

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-218

OCTOBER TERM, 2007

In re S.W., Juvenile

} APPEALED FROM:
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}
} Chittenden Family Court
}
}
} DOCKET NO. 492-10-06 Cnjv

Trial Judge: Brian J. Grearson

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

Mother appeals from the family court's order adjudicating her son, S.W., a child in need of care or supervision (CHINS) and its subsequent disposition order transferring custody to the Department for Children and Families (DCF). On appeal, mother contends that S.W. was not a CHINS because he was being provided proper care by his grandmother, and that DCF custody was unnecessary government intrusion because the court could have granted grandmother custody. We affirm.

In November 2006, the family court adjudicated S.W. a CHINS based on mother's stipulation that due to her use of drugs and inability to control her addiction, she was unable to provide appropriate care for her son. The family court granted grandmother temporary custody under a protective order whereby she was required to consult with DCF regarding the terms of visitation. In January 2007, DCF learned that mother had relapsed and was not engaging in treatment services, and sought custody of S.W. The court transferred temporary custody from grandmother to DCF, but S.W.'s placement remained with his grandmother. Mother objected to the transfer and alleged that she would not have stipulated to the CHINS finding if she had known that custody would be transferred to DCF. * The court held a disposition hearing in May 2007, at which mother and a DCF social worker testified. The social worker testified that mother

* Mother asked the family court to reconsider its CHINS finding. The court refused to reconsider its decision, noting that mother had stipulated to the CHINS disposition. The court explained that dismissing the CHINS finding was not before the court, but rather that in the disposition phase, the court was considering the proper placement for S.W., which could include placement with mother. Because we conclude that there was sufficient evidence to support the court's CHINS determination, we do not reach mother's argument that the court should have reconsidered its CHINS finding at the disposition phase.

was discharged from parenting classes for not showing up and had failed to complete drug treatment. Mother acknowledged that she was using substances and that she had not completed any of the treatment programs suggested by DCF.

The court made oral findings at the conclusion of the hearing, and found that mother had continued to use drugs and had not engaged in any parenting plan or drug treatment plan. The court also found that mother could not provide a safe and stable home for her son. The court placed the child in DCF custody.

At a disposition hearing, the court may transfer custody to DCF if it is most protective of the child's welfare. 33 V.S.A. § 5528; In re J.D., 165 Vt. 440, 442 (1996). We will uphold the court's disposition order if it is supported by the evidence. Id. at 444. (upholding a disposition order where abuse of discretion not demonstrated).

Mother first argues that the family court erred in finding that her son was a CHINS because his grandmother was providing proper care. The State has the burden of proving CHINS by a preponderance of the evidence and we will affirm the family court's findings unless unsupported by the evidence. In re M.B., 158 Vt. 63, 70 (1992). Mother now contends that the undisputed facts, to which she stipulated at the CHINS hearing, did not support the CHINS adjudication. Essentially, mother argues that because she placed S.W. in grandmother's care, and grandmother was taking good care of him, there was no basis upon which to find that the child was not receiving proper parental care. Mother points out that a CHINS adjudication is not compulsory when an incapacitated parent leaves her child with a relative. See In re G.C., 170 Vt. 329, 333 (2000).

We conclude that the facts were sufficient to support a CHINS determination. While mother is correct that leaving a child with a relative does not necessitate a CHINS finding, neither is the court barred from making such a finding in such circumstances. The critical question is whether the child is "without proper parental care," such that the child's well-being is threatened. 33 V.S.A. § 5502(a)(12)(B); In re G.C., 170 Vt. at 334. In this case, the court correctly focused on the child's welfare and considered whether mother was able to properly care for her son. Mother stipulated that she could not care for her son because of her drug addiction. Notwithstanding grandmother's temporary care for S.W., the facts support the family court's CHINS finding based on mother's inability to care for her son. See Id. at 335 (assessing mother's ability to parent, even where child was temporarily placed with foster family, because mother remained legal guardian); In re S.A.M., 140 Vt. 194, 198 (1981) (evaluating mother's ability to parent where child was living with grandparents temporarily, because mother remained legal guardian).

Next, mother contends that the court erred in granting DCF custody of her son. Mother does not challenge the court's determination that she was incapable of providing an appropriate home for S.W. Rather, mother argues that state intervention was not necessary because grandmother was willing and able to take custody of S.W., and custody of S.W. should have been granted to grandmother. As we have highlighted in the past, "[j]uvenile proceedings often involve difficult predictions about the future." In re J.D., 165 Vt. at 444. The court carefully considered the option of granting grandmother custody and concluded that, given mother's failure to address her drug addiction or engage in other services, the best option was to grant

DCF custody. The court's decision did not abuse its discretion. In re B.B., 155 Vt. 365, 369 (1990) ("We leave it to the sound discretion of the juvenile court to weigh the evidence.").

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice