

RENDERED: SEPTEMBER 15, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001469-ME

K.I., A CHILD
UNDER THE AGE OF EIGHTEEN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE TIMOTHY N. PHILPOT, JUDGE
ACTION NOS. 15-J-01220-001, 15-J-01220-002, AND 15-J-01220-003

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * **

BEFORE: COMBS, JOHNSON AND D. LAMBERT, JUDGES.

LAMBERT, D., JUDGE: The Fayette Family Court convicted K.I. of being a habitual runaway under Kentucky Revised Statutes (KRS) 600.020(30). The family court also found K.I. in contempt of court. After review, the family court did not support its conclusions with sufficient evidence from the record. We therefore vacate and remand.

I. BACKGROUND

In 2015, K.I.'s mother swore out two separate complaints against her son. In both, she alleged K.I. was a habitual runaway under KRS 600.020(30) because he stayed away from home for more than 72 hours. The family court initially referred the case to a diversion program. K.I. failed to participate in the diversion program, however, and the case eventually returned to family court.

At first, the family court scheduled a hearing for June 7, 2016. But since K.I. did not appear for court that day, the hearing was rescheduled for July 19, 2016. K.I. was taken into custody and detained pending adjudication for most of the interim.

When the family court finally held a hearing, the only witness who testified was K.I.'s mother. With help from a Swahili interpreter,¹ K.I.'s mother testified that K.I. had disappeared for more than three days in the year preceding August 17, 2016. When asked to speculate as to why, she stated that she suspected K.I. was using drugs and that he had admitted to using drugs in the past. Defense counsel objected to this testimony on relevancy and hearsay grounds. The family court overruled the respective objections because it was "hard to separate the runaway from what caused the runaway" and because K.I. was available to testify.

Following this testimony, K.I.'s mother addressed the second time K.I. disappeared for more than three days. Although it is unclear exactly when

¹ K.I.'s mother is a native of Burundi.

these absences occurred, K.I.'s mother referenced a disagreement after which she called the police on her son.

Once cross-examination concluded, K.I. moved to dismiss the charges without presenting a defense. The family court overruled the motion and orally found K.I. guilty of all charges. The family court ultimately sentenced K.I. to 180 days' supervision with the Cabinet for Health and Family Services. This appeal followed.

II. STANDARD OF REVIEW

Evidentiary issues are reviewed under the abuse of discretion standard. *Engles v. Commonwealth*, 373 S.W.3d 456, 457 (Ky. App. 2012). We will not set aside the trial court's factual findings unless they are clearly erroneous. *Simpson v. Commonwealth*, 474 S.W.3d 544, 547 (Ky. 2015).

III. DISCUSSION

On appeal, K.I. argues the family court incorrectly overruled the evidentiary objections raised during the hearing. K.I. also argues the family court insufficiently supported its ultimate findings of guilt. For the following reasons, we disagree with K.I. as to the evidentiary issues but agree as to the sufficiency of the factual findings.

1. The family court did not admit irrelevant testimony

“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Kentucky

Rule of Evidence (KRE) 401. Any showing of probativeness, however slight, establishes relevancy. *Springer v. Commonwealth*, 998 S.W.2d 439, 449 (Ky. 1999). Moreover, evidence of prior bad acts is admissible under KRE 404(b)(1) if offered to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *Clark v. Commonwealth*, 223 S.W.3d 90, 96 (Ky. 2007).

Here, the family court reasonably explained how evidence regarding K.I.'s possible drug use was probative by suggesting it might have been a reason for K.I.'s absences—i.e., his “motive” for committing the underlying offense. Therefore, the court did not abuse its discretion.

2. The family court did not admit hearsay testimony

To be admissible, evidence “must satisfy not only Article IV (Relevancy), but also Article VIII (Hearsay) of the Kentucky Rules of Evidence.” *Moseley v. Commonwealth*, 960 S.W.2d 460, 461 (Ky. 1997). Hearsay statements are out-of-court statements offered to prove their truth. *Id.* Importantly, though, a statement is not hearsay if it was the party's own statement offered against him. *See* KRE 801A(b)(1). Such a statement is a party admission, and the person to whom the admission was made may testify as to the statement. *See Thurman v. Commonwealth*, 975 S.W.2d 888, 893 (Ky. 1998).

Here, K.I.'s mother testified that her son had told her about previous drug use. The Commonwealth thus offered a party's own statement against him. This was not hearsay.

3. The family court insufficiently supported its findings of guilt

Kentucky Rules of Civil Procedure (CR) 52.01 requires a trial court to “find the facts specifically and state separately its conclusions of law” whenever it tries facts without a jury. At minimum, the facts as found must be included in a written order. *Anderson v. Johnson*, 350 S.W.3d 453, 458 (Ky. 2011). The “[f]ailure to do so allows an appellate court to remand the case for findings, even where the complaining party failed to bring the lack of specific findings to the trial court's attention.” *Id.*; see also *Kindred Nursing Centers Ltd. Partnership v. Sloan*, 329 S.W.3d 347, 349 (Ky. App. 2010)(appellate courts cannot consider oral findings unless incorporated into properly entered written order).

Here, conflicting writings on two docket sheets make it unclear whether the family court ultimately found K.I. guilty of contempt. On one docket sheet from July 20, 2016, the family court circled the contempt charge and wrote, “The [Court] finds runaway [and] contempt[.]” On a subsequent docket sheet, however, the contempt charge was circled and the words “merge into 002-003” were written.

Moreover, the family court did not provide a sufficient written explanation for its ultimate findings regarding the runaway offenses. Although the family court clearly found K.I. was a runaway, neither the docket sheets nor the final disposition order complied with CR 52.01. The family court did not justify “[finding] runaway” on the docket sheet and only checked a box on the final disposition order to indicate that it had “found beyond a reasonable doubt that

[K.I.] committed [two counts of habitual runaway].” As these are precisely the type of conclusory findings that deny meaningful appellate review, we vacate the family court’s judgment and remand the matter for additional proceedings.

ALL CONCUR.

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