

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000935-ME

A.G., A CHILD UNDER EIGHTEEN

APPELLANT

v. APPEAL FROM ANDERSON FAMILY COURT
HONORABLE JOHN DAVID MYLES, JUDGE
ACTION NO. 14-J-00011

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** *

BEFORE: DIXON, JONES AND VANMETER, JUDGES.

DIXON, JUDGE: Appellant, A.G., appeals from an order of the Anderson Family Court finding her in contempt and committing her to the custody of the Cabinet for Health and Family Services. After careful review of the record, we reverse the family court.

On November 22, 2013, a petition was filed in the Anderson Family Court charging sixteen-year-old A.G. with the status offense of habitual truancy. The petition alleged that she had 13.5 unexcused absences and eight unexcused tardies from school. A.G. initially entered into a diversion agreement with the Court Designated Worker's office but violated the agreement by accumulating two additional absences. Her case was thereafter transferred to the family court for a formal hearing.

During a February 11, 2014, hearing, the family court entered a Juvenile Status Offender Order (JSOO) against A.G. based upon the allegation that she was a habitual truant. The JSOO stated that A.G. had appeared in court with counsel and her mother, and was ordered by the family court to maintain a "C" average in school, remain drug free, and submit to random drug screens. The JSOO also contained form language that stated, "Failure to abide by this Order may result in a finding of contempt being made against you by the Court. This could result in a variety of consequences which may include commitment to the Cabinet, being placed in secure detention or other alternative placement and/or ____." The blank in the preceding sentence was completed with the words "custody to the Cabinet." The JSOO was signed by A.G., her mother and her attorney, as well as the judge and the county attorney.

On March 11, 2014, the family court conducted a hearing on the Commonwealth's motion to hold A.G. in contempt based upon a February 20th positive drug screen. Defense counsel objected, citing *M.A.M. v. Commonwealth*,

402 S.W.3d 546 (2013), for the proposition that A.G. could not be held in contempt for violating the JSOO because it was not a valid court order. The family court overruled the objection, noting that *M.A.M.* held that a JSOO was not a valid court order only after there was a final adjudication. Nevertheless, the family court ruled that it was unable to determine from the Commonwealth's evidence whether the drugs A.G. tested positive for were ingested before or after her initial February 11th hearing. Thus, the family court denied the motion for contempt and ordered A.G. to submit to a drug screen that afternoon.

On March 24, 2014, the Commonwealth filed a second motion for contempt based upon a positive result from the March 11th drug screen. During a hearing the following day, the Chief Operating Officer of Kentucky Alternative Programs testified that a toxicology report indicated A.G. tested positive for morphine and opiates. A.G. also testified during the hearing and claimed that she had not taken any drugs since her initial court appearance. A.G. stated that she was enrolled in a drug treatment program at the Ridge called Early Intervention for Youth and that once she completed said program she would begin the Ridge's intensive program. She further explained that she was required to complete the early intervention program before insurance would cover any additional inpatient treatment. At the conclusion of the hearing, the family court found A.G. in contempt but deferred imposing a sentence. The Commonwealth then requested that A.G. be placed in the custody of the Cabinet because her mother was not being proactive about A.G.'s treatment plan. The family court denied the request but

instructed the Cabinet to monitor A.G.'s progress on a daily basis and report to the court if there were any problems.

The record thereafter indicates that on April 1, 2014, the family court entered an order placing A.G. in the temporary custody of the Cabinet pending a hearing the following day. There is no indication that a hearing was held prior to entry of the order and the family court did not document any basis or findings for such. However, based upon the court's comments during the prior hearing, we can only surmise that either A.G.'s mother was not pursuing A.G.'s treatment options or that insurance had refused to pay for such. A record entry on April 2, 2014, reflects that the matter was continued until April 4, 2014, and that A.G. had been placed into Ridge's 28-day inpatient program. At the April 4th hearing, the Commonwealth submitted reports indicating that A.G. had tested positive in three separate drug screens for heroin, methamphetamine, morphine and codeine in the week prior to her admission into the inpatient program.

The next status hearing was held on April 29, 2014. At that time, the Cabinet recommended that A.G. remain in the Cabinet's custody and complete the inpatient program. The family court, however, deferred any ruling until it received a report from A.G.'s therapists at the Ridge, noting that although it harbored serious concerns about A.G. returning home so soon, "[i]f home is the appropriate placement at the recommendation of all the professionals, so be it."

On May 13, 2014, the family court held a final adjudication hearing on A.G.'s disposition for contempt of court. The Commonwealth informed the

family court that A.G. was scheduled to be released the following day from the 28-day program and requested that custody remain with the Cabinet so that A.G. could continue with additional inpatient treatment. Defense counsel, in turn, submitted a letter from A.G.'s therapist at the Ridge recommending that she be allowed to return home and participate in its intensive outpatient program. Counsel argued that being returned home with treatment services in place was the least restrictive alternative required under the Juvenile Code. Nevertheless, the family court ordered A.G. to remain in the Cabinet's custody and continue with inpatient treatment until the end of the summer. The court noted that it wanted to see A.G. successfully complete the program and return home and to school in the fall. A.G. thereafter appealed to this Court.

On appeal, A.G. argues that the family court's finding of contempt was erroneous because the pre-adjudication JSOO was not a valid court order under *M.A.M. v. Commonwealth*, 402 S.W.3d 546 (2013), and further that the order of commitment violated her due process rights and was not the least restrictive alternative. We would note that the Commonwealth has failed to file a brief or otherwise participate in the appeal in this Court. In any event, we agree with A.G. that *M.A.M.* is dispositive and requires reversal herein.

Kentucky Revised Statutes (KRS) 610.010(11) provides that a juvenile charged with a status offense may only be found in contempt of court for violating "valid court orders previously issued by the court[.]" A "valid court order" is defined as:

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

KRS 600.020(66)

In *M.A.M.*, the juvenile was charged with the status offense of Beyond Control of Parents, a violation of KRS 630.020(2). Diversion was unsuccessful and a JSOO was entered against the juvenile due to the allegation that he was beyond the control of his parents. The JSOO stated that the juvenile had appeared in Court with counsel and was placed under specific orders, *i.e.*, obey a curfew, attend school, etc. At a subsequent adjudication/disposition hearing, the juvenile appeared in court with counsel and stipulated to the complaint, thus waiving the necessity for testimony. As such, the family court entered a final disposition order adopting the Cabinet's recommendation that he remain in his parent's custody subject to numerous conditions. Approximately six months later, the

Commonwealth filed a contempt motion alleging that the juvenile had violated the family court's orders by, among other things, leaving home and violating curfew. The family court found the juvenile in contempt of the JSOO and committed him to the custody of the Cabinet for Health and Family Services.

On appeal, a panel of this Court initially determined that the juvenile's stipulation to the complaint during the adjudication hearing and the subsequent disposition order were invalid because there was no affirmative showing that he knowingly, intelligently and voluntarily entered the plea as required by *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Further, the panel noted that the finding of contempt was not based upon the juvenile's violation of the disposition order, but upon his violation of the original JSOO, which was entered prior to the adjudication and disposition. The Panel commented,

We note that the JSOO was based merely on the *allegations* against the child. The JSOO form in this case was check-marked in the box that stated the child "is alleged to be ... Beyond Reasonable Control of Parents"; and it was not check-marked in the box on the form that provides the child "has been found to be a status offender." Therefore, the JSOO was based solely on allegations, and not on any actual findings made by the family court. Consequently, we need to determine whether the JSOO was a valid court order, the violation of which would justify the family court's finding of contempt against the child.

M.A.M., 402 S.W.3d at 555.

After undertaking an analysis of the previously set forth requirements for a valid court order as defined in KRS 600.020(66), the panel concluded:

In the present case, M.A.M. was brought before the court and made subject to the JSOO, and his future conduct was regulated by the JSOO. The JSOO ordered M.A.M. to do, or refrain from doing, certain things, as set forth supra. Additionally, the child was given written and verbal warnings of the consequences of violating the JSOO. The JSOO specifically stated that “[f]ailure to abide by this Order may result in a contempt finding being made against you by the court which could result in a fine and/or your being placed in secure detention or other alternative placement.” . . . The JSOO was signed by the family court, the child, a parent, the child's attorney, and the County Attorney. Consequently, the only question remaining in our analysis of whether the JSOO was a valid court order is whether the child received the full due process rights guaranteed by the United States Constitution before the order was entered.

Clearly, the child did not get an adjudication hearing before the JSOO was entered, because the adjudication hearing occurred at a later date. In the present case, the JSOO was entered based solely on the allegations against the child. M.A.M. did not receive his full due process rights before the order was entered. Consequently, the JSOO was not a valid court order, and the child could not be held in contempt for violating it.

Id. at 555-556.

We perceive no meaningful distinction between *M.A.M.* and the instant matter. A.G. never pled guilty to the offense of habitual truancy nor did the family court make any factual findings. Rather, the JSOO herein, as in *M.A.M.* was based solely upon allegations. Furthermore, there was never an adjudication of the offense charged.¹ Accordingly, based upon the requirements of KRS 600.040(66)

¹ Pursuant to KRS 610.080(1) “[t]he adjudication shall determine the truth or falsity of the allegations in the petition and shall be made on the basis of an admission or confession of the child to the court or by the taking of evidence.”

and the decision in *M.A.M.*, we must conclude that the JSOO was not a valid court order and the family court erred in finding A.G. in contempt of such.

Notwithstanding our decision, it is clearly evident from the video proceedings herein that the family court was doing everything within its power to help A.G. and ensure that she received the treatment she so obviously needed.

Although we are reversing the family court's finding of contempt and order committing A.G. to the custody of the Cabinet, it is our hope, as it was the family court's, that she was able to successfully complete the treatment program and return to school.

Because we are reversing the family court's decision, we necessarily need not address A.G.'s other claims of error raised herein.

The order of the Anderson Family Court finding A.G. in contempt for violating the JSOO and committing her to the custody of the Cabinet is reversed and the matter is remanded for further proceedings.

JONES, JUDGE, CONCURS.

VANMETER, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

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