



of R.C. 2907.02, an offense which would constitute a first-degree felony if committed by an adult. The victim was an 11-year-old child. Appellant entered an admission to an amended charge of gross sexual imposition in violation of R.C. 2907.05(A)(4), an offense which would constitute a third-degree felony if committed by an adult, and was adjudicated a delinquent child. He was thereafter committed to the legal custody of the Ohio Department of Youth Services (ODYS) for a minimum term of six months and a maximum term not to exceed his 21st birthday.

{¶3} On June 8, 2009, five months after he was committed to the custody of ODYS, appellant filed a motion for alternative disposition and special findings. Appellant's motion requested that the court find he was eligible for long-term foster care as an abandoned child under R.C. 2151.011(C) and that a return to Mexico would not be in his best interest. The motion also requested that the juvenile court continue to exercise jurisdiction over appellant until his application for legal status could be adjudicated. Following a hearing, the juvenile court adopted the magistrate's decision recommending that the motion be dismissed with prejudice. Appellant timely appeals, raising four assignments of error.

{¶4} Assignment of Error No. 1:

{¶5} "THE TRIAL COURT COMMITTED PLAIN ERROR BY FAILING TO ADDRESS THE SUBSTANCE OF A MOTION PROPERLY BEFORE IT."

{¶6} Assignment of Error No. 2:

{¶7} "THE TRIAL COURT COMMITTED PLAIN ERROR BY INCORRECTLY IMPUTING INTENTIONS TO CONGRESS RATHER THAN APPLYING THE PLAIN LANGUAGE OF THE OHIO REVISED CODE AS PRAYED FOR BY G.M."

{¶8} Assignment of Error No. 3:

{¶9} "THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT DENIED

APPELLANT'S MOTION FOR ALTERNATIVE DISPOSITION FOR A PROHIBITED REASON."

**{¶10}** Assignment of Error No. 4:

**{¶11}** "THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT DENIED APPELLANT'S MOTION FOR ALTERNATIVE DISPOSITION FOR PUNITIVE REASONS."

**{¶12}** Although appellant's motion argued that he was eligible for placement in long-term foster care (called a "planned permanent living arrangement" in Ohio), his attorney clarified at oral argument that such placement was irrelevant to the case at bar.

In addition, while appellant insisted that he qualified for "special immigrant juvenile" status under Section 1101(a)(27)(J), Title 8, U.S. Code, his counsel conceded at oral argument that the federal statute was inapplicable to this case. Accordingly, any arguments in appellant's brief focusing upon these discarded points will not be addressed.

**{¶13}** Due to the fact that the remaining arguments in appellant's four assignments of error are interrelated, we shall address them together. Appellant insists that the juvenile court retains exclusive original jurisdiction over him because he was adjudicated delinquent and committed to ODYS, therefore his motion for alternative disposition was properly filed before the court. Appellant further submits that the juvenile court improperly ignored the issue of whether he met the statutory definition of an "abandoned child." Such a finding, appellant insists, would have permitted him to pursue an application for legal status with the federal government. In addition, appellant alleges that his motion was improperly denied on the basis of race and for punitive reasons.

**{¶14}** R.C. Chapters 2151 and 2152 delineate the juvenile court's authority to

order dispositions pertaining to abused, neglected, dependent, and delinquent children. If a child is adjudicated delinquent, R.C. 2152.19(A)(1) allows the court, in addition to any disposition authorized or required by R.C. Chapter 2152, to issue "[a]ny order that is authorized by section 2151.353 of the Revised Code for the care and protection of an abused, neglected, or dependent child[.]" Furthermore, the juvenile court retains jurisdiction over a delinquent child to issue further dispositional orders pertaining to the matter for which he was adjudicated delinquent. R.C. 2152.19(A)(8). See, also, *In re Andrew*, 119 Ohio St.3d 466, 2008-Ohio-4791, syllabus.

**{¶15}** As stated, appellant was adjudicated a delinquent child and committed to the custody of ODYS. Accordingly, in addition to any disposition authorized or required by R.C. Chapter 2152, R.C. 2152.19(A)(1) permitted the juvenile court to issue any order available for the care and protection of an abused, neglected, or dependent child under R.C. 2151.353. Moreover, the court was permitted to make any further disposition that it deemed proper. R.C. 2152.19(A)(8). Appellant's motion for alternative disposition was therefore properly before the juvenile court.

**{¶16}** At the time of the hearing on appellant's motion, appellant was four months away from turning 18 years old. As indicated in the statement of facts, ODYS was ordered to detain appellant for a minimum term of six months. With his release from ODYS potentially imminent, appellant seeks for the juvenile court to retain jurisdiction over him so that he may apply for legal status with the federal government and avoid deportation.

**{¶17}** The record indicates that appellant was sent to the United States at age 15, unaccompanied, because his impoverished parents in Mexico could no longer support him. By the time appellant's motion was heard, he had not had any contact with his parents for at least one year. A child is presumed to be abandoned when he has not

had any contact with his parents for more than 90 days. R.C. 2151.011(C). However, the fact that appellant happens to meet the definition of an "abandoned child" under the statute does not automatically warrant the conclusion that he should be found abandoned and afforded the requested relief.

{¶18} Appellant operates under the erroneous presumption that because the juvenile court had jurisdiction to hear his motion for alternative disposition, the court was authorized to make a finding of abandonment. It is true that R.C. 2152.19(A)(1) permits the juvenile court to avail itself of the dispositional orders listed in R.C. 2151.353 that are typically available for a child who is adjudicated abused, neglected, or dependent. However, this fact does not entitle the court to make a finding of abandonment in fashioning its disposition.

{¶19} The legislative authority permitting the juvenile court to access the dispositional orders in R.C. 2151.353 following a delinquency adjudication does not also grant the court the power to adjudicate a delinquent child abused, neglected, or dependent. Rather, R.C. 2151.27 dictates that a complaint must be filed with the juvenile court to initiate abuse/neglect/dependency proceedings. *Riley v. Liston, Fayette* App. No. CA2005-12-032, 2006-Ohio-5846, ¶11. Therefore, the juvenile court does not have jurisdiction to adjudicate a child abused, neglected, or dependent unless a sworn complaint has been properly filed first. See id.

{¶20} It is undisputed that, in the present matter, no complaint was filed under R.C. 2151.27 to initiate abuse/neglect/dependency proceedings. In the absence of such a complaint, the juvenile court was without jurisdiction to adjudicate appellant neglected by reason of his alleged abandonment. See R.C. 2151.03(A)(1) (defining a neglected child as one "[w]ho is abandoned by the child's parents, guardian, or custodian"). See, also, *Riley* at ¶12-13, quoting *State ex rel. Clark v. Allaman* (1950), 154 Ohio St. 296;

*Union Cty. Child Welfare Bd. v. Parker* (1964), 7 Ohio App.2d 79, 83-84. Appellant's argument that R.C. 2152.19(A)(1) empowered the juvenile court to make a finding that he was an abandoned child is thus without merit.

{¶21} We now turn to the propriety of the juvenile court's decision dismissing appellant's motion for alternative disposition. The juvenile court has broad discretion to fashion a disposition for a delinquent child which comports with the overriding purposes for dispositions under R.C. Chapter 2152. *In re Taronn A.*, Lucas App. No. L-07-1286, 2008-Ohio-2089, ¶9. As the juvenile court articulated in its decision, appellant's motion was improper because his requests for relief did not align with the purposes of disposition under R.C. 2152.01. That statute provides the following:

{¶22} "(A) The overriding purposes for dispositions under this chapter are to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. \* \* \*

{¶23} "(B) Dispositions under this chapter shall be reasonably calculated to achieve the overriding purposes set forth in this section, commensurate with and not demeaning to the seriousness of the delinquent child's \* \* \* conduct and its impact on the victim, and consistent with dispositions for similar acts committed by similar delinquent children \* \* \*. The court shall not base the disposition on the race, ethnic background, gender, or religion of the delinquent child \* \* \*."

{¶24} Notably, appellant's brief cites only the clauses of the statute most favorable to him in advancing his argument. Appellant contends that the juvenile court's decision dismissing his motion did not consider his care, protection, and mental and physical development or serve the purpose of rehabilitation. Appellant's brief omits the

dispositional purposes of public safety, accountability, and victim restoration. The juvenile court relied upon these very purposes in dismissing appellant's motion, holding that the requested dispositional orders were not consistent with the purposes of protecting public safety, restoring the victim, and holding appellant accountable for the seriousness of his delinquent act. The court also found that it was in appellant's best interest to return to Mexico because he would not have to register as a sex offender.

{¶25} After reviewing the record, we hold that the juvenile court did not abuse its discretion in premising its decision upon these factors. Despite the stated purposes in R.C. 2152.01 of providing for the care, protection, development, and rehabilitation of child offenders, the facts and circumstances of a case may justify a disposition which fulfills the purposes of protecting public safety, restoring the victim, and holding the offender accountable for the seriousness of his delinquent act rather than affording him relief. *In re Wallace*, Stark App. No. 2007CA00156, 2008-Ohio-1389, ¶44. Appellant, a 17-year-old, sexually abused an 11-year-old child. Appellant entered the country illegally, committed a serious offense, and now prays for relief so he may seek legal status. His request appears nonsensical in view of the circumstances. Furthermore, the juvenile court did demonstrate that it took appellant's welfare into consideration when it observed that he would be released from the custody of ODYS as a registered sex offender, whereas this stigma would not be placed upon him should he return to Mexico. In view of these considerations, we conclude that the juvenile court did not err in dismissing appellant's motion for alternative disposition and special findings.

{¶26} Appellant's first, second, third and fourth assignments of error are overruled.

{¶27} Judgment affirmed.

YOUNG, P.J., and RINGLAND, J., concur.