstances it would be possible.

WAINWRIGHT: Do you think the legislature intended that?

BULL: I believe that they took it into consideration in writing the law. Because it's such a distinct difference between the two sections.

WAINWRIGHT: I'm not sure I understand. I asked, did the legislature intend that difference between the two? And you said you believe the legislature took that into consideration. So you think the legislature intended the different treatment under the two different provisions or not?

BULL: I think so at least at this point. That is such a difference distinguishing the two statutes. You have the first statute 54.04, that's the first phase in all this. And there's always the possibility that the juvenile may be modified and sent to TYC. And so I think the legislature took that into account and they intended at this point in time that look the child is being affected, his due process rights in the disposition and the adjudication hearing, and once the case has been adjudicated and there has been disposition, when it comes to modification his due process rights are a little more limited.

SMITH: On this April 22 order, was this a proposed order that was presented by the county or was it drafted by the court without assistance of the party?

BULL: The policy in our county normally is the state prepares the orders and submits them to the court for their signature.

SMITH: And this would have been served on the opposing attorney prior to signature?

BULL: Prior to signature, we always confer with opposing counsel, let him review the motion and the order to see if they have any problems or objections to any of the wording or anything of that nature prior to submitting it to the judge for signature.

SMITH: There was no objection that this failed to include the finding that they are complaining about on appeal?

BULL: I was not the actual trial court prosecutor, but it does appear from the record that there was not an objection.

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REBUTTAL

KERSEY: Children become subject to the juvenile code at age 10. If they get sent to TYC, that is a nonmodifiable order. The TC cannot modify that order. They can be there until their 18th birthday. Under certain circumstances they can be kept until their 21st birthday.

In this particular case we dealt with a child who first went on probation at age 10 or maybe closer to his...

BRISTER: Can they be released early if they do well at TYC?

KERSEY: Absolutely. This particular child was on probation in a residential facility for an anger management problem. The 10 year old's father died and suddenly he became unmanageable.

O'NEILL: You've not launched a constitutional challenge against 54.05 is my understanding.

BULL: We're arguing from statutory construction.

O'NEILL: So this is just pure statutory construction. And we just have to look at the words the legislature used and make that determination?

BULL: That's my opinion.

O'NEILL: So really fair or not fair doesn't come into it.

BULL: That's what we were talking about earlier when I said certain jobs for y'all, certain jobs for the CA. But I did want you to know that we can get these standards in place and go back to the CA, we don't get this thing back in TC, because the judge ignored the fact that the little boy's father died, and his grandparents (TAPE SIDE A ENDS)_____ and provide a home for him. How could a judge ignore this? That's why we're here. A judge, by the

way who was never actually elected as a judge, made this decision and we think is an abuse of discretion, we think it's in violation of the ____ statute.

SMITH: Do you want a new trial or do you want the judge to review the evidence and issue a new order if you get back to the TC?

BULL: I would present the same evidence I did the first time.

SMITH: So there's no need for a new trial. You just want the judge to make the written findings to assist your appeal.

BULL: I would like to bring my witnesses in. The judge would need to talk to the grandfather to see if he was still able to care for the child.

O'NEILL: You've not brought a legal sufficiency challenge. Only factually sufficiency. Is that right?

BULL: Yes.

O'NEILL: You've not claimed legal insufficiency?

BULL: Correct.