

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).

2018 IL App (4th) 180355-U

NO. 4-18-0355

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 17, 2018

Carla Bender

4th District Appellate

Court, IL

<i>In re</i> A.S., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Vermilion County
Petitioner-Appellee,)	No. 17JA62
v.)	
David S.,)	Honorable
Respondent-Appellant).)	Thomas M. O’Shaughnessy,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court’s neglect finding was not against the manifest weight of the evidence.

¶ 2 In October 2017, the State filed a petition for adjudication of wardship as to A.S. (born in July 2017), the minor child of respondent, David S., asserting A.S. was neglected on six counts. Respondent admitted A.S. was neglected based on two counts alleged in the petition. At the May 2018 dispositional hearing, the Vermilion County circuit court (1) found respondent unfit and unable to care for A.S., (2) made A.S. a ward of the court, and (3) placed A.S.’s custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 3 Respondent appeals, and despite his admission, he argues the circuit court erred by finding A.S. neglected. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A.S.'s mother is Ashley S., who is not a party to this appeal. In January 2018, Ashley signed a final and irrevocable surrender of her parental rights to A.S. The State's October 2017 petition alleged A.S. was neglected pursuant to section 2-3(1)(a) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a) (West 2016)), because she was a minor whose parents did not provide (1) the proper and necessary support for her in that she had complicated medical needs that required specialized training, specialized food, specialized care, and specialized machinery, which her parents did not provide (count I); (2) her with adequate food, clothing, and shelter (count II); and (3) the medical and remedial care recognized under state law as necessary for A.S.'s well-being (count IV). The petition also alleged A.S. was neglected under section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2016)) in that her environment was injurious to her welfare (1) when she resides with respondent and Ashley because they fail to provide A.S. with adequate food as necessary for her health and well-being (count III), (2) when she lives with Ashley because Ashley failed to correct the conditions which resulted in prior adjudications of parental unfitness to exercise guardianship and/or custody of A.S.'s siblings in Vermilion County case Nos. 14-JA-103 and 16-JA-21 (count V); and (3) when she lives with Ashley because of Ashley's history of mental illness (count VI). In October 2017, the circuit court held a shelter care hearing, at which Cari Dieu, a DCFS investigator, and respondent testified. At the hearing, the court found it was in A.S.'s best interests to grant DCFS temporary custody and guardianship of A.S.

¶ 6 On March 21, 2018, the circuit court held the adjudicatory hearing. Pursuant to an agreement with State, respondent admitted A.S. was neglected as alleged in counts I and II of the wardship petition, and the State withdrew the other four neglect allegations. After admonishing respondent and hearing a factual basis for the two counts, the court accepted

respondent's admission.

¶ 7 On May 16, 2018, the circuit court held the dispositional hearing. The State presented the dispositional report and, in addition, the testimony of Sofia Dumlao, the caseworker. Dumlao testified A.S. had a lot of medical issues. She had a heart monitor and an oxygen tube and was scheduled for surgery to receive a feeding tube. A.S. had been in foster care since she was four days old. A therapist was present at respondent's visits with A.S. to teach him how to feed A.S. and address her medical needs. The therapist discharged respondent from the training because he was not improving in his ability to care for A.S. During one visit, A.S.'s oxygen saturation went down, and respondent did nothing. He just let the therapist address the situation. Moreover, respondent did not attend parenting classes and had not obtained both a psychological evaluation and a domestic-violence assessment. Respondent also had transportation issues, and A.S. needed medical care in Peoria, Illinois, and St. Louis, Missouri. After hearing the parties' arguments, the circuit court found respondent was unfit and unable to care for A.S. The court made A.S. a ward of the court and placed his custody and guardianship with DCFS. That next day, the court entered both a written adjudicatory and a written dispositional order.

¶ 8 On May 21, 2018, respondent filed a timely notice of appeal from the dispositional order in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). Thus, this court has jurisdiction of both the adjudicatory order and dispositional order under Illinois Supreme Court Rule 304(b)(1) (eff. Mar. 8, 2016). See *In re Austin W.*, 214 Ill. 2d 31, 43-44, 823 N.E.2d 572, 580 (2005), *abrogated on other grounds by In*

re M.M., 2016 IL 119932, ¶ 31, 72 N.E.3d 260 (noting “dispositional orders are generally considered ‘final’ for the purposes of appeal”); see also *In re D.R.*, 354 Ill. App. 3d 468, 473, 820 N.E.2d 1195, 1199 (2004) (finding this court had jurisdiction of adjudicatory order because it “is a step in the procedural progression leading to the dispositional order”).

¶ 9

II. ANALYSIS

¶ 10 After a petition for adjudication of wardship based on abuse, neglect, or dependency is filed under section 2-13 of the Juvenile Court Act (705 ILCS 405/2-13 (West 2016)), the act provides a two-step process the circuit court must utilize to decide whether the minor child should become a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. Step one of the process is the adjudicatory hearing, at which the court considers only whether the minor children are abused, neglected, or dependent. See 705 ILCS 405/2-18(1) (West 2016); *A.P.*, 2012 IL 113875, ¶ 19. If the circuit court determines the minor children are abused, neglected, or dependent at the adjudicatory hearing, then the court holds a dispositional hearing, where the court determines whether it is consistent with the health, safety, and best interests of the minor children and the public for the minor children to be made wards of the court. *A.P.*, 2012 IL 113875, ¶ 21.

¶ 11 On appeal, respondent contends the circuit court erred by finding A.S. neglected because the State failed to prove A.S.’s environment was injurious to her welfare or that she had not been provided the necessary food, shelter, and clothing to thrive. As the State notes, respondent admitted A.S. was neglected as alleged in both counts I and II of the petition pursuant to an agreement with the State. “A stipulation, or a judicial admission, is an agreement between the parties or their attorneys with respect to business before the court.” *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 462, 605 N.E.2d 493, 505-06 (1992). Moreover, “[a] judicial

admission is a formal act which waives or disposes of the production of evidence, by conceding for the purposes of litigation that a proposition of fact is true. [Citation.] The effect of a judicial admission is to remove the proposition in question from the field of disputed issues.” *Dauen v. Board of Fire & Police Commissioners of City of Sterling*, 275 Ill. App. 3d 487, 491, 656 N.E.2d 427, 430 (1995). Thus, by admitting counts I and II of the wardship petition, respondent withdrew from contention the fact A.S. was neglected as alleged in counts I and II. “ ‘A judicial admission is conclusive upon the party making it; it may not be controverted at trial or on appeal.’ ” *Brummet v. Farel*, 217 Ill. App. 3d 264, 267, 576 N.E.2d 1232, 1234 (1991) (quoting Michael H. Graham, *Evidence: Text, Rules, Illustrations and Problems* at 146 (1st ed. 1983)). Accordingly, respondent cannot challenge the neglect finding on appeal.

¶ 12 Last, we note that, while the nature of the case section of respondent’s brief states he is contesting the finding of neglect and the dispositional order, respondent does not raise any specific arguments challenging the dispositional order.

¶ 13 III. CONCLUSION

¶ 14 For the reasons stated, we affirm the Vermilion County circuit court’s judgment.

¶ 15 Affirmed.