

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-000840-ME

D.R., A CHILD UNDER EIGHTEEN

APPELLANT

v.

APPEAL FROM GREENUP FAMILY COURT  
HONORABLE JEFFREY L. PRESTON, JUDGE  
ACTION NO. 07-J-00035

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION AND ORDER DISMISSING

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BEFORE: KELLER, THOMPSON, AND WINE, JUDGES.

KELLER, JUDGE: D.R.'s mother filed a juvenile complaint alleging that D.R. was beyond her control. Following a hearing, the trial court ordered D.R. to be temporarily committed to the Cabinet for Families and Children (the Cabinet). The trial court then held a disposition hearing, after which the trial court committed D.R. to the Cabinet. The Cabinet placed D.R. in Ramey Home for Children. D.R. appeals from the court's disposition order arguing that the evidence was insufficient to support the trial court's

findings, that the trial court erred when it temporarily placed D.R. with the Cabinet prior to the disposition hearing, and that the trial court did not explore other less restrictive alternatives to removing D.R. from his home.

On September 13, 2007, the Commonwealth filed a motion to dismiss this appeal, arguing that the issues raised by D.R. are now moot. In its motion, the Commonwealth noted that, on September 10, 2007, the trial court reviewed D.R.'s case and returned D.R. to the custody of his mother. The trial court did not schedule any additional actions with regard to D.R. The Commonwealth argues in its motion that this matter is now moot because any opinion of this Court would not have any effect on the status of the parties. D.R. did not file any response to the Commonwealth's motion.

A moot case is one which seeks a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has been actually asserted and contested, or a judgment upon some matter which, when rendered, for any reason, cannot have any practical effect upon a then existing controversy. *Hudspeth v. Commonwealth*, 204 Ky. 606, 265 S.W. 18; *Benton v. Clay*, 192 Ky. 497, 233 S.W. 1041. As falling within that category it is well established that where, pending an appeal, an event occurs which makes a determination of the question unnecessary or which would render the judgment that might be pronounced ineffectual, the appeal should be dismissed. *Hudspeth v. Commonwealth*, 204 Ky. 606, 265 S.W. 18; *Logan County Fiscal Court v. Childress*, 196 Ky. 1, 243 S.W. 1038; *Board of Education of Cumberland County v. Jones*, 194 Ky. 603, 240 S.W. 65; *Williams v. Howard*, 193 Ky. 848, 237 S.W. 1062; *Wheeler v. Patrick*, 192 Ky. 529, 233 S.W. 1054; *King v. Tilford*, 70 S.W. 1064, 24 Ky.Law Rep. 1270; 4 C.J.S., Appeal and Error, § 1362.

*Louisville Transit Co. v. Dept. of Motor Transp.*, 286 S.W.2d 536, 538 (Ky. 1956).

One exception to the above is when a controversy is capable of repetition but will, because of the nature of the action, evade review. In order to determine if a case is capable of repetition while evading review, we must address two questions:

whether (1) the "challenged action is too short in duration to be fully litigated prior to its cessation or expiration and [2 whether] there is a reasonable expectation that the same complaining party would be subject to the same action again." *In re Commerce Oil Co.*, 847 F.2d 291, 293 (6th Cir. 1988).

*Philpot v. Patton*, 837 S.W.2d 491, 493 (Ky. 1992).

Having reviewed the facts in this case and the Commonwealth's motion, we conclude that this case is indeed moot. The only relief we could have granted D.R. would have been to remand this case to the trial court for additional findings and/or for an order returning D.R. to his mother's custody. Since D.R. has been returned to his mother's custody and any additional findings by the trial court would be pointless, any judgment by this Court cannot have any practical effect on the case.

However, our analysis cannot end there. We must determine if this case falls within the capable of repetition yet evading review exception to the mootness doctrine. In order to do so, we must address the questions set forth above in *Philpot*. As to the first question, the issue is whether the nature of the action renders the time frame too short to permit full litigation of the issues through the appellate process. There is nothing about the nature of this action that necessarily renders the time frame too short to permit full appellate review. Had the Cabinet's placement and treatment, in conjunction with D.R.'s efforts, not resulted in significant improvement in his behavior, he could have remained in the Cabinet's custody for a significant period of time, certainly long enough to have permitted full appellate review. It is only through the efforts of the Cabinet and

D.R. that this matter was resolved before full appellate review was possible. Therefore, we hold that the challenged action was not too short in duration to be fully litigated prior to its cessation.

As to the second question, the trial court has returned D.R. to his mother's custody and has essentially closed its file related to D.R. Therefore, while D.R. may be subject to action by the trial court arising from other acts, there is no reasonable expectation that D.R. will be subject to action by the trial court related to this action.

For the foregoing reasons, we grant the Commonwealth's motion and dismiss this appeal as moot.

ALL CONCUR.

ENTERED: February 29, 2008

/s/ Judge Michele M. Keller  
JUDGE, COURT OF APPEALS

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