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2015 IL App (3d) 150130-U

Order filed September 10, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

In re K.C. and H.C.,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Minors.	)	LaSalle County, Illinois.
	)	
(THE PEOPLE OF THE STATE	)	
OF ILLINOIS,	)	Appeal Nos. 3-15-0130 and 3-15-0131
	)	Circuit No. 14-JA-10
Petitioner-Appellee,	)	14-JA-11
v.	)	
	)	The Honorable
Crystal C.,	)	H. Chris Ryan,
	)	Judge, Presiding.
Respondent-Appellant).	)	
	)	

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PRESIDING JUSTICE McDADE delivered the judgment of the court.

Justice Wright concurred in the judgment.

Justice Holdridge dissented.

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**ORDER**

¶ 1 *Held:* Where the petition cited as the factual basis for the circuit court's finding of abuse at the adjudicatory hearing alleged sufficient facts to support the finding and respondent stipulated to those allegations, the trial court did not abuse its discretion in finding that a factual basis existed for the stipulation. However, where a factual basis for the allegations in the petition to which respondent stipulated is not properly established or supported in the record during the

dispositional hearing, the trial court's unfitness finding was against the manifest weight of the evidence.

¶ 2 The State filed petitions for adjudication of wardship on behalf of K.C. and H.C., the minors, alleging the designated respondents, who included the respondent-appellant, Crystal C., the minors' mother, neglected or abused them pursuant to section 2-3(2)(ii) of the Juvenile Court Act of 1987 (the Act). (705 ILCS 405/2-3(2)(ii) (West 2014)). During the dispositional proceeding, which was held immediately after a finding of abuse at the adjudicatory hearing, the circuit court found respondent unfit and placed the minors in the custody and care of the Illinois Department of Children and Family Services (DCFS). Respondent appeals the circuit court's findings, arguing that there was no factual basis properly established to support or accept her stipulation/admission to the allegations in the State's petitions. We affirm in part and reverse in part.

¶ 3 **FACTS**

¶ 4 On August 6, 2014, the State filed a petition for adjudication of wardship in case number 2014-JA-10 in the interest of K.C., born May 5, 2011, and one in case number 2014-JA-11 in the interest of H.C., born May 14, 2014. The petitions alleged respondent-appellant and another designated individual – not a party to this appeal – created a substantial risk of physical injury to the minors by other than accidental means. Both petitions noted the same following factual details:

"On July 19, 2014, the minor, [H.C.] was taken to OSF Saint Elizabeth Hospital after he appeared to be gasping for breath and became lethargic.

A CT scan was performed which showed the minor, [H.C.] sustained two (2) subdural hematomas, with one being sub acute and having acute fresh blood. The minor was subsequently transferred to OSF Saint Francis in Peoria.

Dr. Petrak from the Pediatric Resource Center in Peoria reported that [H.C.] sustained bilateral subdural hematomas and retinal hemorrhages. He required removal of subdural hematoma fluid to reduce pressure.

Dr. Petrak advised that in her professional opinion these injuries were a result of abuse. She further advised that [H.C.] has suffered vision loss, has a severe brain injury and will be cognitively delayed.

Steven Berglund admitted to police and the Department of Children and Family Service that on July 19, 2014 he shook the minor, [H.C.]. He admitted that [H.C.] was crying and he did not know how to get him to stop. He said he got so angry that he picked up [H.C.] by his midsection with both hands and shook him for several second. He further stated the [H.C.'s] head was bouncing back and forth while he shook him.

Steven Berglund further admitted that two weeks prior to the July 19th incident, he has also shaken [H.C.].

Steven Berglund has been charged with aggravated battery to a child

The mother, [Crystal C.] reported that the minor, [H.C.] was not symptomatic on July 19, 2014 or the next morning before she left for work. She further reported that other individuals in the house including her paramour had access to the minor, [H.C.], besides Steven Berglund.

Dr. Petrak advised that she has concerns about the mother's statements regarding the minor not being symptomatic. The doctor reports that almost immediately after being shaken, Hunter would have been showing signs. The doctor has put the mother's account of the incident into question.

The minor, [K.C.], was also in the care and custody of the mother at the time [H.C.] sustained his injuries."

The circuit court conducted the proceedings for both cases simultaneously.

¶ 5 After ordering several paternity tests, finding that the putative father, Steven Berglund, and two other individuals were not the biological father of H.C., and affirming the State's publishing of the petitions for adjudication of wardship to unknown fathers, the circuit court conducted adjudication and dispositional proceedings regarding the State's allegations of neglect and abuse of the minors. At the adjudicatory hearing, respondent maintained that H.C. was not

symptomatic when she left for work and that her paramour at that time may have been involved. She, however, stipulated to the petitions' allegations.

¶ 6 Based on that stipulation, the court adjudged the minors abused. The court proceeded immediately to disposition, made the minors wards of the court, and placed them in the custody and care of DCFS. It admonished respondent of her required cooperation with her impending DCFS service plan to remedy the factors leading to the removal of the minors from her custody and care.

¶ 7 Respondent timely appealed.

¶ 8 ANALYSIS

¶ 9 Respondent argues that the trial court erred in finding the minors abused based only upon her stipulation to the allegations in the petitions. She asserts that a factual basis was not properly established to support or accept her stipulation/admission. The State counters that by respondent stipulating to the allegations in the petition, the need for proof was obviated.

¶ 10 When a respondent challenges the sufficiency of the factual basis for a stipulation, our standard of review is whether the circuit court abused its discretion by determining that a factual basis existed. *In re C.J.*, 2011 IL App (4th) 110476, ¶ 49. Generally, in civil cases "a stipulation, or a judicial admission \*\*\* has the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of that fact." *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 462 (1992). However, in *In re C.J.*, 2011 IL App (4th) 110476, ¶ 54, the court likened the need for a factual basis to support a stipulation in an adjudicatory proceeding to that needed in a criminal proceeding when the court is faced with accepting a defendant's guilty plea. It noted that "the factual basis requirement is satisfied if evidence exists anywhere in the record from which the trial court could reasonably conclude that the minor was abused, neglected, or dependent. *In re*

*A.L.*, 2012 IL App (2d) 110992 ¶ 23 (citing *Id.* ¶ 56). We, however, reject this conclusion and find the court's reasoning in *In re A.L.*, 2012 IL App (2d) 110992 ¶ 24, more persuasive.

¶ 11 In *In re A.L.*, 2012 IL App (2d) 1110992 ¶24, the court found that reliance upon a person's stipulation to allegations of a child being abused, neglected, or dependant while in their custody and care is appropriate with no need for proof in adjudicatory hearings because the focus is exclusively on the child to determine the fact of whether the child was abused, neglected, or dependant. *Id.* (citing *In re Arthur H.*, 212 Ill. 2d 441, 466 (2004)). However, for abuse, neglect, or dependency to be found against a respondent the same stipulation must be supported if used in the subsequent civil dispositional proceeding as the person is then stipulating to his or her own liability. *Id.*

¶ 12 Under section 2–27 of the Act, the trial court may appoint DCFS as guardian of the minor if it determines that the parents are unfit or unable, for reasons "other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so, and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of \* \* \* her parents." 705 ILCS 405/2–27(1) (West 2006). The focus of the court, in this subsequent proceeding, turns to determining whether the person's right to retain custody and care of their child should be abridged. Such a liability judgment would invoke that person's due process rights. *In re A.L.*, 2012 IL App (2d) 110992, ¶ 24. Thus, just as in the criminal context where a defendant's guilty plea must be supported by the prosecutor reciting the evidence it would present at trial followed by the court asking and defense counsel agreeing that the State has such evidence, the same exchange would need to occur to establish proper support of a respondent's stipulation in a dispositional hearing to ensure their right to due process is properly preserved. *In re C.J.*, 2011 IL App (4th) 110476, ¶ 52 (citing *People v. Williams*, 299 Ill. App. 3d

791, 794 (1998)). In lieu of such an exchange, there must be sufficient evidence in the record to support the stipulation. *Id.* at 56. The circuit court's decision in a dispositional hearing will be reversed only if the findings of fact are against the manifest weight of the evidence. *In re Ta.A.*, 384 Ill. App. 3d 303, 307 (2008).

¶ 13 In this case, the circuit court's use of respondent's stipulation to the minors having been neglected or abused as its factual basis for a finding they were abused at the adjudicatory hearing is sufficient. However, the above described exchange or any variation of it in support of the stipulation did not occur during the dispositional hearing and the record is devoid of any other evidence supporting respondent's stipulation. Thus the circuit court's finding that respondent is unfit and placing the minors in the custody and care of DCFS was the result of a procedurally inadequate dispositional hearing and was therefore erroneous. The matter is remanded for a proper hearing.<sup>1</sup>

¶ 14 CONCLUSION

¶ 15 The judgment of the circuit court of LaSalle County is affirmed in part and reversed in part.

¶ 16 Affirmed in part and reversed in part.

¶ 17 JUSTICE HOLDRIDGE, dissenting.

¶ 18 I dissent. In my view, there is sufficient evidence in the record to support the trial court's finding of unfitness. On July 19, 2014, Dr. Petrak treated H.C. for bilateral subdural hematomas and retinal hemorrhages which H.C. suffered while he was in the respondent's care. Dr. Petrak opined that H.C.'s injuries were the result of abuse. The respondent stipulated to the State's

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<sup>1</sup> We note that prior to the original dispositional hearing, the children were in the custody of DCFS. Nothing in the decision changes their placement while the court corrects the procedural deficiencies.

allegation that Steven Berglund shook H.C. violently on July 19, 2014. At the adjudicatory hearing, the respondent testified that her paramour may also have been involved in H.C.'s abuse. Thus, the respondent admitted that she left H.C. in the presence of at least two individuals who could have abused him.

¶ 19 Moreover, the respondent's testimony that H.C. was not symptomatic when she left for work on July 19, 2014, was contradicted by Dr. Petrak, who reported that H.C. would have been showing signs of abuse "almost immediately after being shaken." This suggests that the respondent may have lied about the onset of H.C.'s symptoms and delayed in seeking medical treatment for H.C.'s severe injuries. Dr. Petrak opined that H.C. has suffered vision loss and a severe brain injury and that H.C. will be cognitively delayed as a result of the abuse.

¶ 20 Under these circumstances, it was not against the manifest weight of the evidence for the trial court to find the respondent unfit and place the children in the custody and care of DCFS.