

**In Discretionary Transfer Hearing, parent can waive service of process by appearing at the hearing.[Thorn v. State](12-1-1A)**

**On November 23, 2011, the Tyler Court of Appeals held that the juvenile court's failure to serve Appellant's mother did not deprive it of jurisdiction to consider the State's motion to transfer where mother appeared at transfer hearing.**

¶ 12-1-1A. **Thorn v. State**, MEMORANDUM, No. 12-10-00287-CR, 2011 WL 5877021 (Tex.App.-Tyler, 11/23/11).

**Facts:** The State filed a petition in April 2009 alleging that Appellant, who was then seventeen years of age, had committed a delinquent act. Specifically, the State alleged that he committed the felony offense of aggravated sexual assault. In June 2009, the State filed a petition requesting the juvenile court to waive its original jurisdiction and transfer this matter to district court where Appellant could be prosecuted as an adult.

The juvenile court held a hearing on the State's petition in August 2009. At the conclusion of the hearing, the juvenile court waived its jurisdiction and transferred the matter to district court. In the district court, Appellant pleaded guilty to the felony offense of indecency with a child. There was no plea agreement, and the trial court assessed a sentence of imprisonment for twelve years. This appeal followed.

In his first and second issues, Appellant argues that the juvenile court lacked jurisdiction to transfer his case to district court because it failed to serve his mother in advance of the transfer hearing and because all of the relevant documents were not provided to him prior to the transfer hearing.

**Held:** Affirmed

**Memorandum Opinion:** There are a number of procedural requirements that must be met before a juvenile court may waive its jurisdiction and transfer a child to district court. Two of those requirements are at issue here. The first requirement is that a juvenile court must issue a summons to the child and the child's parent, guardian, or custodian before holding a hearing. See TEX. FAM.CODE ANN. § 53.06(a), 54.02(b) (West 2008 & Supp.2010). This requirement is placed on the juvenile court, and the court lacks jurisdiction to transfer the matter to district court if it does not comply with the summons requirement. See *Carlson v. State*, 151 S.W.3d 643, 645–46 (Tex.App.-Eastland 2004, no pet.)(citing *Grayless v. State*, 567 S.W.2d 216 (Tex.Crim.App.1978); *Ex parte Burkhart*, 253 S.W. 259, 260 (Tex.Crim.App.1923) (op. on reh'g)).

The second requirement is that the court must provide to the child any written material it may consider at the hearing. The present law requires that this material be provided at least five days prior to the transfer hearing. See TEX. FAM.CODE ANN. § 54.02(e) (West Supp.2010). The previous requirement had been that the materials be provided one day in advance, and the law amending the statute continued in effect the previous law for adjudications of conduct that occurred before September 1, 2009. See Act of June 16, 1973, 63rd Leg., R.S., ch. 544, 1973

Tex. Gen. Laws 1460, 1476, amended by Act of Sept. 1, 2009, 81st Leg., ch. 1354, § 1, 2009  
Tex. Gen. Laws 4287, 4287–88.

The record does not show that Appellant's mother was served with a summons for the transfer hearing.<sup>FN2</sup> However, the record does show that she appeared at the transfer hearing. The statute allows that a party other than the child can waive service by appearing voluntarily at the hearing. See TEX FAM.CODE ANN. § 53.06(e). Courts have concluded, based on Section 53.06(e), that a court has jurisdiction when a parent appears at the hearing even if the parent had not been served with a summons. See *K.M.P. v. State*, 701 S.W.2d 939, 941 (Tex.App.-Fort Worth 1986, no writ) (father waived requirement of service by appearing and voluntarily submitting to jurisdiction of court); *R.M.R. v. State*, No. 01–01–00347–CV, 2001 Tex.App. LEXIS 8099, at \*3–4 (Tex.App.-Houston [1st Dist.] Dec. 6, 2001, no pet.)(mem. op., not designated for publication) (no complaint preserved when mother appeared at hearing and juvenile did not raise an objection to lack of a summons of guardian ad litem); c.f. *Carlson v. State*, 151 S.W.3d 643, 645 (Tex.App.-Eastland 2004, no pet.)(court lacked jurisdiction because parent not served and did not appear or otherwise waive service).

FN2. The record shows summonses for both Appellant and his mother. The record also shows that Appellant was served with both summonses, but does not show that his mother was served.

**Conclusion:** We agree that a parent can waive service of process by appearing at the hearing, and we hold that Appellant's mother did so when she appeared at the hearing. Accordingly, the juvenile court's failure to serve Appellant's mother did not deprive it of jurisdiction to consider the State's motion to transfer. We overrule Appellant's first issue.