

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of ALEKSANDAR KORALIJA,  
Minor.

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PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellant,

v

ALEKSANDAR KORALIJA,

Respondent-Appellee.

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UNPUBLISHED  
September 6, 2002

No. 239409  
Washtenaw Circuit Court  
Family Division  
LC No. 02-000004-DL

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

In this delinquency proceeding, the prosecutor appeals as of right from a January 18, 2002, order dismissing charges against respondent for felonious assault, MCL 750.82, two counts of domestic assault, MCL 750.81(2), and malicious obstruction of a telephone call, MCL 750.540. We reverse and remand for further proceedings consistent with this opinion.

On January 7, 2002, a preliminary hearing was held before Referee Gail Alternburg to determine if there was probable cause to authorize the filing of the petition. At the hearing, Washtenaw County Sheriff's Deputy John Voelkner testified that he was dispatched to investigate a domestic assault report on January 5, 2002. Respondent's mother reported that respondent hit her in her eye with a closed fist and hit her on the right forearm with a coat hanger. Deputy Voelkner further testified that respondent's eight-year-old brother, Marco, reported that he tried to stop respondent, but respondent picked him up and threw him to the ground. According to respondent's mother, she tried to call 911 using a cordless phone, but respondent disabled the phone by throwing it to the ground and he severed the wire to the charger for a cellular phone.

Respondent admitted to Deputy Voelkner that he punched his mother in the eye and damaged the telephone equipment. Probation officer Katherine Kinal also interviewed respondent and reported that respondent explained his behavior by stating that "sometimes people need to be abused to make them follow the rules." Respondent's parents were in the midst of divorce proceedings and a custody dispute and Kinal recommended that, because of the

risk of harm to respondent's mother, respondent should be detained pending further proceedings and a family assessment.

Following the preliminary hearing, the referee prepared a summary of her findings and she recommended that the petition be authorized and that respondent be detained, pending a placement review hearing. Thereafter, respondent filed a request for review of the referee's recommendation on two grounds: (1) a lack of probable cause for the felonious assault offense; and (2) detention was neither required nor necessary. The same day, rather than reviewing the specific claims raised by respondent, the trial court dismissed the petition in its entirety. Without oral argument or briefing, the trial court entered the following order:

The Petition is NOT authorized. The Petition is DISMISSED. The minor will be released from the Youth Home to the custody of his parents. Further custody is subject to the continuing jurisdiction of the Family Court in the pending divorce proceedings.

Under the Juvenile Code and court rules addressing the procedures for invoking jurisdiction, the initial step is the authorization of the petition at either a formal preliminary hearing or informal preliminary inquiry. MCL 712A.11 states, in part:

(1) Except as provided in subsection (2), if a person gives information to the court that a juvenile is within section (2)(a)(2) to (6), (b), (c), or (d) of this chapter, a preliminary inquiry may be made to determine whether the interests of the public or the juvenile require that further action be taken. *If the court determines that formal jurisdiction should be acquired, the court shall authorize a petition to be filed.*

(2) Only the prosecuting attorney may file a petition requesting the court to take jurisdiction of a juvenile allegedly within section 2(a)(1) of this chapter. *If the prosecuting attorney submits a petition requesting the court to take jurisdiction of a juvenile allegedly within section 2(a)(1) of this chapter and the court determines that formal jurisdiction should be acquired, the court shall authorize a petition to be filed.* [Emphasis added.]

Furthermore, under MCR 5.932:

The court may authorize a petition to be filed and docketed on the formal calendar if it appears to the court that formal court action is in the best interest of the juvenile and the public.

The trial court's *sua sponte* rejection of the findings and recommendations of the referee and its order dismissing the petition in its entirety makes no reference to the evidence presented at the preliminary hearing or legal arguments offered by the parties. Indeed, the copy of the preliminary hearing transcript provided to this Court is dated January 27, 2002, nine days *after* the trial court's January 18, 2002 ruling. Thus, the trial court failed to point to any record evidence to support its decision or to counter the referee's conclusion that "the interests of the public or the juvenile require that further action be taken." See MCL 712A.11(1).

It is not discernable from the court's order that it was aware of the factual or legal issues raised in this matter and there is no indication of the grounds on which the trial court found the referee's recommendations legally erroneous or factually insufficient. Again, if a determination is made that formal jurisdiction "should" be acquired, the court "*shall* authorize a petition to be filed." MCL 712A.11(1) and (2). Thus, the trial court was required to authorize the petition if it determined that formal jurisdiction should be acquired. While it may very well be within the trial court's discretion to determine whether formal jurisdiction should be acquired, the utter lack of a legal or factual basis for the dismissal, particularly in light of overwhelming evidence that respondent committed the charged offenses, compels us to reverse and remand for consideration of the evidence presented and an explanation of the legal and factual rationale for the dismissal.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly  
/s/ Henry William Saad  
/s/ Michael R. Smolenski