

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002416-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NO. 02-CI-007061

HON. JACQUELYN ECKERT, JUDGE
JEFFERSON DISTRICT COURT; J.S. (A CHILD)

APPELLEES

OPINION AND ORDER

REVERSING AND REMANDING

** ** * * *

BEFORE: BARBER, DYCHE AND JOHNSON, JUDGES.

JOHNSON, JUDGE. The Commonwealth has appealed to this Court from an opinion and order entered by the Jefferson Circuit Court denying the Commonwealth's petition for writ of mandamus to require the Jefferson District Court (Juvenile Division) to transfer a juvenile to the Jefferson Circuit Court so that the juvenile could be tried as an adult. The Commonwealth has charged the juvenile with two counts of sexual abuse in the first degree and two counts of sodomy in the first degree. At

the time of the alleged incidents, the victim was five years old, and the defendant was seventeen years old.

The circuit court denied the writ on the grounds that since the Commonwealth could have sought circuit court review through an appeal of the order denying transfer, the Commonwealth had failed to demonstrate that there is no adequate remedy by appeal, which is an essential element of an action for mandamus.

The Commonwealth appealed the denial of the writ to this Court and also filed motions for intermediate relief and for emergency relief seeking to prevent the trial of the juvenile in the district court. If the trial in the juvenile court had proceeded, jeopardy would have attached, and the Commonwealth would have been constitutionally barred from charging the defendant in circuit court.

In reviewing the motions filed by the Commonwealth and the response filed on behalf of the juvenile defendant, this Court formed the preliminary opinion that the circuit court had erred by holding the Commonwealth had a right to appeal the denial of the transfer of the juvenile and that an immediate remand to the circuit court for consideration of the writ on the merits was appropriate to protect the Commonwealth's opportunity to prosecute the juvenile and the juvenile's opportunity for rehabilitative treatment. For that reason, this Court stayed

the juvenile court trial and directed counsel for the juvenile to show cause why the decision of the circuit court should not be reversed and the matter remanded for further consideration.

Counsel for the juvenile appellee/defendant has now responded to the show cause order and vigorously objected to such a summary reversal and remand. First, the appellee objects to the possibility of disposing of this case based upon the show cause order without the opportunity for briefing. However, this Court notes that it is not unusual in some circumstances for an appellate court to dispense with briefing and to dispose of a case on the basis of less formal presentations. In this instance, we are attempting to balance the Commonwealth's interest in the prosecution of an individual charged with acts which would constitute significant felonies if the defendant were an adult against the interest of a juvenile defendant who would lose certain protections and possible rehabilitative opportunities if the case is transferred from juvenile court. The matter is made significantly more pressing by the age of the defendant and the age of the victim. The appellee has been granted an opportunity to respond to a show cause order from this Court, and this Court has carefully considered that response.

Secondly, counsel for the juvenile defendant argues that the Commonwealth could have taken a direct appeal to

circuit court from the district court's order denying transfer. The appellee bases this argument on the words of KRS 23A.080(1) which read: "A direct appeal may be taken from district court to circuit court from any *final action* of the district court." (Emphasis added). Under the appellee's reading of the statute, the Commonwealth would be permitted an appeal since the district court's ruling on the request for transfer was conclusive on that issue. This would be consistent with the circuit court's analysis of federal cases applying the "collateral order doctrine" in federal procedure. However, the Supreme Court of Kentucky has not adopted the "collateral order doctrine" as the procedure to be followed in this state. We conclude that it is proper to interpret the language of KRS 23A.080(1) consistent with CR¹ 54 and RCr² 12.04 and to require an appeal be taken only from a judgment disposing of a case or a claim properly separated within a case. We conclude that the interpretation urged by the appellee would provide for an appeal from any conclusive ruling on any issue in any case in the district court. This Court has previously held that the Commonwealth did not have a right to appeal from an interlocutory ruling of the district court. Commonwealth v. Williams, Ky. App., 995 S.W.2d 400 (1999).

¹ Kentucky Rules of Civil Procedure.

² Kentucky Rules of Criminal Procedure.

The appellee urges us to uphold the circuit court's ruling on alternative grounds even if we find the circuit judge's core holding to be in error. The appellee also argues that it would be more appropriate to avoid remand to the circuit court given the need for an expedited resolution of this matter recognized in the show cause order of this Court. However, it appears to this Court that a remand to circuit court is the most expeditious procedure to follow in resolving this matter. Because the circuit court denied the writ on the availability of an appeal, that court has not developed the issues concerning whether the district court abused its discretion by denying the motion to transfer the juvenile to circuit court for trial. We accept the appellee's position that significant discretion is granted to the district court on this issue and that the Commonwealth has a significant burden in demonstrating an abuse of that discretion. The very significance of that burden militates in favor of having the issue first addressed by the circuit judge.

Accordingly, this Court ORDERS that the judgment denying the petition for writ of mandamus as set out in the circuit court's opinion and order of October 21, 2002, is hereby REVERSED. This matter is REMANDED to the circuit court for consideration of the Commonwealth's petition for writ of mandamus.

In this Court's previous order of January 17, 2003, we directed that the record of this Court be temporarily sealed because the Commonwealth had attached to its petition certain exhibits in which the juvenile defendant was clearly identified. Upon consideration of the motion of the juvenile defendant to strike those exhibits, the Court has examined the exhibits and determined that the identity of the juvenile defendant is set out in exhibits one, three and five. Those exhibits which concern the processing of the juvenile's case in circuit court are not essential for this Court's permanent record. Accordingly, the Court ORDERS that exhibits one, three, and five attached to both the Commonwealth's motion for intermediate relief filed on December 27, 2002, and the Commonwealth's motion for emergency relief filed on January 6, 2003, be STRICKEN from the record of this Court. The copies of the exhibits shall be removed by the Clerk and destroyed. After removal of the exhibits which have been ordered stricken, the temporary sealing of this record is lifted.

The Commonwealth's motion for additional time within which to file a brief is hereby DENIED AS MOOT.

ALL CONCUR.

ENTERED: February 21, 2003

/s/ Rick A. Johnson
JUDGE, COURT OF APPEALS

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