

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2010-CA-001622-ME

J.R.

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT  
HONORABLE ELISE GIVHAN SPAINHOUR, JUDGE  
ACTION NO. 04-J-00475

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: CLAYTON AND NICKELL, JUDGES; ISAAC,<sup>1</sup> SENIOR JUDGE.

CLAYTON, JUDGE: J.R. appeals from an order of the Bullitt Family Court entered on July 28, 2010, which held her in contempt for failure to attend summer school. The court ordered her to serve thirty (30) days in the county jail, which was conditionally discharged if J.R. immediately began education classes to obtain

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<sup>1</sup> Senior Judge Sheila R. Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

her General Equivalency Diploma (hereinafter “G.E.D”). After a careful review, we vacate the court’s order and remand with instructions for the court to dismiss the action from its docket.

#### FACTS AND PROCEDURAL HISTORY

On December 17, 2009, a juvenile complaint was filed against J.R. alleging that she was an habitual truant. The complaint alleged that, as of December 1, 2009, J.R. had amassed thirty (30) unexcused absences and eleven (11) unexcused tardies. Further, the complaint stated that phone calls, letters, and a visit to the home had all been made without the truancy being corrected.

Thereafter on February 24, 2010, J.R. and her father appeared in Bullitt County Court where a public advocate was appointed for J.R. At this time, the family court advised J.R. that, without correcting the truancy, the worst case scenario would be removal from her father’s home and placement where she would have no option but to attend school. The family court entered two orders – a standard school attendance order (SSAO) and a parental responsibility order.

A hearing was held on March 24, 2010. At the hearing, based on an agreement with the county attorney, J.R. admitted to the habitual truancy allegation and waived a separate disposition hearing. Prior to the hearing, J.R. had been suspended from school and stipulated to contempt. Specifically, J.R. agreed to attend school, write a 250-word essay, perform twenty (20) hours of community service, and remain on the SSAO. After holding a colloquy with J.R. to determine that the plea was knowingly and intelligently made, the family court accepted the

plea and ordered her to attend school, do community service, and write an essay. During the February and March court appearances, the family court judge did not inform J.R. that a violation of the SSAO could result in juvenile detention or time in the adult county jail.

Next, at the review hearing held on April 21, 2010, J.R. provided the court with her essay, and another review hearing was set for June 2, 2010. Yet, on June 2, 2010, neither J.R. nor her parents were in court. Since J.R. and her father failed to appear on that date, the family court entered show cause orders for both of them. The show cause order indicated that a contempt hearing would be held on July 7, 2010. Notwithstanding that J.R. was not in court, the family court judge also signed a docket sheet order, on that day, which required J.R. to attend summer school. Nothing on the docket sheet indicates that provisions were made for J.R.'s parents or J.R. to receive official notice about this order.

On July 7, 2010, J.R. and her parents were again not present in family court. Subsequently, the family court issued a bench warrant for J.R.'s parents and a pick-up order for J.R. On July 22, 2010, however, both orders were rescinded. The next pertinent date is July 28, 2010, when J.R., with her advocate, and father, appeared in court. Because J.R.'s birth date was July 15, 1992, she was now eighteen (18). Regarding the missed court dates, J.R.'s father explained that J.R. and he had come to court on June 1, 2010, rather than June 2, 2010, because he misunderstood the paperwork regarding the hearing date. Furthermore, J.R. stated that she and her mother returned to court on June 2, 2010, but that the case was

never called. After waiting two hours that day, J.R. went to the clerk's office where she was given the paperwork for her community service and told to go home. Regarding the missed court appearance on July 7, 2010, J.R. told the family court that she was sick on that day. The Commonwealth acknowledged that it had seen a doctor's note attesting to J.R.'s illness on that date although the note was not in the file. The family court accepted the reasons for J.R.'s absence on the aforementioned court dates.

The only remaining issue for the family court was J.R.'s failure to attend summer school. According to J.R., she was never told that she must attend summer school. Contrary to her assertion, Mark Hardin, a school official, stated that she had been given two summer school applications, plus Hardin also sent an email to J.R.'s public advocate regarding the summer school requirement. J.R.'s advocate did not contradict Hardin. At this point, the judge made the following comments:

What I've got, my perception of what I've got here is that I've got somebody that thinks she has been able to play the system, which is really a source of irritation to me. A whole lot of irritation. Now if you think that just because you've turned eighteen that I've lost jurisdiction over you and that you are free to go – wrong analysis. I have a clear court order in the file prior to the time you turned eighteen dealing with your education and I maintain the authority to enforce my orders up until you shuffle off this mortal coil or I shuffle off this mortal coil. Now I'm done with the excuses and I'm ready to go on and deal with a contempt hearing for your failure to go to summer school.

The family court then held the contempt hearing wherein testimony was provided by Hardin. J.R., as previously noted, maintained that she did not know that she was supposed to attend summer school. Hardin stated that he told J.R. about summer school when he left four messages for her, spoke to her neighbors, attached a message on the door of her house and notified her advocate. At the conclusion of the testimony, the family court judge ordered:

Ok, I'm going to find that J[R.] is in contempt of court . . . . And I'm going to sentence you to thirty days in the County Jail. I'm going to conditionally discharge that on the basis that you will immediately get started on the G.E.D and I'm going to be doing monthly reviews every single month until you get your G.E.D and the first time there is a bobble you're going to the County Jail.

J.R. now appeals from this order.

J.R. maintains that the finding of contempt and the thirty (30) day sentence must be set aside because the June 2, 2010 order, was not a valid court order, and further, that the family court order finding J.R. in contempt and ordering her to obtain her G.E.D must be vacated because the court's jurisdiction over status offender in the Unified Juvenile Code expires at age eighteen (18). Conversely, the Commonwealth claims that J.R. waived any issue regarding the validity of the court order or otherwise invited error. Further, the Commonwealth argues that the trial court did not err in exercising its inherent powers.

#### STANDARD OF REVIEW

J.R. raises issues of law; therefore, our review is de novo. *Western Kentucky Coca-Cola Bottling Co., Inc. v. Revenue Cabinet*, 80 S.W.3d 787 (Ky. App. 2001).

## ANALYSIS

We begin our analysis by observing that status offenses, such as habitual truancy, “are neither criminal nor delinquent.” *Com. v. B.J.*, 241 S.W.3d 324, 327 (Ky. 2007). But, notwithstanding this factor, these cases are concerned with significant social and personal rights. The Court, in *B.J.* emphasized the importance of these proceedings by stating:

“A proceeding against a child for the status offense of habitual truancy under Chapter 630 . . . can result in severe consequences to that child.” *T.D. v. Commonwealth*, 165 S.W.3d 480, 483 (Ky. App. 2005).

In light of these potentially severe consequences to the child, due process must be afforded, despite the non-criminal nature of juvenile proceedings. “[W]here the fault of the child is at issue and penalties, including loss of liberty, may attach, criminal protections provided by the constitution apply.

*Id.* Such is the case here.

Specifically, we are dealing with the status offense of truancy. A juvenile who has been a habitual truant from school is considered a status offender under Chapter 630. And such behavior shall not be considered criminal or delinquent pursuant to Kentucky Revised Statutes (KRS) 600.020(59)(a). “Status offense action” is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. KRS

600.020(59)(a). So, here we are dealing with an act, which if committed by someone over eighteen (18) years of age would not be any type of offense, criminal or civil. But, as noted by the Kentucky Supreme Court above, since the adjudication of such offenses affects the rights of individuals, in this case, children, due process concerns are significant.

It is helpful at this juncture to review the intent of KRS Chapters 600 to 645, which are titled the Kentucky Unified Juvenile Code. The following legislative purposes are encompassed in the Kentucky Unified Juvenile Code. These purposes, found in KRS 600.010(2), include, among others, the protection of children, strengthening of family life, the use of less restrictive alternatives so that children are not removed from families except when absolutely necessary, and the right to treatment to improve the child's condition. Further, KRS 600.010(2)(g) provides procedural guidelines that affirm:

It shall further be the policy of this Commonwealth to provide judicial procedures in which rights and interests of all parties, including the parents and victims, are recognized and all parties are assured prompt and fair hearings. Unless otherwise provided, such protections belong to the child individually and may not be waived by any other party.

In relation to status offenses, the Kentucky Unified Juvenile Code explicates an even more distinct rationale, which is in addition to the purposes highlighted in KRS 600.010, also allows:

(1) The Commonwealth's courts shall utilize a separate and distinct set of guidelines for status offenders which reflect their individual needs;

(2) It shall be declared to be the policy of this Commonwealth that all its efforts and resources be directed at involving the child and the family in remedying the problem for which they have been referred;

(3) Status offenders shall not be detained in secure juvenile detention facilities or juvenile holding facilities after the initial detention hearing unless the child is accused of, or has an adjudication that the child has violated a valid court order, in which case the child may be securely detained for up to forty-eight (48) hours, exclusive of weekends and holidays, pending receipt of the written report required under KRS 630.080(4). Any period of secure detention prior to the detention hearing shall not exceed twenty-four (24) hours, exclusive of weekends and holidays;

(4) Status offenders accused of violating a valid court order shall not be securely detained in intermittent holding facilities; and

(5) Status offenders accused of or found guilty of violating a valid court order shall not be converted into public offenders by virtue of this conduct.

KRS 630.010.

To summarize, the reason for separate treatment of children is based on both their vulnerability and their rehabilitative potential. Because courts have been given significant power over children, however, the legislature placed paramount importance in the statutes on the recognition of children's rights plus their need for special treatment. Finally, the Unified Juvenile Code outlines major differences in the guidelines for children involved with the court for non-criminal or status offenses rather than public offenses. Keeping this in mind, we now turn

J.R.'s "disposition," at eighteen (18), to thirty (30) days in the county jail for failure to attend summer school.

The first error alleged by J.R. is that the June 2, 2010, court order was not a valid court order. The Commonwealth counters that this issue was not preserved, and therefore, is not subject to review by an appellate court. But J.R. maintains that the issue of whether a court order is valid is a matter of subject matter jurisdiction, and thus, may be raised by the parties or the court at any time.

Basically, "courts have recognize three separate categories of 'jurisdiction': (1) personal jurisdiction involving authority over specific persons; (2) subject matter jurisdiction involving authority over the nature of a case and the general type of controversy; and (3) jurisdiction over a particular case involving authority to decide a specific case." *Hisle v. Lexington-Fayette Urban County Government*, 258 S.W.3d 422, 429 (Ky. App. 2008). Thus, subject-matter jurisdiction refers to a court's authority to determine "this kind of case" as opposed to "this case." *Duncan v. O'Nan*, 451 S.W.2d 626, 631 (Ky. 1970).

To recap, a court lacks subject matter jurisdiction when it attempts to decide a type of controversy over which it has no authority over the nature of the case or the statutory prerequisites of the case. In Kentucky, the family court has been specifically granted jurisdiction over status offenses. KRS 23A.100(2)(d); Kentucky Constitution § 112. In particular, once a complaint of habitual truancy is properly before the family court, subject to compliance with KRS 159.140 and 630.060, the family court has subject matter jurisdiction. Moreover,

notwithstanding exceptions, which are inapplicable here, the statutory grant of authority provides the juvenile courts with exclusive jurisdiction over individuals under the chronological age of eighteen (18) years who have allegedly committed status or public offenses. Pursuant to the Kentucky Unified Juvenile Code, in KRS 600.020(8), which provides statutory definitions for KRS Chapters 600 - 645, a child is defined as “any person who has not reached his eighteenth birthday[.]” At the June 2, 2010 hearing, J.R. was still seventeen (17), so that the family court had both subject matter jurisdiction and the authority to hear the case. Hence, J.R. is challenging the procedural validity of a court order, which she acknowledges was not preserved.

Granted that the family court had subject matter jurisdiction, an issue, even if unpreserved, is subject to the palpable error rule. Kentucky Rules of Criminal Procedure (RCr) 10.26 provides as follows: “A palpable error which affects the substantial rights of a party may be considered . . . by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.”

Consequently, RCr 10.26 permits review of an unpreserved error if the error affects the substantial rights of an appellant. An error affects the substantial rights of an appellant if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Com. v. Rodefer*, 189 S.W.3d 550, 553 (Ky. 2006). Sentencing an eighteen (18) year old person to thirty (30) days in jail

for failure to attend summer school when neither she nor her parents were given official notice of an order, is palpable error. It seriously affects the fairness, integrity, and reputation of juvenile family court proceedings. In essence, we are persuaded that the court order emanating from the June 2, 2010 hearing, was invalid and because it was invalid, no contempt hearing could result from the order.

Kentucky Unified Juvenile Code provides that courts may only hold children in contempt of court to enforce a valid court order.

(11) Nothing in this chapter shall prevent the court from holding a child in contempt of court to enforce valid court orders previously issued by the court, subject to the requirements contained in KRS 610.265 and 630.080.

KRS 610.010(11). Prior to holding a contempt hearing, which may result in a child being securely detained, the court must do the following:

(3)(d) Prior to ordering a status offender or alleged status offender who is subject to a valid court order securely detained because the child violated the valid court order, the court shall:

1. Affirm that the requirements for a valid court order were met at the time the original order was issued;
2. Make a determination during the adjudicatory hearing that the child violated the valid court order; and
3. Within forty-eight (48) hours after the adjudicatory hearing on the violation of a valid court order by the child, exclusive of weekends and holidays, receive and review a written report prepared by an appropriate public agency that reviews the behavior of the child and the circumstances under which the

child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate.

KRS 610.265(3)(d). The language found in KRS 630.080(4)(a) is identical to the portion of KRS 610.265 cited above. The plain meaning of this language mandates that for a court to exercise its contempt power in juvenile court it must strictly comply with the requirements for a valid court order. To be a valid court order, an order must meet the statutory requisites found in KRS 600.020:

(61) “Valid court order” means a court order issued by a judge to a child alleged or found to be a status offender:

- (a) Who was brought before the court and made subject to the order;
- (b) Whose future conduct was regulated by the order;
- (c) Who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings; and
- (d) Who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States.

Examining the four requirements for a valid court order, it is obvious that the order for J.R. to attend summer school was not valid. First, J.R. was not before the court. In fact, at the July 28, 2010 hearing, the family court judge readily accepted that J.R. and her mother had waited in a crowded anteroom and

did not hear the case called. Second, J.R. did not receive written or verbal warning concerning the consequences of the violation of the order when the order was issued. Next, neither her attorney nor her parents were present at the hearing. Lastly, nothing is reflected on the court docket to show the order was officially conveyed to J.R. and her parents.

Most significant, however, is the review of the circumstances surrounding the issuance of the order. It demonstrates a violation of J.R.'s due process rights. Initially, on the court docket, it is indicated that an oral motion for contempt was made. But J.R., her parents, and her attorney were not present. Therefore, no one responded to the motion or defended J.R. Additionally, J.R. was ordered to summer school without discussion about its cost, time, or reasonableness. Notwithstanding these factors, no discussion was held concerning J.R.'s impending eighteenth birthday, which would have removed the court's jurisdiction over her.

Lastly, the issue of notice to J.R.'s parents regarding the summer school order is very troubling. The school official's testimony, both sworn and unsworn, indicates many messages were left, but he never directly stated that anyone including himself spoke directly to J.R. or her parents about summer school. Second, the docket sheet on which the order to summer school was written does not show any official service upon J.R. or her parents. It is impossible to discern from the record whether J.R. or her parents were ever officially provided

notice about the summer school order. Due process mandates that one be given adequate notice.

Because we have determined that no valid court order was issued and that this factor is palpable error, it is not necessary for us to address the jurisdictional issue regarding the court's authority to order J.R. to thirty (30) days in the county jail if she did not begin the process of obtaining her G.E.D.

Having reviewed this matter, we hold that, as a matter of law, the notice about the order that was given to J.R. and her father at the June 2, 2010 hearing, was not sufficient and a violation of her due process rights. Because the notice to attend summer school is inadequate, all that transpired at the July 28, 2010 contempt hearing, is tainted by the deficient notice and unenforceable. Accordingly, we vacate and remand with directions that the family court set aside the challenged order.

ALL CONCUR.

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