

Commonwealth Of Kentucky

Court Of Appeals

NO. 2005-CA-000785-ME

Z.Z.F, A CHILD

APPELLANT

v. APPEAL FROM PENDLETON FAMILY COURT
HONORABLE DAVID E. MELCHER, JUDGE
ACTION NO. 04-J-00006

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, HENRY, AND KNOPF, JUDGES.

KNOPF, JUDGE: Z.Z.F, a child, appeals from a February 21, 2005, order of the Pendleton Family Court which revoked his probation and committed him to the Cabinet for Health and Family Services (CHFS) for placement in a residential treatment facility. Z.Z.F argues that the court failed to make sufficient findings to warrant detention. We find any error to be unpreserved, and that Z.Z.F was not prejudiced by the family court's failure to make specific findings. Hence, we affirm.

On March 15, 2004, the family court found that Z.Z.F had been habitually truant from school. Habitual truancy is classified as a status offense under the juvenile code.¹ The pre-disposition report prepared by the CHFS recommended that Z.Z.F be probated under the supervision of the CHFS, subject to certain terms and conditions. These conditions required Z.Z.F to attend school daily, abide by school rules, maintain his grades, follow a curfew, and refrain from any violations of the law. The conditions also required Z.Z.F.'s mother, J.F., to have weekly meetings with Z.Z.F.'s case worker, to attend parenting classes and counseling sessions with Z.Z.F, and to properly supervise Z.Z.F. The family court adopted the CHFS's recommendations in an order entered on April 8, 2004.

In October, Z.Z.F was charged with operating a motor vehicle without a license and failure to illuminate headlamps. Z.Z.F appeared in Pendleton District Court on November 5. Following that hearing, the district court allowed Z.Z.F. to remain at home, subject to the conditions imposed by the CHFS. However, on January 25, 2005, Z.Z.F. was again charged, this time with theft by unlawful taking under \$300.00, for taking a bottle warmer from a parked car. The district court, per Judge

¹ KRS 630.020(3).

William Probus, scheduled a hearing to show cause why Z.Z.F. should not be held in contempt of its November 5, 2004, order.

At the hearing on February 15, 2005, the CHFS case-worker testified that he had learned that Z.Z.F. had violated a number of the terms of his probation,² but did not report the violations to the court. Judge Probus expressed considerable frustration at the CHFS case worker for failing to properly supervise Z.Z.F. and for failing to report the probation violations. After taking additional testimony from school officials and from J.F., the district court found Z.Z.F. in contempt for violation of the November 5, 2004, order. The district court dismissed the criminal charges without prejudice, but also referred the matter back to family court recommending that Z.Z.F.'s probation be revoked.

Z.Z.F. appeared before the family court on February 21. The family court adopted Judge Probus's findings and granted the Commonwealth's motion to revoke Z.Z.F.'s probation. The family court committed Z.Z.F. to the custody of the CHFS for placement in a residential facility. Z.Z.F. appeals from this order.

² The other violations include; excessive unexcused absences and tardies to school, failing academic performance, disciplinary referrals at school, violations of curfew, and failure to attend counseling sessions as directed by the court.

In support of his argument, Z.Z.F. points to KRS 630.120(4), which requires the court to "affirmatively determine that all appropriate remedies have been considered and exhausted," and "to assure that the least restrictive alternative method of treatment is utilized." Furthermore, KRS 630.120(6) allows a court to commit a status offender to the CHFS only "[w]hen all appropriate resources have been reviewed and considered insufficient to adequately address the needs of the child and the child's family" Similarly, a court may order a status offender who is subject to a valid court order to be securely detained for violations of that order only upon making the findings set out in KRS 630.080(3)(a)-(c). Noting Judge Probus's findings that the CHFS failed to provide adequate supervision or services, Z.Z.F. contends that the family court failed to adequately support its decision to revoke probation.

However, Z.Z.F.'s appointed counsel did not request an additional hearing or findings concerning his detention in a residential treatment facility. Indeed, counsel specifically stated that another hearing was not necessary and declined to present any additional mitigating evidence. Thus, we review the issue under the palpable error standard.³

³ RCr 10.26

We agree with Z.Z.F. that KRS Chapter 630 strongly discourages routine detention of status offenders, even as a sanction for contempt of court. Consequently, KRS 630.080 and 630.120 require the court to make findings concerning any appropriate remedies other than detention. The family court did not set out explicit findings as required by these statutes. We are also disturbed by the CHFS's admitted failure to provide adequate supervision and services to Z.Z.F. as directed in the family court's original probation order.

Nevertheless, Z.Z.F. does not contest the family court's finding that he violated the conditions of his probation. Likewise, he does not argue that the family court lacked the authority to revoke his probation based on those violations. Moreover, there was no dispute at the revocation hearing that residential treatment is the most appropriate resource for Z.Z.F. at this time. Even Z.Z.F.'s mother, J.F., stated at the hearing that she believed residential placement to be the best option for her son. Consequently, we find that Z.Z.F. was not prejudiced by the family court's failure to make specific findings in this regard, and that the family court did not err by revoking Z.Z.F.'s probation and committing him to the CHFS for placement in a residential treatment facility.

Accordingly, the February 21, 2005, order of the Pendleton Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Timothy G. Arnold
Assistant Appellate Advocate
Office of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory R. Stumbo
Attorney General of Kentucky

Todd D. Ferguson
Assistant Attorney General
Frankfort, Kentucky