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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-002037-ME

A.J., A CHILD UNDER
EIGHTEEN

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE ELISE GIVHAN SPAINHOUR, JUDGE
ACTION NOS. 08-J-00401-001 & 08-J-00401-002

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON AND DIXON, JUDGES; HENRY,¹ SENIOR JUDGE.

HENRY, SENIOR JUDGE: A.J. appeals from a final disposition entered by the Bullitt Circuit Court, Family Division, which ordered A.J. to follow a preservation/prevention plan developed by the Cabinet for Health and Family

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Services. The disposition resolved a complaint filed by A.J.'s school, which alleged that she was a habitual truant and out of control of the school. A.J. argues that the trial court did not have jurisdiction to enter the final disposition because the Commonwealth and the school failed to comply with various statutory mandates of Kentucky's Unified Juvenile Code. She maintains that her due process rights were violated and her best interests were not served when the family court assumed jurisdiction of the matter rather than exhausting informal procedures.

In May 2008, A.J. was charged in two separate status offense petitions with being a habitual truant in violation of KRS 630.020(3) and beyond the control of the school she was attending in violation of KRS 630.020(2). A.J., who was born in 1991, was a student at North Bullitt High School at the time the petitions were filed. The petitions alleged that A.J. had been absent without excuse forty times during the 2007-2008 school year, and had twenty-seven discipline referrals during the same period. Both petitions indicated that the county attorney had requested a formal hearing on the matter and that the court designated worker (CDW) had found the case to be not appropriate for informal processing.

A.J. filed a motion on August 21, 2008, which requested the court to refer the case back to the CDW "for further consideration under KRS 610.030 and 630.050." The motion stated that although a conference had been held pursuant to KRS 630.050, with A.J. and her father in attendance, they were never provided with an opportunity to discuss other options for resolution of this matter.

A hearing was held on September 3, 2008, at which A.J.'s counsel again acknowledged that the CDW had held a conference with the child and her parents, but contended that, according to A.J.'s father, the conference did not meet the requirements of KRS 630.050 because the CDW never made an adequate assessment of the issues and never mentioned the possibility of diversion or a referral to a public or private agency for services. The trial court was unwilling to rule on the matter without hearing testimony from both the CDW and A.J.'s father. Accordingly, she granted A.J. a one-week continuance, and asked defense counsel to subpoena the CDW to be present.

At the subsequent hearing, defense counsel reiterated his argument that the requirements of KRS 630.050 had not been met, but admitted that he had not subpoenaed the CDW. The County Attorney responded by arguing that another statutory provision, KRS 610.030, left the final decision as to whether to pursue formal proceedings up to the Commonwealth, and that formal proceedings were warranted in this case. The trial court, declining to rule on the factual issue of what occurred at the conference without the CDW present, ultimately denied A.J.'s motion to dismiss the petitions. After hearing testimony from the assistant principal of A.J.'s high school, the trial court entered a disposition which ordered A.J. to follow a plan developed by the Cabinet for Health and Family Services, which provides as follows:

A. will attend classes at NBHS to comply w/SSAO
[Standard School Attendance Order]

A. would like to be considered for Riverview[.]

A. will continue to work on English III correspondence packet w/assistance when needed from Ms. Hatfield.

Scott J[.] will comply with PRO by assisting A. w/contacting Ms. Hatfield about academic programs and truancy issues every 2 weeks.

This appeal followed.

A.J.'s first argument is that her due process rights were violated when the family court assumed jurisdiction over the status offense petitions. She argues that a more informal resolution of the problem would have been in keeping with the purpose of the Unified Juvenile Code. She argues that the Commonwealth had failed to affirmatively establish compliance with the express mandates and purpose of KRS 630.050. That statute provides as follows:

Before commencing any judicial proceedings on any complaint alleging the commission of a status offense, the party or parties seeking such 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.

A.J. argues that there is no indication in this case that the CDW met with the school officials to determine whether a formal petition to the circuit court

would be necessary or whether a diversionary agreement or referral to a social services agency should be attempted prior to institution of formal proceedings. She urges us to follow the reasoning employed in *T.D. v. Commonwealth*, 165 S.W.3d 480 (Ky. App. 2005), in which this Court held that meeting the requirements of another section of the juvenile code, KRS 630.060(2), was a prerequisite to the circuit court assuming jurisdiction.

First, we note that it is unclear whether the hearing referred to by A.J.'s counsel, at which A.J. and her father were present, was the hearing contemplated by KRS 630.050, which mandates solely the presence of the CDW and the parties seeking the court action (in this case, the assistant principal). Therefore, the specific issue now raised on appeal (whether a conference between the CDW and the assistant principal was held pursuant to KRS 630.050) may never have been properly before the trial court. As the appellant has pointed out elsewhere, "defects in subject matter jurisdiction may be raised by the parties or the court at any time and cannot be waived." *Commonwealth Health Corp. v. Crosslin*, 920 S.W.2d 46, 47 (Ky. 1996). In this case, the family division of the circuit court had subject-matter jurisdiction over the status offense petitions pursuant to KRS 610.010(2). The type of jurisdiction which A.J. alleges was lacking

" . . . refers to the authority and power of the court to decide a *specific* case, rather than the class of cases over which the court has subject-matter jurisdiction." *Milby*, 952 S.W.2d at 205. This kind of jurisdiction often turns solely on proof of certain compliance with statutory

requirements and so-called jurisdictional facts, such as that an action was begun before a limitations period expired. “[A]lthough a court may have jurisdiction over a particular class of cases, it may not have jurisdiction over a particular case at issue, because of a failure by the party seeking relief to comply with a prerequisite established by statute or rule.” *Petrey v. Cain*, 987 S.W.2d 786, 788 (Ky. 1999). [Emphasis in original.]

Nordike v. Nordike, 231 S.W.3d 733, 738 (Ky. 2007).

“[W]here a court has general jurisdiction of the subject matter, a lack of jurisdiction of the particular case, as dependent upon the existence of particular facts, may be waived.” *Collins v. Duff*, 283 S.W.2d 179, 182 (Ky. 1955). The record shows, and A.J. acknowledges, that the trial court was more than willing to ascertain whether the terms of KRS 630.050 had been followed. A.J.’s counsel was granted a one-week continuance, and asked to subpoena the CDW to testify about what had occurred at the conference. A.J.’s attorney refused, without explanation, to subpoena the CDW. In our view, the issue as to whether KRS 630.050 had been observed was thereby waived.

A.J.’s second argument is that the habitual truancy petition should have been dismissed because the school failed to comply with the mandates of KRS 159.140, as required under *T.D. v. Commonwealth*, *supra*. Although this issue is not preserved, A.J. has asked us to review it on the ground that it relates to the trial court’s subject matter jurisdiction.

The pertinent portions of the statute provide as follows:

(1) The director of pupil personnel, or an assistant appointed under KRS 159.080, shall:

...

(c) Acquaint the school with the home conditions of a habitual truant as described in KRS 159.150(3), and the home with the work and advantages of the school;

(d) Ascertain the causes of irregular attendance and truancy, through documented contact with the custodian of the student, and seek the elimination of these causes;

...

(f) Attempt to visit the homes of students who are reported to be in need of books, clothing, or parental care;

...

(3) In any action brought to enforce compulsory attendance laws, the director of pupil personnel or an assistant shall document the home conditions of the student and the intervention strategies attempted.

The Commonwealth's only witness was Michael K. Abell, an assistant principal at North Bullitt High School. A.J. argues that there was no testimony that he was the director of pupil personnel or an assistant to such an individual, as required by KRS 159.140(1). She admits that he was listed as the DPP/designee on the court referral/habitual truancy form attached to the habitual truancy petition. In our view, this constitutes sufficient evidence that he was qualified to perform the duties required under the statute; A.J. was certainly free to challenge Abell's statutory qualifications at the hearing.

Next, she states that his assessment of the causes underlying A.J.'s numerous absences, that she "does not like school and chooses not to attend on many days" was "surprisingly uninspired and lacking in insight." This criticism goes to the quality of Abell's findings; although they may be unimaginative, they are adequate to meet the requirements of the statute.

She further argues that the information Abell provided on the form did not constitute adequate documentation of home conditions or attempted intervention strategies as required under KRS 159.140(3). The form states that A.J. "is defiant while at school which leads to suspension on many days. Dad does not want to fight with her to get her to attend." Under the section entitled "Home conditions, including need for school materials, clothing or parental care" it states "Large brick home in need of some repairs. Some clutter including an older Corvette in yard. Jeep Cherokee in car port but no answer at door although porch light was on. I left record of attendance, report card, and final notice with no response." Under "Interventions by the School" it states that phone calls were made daily upon A.J.'s absences and that Abell "talked with [A.J.'s father] on several occasions about behavior and attendance." The form also indicates that letters were sent to the home, and that a referral had been made to a guidance counselor and to FYRSC [Family Research and Youth Services Centers]. After his unsuccessful attempt to visit the home, Abell left a letter expressing his hope that he could discuss the reasons for A.J.'s truancy and warning the parents that he might be filing a truancy petition, and requesting that they contact him. A.J.

contends that Abell's efforts were insufficient to constitute compliance with the statute. We disagree. Abell's actions as documented on the form satisfy the demands of the statute. He communicated (or attempted to communicate) with the parents on several occasions, and referred A.J. for other assistance. There is no statutory requirement that the director of pupil personnel make repeated home visits in the hope that the parents might be available, nor that he or she include full documentation of the results of referrals to other professionals or agencies.

Thirdly and finally, A.J. argues that the petition for beyond control of school failed to meet the standard set in KRS 600.020(4), which requires a description of the "student's behavior and all intervention strategies attempted by the school" to be attached to the petition. She contends that all that was attached to the petition in her case was a page of writing on school letterhead stating that A.J. did not go to detention or Friday school when assigned. But there is also attached a "Student Discipline Report by Date" which documents in detail the numerous instances of A.J.'s objectionable behavior, including having a cell phone out in class; talking in class and refusing to work; sleeping in class; repeatedly addressing teachers and principals with obscenities; and leaving school without permission. She is described as loud and disruptive. It details that A.J. was given verbal warnings about her behavior; sent to the office so other students could work undisturbed; was placed in "behavior contract"; was given numerous opportunities to make up a missed detention; and that a parent conference was scheduled.

A.J. argues that there is a “paucity of information” concerning the school’s attempts to intervene and address the causes of her behavioral problems, and that the school failed to consider why her bad behavior had suddenly started in the 2007-2008 school year, and whether it was due to a new set of peers, a change in circumstances at home; due to the fact she was bored in her classes or had been cut from the volleyball team. While these may be fruitful avenues of inquiry, in our view the student discipline report in the record fulfills the requirements of KRS 600.020. The statute does not demand an exhaustive psychological analysis of the student, nor does it even demand that the intervention strategies described be wide-ranging or effective.

The final disposition of the Bullitt Circuit Court, Family Division, is therefore affirmed.

ALL CONCUR.

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