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Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-000138-ME

J.R.D., A JUVENILE — APPELLANT

v.

APPEAL FROM BOYLE FAMILY COURT
HONORABLE DOUGLAS BRUCE PETRIE, JUDGE
ACTION NO. 03-J-00060

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ABRAMSON AND GUIDUGLI, JUDGES; BUCKINGHAM,[1] SENIOR JUDGE.

GUIDUGLI, JUDGE: J.R.D., a juvenile status offender, has appealed from the Boyle Family Court's December 7, 2006, order committing her to the Cabinet for Families and Children with the recommendation that she complete a residential treatment program at Ramey-Estep Homes. J.R.D. asserts that the family court improperly committed her to the Cabinet for finding her in contempt of a status offender order, while the Commonwealth

[1] Senior Judge David C. Buckingham, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

maintains that her commitment was as a result of her being a habitual truant. We affirm.

The record in this case consists of four separate juvenile complaints/petitions filed against J.R.D. The mother filed the first complaint/petition on May 1, 2003, when J.R.D. was fourteen years old.[2] The mother called the police after J.R.D. attacked her sister, as a result of which she was taken into custody and later charged with Assault 4th – Domestic pursuant to KRS 508.030. She was conditionally released[3] after a detention hearing, and the matter was eventually resolved. The mother also filed the second complaint the same date, alleging that J.R.D. was beyond the control of her parents in violation of KRS 630.020(2) and citing J.R.D.'s disrespectful attitude and her refusal to obey house rules. That status offense charge was later dismissed without prejudice on the Commonwealth's motion.

The third, two-part petition was filed by a Danville police officer on September 5, 2003. The grounds for the petition were an August 22, 2003, motor vehicle accident during which J.R.D. hit a parked van in a parking lot and left the scene of the accident. J.R.D. did not have an operator's license at the time. She was cited for both offenses. At a

[2] J.R.D.'s date of birth is December 12, 1988.

[3] Some of the conditions of her release included having no unexcused absences from school, that she must obey school and house rules, that she not have any violent contact with any family member, and that she abide by a curfew.

later conference, J.R.D. admitted to the offense of leaving the scene of the accident, and was ordered to complete forty hours of community service and to pay restitution to the owner of the van she damaged. The charge of not having an operator's license was to be dismissed if she copied the driver's manual by hand.[4] A docket order dated December 4, 2003, indicated that J.R.D. had been suspended from school, in violation of the conditions of her release. For this reason, we assume, the family court stated that any violation of the conditions of release before the next scheduled hearing date in January 2004 would result in her immediate pick-up.

On December 18, 2003, Chuck Stallard of Danville Schools filed an affidavit stating that J.R.D. had continued to be defiant to authority and had skipped class. Based upon this affidavit, the family court entered a pick-up order that day. A detention hearing was held on December 29, 2003, when J.R.D. admitted to the two pending allegations of contempt. The family court imposed a zero-hour curfew and scheduled a disposition hearing for January 15, 2004. At the disposition hearing, the family court probated J.R.D. to the court until she reached her eighteenth birthday. A third contempt affidavit was filed on October 19, 2004, which indicated that J.R.D. had been kicked out of school, but the summons was never successfully served.

[4] Her handwritten copy of the Kentucky driver's manual is in the record.

At one of the scheduled show cause hearings, the family court learned that J.R.D. was being home-schooled.

Prior to the filing of the contempt charges resulting from the third petition, Chuck Stallard filed the fourth complaint/petition on November 25, 2003, for which J.R.D. was charged with the status offense of Habitual Truancy pursuant to KRS 630.020(3). J.R.D. obtained appointed counsel and denied the allegations at her arraignment on January 7, 2004. At the conclusion of the January 7th court appearance, the family court entered a Juvenile Status Offender Order, stating that J.R.D. was alleged to be a status offender relating to Habitual Truancy, found that it had jurisdiction over her, and ordered her to comply with several conditions. These conditions required her to not leave home without custodial permission; to obey all home rules (including the imposition of a zero hour curfew); to attend school on time, have no unexcused absences, and have no behavior problems at school; to not violate the law; and to not consume alcohol, or to use or possess any alcohol, tobacco products or illegal drugs. The Status Offender Order also warned that "[f]ailure to abide by this Order may result in a contempt finding being made against you by the court which could result in a fine and/or your being placed in a secure detention or other alternative placement[.]" An adjudication hearing was scheduled for February 25, 2004.

By February 11, 2004, J.R.D. had already violated the terms of the Status Offender Order. Her father filed an affidavit that day indicating that she was "running the streets, skipping school, staying gone for days and according to the police associating with the 'wrong' people." The family court ordered J.R.D. to be picked up and detained, and held a detention hearing on February 16th. J.R.D. admitted to the contempt, and the family court sentenced her to 10 days in detention, credited her for two days served, and probated the balance on the condition that she abide by the terms of the Status Offender Order.

At the February 25, 2004, adjudication hearing on the habitual truancy charge, J.R.D. admitted to being a habitual truant. The family court ordered the Cabinet to complete and file a Pre-Dispositional Investigation Report, and set the matter for a disposition hearing on March 31, 2004. Pursuant to the order, the Cabinet filed the PDI report in which it recommended that J.R.D. enter a long-term residential treatment program. According to its recommendation, such treatment would provide her with the means to become more responsible for her behavior, and would allow her to develop and demonstrate a healthy sense of respect for social norms and the rights of others. At the disposition hearing, the family court indicated that it was ready to remove J.R.D. from her home based upon the

Cabinet's report. However, the Cabinet amended its recommendation, stating that it wanted to open a six-month case on the family and have J.R.D. probated to the Cabinet as opposed to placed into its custody. Based upon this amended recommendation, the family court opted to probate J.R.D. to the Cabinet until her eighteenth birthday under the terms of the previously entered Status Offender Order. The family court specifically stated that if the situation did not improve, she could be removed from her family.

On September 14, 2004, the family court heard this case on a second contempt charge, this one arising from information the court had recently learned in a domestic violence action involving J.R.D.'s estranged parents. During the domestic violence hearing, a social worker testified that J.R.D. had been drinking alcohol. During the course of the juvenile court appearance, the family court learned that J.R.D. had been removed from Danville High School, was in a GED program and was being home-schooled (all which would technically be violations of the status offender order.) The mother also indicated that a few days earlier J.R.D. had returned home drunk. She filed an affidavit to this effect later that day. At the conclusion of the hearing, the family court found that the Status Offender Order was in full force and effect and adopted the terms of a Prevention Plan entered a few days

previously in the domestic violence case.[5] The family court then entered a new Juvenile Status Offender Order, adding several additional conditions, including that J.R.D. enroll in and attend day treatment/GED track, that she be permitted to work at her mother's discretion, and that she be assessed for drug/alcohol abuse through Comprehensive Care. The Status Offender Order again warned that any failure to abide by its terms may result in a finding of contempt.

As J.R.D.'s mother was driving them home from the September 14th court appearance, J.R.D. became upset when she was not permitted to visit with her father that evening. As a result, J.R.D. punched the windshield while her mother was driving, causing it to break. The mother pulled over, called the police, had J.R.D. placed into detention, and returned to court to file a new affidavit detailing J.R.D.'s actions.

The family court held a detention hearing on September 15, 2004, on the new contempt charge. At the conclusion of the hearing, the family court entered the following order:

> Court finds probable cause to believe that child has committed the offense of contempt of court for violation of Status Offender Order. The Court further finds based upon the fact, that if found ultimately to be in contempt it would be the child's third

[5] The terms included requirements that no alcohol was to be consumed during J.R.D.'s visitations with her father and that all alcohol had to be locked up when she was there, that the parents cooperate with the Cabinet, that they submit to random drug screenings, and that all house rules be followed.

> contempt allegation and second finding. Further, the child is alleged to have committed the offense within an hour of her court appearance on 9/14/2005. Accordingly, the Court finds that detention at this time is in the child's best interests. In so finding the Court has determined that there was a valid status offender order in place at the time the alleged offense was committed. The Court has also directed that CHFS file a written report, copy to court and counsel by Tues., September 20, 2005 as required in KRS 610.265(2)(b)4.c. PTC set for October 12, 2005.

At the October 12, 2005, pretrial conference, the family court ordered the Cabinet to open a case on the family, stated that all prior orders were to remain in effect, and reset the case on the contempt issue for December 7, 2005.

On October 31, 2005, Cabinet employee Scott Helm filed an affidavit stating that J.R.D. tested positive for marijuana during an October 18th drug test. J.R.D. was again picked up and placed in detention. At the detention hearing on November 3, 2005, J.R.D. admitted the contempt and that there was probable cause for the pick up. As an alternate to detention, and pursuant to the parties' agreement, the family court placed J.R.D. in the temporary custody of the Cabinet for transportation that day to Ramey-Estep Homes for in-patient treatment. The family court then set a disposition hearing on this contempt charges for the previously set December 7th show

cause hearing on the other two pending contempt charges, and ordered the Cabinet to file another PDI report.

At the December 7, 2005, court date, the Cabinet filed the PDI report as ordered, in which it recommended that J.R.D. be committed to the Cabinet, that she complete the program at Ramey-Estep Homes and earn her GED, that the parents continue with their case plans, that J.R.D. and her father continue to submit to random drug tests, and that J.R.D. follow the status probationary orders as well as other orders and recommendations of the court and the Cabinet. During the hearing, counsel for J.R.D. asserted that her family did not realize that the treatment program would last several months and requested that she be returned home to continue with her treatment. At the conclusion of the hearing, the family court merged the three pending contempt charges and adopted the recommendations of the Cabinet. The family court decided to conditionally permit J.R.D. to spend two days with her family over the Christmas holiday, adding an amendment to this effect to the adopted recommendations. Finally, the family court entered a Juvenile Status Disposition order, in which it found that J.R.D. was a habitual truant and in contempt of court, and committed her to the Cabinet with the recommendation that she complete the treatment program at Ramey-Estep Homes. It is from this order that J.R.D. has taken the present appeal.

On appeal, J.R.D. argues that the family court erred by committing her to the Cabinet for contempt of court and because commitment to the Cabinet was not the last restrictive alternative. In response, the Commonwealth counters J.R.D.'s arguments, pointing out (as did J.R.D.) that the first argument was unpreserved, but that any error did not rise to the level of palpable error, and that the family court committed her for being a status offender, rather than for contempt of court. The Commonwealth also asserts that commitment to the Cabinet was the least restrictive alternative in this case.

1) COMMITMENT TO THE CABINET

J.R.D. concedes that this argument was not preserved for appeal, but nevertheless asserts that this argument must be reviewed as it is akin to sentencing in a criminal matter, or that it should be reviewed under the palpable error rule pursuant to RCr 10.26. She argues that the statutes applicable to status offenders do not permit a court to delegate a decision on confinement to the Cabinet, and that it was fundamentally unfair to her for the family court to bootstrap a commitment order to a contempt finding as she was never told that this could be a possible outcome of violating a status offender order. The Commonwealth, on the other hand, asserts that this is not a true criminal matter and that this is not a case involving palpable error. Furthermore, the Commonwealth argues

that the family court's order of commitment was both authorized and lawful.

We agree with the Commonwealth that commitment to the Cabinet was the appropriate ruling in this matter, and we can identify no error, palpable or otherwise. By the terms of the order relating to the habitual truancy charge, J.R.D. was probated to the Cabinet until her eighteenth birthday, and the family court specifically stated that she could be removed from her family if the situation did not improve. Furthermore, the Cabinet recommended in its PDI report that J.R.D. would benefit from long-term residential treatment. As revealed by the numerous contempt charges and detentions that followed, J.R.D. clearly violated the terms of her probation, meaning that she was subject to removal to the Cabinet. By committing J.R.D. to the Cabinet, the family court was simply following its order resolving the habitual truancy charge; J.R.D. was not committed solely for her contemptuous actions.

We perceive no error in the family court's decision to commit J.R.D. to the Cabinet.

2) LEAST RESTRICTIVE ALTERNATIVE

J.R.D. next argues that commitment to the Cabinet to be placed into a treatment center was not the least restrictive alternative available. On the other hand, the Commonwealth points out that the many other alternatives attempted had not

worked and that J.R.D.'s removal from her home served her best interests.

While we agree with J.R.D.'s statement of the law that a court must impose the least restrictive method of treatment, we ultimately agree with the Commonwealth that the family court properly committed her to the Cabinet. The Legislature has made it clear that "[t]he court shall show that other less restrictive alternatives have been attempted or are not feasible in order to insure that children are not removed from families except when absolutely necessary[.]" KRS 600.010(2)(c). But the Legislature also provided that "[w]hen all appropriate resources have been reviewed and considered insufficient to adequately address the needs of the child and the child's family, the court may commit the child to the cabinet for such services as may be necessary." KRS 630.120(6). In the present case, the family court obviously expended a tremendous amount of time and effort through numerous court proceedings over several years to remedy the situation without removing J.R.D. from her home. Nothing was effective. Both the Cabinet and the family court recognized that J.R.D. needed to be removed from her home in order for her to get the appropriate treatment.

Again, we perceive no error or abuse of discretion in the family court's decision to commit J.R.D. to the Cabinet, or

in its recommendation that she be required to complete the treatment plan at Ramey-Estep Homes.

For the foregoing reasons, the judgment of the Boyle Family Court is affirmed.

ALL CONCUR.

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