

RENDERED: MARCH 17, 2006; 10:00 A.M.

ORDERED NOT PUBLISHED BY THE KENTUCKY SUPREME COURT:
OCTOBER 12, 2006
(2006-SC-000283-D)

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001868-DG

D.F., A MINOR

APPELLANT

ON DISCRETIONARY REVIEW FROM JEFFERSON CIRCUIT COURT
v. HONORABLE F. KENNETH CONLIFFE, JUDGE
ACTION NO. 04-XX-000023

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND JOHNSON, JUDGES.

JOHNSON, JUDGE: D.F., a minor, was granted discretionary review of an opinion and order entered by the Jefferson Circuit Court on August 12, 2004, which affirmed an amended order of the Jefferson District Court entered on April 6, 2004, which modified a dispositional order by changing the amount of restitution D.F. owed from \$14.43 to \$214.43. Having concluded that the Jefferson District Court retained continuing

jurisdiction over D.F.'s case when it entered the amended restitution order, we affirm.

Pursuant to KRS¹ 610.010(1), the juvenile session of the Jefferson District Court had exclusive jurisdiction over D.F. in this case because D.F. resided in Jefferson County and was under eighteen years of age at the time of the burglary. The Jefferson District Court thereby had jurisdiction to adjudicate and to dispose of the charge as provided in KRS 610.080. The District Court adjudicated the truth of the allegations in the petition on the basis of D.F.'s admitting to the charge of burglary in the second degree.² Disposition of the matter occurred during the same hearing as the adjudication pursuant to D.F.'s waiver of the bifurcated procedure as permitted by KRS 610.080.

Under KRS 635.060(1), the District Court had the power to, and did, order D.F. to make restitution to the burglary victim "in the sum and upon the conditions as the court determine[d]." The dispositional order entered by the District Court on December 10, 2003, following the adjudication of the petition against D.F. ordered, inter alia, that restitution for the damage to a door in the amount of \$14.43 be paid within 45

¹ Kentucky Revised Statutes.

² KRS 511.030.

days after the entry of the dispositional order. The District Court set a hearing for a 90-day review for March 10, 2004.

D.F. tendered the restitution through the court, as required, within the 45-day period. However, at the scheduled review hearing, the Commonwealth informed the District Court, as well as D.F. and his counsel, that the restitution amount of \$14.43 was incorrect, and the correct amount was \$214.43. Over D.F.'s objection, the District Court scheduled a hearing regarding the restitution dispute for April 6, 2004.

At the hearing, the burglary victim testified that she told the Commonwealth's Attorney on December 10, 2003, that her damages as a result of the burglary were \$214.43, but that the prosecutor had misunderstood and had written down the amount incorrectly as \$14.43. The victim further testified that she notified the Commonwealth's Attorney of the mistake when she received the restitution check in the amount of \$14.43. The Commonwealth moved to amend the restitution order to include the additional \$200.00 claimed as damages as a result of the burglary.

After receiving the testimony at the April 6, 2004, hearing, the District Court ruled that restitution in the amount of \$214.43 had been proved and ordered D.F. to pay an additional \$200.00 for restitution at \$25.00 per month. The District Court

also ruled that the requirement under Workman v. Commonwealth,³ that the Commonwealth honor a plea bargain agreement was not applicable to the matter because the prosecutor had a misunderstanding regarding the amount of damages incurred by the burglary victim. D.F. appealed the amended dispositional order to the Jefferson Circuit Court which affirmed the District Court in an opinion and order entered on August 12, 2004. This Court granted discretionary review.

D.F. argues that the juvenile court did not have jurisdiction to amend the dispositional order entered on December 10, 2003, after the expiration of ten days following its entry.⁴ D.F. claims the original dispositional order was a final order for the purposes of CR 59.05 because it adjudicated "all the rights of all the parties in an action or proceeding[.]"⁵ Additionally, D.F. asserts that the original dispositional order was a final order pursuant to KRS 610.130, which permits the taking of an appeal from such an order to the circuit court as a matter of right. D.F. argues that the original dispositional order was a final order and the Commonwealth's motion to amend was untimely. He also argues

³ 580 S.W.2d 206 (Ky. 1979).

⁴ Kentucky Rules of Civil Procedure (CR) 59.05; Crane v. Commonwealth, 833 S.W.2d 813, 818 (Ky. 1992).

⁵ CR 54.01.

that the Commonwealth improperly breached its plea agreement with him when it moved to amend the dispositional order to increase the amount of restitution.⁶

The Commonwealth asserts that the juvenile court acted within its jurisdiction in amending the dispositional order to increase the amount of restitution because the Unified Juvenile Code gives the juvenile court "continuing jurisdiction" over a child when a dispositional order is entered.⁷ The Commonwealth relies on KRS 610.010(13), which provides as follows:

The court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders, and to conduct permanency hearings under 42 U.S.C. sec. 675(5)(c) until the child is placed for adoption, returned home to his or her parents with all the court imposed conditions terminated, or reaches the age of eighteen (18) years [emphases added].

Based upon this "continuing jurisdiction," the Commonwealth argues that the District Court acted within its jurisdiction in amending the dispositional order to increase the amount of restitution. The Commonwealth contends that the amended dispositional order was in accordance with the intent of the Unified Juvenile Code to advance "principles of personal

⁶ Workman, 580 S.W.2d at 206.

⁷ KRS 610.010(13).

responsibility" and "accountability"⁸ and that the District Court's action was authorized. The Commonwealth argues that a distinction should be made between juvenile court cases and criminal court cases because the dispositional alternatives are more lenient for juveniles than adults. Further, the Commonwealth asserts that it has not breached a plea agreement with D.F. because juvenile proceedings are not undertaken to obtain a criminal conviction.

We agree with the Commonwealth that in light of the continuing jurisdiction granted to the District Court by KRS 610.010(13), CR 59.05 does not apply to the entry of the dispositional order. KRS 610.010(13) grants the juvenile session of the District Court "continuing jurisdiction" to "review" a previously entered dispositional order. "All statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature[.]"⁹ "The primary purpose of judicial construction is to carry out the intent of the legislature" [citations omitted].¹⁰

It is clear in the case before us that the Jefferson District Court intended to exercise this jurisdiction when it

⁸ KRS 600.010(2)(e).

⁹ KRS 446.080(1).

¹⁰ Commonwealth v. Kash, 967 S.W.2d 37, 43 (Ky.App. 1997).

scheduled a review hearing for 90 days following the entry of the original dispositional order against D.F. Such review is proper so the juvenile court can ensure that a previously entered order is being complied with by the child and any other persons covered by the order. If there is noncompliance, the court can use its contempt powers against a child to enforce a prior order issued by the court.¹¹ We conclude from the overall purpose of the Unified Juvenile Code that it was the intent of the legislature that the grant of "continuing jurisdiction" set out in KRS 610.010(13) include the continuing power to amend or to modify a previously entered dispositional order.

As to D.F.'s claim that under Workman the Commonwealth should not be allowed "to disregard promises and fail to perform bargains,"¹² we note that D.F. has not asked the District Court to allow him to withdraw his plea. However, in view of the equities in this case (i.e., D.F. is only being ordered to pay the victim the restitution she is rightly due) we do not see how the District Court's refusal to allow D.F. to withdraw his plea would be an abuse of discretion.¹³

Based on the foregoing, the opinion and order of the Jefferson Circuit Court is affirmed.

¹¹ KRS 610.010(10).

¹² Workman, 580 S.W.2d at 207.

¹³ See Bronk v. Commonwealth, 58 S.W.3d 482, 487 (Ky. 2001).

ALL CONCUR.

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