

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 2, 2026

CV-26-0218

In the Matter of ETHAN H., Alleged
to be a Juvenile Delinquent.

MAURY B. JOSEPHSON, as
Tompkins County Attorney,
Respondent;

MEMORANDUM AND ORDER

ETHAN H.,
Appellant.

Calendar Date: June 1, 2026

Before: Clark, J.P., Fisher, Powers, Mackey and Corcoran, JJ.

Thomas G. Shannan, Ithaca, for appellant.

Maury B. Josephson, County Attorney, Ithaca (*Holly L. Mosher* of counsel), for respondent.

Clark, J.P.

Appeal from an order of the Family Court of Tompkins County (Scott Miller, J.), entered January 6, 2026, which granted petitioner's application, in a proceeding pursuant to Family Ct Act article 3, to adjudicate respondent a juvenile delinquent.

Respondent (born in 2009) has developmental disabilities along with significant mental health and medical issues.¹ He was raised primarily by his mother and her

¹ There is an individualized education plan in place for respondent.

husband (hereinafter the stepfather) and had an extremely difficult childhood. In December 2021, respondent was referred to a person in need of supervision (hereinafter PINS) diversion program for truancy and behavioral concerns appearing to stem from being bullied at school and trouble inside of the family home. The Probation Department referred respondent and his mother for services, but respondent's mother did not follow through with intakes for such services and two juvenile delinquency petitions were subsequently filed against respondent in connection with separate incidents. He was ultimately placed on probation for one year as a result of adjudications in both of those matters and was later unsuccessfully discharged. Meanwhile, in September 2023, the Tompkins County Department of Social Services (hereinafter DSS) filed neglect petitions against respondent's mother and stepfather. Temporary custody of respondent was transferred to DSS during the pendency of the neglect proceedings and, in November 2024, he was placed at Elmcrest Children's Center in Onondaga County.

In June 2025, petitioner Tompkins County Attorney (hereinafter the presentment agency) filed the instant juvenile delinquency petition against respondent based upon allegations that he had damaged two windows at Elmcrest three months prior and that such conduct, if committed by an adult, would constitute the crime of criminal mischief in the fourth degree (*see* Penal Law § 145.00).² During the initial appearance on the petition, respondent waived his right to a hearing and entered an admission to the allegations, informing the court that "[b]eing away from [his] family [was] tearing [him] apart." Onondaga County Family Court (Zavaglia, J.) found respondent's admission to be knowing and voluntary, issued a fact-finding order adjudicating respondent a juvenile delinquent, and transferred the matter to Tompkins County Family Court for disposition.

During an appearance before Tompkins County Family Court in July 2025, a counselor from Elmcrest advised that respondent had since absconded from Elmcrest several times. Despite such revelation, the presentment agency agreed that an adjournment of the proceeding in contemplation of dismissal (hereinafter ACD) was appropriate, emphasizing that the conduct underlying the instant petition had occurred several months earlier, that respondent had been placed at Elmcrest as the subject of a neglect proceeding, and that not "much c[ould] be gained by an additional disposition." Tompkins County Family Court (Miller, J.) issued an order adjourning the matter "in

² Since respondent was in the custody of DSS at that time pursuant to neglect proceedings, DSS also participated in the underlying juvenile delinquency proceeding as an interested party. The presentment agency and DSS were represented by different attorneys.

contemplation of dismissal for a period of six months, to December 31, 2025 . . . with a view to ultimate dismissal of the petition in the furtherance of justice." The ACD order also required respondent to obey all laws and to follow the rules of Elmcrest.

In November 2025, the presentment agency filed an application to restore the matter to the calendar, alleging that respondent had violated the terms of his ACD by, among other things, repeatedly absconding from Elmcrest, getting into altercations with youth and staff, and failing to attend school. An initial appearance on the application was held in December 2025 and respondent was brought to court directly from the hospital, where he had spent the previous two weeks obtaining mental health treatment. During the appearance, Family Court took testimony from a clinician at Elmcrest, who confirmed that respondent had left Elmcrest without permission numerous times since the ACD order was issued. Finding such conduct to be a violation of the ACD order, Family Court restored the matter to the calendar, returned respondent to Elmcrest, ordered an updated predisposition investigation and scheduled a dispositional hearing.

Two days later, DSS wrote a letter to Family Court advising that respondent had again absconded from Elmcrest and that they were concerned for his safety. In a corresponding email sent to the parties' attorneys, DSS revealed its intent to file a motion in the neglect proceeding to transfer respondent's placement to a secure facility. However, because "the application process under the [n]eglect proceeding [was] a cumbersome [one]," DSS advised that it would not oppose "the scheduling of a prompt appearance on the [juvenile delinquency matter] or the [c]ourt issuing a [w]arrant, as it would be in the child's best interest to be taken into custody for his own safety." A warrant was ultimately issued for respondent and, after he was located, Family Court held another predispositional appearance in the juvenile delinquency proceeding. During such appearance, counsel for the presentment agency revealed that Elmcrest intended to discharge respondent and advocated for his placement in predisposition detention. DSS's counsel, in turn, explained that he had reached out to other qualified residential placement facilities to take respondent under the neglect proceeding but was having difficulty finding placement and that there were more suitable options for placement in the juvenile delinquency proceeding. Family Court ultimately remanded respondent to a detention facility pending disposition of the matter. However, no detention beds were available for respondent and he ended up in the temporary custody of the Tompkins County Sheriff's Department for approximately two weeks.

A dispositional hearing was subsequently held over the course of two days. Prior to the second hearing date, respondent moved to dismiss the juvenile delinquency petition

in the furtherance of justice. The presentment agency opposed the motion and advocated for placing respondent in the custody of the Office of Children and Family Services (hereinafter OCFS). Family Court declined to dismiss the proceeding in the interest of justice and issued a dispositional order that adjudicated respondent a juvenile delinquent and remanded him to OCFS custody for placement in a limited secure facility for a period of nine months. Although the court recognized that respondent has "significant developmental disabilities, . . . documented mental health diagnoses, and . . . serious medical needs," all of which "obviously contribute to [his] ability to regulate his behavior and comply with supervision," it found that Elmcrest lacked the ability to prevent respondent from absconding and that placement in OCFS custody was "best suited to address his needs in a therapeutic and developmentally appropriate manner." Respondent appeals from the dispositional order.³

Preliminarily, as the presentment agency concedes, the allocution in which respondent admitted to the facts underlying the juvenile delinquency petition was defective since Family Court failed to inform him of the possible dispositional orders that could be entered against him or the nature/duration of any placement (*see* Family Ct Act § 321.3 [1]; *Matter of Tashawn MM.*, 218 AD3d 906, 909 [3d Dept 2023]; *Matter of Christian VV.*, 211 AD3d 1378, 1379 [3d Dept 2022]; *Matter of Robert OO.*, 34 AD3d 1074, 1075 [3d Dept 2006]). Nevertheless, we decline to remit the matter to Family Court for further proceedings in that regard, as we agree with respondent that dismissal of this proceeding is warranted in the interest of justice (*see Matter of A. WW.*, 237 AD3d 1420, 1424 [3d Dept 2025]).

Under Family Ct Act § 315.2 (1), a juvenile delinquency petition "may at any time be dismissed in furtherance of justice when, even though there may be no basis for dismissal as a matter of law, such dismissal is required as a matter of judicial discretion by the existence of some compelling further consideration or circumstances clearly demonstrating that a finding of delinquency or continued proceedings would constitute or result in injustice." The factors to consider in determining whether to invoke such "extraordinary remedy" (*Matter of James JJ.*, 206 AD3d 1091, 1091 [3d Dept 2022])

³ Respondent filed a motion with this Court for a stay of the dispositional order, release from detention and placement with his father pending the appeal. Following an appearance on the motion, this Court granted a stay and returned respondent to DSS's custody pending the outcome of this appeal (2026 NY Slip Op 65593[U] [3d Dept 2026]). Respondent's counsel has advised this Court that respondent is now in the temporary custody of his father.

include " '(a) the seriousness and circumstances of the crime; (b) the extent of harm caused by the crime; (c) any exceptionally serious misconduct of law enforcement personnel in the investigation and arrest of the respondent or in the presentment of the petition; (d) the history, character and condition of the respondent; (e) the needs and best interest of the respondent; (f) the need for protection of the community; and (g) any other relevant fact indicating that a finding would serve no useful purpose' " (*Matter of A. WW.*, 237 AD3d at 1422, quoting Family Ct Act § 315.2 [1]). Such factors must be considered "individually and collectively" (Family Ct Act § 315.2 [1]) and " '[a]t least one of these factors must be readily identifiable and sufficiently compelling to support the dismissal' " (*Matter of A. WW.*, 237 AD3d at 1422, quoting *Matter of James JJ.*, 206 AD3d at 1092).

While we recognize that "[d]ismissal in the furtherance of justice is an extraordinary remedy that must be employed sparingly" (*Matter of James JJ.*, 206 AD3d at 1091), this is one of those rare cases where dismissal is warranted under Family Ct Act § 315.2 (1). As for factor (a), respondent's conduct of breaking two windows at Elmcrest was certainly a poor choice, but the underlying conduct amounted to criminal mischief in the fourth degree, which is a class A misdemeanor and not a felony (*see* Penal Law § 145.00; *Matter of Deborah C.*, 261 AD2d 138, 138-139 [1st Dept 1999]). Factor (b) also favors dismissal, as respondent's conduct was a nonviolent, property-related offense and there were no injuries involved. Factor (c) is inapplicable.

As for factor (d), we are mindful that respondent has two prior juvenile delinquency adjudications. However, he was offered ACDs in both of those matters and was ultimately placed on probation, demonstrating that the presentment agency did not view respondent to be a danger to the community as a result of the conduct precipitating such adjudications. Respondent's "history, character and condition" cannot be viewed in a vacuum and must be considered within the broader context of his circumstances. Although respondent certainly bears responsibility for his conduct, he had an extremely difficult childhood during which he witnessed domestic violence in his home and was neglected by his mother. DSS at one point raised a concern that respondent also may have been a victim of sexual abuse and sex trafficking. Coupled with his difficult upbringing, respondent has significant mental health and medical issues, as well as intellectual disabilities. Unfortunately, respondent's behavior appears to be, at least in part, the "function of a system that failed [him] in many ways on multiple occasions" (*Matter of A. WW.*, 237 AD3d at 1422).⁴ We also note that, at the time respondent committed the acts

⁴ The presentment agency acknowledges in its brief on appeal that respondent did not receive the services that he needed while in the custody of DSS.

precipitating the filing of the instant petition, he was at Elmcrest as a result of a neglect proceeding against his mother and stepfather, who had not followed through with intakes for services for him. Respondent was then subsequently held at the Tompkins County Sheriff's Department during the pendency of this proceeding, where, according to his counsel, he received no mental health treatment or interaction with peers for approximately two weeks (*see id.*). Simply put, "respondent has paid the price" for his nonviolent conduct "several times over" and factor (d) weighs heavily in favor of dismissal (*id.* at 1424).

As for factor (e), respondent's counsel has advised this Court that, following the issuance of the order on appeal, respondent's father filed a petition for custody under Family Ct Act article 6 and DSS consented to transfer temporary custody of respondent to the father.⁵ An interim custody order was then issued granting the father sole legal and physical custody of respondent, the father opened a preventative services case with DSS on respondent's behalf, and the neglect proceedings against the mother and stepfather have been resolved. Respondent's counsel informed this Court that respondent has been more consistently attending school while in his father's custody, which was an ongoing concern while he was in DSS's custody, and that he "has been receiving the care that he needs." In these circumstances, the needs and best interests of respondent would not be served by having another juvenile delinquency adjudication on his record, particularly given the non-serious nature of the underlying offense and the fact that he could potentially face removal from his father's care, where he appears to be doing well and has a preventative services case open.

Factors (f) and (g) are perhaps the most compelling factors in favor of dismissal. Significantly, the presentment agency itself initially took the position that there was not "much [that] c[ould] be gained by an additional" juvenile delinquency adjudication against respondent in this case and that an ACD was appropriate, indicating that it did not believe that respondent was a danger to the community and that an additional adjudication would serve no useful purpose. Although respondent subsequently absconded from Elmcrest numerous times, the record indicates that a disposition in this matter was pursued, at least in part, upon a concern about finding suitable placement for respondent in the context of the neglect proceeding. However, as we have previously noted, "it is not proper to leverage a juvenile delinquency proceeding in order to obtain a

⁵ DSS's consent to transfer temporary custody of respondent to his father signifies its belief that the father is a fit and qualified resource for respondent. The father is working with a local community organization for assistance in obtaining services.

suitable placement for a hard-to-place child who is mentally ill or otherwise disabled" (*Matter of A. WW.*, 237 AD3d at 1423-1424; *see generally Matter of Daniel I.*, 57 AD3d 666, 668 [2d Dept 2008]). In these circumstances, continuing the juvenile delinquency proceeding against respondent would serve no useful purpose and dismissal in the furtherance of justice is warranted.

Fisher, Powers, Mackey and Corcoran, JJ., concur.

ORDERED that the order is reversed, on the facts and in the exercise of discretion in the furtherance of justice, without costs, petition dismissed, and matter remitted to the Family Court of Tompkins County for further proceedings pursuant to Family Ct Act § 375.1.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court