

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

IN THE MATTER OF:	:	O P I N I O N
ASHLEY BRANT, ALLEGED UNRULY CHILD	:	CASE NO. 2004-A-0074

Civil Appeal from the Ashtabula County Court of Common Pleas, Juvenile Division, Case No. 2004 JD 00284.

Judgment: Affirmed.

R. Russell Kubyn, Kubyn & Kubyn, Victoria Place, #280, 100 South Park Place, Painesville, OH 44077 (For Appellant-Michael Brant).

DIANE V. GRENDELL, J.

{¶1} Appellant-complainant, Michael Brant, appeals the September 14, 2004 judgment entry of the Ashtabula Court of Common Pleas, Juvenile Division, dismissing his complaint against his daughter, Ashley Brant, as an alleged unruly child. For the following reasons, we affirm the decision of the lower court.

{¶2} Michael Brant was granted permanent custody of Ashley Brant, born May 5, 1988, through the decree of divorce terminating his marriage to Bonnie Brant issued by the Summit County Court of Common Pleas. Since August 1999, Ashley has resided with Michael in Ashtabula County.

{¶3} On June 18, 2004, Michael filed a Verified Complaint alleging Ashley to be “an unruly child pursuant to Ohio Revised Code §2151.022 inasmuch as she does not

submit to reasonable control of her parent by reason of being wayward or habitually disobedient.” Also, on June 18, 2004, Michael filed a Motion to Limit Parental Involvement Based on Contributing To the Unruliness of a Minor Child. In this motion, Michael alleged that Bonnie was encouraging Ashley to be “disrespectful” and “verbally abusive” toward her custodial family so that Ashley would be allowed to live with Bonnie. The June 18 motion sought to terminate and/or limit Bonnie’s involvement with Ashley.

{¶4} On August 2, 2004, a hearing was held before a magistrate of the juvenile court. At this hearing, Michael’s attorney stated Ashley’s unruly behavior was precipitated by Bonnie’s efforts to gain custody of Ashley by filing a motion to change custody in Summit County Domestic Relations Court. Michael’s attorney asked the court to exercise exclusive jurisdiction over Ashley and stay the Summit County proceedings. Michael’s attorney stated “it’s [the] father’s feeling that a lot of this behavior and a lot of the problems that have been going on is as a result of this change of custody motion that’s been filed by the mother.” At this hearing, Ashley denied the charges and an attorney was appointed to represent her.

{¶5} On August 17, 2004, another magistrate of the juvenile court dismissed the case “as improvidently filed” and as “an inappropriate use of the Court’s time to pursue civil remedies.” The magistrate noted that “[a] review of these *** pleadings reflects that the filing is a subterfuge to engage in civil litigation between the parents.”

{¶6} Michael filed objections to the magistrate's decision. On September 14, 2004, the trial court overruled Michael's objections and adopted the magistrate's decision. This appeal timely follows.¹

{¶7} On appeal, Michael raises the following assignment of error: "The court erred and committed an abuse of discretion [by] sua sponte dismissing the case." Michael argues that, in dismissing the complaint, the magistrate made "factual assertions without any [evidentiary] proceedings before him." Accordingly, the court's sua sponte dismissal of the action constitutes an abuse of discretion. We disagree.

{¶8} We construe the juvenile court's dismissal of Michael's complaint as an exercise of the court's discretion to decide whether or not to commence juvenile court proceedings. Juvenile Rule 9(A), governing the intake and screening of cases, provides as follows: "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."²

{¶9} The Ohio Supreme Court has held that the goals of the "best interests of the child and the welfare and protection of the community *** are most effectively met at the initial intake of the juvenile by the juvenile court. The overriding rule upon intake of

1. On April 1, 2005, this court remanded the cause for lack of a final appealable order, noting that the August 17, 2004 magistrate's decision "is captioned as a Judgment Entry and a Magistrate's Order/Decision," "is signed by both the magistrate and the trial court judge," and contains "a sentence indicating that the trial court approves and adopts the Magistrate's Decision." On April 5, 2005, the trial court issued another judgment entry approving the decision of the magistrate.

2. "The term 'intake' refers to the process by which a decision is made whether to file a complaint, or, in some instances, to proceed with a previously filed complaint. Intake procedures and decision-making are informal. The intake process, which determines whether an effort will be made to involve the state in the life of the child and his or her family, is an area of discretion that has been largely unaffected by the judicial and legislative reforms that have followed the decision in *In re Gault* [(1967), 387 U.S. 1]." 2 Ohio Family Law § 13.1.

a child is that formal court action should be a last resort to resolving juvenile problems.”
In re M.D. (1988), 38 Ohio St.3d 149, 153.

{¶10} “Whether a [juvenile] proceeding should be dismissed or reach the merits is within the sound discretion of the trial judge.” *In re Arnett*, 3rd Dist. No. 5-04-20, 2004-Ohio-5766, at ¶9. This court has held that, “[i]t is clear from the language of Juv.R. 9 that formal court action is permissible in appropriate cases, and that it is within the discretion of the juvenile court to proceed in such a manner.” *In re Corcoran* (1990), 68 Ohio App.3d 213, 216; accord, *In re Carter* (March 11, 1996), 12th Dist. No. CA95-05-087, 1996 Ohio App. LEXIS 893, at *5.

{¶11} In the present case, the juvenile court determined that it was not in the interest of justice that the complaint against Ashley should proceed. The court’s decision is based on its conclusion that Michael’s complaint was filed as a result of related civil litigation pending in Summit County. This conclusion is supported by Michael’s efforts to stay the proceedings in Summit County, to terminate and/or limit Bonnie’s contact with Ashley, and Michael’s belief that Ashley’s misbehavior is a result of Bonnie’s effort to gain custody of Ashley. We find no abuse of discretion in the juvenile court’s decision. Cf. *In re Smith* (1992), 80 Ohio App.3d 502, 505 (“[t]he juvenile court was entitled to review the appropriateness of filing the complaint *** during the initial intake of the juvenile into the juvenile court system, while keeping in mind that formal action before the juvenile court should be a last resort in dealing with juvenile problems”).

{¶12} We emphasize that a juvenile court’s procedures during intake are informal. Moreover, the juvenile court is entitled to dismiss a complaint even after the

allegations of the complaint are established at the adjudicatory hearing if it is in the best interests of the child or the community. See *In re Dodson* (March 4, 1996), 3rd Dist. No. 17-95-19, 1996 Ohio App. LEXIS 994, at *6-*7, citing Juv.R. 29(F)(2)(d).

{¶13} For the foregoing reasons, the decision of Ashtabula County Court of Common Pleas, Juvenile Division, dismissing Michael's unruly child complaint is affirmed.

CYNTHIA WESTCOTT RICE, J., concurs,

DONALD R. FORD, P.J., dissents with a Dissenting Opinion.

DONALD R. FORD, P.J., dissenting.

{¶14} I respectfully dissent. Nothing in the unruly child complaint of appellant Michael Brant references any collateral issue of a change of custody action in Summit County filed by the natural mother, Bonnie Brant, as a basis for their daughter's alleged unruliness. The sole issue raised in the complaint was whether the daughter was unruly.

{¶15} In its April 5, 2005 judgment entry, the trial court indicated:

{¶16} "[t]his matter came before the [c]ourt pursuant to a [j]udgment [e]ntry of the Eleventh District Court of Appeals remanding this matter to the trial court for the sole purpose of issuing a [j]udgment that is a final appealable order. In case number 04 JD 284, the [c]ourt finds that the complaint therein charging unruliness was improvidently filed as the allegations and demands made in such complaint are not recoverable

pursuant to an unruly complaint, and that this [c]ourt has no jurisdiction to satisfy the demands of the complaint. Further, that the decision of the [m]agistrate is hereby approved by this entry. The complaint is therefore dismissed.”

{¶17} The foregoing judgment entry does not reference remarks made at a pretrial conducted by Magistrate Hough on August 2, 2004, by appellant’s attorney suggesting this underlying reason for unruliness was the result of the natural mother filing for a change of custody of their daughter from appellant to her. The trial court makes no nexus in its judgment entry regarding that item and its dismissal with respect to improvidently filed. Also, there was no responsive pleading which raised the issue of jurisdiction.

{¶18} Even though “intake” procedures are informal, there should be some factual or legal basis on which to dismiss for lack of jurisdiction. See, generally, *In re Fox* (June 8, 2001), 11th Dist. No. 2000-P-0008, 2001 Ohio App. LEXIS 2584. Here, the complaint alone does not support this conclusion.

{¶19} Thus, this writer believes that the trial court erred and committed an abuse of discretion by sua sponte dismissing the case. I would reverse its decision and remand the matter to the trial court.