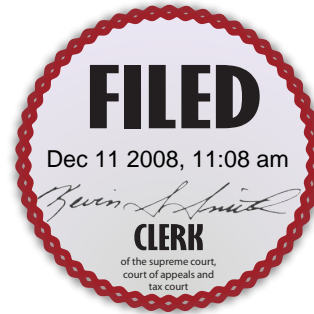


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

**BARBARA S. BARRETT**  
Evansville, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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C.F., )  
Appellant-Defendant, )  
 )  
vs. ) No. 82A01-0807-CR-338  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE VANDERBURGH SUPERIOR COURT  
The Honorable Mary Margaret Lloyd, Judge  
Cause No. 82D02-0803-FD-265

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**December 11, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## Case Summary

C.F. appeals the trial court's denial of his motion to dismiss or transfer jurisdiction. We reverse.

### Issue

C.F. raises two issues, which we consolidate and restate as whether the trial court properly denied his motion to dismiss or transfer jurisdiction.

### Facts

On March 18, 2008, seventeen-year-old C.F. was charged with Class D felony theft and Class A misdemeanor dangerous possession of a firearm. On May 19, 2008, C.F. filed a motion to dismiss or to transfer jurisdiction from adult court to juvenile court. The trial court denied C.F.'s motion. C.F. moved to have the issue certified for interlocutory appeal, and this motion was granted. C.F. now appeals.

### Analysis

As an initial matter, we point out that the State did not file an appellee's brief. "When the appellee has failed to submit an answer brief we need not undertake the burden of developing an argument on the appellee's behalf." Trinity Homes, LLC v. Fang, 848 N.E.2d 1065, 1068 (Ind. 2006). "Rather, we will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error." Id. Prima facie error is defined as at first sight, on first appearance, or on the face of it. Id. If C.F. is unable to meet this burden, we will affirm. See id.

Generally, if a court having criminal jurisdiction determines that a defendant is alleged to have committed a crime before the defendant is eighteen years of age, the court

shall immediately transfer the case to the juvenile court. Ind. Code § 31-30-1-11(a). However, pursuant to the statute effective at the time C.F. was charged, a juvenile court does not have jurisdiction over an individual who was at least sixteen and who was alleged to have violated:

- (1) IC 35-41-5-1(a) (attempted murder);
- (2) IC 35-42-1-1 (murder);
- (3) IC 35-42-3-2 (kidnapping);
- (4) IC 35-42-4-1 (rape);
- (5) IC 35-42-4-2 (criminal deviate conduct);
- (6) IC 35-42-5-1 (robbery) if:
  - (A) the robbery was committed while armed with a deadly weapon; or
  - (B) the robbery results in bodily injury or serious bodily injury;
- (7) IC 35-42-5-2 (carjacking);
- (8) IC 35-45-9-3 (criminal gang activity);
- (9) IC 35-45-9-4 (criminal gang intimidation);
- (10) IC 35-47-2-1 (carrying a handgun without a license);
- (11) IC 35-47-10 (children and firearms);
- (12) IC 35-47-5-4.1 (dealing in a sawed-off shotgun); or
- (13) any offense that may be joined under IC 35-34-1-9(a)(2) with any crime listed in subdivisions (1) through (12);

I.C. § 31-30-1-4(a) (2007).

Effective July 1, 2008, Indiana Code Section 31-30-1-4(a)(10) and (11) were amended to include the specific language “if charged as a felony.” See P.L. 67-2008, Sec. 2. However, based on the Legislature’s own website, it appears that this section was and still is titled, “Juvenile court lacks jurisdiction over individuals at least 16 years old committing certain felonies; retention of jurisdiction by court having adult jurisdiction[.]” See Office of Code Revision Indiana Legislative Services Agency, <http://www.in.gov/legislative/ic/code/title31/ar30/ch1.html> (last visited Nov. 7, 2008)

(emphasis added). Even if this title is unofficial, in the absence of argument to the contrary from the State, we will assume that Indiana Code Section 31-30-1-4(a)(11) always applied to felony charges and that the 2008 amendments simply clarified that point.

C.F. was charged with Class D felony theft and Class A misdemeanor dangerous possession of a firearm. See I.C. §35-43-4-2(a), I.C. § 35-47-10-5. Because theft is not a crime listed in subdivisions one through twelve of Indiana Code Section 31-30-1-4(a) and the firearm charge was charged as a misdemeanor, the juvenile court has jurisdiction over the allegations even if C.F.’s firearm charge was properly joined with his theft charge under Indiana Code Section 35-34-1-9(a)(2).

In support of the denial of C.F.’s motion, the trial court relied on Gall v. State, 811 N.E.2d 969 (Ind. Ct. App. 2004), trans. denied. In that case, Gall was convicted of Class A felony attempted murder, two counts of Class D felony criminal recklessness, and Class A misdemeanor dangerous possession of a firearm. Referring to the joinder statute and the “children and firearms” provision of Indiana Code Section 31-30-1-4(a), the court concluded:<sup>1</sup>

Here, Gall was charged with one count of dangerous possession of a firearm and four counts of attempted murder as the result of his firing multiple rounds from a semi-automatic weapon in the direction of Campbell and the three passengers in his car on March 9, 2002. At the time, Gall was sixteen years old. Under Indiana Code section 31-30-1-4(a), the juvenile court lacked subject-matter jurisdiction to hear his case.

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<sup>1</sup> Since Gall was decided, Indiana Code Section 31-30-1-4(a) was amended to include attempted murder as a listed offense. See P.L. 216-2007, Sec. 35.

Gall v. State, 811 N.E.2d at 973. Although it is unclear, to the extent that Gall holds misdemeanor dangerous possession of a firearm is removed from the juvenile court's jurisdiction over a case, we disagree with that holding. We conclude that because C.F. was not charged with a felony listed in Indiana Code Section 31-30-1-4(a), the juvenile court retained jurisdiction over his case.

Another way in which an adult court may obtain jurisdiction over a juvenile alleged to have violated a criminal statute is by waiver. Specifically, upon a motion by the prosecutor, the juvenile court shall waive jurisdiction if it finds: "(1) the child is charged with an act which would be a felony if committed by an adult; and (2) the child has previously been convicted of a felony or a nontraffic misdemeanor." I.C. § 31-30-3-6. This statute is inapplicable to this case because the State did not move to waive the juvenile court's jurisdiction. Moreover, there is no indication that C.F. has previously been convicted of a felony or a nontraffic misdemeanor as required for waiver of the juvenile court's jurisdiction.

C.F. has made a prima facie showing that the trial court erred in denying his motion to dismiss or transfer jurisdiction. C.F. has established that the juvenile court, not the adult court, has jurisdiction over this case.

### **Conclusion**

C.F. has made a prima facie showing that the adult court erred in denying his motion to dismiss or transfer jurisdiction. We reverse.

Reversed.

FRIEDLANDER, J., and DARDEN, J., concur.