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SUPREME COURT ORDERED NOT PUBLISHED: AUGUST 13, 2008
(FILE NO. 2008-SC-0268-DE)

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001468-ME

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE LISA O. BUSHELMAN, JUDGE
ACTION NO. 05-J-00099 AND 05-J-00099-002

C. M., A CHILD; C. M., FATHER;
T. M., MOTHER; AND KENTON COUNTY
ATTORNEY'S OFFICE

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: CAPERTON, LAMBERT, AND THOMPSON, JUDGES.

CAPERTON, JUDGE: The Cabinet for Health and Family Services
appeals the Kenton Circuit Court's order extending or
reinstating C.M.'s commitment to the Cabinet. After careful
review, we affirm.

The Cabinet assumed custody of C.M. as a dependant minor until she reached the age of majority. Upon reaching the age of majority, with the consent of the Cabinet, the circuit court approved C.M.'s request for continued commitment until age 21 for the purpose of facilitating her education at Northern Kentucky University. Following the extension of her commitment, C.M. soon dropped out of her classes at Northern, and the Cabinet asked her to voluntarily rescind her commitment. After speaking with her guardian ad litem, however, C.M. had a change of heart about dropping out of Northern and about voluntarily rescinding her commitment. Therefore, she again moved for reinstatement or continuation of her commitment.

At the hearing on the motion, C.M. contended that she had made a mistake in dropping out of her classes and that she deserved a second chance. For its part, the Cabinet contended that C.M. had failed to pursue her education at Northern, which was the basis for extended commitment, and therefore the Cabinet was within its rights to withdraw consent to her extended commitment. Ultimately, the circuit court was persuaded that continued commitment was in C.M.'s best interests. This appeal followed.

The child, C.M., was committed to the Cabinet while under the age of 18 pursuant to Kentucky Revised Statutes (KRS) 620.140 as a dispositional alternative. Interpretation of KRS 620.140 is for the courts. See KRS 446.080. Further, a cardinal rule of statutory interpretation is for the reviewing court to

ascertain and give effect to the legislature's intent.

Commonwealth, Cabinet for Human Resources, Interim Office of Health Planning and Certification v. Jewish Hospital Healthcare Services, Inc., 932 S.W.2d 388 (Ky.App. 1996).

Commitments under the age of 18 are for an indeterminate period of time. KRS 620.140(1)(d). This "indeterminate period" allows the Cabinet to work its programs on the youth and, if necessary, the family of the youth through counseling, education, and various programs designed to rehabilitate. The rehabilitation, by virtue of the steps necessary to accomplish and the variation of abilities of individuals, is certainly for an indeterminate period. The determination that the child/parent(s) have accomplished rehabilitation is normally within the purview of the Cabinet and, thus, the time of release from commitment is at the discretion of the Cabinet absent objection. The procedure for such release is a rather informal letter to the court advising that the Cabinet intends to release a child on a particular date.¹

A continued reading of KRS 620.140, for our purposes, allows the court to further commit a child, here C.M., for the purpose of education up to the age of 21 years. Such order is for a particular purpose, i.e. education, and extends either (1)

¹ We would like to have had the one issued in this case, unfortunately, the letter referenced by counsel for the Cabinet for Health and Family Services in his brief was not part of the record as certified on appeal nor ever placed in the juvenile court record.

over a period of time up to the child's age of 21 as predetermined by the order or (2) accomplishment of the educational purpose. This type of order differs from an order of indeterminate period in that the order *sub judice* continues until a predetermined time expires or the educational purpose is accomplished.

Counsel for the Cabinet is correct as to the separation of powers set forth in our Constitution of Kentucky wherein one branch, whether executive, judicial, or legislative, shall not exercise the powers of the other unless expressly authorized by our Constitution. Ky. Const., § 27, § 28. Counsel for the Cabinet complains of attempts by the judiciary to direct decisions of the Cabinet concerning their programs and services. Counsel professes to protect the Cabinet from the judiciary by wielding the constitutional sword. Now that the sword is released from its scabbard, let us reverse the swing and sever the Cabinet's professed ability to vacate a court order. A court order stands until set aside by the issuing court.²

The Cabinet's informal procedure of writing a letter may suspend educational services to a child but that is exactly what is done, mere suspension. The trial court below merely reinstated services that were suspended by the Cabinet's procedure of issuing a letter of intent to release. The court's order of education stands until modified or vacated by the court; might we recommend an appropriate motion to said court.

² Of course, such order may be appealed then affirmed, reversed or vacated.

We, however, find there was no error in the order of the circuit court reinstating C.M.'s commitment to the Cabinet. Accordingly, we affirm the judgment of the Kenton Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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