

[Cite as *In re K.H.*, 2009-Ohio-5237.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 92618**

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**IN RE: K.H.**

**A Minor Child**

[APPEAL BY STATE OF OHIO]

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**JUDGMENT:**  
**REVERSED AND REMANDED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case No. DL-08125696

**BEFORE:** Celebrezze, J., McMonagle, P.J., and Boyle, J.

**RELEASED:** October 1, 2009

**JOURNALIZED:**  
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} The state of Ohio appeals a juvenile trial court ruling dismissing a complaint with prejudice for failing to attach an affidavit of an eyewitness, as previously ordered by the juvenile court in a prior filing of the same charges. The state argues that the trial court was without authority to impose additional requirements above those specified in Juv.R. 10 and R.C. 2151.27 and that the trial court erred when it failed to hold a hearing to determine if any of appellee's constitutional or statutory rights were violated before reaching the decision to dismiss with prejudice. After a thorough review of the record and for the following reasons, we reverse.

### **Background**

{¶ 2} On September 10, 2007, the state of Ohio filed a four-count delinquency complaint<sup>1</sup> against appellee, K.H.,<sup>2</sup> in the juvenile court. On December 5, 2007, the complaint was dismissed. The complaint was refiled, but was again dismissed on June 16, 2008 because necessary witnesses for the state were not available to testify. In the order of dismissal without prejudice, the court conditioned refiling of the complaint on attachment of an affidavit from a key eyewitness, Cleveland Police Patrolman Joe Glasscock.

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<sup>1</sup> One count of receiving stolen property (R.C. 2913.51), a fourth degree felony; one count of possession of crack cocaine (R.C. 2925.11(A)), a fourth degree felony; one count of trafficking in marijuana (R.C. 2925.03(A)(2)), a fifth degree felony; and possession of marijuana (R.C. 2925.11(A) and (C)(3)), a minor misdemeanor.

<sup>2</sup> The parties are referred to herein by their initials or title in accordance with this court's established policy regarding non-disclosure of identities in juvenile

On July 9, 2008, the state refiled the complaint without attaching any additional affidavit. Trial was set for December 4, 2008, where the state asked for a continuance because the owner of the stolen vehicle and Patrolman Glasscock were not available to testify. The juvenile court denied the state's motion and dismissed the complaint with prejudice citing a lack of any attached affidavit and noting that this was the third filing of the complaint.

{¶ 3} The state challenges this dismissal citing two assignments of error:

{¶ 4} “The trial court erred by imposing on the state additional requirements, beyond those included in Juv.R. 10 and R.C. 2151.27, for the refiling of a delinquency complaint.”

{¶ 5} “The trial court erred by dismissing the complaint with prejudice where neither a constitutional or statutory violation was alleged and the court failed to hold a hearing on the merits.”

### **Law and Analysis**

{¶ 6} The state first challenges the juvenile court's authority to impose additional requirements on a complainant beyond those specified in the Rules of Juvenile Procedure.

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cases.

{¶ 7} We note initially that “dismissal of a plaintiff’s complaint is a harsh sanction and should not be done casually.” *Boccia v. Boccia*, 11th Dist. No. 2005-T-0025, 2006-Ohio-2384, at ¶22. The decision to dismiss a complaint is within the sound discretion of the trial court. To constitute an abuse of discretion, the ruling must be more than legal error; it must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140. “The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations.” *State v. Jenkins* (1984), 15 Ohio St.3d 164, 222, 473 N.E.2d 264, quoting *Spalding v. Spalding* (1959), 355 Mich. 382, 384-385, 94 N.W.2d 810. In order to have an abuse of that choice, the result must be “so palpably and grossly violative of fact and logic that it evidences not the exercise of will but the perversity of will, not the exercise of judgment but the defiance thereof, not the exercise of reason but rather of passion or bias.” *Id.*

## **Continuing Jurisdiction after Dismissal without Prejudice**

{¶ 8} Juv.R. 1<sup>3</sup> grants a great deal of latitude to the juvenile court to effectuate its purpose. The court's order requiring the attachment of an affidavit to the complaint before the case could be refiled appears to fit within its discretion by the grant of authority in Juv.R. 1(B)(2) to eliminate unjustifiable expense and delay. However, this broad discretion is limited where Juv.R. 1(C) states: "When any statute provides for procedure by general or specific reference to the statutes governing procedure in juvenile court actions, procedure shall be in accordance with these rules."

{¶ 9} Juv.R. 10 and R.C. 2151.27 specifically govern the requirements of a complaint in juvenile court. Juv.R. 10(B) requires the complaint to: "(1) state in ordinary and concise language the essential facts that bring the proceedings within the jurisdiction of the court, and in juvenile traffic and delinquency proceedings, shall contain the numerical designation of the

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<sup>3</sup>Juv.R. 1(B) states: "These rules shall be liberally interpreted and construed so as to effectuate the following purposes:

"(1) to effect the just determination of every juvenile court proceeding by ensuring the parties a fair hearing and the recognition and enforcement of their constitutional and other legal rights;

"(2) to secure simplicity and uniformity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay;

"(3) to provide for the care, protection, and mental and physical development of children subject to the jurisdiction of the juvenile court, and to protect the welfare of the community; and

"(4) to protect the public interest by treating children as persons in need of supervision, care and rehabilitation."

statute or ordinance alleged to have been violated; (2) contain the name and address of the parent, guardian, or custodian of the child or state that the name or address is unknown; (3) be made under oath.” R.C. 2151.27 substantially mirrors these requirements.<sup>4</sup>

{¶ 10} The court may limit delay in a reasonable manner, including limiting continuances or dismissing with prejudice a complaint where a party fails to prosecute a claim in a timely manner. *In the Matter of Gearhart* (June 26, 1984), Franklin App. No. 83AP-878.

{¶ 11} In *Gearhart*, the state, after having received one continuance, was told that only one continuance would be allowed. Upon again being unprepared for trial, the state asked that its complaint be dismissed without prejudice because a witness was unavailable to testify. The juvenile court found this to be a circumvention of its order that only one continuance would be allowed. The court then dismissed the complaint with prejudice. On appeal, the decision of the juvenile court was found to be within its discretion:

“To hold that the prosecution can continue the trial indirectly when denied a

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<sup>4</sup>R.C. 2151.27 states: “Any person having knowledge of a child who appears \* \* \* to be an unruly, abused, neglected, or dependent child may file a sworn complaint with respect to that child in the juvenile court \* \* \* upon information and belief, and, in addition to the allegation that the child committed the violation or is an unruly, abused, neglected, or dependent child, the complaint shall allege the particular facts upon which the allegation that the child committed the violation or is an unruly, abused, neglected, or dependent child is based.”

continuance would usurp the juvenile court's powers to expedite the disposition of delinquency proceedings and to control its own calendar.” *Id.*

{¶ 12} While we find *Gearhart* quite persuasive, the juvenile court in the instant case imposed a restriction on the state distinguishable from *Gearhart*.

The court’s order conditioning the refiling of the complaint was outside of the juvenile court’s authority because “a dismissal without prejudice relieves the court of all jurisdiction over the matter, and the action is treated as though it had never been commenced.” *Midland Title Sec., Inc. v. Carlson*, 171 Ohio App.3d 678, 682, 2007-Ohio-1980, 872 N.E.2d 968, 972. See, also, *Zimmie v. Zimmie* (1984), 11 Ohio St.3d 94, 95, 464 N.E.2d 142; *DeVille Photography, Inc. v. Bowers* (1959), 169 Ohio St. 267, 272, 159 N.E.2d 443; *Conley v. Jenkins* (1991), 77 Ohio App.3d 511, 517, 602 N.E.2d 1187.

{¶ 13} Once a juvenile court dismisses a complaint without prejudice, it is as though the action had never been filed. Any jurisdiction the court had over the matter is terminated. The juvenile court then lacked jurisdiction to require the addition of an affidavit above and beyond what is specified by Juv.R. 10 and R.C. 2151.27 upon refiling the complaint.

{¶ 14} The state’s complaint complied with Juv.R. 10 and R.C. 2151.27. Therefore, the juvenile court abused its discretion when it dismissed the state’s case based on a failure to file an affidavit beyond the requirements of the governing rules. While the juvenile court is allowed broad discretion,



that discretion is limited when a statute speaks directly to what is required. The decision of the juvenile court dismissing the state's complaint must be overturned.

### **Failure to Hold a Hearing**

{¶ 15} In the state's second assignment of error it claims that the juvenile court lacked authority to sua sponte dismiss a complaint with prejudice without a showing of a constitutional or statutory deprivation of rights. It also argues that the Rules of Juvenile Procedure do not contemplate a dismissal with prejudice except when there has been a hearing on the merits. Due to our holding above, this issue is moot.

{¶ 16} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

CHRISTINE T. McMONAGLE, P.J., and

MARY JANE BOYLE, J., CONCUR