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OCTOBER 12, 2006
(2006-SC-000221-D)

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-001978-MR

CABINET FOR HEALTH AND
FAMILY SERVICES

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 04-J-00590

SHARON EVANS

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM AND McANULTY, JUDGES; PAISLEY, SENIOR JUDGE.¹

BUCKINGHAM, JUDGE: The Cabinet for Health and Family Services (Cabinet) appeals from an order of the Fayette Family Court requiring the Cabinet to pay for counseling for Sharon Evans and from an order denying the Cabinet's motion to alter, amend, or vacate the prior order. We affirm.

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Evans has a 14-year-old daughter who lives with her. An altercation between mother and daughter on April 4, 2004, led to charges being filed against the daughter. Later, the Cabinet filed a dependency, neglect, and abuse action against Evans, alleging that the daughter was a neglected child. The child was eventually committed to the Cabinet. During court proceedings, Evans admitted she smoked marijuana and drank alcohol when she was stressed and needed help with her nerves.

At the dispositional hearing before the family court, the Cabinet recommended, among other things, that Evans complete a substance abuse and mental health evaluation and comply with the recommended treatment. As Evans's inability to pay for counseling was not disputed, the court ordered the Cabinet to pay for substance abuse and mental health counseling.² The court determined that counseling would be beneficial in reuniting Evans and her daughter. The Cabinet objected to the court ordering it to pay for Evans's counseling, and it filed a motion to alter, amend, or vacate. The court denied the motion, and this appeal by the Cabinet followed.

First, the Cabinet contends that KRS³ 610.010(11) specifically prohibited the family court from ordering the

² Even on appeal, the Cabinet has not questioned Evans's inability to pay for counseling.

³ Kentucky Revised Statutes.

Cabinet to pay for Evans's counseling. KRS 610.010(11) provides as follows:

Except as provided in KRS 635.060(3), nothing in this chapter shall confer upon the District Court jurisdiction over the actions of the Department of Juvenile Justice or the cabinet in the placement, care, or treatment of a child committed to the Department of Juvenile Justice or the cabinet; or to require the department or the cabinet to perform, or to refrain from performing, any specific act in the placement, care, or treatment of any child committed to the department or the cabinet.

The language of the statute restricts the jurisdiction of the court over the Cabinet's actions concerning the placement, care, or treatment of a child committed to it. Since the court's order in this case related to the parent and not the placement, care, or treatment of the child, we conclude that the statute does not prohibit the court's order.

Second, the Cabinet argues that the family court did not have the authority to require the Cabinet to pay Evans's counseling expenses absent specific statutory authorization. Section 230 of the Kentucky Constitution provides in part that "[n]o money shall be drawn from the State Treasury, except in pursuance of appropriations made by law[.]" KRS 41.110 provides, in part, that:

No public money shall be withdrawn from the Treasury for any purpose other than that for which its withdrawal is proposed, nor unless it has been appropriated by the General

Assembly or is a part of a revolving fund, and has been allotted as provided in KRS 48.010 to 48.800, and then only on the warrant of the Finance and Administration Cabinet.

The purpose of Section 230 of the Kentucky Constitution and KRS 41.110 "was to prevent the expenditure of the State's money without the consent of the Legislature." Ferguson v. Oates, 314 S.W.2d 518, 521 (Ky. 1958), quoting Ross v. Gross, 300 Ky. 337, 188 S.W.2d 475, 477 (1945).

In addition to these authorities, the Cabinet relies on KRS 453.010 which provides, in part, that "[n]o judgment for costs shall be rendered against the Commonwealth in any action prosecuted by or against the Commonwealth in its own right[.]" Finally, the Cabinet relies on CR⁴ 54.04(1) which provides, in part, that "costs against the Commonwealth, its officers and agencies shall be imposed only to the extent permitted by law."

Despite these authorities cited by the Cabinet, we conclude that the family court had the authority to order the Cabinet to provide counseling services for Evans. One of the legislative purposes of the Unified Juvenile Code is that the Commonwealth direct its efforts "to strengthen and maintain the biological family unit; and to offer all available resources to any family in need of them[.]" KRS 600.010(2)(a). An additional legislative purpose of the Code recognizes that it is

⁴ Kentucky Rules of Civil Procedure.

sometimes "necessary to remove a child from his or her parents" in order to protect and preserve the child's rights and needs. See KRS 620.010. The statutes concerning the dependency, neglect, and abuse of children and their removal from the home and commitment to the Cabinet are set forth in KRS Chapter 620.

In G.G.L. v. Cabinet for Human Resources, 686 S.W.2d 826 (Ky.App. 1985), this court was confronted with an appeal by the Cabinet for Human Resources of an order entered by the trial court directing it to pay \$105 for bus transportation from Ohio to Kentucky to enable the parents to attend a hearing on the Cabinet's petition to involuntarily terminate their parental rights. The Cabinet argued that KRS 453.010 specifically prohibited the court from assessing costs against them in the absence of a statutory provision allowing it. This court rejected the Cabinet's argument for two reasons.

First, we held that the application of the statute would effectively deny the parents their constitutional right to fundamental fairness as guaranteed by the Fourteenth Amendment of the U.S. Constitution. Quoting language by the U.S. Supreme Court in Santosky v. Kramer, 455 U.S. 745, 753-54, 102 S.Ct. 1388, 1394-95, 71 L.Ed.2d 599 (1982), the court in G.G.L. stated:

The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply

because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting State intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.

Id. at 828.

Second, this court in the G.G.L. case relied on Smother v. Lewis, 672 S.W.2d 62 (Ky. 1984). In the Smother case, the Kentucky Supreme Court held that:

[W]e now adopt the language framework of 28 Am.Jur.2d, Injunctions, Section 15, and once and for all make clear that a court, once having obtained jurisdiction of a cause of action, has, as an incidental to its constitutional grant of power, inherent power to do all things reasonably necessary to the administration of justice in the case before it.

Id. at 64. See also Cabinet for Human Resources v. Howard, 705 S.W.2d 935, 938 (Ky.App. 1985). In the Howard case, we noted the importance of the fact that the fees assessed against the Cabinet "were not assessed against the Commonwealth in general, but against an agency of the Commonwealth which had already been appropriated money for its operation in the area of

child health and welfare." Id. That is the situation here as well.

When a court orders the removal of a child from the parent, the "services provided to the parent and the child shall be designed to promote the protection of the child and the return of the child safely to the child's home as soon as possible." KRS 620.130(2). The Cabinet is "responsible for providing services to the family in order to facilitate this family reintegration." L.B.A. v. H.A., 731 S.W.2d 834, 836 (Ky.App. 1987). We believe substance abuse and mental health counseling for a parent, who otherwise has no ability to pay for it, falls within the definition of "reunification services," as defined in KRS 620.020(11), to be provided by the Cabinet.⁵ In short, we conclude that the court had the authority to require the Cabinet to pay for counseling expenses for Evans for all of the foregoing reasons.

Finally, the Cabinet argues that its paying the cost of counseling for Evans would be unconstitutional under Sections 3 and 171 of the Kentucky Constitution. Its argument in this regard is that public funds should not be disbursed to an individual or group of individuals without consideration of

⁵ "Reunification services" are defined in KRS 620.020(11) as "remedial and preventative services which are designed to strengthen the family unit, to secure reunification of the family and child where appropriate, as quickly as practicable, and to prevent the future removal of the child from the family."

public services or benefit to the public interest or welfare.
We conclude that governmental efforts in the area of family
reunification serves a public purpose as evidenced by the
statutes providing for the Cabinet's involvement in these
matters.

The order of the Fayette Family Court is affirmed.

ALL CONCUR.

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