RENDERED: APRIL 24, 2020; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-000312-OA

C.C., A JUVENILE — PETITIONER

v.

AN ORIGINAL ACTION
ARISING FROM KENTON CIRCUIT COURT
ACTION NO. 16-J-00576-004

HON. CHRIS MEHLING, JUDGE,
KENTON CIRCUIT COURT — RESPONDENT

AND

COMMONWEALTH OF KENTUCKY — REAL PARTY IN INTEREST

OPINION AND ORDER
DENYING

** ** ** ** **

BEFORE: ACREE, KRAMER, AND LAMBERT, JUDGES.

KRAMER, JUDGE: C.C., by counsel, petitions this Court for a writ of mandamus to order the respondent to dismiss the status offense charge of habitual runaway due to a lack of jurisdiction. The Commonwealth filed a response to the petition

for writ of mandamus and stated that the charge was dismissed on March 6, 2019, and that this case is moot. Although moot, this Court deems it appropriate to address the complained-of error because C.C. is a minor, and it is possible for the same issue to arise again. Therefore, we hold that the capable-of-repetition-yet-evading-review exception applies. *See Commonwealth, Dep't of Corrections v. Engle*, 302 S.W.3d 60, 63 (Ky. 2010); *C.S. v. Commonwealth*, 559 S.W.3d 857, 865 (Ky. App. 2018).

The Kentucky Supreme Court has defined the standard this Court must use to determine whether to issue a writ of mandamus or a writ of prohibition. Kentucky case law contemplates two categories or "classes" where a writ may be appropriate: "(1) where the lower court is acting outside its jurisdiction, and (2) where the lower court is acting erroneously but within its jurisdiction." *Powell v. Graham*, 185 S.W.3d 624, 628 (Ky. 2006). The standards for evaluating a petition for a writ of prohibition or mandamus under each class are stated in *Hoskins v. Maricle*, 150 S.W.3d 1, 10 (Ky. 2004):

> A writ . . . *may* be granted upon a showing that (1) the 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; or (2) that the 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 is not granted.

Because C.C. argues the family court was proceeding outside of its jurisdiction, the remedy of a writ is available to vindicate the type of claim C.C. has asserted. Upon review, we determine that the family court acted within its jurisdiction in this matter.

While the record is somewhat convoluted, the basis of C.C.'s plea before this Court is that his case should have gotten no further than the court-designated worker's office (CDW) due, in part, to an incomplete complaint having been submitted pursuant to KRS[1] 610.030. Hence, he argues that the deficiency in the complaint thwarted the family court's jurisdiction over him. While the record is not entirely clear, it does include the completed complaint and the necessary notarized affidavit dated January 22, 2019—although it was not filed in the record until February 7, 2019.

Alternatively, C.C. argues that he was entitled to mandatory diversion, which would have diverted his case from the family court. He argues that KRS 610.030 and KRS 630.050, as well as the Juvenile Court Rules of Procedure and Practice (JCRPP) 4, mandated diversion or referral to the family accountability, intervention, and response team (FAIR team) prior to filing a status offense petition. We disagree.

[1] Kentucky Revised Statute.

C.C. relies on the unpublished case of *A.B. v. Commonwealth*, No. 2016-CA-001847-ME, 2018 WL 385532 (Ky. App. Jan. 12, 2018). *A.B.* held, in that case, that "the failure of the CDW and FAIR team to make a good faith effort to assist A.B. in entering into a diversion agreement deprived the family court of subject matter jurisdiction." *Id.* at *6. *A.B.* noted that "[i]t is well established that noncompliance with the pretrial procedures related to juvenile status offenders deprives the family court of subject matter jurisdiction." *Id.* at *5 (citing *J.L.C. v. Commonwealth*, 491 S.W.3d 519, 527-29 (Ky. App. 2016); *N.K. v. Commonwealth*, 324 S.W.3d 438, 441-42 (Ky. App. 2010); *T.D. v. Commonwealth*, 165 S.W.3d 480, 483 (Ky. App. 2005)). *A.B.* further relied on *B.H. v .Commonwealth*, 329 S.W.3d 360, 364 (Ky. App. 2010) and *J.S. v. Commonwealth*, 528 S.W.3d 349, 352-53 (Ky. App. 2017). However, *A.B.*, and all the cases relied upon by it, are distinguishable in that, while all the cases involved status offenses, all the cases involved the status offense of habitual truancy[2] with the exception of *J.S.* which involved the status offense of being beyond the control of school.[3] The status offense involved in this matter is habitual *runaway*.[4] C.C.'s argument fails because he ignores provisions

[2] KRS 610.010(2)(b).

[3] KRS 610.010(2)(a).

[4] KRS 610.010(2)(c).

of the Unified Juvenile Code and the JCRPP which pertain specifically to habitual runaway status offenses.[5]

Although habitual runaway is a status offense, KRS 630.030(2) provides that a child may be taken into custody by an officer if there are reasonable grounds to believe that the child has been a habitual runaway. Upon taking the child into custody, the officer shall notify the child's parent or custodian, the Department of Juvenile Justice, if appropriate, and the CDW. KRS 610.200(2), KRS 630.040(2), JCRPP 10(A). The CDW shall have responsibility for determining appropriate placement of the child. KRS 630.040(2). If the CDW determines that placements designated in KRS 610.200(5) have been exhausted or are not appropriate, the child may be delivered to a secure juvenile detention facility. KRS 630.040(3). The officer is then required to file a complaint *with the court*, stating the basis for taking the child into custody. KRS 630.040(7). "If a complaint is referred to the court, the complaint and findings of the [CDW]'s preliminary intake inquiry shall be submitted to the court for the court to determine whether process should issue[.]" KRS 610.030(10).

The Commentary to JCRPP 10 explained that the CDW "can exercise

[5] It should be noted that the JCRPP were amended, effective February 1, 2020, and, as a result, JCRPP 10-12, relating to protective custody and suspected runaways, were removed. Because the prior versions of JCRPP 10-12 were in effect at the time of the proceedings, this opinion refers only to the previous version of the JCRPP.

the information and resources at their disposal to keep a child out of custody and avoid court involvement as appropriate. However, detention is appropriate when there is no available placement for a child who is a habitual runaway."

> If the child cannot be released to the parent or is not otherwise placed and the child qualifies as a habitual runaway, the peace officer shall initiate a complaint with the court designated worker using the AOC-JV-52, Complaint, Affidavit of Peace Officer, and Order for Emergency Protective Custody of a Child Suspected of Being a Habitual Runaway, to seek an *ex parte* emergency protective custody order from the court pursuant to KRS 610.012(2), (3).

JCRPP 10(C). KRS 610.012, titled "Exclusive jurisdiction of District Court or family division of Circuit Court concerning temporary detention of suspected *runaway*[,]" states in subsection (2) that "[p]roceedings to temporarily detain a child suspected of being a runaway by means of an emergency protective custody order, pending further appropriate court action, shall be initiated by filing a complaint with the court-designated worker." (Emphasis in title added.) "Notwithstanding any other provision of law to the contrary," a child who is suspected of being a runaway may be detained "pursuant to an ex parte emergency protective order[.]" KRS 610.012(3). The Commentary to JCRPP 10(C) explained that "KRS 610.012 creates a new form of emergency custody order, the emergency *protective* custody order, which only applies to habitual runaways." (Emphasis

added.)

"In harmonizing the conflict between two statutes that relate to the same subject, Kentucky follows the rule of statutory construction that the more specific statute controls over the more general statute." *Light v. City of Louisville*, 248 S.W.3d 559, 563 (Ky. 2008). This Court agrees that noncompliance with the pretrial procedures related to juvenile status offenders deprives the family court of subject matter jurisdiction as has been previously held. However, this Court holds that habitual runaway cases in which the child has been detained under an emergency protective order are an exception and that noncompliance with KRS 610.030(6) and KRS 630.050 does not deprive the family court of subject matter jurisdiction because KRS 610.012, pertaining specifically to suspected habitual runaways, is more specific and, therefore, controls. Particularly relevant to this case is KRS 610.012(6) which provides that at the detention hearing, "[i]f the child is released, except to the cabinet pursuant to an emergency custody order, the [CDW] *shall* initiate a status offense case." (Emphasis added.) Thus, the statute mandated that the petition in this case be filed. Accordingly, the offer of diversion or referral to the FAIR team was not required prior to instituting a status offense case in the family court. At the detention hearing held on January 23, 2019, the court ordered that C.C. be released to his father. At that point, a status offense was

required to be initiated pursuant to KRS 610.012(6).[6]

Having considered the petition for a writ of mandamus filed herein by the petitioner, and being otherwise sufficiently advised, this Court ORDERS that the petition for a writ of mandamus is hereby DENIED.

ALL CONCUR.

ENTERED: April 24, 2020

JUDGE, COURT OF APPEALS

ATTORNEY FOR PETITIONER:

Timothy G. Arnold
Frankfort, Kentucky

RESPONDENT:

Hon. Christopher J. Mehling
Covington, Kentucky

ATTORNEY FOR
REAL PARTY IN INTEREST:

Daniel Cameron
Attorney General of Kentucky

Todd D. Ferguson
Assistant Attorney General
Frankfort, Kentucky

[6] The record is not clear whether the status offense petition, filed on January 23, 2019, was filed before or after the detention hearing. Regardless, it would have been required to be filed once the court released C.C. to his father. Otherwise, the court would have been required to issue an emergency custody order and place C.C. with the cabinet who would have been required to file a dependency, neglect, and abuse action as a new action.