



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

JANUARY TERM, 2023

In re P.B., Juvenile	}	APPEALED FROM:
(K.B., Mother*)	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	CASE NO. 21-JV-01562
	}	Trial Judge: Kirstin K. Schoonover

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

Mother appeals from the trial court's determination that daughter P.B. was a child in need of care or supervision (CHINS). We affirm.

The trial court made the following findings after a hearing. P.B. was born in August 2005. Parents do not live together and at the time the CHINS petition was filed, P.B. was living primarily with mother. P.B. was diagnosed with Type 1 Diabetes in January 2020. To control her blood sugar levels, P.B. needs to inject insulin daily. If she fails to do so, she could become nauseous and dehydrated, vomit, and lose consciousness. Over time and if left untreated, Type 1 Diabetes can cause significant physical problems and death.

P.B. and mother initially learned how to administer P.B.'s daily injections with a pen. P.B. would administer this medicine and she knew how to insert insulin into the pen. In June 2021, P.B. transitioned to a pump system that she wore on her body; the pump system uses vials of insulin, and the ratio of insulin differs from that used in the pen. The supplies for the pump must be refilled approximately every three months.

In August 2021, P.B. informed mother that she had run out of insulin for her pump. Mother told P.B. to use the old insulin from her pens, which P.B. did. The insulin prescription for the pump was not filled. P.B. did not remember how to calculate the proper insulin dosage and improvised. Mother acknowledged that she relied on P.B. to figure out the dosage.

P.B. remained without prescribed insulin for about five weeks beginning in October 2021, which mother acknowledged. Mother did not check P.B.'s blood-sugar levels regularly and told P.B. to check them herself. Mother relied on P.B. to administer her own medicine. Mother and P.B. missed a scheduled appointment with P.B.'s endocrinologist in October 2021 and mother did not reschedule it.

In November 2021, P.B. told mother she did not feel well. P.B. passed out at school and was transported to the hospital. Mother did not return numerous calls placed to her after P.B. passed out. P.B. was admitted to the hospital and diagnosed with mild ketoacidosis. Her blood-sugar levels were high. Mother did not call P.B.'s doctor after P.B.'s hospital admission; mother believed that P.B. was not sick but was just seeking attention. P.B.'s treating physician was concerned that P.B. was out of vials for her pump and that she had been using expired insulin from her pens; the doctor was also concerned that mother said she was unaware that P.B. had run out of insulin. The doctor expected mother to ensure that P.B. had the necessary supplies given the danger to P.B.'s health if her insulin ran out. The doctor asked the Department for Children and Families (DCF) to coordinate a safe hospital discharge plan for P.B. In mid-November 2021, DCF filed the CHINS petition at issue here.

Based on the findings above, the court concluded that P.B. was CHINS pursuant to 33 V.S.A. § 5102(3)(B) because she was “without proper parental care or subsistence, education, medical, or other care necessary for . . . her well-being.*” It explained that P.B. was hospitalized due to the mismanagement of her insulin. Mother largely abdicated her responsibility to help P.B. manage her diabetes, which put too heavy a burden on P.B. Mother did not take P.B. to the doctor, where the insulin issue presumably could have been addressed, and she did not refill P.B.'s prescription when her insulin ran out. Mother knew that P.B. did not have her medicine and told P.B. to use old insulin from her pen. This insulin had expired, and it required a specific calculation to administer properly in the pump. The court found that mother's poor judgment and lack of attentiveness to P.B.'s condition put P.B. at risk of physical harm and it directly contributed to P.B.'s hospitalization. Without intervention by other family members, the court found that the physical consequences to P.B. could have been much worse. The court determined that P.B. was harmed and at risk of further harm and that she was without proper parental care at the time that the CHINS petition was filed. Following the issuance of a disposition order, this appeal followed.

Mother argues on appeal that the evidence does not support the court's conclusion. According to mother, she made significant efforts to meet P.B.'s needs and the fact that P.B. was hospitalized does not show that she was CHINS. Mother asserts that she was prepared to take P.B. to the doctor. Mother suggests that P.B. wanted to live with father and that this was accomplished through the CHINS petition.

As the court recognized, “[t]he focus of a CHINS proceeding is the welfare of the child.” In re M.O., 2015 VT 120, ¶ 6, 200 Vt. 384 (quotation omitted). A child is CHINS if the child is “without proper parental care or subsistence, education, medical, or other care necessary for [the child's] well-being.” 33 V.S.A. § 5102(3)(B). On review, we will uphold the court's factual findings 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, ¶ 8, 187 Vt. 291. We leave it to the family division “to weigh the evidence and assess the credibility of witnesses.” Id. ¶ 29.

We conclude there is no error here. Mother does not challenge any of the court's factual findings as clearly erroneous and the court's findings support its conclusion that P.B. was CHINS. The court did not base its conclusion simply on the fact that P.B. was hospitalized, as

* The court did not conclude that P.B. was CHINS because she was “without or beyond the control of his or her parent” under 33 V.S.A. § 5102(3)(C) and it is unclear why mother references this statutory language in her brief.

mother suggests. Instead, as set forth above, it found that mother did not assist P.B. in managing her diabetes. She did not check P.B.'s blood sugar levels regularly. She did not take P.B. to her scheduled doctor appointment or reschedule that appointment. She advised P.B. to use old insulin that required a different ratio when used with P.B.'s pump system and she did not refill P.B.'s insulin prescription. The court acted well within its discretion in concluding that mother's poor judgment and lack of attentiveness to P.B.'s condition put P.B. at risk of harm and directly contributed to P.B.'s hospitalization. Mother essentially challenges the trial court's assessment of the evidence and we do not reweigh the evidence on appeal. *Id.* While mother disagrees with the court's conclusion, she fails to demonstrate any error. See *Meyncke v. Meyncke*, 2009 VT 84, ¶ 15, 186 Vt. 571 (mem.) (explaining that arguments amounting to nothing more than disagreement with court's reasoning and conclusion do not make out case for abuse of discretion).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Karen R. Carroll, Associate Justice

Nancy J. Waples, Associate Justice