

MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE:

IN THE INTEREST OF: K.S-W., PLAINTIFF; C.P.S., APPELLANT; D.B.W, APPELLANT
PRO SE,

Appellant

v.

JUVENILE OFFICER, RESPONDENT; MISSOURI CHILDREN'S DIVISION,
RESPONDENT.

Respondent

DOCKET NUMBER WD75753

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: October 22, 2013

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Justine E. Del Muro, Judge

Appellate Judges:

Division One
Victor C. Howard, P.J., Joseph M. Ellis, and Anthony Rex Gabbert, JJ.

Attorneys:

Donald Forrester, Kansas City, Valerie Sieverling, Kansas City, Laurie Snell, Kansas City

Counsel for Appellant

Attorneys:

Gary Gardner, Jefferson City

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**IN THE INTEREST OF: K.S-W., PLAINTIFF;
C.P.S., APPELLANT; D.B.W, APPELLANT
PRO SE, Appellant, v.
JUVENILE OFFICER, RESPONDENT;
MISSOURI CHILDREN'S DIVISION,
RESPONDENT, Respondent**

WD75753

Jackson County

Before Division One Judges: Victor C. Howard, P.J., Joseph M. Ellis, and Anthony Rex Gabbert, JJ.

C.P.S. and D.B.W. (Appellants) appeal the circuit court's judgment adopting the commissioner's findings that sustained Juvenile Officer allegations that K.S.W. was in need of care and treatment and subject to the jurisdiction of the court pursuant to Section 211.031.1, RSMo. Cum. Supp. 2010, due to parental neglect. Appellants assert that the court erred when: (1) it sustained Count 1 of the petition which alleged the child to be without proper care, custody and support and subject to jurisdiction pursuant to Section 211.031.1 because the findings grossly misstate the evidence, are against the weight of the evidence, and the Juvenile Officer failed to prove the allegation by clear and convincing evidence; (2) it denied Appellants a fair and impartial hearing by an impartial and competent judicial officer free from ex parte communications because it failed to hear and keep a record of testimony, made biased findings without reference to the evidence, and abused its discretion in determining credibility; (3) it considered and relied on evidence irrelevant to the allegations in the Petition, or hearsay, because it sustained objections to the admission of such evidence or stated that no consideration was being given to the evidence that did not support allegations in the petition; (4) it overruled Appellants' motions to dismiss and sustained the Juvenile Officer's petition because the petition and the Commissioner's Conclusions of Law failed to establish abuse and neglect in that the allegations sustained lack specificity, do not constitute abuse or neglect under the law, and are made in the absence of substantial, competent evidence as a matter of law.

REVERSED AND REMANDED

Division One holds:

- (1) As the judgment is reversed on other grounds, it is unnecessary to reach whether the court erred in sustaining Count 1 of the petition.
- (2) As the judgment is reversed on other grounds, it is unnecessary to determine whether the court denied Appellants a fair and impartial hearing.

- (3) The circuit court abused its discretion in considering and relying on prejudicial evidence that proved to be irrelevant to the allegations in the petition.
- (4) As the judgment is reversed on other grounds, it is unnecessary to determine whether the court erred in overruling Appellants' motions to dismiss and in sustaining the Juvenile Officer's petition.

Opinion by Anthony Rex Gabbert, Judge

Date: October 22, 2013

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.