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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000394-ME

Z.J.C., A CHILD UNDER EIGHTEEN — APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE LISA BUSHELMAN, JUDGE
ACTION NO. 13-J-01802

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, STUMBO, THOMPSON, JUDGES.

COMBS, JUDGE: Z.J.C., a minor, appeals the order of the Kenton Circuit Court which committed him to the custody of the Cabinet for Health and Family Services. After our review, we affirm.

On November 22, 2013, the Cabinet filed an "out-of-control" complaint against Z.J.C. His mother attested that Z.J.C.'s conduct was uncooperative and

defiant. He did not observe curfews, refused to participate in counseling, and displayed disruptive behavior. His mother locked up her purse and all the knives in the house. She was afraid to be in the family home with him. Attached to the complaint were police reports showing that on several occasions, the family had requested law enforcement intervention due to Z.J.C.'s behavior. The complaint also referenced past treatment for Z.J.C. He had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiance Disorder (ODD). Z.J.C. had undergone treatment that included medication. However, his parents discontinued the medication because they believed that it did not help.

As a result of the Cabinet's complaint, Z.J.C. was provided with written notice of his rights and consequences on December 11, 2013. Z.J.C. expressed to the court that he understood his rights and consequences, and he signed the written notice. At that time, the court imposed several conditions on Z.J.C., including: obeying his parents' rules; attending school and maintaining passing grades; cooperating with the Cabinet's service providers (Counseling Associates and Champions); and completing a mental health assessment. The conditions were in writing, and Z.J.C. signed the document.

On December 16, 2013, Z.J.C.'s mother filed a contempt motion, reporting that Z.J.C. had violated several of the court ordered conditions. On January 8, 2014, the court conducted an adjudication hearing for the original status charge of "beyond control." Z.J.C. admitted to being beyond control, and the Commonwealth withdrew the contempt charge. The court talked frankly with

Z.J.C, focusing on the mental health assessment. It explained that it did not want to punish him for behavior that could be corrected with medication. The court cautioned Z.J.C. that not completing the assessment could result in commitment to the Cabinet and placement in a facility.

However, Z.J.C.'s mother filed a similar motion for contempt on January 13, 2014. Z.J.C. had behaved belligerently toward his mother, threatened to run away from home, skipped school, and refused to do school work.

On February 6, 2014, the Cabinet submitted its recommendation for disposition. It recommended that Z.J.C. be committed to the Cabinet as a status offender. On February 7, the court held a disposition hearing for the beyond-control charge. The court heard testimony from one of Z.J.C.'s therapists, a social worker at his school, and his mother. At the end of the hearing, the court committed Z.J.C. to the custody of the Cabinet for placement at the Ramey-Estep Home. This appeal followed.

In matters that were not tried by a jury, the review by an appellate court affords the trial court much discretion; we review according to the clearly erroneous standard under Kentucky Rule[s] of Civil Procedure (CR) 52.01. As long as the record contains substantial evidence to support the trial court's findings, they must stand. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998).

Z.J.C. contends that the trial court erred in committing him to the Cabinet because less restrictive alternatives were available and because the decision was not supported by substantial evidence.

Kentucky Revised Statute[s] (KRS) 600.010(2)(c) provides that "[t]he 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." Additionally, in disposition hearings, "[w]hen 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).

Z.J.C. argues that the court should have attempted less restrictive alternatives and that he had not been involved with the court long enough for it to make a finding. We disagree because KRS 600.010(2)(c) also provides that the court may determine whether less restrictive alternatives are ***feasible*** for the juvenile. In this case, the out-of-control petition was filed because Z.J.C. was not cooperating with less restrictive programs. The record includes an extensive history of less restrictive alternatives, which included several counseling programs and a partial hospitalization. Furthermore, with respect to the requirements contemplated by KRS 630.120(6), there was evidence that Z.J.C.'s behavior had created problems for his entire family – particularly his younger sister.

Nonetheless, Z.J.C. now claims that the court's decision was not supported by substantial evidence. We have reviewed the record, and the family court carefully recounted testimony when it announced its findings. It placed significance on the testimony of Z.J.C.'s mother. She reported that Z.J.C.'s negative behaviors had escalated. He did not observe curfew; he refused to attend school; he did not maintain ***any*** passing grades;[1] and he cooperated only minimally in a counseling program. Notably, Z.J.C. utterly refused even to participate in a mental health evaluation. The family court stated that it simply did not know what to do other than commit him to the Cabinet due to his refusal to take advantage of the less restrictive alternatives that were offered to him. Z.J.C. points out that his Champions' counselor testified that he had improved. However, that testimony also supports the court's decision because Z.J.C. cooperated ***only minimally***. Although he had shown some progress in identifying bad behaviors, he had not appreciably modified any of them. Therefore, none of the evidence in the record contradicts the court's findings, and we are unable to conclude that the family court committed error.

Finally, Z.J.C. asks us to review for palpable error whether the family court improperly shifted the burden of proof. A palpable error is one that results in "manifest injustice" affecting a party's substantial rights. *Martin v. Commonwealth*, 207 S.W.3d 1, 3 (Ky. 2006). The *Martin* court articulated that an appellate court may recognize palpable error as one that "seriously affects the

[1] At the time of the hearing, Z.J.C.'s highest grade was a 56.

fairness, integrity, or public reputation of judicial proceedings" and that it should probe the record to determine if the error was "shocking or jurisprudently intolerable." *Id*. at 4.

Z.J.C. argues that the proceeding was flawed because the family court asked him to present his evidence prior to the Cabinet's presentation. We are unable to agree that this decision affected Z.J.C.'s substantial rights. The family court listened to all evidence and arguments from both parties before making its decision. No error occurred that was shocking or that seriously affected the integrity of the proceedings.

We affirm the Kenton Circuit Court.

ALL CONCUR.

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