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Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001231-MR

COMMONWEALTH OF KENTUCKY — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 11-CI-006160

DEANA MCDONALD, JUDGE,
JEFFERSON DISTRICT COURT;
AND J.M., A CHILD — APPELLEES

OPINION
REVERSING
AND REMANDING

** ** ** ** **

BEFORE: MAZE, STUMBO AND TAYLOR, JUDGES.

MAZE, JUDGE: The Commonwealth of Kentucky, acting as Appellant, appeals the ruling of Jefferson Circuit Court denying its Petition for a writ of prohibition

against Jefferson District Court Judge Deana McDonald.[1] We find that the circuit court erred in denying the Commonwealth a writ of prohibition against Judge McDonald's practice of deferral. Accordingly, we reverse and remand for entry of such a writ.

Background

On October 19, 2010, the court-designated worker ("CDW") in Jefferson County drafted and submitted a juvenile petition alleging that J.M., a minor, had committed the criminal offense of Abuse of a Teacher following a physical altercation at her school in Louisville. After her initial appearance in the juvenile session of Jefferson District Court, and at the request of her defense, J.M.'s case was continued for purposes of evaluating the child's competency. On April 11, 2011, the results of the evaluation in the form of a competency report were filed with the juvenile court clerk. During a competency hearing two weeks later before Judge McDonald, the Commonwealth stipulated that the child, per the report, was not competent to stand trial but was likely to become so within nine to twelve months. The Commonwealth proposed a continuation of the case for a review of the child's competency at a later date within the timeframe suggested in the competency report. The child's attorney objected and Judge McDonald stated that she was "not willing to spend $800.00, again, on a ten-year-old child . . . ." Judge McDonald instead referred the case to the CDW, adding that her decision "pretty much takes it out of [the Commonwealth's] hands."

[1] Judge McDonald did not file a brief on appeal. However, J.M., represented by the Department of Public Advocacy, did and we refer to her hereinafter as "Appellee."

In response to Judge McDonald's ruling, the Commonwealth filed a Motion to Set Aside and Recall the court's order, requesting that disposition of the case be stayed until the child's competency could be further evaluated consistent with the conclusions of the competency report. The Commonwealth also argued that Judge McDonald's decision to unilaterally divert the case to the CDW infringed on its exclusive authority to prosecute criminal cases. Judge McDonald denied the Commonwealth's motion, stating that the Unified Juvenile Code ("UJC") permitted her "to invade the realm typically exclusive to the Executive Branch" by referring the matter back to CDW.

Following Judge McDonald's order denying its motion, the Commonwealth filed an original action in Jefferson Circuit Court seeking a writ of prohibition against Judge McDonald on the basis that she unconstitutionally diverted prosecution of the case "without the consent of the Commonwealth and with no opportunity for a representative of the Commonwealth to be heard." During the pendency of the case in the circuit court, it was revealed through discovery that Judge McDonald had taken similar action in some thirty-six other juvenile cases during 2011.

After hearing arguments in the case, the Circuit Court denied the Commonwealth's petition for a writ, finding that Judge McDonald's decision not to continue the case for further competency evaluation, but to refer it back to the CDW, "simply proceeded with the rehabilitative spirit of the [UJC]…." It is from this order that the Commonwealth now appeals.

Analysis

I. Circuit Court's Jurisdiction Over Writs of Prohibition

Appellee contends that, though the circuit court declined to issue the writ of prohibition, the court did not have jurisdiction to consider the writ. The Appellee makes several arguments, based in case law, in statute, and in the Kentucky Constitution, in support of their its that the proper authority to consider a writ petition can only be in this Court or the Supreme Court. We disagree.

Sections 110 and 111 of our Constitution endow the Supreme Court with its appellate authority, as well as the ability to issue all writs which may give effect to that authority. In addition, the Supreme Court has delegated authority to this Court, permitting us to "issue necessary orders to give control over lower courts." Rules of the Supreme Court ("SCR") 1.030(3). The Appellee states that the Constitution lacks any delegation of appellate authority to the circuit courts; therefore, they cannot exercise jurisdiction over district court judges.

The General Assembly, along with numerous decisions by our appellate courts, has provided authority for circuit courts to consider writs brought against judges of the district court. In 1978, our General Assembly enacted Kentucky Revised Statutes ("KRS") 23A.080, which states, in part, "[t]he Circuit Court may issue all writs necessary in aid of its appellate jurisdiction, or the complete determination of any cause within its appellate jurisdiction." KRS 23A.080(2). Accordingly, we have found that this statute confers the authority to

consider extraordinary writs upon our circuit courts. *See Delahanty v. Commonwealth, ex rel. Maze*, 295 S.W.3d 136, 140 (Ky. App. 2009).

In denying the dispositive effect of KRS 23A.080, however, Appellee raises arguments similar to those raised in opposition to the writ in *Delahanty*, which concerned a district court judge's rule prohibiting the prosecution from voicing certain objections during probable cause hearings. However, this Court disposed of these arguments, and the trial court's practice, quite readily, citing the authorization granted in Section 112 of the Constitution,[2] and citing to Kentucky Rules of Civil Procedure ("CR") 81, which states that "[r]elief heretofore available by the remedies of mandamus, prohibition . . . may be obtained by original action in the appropriate court." *Delahanty,* 295 S.W.3d at 139-140. Citing also to SCR 1.40(6), which provides, "[p]roceedings for relief in that nature of mandamus or prohibition against a district judge shall originate in the circuit court," we have held that the circuit court is the "appropriate court" to hear the Commonwealth's petition for a writ of prohibition against a judge of the district court. *Id.*; *see also Abernathy v. Nicholson*, 899 S.W.2d 85 (Ky. 1995); *Commonwealth v. Williams*, 995 S.W.2d 400 (Ky. App. 1999).

We do so again today. Despite the Appellee's arguments to the contrary, it remains well-established that our circuit courts are the proper venue to entertain writs of prohibition and mandamus against district judges. The belief of

[2] Section 112(5) of Kentucky's Constitution states, "[t]he Circuit Court shall have original jurisdiction of all justiciable causes not vested in some other court and appellate jurisdiction as may be provided by law."

our General Assembly and our Supreme Court that circuit courts should hear extraordinary writs concerning the district courts is, as pointed out in *Delahanty*, "not without reason. It provides rapid and easy access to the court system within the same county when the act complained of will result in immediate and irreparable harm." 295 S.W.3d at 140.

The Appellee's argument that the circuit court lacked the authority to consider the petition for an extraordinary writ and that a party must petition elsewhere for such relief, in addition to being erroneous, begs the question: "If not in the circuit court, where?" The Appellee seems to proffer that this Court is the proper authority to which one must appeal. However, our decisions in *Abernathy*, *Williams*, and *Delahanty* clearly say otherwise. When measured against the weight of this authority, as well as the sound reasoning behind a circuit court's jurisdiction over cases originating in district court, the Appellee's argument must fail.

Accordingly, we find that the circuit court properly considered the writ and that the Commonwealth followed the correct procedure in seeking relief with that court; and we proceed to the substantive legal question of whether the circuit court erred in refusing to issue the writ of prohibition.

II. Commonwealth's Entitlement to Writ of Prohibition

In seeking a writ of prohibition via an original action in circuit court, the Commonwealth must establish its right to relief under one of two circumstances. The Supreme Court has outlined these circumstances as follows:

> We recognize two broad classes of cases in which a writ may be properly granted. The first is when a lower court is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court.... The second is when a lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if the petition [for a writ] is not granted. Under a special subclass of the second class of writ cases, a writ may issue even absent irreparable injury to the writ-petitioner if the lower court is acting erroneously and a supervisory court believes that if it fails to act the administration of justice generally will suffer the great and irreparable injury.

Toyota Motor Mfg., Kentucky, Inc. v. Johnson, 323 S.W.3d 646, 649 (Ky. 2010) (citing to *Hoskins v. Maricle*, 150 S.W. 3d 1 (Ky. 2004)) (internal citations and quotations omitted).

A. Standard of Review

Along with this class-based analysis comes an amorphous standard of review to which we must adhere on appeal. In *Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803 (Ky. 2004), our Supreme Court outlined this standard.

> [T]he proper standard actually depends on the class, or category, of writ case. De novo review will occur most often under the first class of writ cases, i.e., where the lower court is alleged to be acting outside its jurisdiction, because jurisdiction is generally only a question of law. De novo review would also be applicable under the few second class of cases where the alleged error invokes the "certain special cases" exception or where the error involves a question of law.

Grange, 151 S.W.3d at 810 (citing to *Bender v. Eaton*, 343 S.W.2d 799 (Ky. 1961); *Lexington Pub. Library v. Clark*, 90 S.W.3d 53 (Ky. 2002); CR 81; CR 52.01 (internal quotations omitted)). Under this first class of cases, as well as a limited number of other cases in which the question considered is exclusively one of law, we show the trial court's decision granting or denying a writ of prohibition no deference. However, the Court lays out the proper standard for the majority of cases falling within the so-called second class of possible cases:

> But in most of the cases under the second class of writ cases, i.e., where the lower court is acting within its jurisdiction but in error, the court with which the petition for a writ is filed only reaches the decision as to issuance of the writ once it finds the existence of the 'conditions precedent,' i.e., no adequate remedy on appeal, and great and irreparable harm. 'If [these] procedural prerequisites for a writ are satisfied, whether to grant or deny a petition for a writ is within the [lower] court's discretion.'

Id. (Internal quotations omitted.) Therefore, if we deem the Commonwealth's petition for a writ to fit under this more common type of case within the second class of possible writ cases and once the trial court properly concludes that the given prerequisites are satisfied, we must show deference to the trial court's discretion and will not reverse but for an abuse of that discretion.

Finally, the Supreme Court adds a third level of review:

> But the requirement that the court must make a factual finding of great and irreparable harm before exercising discretion as to whether to grant the writ then requires a third standard of review, i.e., clear error, in some cases. This is supported by the fact that the petition for a writ is an original action in which the court that hears the petition . . . acts as a trial court. And findings of fact by a

> trial court are reviewed for clear error. Therefore, if on appeal the error is alleged to lie in the findings of fact, then the appellate court must review the findings of fact for clear error before reviewing the decision to grant or deny the petition.

Id. Therefore, if the Commonwealth's allegation of error on appeal concerns the circuit court's findings of fact, we review those findings for clear error before reviewing that court's broader decision on whether to grant the writ under the appropriate standard of review.

While the Commonwealth concedes that Judge McDonald was operating within her jurisdiction as it pertains to the subject matter of the case, i.e., administration of a criminal case in juvenile court, it nonetheless asserts that she exceeded her jurisdiction in diverting prosecution of the case to the CDW. Hence, the Commonwealth seems to urge our de novo review of the circuit court's decision. In contrast, Appellee urges an abuse of discretion standard. However, the question of jurisdiction is exclusively one of law. Therefore, our initial review of the circuit court's opinion and the Commonwealth's arguments concerning jurisdiction will be under a de novo standard. However, we may adapt this standard as the facts and as the standards in *Toyota Motor* and *Grange* require.

B. **Effect of Judge McDonald's Referral to CDW**

We are compelled to resolve one factual issue before proceeding to the question of jurisdiction. At oral argument, the Appellee contended that Judge McDonald's decision to "re-refer" the case to the CDW did not constitute diversion and, therefore, could not possibly be seen as acting outside of her

jurisdiction as judge.[3] Indeed, in reviewing the record, we find no mention of the term "diversion." Rather, Judge McDonald and others repeatedly say that the case was "referred" back to the CDW. In resolving this semantic yet important issue, we look to the Kentucky Rules of Criminal Procedure ("RCr"), as well as Judge McDonald's words and orders for evidence of the effect she wished her decision to have.

RCr 8.04 addresses Pretrial Diversion and generally defines the act of diversion as an agreement that "prosecution will be suspended for a specified period after which it will be dismissed on the condition that the defendant not commit a crime during that period, or other conditions agreed upon by the parties." RCr 8.04(1). Following the report regarding J.M.'s competency, and cognizant of the resulting halt in the case, the Commonwealth expressed its wish to continue the case to a date when, according to the report, the child may be competent. Judge McDonald replied that she was "ready to refer this back to the CDW's Office[,]" and that she did not "really know what [the CDW] would do with it now that [J.M.]'s been determined to be incompetent, but that pretty much takes it out of [the county attorney's] hands." Judge McDonald later acknowledged in a written opinion that her decision "referred the case back to the CDW's Office over the Commonwealth's objection[;]" that she was permitted "to invade the realm

[3] While the record reflects that this matter was not raised prior to oral argument, we wish to address this basic and imperative question prior to rendering a decision which must inevitably be based entirely upon its answer.

typically exclusive to the Executive Branch[;]" and that her "referral back to the CDW removed the issue of prosecution…."

From this definition and from these words, we deduce that, no matter what Judge McDonald called it, no matter the term used by the circuit court, and despite the Appellee's phrasing on appeal, Judge McDonald's decision was intended to, and indeed did, divert prosecution of J.M.'s case. Sending the case back to the CDW took the case back in time to a point where, under statute, the Commonwealth had no discretion over the case. Most importantly, it placed the case in a procedural position where, if certain conditions were met or certain decisions were made, it could be dismissed; however, it has long been established that a trial court cannot effect the dismissal of a case over the objection of the Commonwealth. *See Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004) ("subject to rare exceptions . . . a trial judge has no authority, absent consent of the [Commonwealth], to dismiss, amend, or file away before trial a prosecution…."); *see also Commonwealth v. Isham*, 98 S.W.3d 59, 62 (Ky. 2003); *Commonwealth v. Allen*, 980 S.W.2d 278, 281 (Ky. 1998); *Commonwealth v. Hicks*, 869 S.W.2d 35, 37 (Ky. 1994).

The effect which Judge McDonald's decision had upon J.M.'s case was indistinguishable from diversion regardless of what it was called. Therefore, we conclude that Judge McDonald's action diverted prosecution of J.M.'s case and we proceed to the question of whether such a decision was permissible.

C. Alleged Exceedance of Judge McDonald's Jurisdiction

Again, under the aforementioned standard established in *Toyota Motor*, whether Judge McDonald exceeded her jurisdiction is a key question, the answer to which will determine, in part, whether the Commonwealth was entitled to a writ of prohibition and whether the circuit court erred in denying the petition for relief. Accordingly, we consider the Commonwealth's assertion that Judge McDonald exceeded her jurisdiction by violating the doctrine of separation of powers when she invaded the realm of the prosecutor to divert the case to the CDW. Additionally, we evaluate the statutory authority to which Judge McDonald and the circuit court cited in support of their findings that the former was acting within her jurisdiction.

Our Commonwealth's Constitution establishes the respective duties of three distinct branches of government. *See* Kentucky Constitution § 27. The Constitution expressly assigns the Executive Branch, established in Section 69, the duty of executing and enforcing the laws promulgated by the Legislative Branch. *See* Ky. Const. § 81. Likewise, judicial authority is "vested exclusively in one Court of Justice" which includes our Supreme Court and Court of Appeals, circuit courts of "general jurisdiction" and district courts of "limited jurisdiction." Ky. Const. § 109.

The Constitution also provides an express prohibition against the encroachment of one branch upon the exclusive authority of another. Specifically, the Constitution provides that "[n]o person or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the

others, except in the instances hereinafter expressly directed or permitted." Ky. Const. § 28. This doctrine of separation of powers is strictly enforced in our Commonwealth. *See Legislative Research Commission v. Brown*, 664 S.W.2d 907, 912 (Ky. 1984) (citing to *Arnett v. Meredith*, 121 S.W.2d 36 (Ky. 1938), and holding "the separation of powers doctrine is fundamental to Kentucky's tripartite system of government…."); *see also Sibert v. Garrett*, 246 S.W. 455 (Ky. App. 1922) (observing that Kentucky's Constitution "emphatically separates and perpetuates what might be termed the American tripod of government."); *Commonwealth v. Partin*, 702 S.W.2d 51 (Ky. App. 1985) (holding that Section 28 of the Constitution precludes a district court from exercising Executive Branch functions).

In the present case, the Commonwealth urges us to apply the doctrine of separation of powers and to hold that Judge McDonald stepped outside the constitutional confines to which the Judicial Branch is limited. In contrast, Judge McDonald and the circuit court cite to various statutes, including portions of the UJC, as authority for her decision "to invade the realm typically exclusive to the Executive Branch." For example, Judge McDonald refers to KRS 610.100(3), which she portrays as allowing a court, on its own motion, to remove a case from prosecution. The circuit court also points to several statutes which emphasize the "rehabilitative spirit of the Code" and consideration of the child's best interests, including KRS 600.020's stated purpose of a "diversionary agreement" as being

"to serve the best interest of the child and to provide redress for those offenses without court action…."

In support of its argument that, despite these provisions of the UJC, Judge McDonald acted outside of her jurisdiction and violated the separation of powers, the Commonwealth cites to *Flynt v. Commonwealth*, 105 S.W.3d 415 (Ky. 2003). In *Flynt*, the circuit court approved a defendant's application for pretrial diversion over the Commonwealth's objection. Upon the Commonwealth's appeal, the Supreme Court found the circuit court's action to be in contravention of the separation of powers. The Court wrote that

> [b]y approving a defendant's application for pretrial diversion, a circuit court permits the defendant to embark upon a path, which, if successfully negotiated, will result in the defendant's charges being "dismissed-diverted"- a status indistinguishable from any other dismissal as it is defined by statute as one that shall not constitute a criminal conviction.

105 S.W.3d at 426 (internal citations and quotations omitted). Additionally, like Judge McDonald's order in the present case, the defendant in *Flynt* cited statutory authority in support of the trial court's unilateral Order of Diversion. The Supreme Court found that authority lacking, holding that to interpret a statute

> as permitting a trial court to approve pretrial diversion applications over the Commonwealth's objection – and thus conferring upon circuit courts the discretionary authority that we have previously held to be within the exclusive province of the executive branch – would construe it in a manner inconsistent with Kentucky's constitutional separation of powers provisions.

Flynt at 426.

The holding in *Flynt* applies to the present case, and we conclude that Judge McDonald's actions were an exceedance of her constitutional jurisdiction. The UJC notwithstanding, Judge McDonald was incorrect in unilaterally deferring prosecution of the child, an action which constituted an assumption of a role reserved for the executive. She readily acknowledged the latter fact in her order. Furthermore, neither the Constitution, nor any of the statutes to which Judge McDonald cites grants a district court judge the power to divert prosecution of a case.[4] To the contrary, as the Court in *Flynt* points out, our Constitution forbids it.

Most importantly for purposes of this appeal, we find that the circuit court erred in finding no basis for issuance of a writ of prohibition. In its order, the circuit court acknowledged the county attorney's duty to prosecute which is established under KRS 15.725 and the circuit court's authority to consider extraordinary writs established under KRS 23A.080. It also recognized that the UJC grants the county attorney, and not the district court, the power to cease prosecution of a case; that a case may be diverted only by agreement between the CDW and the child, and only with the consent of the County Attorney; and that no such agreement existed in this case. Despite these acknowledged facts, the circuit

[4] Of particular interest is Judge McDonald's citation to KRS 610.100(3), which concerns the informal adjustment of a case. Judge McDonald's order interprets this statute to mean that the court "has the authority, at any time during the proceeding, on its own motion, to informally adjust a petition thus removing the case from prosecution." However, this characterization of KRS 610.100(3) fails to mention the statutory definition of an "informal adjustment" provided in KRS 600.020(32): "an agreement reached among the parties…which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition." The Commonwealth no doubt is a "party." Hence, while KRS 610.100 does establish the court's important role in the disposition of cases over which it presides, we agree with the Commonwealth that it hardly stands for the proposition that the court may unilaterally dispose of cases without the consent of all parties, including the Commonwealth.

court, relying on the more much general "best interests" of the child, concluded that Judge McDonald was entitled to cease prosecution of J.M.'s case. As the plethora of case law and statutory authority we have cited establishes, this was reversible error.

Indeed, the process of determining a child's competency, as well as proceeding with her prosecution, can be a costly one, and the UJC rightfully urges our courts to rule in the best, and "rehabilitative," interests of a child. However, nothing in the UJC could, or does, enable a judge to cut such costs or serve such interests at the expense of our Constitution's mandated separation of powers. Pursuant to the procedures established in the UJC, once the CDW recommended prosecution of a petition, and once the Commonwealth chose to go forward with that prosecution, the petition was the Commonwealth's, and not the district court's, to prosecute or divert.

Even if it was more expedient to defer prosecution, even if it was less expensive for the court to defer prosecution, even if doing so seemingly served the "rehabilitative spirit" of the UJC to defer prosecution, our Constitution does not permit a judge, at any level and at any time, to unilaterally defer prosecution of a case. Only the Commonwealth, acting at the behest of the Executive, may do so. Hence, while we have little doubt that Judge McDonald's action was well-meaning, we conclude that she exceeded her jurisdiction and the circuit court erred in finding to the contrary.

D. **Application of *Toyota Motor* Standard**

Having found that Judge McDonald exceeded her jurisdiction in diverting prosecution of J.M.'s case under the so-called "first class" of writ cases referred to under *Toyota Motor*, we must also find that the Commonwealth could obtain no remedy through an appeal to an intermediate court. *Toyota Motor* at 649. Otherwise, despite Judge McDonald's actions, the Commonwealth would not be entitled to a writ of prohibition against those actions.

In prosecutions executed in district court, the Commonwealth does not enjoy the right to interlocutory appeals to the circuit court or elsewhere. *See Ballard v. Commonwealth*, 320 S.W.3d 69 (Ky.2010); KRS 22A.020(4) (granting the Commonwealth the ability to do so from circuit court only). Additionally, there exists no intermediate court between district court and circuit court to which the Commonwealth could appeal Judge McDonald's decision. Hence, we find that the Commonwealth had "no remedy through an application to an intermediate court…." *Toyota Motor* at 649. Accordingly, under the "first class" of writ cases under *Toyota Motor*, the Commonwealth satisfied the elements necessary for appropriate issuance of a writ of prohibition.

As we mention earlier in this opinion, and although not absolutely clear from the arguments brought before this Court, Appellee seemingly urges us to apply an abuse of discretion standard, and in doing so, imply that this case fits under the so-called "second class" of writ cases, meaning that Judge McDonald was acting within her jurisdiction but is alleged to have done so erroneously. If this is the case, under *Toyota Motor*, the Commonwealth must prove that it had no

other adequate remedy "by appeal or otherwise" and that Judge McDonald's actions will cause "great injustice and irreparable injury" if not prohibited. *Toyota Motor* at 649. While we believe Judge McDonald clearly exceeded her jurisdiction, we also believe that the Commonwealth would prevail even under this heightened alternative standard.

As we have already said, the Commonwealth is not permitted, by statute or other authority, to seek interlocutory relief from the circuit court or any other appellate court when such an appeal originates from a district court case. *See Ballard*, *supra*, and KRS 22A.020(4). Hence, no other possible remedy exists for the Commonwealth against the impermissible actions of a district court judge.

Furthermore, we contend that few actions pose a greater threat of injustice and irreparable injury to the Commonwealth's ability to carry out its constitutional and statutory duties than the repeated encroachment by the Judicial Branch upon those duties. Even a cursory review of how our system of justice must operate under the Constitution and our laws reveals that, if the district court is permitted to continue its practice of diverting prosecution of juvenile court cases without the consent of the Commonwealth, the latter's ability to carry out its duties will be greatly compromised, and indeed irreparably injured. When a practice so clearly upsets "the interest of orderly judicial administration," failure to act and to prohibit that practice can only result in great and irreparable injury. *See Bender v. Eaton*, 343 S.W.2d 799, 801 (Ky. 1961), and *Commonwealth v. Green*, 194 S.W.3d 277, 281 (Ky. 2006).

Judge McDonald's repeated decision to divert the prosecution of juvenile court cases is one which can only result in "great injustice and irreparable harm." Accordingly, though we believe this case more appropriately fits under the "first class" of cases described in *Toyota Motor*, and that the Commonwealth met the lesser burden for such cases, the Commonwealth's petition for a writ of prohibition also satisfies the heightened scrutiny the "second class" of writ cases requires.

Conclusion

For the reasons we express above, Judge McDonald's referral of the juvenile case to the CDW effectively deferred the prosecution of the case, an action she was not permitted to take without the consent of the Commonwealth. In so finding, we acknowledge that a writ of prohibition is an extraordinary form of relief granted only in the most extreme of circumstances. This is rightfully the case. However, we believe such extreme relief is warranted in the present case.

Therefore, we hold that the circuit court erred in denying the Commonwealth's request for a writ of prohibition against Judge McDonald's actions. We reverse the order of the Jefferson Circuit Court and we remand the issue for entry of an order granting the extraordinary writ sought by the Commonwealth.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENTS FOR APPELLANT:

Jack Conway
Attorney General of Kentucky

David A. Sexton
Assistant Attorney General
Louisville, Kentucky

BRIEF AND ORAL ARGUMENTS FOR APPELLEE, J.M., A CHILD:

J. David Niehaus
Louisville Metro Public Defender
Louisville, Kentucky

NO BRIEF FILED ON BEHALF OF JUDGE MCDONALD.