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Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001507-DG

COMMONWEALTH OF KENTUCKY — APPELLANT

ON DISCRETIONARY REVIEW
FROM JEFFERSON CIRCUIT COURT
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE
ACTION NO. 01-XX-00031

C.J., A CHILD — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: KNOPF, MILLER, AND TACKETT, JUDGES.

KNOPF, JUDGE: In February 2001, fifteen-year-old C.J. faced arraignment in the juvenile division of Jefferson District Court on charges of second-degree wanton endangerment[1] and possession of a weapon on school property.[2] The petition against C.J. alleged that he was a student at Shawnee High School in Louisville; that on January 18, 2001, during a verbal altercation, he had pulled a knife on another student; and that

[1]KRS 508.070.

[2]KRS 527.070.

because shortly after the incident he appeared acutely depressed, he had been sent to Norton-Kosair Hospital for psychiatric evaluation and observation. Following the formal reading of the charges, C.J., who was not represented by counsel, informed the court that he had spent eight days at the hospital and had then resumed attendance at Shawnee. He also told the court that both at school and at home things were fine; the crisis had passed.

At that point, some three or four minutes into the proceeding, the trial judge, Shelia Collins, announced that C.J.'s case seemed amenable to an informal adjustment and asked a public defender, who happened to be present, to take C.J. aside and to explain to him what an informal adjustment would entail. C.J. would be obliged, the court declared, to surrender his knife for disposal, to continue with counseling, and to perform ten hours of community service within the next thirty days. C.J. agreed to these conditions, apparently, but the Commonwealth objected to the proceeding on the ground that no one at the high school had been consulted and thus that an informal adjustment was premature. When the trial judge overruled the Commonwealth's objection and "adjusted" C.J.'s case, the Commonwealth sought an appeal in Jefferson Circuit Court. By order entered June 19, 2001, the Circuit Court in essence dismissed the appeal on the ground that an informal adjustment is not an appealable order. This Court then granted the Commonwealth's motion for discretionary review to consider whether an informal adjustment may be appealed. We agree with the circuit court that it may not be.

KRS 23A.080 provides that

> [a] direct appeal may be taken from District Court to Circuit Court from any final action of the District Court.

KRS 610.130 provides that

> [u]nless otherwise exempted, an appeal to the Circuit Court may be taken as a matter of right from the juvenile session of the District Court from dispositional orders under KRS 610.110.

As we understand it, an informal adjustment is neither a final action by the district court nor a dispositional order. Rather, KRS 600.020(31) defines "informal adjustment" as

> an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition . . . .

An informal adjustment is, then, a conditional agreement to abate the petition against the juvenile defendant. While the conditions are pending, the matter is simply in abeyance. If the juvenile satisfies the conditions, agreed to by the parties and approved by the court, then no further action is taken on the petition. At no point is there a final action by the district court; there is rather a decision not to act. And there is no disposition (for which both adjudication and dispositional hearings are required[3]), as is indicated by the fact that KRS 610.110 (on juvenile dispositions) includes no reference to informal adjustments.

[3]KRS 610.080.

We thus agree with the circuit court that it lacked jurisdiction to entertain the Commonwealth's appeal; that appeal, accordingly, was properly dismissed.

This is not to say, however, that the Commonwealth was without recourse. The definition of "informal adjustment," *supra*, suggests that the General Assembly placed a check on the district court's discretion in this area by requiring both that the parties agree to the proposed adjustment and that the victim and certain others be consulted and allowed to express an opinion concerning the agreement.[4] The Commonwealth contends, in effect, that in this case the district court proceeded in derogation of the check on its authority by failing to afford the "victim" high school an opportunity to respond to the adjustment motion and then by going forward with the adjustment despite the Commonwealth's objection. Because an appeal was not available to the Commonwealth, it was obliged, if it desired review, to bring an original proceeding in the circuit court for relief in the nature of mandamus or prohibition.[5] Its failure to do so precluded the circuit court and precludes this Court from addressing the merits of the Commonwealth's claim.

In sum, we agree with the Jefferson Circuit Court that an informal adjustment is not a final action or a disposition by

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[4]*See also* KRS 610.100(3) (providing that petitions may be adjusted at any time during the proceeding, upon motion "and with the victim and with those persons specified in KRS 610.070 having prior notification of the motion.").

[5]*Cf.* Tipton v. Commonwealth, Ky. App., 770 S.W.2d 239 (1989) (holding that the Commonwealth was not entitled to interlocutory relief by appeal from district court, but that similar relief would be available via an original action) and CR 81.

the district court from which an appeal will lie. We affirm, accordingly, the circuit court's June 19, 2001, order dismissing the Commonwealth's attempted appeal.

ALL CONCUR.

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