

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000758-ME

V.B., A CHILD UNDER EIGHTEEN¹

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE KIMBERLY BUNNELL, JUDGE
ACTION NO. 04-J-00639-001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER
DISMISSING

** ** *

BEFORE: HENRY, JOHNSON, AND SCHRODER, JUDGES.

JOHNSON, JUDGE: V.B., a child under 18, has appealed from an order of the Fayette Family Court entered on March 8, 2005, which released him from custody and placed him under the supervision of the Division of Youth Services through the remainder of the 2004-2005 school year. Having concluded that it is impossible for this Court to grant actual or practical relief to V.B., we dismiss the appeal as moot.

¹ Because this case involves a juvenile offender, the individuals will be referred to by their initials to protect the interests of the minor child.

On February 21, 2004,² the Commonwealth filed a complaint against V.B. alleging that he was a habitual truant as described in KRS³ 630.020(3).⁴ As grounds for this claim, the Commonwealth stated that as of February 17, 2004, V.B. had withdrawn from Crawford Middle School, but was not attending Lexington Traditional Magnet School, and had missed 30 days of the school year in Fayette County without a valid excuse.⁵ A promise to appear was signed by V.B.'s mother, A.B., and V.B. was arraigned on May 4, 2004. While his adjudication was pending, V.B. was ordered to attend school.

Following negative reports from school, a contempt hearing was scheduled in V.B.'s case. At the hearing held on May 18, 2004, V.B. was adjudicated, pled guilty, and was ordered removed from his home and to be placed by the Detention Alternatives Coordinator (DAC). V.B. was to be placed by the DAC at the Bluegrass Regional Assessment Center on May 20, 2004.

² V.B. was 13 years old at the time.

³ Kentucky Revised Statutes.

⁴ KRS 630.020(3) provides, in part, as follows:

The court shall have exclusive jurisdiction in proceedings concerning any child living, or found within the district, who allegedly:

. . .

(3) Has been [a] habitual truant from school.

⁵ Although not entirely clear from the record on appeal, it appears that at the time of the Commonwealth's complaint, V.B. was already on diversion, but had failed to attend school as required.

A disposition hearing was held on June 1, 2004, at which time the family court adopted the report and recommendations of the Division for Youth Services (DYS). The report stated as follows:

In the case of [V.B.] I respectfully recommend that [he] be placed on supervision with the Division of Youth Services for 180 days with the following terms:

1. [V.B.] is to attend school daily without any unexcused absences, tardies, or suspensions. [V.B.] is to cooperate with school staff members. [V.B.'s] progress will be monitored by DYS Social Worker.
2. [V.B.] is to continue counseling at Comprehensive Care and follow any recommendations made by that program. [A.B.] is to notify DYS Social Worker of appointment dates.
3. [V.B.] is to obey all home rules, including a curfew to be established by his mother. [A.B.] is to notify DYS Social Worker of any noncompliance.
4. [V.B.] and his mother are to cooperate and complete any program deemed necessary by DYS Social Worker.

The family court judge handwrote on the court's docket sheet "[a]dopt report" and ordered V.B. released from custody.

Although no formal order was entered or served on V.B., he does not dispute the fact that the family court verbally advised him of the conditions of his release and the consequences of violating those conditions.

On November 15, 2004, V.B. was charged with violating court orders when he failed to attend day treatment on two separate occasions. He was arraigned on November 16, 2004. V.B. was adjudicated and pled guilty on December 21, 2004. A disposition hearing was held on the same day wherein the family court again adopted the DYS recommendations, which stated that V.B. should "remain on supervision to the Division of Youth Services for 120 days with the previously ordered terms." Again, the family court made a written notation on its docket sheet stating "[a]dopt report". No formal order was entered or served on V.B.

On February 18, 2005, a juvenile custody order was issued against V.B. for contempt of court for failing to attend school on three separate occasions. V.B. was placed in custody at the Fayette County Juvenile Detention Center. An adjudication hearing was held on February 22, 2005, wherein V.B. admitted his truancy. However, V.B. objected to the proceedings and argued that the prior orders of the family court were not "valid court orders" and as such could not be used as the basis for detaining him for contempt of court. The family court disagreed and entered a juvenile status offender order⁶ which stated, in part, as follows:

⁶ V.B. concedes in his brief that this order "met the criterion for being a 'valid court order.'"

3. As a result of this hearing, you are ordered as follows:

Do not leave your home without custodial permission;

Obey all rules of your home, including a curfew which is (set by parent);

Attend all school sessions on time, have no unexcused absences and no behavior problem at school;

You are to violate no law;

You are not to consume, use or possess any alcoholic beverages, tobacco products or illegal drugs [emphases added] [.]

V.B. was detained pending a disposition hearing.

On March 8, 2005, a disposition hearing was held, at which time the family court released V.B. from custody and adopted the recommendations of the DYS, which stated as follows:

In the case of [V.B.] this worker respectfully recommend that he remain on supervision with the Division of Youth Services days with the following terms:

1. [V.B.] to regularly attend school daily without any unexcused absences, tardies, or suspensions. [V.B.] is to cooperate with school staff. Absences will be excused by a doctor's statement only. [A.B.] must return [V.B.] to school after he visits the doctor unless the doctor informs her in writing that he is to be absent from school [emphasis original].
2. [V.B.] to cooperate with the following Division of Youth Services' therapeutic groups: Domestic Violence, Anger

Management, and Decision-Making.
Worker will inform [A.B.] of the dates
and times of the group. [A.B.] will
provide transportation to the group.

3. [V.B.] to continue counseling at the Comprehensive Care Center and follow any recommendations made by the program. [V.B.] to regularly take his prescribed medications.
4. [V.B.] is to obey all home rules, including a curfew to be established by [A.B.] [A.B.] is to notify DYS' worker of any noncompliance.
5. [A.B.] is to schedule and cooperate with a Parent Assessment and any recommendation(s) of the assessment at the Center for Women, Families, and Children.
6. [V.B.] and [A.B.] are to cooperate and complete any programs deemed necessary by DYS' worker.

The family court extended the DYS supervision of V.B. until the end of the 2004-2005 school year. This appeal followed.

On appeal, V.B. argues that the family court erred by finding him in contempt and by detaining him based on an invalid court order. He claims that because the family court's order was not written or served upon him it was unenforceable. The Commonwealth counters by alleging that the issue on appeal is moot because V.B. has already been released from supervision. While we agree with the Commonwealth that the issue on appeal is moot, we note that V.B. is correct that the requirements for a

valid court order were not present in two of the family court's orders.

It is well-established that the juvenile court has the inherent authority to punish violations of its orders through its contempt powers.⁷ Furthermore, there is express statutory authority which anticipates that a juvenile court has the power to hold a child in contempt. Indeed, KRS⁸ 610.010(10) specifically provides that "[n]othing in this chapter shall prevent the District Court from holding a child in contempt of court to enforce valid court orders previously issued by the court." KRS 600.020(60) provides the definition for a valid court order as follows:

"Valid court order" means a court order issued by a judge to a child alleged or found to be a status offender:

- (a) Who was brought before the court and made subject to the order;
- (b) Whose future conduct was regulated by the order;
- (c) Who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings; and

⁷ Young v. Knight, 329 S.W.2d 195, 200 (Ky. 1959).

⁸ Kentucky Revised Statutes.

- (d) Who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States.

Our Supreme Court addressed the issue of mootness in Kentucky High School Athletic Association v. Runyon,⁹ where it dismissed the KHSAA's appeal as moot because the basketball season had ended and the student-athlete's eligibility to play was no longer at issue. The Supreme Court stated:

As we have held, "[t]he classic occurrence which necessitates a court's abrogation of jurisdiction for mootness is a change in circumstances in the underlying controversy which vitiates the vitality of the action."¹⁰

It is apparent that two of the family court's orders did not meet the requirements of a "valid court order" under the definition found in KRS 600.020(60). However, at this point in time, the 2004-2005 school year is well over and V.B. has been released from supervision by DYS. Thus, there is no controversy remaining to be addressed by this Court.

For the foregoing reasons, this Court ORDERS that this appeal be and it is hereby DISMISSED.

HENRY, JUDGE, CONCURS.

SCHRODER, JUDGE, CONCURS IN RESULT ONLY.

⁹ 920 S.W.2d 525 (Ky. 1996).

¹⁰ Runyon, 920 S.W.2d at 526 (quoting Commonwealth v. Hughes, 873 S.W.2d 828, 830 (Ky. 1994)).

ENTERED:

JUDGE, COURT OF APPEALS

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