

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 2, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 02-3277
02-3278**

**Cir. Ct. Nos. 02-JC-39
02-JC-40**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

No. 02-3277

**IN THE INTEREST OF ASHLEY E.R.,
A PERSON UNDER THE AGE OF 18:**

SHEBOYGAN COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-APPELLANT,

v.

DAWN R.,

RESPONDENT-RESPONDENT,

CHRISTOPHER W. G.,

RESPONDENT.

No. 02-3278

**IN THE INTEREST OF KIRSTEN L. R.,
A PERSON UNDER THE AGE OF 18:**

SHEBOYGAN COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-APPELLANT,

V.

DAWN R.,

RESPONDENT-RESPONDENT,

CHRISTOPHER J. K.,

RESPONDENT.

APPEAL from orders of the circuit court for Sheboygan County:
JAMES J. BOLGERT, Judge. *Affirmed.*

¶1 BROWN, J.¹ The Sheboygan County Department of Human Services appeals from orders dismissing petitions alleging that two minor children, Ashley E.R. and Kirsten L.R., were in need of protection and services. The circuit court held that the petitions in this case failed to allege and contain information giving rise to a reasonable inference sufficient to establish probable cause that the children were in need of protection and services which could be ordered by the court and which were not already being provided by their mother. Upon review, we agree and affirm.

¶2 The following facts are not in dispute. In September 2002, the Department filed petitions for protection or services, alleging that Ashley and

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

Kirsten were in need of the court's protection. The Department's actions sprang from allegations that Kirsten had been sexually abused by her maternal grandfather. The Department invoked the court's protection for Kirsten pursuant to WIS. STAT. § 48.13(3)² and for Ashley pursuant to § 48.13(3m).

¶3 Ashley and Kirsten's mother, Dawn R., initially told police in May 2002 that she believed Kirsten's account of sexual abuse because she herself had been sexually assaulted in the past by Kirsten's grandfather. In June, Dawn indicated to the social worker who was handling the case that she now believed that Kirsten was coerced into making the sexual abuse allegations by her grandmother to further the grandmother's own agenda in a pending divorce. The Department then sought the court's protection for the children based on its belief that Kirsten was the victim of abuse by the grandfather and Dawn no longer appeared to believe it.

¶4 Dawn then brought a motion before the circuit court to dismiss the CHIPS petitions due to the insufficiency of the petitions. Dawn asserted that the CHIPS petitions failed to state that either child had been in contact with the

² WISCONSIN STAT. § 48.13 provides in pertinent part:

Jurisdiction over children alleged to be in need of protection or services. The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

....

(3) Who has been the victim of abuse ... [or]

(3m) Who is at substantial risk of becoming the victim of abuse ... based on reliable and credible information that another child in the home has been the victim of such abuse[.]

grandfather accused of abusing the children since May 2002. Following a motion hearing in October, the circuit court granted Dawn's motion and dismissed the petitions.

¶5 On appeal, the Department argues that the circuit court erred when it dismissed the CHIPS petitions for legal insufficiency. The sufficiency of a pleading, including a juvenile petition, presents a question of law to which no special deference is accorded the trial court's ruling. *Sheboygan County v. D.T.*, 167 Wis. 2d 276, 282-83, 481 N.W.2d 493 (Ct. App. 1992). The same principles that govern the sufficiency of criminal complaints apply. *Id.* at 283. These principles require that the pleading recite the "essential facts" constituting the basis for the action. *Id.*

¶6 For a CHIPS petition to be sufficient, it must satisfy the requirements of WIS. STAT. § 48.255. In particular, the petition must provide "reliable and credible information which forms the basis of the allegations necessary to invoke the jurisdiction of the court." Sec. 48.255(1)(e). Pursuant to WIS. STAT. § 48.13(3) and (3m), the court has exclusive original jurisdiction over a child either who has been the victim of sexual or physical abuse or who is at substantial risk of becoming the victim of abuse *and who is alleged to be in need of protection or services which can be ordered by the court.* In other words, for the Department's CHIPS petitions to be sufficient, it not only must allege that Kirsten and Ashley have been victims of sexual abuse, but also must allege and contain information which at least gives rise to a reasonable inference sufficient to establish probable cause that Kirsten and Ashley are in need of protection or services which can be ordered by the court. *See State v. Courtney E.*, 184 Wis. 2d 592, 601, 516 N.W.2d 422 (1994); *see also* § 48.13.

¶7 Here, the parties agree that the petitions allege with sufficiency that Kirsten was the victim of abuse under WIS. STAT. § 48.255. Thus, the question in this case is whether the petitions sufficiently established probable cause that Kirsten and Ashley were in need of protection or services that could have been ordered by the circuit court.

¶8 In *Courtney E.*, our supreme court addressed a similar issue. There, a fifteen-year-old girl became the subject of a CHIPS petition after becoming pregnant by her twenty-one year old boyfriend. *Courtney E.*, 184 Wis. 2d at 596-97. The court pointed out that while the petition in that case did sufficiently establish probable cause that the child was the victim of sexual abuse as required by WIS. STAT. § 48.255, it did not establish probable cause that any protection or services that could be ordered by the circuit court for the victim were needed. *Courtney E.*, 184 Wis. 2d at 601. The court noted that the petition lacked specific reasons, beyond stating that she was the victim of sexual abuse, why she was in need of court-ordered protection services. *Id.* The court provided specific examples that the petition could have contained, such as that she had been abandoned by her parents, or that her parents were unable or refused to care for her, or that her parents refused to provide essential medical care for her. *Id.* at 602. Because the petition lacked those specifics, the court considered that “[i]t is altogether possible, based on the face of the petition, that [the victim] is receiving all the protection or services she needs from her family,” and affirmed the circuit court’s dismissal of the petition. *Id.*

¶9 Much like the petition in *Courtney E.*, the petitions in this case fail to establish probable cause that Kirsten and/or Ashley was or is in need of protection or services which could have been ordered by the circuit court. The petitions merely state that Kirsten was the victim of abuse and Dawn no longer

appears to believe that this is true. There were no allegations that Kirsten or Ashley had been abandoned by Dawn, or that Dawn was unable or refusing to care for them, or that Dawn was refusing to provide essential medical care for Kirsten or Ashley or that Dawn was letting the grandfather have unsupervised visits with the girls. In fact, the petitions clearly indicate that Dawn sought medical treatment for Kirsten after she learned of the alleged abuse and that she has cooperated with both the Department and the Sheboygan police department in their investigation of Kirsten's grandfather regarding the reported sexual abuse. As in *Courtney E.*, the lack of specific information in the petitions suggests that Dawn is providing all of the services and protection that Kirsten and Ashley need.

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

