

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JAMES KNIGHT,

Defendant-Appellee.

UNPUBLISHED

July 17, 1998

No. 208246

Recorder's Court

LC No. 96-629579 AR

Before: Murphy, P.J., and Young, Jr. and Michael R. Smith*, JJ.

MEMORANDUM.

By order of the Supreme Court, we consider as on delayed leave plaintiff's appeal from the trial court's order dismissing a delinquency petition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On February 2, 1996, a delinquency petition was filed charging defendant with multiple offenses. Defendant was served by ordinary mail. Defendant failed to appear for the pretrial hearing, and the petition was dismissed without prejudice, based on the fact that there was no personal service.

Plaintiff sought review of the referee's decision. The probate court affirmed the referee's decision, noting that while the referee had other options, she did not err as a matter of law in dismissing the petition without prejudice, particularly where the prosecutor expressed no reluctance to refile the petition. The recorder's court also affirmed the decision, noting that the prosecutor had not sought any alternative relief before the referee.

MCR 5.920(C)(4) provides that in a juvenile proceeding, when a party fails to appear in response to a notice of hearing, the court may order the party's appearance by summons or subpoena. MCL 712A.12; MSA 27.3178(598.12) provides that after a petition is filed the court may dismiss the petition or issue a summons requiring the person with custody or control of the child to bring the child before the court. Both the statute and court rule are phrased to give discretion to the court. The statutory discretion is limited to two choices. The court may either

* Circuit judge, sitting on the Court of Appeals by assignment.

dismiss the petition or elect to continue the proceedings. *In re Brown*, 149 Mich App 529, 537; 386 NW2d 577 (1986). Here, the trial court elected to dismiss the petition without prejudice. Where plaintiff expressed no reluctance to refile the petition, and did not request alternate measures from the referee, there is no showing that the referee abused her discretion in dismissing the petition without prejudice.

Affirmed.

/s/ William B. Murphy
/s/ Robert P. Young, Jr.
/s/ Michael R. Smith