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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000201-ME

S.C., A MINOR — APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE PAULA SHERLOCK, JUDGE
ACTION NO. 04-J-502408-1

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; LAMBERT, JUDGE; KNOPF,[1] SENIOR JUDGE.

KNOPF, SENIOR JUDGE: S.C., a juvenile status offender, appeals from the Jefferson Family Court's January 25, 2007, order committing him to the Cabinet for Health and Family Services (the Cabinet) claiming that the family court improperly committed him because not all less restrictive alternatives to commitment were exhausted. For the reasons stated below, we affirm.

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

On May 17, 2004, a juvenile complaint was filed in the Jefferson Family Court alleging that S.C. had committed the offense of being a habitual truant, a status offense, in violation of KRS 630.020(3). S.C. had missed 37 days of school, 26 of which were unexcused absences, in addition to 44 unexcused tardies for the 2003-2004 school year. The complaint also mentioned that a home visit was attempted on March 22, 2004, and that "all attempts by school personnel to encourage attendance have failed."

On February 24, 2005, S.C. conceded to having committed the status offense of habitual truancy. As a result of this plea, the family court directed that S.C. reside at home and attend school every day unless he had a written medical excuse. The Commonwealth made a motion to commit S.C. to the Cabinet on April 7, 2005, because of his continued truancy. As a result of the dispositional hearing on April 21, 2005, it was once again ordered that S.C. attend school daily and on time unless medically excused in writing, and S.C. was allowed to stay with his mother. On June 16, 2005, S.C. was probated to the Cabinet, and yet again, the conditions of the probation included that S.C. would attend school daily and not violate the law as well as keep all appointments with probation workers and abide by a curfew.

A case report in October, 2005, reflected that S.C. was doing better and that all prior consistent orders of the court were continued in effect. However, a case report in December of that same year reflected that S.C.'s "behavior was starting to decline" and he had been suspended from school for fighting. S.C. was directed to attend counseling at Seven Counties Services and all family members were directed to cooperate with the

Cabinet. The Commonwealth made a motion to schedule a hearing to show cause why S.C. should not be held in contempt on January 31, 2006, alleging that S.C. refused to participate in scheduled drug screenings and had informed his mother that his results would be positive for drugs. On February 9, 2006, the court entered an order granting temporary custody of S.C. to his natural father. Again, S.C. was ordered to obey all rules of his father's household in addition to attending school and submitting to drug testing.

On December 8, 2006, the Commonwealth filed a motion to hold S.C. in contempt on the grounds that he was not complying with court orders. The motion was heard in court on December 14, 2006, at which time the Cabinet did note S.C.'s initial improvement while in his father's custody. However, S.C. had returned to his mother's residence and continued to be absent from school, including a suspension for threatening a teacher. In addition, S.C. still refused the court-ordered drug testing. The Commonwealth recommended that S.C. be committed to the Cabinet given his long history of failing to improve his behavior and abide by court orders. The court gave S.C. one more month to reside with his mother as an alternative to commitment. Sometime in this month, S.C.'s mother contacted his social worker because S.C. was exhibiting violent behavior towards her and was "going crazy." S.C. also refused another drug test.

The court conducted a hearing on January 25, 2007, to address the contempt charge and the commitment motion. The Commonwealth offered proof as to S.C.'s violent behavior, continued truancy, and failure to submit to a drug test. The court determined that S.C. had repeatedly violated conditions imposed upon him and feared

that S.C. was "headed for prison" unless he corrected his behavior. The court held that S.C. would be committed to the Cabinet for thirty days in secure detention for the contempt and repeated violations. This appeal followed.

S.C. argues that his commitment to the Cabinet for contempt of court for being a habitual truant was not the least restrictive alternative available. The Commonwealth argues that the numerous alternatives were attempted and none had worked and that S.C.'s removal from his home served his best interests. The court made numerous attempts to help S.C. by ordering counseling and drug testing and allowed S.C. to live with his father in an effort to improve his school attendance.

While we agree with S.C.'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 S.C. to the Cabinet. The Legislature has made it clear that "the 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 "when 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).

S.C. cites *X.B. v. Commonwealth*, 105 S.W.3d 459 (Ky.App. 2003) in support of his argument that he was improperly committed. However, this Court held in that case that the trial court improperly committed X.B. for failure to state or show that

any less restrictive alternatives were attempted or were not feasible. *Id*. at 461. In fact this Court in *dicta* stated that:

> Had the record clearly indicated that X.B. had been before the court on previous occasions and that the court had attempted lesser restrictive alternatives, then the result herein may have been different.

Id. at n. 3. That is not the case here. The trial court documented numerous attempts to change S.C.'s behavior. Therefore, the holding in *X.B. v. Commonwealth* is not applicable to the present facts.

In S.C.'s case, the family court obviously expended a tremendous amount of time and effort conducting numerous court proceedings over several years in an attempt to avoid removing S.C. from his home. Nothing was effective. S.C. had repeatedly violated various orders and conditions imposed upon him as a result of his habitual truancy. Both the Cabinet and the family court recognized that S.C. needed to be removed from his home as the last step to protect him from his own behavior.

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

ALL CONCUR.

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