

STATE OF MICHIGAN
COURT OF APPEALS

In re GERALD MICHAEL BRICKMAN, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellant,

v

GERALD MICHAEL BRICKMAN,

Respondent-Appellee.

UNPUBLISHED

April 6, 2001

No. 221091

Oakland Circuit Court

Family Division

LC No. 99-621320-DL

Before: Talbot, P.J., and Sawyer and Borchard*, JJ.

MEMORANDUM.

Petitioner claims an appeal from the order of the family division of the circuit court dismissing the petition filed against respondent. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On April 23, 1999, petitioner charged respondent (DOB 4-19-85) as a juvenile with criminal sexual conduct in the first degree, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), the victim being respondent's three-year-old female cousin. The offense was alleged to have occurred on or about February 14, 1997. The family court sua sponte dismissed the petition, finding that it lacked jurisdiction over respondent. Evidently, the family court dismissed the case because it was two years old and because respondent no longer lived in the state.

We review a question of law de novo. *People v Law*, 459 Mich 419, 423; 591 NW2d 20 (1999).

The family division of the circuit court has exclusive jurisdiction of a juvenile under the age of seventeen "who is found within the county" if the juvenile has violated a municipal ordinance, a law of the state, or a law of the United States. MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1). MCR 5.926(A) provides that "[a]s used in MCL 712A.2; MSA

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

27.3178(598.2), a child is ‘found within the county’ where the offense against the child occurred, where the offense committed by the juvenile occurred, or where the minor is physically present.”

Petitioner argues that the family court erred by dismissing the petition filed against respondent. We agree, reverse the family court’s decision, and remand this case for further proceedings. The charge in this case was filed just over two years after the alleged incident, and thus was timely. MCL 767.24(2); MSA 28.964(2). Respondent was under the age of seventeen, was charged with violating a law of the state, and was “found within the county,” as that term is defined. MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1); MCR 5.926(A). The language of the statute and court rule is unambiguous; thus, judicial construction was not permitted. *People v Philabaun*, 461 Mich 255, 261-263; 602 NW2d 371 (1999). That respondent was not physically present in the state did not support the family court’s conclusion that it lacked jurisdiction. *People v Leonard*, 144 Mich App 492, 495; 375 NW2d 745 (1985).

The family court’s order dismissing the petition is reversed, and this case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Fred L. Borchard