

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-000072-DG

COMMONWEALTH OF KENTUCKY

APPELLANT

ON DISCRETIONARY REVIEW FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE BARRY WILLETT, JUDGE  
ACTION NO. 00-XX-000001

L.L., A CHILD

APPELLEE

OPINION  
VACATING AND REMANDING WITH DIRECTIONS

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BEFORE: GUIDUGLI, KNOFF, AND TAYLOR, JUDGES.

GUIDUGLI, JUDGE: On April 18, 2000, thirteen-year-old L.L. was charged with rape in the first degree. L.L. had allegedly sexually assaulted a four-year-old by inserting a fingernail polish bottle in the child's vagina. Several hearings were held concerning L.L.'s competency. Eventually the District Court Judge determined that L.L. was incompetent because of her age, and limited verbal and educational skills. The court also found that she was not mentally ill and would not benefit from

hospitalization. Following these hearings during which medical and social service experts testified, the district court entered an order informally adjusting the case.

The Commonwealth appealed to the Jefferson Circuit Court, which affirmed, stating that informal adjustment was appropriate and the district court had not committed reversible error by entering an informal adjustment order. This Court granted the Commonwealth's motion for discretionary review. L.L. then filed a motion to dismiss the appeal due to this Court's lack of jurisdiction because an informal adjustment is a non-final and non-appealable order. That motion was passed to the three-judge merits panel for consideration. Prior to rendering an opinion in this matter, this Court entered an order holding it in abeyance pending a final determination in Commonwealth v. C.J., a Child (Court of Appeals No. 2001-CA-001507-DG), which raised the same issue and in which the Kentucky Supreme Court had granted discretionary review (Supreme Court No. 2002-SC-001009-DG). The Supreme Court rendered an opinion in Commonwealth of Kentucky v. C.J., a Child<sup>1</sup> on February 17, 2005. In that case, the Supreme Court affirmed this Court's opinion that an informal adjustment is not a final and appealable order. Specifically, the Court stated:

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<sup>1</sup> \_\_\_ S.W.3d \_\_\_ (Ky., 2005).

The sole issue [footnote omitted] before us is whether the Unified Juvenile Code allows for an appeal from an informal adjustment by the juvenile court. The question is one of statutory interpretation, specifically whether an informal adjustment constitutes a final action by the juvenile court. We conclude that it does not.

. . .

The Commonwealth focuses on the language of KRS 610.130, which provides:

Unless otherwise exempted, an appeal to the circuit court may be taken as a matter of right from the juvenile session of the district court from dispositional orders under KRS 610.110. The appeal shall be taken in the manner provided in the Rules of Criminal Procedure, and the circuit court shall, in the best interest of the child, hear such cases expeditiously.

The Commonwealth posits that the language of KRS 610.130 is permissive rather than restrictive, and therefore an informal adjustment is a final disposition although not included within the dispositional orders under KRS 610.110.

Because C.J. was brought before the juvenile court as a public offender, we agree that he would have fallen within the scope of KRS 610.130 had the charges against him been adjudicated and subject to a dispositional order. However, by its definition, an informal adjustment is neither an adjudication nor disposition. Rather, KRS 600.020(28) defines an "informal adjustment" as:

[A]n agreement reached among the parties, with consultation,

but not the consent, of the victim of the crime or other persons specified in KRS 610.070, if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition[.]

(Emphasis added). Clearly, by its plain language, an informal adjustment is not "a final or appealable . . . order adjudicating all the rights of all the parties in an action or proceeding . . ." CR 54.01.

Looking beyond the technical language of the statute, we consider also the practical ramifications of our conclusion. As stated by the Court of Appeals in this case:

An informal adjustment is . . . a conditional agreement to abate the petition against the juvenile defendant. While the conditions are pending, the matter is simply in abeyance. If the juvenile satisfies the conditions, agreed to by the parties and approved by the court, then no further action is taken on the petition. At no point is there a final action by the district court; there is rather a decision not to act. And there is no disposition (for which both adjudication and dispositional hearings are required), as is indicated by the fact that KRS 610.110 (on juvenile dispositions) includes no reference to informal adjustments.

See also Commonwealth v. S.M., 769 A.2d 542, 544 (Pa. 2001) ("[i]f a trial court wishes to supervise a juvenile for a period of time

prior to entering a final order, the Juvenile Act provides several alternatives by which to do so, including informal adjustment . . . .").

There is simply no language in Kentucky's Juvenile Code authorizing an appeal of an informal adjustment. Had the legislature intended to include such language, it certainly could have done so. By omitting informal adjustments from those matters that are appealable, the inference is that the legislature intended no appeal be allowed from an informal adjustment by the juvenile court. Bailey v. Reeves, 662 S.W.2d 832 (Ky. 1984); Smith v. Wedding, 303 S.W.2d 322 (Ky. 1957).

Because no appeal from an informal adjustment is available, the Commonwealth, if it desires review of such action, is required to bring an original proceeding in the circuit court in the nature of a writ of mandamus or prohibition. Commonwealth v. Williams, 995 S.W.2d 400 (Ky.App. 1999); SCR 1.040(6); CR 81.[<sup>2</sup>]

While the circuit court in this case affirmed the district court's order informally adjusting the case, it is clear from the C.J. case that the Commonwealth had no right to appeal the informal adjustment. Therefore, the memorandum opinion of the Jefferson Circuit Court affirming the district court's informal adjustment is vacated and this matter is remanded with directions that the circuit court enter an order dismissing the Commonwealth's appeal.

ALL CONCUR.

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<sup>2</sup> Id. at \_\_\_\_.

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