

RENDERED: FEBRUARY 8, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2007-CA-001844-ME

CABINET FOR HEALTH AND
AND FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DOUGLAS BRUCE PETRIE, JUDGE
ACTION NO. 07-J-00123 AND 07-J-00123-00

N.J.N.D., SUBJECT CHILD
AND B.D., SUBJECT CHILD'S MOTHER

APPELLEES

OPINION REVERSING

** ** * * *

BEFORE: CAPERTON, LAMBERT, AND THOMPSON, JUDGES.

LAMBERT, JUDGE: The Cabinet for Health and Family Services (hereinafter "the Cabinet") appeals from an order of the Boyle Family Court requiring it to pay for the costs associated with in-house drug rehabilitation for a mother who is currently party to a dependency, neglect, and abuse proceeding. After careful review, we reverse the order.

The Cabinet filed a non-removal petition on July 9, 2007, concerning N.J.N.D., a child. The petition alleged

neglect against the mother but was a non-removal petition as the maternal grandmother agreed to supervise the mother and child. At an arraignment hearing held on July 23, 2007, the mother denied the neglect allegations. At a pretrial conference held on August 13, 2007, however, the mother stipulated to neglect. At that time, temporary custody was given to the Cabinet, with placement given to the maternal great aunt. It was at this pretrial conference that the court ordered the Cabinet to pay for costs associated with the in-house drug rehabilitation of the mother of N.J.N.D. This appeal followed.

The Cabinet argues that the trial court does not have the authority to require the Cabinet to expend state resources to pay the costs associated with in-house drug rehabilitation therapy. It argues that by issuing this order the court violated the doctrine of the separation of powers. We agree.

We find that this case is indistinguishable from the issues recently addressed by this Court in *Cabinet for Health and Family Services v. G.W.F.*, 229 S.W.3d 596 (Ky.App. 2007). We therefore adopt the following as our opinion:

The Cabinet contends that, under the separation of powers doctrine, it is within the sole purview of the Kentucky legislature to determine how governmental resources are expended, and that consequently the trial court exceeded the scope of its authority by ordering the Cabinet to pay for the [in-house drug rehabilitation] without any specific statutory authorization.

We set forth below the portions of the Constitution of Kentucky and other pertinent

statutory provisions which define the doctrine of the separation of powers:

Kentucky Constitution § 27 states:

The powers of the government of the Commonwealth of Kentucky shall be divided into three distinct departments, and each of them be confined to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

Kentucky Constitution § 28 states:

No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

Kentucky Constitution § 230 states in part that:

No 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.

KRS 41.130(2) provides that:

No warrant shall be issued unless the money to pay it has been appropriated by law. The Finance and Administration Cabinet may require any claimant to state on the face of his claim the law under which it is payable.

KRS 453.010 provides that:

No judgment for costs shall be rendered against the Commonwealth in any action prosecuted by or against the Commonwealth in its own right, unless specifically provided by statute; provided, however, that in any civil action filed in any court of competent jurisdiction by or against the Commonwealth of Kentucky, the costs may be paid by the Commonwealth when such costs are approved and allowed by the judge of the court in which the case was filed. Costs shall not exceed the fees allowed for similar services in other civil actions.

And finally, Kentucky Rules of Civil Procedure (CR) 54.04(1) provide that:

Costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the Commonwealth, its officers and agencies shall be imposed only to the extent permitted by law.

In addition to these constitutional and statutory authorities, the Cabinet relies on *Ferguson v. Oates*, 314 S.W.2d 518 (Ky. 1958), where it was simply stated that 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." *Id.* at 521 (citation omitted).

. . .

Although the funds for the drug [rehabilitation] in this case are also being assessed against the Cabinet in connection with its operation in the area of child health and welfare, and not against the Commonwealth in general, we do not believe that this fact on its own is sufficient to justify the trial court's order. We are aware of no specific statute authorizing the court to assess such payment. Furthermore, there appears to be no significant potential infringement of the parents' due process rights, as there was in *G.G.L. v. Cabinet*, 686 S.W.2d 826 (Ky.App. 1985), which would

serve to bring the issue within the purview of the court's inherent powers to administer justice. We therefore hold that, under the specific facts of this case, the court erred in ordering the Cabinet to pay the costs of [the in-house drug rehabilitation].

See Id. at 597-599.

The order of the Boyle Circuit Court is reversed in accordance with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Margaret E. McCann
Commonwealth of Kentucky
Cabinet for Health and Family
Services
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