

RENDERED: OCTOBER 28, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-002003-ME

J.T., A CHILD UNDER
EIGHTEEN

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE JO ANN WISE, JUDGE
ACTION NO. 10-J-01378

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER DISMISSING

** ** * ** * **

BEFORE: CAPERTON, KELLER, AND LAMBERT, JUDGES.

LAMBERT, JUDGE: J.T. has appealed from an order in which the Fayette Family Court found her to be a habitual truant pursuant to the Unified Juvenile Code, Kentucky Revised Statutes (KRS) Chapters 600 to 645. Because we agree with J.T. that this matter became moot when she reached the age of eighteen, we must dismiss this appeal.

In March 2010, a Court Designated Worker (CDW) completed a juvenile complaint alleging that J.T. had violated KRS 630.020(3), the habitual truancy statute. Born on December 17, 1992, J.T. was in the 10th grade at the time the complaint was filed. The complaint alleges that between August 12, 2009, and March 9, 2010, J.T. had accumulated fifteen unexcused absences and one unexcused tardy. While the record reflects that a diversion was attempted, the CDW ultimately recommended that informal processing was inappropriate because an attempted diversion was unsuccessful due to J.T.'s failure to complete a workbook and her failure to appear at a conference. After J.T. failed diversion, the Commonwealth, through the CDW, filed the juvenile petition. The family court then issued a summons that was served on J.T.'s mother and that ordered her to bring J.T. to court on August 30, 2010. Filed with the complaint was a CDW Juvenile Truancy Referral Checklist showing the unexcused absences and tardy, as well as a Student Profile Attendance Report detailing J.T.'s attendance during the 2009-2010 school year.

J.T. and her mother appeared before the family court on August 30, 2010. A public defender was officially appointed to represent J.T. in the action. Counsel informed the court of her belief that many of the unexcused absences were due to J.T.'s pregnancy when she was on bed rest at an alternative placement (the Family Care Center) as well as confusion regarding whether physician's notes were properly recorded in her younger sister's attendance records rather than in

J.T.'s records. The court continued the proceedings to a later date to permit J.T. to obtain the necessary records to clarify the situation regarding the school records.

At the next court date on September 13, 2010, counsel for J.T. indicated that she had records during the time J.T. was on bed rest at the Family Care Center. Counsel then requested an adjudication hearing to present testimony regarding the discrepancies in the records between the Family Care Center and J.T.'s high school.

The family court held an adjudication hearing on October 11, 2010. The Commonwealth called an administrator from J.T.'s school to testify regarding her attendance during the time period at issue, noting that J.T. had been in an alternative placement during the fall before returning to her regular high school. The mother testified on J.T.'s behalf, stating that her profession as a flight attendant required her to be out of town, which in turn made it difficult to provide timely notes to excuse J.T.'s absences. J.T. did not provide any other witnesses to address the alleged discrepancies in the attendance records.

At the conclusion of the hearing, the family court found that J.T. was a habitual truant. As a result of this finding, the family court placed J.T. under a valid court order requiring her to go to school every day, obey all rules of her home, not consume or possess any alcohol, tobacco products, or illegal drugs, and submit to drug testing. J.T. requested a separate disposition hearing and report, which the family court denied, specifically stating that the proceeding was a disposition. A juvenile status offender order memorializing the family court's

rulings was entered the same day. The family court amended the order on its own motion pursuant to Kentucky Rules of Civil Procedure (CR) 60.02 on October 19, 2010, to include an order that J.T. would not be permitted to withdraw from school, and it scheduled a review for November 8, 2010. This appeal follows.

On appeal, J.T. presents two arguments. The first is an unpreserved argument that the initial truancy petition should have been dismissed for failure to comply with the necessary statutory requirements. The second argument concerns whether the family court erred in denying J.T. the right to a predisposition investigation report and a separate disposition hearing. In its brief, the Commonwealth contends that the petition was sufficient in light of the unsuccessful attempt at informal action procedures. Furthermore, the Commonwealth argues that whether J.T. was entitled to a predisposition report or a separate disposition hearing was mooted when J.T. reached her eighteenth birthday.

Our ultimate decision in this case, however, rests upon our consideration of J.T.'s motion to dismiss the appeal, which was passed to the merits panel for consideration. In her motion, J.T. states that once she reached the age of eighteen on December 17, 2010, during the pendency of this appeal, the matter became moot because she could no longer be granted any meaningful relief should the matter be remanded to the family court. She bases this argument on the family court's loss of jurisdiction over her pursuant to the dictates of the Unified Juvenile Code. While it did not respond to this motion, the Commonwealth argued

in its brief that the adjudication should be affirmed, but the remainder of the appeal should be dismissed.

Regarding juvenile status offenses, KRS 610.010(2) provides, in relevant part, that “the juvenile session of the District Court of each county or the family division of the Circuit Court shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his or her eighteenth birthday and who allegedly: . . . (b) Is an habitual truant from school[.]” Accordingly, once J.T. reached her eighteenth birthday, the family court no longer had jurisdiction to hold a disposition hearing regarding whether she was a habitual truant or otherwise consider that issue.

The law of this Commonwealth is clear that an appellate court generally may not consider matters that are moot. “As we have held, ‘[t]he classic occurrence which necessitates a court’s abrogation of jurisdiction for mootness is a change in circumstance in the underlying controversy which vitiates the vitality of the action.’” *Kentucky High School Athletic Ass’n v. Runyon*, 920 S.W.2d 525, 526 (Ky. 1996) (quoting *Commonwealth v. Hughes*, 873 S.W.2d 828, 830 (Ky. 1994)). Additionally, in *Medical Vision Group, P.S.C. v. Philpot*, 261 S.W.3d 485 (Ky. 2008), this Court explained that “an appellate court is required to dismiss an appeal when a change in circumstance renders that court unable to grant meaningful relief to either party. Unless there is ‘an actual case or controversy,’ this Court has no jurisdiction to hear an issue and is prohibited from producing mere advisory opinions.” *Id.* at 491 (internal citations omitted).

In the present matter, there is no dispute that the family court lost jurisdiction over J.T. once she reached her eighteenth birthday on December 17, 2010. Therefore, had this Court reversed the family court's ruling, the family court would have been powerless upon remand to hold a disposition hearing or otherwise consider whether J.T. was a habitual truant. Hence, there is no meaningful relief the family court could provide to J.T. if she were to be successful in the present appeal. Accordingly, we hold that the issues raised in this appeal are moot.

We recognize that in her first argument, J.T. has argued that the truancy petition should be dismissed for lack of subject matter jurisdiction due to the school's failure to comply with the statutory requirements to document the home conditions of the student as well as the intervention strategies attempted in this case pursuant to KRS 159.140(3) and KRS 630.060(2). In other words, she contends that the family court's jurisdiction was never properly invoked.

However, in light of our determination that the appeal is now moot due to lack of jurisdiction, we perceive no use in considering an argument that might result in the need to remand for dismissal of the petition for the very same reason, albeit on a different basis. To consider this argument would result in an advisory opinion, which we are not permitted to issue. *See Kentucky High School Athletic Ass'n v. Davis*, 77 S.W.3d 596, 599 (Ky. App. 2002) (“[T]his Court does not render purely advisory opinions[.]”).

For the foregoing reasons, the motion to dismiss the appeal as moot is GRANTED.

CAPERTON, JUDGE, CONCURS.

KELLER, JUDGE, CONCURS IN RESULT ONLY.

/s/ James H. Lambert
JUDGE, COURT OF APPEALS

ENTERED: October 28, 2011

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