

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2008-CA-000177-ME

B. K., A CHILD UNDER EIGHTEEN

APPELLANT

APPEAL FROM BULLITT CIRCUIT COURT  
v. HONORABLE ELISE GIVHAN SPAINHOUR, JUDGE  
ACTION NO. 03-J-00384

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, DIXON, AND WINE, JUDGES.

WINE, JUDGE: B.K., a child under eighteen years of age,<sup>1</sup> appeals from an adjudication by the Bullitt Circuit Court finding her to be beyond parental control.

We find that the trial court had jurisdiction to consider the petition even though the Commonwealth failed to introduce evidence that a pre-petition conference was

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<sup>1</sup> The record indicates that B. K.'s date of birth is September 24, 1990. At this writing, B. K. is still a child under the age of eighteen.

held, and that there was substantial evidence to support the trial court's findings and adjudication. Hence, we affirm.

On September 14, 2007, B.K.'s adoptive mother, G.K., filed a juvenile petition alleging that B.K. was beyond parental control in violation of Kentucky Revised Statutes (KRS) 600.020(3). Specifically, G.K. alleged that B.K.

has been gone during part of the day on 9/4/07 and 9/8/07 by breaking her curfew, with her whereabouts unknown. [B.K.] stayed gone all night on 9/1/07 and did not return until [9/2/07]. [B.K.] has had sexual relationships with both an adult male (37 years old) and an adult female (25 years old). On 9/5/07 subject was administered a drug test by her mother and it showed positive for both oxicotton [sic] and cocaine.

On November 14, 2007, B.K. appeared before the juvenile court for a hearing. The court appointed counsel for B.K. and directed the Cabinet for Health and Family Services (Cabinet) to begin an investigation of the allegations in the petition. The court also ordered B.K. to attend school regularly, and to "obey all house rules including curfew, friends with whom she may associate, no drug or alcohol use, and no contact of [any] kind with William Scott Gravel and Wendy Johnson Riggs," the two adults mentioned in the petition. The court further stated that B.K.'s "[f]ailure to obey will result in a charge of contempt and the imposition of all penalties including detention." Nevertheless, on December 21, 2007, and January 4, 2008, the Commonwealth filed motions to hold B.K. in contempt for violation of these conditions.

On January 9, 2008, the court conducted a hearing on the charges that B.K. was beyond parental control. G.K. testified in detail about the matters alleged in the petition. She also testified that she had received information that B.K. was continuing to see Gravel, and that B.K. had been arrested in Gravel's company one week prior to the trial. B.K. presented the testimony of the assistant principal of her high school. He testified that B.K. had disciplinary problems and unexcused absences in the past, but that her behavior and grades had improved. The assistant principal also testified that B.K. had told him about her relationship with Gravel, and had also told him that Gravel had threatened her.

After considering the evidence, the trial court found that B.K.

was not coming in as she was told to. The child would stay out and mother would not know where she was. The child was gone all night on Sept. 4, 2007 and would not answer cell phone after first call. She would not tell her mother where she was. She came home on Sept. 5, 2007. She was gone another night (September 8, 2007) under the same scenario. There were repeats on some weekends. Child refuses to give phone numbers where she can be found. Her mother said her speech would be incoherent or slurred; she has been observed to be unable to walk in a stable manner. She passed out & mother could not wake her up.

Mother has suspicion child is going w/William Gravel and has seen them together subsequent to the petition. The child was also found naked in bed with an adult woman who was also naked. They were asleep w/ [B.K.]'s arm & legs draped over the woman. The woman ("Wendy" Johnson) has posted pictures of the child on the net engaged in lesbian conduct with her. Child had contact with woman after being told to stay away from her. Calls from "Tonya" told her about child being with Mr. Gravel who is 37. He has tried to contact the

Petitioner's home and was told not to come around the child. Child has 9.24 unexcused absences at school and is flunking most of her classes. Child works at Kroger. She has been a disciplinary problem at school in the recent past but not currently. Child has admitted involvement w/William Gravel & told the principal she was afraid "he would hurt her."

Based on these findings, the trial court found B.K. to be beyond parental control. After receiving the report of the Cabinet, the court directed that B.K. be placed on home incarceration for nine days. The court further ordered B.K. to obey all house rules, attend school daily, follow her schedule from her employer, and comply with the Cabinet's recommendations including counseling. The court further directed that "all photographs posted on the net of the child shall be removed immediately." This appeal followed.

B.K. first argues that the Commonwealth failed to present any evidence that the court-designated worker had discharged his duties pursuant to KRS 630.050 before the petition was brought. B.K. concedes that this issue was not raised below, but contends that the failure to satisfy the statute's requirements deprived the trial court of subject-matter jurisdiction to consider the juvenile petition. We disagree.

As B.K. correctly notes, KRS 630.050 requires:

Before commencing any judicial proceedings on any complaint alleging the commission of a status offense, the party or parties seeking court action shall meet for a conference with a court-designated worker for the express purpose of determining whether or not:

- (1) To refer the matter to the court by assisting in the filing of a petition under KRS 610.020;
- (2) To refer the child and his family to a public or private social service agency. The court-designated worker shall make reasonable efforts to refer the child and his family to an agency before referring the matter to court; or
- (3) To enter into a diversionary agreement.

B. K. points to *T. D. v. Commonwealth*, 165 S.W.3d 480 (Ky. App. 2005), in which this Court held a failure to comply with the requirements of KRS 630.060(2) deprived the juvenile court of jurisdiction to consider a complaint alleging habitual truancy. *Id.* at 483. However, KRS 630.060(2) specifies that “[n]o complaint shall be received by the court designated worker alleging habitual truancy unless an adequate assessment of the child has been performed pursuant to KRS 159.140(1)(c), (d), and (f) . . . .” In contrast, while KRS 630.050 also requires a pre-petition conference, the statute does not preclude a court-designated worker from filing a status-offense petition from being filed if such a conference is not held. Although the juvenile court could have dismissed the petition if this issue had been timely raised, we cannot find that the failure to comply with the statute deprived the juvenile court of jurisdiction to address the merits of the petition against B.K.

B.K. next argues that it was unreasonable for the court to find her to be beyond parental control based upon the evidence presented at the hearing. When a juvenile challenges the sufficiency of the evidence, because the

Commonwealth carries the same burden of proof as it does in an adult criminal case to show that a juvenile committed an offense, we borrow from the criminal law and apply the directed verdict standard of review. *W. D. B. v. Commonwealth*, 246 S.W.3d 448, 453 (Ky. 2007). Thus, in the case of a juvenile adjudication, a reviewing court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth and determine if, under the evidence as a whole, it would be clearly unreasonable for the trial court to find guilt, only then the juvenile is entitled to a directed verdict of acquittal. *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991); *Commonwealth v. Sawhill*, 660 S.W.2d 3, 4 (Ky. 1983).

KRS 600.020(3) defines the status offense of being beyond the control of parents to mean:

a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645[.]

B.K. first argues that G.K.'s testimony consisted primarily of hearsay and speculation. B.K. also contends that there was no evidence that she had "repeatedly failed to follow the directives" of her parent. Finally, B.K. asserts that the trial court improperly considered matters beyond those alleged in the petition. We find no merit to any of these arguments.

G.K. testified that on several occasions B.K. broke her curfew, stayed out all night, refused to answer her telephone or provide contact numbers, and continued her relationship with Gravel despite G.K.'s directions and the court's orders. G.K. also had reason to believe that B.K. was using alcohol and drugs. While some of G.K.'s testimony concerning B.K.'s relationships with Gravel and Johnson was based on secondhand information, that information was corroborated by evidence of record.

Moreover, we find that the evidence was sufficient for the trial court to find that B.K. repeatedly refused to follow the reasonable directions of her parent, and that this behavior placed her in significant danger. While the evidence of B.K.'s drug test results was not admitted at the hearing, G.K. was able to testify from her own knowledge that B.K. appeared to be under the influence of something after being out all night. B.K.'s own stated fear of Gravel highlights the danger she placed herself in by continuing to associate with him. Although it is conceivable that another fact-finder might have reached a different result, we cannot say that the evidence was insufficient to support the trial court's findings.

And lastly, the trial court's findings concerning B.K.'s school attendance, disciplinary history and grades were based upon evidence that B.K. herself introduced. Thus, B.K. cannot argue that she received inadequate notice that this evidence would be introduced. Consequently, the trial court did not err by using this evidence to support its finding that B.K. was beyond parental control.

Accordingly, the adjudication of the Bullitt Circuit Court finding

B. K. to be beyond parental control is affirmed.

ALL CONCUR.

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