

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

In re: M.W. : Case No. 25CA4166
:
Alleged Delinquent Child. : DECISION AND
: JUDGMENT ENTRY

RELEASED 9/29/2026

APPEARANCES:

Shane A. Tieman, Prosecuting Attorney, and Jay S. Willis, Assistant Prosecuting Attorney, Portsmouth, Ohio, for appellant.

L. Scott Petroff, Athens, Ohio, for appellee.

Hess, J.

{¶1} The State of Ohio appeals from a judgment of the Scioto County Common Pleas Court, Juvenile Division, dismissing a delinquency complaint against M.W. The State presents two assignments of error asserting (1) the court erred as a matter of law by sua sponte dismissing the complaint without properly following the procedures outlined by Juv.R. 29 and failing to conduct an adjudicatory hearing, and (2) the dismissal violated the alleged victims' constitutional rights pursuant to Marsy's Law and the Ohio Constitution. For the reasons which follow, we sustain the first assignment of error, reverse the juvenile court's judgment, and remand for further proceedings consistent with this decision. This decision renders moot the second assignment of error, so we need not address it.

I. FACTS AND PROCEDURAL HISTORY

{¶2} On October 27, 2025, a complaint was filed alleging M.W., age 16, was a delinquent child for committing two offenses which would be first-degree misdemeanor

assault if committed by adult. The complaint alleged that on or about September 13, 2025, she knowingly caused or attempted to cause physical harm to A.L. and J.B. Specifically, M.W. pulled A.L.'s hair and scratched her (Count One) and slapped J.B.'s face without provocation (Count Two). The Scioto County juvenile judge recused, and a retired judge of the Hamilton County Common Pleas Court, Juvenile Division, was assigned to preside over the matter.

{¶13} On November 13, 2025, the juvenile court conducted an “initial hearing” at which M.W. and K.R., who was charged in connection with the same incident as M.W., appeared. The court explained that because the girls did not have counsel, “we really can’t go forward very much.” The court orally granted the State’s motion to amend the victim’s name in Count Two from J.B. to N.L. The court informed M.W. and K.R. that the next time they were in court, they would be asked to enter a plea to the charges and that if they denied them, there would be a trial at which they had various rights. The court explained the next hearing would be November 20, 2025, and that it did not like that date because it was “a full two months from the day of the alleged incident” and “especially when you’re dealing in Juvenile Court, you want to get to it right away, okay, before everybody forgets why we’re even here.” But the date “can’t be helped because I’m a travelling judge and I only have certain days that I can get here, there are only certain days that the attorneys can get here, and there are only certain days that the courtroom is available.” And “it looks like November twentieth is the next day that hits” After the hearing, the court issued an entry granting the motion to amend, appointing counsel

for M.W., entering “a plea of deny” on M.W.’s behalf, and continuing the matter “for a further arraignment and plea hearing” on November 20, 2025.¹

{¶4} At the November 20, 2025 hearing, the court stated that it “was wondering if we could have a plea today but apparently we’re not going to be able to do that” and that it was going to continue the case because the alleged victims were not there. The court noted that it “heard some things from counsel about that there wasn’t [sic] any serious injuries here” and “that this might be something that could be resolved in a way that doesn’t uh, result in a record given to children who are here for the first time.” But the State wanted to know the feelings of the alleged victims before agreeing to anything. And the court wanted to know “what they’re thinking before I order anything in opposition to the State or defense counsel.” The court indicated that at the next hearing, it would ask the girls whether they wanted “to admit or deny this all depending upon what we know that day.” The assistant prosecutor then stated that while the State opposed a diversion program given the nature of the charges, it did not “oppose trying to work this case out,” but he had “not heard directly from the two alleged victims.” The assistant prosecutor stated, “They were notified but chose not to be here today, um did not respond to our victim advocate’s last call to my knowledge. Um, but I would need to speak with them before I can enter any other agreements.” Later, the court stated that “there cannot be any contact with the alleged victims,” and K.R.’s mother indicated one of them was still K.R.’s boyfriend but that K.R. had no contact with the other alleged victim. The court indicated the next hearing date would be December 17, 2025, which was “the first date that we could get where we could all be here”

¹ This entry contains a scrivener’s error indicating the juvenile defendant under consideration is K.R. when it was M.W.

{¶5} After the hearing, the court issued an entry stating:

Under the present circumstances of this case, the Court might consider actions in accordance with Juvenile Rule 29 or the Court's diversion program.

The assistant prosecutor, defendant's counsel, and the Court need to assess the alleged victims' wishes and the impact upon them in connection with the alleged incidents.

This matter is continued for the presence of the alleged victims and further consideration of the Court.

{¶6} At the December 17, 2025 hearing, the court explained the alleged victims were not there, and it did not "know what we should do." The assistant prosecutor stated it was his understanding that the matter had "been set for arraignment multiple times," that the alleged victims had been notified by mail, email, and voicemail, that they had not answered calls from the victim advocate, and that he had not been able to speak with them. However, it was still the State's intention to "go forward with this matter," and "if an adjudication is scheduled," the State would subpoena the alleged victims and other witnesses. K.R.'s counsel thought the appropriate action was to set the matter for adjudication and "see how things progress from there." M.W.'s counsel said "at this time we would enter a plea of denial to both counts" and asked the court to set the matter for "pretrial." M.W.'s counsel noted that he spoke to K.R. in the hallway, and she indicated that "she is still dating one of the alleged victims." M.W.'s counsel said, "I think both alleged victims' cooperation or interest in this case probably speaks volumes." Then K.R.'s counsel said he could not recall if he had entered a plea of denial for K.R., but if not, would do so now.

{¶7} The court asked the girls' mothers what they thought should be done. K.R.'s mother stated, "I think a dismissal because I don't think it was as big as it's being blown

up to be. Um, but - - I also don't, I mean the victims aren't reaching back to you know the Victim's Advocate or anything like that. And I think that they don't want to move forward." M.W.'s mother said, "I agree," and "I feel like you know, [K.R.] and the alleged victim are still a thing, you know what I mean. Like he knows that the court proceeding's going on so he doesn't, you know what I mean, like he don't, he doesn't also want to move forward or he would be here." The court asked the mothers about the girls. K.R.'s mother said that K.R. was a senior at Vo-tech, gets good grades, had been working for almost a year, had "never been in trouble," and was "good at home." She was proud to stand behind her. M.W.'s mother said that M.W. had "grown up with her because I was a teen mom. So I am, I'm very proud. She's my little best friend. Um, she is a junior in high school. She does band. Um, she takes her friendships very seriously. Um, she makes me proud. I'm very proud of my daughter." She was "ten toes behind her."

{¶18} The court asked the girls about what happened. K.R. said that her boyfriend cheated on her with another girl, that she felt disrespected, and that she "kind of just acted out," but it was "in the past." She regretted what happened. M.W. told the court, "I was there but I didn't like hit no one or anything like that and I - - I'm not in contact with these victims. It's not that I don't dislike them, it's just - - they're not really anything like, any relationship to me."

{¶19} The court stated:

We're dealing with something that happened in September? This is a Juvenile Court. This is not an adult criminal court. This is a Juvenile Court. This is a thing that teenagers get into commonly as juveniles. Relationship arguments, relationship fights, and things like that. These are things that happen and as I may have said once before, quite often. Especially if there's a period of time that goes by between the alleged incident and the court date, um the children who were involved in the altercation are playing together on the playground. That's the nature of a Juvenile Court. There's

no help that the Juvenile Court can do. These girls don't need to be on probation. They don't need to have a criminal record or delinquency record. [K.R.'s] eighteen years old now. [M.W.'s] younger, but they don't need to have a record over this kind of thing where I believe that the victims are not interested in pursuing this. So, I'm dismissing the case - - um, over the objections of the State. I understand their objections, but I think this should be over with now after three months, after three court hearings, after the victims were instructed to be here and did not come. So, I think I've given them all the opportunity that I need to and I think that this thing should be dismissed and handled with the parents and the school. Did this happen at school?

After the mothers said it did not, the court said, "This should be covered by the parents" and asked what parental discipline had been exercised in the matter. M.W.'s mother said the girls "haven't hung out since" but "[n]ot because of punishment, just because life got caught up, you know, and like these two have been best friends since they were like nine and ten. And I feel like that in itself has punished, I know it's punished my daughter." K.R.'s mother said, "I'm sure that it's punished [K.R.]" M.W.'s mother then said:

Like they're their go-to to each other. And like, where my daughter had some feelings towards her boyfriend (points to [K.R.]) at the time and they stayed together, you know what I mean, like that has definitely, not hindered their friendship, but it's kind of, you know what I mean, like that's her (points to [K.R.]) boyfriend that she loves, you know what I mean, like don't mess with him. But also, you know, she doesn't see eye to eye with that, so they don't hang out as much anymore and I feel like that is a huge, huge difference since September.

The court asked if the mothers could "take care of this at home?" They responded, "Mhmm." The court said, "Do it, okay? Case dismissed. That's it."

{¶10} The same day, the court issued an entry dismissing M.W.'s case. The entry states:

This matter was continued for the presence of the alleged victims and further consideration of the Court. Despite being notified, the alleged victims did not appear today and did not respond to inquiries by the prosecutor's office and the Victim Advocate.

The juvenile defendant is 16 years old. She has never been in trouble before and has no criminal or delinquency record. She is a good student. Her mother reports no problems at home and describes her daughter as a child she is proud to stand beside.

The alleged incident took place over 3 months ago. The juvenile defendant has appeared in Court three times. One of the alleged victims is the co-defendant's boyfriend and they are still dating. The incident appears to have involved a boyfriend-girlfriend argument and physical fight, and included another alleged victim. The juvenile defendant denies any physical involvement on her part. No injuries were reported. There are no issues regarding restitution.

The Court hereby dismisses this matter in the best interests of the child and community. Nothing is to be gained by creating a juvenile record, by placement in detention, placement on probation or any other disposition for this juvenile defendant. It does not appear that the alleged victims are interested in pursuing prosecution. The mother has exercised parental discipline at home. The juvenile defendant has not been in contact with her co-defendant/best friend since the alleged incident. The purposes of a Juvenile Court are met by dismissal of this case under the circumstances.

The state objects to the dismissal.

The juvenile defendant entered a denial in this matter. In accordance with the oral motion of the juvenile defendant's attorney, any statements made by the juvenile defendant in response to questioning by the Court or reported in this entry are hereby declared inadmissible in any further proceedings.

The State filed an appeal of right under R.C. 2945.67(A).

II. ASSIGNMENTS OF ERROR

{¶11} The State presents two assignments of error:

Assignment of Error 1. The trial court erred as a matter of law by sua sponte dismissing the Complaint without properly following the procedures outlined by Ohio Juvenile Rule 29 and failing to conduct an adjudicatory hearing.

Assignment of Error 2. The trial court's dismissal of the Complaint violated the constitutional rights of the alleged victims pursuant to Marsy's Law and the Ohio Constitution.

III. ASSIGNMENT OF ERROR 1

A. Positions of the Parties

{¶12} In the first assignment of error, the State contends the juvenile court erred as a matter of law by sua sponte dismissing the complaint without properly following the procedures in Juv.R. 29 and failing to conduct an adjudicatory hearing. The State maintains that de novo review applies. The State asserts Juv.R. 9 is inapplicable because no community resources were used to ameliorate the situation, and formal court action was initiated with the filing of the complaint. The State suggests Juv.R. 22 is inapplicable because M.W. did not file a pretrial motion to dismiss, and the court made no findings of any defect in the complaint. The State claims Juv.R. 29 governs this matter. The State maintains that the “court complied with Juv.R. 29(B) to a point but never made specific findings pertaining to Juv.R. 29(B)(6).” The State asserts that once a plea of denial is entered, pursuant to Juv.R. 29(E) and (F), the court should have conducted an evidentiary hearing, determined the issues considering sworn testimony, and made a finding whether the allegations in the complaint were proven beyond a reasonable doubt. But the court refused to schedule an adjudicatory hearing. Instead, it elicited and relied on unsworn statements from the alleged delinquent children and their mothers, made factual findings without conducting an evidentiary hearing or taking sworn testimony, and dismissed the complaint, even though the Juvenile Rules do not permit a summary judgment. In doing so, the court acted “in violation of basic due process.”

{¶13} M.W. contends that Juv.R. 29 outlines the procedure for an adjudicatory hearing, but as the State pointed out, the juvenile court never scheduled an adjudicatory hearing at which evidence could be presented. M.W. maintains that nothing in the rules

mandated that the court proceed to an adjudicatory hearing, so Juv.R. 29 does not govern this dispute. She asserts that Juv.R. 9 grants a juvenile court broad authority to dismiss a delinquency complaint without a formal adjudicatory hearing and that such dismissal is subject to review under the abuse of discretion standard.² M.W. maintains that *In re M.D.*, 38 Ohio St.3d 149 (1988), and *In re D.S.*, 2017-Ohio-8289, show that the adjudicatory hearing is the formal action Juv.R. 9 is designed to avoid. She claims the contention that dismissal under Juv.R. 9 is not appropriate once a complaint is filed was contemplated and rejected by the majority in *In re D.S.*, even though it was advanced in Justice (now Chief Justice) Kennedy's dissent. M.W. asserts that here, the juvenile court listed multiple reasons for dismissal, and while the State may disagree with them, a court which exercises its discretion based on "a list of specific reasons . . . does not act arbitrarily." And she maintains that "[w]hen the alleged victims refused to appear at multiple hearings, despite ample notification, the court correctly determined that proceeding to a formal adjudicatory hearing was improper in a case where no parties suffered any harm, [she] denied criminal wrongdoing, and no party had any prior criminal record."

{¶14} In its reply brief, the State contends *In re D.S.* was a plurality opinion. The State maintains that the dissent correctly pointed out that Juv.R. 9 does not contain the word "dismiss" and that the only applicable rule which authorizes dismissal of a complaint is Juv.R. 29. The State also claims that even if an abuse of discretion standard applies, the juvenile court abused its discretion.

² M.W. asserts that even though the dismissal entry noted that the State objected to the dismissal, "no objection was made on the record," but M.W. does not assert that this alleged failure to object warrants plain error review. In any event, we agree with the State that its objection to dismissal is implicit in its statements to the court regarding its intention to go forward with the matter despite the failure of the alleged victims to appear. Notably, when the court orally stated that it was dismissing the case "over the objections of the State," none of the parties corrected the court or argued that no explicit objection had been made.

B. Juvenile Rules

{¶15} The juvenile court did not indicate under what authority it was dismissing the delinquency complaint. The parties have not identified any relevant statutory authority. The Juvenile Rules the parties direct us to are Juv.R. 9, 22, and 29.

1. Juv.R. 22

{¶16} Juv.R. 22(A) states: “A party may move to dismiss the complaint or for other appropriate relief.” Juv.R. 22(D) states:

Any defense, objection or request which is capable of determination without hearing on the allegations of the complaint may be raised before the adjudicatory hearing by motion. The following must be heard before the adjudicatory hearing, though not necessarily on a separate date:

(1) Defenses or objections based on defects in the institution of the proceeding;

(2) Defenses or objections based on defects in the complaint (other than failure to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceeding);

. . .

{¶17} Juv.R. 22 has little relevance to the matter at hand. Juv.R. 22(A) permits a “party” to move to dismiss the complaint. The term “party” includes “the child’s parent or parents.” Juv.R. 2(BB). Thus, under Juv.R. 22(A), M.W.’s mother could and effectively did move to dismiss the complaint, meaning the dismissal was not sua sponte as the State contends. But that does not resolve the issue whether the juvenile court properly dismissed the complaint. And while Juv.R. 22(D) addresses defenses or objections based on defects in the institution of the proceeding or in the complaint, the juvenile court did not dismiss the complaint in this case on such grounds.

2. Juv.R. 29

{¶18} Juv.R. 29 governs adjudicatory hearings, which are hearings “to determine whether a child is a juvenile traffic offender, delinquent, unruly, abused, neglected, or dependent or otherwise within the jurisdiction of the court.” Juv.R. 2(B). Juv.R. 29(B) provides that at the beginning of the hearing, the court shall perform certain tasks, including:

(6) Inquire of the prosecutor if the victim requested to confer and whether the prosecutor conferred and gave timely notice to the victim if requested. If the victim is not present and the court determines that timely notice was not given to the victim, the prosecutor failed to confer with the victim, or the victim was not adequately informed of the nature of the proceeding, the court shall neither accept a plea nor amend or dismiss a complaint and must continue the hearing. The matter may proceed if the prosecutor states the victim has been appropriately notified, is not reachable, or is uncooperative.

Then, pursuant to Juv.R. 29(C), “[t]he court shall request each party against whom allegations are being made in the complaint to admit or deny the allegations.” Juv.R. 29(E) states:

If a party denies the allegations the court shall:

(1) Direct the prosecuting attorney or another attorney-at-law to assist the court by presenting evidence in support of the allegations of a complaint;

(2) Order the separation of witnesses, upon request of any party;

(3) Take all testimony under oath or affirmation in either question-answer or narrative form; and

(4) Determine the issues by proof beyond a reasonable doubt in juvenile . . . delinquency . . . proceedings

{¶19} Juv.R. 29 (F) states:

Upon the determination of the issues, the court shall do one of the following:

(1) If the allegations of the complaint, indictment, or information were not proven, dismiss the complaint;

(2) If the allegations of the complaint, indictment, or information are admitted or proven, do any one of the following, after compliance with Article I, Section 10a of the Ohio Constitution and all provisions in the Revised Code setting forth victim rights:

- (a) Enter an adjudication and proceed forthwith to disposition;
- (b) Enter an adjudication and continue the matter for disposition for not more than six months and may make appropriate temporary orders;
- (c) Postpone entry of adjudication for not more than six months;
- (d) Dismiss the complaint if dismissal is in the best interest of the child and the community.

. . .

{¶20} In this case, the juvenile court found dismissal was in the best interests of the child and community, which is the standard for dismissal in Juv.R. 29(F)(2)(d), but to the extent court dismissed the complaint under that provision, it erred because the court did not comply with other provisions of Juv.R. 29. Whether the court complied with the Juvenile Rules presents a question of law we review de novo. See generally *Davis v. Unknown Heirs of Chadwick Damron*, 2026-Ohio-1469, ¶ 9 (4th Dist.) (“Whether a trial court complied with the Ohio Rules of Civil Procedure presents a question of law we review de novo”). The Juvenile Rules do not distinguish between arraignment and adjudicatory hearings. Instead, Juv.R. 29(B), which sets forth what the court must do at the beginning of the adjudicatory hearing, and Juv.R. 29(C), which requires that the court ask each party against whom allegations are being made in the complaint to admit or deny them, “constitute the parallel of a criminal arraignment as provided under Crim. R. 10.” *In re Feister*, 2002 WL 253843, *2 (5th Dist. Feb. 19, 2002). The absence of an alleged victim does not prevent the matter from proceeding where, as here, the prosecutor states that the victim has been appropriately notified. Juv.R. 29(B)(6). If the

party denies the allegations, Juv.R. 29(E) mandates that the court, among other things, direct the prosecuting attorney (or another attorney-at-law) to present evidence in support of the allegations, take all testimony under oath or affirmation, and determine the issues by proof beyond a reasonable doubt in a delinquency proceeding. Here, after M.W. entered a denial, the court did not comply with the provisions of Juv.R. 29(E). Thus, the court could not have dismissed the complaint under Juv.R. 29(F)(1) on the ground that the allegations were not proven or under Juv.R. 29(F)(2)(d) on the ground that even though the allegations were proven, dismissal was in the best interest of the child and the community.

3. Juv.R. 9

{¶21} The version of Juv.R. 9 in effect during the lower court proceedings is the one which took effect July 1, 2024, and stated:³

Intake

(A) Court action to be avoided

In all appropriate cases formal court action should be avoided and other community resources utilized to ameliorate situations brought to the attention of the court.

(B) Notification

If formal court action is avoided pursuant to division (A) of this rule, the court shall notify the prosecuting attorney and the victim of the offense in accordance with Chapter 2930 of the Revised Code.

(Emphasis in original.) The rule does not explicitly mention dismissal. Therefore, we must determine whether a court may dismiss a delinquency complaint under Juv.R. 9(A), and if so, whether dismissal in this case was appropriate under that rule.

³ The current version of the rule, which took effect on July 1, 2026, made no changes to Juv.R. 9(A) or (B). It added Juv.R. 9(C), which addresses pre-initial appearance diversion.

a. *In re M.D.*

{¶22} In *In re M.D.*, M.D., age 12, was charged with one delinquency count of complicity to rape in violation of R.C. 2907.02 and 2923.03(A)(4). 38 Ohio St.3d at 150. The complaint alleged that she caused a five-year-old boy to rape a five-year-old girl. *Id.* M.D. entered a denial, and her counsel moved to dismiss, arguing that prosecution of a 12-year-old child for a felony sex crime involving an incident of “playing doctor” was repugnant to R.C. 2151.01, Juv.R. 9(A), and local intake policy for juvenile sex offenses, all of which implicated constitutional rights and “the psychological and social well-being of young children.” *Id.* at 150-151. The trial court overruled the motion, and during trial, the other children testified that “they, with M.D., were ‘playing doctor,’ and that at the direction of M.D., [the boy] dropped his pants and placed his penis in [the girl’s] mouth, ostensibly because M.D. had instructed them to take temperature that way.” *Id.* at 150. M.D. was adjudicated a delinquent child, and the appellate court affirmed. *Id.*

{¶23} The Supreme Court unanimously reversed and vacated the delinquency adjudication. *Id.* The court stated that “[t]his case presents an issue involving the prosecution of juveniles under the age of thirteen as delinquents for conduct, characterized as ‘playing doctor,’ allegedly constituting felony sex crimes.” *Id.* The court held that “to bring such charges in juvenile court, under the instant circumstances, is contrary to R.C. Chapter 2151 and Juv.R. 9(A), violates the intake policy of the Cuyahoga County Juvenile Court, and public policy in general, and thus constitutes a denial of due process of law.” *Id.* The court explained there was no transcript of the proceedings below, but M.D. “challenges only the discretion initially exercised by the prosecutor in bringing the instant charges,” and “[s]uch a challenge may be decided on the documents and

exhibits found in the record certified to this court, in addition to the findings of the juvenile court below.” *Id.* at 151. The Supreme Court’s review of the case led “to the inescapable conclusion that the conduct of appellant and the other children involved herein did not constitute a sexual assault or complicity thereto, as proscribed by R.C. 2907.02 and 2923.03, but rather could more accurately be characterized as childhood curiosity and exploration.” *Id.* And “[a]djudging a child as ‘delinquent’ under circumstances where, as here, the child has neither committed a crime nor violated a lawful order of the juvenile court is obviously contrary to R.C. Chapter 2151.” (Footnote omitted.) *Id.* at 152.

{¶24} The Supreme Court also stated that even if the conduct technically involved a rape, prosecuting M.D. violated “the underlying public policy of this state as expressed in R.C. Chapter 2151 and the Rules of Juvenile Procedure.” *Id.* at 152-153. The court stated, “The best interests of the child and the welfare and protection of the community are paramount considerations in every juvenile proceeding in this state.” *Id.* at 153. The court explained that “[t]he overriding rule upon intake of a child is that formal court action should be a last resort to resolving juvenile problems.” *Id.* At the time, Juv.R. 9(A) contained the same language as the July 1, 2024 version and current version of the rule, and Juv.R. 9(B) stated:

(B) Screening; referral.

Information that a child is within the court’s jurisdiction may be informally screened prior to the filing of a complaint to determine whether the filing of a complaint is in the best interest of the child and the public.

(Quotation marks omitted.) *Id.*, quoting Juv.R. 9(B). And “nothing in the record or in the arguments of the prosecutor” persuaded the court “that the ‘best interest of the child and

the public' were served by the filing of the instant complaint." *Id.* at 153-154. The court stated, "Quite to the contrary, legal counsel for the family of the alleged five-year-old 'rapist' petitioned the juvenile court judge prior to trial to dismiss this action, as 'the trauma which the impending trial is causing and could cause the family is far more serious than the alleged acts, which * * * [the family] truly believe[s] [were] just kids playing doctor.'" (Ellipsis and bracketed text in original.) *Id.* at 154. The court stated that "[i]t was inappropriate" that the "case was filed in juvenile court," "it reasonably devolved on the juvenile judge to dismiss it pursuant to the mandates of R.C. Chapter 2151," and the failure to do so "resulted in a denial of M.D.'s constitutional rights to due process under the law" *Id.* at 154.

b. *In re D.S.*

{¶25} In *In re D.S.*, D.S., age 12, was charged with 3 delinquency counts of gross sexual imposition in violation of R.C. 2907.05(A)(4). 2017-Ohio-8289, at ¶ 2 (lead opinion). The alleged victim was almost ten years old. *Id.* Count one alleged D.S. engaged in sexual contact by touching and rubbing the victim's penis on numerous occasions, and counts two and three alleged D.S. engaged in sexual contact by having anal intercourse with and performing fellatio on the victim. *Id.* The complaint did not allege use of force or threat of force. *Id.* D.S. moved to dismiss on the ground that R.C. 2907.05(A)(4) was unconstitutional as applied to him because absent an allegation of force or threat of force, there was "no reasoned basis for deciding which of two children under the age of 13 had a purpose of sexual gratification." *Id.* at ¶ 3. Alternatively, D.S. moved to dismiss pursuant to Juv.R. 9(A), in accordance with *In re M.D.* *Id.* A magistrate held a hearing on the motion and decided that it should be denied, but the juvenile court dismissed the case.

Id. at ¶ 3-4. “Referring to the allegations in the complaint, the court stated that since ‘[t]hese children are quite close in age, it is arbitrary to decide who should be charged and who should not, given there is no threat of force or violence.’” *Id.* at ¶ 4. Thus, the court held R.C. 2907.05(A)(4) unconstitutional as applied to D.S. *Id.* The court also held dismissal was proper under Juv.R. 9, stating:

there are alternative methods available to provide for the treatment needs of both children and to protect the community as a whole without the use of formal Court action. If the parents are not able to provide the treatment necessary, a dependency action may be filed on behalf of the child needing the services. The Court does not find it is in the best interest of either child, given the facts of this case, to continue with the prosecution of this matter.

Id. The court of appeals reversed, and in a 3-1-3 decision the Supreme Court reversed the judgment of the court of appeals and reinstated the juvenile court’s order dismissing the case. *Id.* at ¶ 13 (lead opinion); ¶ 14-15 (Fischer, J., concurring in judgment only).

{¶26} The lead opinion, authored by former Justice O’Neill and joined by former Chief Justice O’Connor and former Justice O’Donnell, concluded dismissal was proper under Juv.R. 9(A) and did not reach the issue whether R.C. 2907.05(A)(4) was unconstitutional as applied to D.S. *Id.* at ¶ 1, 11-12. The lead opinion stated:

Under Juv.R. 9(A), some—but not all—juvenile complaints go to a “formal” delinquency proceeding. The rule provides: “In all *appropriate cases* formal court action should be avoided and other community resources utilized to ameliorate situations brought to the attention of the court.” (Emphasis added.) As is true of all the Juvenile Rules, Juv.R. 9(A) is meant to be “liberally interpreted and construed” in order “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,” Juv.R. 1(B)(3), and “to protect the public interest by treating children as persons in need of supervision, care and rehabilitation,” Juv.R. 1(B)(4). Clearly, juvenile courts are vested with considerable discretion by virtue of the language of the foregoing rules. For that reason, we will not reverse an order to dismiss a complaint under Juv.R. 9(A) absent an abuse of discretion.

Id. at ¶ 8. The lead opinion stated that the holding in *In re M.D.* “necessarily contemplated that in an appropriate case, a juvenile court may reasonably exercise its discretion to dismiss a juvenile complaint upon the evidence available on the face of the complaint.”

Id. at ¶ 10.

{¶27} The lead opinion further stated:

[W]e hold that the juvenile court did not abuse its discretion by dismissing the matter pursuant to Juv.R. 9(A). The juvenile court was aware of the relative ages of the children involved in the charged incidents, was aware that there was no allegation of force or threat of force, and was aware of the general nature of the sex acts alleged in the complaint, as developed in the record up to that point through the parties’ filings and the transcript of the hearing held before the magistrate. The court considered these facts, reasoning through and balancing many of the same interests we considered in *M.D.* . . . As the state argued, a full formal court proceeding would no doubt have developed a more detailed factual record upon which the juvenile court might have relied in determining the proper outcome in this case. But that is precisely the kind of proceeding that Juv.R. 9(A) empowers a juvenile court to avoid—a review of the details of a sexual interaction between children under the age of 13. A juvenile court’s primary concern is not always to determine culpability for acts that would be crimes if committed by an adult. As we have recognized in the past, holding a formal proceeding to determine whether a child was motivated by innocent curiosity or by culpable sexual gratification may be as bad or worse for the children involved—and for society—as was the act itself. See *M.D.* The juvenile court must exercise its discretion in deciding the best course, and we owe substantial deference to the court’s decision.

Id. at ¶ 11.

{¶28} Justice Fischer concurred in judgment only with an opinion stating, “I would resolve this case by answering two narrow questions: (1) is a ruling under Juv.R. 9(A) to dismiss charges reviewed for an abuse of discretion? The answer is yes. And (2) did the juvenile court abuse its discretion in this case? The answer is no.” *Id.* at ¶ 14 (Fischer, J., concurring in judgment only). Thus, Justice Fischer agreed “with the lead opinion’s conclusions” and concurred in the judgment but did not join the lead opinion because it

“uses language that could be interpreted as an expansion of the material rights of juveniles when there is no basis in law to support such an expansion.” *Id.* at ¶ 14-15.

{¶29} Justice Kennedy authored a dissenting opinion joined by former Justice French and Justice DeWine. Justice Kennedy explained that “*In re M.D.* did not authorize a juvenile court to use Juv.R. 9(A) to dismiss a case after formal charges have been filed” *Id.* at ¶ 27 (Kennedy, J., dissenting). Moreover, “the language of Juv.R. 9 is plain and unambiguous and does not grant a juvenile court authority to dismiss a formally filed charge” *Id.* at ¶ 16. “Despite the lead opinion’s conclusion that it is permissible for a juvenile court to use Juv.R. 9 to dismiss a formal complaint, the word ‘dismiss’ does not appear in Juv.R. 9.” *Id.* at ¶ 34. “While Juv.R. 1(B) requires us to liberally construe the Juvenile Rules, that mandate does not give us the authority to rewrite Juv.R. 9, or to simply ignore the wording of the rule or to add words to it[.]” (Citations omitted.) *Id.* And “[b]ecause the juvenile court had no authority pursuant to Juv.R. 9 to dismiss the formal complaint, the court abused its discretion.” *Id.* at ¶ 37. Justice Kennedy stated that “[b]y adding the word ‘dismiss’ to Juv.R. 9 and ignoring its context within the Juvenile Rules, a majority of this court has exceeded our proper judicial role and unwisely rewritten Juv.R. 9, thereby empowering juvenile courts—seemingly at will—to dismiss formal complaints without the fully developed record that Juv.R. 29(F)(2)(d) requires.” *Id.* at ¶ 50. Justice Kennedy also concluded that “R.C. 2907.05(A)(4) is not unconstitutionally vague or arbitrary as applied to appellant, D.S.” *Id.* at ¶ 17. Thus, Justice Kennedy would have affirmed the judgment of the court of appeals. *Id.* at ¶ 18.

c. Analysis

{¶30} The opinion authored by former Justice O’Neill in *In re D.S.* is a lead opinion, as opposed to a majority opinion or plurality opinion. A majority opinion is one “joined in by more than half the judges considering a given case.” *Black’s Law Dictionary* (12th Ed. 2024). A plurality opinion is one “lacking enough judges’ votes to constitute a majority, but receiving more votes than any other opinion.” *Id.* “It is possible for a decision to fail to contain even a plurality opinion, if two or more non-majority opinions are joined by the same number of judges.” *Unkart v. State*, 400 S.W.3d 94, 100, fn. 31 (Tex.App. 2013). “In that case, one of the opinions announces the judgment of the court and can be referred to simply as the ‘lead opinion.’” *Id.* Because the opinion authored by former Justice O’Neill was joined by the same number of justices as the dissenting opinion, it is a lead opinion. And because four justices declined to join the lead opinion, it is not binding authority and statements in it cannot be characterized as a holding of the Supreme Court. See Ohio Const., art. IV, § 2(A) (“A majority of the supreme court shall be necessary . . . to render a judgment”); *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 2012-Ohio-5017, ¶ 29 (portion of opinion four justices declined to join “is not a holding of this court”); and *State ex rel. Pennington v. Bivens*, 2021-Ohio-3134, ¶ 30 (case in which four justices declined to join per curiam opinion “is not binding on this court”). Therefore, we are free to agree, and do agree, with Justice Kennedy that “*In re M.D.* did not authorize a juvenile court to use Juv.R. 9(A) to dismiss a case after formal charges have been filed” *In re D.S.*, 2017-Ohio-8289, at ¶ 27 (Kennedy, J., dissenting).

{¶31} Nonetheless, it is evident that in *In re D.S.*, four justices determined that a juvenile court has authority to dismiss a delinquency complaint under Juv.R. 9(A) and that

the decision to do so is reviewed for abuse of discretion. Although Juv.R. 9(B) was amended several years after *In re D.S.*, Juv.R. 9(A) remains the same, and it is not evident that the amendment has any impact on the position of those justices, as Juv.R. 9(B) is not mentioned in the lead opinion or opinion concurring in judgment only. Therefore, while we agree with Justice Kennedy that “the language of Juv.R. 9 is plain and unambiguous and does not grant a juvenile court authority to dismiss a formally filed charge,” *id.* at ¶ 16, we are constrained to follow the position on which four justices agreed, even though this agreement did not result in a majority opinion. See *generally State v. Bond*, 2022-Ohio-4150, ¶ 17 (treating position agreed upon by four justices as binding even though it did not result in a majority opinion, stating that “[b]ecause four justices determined in [*State v. West*, 2022-Ohio-1556,] that a plain-error analysis is still necessary when the party asserting a structural error did not object to that error in the trial court, [*id.* at ¶ 35] (plurality opinion), ¶ 38-41 (Donnelly, J., dissenting), we must next determine to what extent, if any, the existence of a public-trial violation here informs the plain-error analysis under Crim.R. 52(B)”). Accordingly, we conclude that under Juv.R. 9(A), a juvenile court has authority to dismiss a delinquency complaint and that the decision to do so is reviewed for an abuse of discretion.

{¶32} But even if the juvenile court dismissed the complaint in this case under Juv.R. 9(A), the decision to do so constitutes an abuse of discretion. “A trial court abuses its discretion when it makes a decision that is unreasonable, unconscionable, or arbitrary.” *State v. Darmond*, 2013-Ohio-966, ¶ 34, citing *State v. Adams*, 62 Ohio St.2d 151, 157 (1980). “An abuse of discretion includes a situation in which a trial court did not engage in a “sound reasoning process.”” *Id.*, quoting *State v. Morris*, 2012-Ohio-2407, ¶ 14,

quoting *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990). And “[g]enerally, an appellate court will defer to a trial court’s factual findings if competent and credible evidence supports those findings.” *State v. Dearth*, 2025-Ohio-4695, ¶ 20 (4th Dist.), quoting *State v. Havens*, 2022-Ohio-1712, ¶ 11 (4th Dist.), quoting *State v. Brown*, 2016-Ohio-1453, ¶ 5 (4th Dist.). In this case, the dismissal was not based on a sound reasoning process. As we explain below, it was premised on factual findings the court made based on statements which are not evidence and other factors which do not support a conclusion that dismissal was in the best interests of both M.W. and the community.

{¶33} The juvenile court found that M.W. had “never been in trouble before,” that M.W. had “no criminal or delinquency record,” that M.W. was “a good student,” that her mother “reports no problems at home,” and that her mother “describes her daughter as a child she is proud to stand beside.” But no evidence supports these findings. The court made at least some of these findings based on statements it believed M.W.’s mother made. However, while M.W.’s mother indicated she was proud to stand behind her daughter, M.W.’s mother did not state that M.W. had never been in trouble before, had no criminal or delinquency record, was a good student, or had no problems at home. It was K.R.’s mother who stated that K.R. had never been in trouble, got good grades, and was good at home. But even if M.W.’s mother had made similar statements, her statements to the court were unsworn, and “[u]nsworn statements are not evidence.” *State v. Reynoso*, 2025-Ohio-3119, ¶ 18 (11th Dist.). We observe that in a discovery response filed November 24, 2025, the assistant prosecutor stated that M.W. had no criminal record which was known at that time. And at the November 20, 2025 hearing,

the court indicated that counsel had told it the children were “here for the first time,” which could be interpreted to mean they had no criminal or delinquency record. But “it is well established that ‘statements of counsel are not evidence.’” *Estate of Vasquez v. Tallmadge Health & Rehab Center*, 2026-Ohio-1647, ¶ 35 (8th Dist.), quoting *Hersh v. Cuyahoga Cty. Bd. of Revision*, 2020-Ohio-3596, ¶ 15 (8th Dist.).

{¶34} The court found one alleged victim was M.W.’s co-defendant’s boyfriend and that they were still dating, that the incident “appears to have involved a boyfriend-girlfriend argument and physical fight, and included another alleged victim,” that M.W. “denies any physical involvement on her part,” that “[n]o injuries were reported,” and that “[t]here are no issues regarding restitution.” The findings about K.R. still dating one alleged victim and the incident appearing to involve a boyfriend-girlfriend argument are supported only by unsworn statements and statements of counsel, which again, are not evidence. *Reynoso* at ¶ 18; *Estate of Vasquez* at ¶ 35. Nothing in the record supports the finding that no injuries were reported or that there are no restitution issues. At the November 20, 2025 hearing, the court did comment that it had “heard some things from counsel about that there wasn’t [sic] any serious injuries here.” But no “serious injuries” is not the same as no injuries, and again, counsel’s statements are not evidence. *Id.* at ¶ 35. Moreover, M.W.’s unsworn denial of any physical involvement on her part is not evidence or grounds for dismissal. Pursuant to Juv.R. 29(E), a denial triggers the evidentiary portion of the adjudicatory hearing.

{¶35} The court also found “[t]he mother has exercised parental discipline at home. The juvenile defendant has not been in contact with her co-defendant/best friend since the alleged incident.” The court presumably made these findings based on

statements of M.W.'s mother, but again, her unsworn statements are not evidence, *Reynoso* at ¶ 18, and even if they were, the court misunderstood them. When asked about discipline she had exercised, M.W.'s mother stated, "They actually haven't hung out since," referring to M.W. and K.R. But then M.W.'s mother stated that this was "[n]ot because of punishment" and was "just because life got caught up" and that she felt this had punished her daughter. Later, M.W.'s mother stated that the girls "don't hang out as much anymore." These statements do not show that M.W.'s mother exercised any parental discipline or that M.W. and K.R. had "not been in contact" since the alleged incident. At most, they show that the girls either had not hung out or had hung out less since the alleged incident, for reasons unrelated to parental discipline.

{¶36} In addition, the court observed that the alleged incident took place over three months ago and that M.W. had appeared in court three times. M.W. and the community have an interest in the prompt resolution of this matter. However, the complaint alleged that M.W. knowingly caused or attempted to cause physical harm to two people. The complaint was less than two months old when the court dismissed it. Prior continuances were granted in efforts to protect the rights of M.W., protect the rights of the alleged victims, and facilitate a potential resolution. And the record indicates that the continued hearing dates occurred as soon as the schedules of the court and parties allowed. Although M.W. may have been inconvenienced by having to appear again for the evidentiary portion of the adjudicatory hearing, nothing in the record suggests she would have suffered prejudice or harm. Thus, we fail to see how the fact that the alleged incident took place over three months before the dismissal and the fact that M.W. made

three court appearances supports the conclusion that it was in the best interests of both M.W. and the community to dismiss the complaint.

{¶37} Finally, the court stated that “[i]t does not appear that the alleged victims are interested in pursuing prosecution.” But even if the alleged victims’ nonappearance was equivalent to a request for dismissal, as the State points out, R.C. 2930.06(A)(4) states, “A court shall not dismiss . . . a delinquent child complaint solely at the request of the victim . . . and over the objection of the prosecuting attorney” Although the court gave other reasons for dismissal aside from the finding that it appeared the alleged victims were not interested in pursuing prosecution, as explained above, those reasons are either unsupported by evidence or do not support a conclusion that dismissal was in the best interests of both M.W. and the community. And given R.C. 2930.06(A)(4), we conclude the court could not reasonably rely solely on the nonappearance of the alleged victims as a ground for dismissal over the objection of the prosecuting attorney.

4. Conclusion

{¶38} The juvenile court erred when it dismissed the complaint. To the extent the dismissal was premised on Juv.R. 9(A), it was unreasonable and thus an abuse of discretion. To the extent it was premised on Juv.R. 29(F)(2)(d), it was improper because the court failed to conduct an adjudicatory hearing in compliance with the procedures outlined in Juv.R. 29. Accordingly, we sustain the first assignment of error, reverse the juvenile court’s judgment, and remand for further proceedings consistent with this decision. This decision renders the second assignment of error moot, so we need not address it. App.R. 12(A)(1)(c).

JUDGMENT REVERSED.
CAUSE REMANDED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS REVERSED and the CAUSE IS REMANDED. Appellee shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court, Juvenile Division, 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.

Smith, P.J. & Wilkin, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.