

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 130175-U

NO. 4-13-0175

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 25, 2013
Carla Bender
4th District Appellate
Court, IL

In re: F.C., K.C., and B.O., Minors;)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 12JA55
BARRY OVERTON, JR.,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order placing custody and guardianship of the children with the Department of Children and Family Services did not apply to the respondent father's child because the only count regarding that child was withdrawn as part of an agreement with respondent mother.

¶ 2 Respondent father, Barry Overton, Jr., appeals the order placing custody and guardianship of his son, B.O. (born September 28, 2009), with the Department of Children and Family Services (DCFS). Overton argues the trial court's decision after the dispositional hearing is against the manifest weight of the evidence. We need not consider Overton's argument. The abuse allegations regarding B.O. were withdrawn by the State, rendering the rulings of the court after such withdrawal inapplicable to B.O. Reversed and remanded.

¶ 3 I. BACKGROUND

¶ 4 In December 2012, the State filed a petition for the adjudication of abuse and

shelter care on behalf of F.C. (born November 4, 2004), K.C. (born March 10, 2006), and B.O. Overton is the father of B.O., but not the father of F.C. or K.C. The custody of F.C. and K.C. is not an issue in this appeal.

¶ 5 In the petition, the State alleged three counts of abuse. In counts I and III, the State alleged K.C. and F.C. were abused by respondent mother, Elisabeth Cribb. Count I alleged Cribb inflicted physical injury on K.C. and F.C. by other than accidental means. Count III alleged Cribb inflicted excessive corporal punishment on K.C. and F.C. In count II, the State alleged all three children were abused, because in residing with Cribb there was a substantial risk of physical injury to them (705 ILCS 405/2-3(2)(ii) (West 2012)). No allegations were made Overton abused or neglected the children.

¶ 6 At a January 2013 hearing, Cribb stipulated to count III. In exchange, the State agreed to withdraw counts I and II, and not seek criminal charges on Cribb's stipulation. Cribb and Overton waived their rights to an adjudicatory hearing.

¶ 7 On January 28, 2013, the trial court entered an order of adjudication. The court found the minors were abused in that they had "been the subject of excessive corporal punishment as defined by 705 ILCS 405/2-3(2)(v) [(West 2012)]." The court provided the following as the factual basis for its decision:

"Respondent mother has stipulated to Count III of the petition alleging physical abuse through the infliction of excessive corporal punishment. The minors are [F.C.], age 8[,] [K.C.], age 6, and [B.O.], age 3. On or about 12/1/12[,] the minors [F.C.] and [K.C.] were observed with welts and bruises caused by being

struck by an extension cord by respondent mother."

¶ 8 A dispositional hearing was held in February 2013. After the hearing, the trial court determined it was in the children's best interests they be made wards of the court and placed custody and guardianship of the children with DCFS.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 When the State seeks to protect a child by making it a ward of the court, the State begins the process by filing a petition under section 2-13 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-13 (West 2012)). A section 2-13 petition must allege, in part, the child is "abused, neglected, or dependent." 705 ILCS 405/2-13(2) (West 2012)). An adjudicatory hearing follows. See 705 ILCS 405/2-14(b) (West 2012). Parents, however, may waive the adjudicatory hearing by stipulating to allegations. See, e.g., *In re T.A.*, 378 Ill. App. 3d 1083, 1085, 883 N.E.2d 639, 641 (2008). The trial court must then determine whether the child is abused, neglected, or dependent. See 705 ILCS 405/2-21(1) (West 2012). Only after a child is found to be abused, neglected, or dependent will the proceedings advance to a dispositional hearing where "the court shall determine whether it is consistent with the health, safety and best interests of the minor and the public that he be made a ward of the court." 705 ILCS 405/2-21(2) (West 2012).

¶ 12 In this case, after Cribb stipulated to count III, the State withdrew counts I and II. Count II was the only count that alleged B.O. was an abused child under the Act. As no allegations of abuse remained regarding B.O., none of the trial court's later orders apply to him. To the extent those orders mention B.O., they must be reversed.

III. CONCLUSION

¶ 13

¶ 14

We reverse the adjudicatory and dispositional orders as they apply to B.O.

¶ 15

Reversed and remanded.