



disciplinary board complaint against her. The court granted the attorney's motion, but warned mother that she could not expect to be able to keep switching attorneys. Soon thereafter, mother filed a pro se appearance and a waiver of counsel, but reconsidered her decision in January 2008 and asked the court to appoint her another attorney. The court did so, but again warned mother that she would be expected to work cooperatively with the new attorney.

The CHINS hearing resumed on March 21, 2008, with mother being represented by the new attorney, who presented five witnesses, including mother. At the hearing, mother acknowledged raising her voice with the children due to the stress resulting from her not taking her medication, but denied hitting the children or throwing things at them. On April 3, the court filed a decision adjudicating the children as CHINS. The court rejected DCF's allegations of abandonment, but found that mother had physically abused B.K. and S.C. by striking them in the face out of anger and had exhibited a lack of parental care by taking B.K. and K.C. out of school and by failing to take her medication, resulting in physical and verbal abuse of the children.

A contested disposition hearing was held on June 20. At the hearing, the court acknowledged that mother had been taking her medication and thus was better able to parent her children than when the merits hearing was held, but nonetheless found that the emotional abuse continued and that mother was not yet ready to resume custody. Accordingly, the court retained custody with DCF and adopted the disposition report calling for a goal of future reunification with mother or with the children's respective fathers. On July 9, mother filed a notice of appeal through her counsel. On August 1, mother filed pro se motions seeking to appeal the CHINS and disposition decisions, to obtain new counsel, and to modify visitation. In the motions, mother stated that neither one of her counsel had provided her with adequate representation. On August 20, the court denied the motions on three separate motion-reaction forms, stating that (1) the case was currently on appeal; (2) new counsel had already been appointed in connection with the appeal; and (3) determinations regarding visitation would be made in accordance with the disposition report adopted by the court. On September 22, mother filed a notice of appeal from those orders.

On appeal, mother argues that (1) her trial counsel improperly conceded that her children were CHINS at the second day of the CHINS hearing, and (2) the family court should have appointed her new counsel and heard her ineffective-assistance-of-counsel claim. The State and the juveniles oppose the appeals and ask this Court to affirm the family court's orders.

Regarding the first claim of error, mother contends that her attorney, without her authorization, conceded to a finding that the children were CHINS. We disagree. In making this argument, mother focuses on a few of her attorney's remarks in isolation. At the start of the second day of the CHINS hearing, mother's attorney expressed concern over what evidence the court would be considering, given that there was potential evidence of abuse or neglect from a time period as remote as twelve years earlier. The court hedged on its response, but suggested that, with respect to disposition, there was a critical difference between a finding of abuse and a finding of neglect. At one point, the attorney acknowledged the likelihood of a CHINS finding, stating that the key issue appeared to be the appropriate disposition. Following the close of evidence, mother's attorney argued that there was no evidence of abandonment. As to the evidence of abuse and neglect, the attorney acknowledged the children's direct testimony of abuse, and further noted that he had told mother that the court could find CHINS if it believed

any of that testimony, which would be difficult to disprove in its entirety. The attorney argued, however, that B.K.'s testimony had undoubtedly been embellished, given the child's nature and her desire not to join mother in Florida. The attorney contended that the evidence against mother was more in the nature of improper parental care because of mother not having taken her medication, rather than outright abuse. The attorney urged the court to find, if any neglect or abuse, only that there had been some improper care by mother due to her failure to take her medication, which could be fully rectified. As it turned out, the court agreed with mother's attorney that the State failed to prove abandonment, but disagreed with him that there had been no abuse.

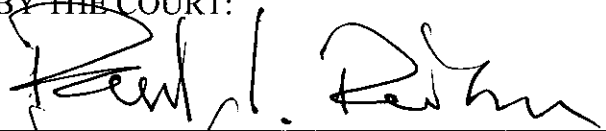
We conclude that the remarks made by mother's attorney do not compel reversal of the CHINS or disposition orders. Although the attorney's remarks may have gone further than necessary in conceding the evidence against mother, the attorney plainly engaged in a strategy of trying to convince the court that there was no evidence of abandonment or abuse, and that any transgressions by mother were nothing more than a lack of proper parental care due to her failure to take her medication. The attorney made this argument in the presence of mother with no objection on her part. Given the significant evidence against mother, including the testimony of her children, the strategy employed by mother's attorney and apparently accepted by mother appears to be a reasonable one. Cf. Underwood v. Clark, 939 F.2d 473, 474 (7th Cir. 1991) (in some circumstances, acknowledgment of overwhelming evidence on a particular count may be a sound trial tactic). In short, upon review of the record, we conclude that mother's attorney did not concede her case but rather engaged in a strategy aimed at improving the chances of her regaining custody of her children as soon as possible. Cf. In re J.H., 144 Vt. 1, 4 (1983) (“[A]n attorney has no authority, without the permission of his client, to dismiss a case with prejudice or do any act that will have the effect of irrevocably renouncing or barring his client's right of action.”). Moreover, the court found abuse by mother, notwithstanding her attorney's argument to the contrary; therefore, the court's finding of CHINS was plainly not based on any argument made by mother's attorney.

Mother also argues that the family court erred by not appointing her new counsel and hearing her ineffective-assistance-of-counsel claims. On August 1, 2008, six months after the CHINS order and six weeks after the disposition order, mother's assigned trial court counsel was allowed to withdraw, and mother filed three pro se motions with the family court, two of which are relevant to this appeal. In the first motion, a “Motion to Appeal,” mother requested new merits and disposition hearings and a new assigned counsel, claiming that her previous attorney had been inadequate and that the court had failed to give her sufficient time to present her case. In the second motion, she reiterated her request for new assigned counsel, once again noting the deficiencies of her previous counsel. The family court denied both motions, stating that the case was already on appeal, and that appellate assigned counsel had already been appointed. We conclude that the family court did not err in denying mother's “Motion to Appeal,” in which she essentially challenges orders that had been issued months earlier and were already being appealed. To the extent that mother was claiming ineffective assistance of counsel, this Court has never ruled that such a claim is viable in a CHINS proceeding, and even if it were, we have pointed out that such claims are normally resolved in a separate proceeding to develop an evidentiary record. See In re M.B., 162 Vt. 229, 233 n.3 (1994). We cannot fault the family court for not deciphering mother's pro se motions in the same manner as that suggested by mother's appellate counsel, but the court erred by concluding that mother did not need a new

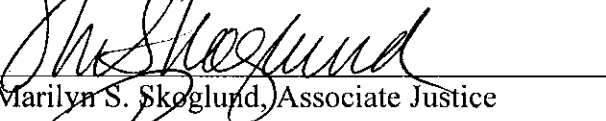
assigned counsel because she had been appointed an appellate counsel. Mother was plainly seeking to modify or vacate the previous CHINS and disposition orders, see 33 V.S.A. § 5113 (regarding modification or vacation of previous orders), which would have been outside the purview of appellate counsel. Given that mother's previous trial counsel had withdrawn, the family court should have appointed a new trial counsel for mother. The new counsel could consult with mother and determine what, if any, viable claims she had concerning modification of the previous orders.

The family court's CHINS and disposition orders are affirmed. The matter is remanded for the family court to appoint assigned trial counsel for mother.

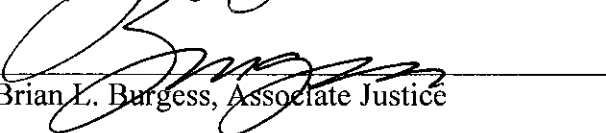
BY THE COURT:



Paul L. Reiber, Chief Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice