Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-177

OCTOBER TERM, 2019

In re R.C. & A.C., Juveniles (N.C., Father*)	}	APPEALED FROM:
	}	Superior Court, Franklin Unit, Family Division
	}	DOCKET NO. 59/60-2-18 Frjv
		Trial Judge: Martin A. Maley

In the above-entitled cause, the Clerk will enter:

Father appeals from the trial court's determination that R.C. and A.C. are children in need of care or supervision (CHINS). We affirm.

A.C. was born in November 2006; R.C. was born in August 2014. In February 2018, the children were taken into the emergency custody of the Department for Children and Families (DCF) after B.G., mother's eighteen-month-old nephew, suffered serious, unexplained physical injuries in parents' care. B.G. required emergency medical treatment, and given the nature of his injuries, a criminal investigation ensued. The status of the criminal investigation is not clear from the record.

Following a three-day evidentiary hearing, the court determined that R.C. and A.C. were CHINS. It made the following findings concerning the events leading to the CHINS petition. B.G. was dropped off at parents' home on a Friday and picked up the following Monday afternoon. He had no injuries when he was dropped off. B.G.'s mother brought B.G. to the hospital immediately upon his return to her care. His body, face, ears, and the top of his head were covered in injuries; his lips were extremely swollen as well. A highly qualified expert in the area of child abuse pediatrics examined B.G. at the hospital. B.G. had more bruises on his body than the expert had ever seen on one child. The expert observed at least thirty-two discrete bruises and more that he could not see. He opined that the injuries to B.G.'s mouth and face, including substantial bruising around the mouth and the tearing of the upper and lower frenulum, were likely caused by a punch in the face. The expert also discovered a pinch mark on B.G.'s penis. Based on his prior experience and research in the field, the expert was certain that the mark was not accidental or self-inflicted, but rather intentionally caused by someone pinching the tip of B.G.'s penis between their finger and thumb.

The expert also observed that B.G.'s scalp had an "odd repetition" of circular pattern injuries, "a little smaller than a quarter in diameter, and repeated." At the time of his initial examination, the expert was unsure what device had caused these injuries. Within several days of his initial examination, however, police obtained a circular-shaped signet ring from father; father was wearing the ring at the time it was collected. On the face of the ring was a pentagram. The

expert examined the ring and compared the distinctive circular-type bruising on B.G.'s scalp with the ring's shape. He found that the bruising matched the ring's design. Based on his examination, it was his expert medical opinion that the bruises to B.G.'s head were caused by being struck with father's ring. The expert explained with additional detail and certainty the mechanics of the injuries caused by father's ring. In addition to the injuries described above, the expert testified that B.G. also sustained fractures to his right wrist and possible internal injuries. B.G. had previously sustained other injuries while in parents' care, including a bruise on his penis and a burn on his hand.

Parents blamed three-year-old R.C. for inflicting some of B.G.'s injuries, which the expert emphatically ruled out given the amount of force required to leave the marks found on B.G. and to cause his significant injuries. Parents offered other explanations for B.G.'s injuries as well, including that B.G. fell in the bathtub and that another child threw a book at him. The court found parents' version of events did not even begin to explain the various horrendous injuries that B.G. suffered.

The children's maternal grandmother (also B.G.'s grandmother) testified that she dropped B.G. off at parents' home on a Friday and picked him up on Monday. When grandmother dropped B.G. off, she did not notice any injuries and he was not in distress. When she picked him up, he was dressed in a coat, hat, and hood. Despite his outfit, grandmother noticed that B.G. had a bruise under his eye and that his lips were swollen and crusted with blood. Father was the sole or primary caretaker for the children during certain periods of time that weekend; he was caring for B.G. when grandmother retrieved B.G. Father told grandmother that B.G. had fallen in the bathtub. When grandmother removed B.G.'s hat and coat, she noticed bruises on his body and head. She contacted B.G.'s mother, telling her it looked like B.G. had been beaten up. B.G.'s mother similarly testified that B.G. did not have any injuries when he was dropped off at parents' home.

Paternal grandmother saw B.G., parents, and their children during the weekend in question. She did not notice any significant aggressive behaviors by R.C. She noted that B.G. had been mildly injured by a hula hoop at a school function that weekend but, as of Saturday evening, she did not see any injuries to his scalp. Paternal grandmother also testified to father's longstanding struggles with substance abuse, including multiple admissions to residential treatment. Father admitted to struggling with substances, particularly crack cocaine. He admitted using crack cocaine while the children were in school and to recently relapsing and using crack cocaine. Police located drug paraphernalia and suspected cocaine in a dresser in the family residence, which the children could have accessed. The court concluded that father was using substances in the period leading up to the CHINS petition.

Based on paternal grandmother's testimony, the court inferred that B.G.'s injuries were not inflicted until later Saturday evening or the following day. It found that father intentionally caused serious injuries to B.G. and attempted to cover up his role by blaming R.C. and other minor events that weekend. The court gave substantial weight to the expert's testimony and opinions, particularly with respect to the cause of B.G.'s scalp injuries. As indicated above, the expert dispelled the notion that the injuries could have been inflicted by R.C., or have been accidental or self-inflicted, which further supported the court's findings that father's explanations for the injuries were not believable. While the court did not find that mother caused B.G.'s injuries, it found it inconceivable that she did not observe B.G.'s obvious and serious injuries. The court found that she did in fact observe the injuries, had reason to suspect that father inflicted them, and yet adopted and supported father's version of events. The court rejected as blatantly false parents' assertion that B.G. was sent home with only some facial bruising. The court found both parents deceptive about the nature and origin of B.G.'s serious injuries.

Based on these and other findings, the court concluded that R.C. and A.C. were CHINS. It found parents' "pattern of conduct toward children entrusted to their care" to be relevant and probative of a risk of harm to A.C. and R.C. E.J.R. v. Young, 162 Vt. 219, 225 (1994). It determined that the fact that B.G.'s abuse was unexplained, apparently random, and perhaps drug induced, placed any child in father's care at risk. The court also cited father's ongoing dishonesty about the events as further connecting father's abuse of B.G. to risk of harm to A.C. and R.C. It noted that father should have known that B.G. required immediate medical attention while in his care, yet he instead tried to hide B.G.'s injuries for as long as possible. The court concluded that mother knew that B.G. had sustained serious injuries and she failed to intervene. It thus concluded that father posed a severe risk of harm to any child entrusted to his care and that mother could not be entrusted to protect the children in the home given her failure to act, rendering the children CHINS. Father appealed.

Father argues that the court engaged in speculation in finding, by a preponderance of the evidence, that he abused B.G., including punching him in the face and pinching his penis. Father also asserts that his alleged treatment of B.G. has no bearing on whether R.C. and A.C. were at risk of harm.[1]

We reject these arguments. The State had the burden of providing by a preponderance of the evidence that at the time the CHINS petition was filed, the children were in need of care or supervision. In re L.M., 2014 VT 17, ¶¶ 19-20, 195 Vt. 637. On review of a CHINS determination, "we will uphold the court's findings of fact unless they are clearly erroneous" and "we will uphold the court's legal conclusions where supported by its findings." In re M.L., 2010 VT 5, ¶ 18, 187 Vt. 291. It is the exclusive role of the trial court "to weigh the evidence and assess the credibility of witnesses." Id. ¶ 29.

The court's finding that father abused B.G. is supported by the record. As recounted above, the court credited testimony that B.G. was dropped off at parents' home without injuries. B.G. was observed on Saturday not to have to the grievous injuries he later suffered. When B.G.'s grandmother picked him up from parents' home on Monday, B.G. was covered in obvious injuries. As his grandmother described it, it looked like someone "beat the crap out of him." Father was the primary or sole caregiver for B.G. for periods of time during the weekend in question. He lied about how B.G. was injured. Father tried to hide B.G.'s injuries, dressing him in a coat, hat, and hood. Neither he nor mother offered any plausible explanation for how B.G.'s injuries occurred; they were instead deceitful. The court credited the expert's testimony linking the distinct bruising pattern on B.G.'s scalp to father's signet ring, a ring seized from father's finger. Based on the evidence, the court did not err in finding it more probable than not that father abused B.G.

Father argues that the court "overstated the strength of the evidence" connecting his ring to B.G.'s bruises. This is simply a challenge to the court's assessment of the weight of the evidence, an argument we do not entertain on appeal. The expert offered his expert medical opinion that father's ring caused the marks on B.G.'s scalp. He opined that the circumference of the ring was "a perfect match" of the bruises on B.G.'s scalp. The expert did not state that the ring "could" have caused the bruises; he testified that it did. To prove its case, the State did not need to rule out other possible objects that could have caused the distinct injuries to B.G.'s scalp, nor

[1] Father also challenges as unfounded the court's observation that his actions were "perhaps drug induced." The court did not find this as fact, and its passing observation, couched as a mere possibility, had no bearing on its conclusion. Cf. State v. Bruno, 2012 VT 79, ¶ 18 n.1, 192 Vt. 515 (recognizing trial court's "musings as mere hypotheses," rather than the basis of court's credibility assessment). This claim of error is without merit.

did it need to establish that other individuals who had access to B.G. that weekend did not injure him. This was not a case where "two possibilities can be inferred from the evidence," as father posits. The State's evidence, including evidence about father's access to B.G. and the causation testimony offered by the State's expert, all of which the trial court credited, satisfied the State's burden of proof.

The court's findings that father punched B.G. in the face is equally supported by the evidence. The court determined that "[g]iven the strength of the evidence pointing to Father, with regard to the injuries caused by the signet ring and the contemporaneous findings of other unexplained injuries, . . . Father also inflicted the injuries to B.G.'s face and mouth by punching him."[2] The court did not engage in speculation in finding it more likely than not that father caused these injuries, nor did it rely on impermissible character evidence in doing so, assuming arguendo that such an argument was preserved. In re R.M., 150 Vt. 59, 69 (1988) (rejecting argument that "introduction of evidence pertinent to abuse and neglect of [child's] sibling was violative of the prohibition against the use of prior bad acts to prove character of a person" and finding that "V.R.E. 404(b) does not apply under the circumstances of the instant case," explaining that "purpose of challenged evidence was not to demonstrate that [child's] mother acted in conformity with a particular character trait, but, rather, its legitimate purpose was to show the totality of the home environment directly impacting on the well-being of [child]"). It was reasonable to infer from the evidence above, and the fact that father caused the injuries to B.G.'s scalp, that he also punched B.G. in the face, splitting his upper and lower frenulum and bruising his mouth. The court is entitled to rely on circumstantial evidence and draw reasonable inferences from the facts. Cf. State v. Erwin, 2011 VT 41, ¶ 20, 189 Vt. 502 ("Obviously, [a] defendant's guilt may be established by direct evidence and by circumstantial evidence, and 'proof of facts includes reasonable inferences properly drawn therefrom.' " (quoting State v. Kerr, 143 Vt. 597, 603 (1983))). It may also rely on its own common sense and experience. In re L.M., 2014 VT 17, ¶ 30, 195 Vt. 637 ("In reaching its decision that [a child] was 'without proper parental care or subsistence, education, medical, or other care necessary for his or her well-being,' 33 V.S.A. § 5102(3)(B), the court could properly draw upon its own common sense and experience." (quotation omitted)).

The court found it probable that father pinched B.G.'s penis, crediting the expert's testimony that it was an intentionally inflicted injury. We need not consider father's arguments concerning the pinch because, even assuming this finding was unsupported, it would not undermine the court's conclusion that father inflicted serious physical harm on B.G.

Finally, the court's findings support its conclusion that A.C. and R.C. were at risk of harm. Its reasoning is well-grounded in our existing case law. We recognized in E.J.R., 162 Vt. at 224, that the trial court "may rely on evidence of the treatment of a sibling in concluding that a child is a CHINS." The trial court there found that "both parents exhibited a pattern of conduct toward children entrusted to their care substantially departing from the norm," and we found ample evidence to link the treatment of the child's siblings to the "likely future treatment" of the child in question. Id. at 225 (quotation omitted). We reached a similar conclusion in In re J.C., 2016 VT 9, 201 Vt. 192, upholding the trial court's conclusion that a mother's emotional and physical abuse of her stepchild placed the other children in the home at risk of harm.

[2] Father erroneously asserts that the court erred in finding that B.G. was punched in the face. B.G.'s upper and lower frenulum were torn and the area around his mouth and face was bruised, which the expert attributed to the child's having been punched in the face. The expert testified, "I believe this child was punched in the face." His testimony supports the court's finding.

We have never limited the application of this principle to siblings, and father offers no persuasive reason why we should do so. Even if it is true, as father asserts, that "[s]iblings are more likely to be similarly situated when they live in the same household," that does not mean evidence of a parent's mistreatment of other children is necessarily irrelevant. Instead, as father acknowledges, we must consider the specific factual circumstances in each case. See E.J.R., 162 Vt. at 224 ("Whether treatment of one child is probative of neglect or abuse of a sibling must be determined on the basis of the facts of each case." (quotation omitted)); see also In re J.C., 2016 VT 9, ¶ 7 ("The principal issue is whether, given all of the circumstances, the child is without proper parental care, such that the child's well-being is threatened, a question of fact, and each case must be determined on its own facts." (quotation and alteration and quotation marks omitted)).

Father's unexplained serious physical abuse of an eighteen-month-old relative in his home, a child who was entrusted to parents' care, is clearly relevant in determining if other children in parents' care and home are at risk of harm. Mother's failure to protect B.G. is equally relevant. As the trial court explained, father offered no explanation as to why he attacked a small child so horrifically. He engaged in ongoing dishonesty about the events in question. He attempted to cover up his actions by suggesting improbable causes. He did not seek out emergency medical treatment for B.G. for his obvious grievous injuries, but instead took steps to obfuscate the truth behind B.G.'s injuries for as long as possible. As the court observed, father's horrific abuse of B.G., unexplained and random, placed any child in father's care at risk. Mother similarly did not seek out help for B.G. despite his serious and obvious injuries. As in E.J.R., both parents here "exhibited a pattern of conduct toward [a child] entrusted to their care substantially departing from the norm." 162 Vt. at 225 (quotation omitted). The court did not err in concluding that their conduct posed a risk of harm to A.C. and R.C.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice