

No. 02-14-00144-CV

IN THE COURT OF APPEALS FOR THE SECOND JUDICIAL DISTRICT
OF TEXAS, AT FORT WORTH

**In re Fort Worth Star-Telegram, Dallas Morning News, CBS Stations
Group Of Texas LLC, KXAS-TV, NW Communications Of Texas, Inc.,
On Behalf Of Station KDFW Fox 4, And WFAA-TV, Inc.**

An Original Proceeding

**Brief for the Texas Criminal Defense Lawyers
Association as *Amicus Curiae***

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Identity of Parties and Counsel

Pursuant to Rule 38.1(a), Rules of Appellate Procedure (“Tex.R.App.Pro.”), the following is a complete list of the names and addresses of all parties in the action currently before the Court:

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2. Paul C. Watler (pwatler@jw.com); Jackson Walker, L.L.P.; Counsel for Relators Dallas Morning News and WFAA-TV, Inc.

Respondent

3. Hon. Jean Boyd (sbrown@tarrantcounty.com); Judge, 323rd Judicial District Court

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Statement of the Case

The underlying proceeding is a juvenile determinate sentence case involving a 16 year old child in which the trial court ordered two separate proceedings be closed to the general public and to the press.

Issues Presented by Relators

1. Closure of Proceedings. Did the trial court abuse its discretion by closing juvenile proceedings to the press and general public (for which there is no adequate remedy by appeal) when—
 - a. No party requested such closure,
 - b. The State of Texas objected to the closure of the proceedings,
 - c. The press and general public were not provided notice of the closure or an opportunity to object to closure of the proceedings, and
 - d. The trial court's decision to close the proceedings was not supported by findings that explained the balancing of interests, the need for closure of the proceedings, and the basis for a determination that good cause existed to close the proceedings.
2. Evidentiary Hearing and Opportunity to be Heard. Did the trial court abuse its discretion by closing juvenile proceedings to the general public and the media (for which there is no adequate remedy by appeal) when the trial court did not conduct an evidentiary hearing to determine whether closure of the proceedings was warranted and did not give the press and general public an opportunity to be heard on the issue of closure, and do the First Amendment to the Constitution of the United States, Article 1, § 8 and Article 1, § 13 of the Texas Constitution, and Section 54.08 of the Texas Family Code require such a hearing and opportunity to be heard before a juvenile court proceeding may be closed to the press and general public?

Issues Presented by Relators

(CONT)

3. Good Cause. Did the trial court abuse its discretion by closing juvenile proceedings to the press and general public (for which there is no adequate remedy by appeal) when—
 - a. The trial court's decision to close the proceedings was challenged, and
 - b. The trial court made conclusory statements that opening the proceedings to the public might taint the jury pool, but did not
 - i. consider reasonable alternatives to closing the proceedings, or
 - ii. make specific findings adequate to support the closure?
4. Transcript of Proceedings. Did the trial court abuse its discretion (for which there is no adequate remedy by appeal) by denying Relators' request for access to transcripts of the closed proceedings (even if the trial court's closing of the proceedings to the press and general public might have been proper) where—
 - a. The parties had reached an agreement as to the disposition of the case, and the trial court had approved the agreement,
 - b. The case was concluded, and
 - c. There could no longer be any threat to a party's ability to obtain a fair trial?

Statement Pursuant to Rule 11, Tex.R.App.Pro.

The Texas Criminal Defense Lawyers Association (“TCDLA”) is the largest state association for criminal defense attorneys in the nation. TCDLA started more than 40 years ago as a small, nonprofit association and has grown into a state-of-the-art organization, providing assistance, support and continuing education to its members. TCDLA provides a statewide forum for criminal defense lawyers and is the only voice in the legislature interested in basic fairness in criminal defense cases.

This brief complies with all applicable provisions of the Rules of Appellate Procedure, and copies have been served on all parties listed above.

Neither TCDLA nor any of the attorneys representing TCDLA have received any fee or other compensation for preparing this brief.

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An Original Proceeding

**Brief for the Texas Criminal Defense Lawyers
Association as *Amicus Curiae***

TO THE HONORABLE SECOND COURT OF APPEALS:

COMES NOW, the Texas Criminal Defense Lawyers Association, *Amicus Curiae*, respectfully submits this *amicus curiae* brief, and would show the Court as follows:

Facts of the Case

Relators adequately recite the relevant facts.

Issues as Framed by *Amicus Curiae*

Did the trial court clearly abuse its discretion by *sua sponte* closing a juvenile hearing pursuant to section 54.08 of the Texas Family Code?

Did the trial court clearly abuse its discretion in maintaining the confidentiality of the juvenile's records pursuant to section 58.007 of The Texas Family Code?

TCDLA respectfully suggests that the answer to both questions is "No."

Arguments & Authorities

I

Mandamus in General

In order to obtain mandamus relief, a relator must demonstrate that the act which they seek to compel is ministerial, that is, not involving a discretionary or judicial decision, and that they have no adequate remedy at law.¹ See **Anderson v. City of Seven Points**, 806 S.W.2d 791 (Tex. 1991); see also **Raesz v. Mitchell**, 415 S.W.3d 352 (Tex.App.-Ft. Worth 2013). Failure to perform a ministerial act is often referred to as an abuse of discretion. See, e.g., **In re Prudential Ins. Co. of America**, 148 S.W.3d 124, 135 (Tex. 2004). A trial court clearly abuses its discretion when it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law. **Walker v. Packer**, 827 S.W.2d 833, 839 (Tex. 1992)(orig. proceeding); **In re TDPRS**, 71 S.W.3d 446, 448 (Tex.App. - Fort Worth 2002). Mandamus will issue only to correct a clear abuse of discretion. **In re Daisy Mfg. Co.**, 17 S.W.3d 654, 658 (Tex. 2000) (orig. proceeding).

There is a line of cases in which the question of “standing” is raised, even in mandamus cases. These cases rely on **Hunt v. Bass**, 664 S.W.2d 323, 324 (Tex. 1984)(“Standing consists of some interest peculiar to the person individually and not as a member of the general public.” See., e.g.,

In re Hunt County Community Supervision and Corrections

¹ TCDLA does not contest Relators assertion they have no adequate remedy at law.

Department, No. 06-14-0017-CV (Tex.App. - Texarkana; May 23, 2014), citing **Hunt v. Bass**. TCDLA suggests that the Court does not need to determine whether Relators have standing because Relators cannot demonstrate that Respondent abused her discretion. That is, Respondent owed no ministerial duty to Relators.

The acts sought by Relators are not ministerial. Instead, controlling statutes afford juvenile courts total discretion in matters involving the confidentiality of juvenile proceedings and records. More specifically, Sections 54.08 and 58.007 of the Texas Family Code allow juvenile courts in every juvenile case to (1) close or open a proceeding; and 2) release or not release confidential records.

In short, applicable statutes authorized Respondent's actions. Also, neither the Texas Supreme Court or the United States Supreme Court have directly addressed whether such statutes are unconstitutional. Thus, it cannot be said that Respondent clearly abused her discretion.

II

Closing the Hearings

Section 54.08, Tex.Fam.Code, allows juvenile courts to *sua sponte* exclude the public from juvenile hearings. In differentiating between juveniles younger than 14 versus juveniles older than 14, and by delineating criteria to follow, the Legislature codified a statute that allows juvenile courts to balance the interests of the public with the interests of

children charged with committing crimes. **Texas Juvenile Law**, 8th Ed., Robert O. Dawson © 2012, at 371.

Title Three of the Family Code as a whole provides a civil framework for juvenile courts to employ in carrying out their responsibility to protect children and their families in the context of providing rehabilitation for those adjudicated. Title Three is also designed to remove the taint of criminality whenever possible. See Section 51.01, Tex.Fam.Code.

Texas juvenile justice laws regarding confidentiality are similar to federal laws found in the Federal Juvenile Delinquency Act.² **United States v. Three Juveniles**, 61 F.3d 86, 92 (1st Cir. 1995)(upholding federal statute allowing closure of federal prosecutions involving juveniles); **Lanes v. State**, 767 S.W.2d 789 (Tex.Cr.App. 1989)(describing the rehabilitative purpose and history of Texas's juvenile justice system). Multiple circuit courts of appeals have held that district court judges can limit the press's access to juvenile court proceedings. In **United States v. A.D.**, 28 F.3d 1353 (3rd Cir. 1994), a federal delinquency proceeding, the Third Circuit Court of Appeals held that the confidentiality provisions within the Juvenile Delinquency Act do not require that district court judges categorically exclude the public and press from such proceedings. “Rather, Congress left the delicate task of weighing the interests of the juvenile and the public to the informed discretion of the district judge in each case.” **A.D.**, 28 F.3d at 1361. Likewise, in a case involving three juveniles tried for federal hate crimes, the

² 18 U.S.C. sections 5031- 5042.

First Circuit Court of Appeals decided district judges have the discretion to exclude the press from juvenile proceedings and applied the “higher interests” and “narrowly tailored” tests from **Press-Enterprise Co. v. Superior Court of California, Riverside County**, 464 U.S. 501 (1984); **Three Juveniles**, 61 F.3d at 87–88.

The First Circuit specifically recognized that the Juvenile Delinquency Act contains confidentiality provisions and was intended “to provide for the care and treatment of juvenile delinquents.” **Three Juveniles**, 61 F.3d at 87–88. The court also explained that the Act’s fundamental “purpose is to rehabilitate, not to punish, so as ‘to assist youths in becoming productive members of our society.’” **Three Juveniles**, 61 F.3d at 88; citing **In re Sealed Case (Juvenile Transfer)**, 893 F.2d 363, 367 (D.C. Cir. 1990). “To this end, the Act attempts to insulate juveniles from the stigma of a criminal record.” **Sealed Case**, 893 F.2d at 367. The court thus reasoned that “[t]he confidentiality provisions of the Act are therefore quite essential to the Act’s statutory scheme and overarching rehabilitative purpose.” **Sealed Case**, 893 F.2d at 367.

The children in **Three Juveniles** were not transferred for adult prosecution, a determination “based on an evaluation of criteria set forth by the Act,” such as age, social background, nature of the offense, the juvenile’s record, and their “present intellectual development and psychological maturity.” **Three Juveniles** 61 F.3d at 92–93. The circuit court reasoned that since “these criteria are highly significant indicators of

the amenability of the juvenile to rehabilitation, they are also very relevant to the [district] court's decision whether to close the proceedings." **Three Juveniles** 61 F.3d at 93. The Court thus concluded that these factors weigh in favor of closing the juveniles' proceedings and align with "the Act's strong preference for preserving the confidentiality of juvenile records." **Three Juveniles** 61 F.3d at 93.

The first proceeding closed by Respondent was very similar to the proceeding closed by the juvenile court in **Three Juveniles**. Respondent had the responsibility of determining whether to transfer R.J.D. to criminal court for adult prosecution. In making this determination, Respondent was statutorily required, "after a full investigation and a hearing," to determine whether there was probable cause to believe that R.J.D. committed the offense alleged, and whether the totality of the circumstances required criminal proceedings.

In making these determinations, Respondent was required to consider, among other matters:

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 the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

See Section 54.02 (f), Tex.Fam.Code.

Additionally, Section 54.02 (d), Tex.Fam.Code, required Respondent, to order and obtain, prior to the hearing, a complete diagnostic study, social evaluation, and full investigation of R.J.D., his circumstances, and the circumstances of the alleged offense. Clearly, evidence offered by either party would indicate whether R.J.D. was amenable to rehabilitation. Consequently, Respondent reasonably concluded the nature of the evidence to be offered and admitted during the proceeding weighed heavily in favor of closing the proceeding.

Respondent also had an affirmative duty to assure R.J.D.'s Sixth Amendment right to a fair trial was not infringed upon by the press having access to such sensitive personal information, as well as facts regarding the alleged offense. See ***Gannett Co. v. DePasquale***, 443 U.S. 358, 393-394 (1979); and ***Sheppard v. Maxwell***, 384 U.S. 333, 350 (1966).

As to the second proceeding, it is important to emphasize the nature of the hearing was a jury trial to determine whether R.J.D. committed capital murder. Before jury selection began, the State and R.J.D. announced to Respondent they had reached a plea agreement. R.J.D.'s right to a fair trial did not terminate upon that announcement, nor did Respondent's duty to safeguard that right. Instead, that right and duty continued to exist until Respondent heard evidence and a final adjudication and disposition had occurred. If the proceeding were not closed and Respondent rejected the plea agreement, or either party renounced the

agreement, the jury pool could certainly been tainted by the release of any of the particulars surrounding the agreement.

III

Confidentiality of Juvenile Records

Section 58.007, Tex.Fam.Code, allows Respondent to refuse to release confidential juvenile records. The section generally indicates that the legislature took care to specify the limited situations in which certain members of the public, apart from the juvenile justice system, may have access to juvenile records.

Section 58.007(h) in particular permits Respondent to share juveniles' identities with the public by way of warrants and directives to apprehend, and Section 58.007(b)(5) requires leave of the court for non-designated persons to inspect juveniles' records. More specifically, Section 58.007(b), Tex.Fam.Code, states in part:

Except as provided by Section 54.051(d-1) and by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title may be inspected or copied are open to inspection only by:

1. the judge, probation officers, and professional staff or consultants of the juvenile court;
2. a juvenile justice agency as that term is defined by Section 58.101;
3. an attorney for a party to the proceeding;
4. a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

5. with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

In addition, Section 58.005 (a), Tex.Fam.Code, provides:

Records and files concerning a child, including personally identifiable information, and information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to:

1. the professional staff or consultants of the agency or institution;
2. the judge, probation officers, and professional staff or consultants of the juvenile court;
3. an attorney for the child;
4. a governmental agency if the disclosure is required or authorized by law;
5. a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;
6. the Texas Department of Criminal Justice and the Texas Juvenile Probation Commission for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; or
7. with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

If the Legislature intended for the general public to have unfettered access to juvenile records, all these statutes would be unnecessary. Pursuant to Sections 58.005 and 58.007, Tex.Fam.Code, Respondent did

not have the express authority to release R.J.D.'s records (the reporter's record), and Relators did not establish that they had a legitimate interest in the records.

Conclusion

Due to a concern that public exposure of juvenile proceedings would inhibit rehabilitation of juveniles, several states, including Texas, and the federal government, have consistently mandated the confidentiality of juvenile records, and have upheld the closure of juvenile proceedings. Thus, in the instant case, there was no clear abuse of discretion and Relators are not entitled to relief. However, if the Court is of the opinion that the record is unclear as to whether Respondent had good cause to close the proceedings and/or Relators proved that had a legitimate interest in R.J.D.'s records, the appropriate remedy would be to abate this proceeding and remand for findings.

Prayer

WHEREFORE, PREMISES CONSIDERED, the Texas Criminal Defense Lawyers Association, *amicus curiae* in the above styled and numbered cause respectfully prays that, for the reasons set out herein, the Court will deny Relators petition in all things.

Respectfully submitted:

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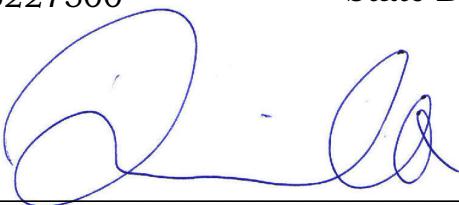
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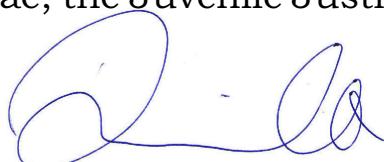
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Certificate of Compliance and Delivery

This is to certify that: (1) this document, created using WordPerfect™ X7 software, contains 2383 words, excluding those items permitted by Rule 9.4 (i)(1), Tex.R.App.Pro., and complies with Rules 9.4 (i)(2)(B) and 9.4 (i)(3), Tex.R.App.Pro.; and (2) on June 6, 2014, a true and correct copy of the above and foregoing “Brief for the Texas Criminal Defense Lawyers Association as *Amicus Curiae*” was transmitted via electronic mail (*eMail*) to each of the following individuals using the State’s eFiling portal’s eService function:

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2. Paul C. Watler (pwatler@jw.com); Jackson Walker, L.L.P.; Counsel for Relators Dallas Morning News and WFAA-TV, Inc.
3. Hon. Jean Boyd (sbrown@tarrantcounty.com); Judge, 323rd Judicial District Court; Respondent;
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