

Commonwealth of Kentucky
Court of Appeals

NO. 2005-CA-002595-ME

J.L.T., A JUVENILE

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE MARGARET RYAN HUDDLESTON, JUDGE
ACTION NO. 00-J-00795 AND 00-J-00795-003

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER
DISMISSING APPEAL AND
DENYING MOTION TO PUBLISH

** ** * ** * ** *

BEFORE: ACREE, JUDGE; BUCKINGHAM AND HENRY, SENIOR JUDGES.¹

ACREE, JUDGE: J.L.T. appeals from an order of the Warren Family Court entered December 13, 2005. That order prohibited him from further absences from the Warren County Day Treatment School and required him to present himself to school authorities on days he believed he was ill so that those authorities could make the medical/parental decision that he was, in fact, too ill to attend school. J.L.T. is now over eighteen (18)

¹ Senior Judges David C. Buckingham and Michael L. Henry sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

years of age. He has attained his G.E.D. He is no longer under the jurisdiction of the Warren Family Court because J.L.T. is no longer subject to Kentucky's Unified Juvenile Code. J.L.T. is no longer under the supervision of the Warren County Day Treatment School. Therefore, the issue is now moot and shall be dismissed.

J.L.T. Requests that we review this issue despite its mootness because it is an issue “capable of repetition, yet evading review.” This is a well-established exception to the rule against our issuance of advisory opinions. However, J.L.T.'s issue does not satisfy the requirements of this exception.

The determination whether the exception to the mootness doctrine applies turns on the application of a two-part test: (1) is the “challenged action too short in duration to be fully litigated prior to its cessation or expiration and (2) [is there] a reasonable expectation that the **same complaining party** would be subject to the same action again. “In re *Commerce Oil Co.*, 847 F.2d 291, 293 (6th Cir. 1988). (Emphasis added.)

Our Supreme Court very recently repeated and applied this two-prong test in *Fletcher v. Commonwealth*, 163 SW3d 852, 859 (Ky. 2005). We see no need to amend this test in any way.

We immediately turn to the second prong of the test and note that J.L.T. will never again be subject to the Unified Juvenile Code. There is no expectation, reasonable or otherwise, that he will be subject to this same action again.

We therefore decline to apply this exception to the mootness doctrine.

On the other hand, we feel compelled to question the wisdom of the order. The Warren Family Court should not, in any way, ascribe any measure of our approval to this order.

For the foregoing reasons, the motion of Appellee Commonwealth of Kentucky to dismiss as moot is hereby GRANTED.

Appellant J.L.T.'s motion to publish this order is DENIED.

ALL CONCUR.

ENTERED: March 30, 2007

/s/ Glenn E. Acree
JUDGE, COURT OF APPEALS

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