

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

July 12, 1995

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

**NOTICE**

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

No. 95-0316-FT

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT II

In re the Interest of Derrick J.  
A Child Under the Age of 18 Years:

STATE OF WISCONSIN,

Petitioner-Appellant,

v.

ZITA B.,

Respondent-Respondent.

APPEAL from an order of the circuit court for Racine County:  
NANCY E. WHEELER, Judge. *Affirmed.*

SNYDER, J. The State seeks to vacate an order dismissing a Children in Need of Protection or Services (CHIPS) petition that it filed regarding Derrick J. The circuit court dismissed the petition on the grounds that Derrick was not residing in the state during the pendency of the CHIPS action. The State argues that Derrick's physical absence is irrelevant to the

court's competency to exercise its jurisdiction and act on the CHIPS petition. We conclude that the circuit court lacked competency to act on the petition because there were no services which it could have ordered as required under § 48.13, STATS. Accordingly, we affirm the order dismissing the CHIPS petition.

On October 12, 1994, the State filed CHIPS petitions on each of Zita B.'s five children, including Derrick. According to the petitions, the five children were taken into protective custody on October 8, 1994, and placed in foster care after having been left alone by Zita. The petitions for each child contained the same factual allegations, and contended that the children were in need of protection or services pursuant to subsecs. (2), (8) and (10) of § 48.13, STATS.<sup>1</sup>

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<sup>1</sup> Section 48.13, STATS., states in relevant part:

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:

....

(2) Who has been abandoned;

....

(8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;

....

(10) Whose parent ... neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.

...

However, the undisputed evidence presented at the plea and dispositional hearing revealed that Derrick had not been taken into custody on October 8 but instead had been living with his alleged father in Illinois. It is further undisputed that Derrick resided outside Wisconsin, presumably with his alleged father, throughout the pendency of the CHIPS proceedings.

On December 22, 1994, a plea and dispositional hearing was held on the petitions. Neither Derrick nor his alleged father was present at this hearing, and his appearance was waived by the court-appointed guardian ad litem. The circuit court sua sponte raised the issue of its jurisdiction over the petition regarding Derrick and solicited arguments from the parties. The court then dismissed the petition regarding Derrick, concluding that there were no services which it could order for a child who had been absent from the state during the CHIPS proceeding and who remained absent. However, the court ordered Zita to notify the Racine County Department of Human Services within twenty-four hours if Derrick returned.<sup>2</sup> The State appeals.

Section 48.13, STATS., gives the circuit court “exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court.” Because this jurisdiction is conferred by statute, it is among the lesser powers of a circuit court referred to as the court’s “competency” to act, which is the ability to adjudicate a specific case before the court. *Michael J.L. v. State*, 174 Wis.2d 131, 137, 496 N.W.2d 758, 760 (Ct. App.

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<sup>2</sup> Following Zita’s no contest plea to the petitions concerning the other four children, the court found them to be in need of protection or services and placed them in foster care.

1993). Whether the court had competency to exercise its jurisdiction in this matter pursuant to § 48.13 is a question of law which we review de novo. See *State ex rel. R.G. v. W.M.B.*, 159 Wis.2d 662, 666, 465 N.W.2d 221, 223 (Ct. App. 1990).

For a CHIPS petition to be sufficient, it must provide “reliable and credible information which forms the basis of the allegations necessary to invoke the jurisdiction of the court.” *State v. Courtney E.*, 184 Wis.2d 592, 600, 516 N.W.2d 422, 425 (1994) (quoting § 48.255(1)(e), STATS.). Pursuant to § 48.13, STATS., a court has jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court and who meets one of the fourteen criteria set forth in § 48.13. *Courtney E.*, 184 Wis.2d at 600 & n.5, 516 N.W.2d at 425. Therefore, in order for the petition in this case to be sufficient, it must allege and provide information that: (1) Derrick is in need of protection or services which can be ordered by the court; and (2) Derrick has been abandoned, see § 48.13(2), is receiving inadequate care during his parent's absence, see § 48.13(8), or is a child whose parent neglects, refuses or is unable to provide daily necessities so as to seriously endanger his health, see § 48.13(10).

We conclude that the trial court lacked competency to exercise its jurisdiction over the CHIPS petition because the petition failed to meet the first criteria of § 48.13, STATS.—that Derrick was in need of protection or services *which can be ordered by the court*. As the circuit court recognized, because Derrick had not been living in Wisconsin at any time during the pendency of the CHIPS proceeding, it was at a loss as to any services it could order for Derrick. The

State argued at the hearing that the court could order that Zita cooperate with establishing paternity and that this would constitute a “tremendous service to [Derrick] so that he is legitimized and is then able to receive benefits from his father.” We are unconvinced that this is the type of service contemplated by § 48.13.

Further, our supreme court has held that a “CHIPS petition is not sufficient unless it contains information which at least gives rise to a reasonable inference sufficient to establish probable cause that there is something that the court could order for the child that is not already being provided.” *Courtney E.*, 184 Wis.2d at 602, 516 N.W.2d at 426. Here, the factual allegations in the petition do not apply to Derrick because it is undisputed that he was not present during the relevant time period. The State concedes in its argument that Derrick's father's fitness to care for him is unknown. It is entirely possible that Derrick is receiving all of the protection and services that he needs from his father in Illinois. *See id.* at 602, 516 N.W.2d at 426. Accordingly, we conclude that the petition was not sufficient and the circuit court properly dismissed it.

The State also relies on the Uniform Child Custody Jurisdiction Act (UCCJA), ch. 822, STATS., to argue that the child's residency controls and therefore the court has jurisdiction to act on the CHIPS petition. The State contends that Derrick's undisputed place of residency was Racine, Wisconsin, and his temporary absence does not deprive the court of jurisdiction. We agree with Derrick that the State's reliance on the UCCJA is misplaced. We are mindful that the UCCJA applies to CHIPS proceedings. *N.J.W. v. State*, 168

Wis.2d 646, 652, 485 N.W.2d 70, 72 (Ct. App. 1992). However, if a court lacks competency to act on a CHIPS petition because the petition is insufficient under § 48.13, STATS., the UCCJA does not act to render the court competent. We fail to see the relevance of the UCCJA to the appellate issue here.

The State also makes a veiled public policy argument, asserting that Derrick “is now essentially abandoned by his state of residence, the state that is obligated by law to protect him.” We disagree. The trial court ordered that Zita notify the county within twenty-four hours of Derrick's return, presumably so that the State could monitor the situation and provide any necessary protection or services.

Last, the State asserts that the circuit court cannot, on its own motion, dismiss a CHIPS petition “without a fact finding.” The State also concludes its arguments by making vague constitutional complaints, stating that Derrick has been “deprived ... of the protection afforded him by virtue of his residency,” “discriminated against” and was “stripped of his citizenship.” The State fails to develop any argument in support of these bold assertions. An issue raised but not argued or briefed is deemed abandoned. *Reiman Assocs., Inc. v. R/A Advertising, Inc.*, 102 Wis.2d 305, 306 n.1, 306 N.W.2d 292, 294 (Ct. App. 1981).

*By the Court.* – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.