

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2002-380

DECEMBER TERM, 2002

In re S.H. and D.H., Juveniles

}	APPEALED FROM:
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}	Franklin Family Court
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}	DOCKET NOS. 96/97-6-02 Frjv
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}	Trial Judge: Jane Dimotsis
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}	

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

Father appeals from a family court judgment that the minors were children in need of care and supervision (CHINS). He contends that the evidence was insufficient to support the finding that the parents had failed to provide adequate health care. We affirm.

D.H. and S.H., who were one and two and a half years old at the time of these proceedings, resided with their parents in a motel room in Swanton. The Department of Social and Rehabilitation Services (SRS) opened a protective services case on the family in the summer of 2000, following reports of domestic violence. The Family Center in St. Albans provided a number of home visits through June 2002. In May of that year, the Family Center worker became concerned about the children's chronic health problems. Specifically, she was concerned about frequent ear infections, vomiting, and overall uncleanliness. S.H.'s teeth were rotting, and the children were continually drinking undiluted juice from bottles despite their pediatrician's advice to mother to provide only milk or water. The worker noted that mother was stressed and isolated; neither she nor father had a driver's license. Father worked long hours, and mother was dependent on her father's mother for rides to the doctor and elsewhere.

An SRS worker visited the family on several occasions in May 2002. She noted that mother appeared overwhelmed and isolated, but was resistant to SRS intervention. The worker recalled several conversations with mother concerning father's alcohol problem. Mother was referred for individual counseling and advised to use Mousetrap Pediatrics because of its long hours. That same month, the children started day care in Swanton. Rides were arranged through a taxi service.

The day care provider observed immediately that S.H. was provided only juice bottles despite his obviously rotting teeth, which she described as black in color. The provider also noted that S.H. ate little or no food, because of apparent chewing difficulties. She further observed that S.H.'s stools were consistently runny, and that he constantly had a severe diaper rash. In early June, she became alarmed by a diaper that appeared to be bloody and called SRS. Mother took S.H. to the emergency room that evening, where apparently no blood was observed by the attending physician. About a week later, the day care provider noted a severe-looking wound on S.H.'s foot that was covered with dirty band-aids. She cleaned the foot, applied ointment, and advised mother to visit the doctor. Over the next several days, the day care provider observed that the wound appeared to get much worse; it was red, warm to the touch, and caused difficulty walking. She repeatedly advised mother to bring S.H. to the doctor, but mother indicated that she lacked transportation. At this time, the provider also observed that D.H. appeared with a large black and blue bruise on his forehead and a long scrape from his eye to his chin.

SRS took the children into custody on the evening of June 21. The SRS worker observed that father appeared to be intoxicated at the time. S.H. was dressed in a wet and filthy sleeper, had a juice bottle, and walked with a limp. The wound on his foot had red marks radiating to the ankle, and was undressed and dirty. D.H. was also in a dirty, wet sleeper, and had a grey pallor. The children were brought to the emergency room, where they were cleaned, the wound on S.H.'s foot was treated, and an antibiotic was prescribed. The children were placed in foster care.

A CHINS hearing was held in August. Numerous witnesses testified, including mother, the children's pediatrician, the Family Center worker, the day care provider, and two SRS caseworkers. At the conclusion of the hearing, the court made oral findings and conclusions. The court took pains to acknowledge that mother had managed to bring the children to the pediatrician's office when she was able to obtain rides, had attempted to obtain a dentist appointment for S.H., and had tried very hard to find a job and better housing and care for her family. Nevertheless, in light of all the evidence, summarized above, the court found that mother had failed to provide adequate medical care for the minors, and accordingly entered an adjudication of CHINS. See 33 V.S.A. § 5502(a)(12)(B) (CHINS includes child who is without proper medical care necessary for child's well-being). Father - although not mother - has appealed the court's decision. An appellees' brief was filed on behalf of the minors. The State has indicated that it joins in the minors' brief.

Appellees assert that father's appeal is barred on two grounds. First, they contend a CHINS merits adjudication is not an

appealable final judgment. We have never so held, and, indeed, have routinely entertained appeals from CHINS adjudications. See, e.g., In re D.T., 170 Vt. 148, 149 (1999) (affirming CHINS adjudication); In re A.L., 163 Vt. 635, 635 (1995) (mem.) (affirming CHINS adjudication). The focus of a CHINS proceeding is the welfare of the child; a finding of CHINS is the predicate for retention of the child in State custody, and sets in motion the State's obligation to prepare a disposition report and conduct further hearings to determine the ultimate disposition most suited to the protection and welfare of the child. 33 V.S.A. § § 5526, 5527, 5528; see In re F.P., 164 Vt. 117, 122 (1995) (because focus of CHINS proceeding is welfare of child, court may adjudicate CHINS if allegations of complaint are established as to one parent but not the other). The CHINS proceeding thus determines issues critical to the child's welfare and custody status, and while not the last word on the subject, it is certainly a final judgment for purposes of appeal.

Appellees also assert that father lacks standing to challenge the CHINS adjudication because the parties are separated and mother had physical custody of the children. Nothing in the record of the CHINS proceeding, however, supports the assertion that the parties are separated. On the contrary, although mother testified that father worked long hours, she also indicated that he contributed to the children's care when he was home, and other testimony indicated that the mother and father were living together.

Turning to the merits, we note that our review is limited. We must uphold the court's findings unless clearly erroneous, and its conclusions if supported by the findings. D.T., 170 Vt. at 156. If "credible evidence" supports the court's findings and determination that a child is in need of care and supervision, we must uphold the judgment. Id. at 158. Applying this deferential standard to the case at bar, we are compelled to affirm the judgment. While the court here carefully acknowledged mother's sincere efforts to care for the children, it found that despite these efforts the children were not provided the health care they required. Although father denigrates as routine many of the children's reported health problems, the evidence indicated that they had, in fact, become serious health risks which required immediate and substantial medical intervention, which mother failed to provide. We conclude, therefore, that credible evidence supported the court's findings and conclusion that the children were in need of care and supervision. Accordingly, we discern no basis to disturb the judgment. Although father also challenges the court's finding that he was often drunk, the finding was not material to the CHINS determination, and we therefore decline to address it.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice