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Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000907-DG

R.T., A CHILD

APPELLANT

v. ON DISCRETIONARY REVIEW
FROM JEFFERSON CIRCUIT COURT
HONORABLE BARRY WILLETT, JUDGE
ACTION NO. 16-XX-000011

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; COMBS AND JONES, JUDGES.

COMBS, JUDGE: The issue before us involves interpretation of KRS¹
635.060(4)(a)2 of the Juvenile Code which allows the juvenile court the option of
committing a child “adjudicated for an offense involving a deadly weapon” to the

¹ Kentucky Revised Statutes.

custody of the Department of Juvenile Justice (DJJ). Appellant, R.T., a child, contends that trial court erred in construing the language, “**involving** a deadly weapon,” to include **possession** of a handgun by a minor. Finding no error, we affirm.

KRS 635.060 is entitled, “Options of court at dispositional hearing[.]”

KRS 635.060² provides, in pertinent part, as follows:

If in its decree the juvenile court finds that the child comes within the purview of this chapter, **the court, at the dispositional hearing, may impose any combination of the following**, except that the court shall, if a validated risk and needs assessment tool is available, consider the validated risk and needs assessment submitted to the court and parties by the Department of Juvenile Justice or other agency before imposing any disposition:

...

(4)(a) **Order the child to be committed** or recommitted **to the custody of the Department of Juvenile Justice**, grant guardianship to a child-caring facility or a child-placing agency authorized to care for the child, or place the child under the custody and supervision of a suitable person **if**:

...

2. The child was adjudicated for an offense involving a deadly weapon, an offense in which the child has been declared a juvenile sexual offender under KRS 635.510, or an offense that would be a felony offense if committed by an adult, other than a Class D felony.

² Effective July 1, 2015. As Appellant notes in her Statement of the Case, her counsel requested to opt in to Senate Bill 200 on July 7, 2015, in order “to receive the benefit of new legislation that had become effective on July 1, 2015.” See *Q.M. v. Commonwealth*, 459 S.W.3d 360 (Ky. 2015) (Senate Bill 200 made sweeping changes to the juvenile code, some of which became effective in 2014, and the remainder of which become effective on July 1, 2015).

(Emphases added).

The underlying facts are not in dispute. The Circuit Court's order entered April 28, 2017, provides a concise summary:

A juvenile petition was filed in R.T.'s interest on March 18, 2015 . . . after R.T. was involved in an altercation with a police officer at or near her mother's home and eventually arrested. According to the petition, R.T. ran from the officer when he initially arrived at the home. Once overtaken, R.T. allegedly balled her fists assumed a bladed stance, and then began threatening to fight and kill the officer, and resisted his attempts to arrest her. The officer finally took R.T. to the ground, placed her under arrest, and after searching her clothing, found a loaded pistol tucked beneath her waistband and a plastic bag containing marijuana R.T. was charged with carrying a concealed deadly weapon, possession of a handgun by a minor, possession of marijuana, resisting arrest, third-degree terroristic threatening, third-degree criminal mischief and menacing.

On March 19, 2015, R.T. pled guilty to the misdemeanor offenses of possession of a handgun by a minor, resisting arrest, and third-degree criminal mischief. R.T. was fifteen years old at the time. After taking R.T.'s plea, the district court dismissed the remaining charges against her as merged, and continued the case for a dispositional hearing on April 2, 2015. . . . The parties then agreed to postpone the dispositional hearing until a later date to monitor R.T.'s progress while she was in treatment at Maryhurst [a residential treatment program in Jefferson County]. After monitoring R.T.'s progress for a few months and receiving reports of her alleged non-compliance with her treatment program, the district court set a final dispositional hearing for November 12, 2015. On that day, the court was forced to issue a bench warrant for R.T.'s arrest because she was absent from her treatment facility and failed to appear at the hearing.

The district court held a final dispositional hearing on January 2, 2016. Based on a predisposition investigation report authored by personnel at the DJJ and oral testimony given by DJJ and Cabinet personnel at the hearing, the court found that commitment to DJJ was in R.T.'s best interests and, accordingly entered a dispositional order committing her to its custody for placement in another treatment program. The court ruled that it had the authority to commit R.T. to the custody of the DJJ under KRS 635.060(4)(a)2 because she pled guilty to and "was adjudicated for an offense involving a deadly weapon."

On February 4, 2016, R.T. filed a notice of appeal to the Jefferson Circuit Court from the Jefferson District Court's dispositional order entered on January 7, 2016.

By order entered April 28, 2017, the circuit court affirmed. The court agreed with the Commonwealth's "broad interpretation of the statute." Applying the cardinal rule of statutory construction (*i.e.*, to ascertain and give effect to the Legislature's intent), the circuit court examined the plain and ordinary meaning of the statutory language. The court determined that "[t]he plain meaning of the phrase 'involving a deadly weapon' is that a deadly weapon is present during or somehow included in the commission of an act such that it essentially forms part of the act itself[,]" and that the language is "broad enough to include both the use and possession of a deadly weapon." The circuit court recognized the distinction between use and possession; however, "the absence of those two terms in the statute

and the General Assembly's use of the broader term 'involving' indicates to the Court that it was attempting to reach conduct falling in both categories." The circuit court noted that such interpretation was consistent with the purpose of the Juvenile Code, which treats offenses involving deadly weapons more seriously than many other offenses. The circuit court stated as follows:

Courts should have available to them a full range of options, including, if necessary, committing a child to the Department of Juvenile Justice, to deal with the offense that the Juvenile Code deems to be the most threatening to public safety, especially when those threats might manifest themselves in a variety of different circumstances. For those reasons, the Court rejects R.T.'s contention that the phrase "involving a deadly weapon" is synonymous with "use of a deadly weapon" or that it requires something more than mere possession.

The circuit court also rejected R.T.'s argument that the statute is ambiguous and explained that "[b]ecause 'involving a deadly weapon' incorporates both the use and possession of a deadly weapon, the distinction between the two terms cannot serve as a source of any ambiguity." The court noted that "other than drawing that distinction, R.T. makes no attempt to demonstrate that the statute is susceptible to more than one reasonable interpretation."

On May 30, 2017, R.T. filed a motion for discretionary review. By order entered December 14, 2017, this Court granted the motion and ordered the appeal to be perfected and prosecuted as an appeal taken as a matter of right.

On appeal, R.T. contends that the Juvenile Session of the Jefferson District Court erred in committing her to the DJJ because she did not meet the requirements for that disposition under KRS 635.060(4)(a)2.

Statutory interpretation is a question of law which we review *de novo*. *Commonwealth v. Plowman*, 86 S.W.3d 47 (Ky. 2002).

The seminal duty of a court in construing a statute is to effectuate the intent of the legislature.

...

An unambiguous statute is to be applied without resort to any outside aids. This Court has repeatedly held that statutes must be given a literal interpretation unless they are ambiguous and if the words are not ambiguous, no statutory construction is required. KRS 446.080 provides for a liberal construction of statutes with the view to promote their objects and to carry out the intent of the legislature. All words and phrases shall be construed according to the common and approved usage of language. *Cf.* 446.080(4).

Id. at 49 (citations omitted).

The common meaning of words may be “determined by reference to dictionary definitions. . . . The particular word, sentence or subsection under review must also be viewed in context rather than in a vacuum; other relevant parts of the legislative act must be considered in determining the legislative intent.” *Jefferson County Bd. of Educ. v. Fell*, 391 S.W.3d 713, 719 (Ky. 2012).

R.T. argues that “an offense involving a deadly weapon” as used in KRS 635.060(4)(a)2 does not include mere possession of a handgun. She relies

upon *Darden v. Commonwealth*, 52 S.W.3d. 574 (Ky. 2001). In *Darden*, the trial court granted the Commonwealth’s motion to transfer the case to circuit court to try Darden as an adult pursuant to KRS 635.020(4) due to his possession of a weapon on school property. In relevant part, KRS 635.020(4) provides that a child:

shall be transferred to the Circuit Court for trial as an adult if, following a preliminary hearing, the District Court finds probable cause to believe that the child committed a felony, **that a firearm was used in the commission of that felony**, and that the child was fourteen (14) years of age or older at the time of the commission of the alleged felony.

(Emphasis added). The appellant argued that the unlawful possession of a firearm is not actual use of a firearm and that he did not meet the criteria of the transfer statute.

Our Supreme Court noted its previous decision in *Haymon v. Commonwealth*, 657 S.W.2d 239 (Ky. 1983),³ where it held that the phrase, “use of a weapon” in the burglary statute is subject to two different interpretations, presence and actual use, entitling the defendants the benefit of the ambiguity. *Darden*, at 577. The Supreme Court agreed with Darden that the trial court erred in allowing the case to be transferred from juvenile court to circuit court and explained that:

[T]he terms “possession of a weapon” and “use of a weapon” are two entirely different concepts. Further, doubts in the construction of a penal statute are to be

³ In *Haymon*, the issue was whether possession of a firearm obtained during commission of a burglary constitutes use of a weapon so as to preclude eligibility for probation, shock probation, or conditional discharge under KRS 533.060(1).

resolved not only in favor of lenity, but also against a construction that would produce extremely harsh or incongruous results. *Commonwealth v. Colonial Stores, Inc.*, Ky., 350 S.W.2d 465, 467 (1961).

Id.

In the case before us, R.T. contends that the term, “an offense involving a deadly weapon” as used in KRS 635.060(4)(a)2 seem “to require some action greater than simple possession.” We disagree. In common usage, “to involve” means “to include.”⁴ We agree with the circuit court that as used in KRS 635.060(4)(a)2, “the plain meaning of the phrase ‘involving a deadly weapon’ is that a deadly weapon is present during or somehow included in the commission of an act”

R.T. cautions that construing the statutory language “to include any situation where a weapon is found on or near a child . . . would lead to harsh results[.]” Indeed, that very argument was made in *Darden*. But in the case before

⁴ Merriam-Webster.com defines *involve* as:

1 a : to engage as a participant // workers *involved* in building a house

b : to oblige to take part // right of Congress to *involve* the nation in war

c : to occupy (someone, such as oneself) absorbingly; *especially* : to commit (someone) emotionally // was *involved* with a married man

2 a : to have within or as part of itself : INCLUDE

b : to require as a necessary accompaniment : ENTAIL

c : AFFECT // the cancer involved the lymph nodes

3 : to relate closely : CONNECT

4 : to surround as if with a wrapping : ENVELOP

<https://www.merriam-webster.com/dictionary/involve> (emphasis original).

us, the context is different. The transfer statute applies automatically if its criteria are satisfied and, as the Commonwealth notes, results in potentially dire consequences.⁵ However, KRS 635.060(4)(a)2 allows the juvenile court *options*, one of which is committing a child to the custody of the DJJ.

The Commonwealth contends that the General Assembly “incorporated a broad vehicle” by which the court may commit a juvenile to the DJJ’s custody under KRS 635.060(4)(a)2 by utilizing the phrase “involving a deadly weapon” as contrasted to the more restrictive and precise language in the transfer statute; *i.e.*, “that a firearm was used in the commission of that felony.” As did the circuit court, we find this argument persuasive. *See Jordan v. Commonwealth*, 295 Va. 70, 75, 809 S.E.2d 622, 624 (2018) (“When the General Assembly employs a specific word in one section of a statute, and chooses a different term in another section of the statute, we must presume the difference in language was intentional.”).

⁵ *See K.R. v. Commonwealth*, 360 S.W.3d 179 (Ky. 2012), holding that complicity to commit an offense involving use of a firearm requires transfer under KRS 635.020(4) where an offense involving direct use of a firearm would do so as well. The Court explained that:

If this were a case about *discretionary* transfer under one of the categories listed in KRS 635.020, a writ would most likely be unavailable. . . . KRS 635.020(4), on the other hand, provides that transfer is *mandatory* when a firearm is used in commission of the underlying offense. By treating offenses in which a firearm is used differently, the General Assembly has declared a different public policy, one of essentially no tolerance of gun-related crimes by juveniles.

Id., at 184 (emphasis original).

We conclude that the circuit court correctly construed the statute. Accordingly, we affirm the order of the Jefferson Circuit Court entered on April 28, 2017, affirming the district court's disposition order.

ALL CONCUR.

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